INTERNATIONAL ASSOCIATION OF JUDGES
KAZAKHSTAN 2019

FOURTH STUDY COMMISSION QUESTIONNAIRE

“HARASSMENT, IN A BROAD SENSE MORAL AND SEXUAL
AND ITS CONSEQUENCES ON LABOUR RELATIONS”

BREAKDOWN OF RESPONSES
**QUESTION 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?

Responses to this question provided evidence of laws which address workplace harassment in specific and general terms or indicated a lack of existing laws. Various countries also provided insufficient information as to their current position.

I SPECIFIC LAWS

Belgium, Australia, Canada, China (Taiwan), France, Liberia, Moldova, Norway and the United Kingdom provided the greatest insight into their harassment laws. Each of their individual laws are summarised below.

**BELGIUM**

Belgium has comprehensive laws and regulations aimed at preventing workplace violence and ensuring the protection of workers from psychological/moral and sexual harassment at work. Legislation specifically defines violence, moral and sexual harassment in the workplace. Employers are obligated to have prevention methods in place to prevent violence, moral or sexual harassment at work.

**AUSTRALIA**


**CANADA**

The act in respect of labour standards (‘Labour Act’) provides that ‘every employee has a right to a work environment free from psychological harassment’ (s 81.19 para. 1 of the *Labour Act*). Division 2 is dedicated to psychological harassment and includes sexual harassment (s. 81.18 para 1). Section 81.18 of the *Labour Act* is dedicated to psychological harassment including
vexatious behaviour, in the form of hostile or unwanted actions, that violates the dignity or physical or psychological integrity of the employee, that results in a harmful work environment which normally occurs repeatedly.

The Canada Labour Code (‘Canadian Code’) does not directly address the issue of psychological harassment in general but offers specific protection only with respect to sexual harassment (division XV.1). Recent amendments to the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act 2017 No. 1 increased obligations of federal employers in situations of harassment and violence at work.

The Charter of Human Rights and Freedoms (‘Québec Charter’) provides that everyone has the right to inviolability and dignity and working conditions consistent with this principle. The Québec Charter and the Canadian Human Rights Act (‘Canadian Act’) states that any type of harassment, especially in employment matters may constitute discriminatory practice (s 10.1, Québec Charter and para. 14(1)(c) of the Canadian Act).

CHINA (TAIWAN)

The right to equal treatment is constitutionally entrenched in Article 7 of the Republic of China (Taiwan) Constitution. In addition, the Sexual Harassment Prevention Act (Article 2) defines sexual harassment as sexual statements or behaviour violating another person’s wishes. The Act of Gender Equality in Employment (Article 12) defines sexual harassment as, inter alia, making sexual requests and using verbal or physical conduct of a sexual nature with the intent of gender discrimination.

FRANCE

The Labour Code defines sexual and moral/psychological harassment. It states that no employee should suffer sexual harassment consisting of repeated sexual comments or conduct that offend his or her dignity because of their degrading or humiliating character, or create a situation that is intimidating, hostile or offensive, or be assimilated to sexual harassment (Article L. 1153-1). The Labour Code also provides that no employee shall be subjected to repeated acts of moral harassment that have as their object or effect a deterioration of his working conditions that may affect his rights and dignity, alter his physical or mental health or compromise his professional future (Article L. 1152-1).
The Penal Code outlines the requirements for conduct to be considered sexual harassment. It requires that the act be repeated and uses serious pressure. It may also include words/acts inflicted by several persons against the victim, even if individuals do not engage repetitively or if harassment occurs through a medium of communication (Article 222-33). The Penal Code also defines moral/psychological harassment as ‘harassing others by repeated speech or behaviour that has the purpose or effect of a deterioration of working conditions that may affect their rights and dignity, impair their physical or mental health or jeopardize their professional future’. (Article 222-33-2). The penalty outlined is two years imprisonment and a 30,000 € fine (or 3 years and 45,000 € in aggravated circumstances).

LIBERIA

The National Code of Conduct for All Public Officials and Employees provides that no public official or government employee shall discriminate, harass or bully anyone, particularly those over whom they have authority or those who are vulnerable. It defines sexual harassment as any unwelcomed sexual behavior by a public official or employee of Government towards any sex. The Standing Orders for the Civil Service of 2012 (s 9.1(1) also defines sexual harassment as unwelcome sexual advances, requests for sexual favors and other conduct of such nature.

MOLDOVA

The Labour Code defines sexual harassment as any form of physical, verbal or nonverbal behavior of a sexual nature that damages the dignity of the person or creates an unpleasant, hostile, degrading, humiliating or insulting atmosphere. It is punishable by a fine in the amount of 650 to 850 conventional units or by community service from 140 to 240 hours or by imprisonment for up to 3 years. The Contravention Code, Equality Act 25.05.2012 and the Law on Equal Opportunities for Women and Men 09.02.2006 provides similar definitions of harassment.

NORWAY

Section 13 of The Equality and Anti-Discrimination Act defines harassment as acts, omissions or statements that have the purpose or effect of being offensive, frightening, hostile, degrading or humiliating. Sexual harassment is defined as any form of unwanted sexual attention that has the purpose or effect of being offensive, frightening, hostile, degrading, humiliating or troublesome.
UNITED KINGDOM

Section 26 of the Equality Act categorises harassment into three forms – general harassment (conduct that violates a person’s dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment), sexual harassment or less favourable treatment following harassment. There are three essential elements of a harassment claim under s 26 being unwanted conduct that has the prescribed purpose or effect and relates to a relevant protected characteristic. In Owens v Euro Quality Coatings Limited and Others, an employer was liable for failing to remove a picture of a Swastika for some weeks, amounting to unwanted conduct. In HM Land Registry v Grant the ‘outing’ of a gay employee was considered unwanted conduct.

II GENERAL LAWS

Armenia, Brazil, Chile, Estonia, Finland, Greece, Israel, Netherlands, and Poland provided generalised legislative outlines. Each of their individual laws are summarised below.

BRAZIL

Moral harassment is not considered a crime but constitutes an unlawful act. Brazilian legislation does not define moral harassment. Basic fundamental freedoms and protections are guaranteed however by the Constitution of the Republic of Brazil (1988). The Civil Code (2002) guarantees damages for moral harassment. In addition, various federal legislation/decrees restrict and penalise conduct including violence against women, granting of financial assistance to companies where directors have been convicted of moral or sexual harassment and bullying/ cyberbullying.

CHILE

Harassment is broadly defined as unwanted physical, verbal, nonverbal and psychological behaviour that interferes with work performance or the work environment. Examples included offensive jokes, insults, derogatory comments, inappropriate images, unwanted and inappropriate sexual advances and touching. The Administrative Statute and the Administrative Statute for Municipal Officials also include protections against labor harassment and sexual harassment.
ESTONIA

The Equal Treatment Act aims to ensure protection against discrimination on the grounds of nationality, race, colour, religion or other beliefs, age, disability or sexual orientation. The Civil Services Act (s 18) ensures the protection against discrimination against people who apply to take up service and those employed in service. The Employment Contracts Act (s 3) covers equal treatment in labour contract relationships.

FINLAND

The Occupational Health and Safety Act (738/2002) appears to mention harassment, yet it is not specifically defined. The Act stipulates that employers are required to take care of the safety and health of their employees while at work by taking necessary measures. For this purpose employers shall consider the circumstances related to the work, working conditions and other aspects of the working environment as well as the employees’ personal capacities (s 8(1)). Employers must continuously monitor the working environment, the state of the working community and the safety of the work practices. Employers shall also monitor the impact of the measures put into practice on safety and health at work (s 8(4)). Under the Criminal Code of Finland, sexual harassment is also considered to be a crime and is specifically defined.

GREECE

Greece has an established general framework for equal treatment in employment and occupation (Directive 2014/54/EU). Under the Civil Code, anyone who unlawfully suffers an insult of his personality has the right to demand that the insult is lifted and not repeated in future and that a claim for damages under tort is not prohibited (Article 57). Additionally, in relation to labour law sexual harassment involves an infringement on a worker’s personality and the employer’s termination of the employment contract due to the employee’s reaction to the person’s offense is abusive, and therefore unlawful (Civil Code Article 281)

Law 3896/2010 stipulates that any form of direct or indirect discrimination on grounds of sex, in particular as regards to marital status, shall be prohibited in all areas within the scope of this Act (Article 3). Anyone who considers themselves to have suffered a violation of the Act has a right to judicial protection and a right to appeal (Article 22/23).
ISRAEL

The issue of maltreatment is currently not regulated by legislation. The prevention of bullying and harassment is regulated by laws that prohibit harassment in general and not necessarily within the framework of labour relations. These include the *Harassment in the Prevention of Sexual Harassment Law, 5758-1998*, *Harassment in the Equal Employment Opportunities Law 5748-1998* and *The Prohibition of Defamation Law, 5725-1965*.

NETHERLANDS

The Dutch Constitution entitles everyone to equal treatment. The forms of discrimination against which a person can take action include discrimination on the grounds of religion or belief, origin, sexual orientation, sex, skin colour, race, civil status, disability or chronic illness, or age.

The *Dutch Working Conditions Act* provides the basis for a sound health and safety policy covering workplace harassment. Harassment is not specifically defined. The Act applies to all employers and employees in the Netherlands and both parties are subject to statutory obligations. The *Civil Code* imposes a general obligation for both the employer and employee to uphold good employment practices. Although harassment is not specifically defined in the *Civil Code* it has been applied to cover workplace harassment.

LATVIA

Harassment is defined in Labor Law and is deemed to be discrimination. Harassment is the subjection of a person to unwanted actions that are associated with his/her belonging to a specific gender, actions of sexual nature if the purpose or result is the violation of a person’s dignity and the creation of an intimidating, hostile, offensive or humiliating environment.

MALI

Harassment is considered to be inappropriate behaviour or any pressure against a person or a community for the purpose of receiving benefits without any legal counterpart. It may consist of acts that are physical, verbal, psychological, economic, financial, etc. It is encountered in
the form of blackmail, dismissal or increased treatment, insults, derogatory comments, inappropriate images and sexual advances. Harassment is not incorporated into the *Malian Labor Code*.

**PARAGUAY**

The *Penal Code* (Law No. 1.160/97) prohibits sexual harassment and establishes a penalty of two years imprisonment or a fine. Under the *Labor Code* (Law No. 213/93) an employer may terminate the employment contract if an employee is sexually harassing other people in the workplace. An employee may unilaterally terminate an employment contract if he/she has been subject to workplace sexual harassment.

**POLAND**

The *Polish Codex of Labour Law* provides general rules of labour law. Article 11 prohibits direct or indirect discrimination in employment (including gender, age, disability, race, religion, nationality, political views, trade union membership, ethnic origin, creed, sexual orientation or conditions of employment). Article 183a s 5.p.2 defines harassment as “unwanted conduct with the purpose or effect of violating the dignity of an employee and of creating an intimidating, hostile, degrading, humiliating or offensive atmosphere”.

**III NO LAWS/ NO DETAIL PROVIDED**

**ARMENIA**

No separate laws regarding harassment, they are instead regulated by the *Labor Code*. The *Labor Code* of the Republic of Armenia does not contain separate provisions that define the concept of harassment.

**GERMANY**

No laws covering workplace harassment specifically. Harassment is only covered by general regulation regarding the protection of mental or physical health, personality, honour or the right to sexual self-determination
**PANAMA**

The *Labor Code* of the Republic of Panama authorises an employer to terminate an employee’s contract if they engage in “sexual harassment, immoral or criminal conduct of the worker, during the provision of the service”. Sexual harassment is not defined in The Labor Code. Internal regulation within the company is possible, instead binding the parties through their employment.

**IV LACK OF INFORMATION**

**LATVIA**

Harassment is defined in Labor Law and is deemed to be discrimination. Harassment is the subjection of a person to unwanted actions that are associated with his/her belonging to a specific gender, actions of sexual nature if the purpose or result is the violation of a person’s dignity and the creation of an intimidating, hostile, offensive or humiliating environment.

**JAPAN**

No specific provisions. Relevant laws include the *Rules of the National Personnel Authority 10-10* (Prevention, etc. of Sexual Harassment) and *Rules of the National Personnel Authority 10-15* (Prevention, etc. of Harassment Relating to Pregnancy, Delivery, Childcare or Nursing Care).

**LITHUANIA**

Relevant laws include the *Labor Code, Law on Equal Opportunities* and the *Law on Equal Opportunities for Women and Men*.

**SLOVENIA**

Regulated by the *Labour Code and Anti-Discrimination Code*. 
QUESTION 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?

I SPECIFIC LAWS OR PROCESSESS

AUSTRALIA

An array of remedies exist for victims of misconduct (including harassment or bullying). In criminal law remedies include the involvement of police or prosecuting authorities. Civil remedies include claims for damages, vicarious liability consequences (tort law) and if there is a statutory contravention the victim may have remedies against the employer for failing to provide a safe workplace that is free from bullying or harassment.

Further, the Fair Work Commission can issue “stop orders” where bullying is involved, requiring the perpetrator to desist in the relevant conduct. The victim may commence a proceeding in the Federal Circuit Court of Australia alleging sexual discrimination where sexual harassment is involved. Contractual terms will be considered if the employee’s contract incorporates terms that forbid harassment or discrimination, as a breach of this contract becomes actionable. The most common remedy for this is damages or an injunction stopping the contravening conduct.

In Hill v Hughes [2019] FCCA 1267 a principal solicitor (Hughes) at the law firm Bessley & Hughes made numerous sexual advances to an employee (Hill) throughout the course of her employment. The Court found that this conduct amounted to sexual harassment and ordered Hughes to pay $170,000 in damages. In Rush v Nationwide News Pty Ltd (No 7) [2019] FCA 496 an Australian newspaper published an article of widespread circulation entitled “KING LEER”. The article referred to Mr Rush allegedly engaging in what it asserted was “inappropriate behaviour” (touching an actress on her breasts and acting in a sexually predatory manner towards her) during rehearsals and performances of King Lear. This was the largest defamation case in Australian history with Mr Rush being awarded damages of $850,000.
Currently there is a national inquiry into sexual harassment in the workplace undertaken by the federal Sex Discrimination Commissioner aimed at investigating the intersection between defamation laws, sexual harassment laws and human rights law.

**BELGIUM**

A victim of workplace misconduct may contact the company’s trusted advisor or prevention advisor to make a complaint, contact the inspection department of the Occupational Safety and Control Department of the FPS Employment, Labor and Social Dialogue or file legal proceedings in court.

Companies with no preventative policy in place may be ordered to pay an administrative fine of 137.50 to 1375 euros or criminal fine of 275 to 2750 euros.\(^1\) Penalties against the perpetrator include disciplinary sanctions within work regulations, dismissal for serious misconduct, liability for damages or criminal sanction. \(^2\) If the perpetrator is the employer or a third party, they may be imposed with an injunction to cease the relevant conduct, an administrative fine of 1650 to 16500-euro, criminal prosecution of imprisonment for six months to three years and/or criminal fine of 3300 to 33 000 €.\(^3\) The employer cannot terminate an employment relationship or unjustifiably and unilaterally modify the working conditions of an employee on the basis of a complaint, legal action or testimony made by the employee.\(^4\)

**BRAZIL**

Private sector complaints can be directed to a professional union, civil entities for human rights and medical councils. Public sector complaints may report complaints to the Federal Labor Minister, Federal Prosecutor’s Office and Committees or Commissions on Human Rights. This commonly results in an investigation in the workplace. Extra-judicial penalties in the private sector include the victim’s ability to terminate the labor contract and receive labor indemnity

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\(^1\) *Social Penal Code*, Articles 121 and 122 respectively
\(^2\) *Penal Code*, Article 398, 442bis
\(^3\) *Social Criminal Code*, Article 120
\(^4\) Article 32 tredecies, s 1st
and the offending employee potential dismissal. In the public sector the offender may undergo Disciplinary Administrative Procedure.

Judicial penalties include civil, administrative and criminal penalties. The civil penalty includes loss of job, administrative penalty leading to loss of public position (judges may have retirement cancelled) and criminal penalties for sexual harassment findings can lead to detention.

**CANADA**

Victims of workplace misconduct would first inform their superiors. The *Canadian Code* then requires the employer to issue a policy statement on sexual harassment that determines ‘*how complaints may be brought to the attention of the employer*’ (ss 247.4(1) and para 247(2)(e)). If the employee is not unionized he/she must contact the CNESST (commission) within two years of the last incidence of the offending behaviour (ss 123.6-123.7 of the *Labour Act*). Following the complaint, the CNESST conducts an investigation to decide whether to take action.

The victim may also approach the misconduct from a human rights perspective by claiming a violation to their right to integrity, dignity or a discriminatory act based on a prohibited ground of discrimination such as sex, ethnic origin or religion (s 10 *Québec Charter* and ss 3(1) of the *Canadian Act*). Complaints turn to the discretion of the Canadian Human Rights Commission (or the *Commission des droits de la personne et de la jeunesse*). The victim may also bring action under a civil liability, but must prove the defendant’s fault, the material or moral damage suffered and the causal link between these elements (s 1457 of the *Civil Code of Québec*).

If the employer has not taken the necessary means to avoid the occurrence/ prolongation of the situation, the ACT may impose any fair and reasonable decision. The ALT cannot condemn the harasser directly, but can order the employer to comply with various measures (s. 123.15 of the *Labour Act*) including: reinstating the victim, paying the victim a compensation up to a maximum equivalent to the wages lost or loss of employment, taking reasonable action to put a stop to the harassment and paying punitive and moral damages to the victim. If the victim opts for a human rights complaint, the harasser may be ordered to pay damages and possibly punitive damages (s. 49 *Québec Charter*)
In the case of *Viau et Pain d’Alain Boulangerie asrtisanale inc* (2015 QCCRT 0685) 2015 case a bakery clerk blamed a colleague for having pinched and tickled her on her thighs, arms and ribs. The ALT agreed that these violations to physical integrity created a harmful work environment for the complainant and that the employers inaction breached their obligations to prevent psychological harassment.

In *Labrie et ABP Location* (2016 QCTAT 3078) the employer abused managerial rights by making hurtful comments to his employee in front of witnesses and threatening him so he would not file a complaint. The ALT concluded that this behaviour would be vexatious in the eyes of a reasonable person, that it created an unhealthy climate and that it constituted an affront to the victim’s dignity.

**FINLAND**

The *Occupational Health and Safety Act* provides that the employees for their part shall act in cooperation with the employer and the employees’ representatives in order to achieve the objectives of this Act. The employees have the right to submit proposals on safety and health in the workplace and other matters to the employer and get a response to them (s 17). The Act also provides that employees shall avoid such harassment and other inappropriate treatment of other employees at the workplace which causes hazards or risks to their safety or health (s 18).

S 19 provides that employees shall without delay inform the employer and the occupational health and safety representative of any such faults and defects they have discovered in the working conditions or working methods which may cause hazards or risks to the employees’ safety or health. Then the employer, on the other hand, shall inform the employee who gave the report and the occupational safety and health representative what measures have been taken or will be taken in the matter concerned. S 63 states that if the employer does not do his/her duty to provide safety in the workplace the employer shall be sentenced to a fine for violation of occupational safety and health.

Chapter 2 s 5(a) of the *Criminal Code* provides that a person who by touching, commits a sexual act towards another person that is conducive to violating the person’s right to sexual self-determination, shall be sentenced, unless punishment is provided elsewhere in this Chapter for the act, for sexual harassment to a fine or to imprisonment for at most six months.
**FRANCE**

Unions can take legal action on behalf of the employee victim to support the worker to file a criminal complaint. The Health and Safety Committee Working Conditions can be consulted to suggest preventative actions to avoid future work harassment. Employers have a duty to take action and resolve the matter within 2 months of being notified of an issue of harassment.

In addition to filing a criminal complaint, the employee may also seek compensation for the employer’s breach of duties/obligations and/or directly against the perpetrator. Penalties include dismissal of employee (particularly in instances of sexual harassment) extending to conduct which takes place outside the workplace.

In proceedings, objective facts must first be established to presume moral/psychological or sexual harassment took place (for example, attestations or medical certificates). The judge will then determine whether these facts holistically raise the presumption of the existence of the alleged harassment.

**MALI**

Remedies include mediation, intervention of staff delegates/ labor inspector or judicial process avenues. Mediation is requested by the victim or moral or sexual harassment and must have consent of both parties. Intervention of staff delegates measures are in place due to fear of other social and/or religious consequence. The staff delegate may act in the place of the victim to initiate remedies. Intervention of the labor inspector involves controlling of the execution of health and safety provisions, determining whether the rules have been contravened, whether the employer has an obligation to implement measures to stop the reported harassment, or provide a guarantee of cessation if the employer is involved.

In judicial proceedings, sexual harassment is treated as a serious issue that may result in the dismissal of the perpetrating employee or sanction against the employer. During proceedings the judge has inquisitorial powers. The proceedings may then give rise to awardings of compensation.
NETHERLANDS

The Working Conditions Act requires companies to have a confidential counsellor, known as a vertrouwenspersoon, who is specially trained to receive reports or complaints and to deal with them in a supportive and appropriate manner. The employee may seek guidance from a union representative and external legal advice from an employment lawyer or ‘Juridisch Loket’, a government service which provides free legal counselling. An employee can take (civil) action against the employer requesting termination of the employment agreement and to pay ‘fair compensation’ on top of the statutory transition payment in case of seriously culpable acts or omissions of the employer. Offending employees may be dismissed instantly or the employer may request the court terminate the employment contract without transition payment.

An employee may have to pay the employer compensation in the amount of wages during the applicable notice period if there was an intent of negligence which caused the employer to dismiss him instantly.

NORWAY

Per the Working Environment Act employees have a right to report unacceptable behaviour including harassment and all other forms of improper conduct. The Act also provides protection to whistle blowers by prohibiting retaliation against them. Incidents can be reported to the Norwegian Labor Inspection Authority if an employee is uncomfortable raising it with the employer. The authority will ensure the employer fulfils their responsibility but will not engage in resolving conflicts. The Working Environment Act also outlines an active duty to inform employers or Health, Safety and Environment (HSE) immediately of allegations/ incidences of harassment or discrimination. The purpose of this measure is to prevent injury or exclusion from working life; create good and safe working environment; prevent and manage conflicts and improper conduct in the workplace.

Remedies include managerial apologies, ensuring similar incidents do not occur in future and/or the negative career, work or pay related consequences of employee are rectified. Penalties include a fine or imprisonment (of no more than two years), per s 266 of the Norwegian Penal Code. Harassment cases may be dealt within in the County, Supreme and Court of Appeal or raised by ombudsman.
SERBIA

Mediation is considered to be the first step to rectification. Should mediation fail and there is reasonable doubt the misconduct took place, the employers must initiate proceedings to determine if there was a case of the employee’s responsibility for breaching the workplace discipline. If the employee is found responsible, the employer may impose her/him with a warning, suspension from workplace without remuneration from 4 to 30 days, permanent transfer to another working environment in order to perform equivalent or different duties.

If the employee repeats the misconduct, the employer may terminate her/his contract in accordance with the law. An employee not pleased with a decision that deems that she/he was subject to harassment by a person in charge can bring a case before the court. An employee may request to establish that she/he was subject to harassment, to ban further behaviour presenting harassment, to perform actions to remove consequences of harassment, to remunerate material damage and moral prejudice, to publish the verdict passed following a suit.

Should the plaintiff make credible that harassment occurred, the employer must prove that there was no harassment. Temporary measures can be adopted in the interim including a restraining order or a restraining order from the space surrounding the harassed person’s workplace.

UNITED KINGDOM

Employers are liable for acts of harassment carried out by employees in the course of their employment, even if it was carried out without their knowledge, unless the employer has taken ‘all reasonable steps’ to prevent the harassment (ss 109(1), 3, (4) of the Equality Act). In the case of Rose-Brown v The Home Office (UKBA), a black woman was employed as an officer. Two black contractors came to the office to deal with excessive heat. A white female colleague of Rose-Brown stated that it was only black staff that complained of the heat and that if they did not like the weather they should go back to their own countries. This colleague was suspended and given a written warning, which Rose-Brown argued was insufficient. However, a claim under s 3A of the Race Relations Act was out of time.
An employer may be vicariously liable under the *Protection from Harassments Act* 1997 for acts committed by employees in the course of employment to which there is no available defence.

Employment Tribunals may make a declaration as to the rights of the complainant and the respondent, order the respondent to pay compensation to the complainant, make an appropriate recommendation, make an order requiring the respondent to pay compensation to the complainant (the harasser takes the victim as he finds them) (Southern v Britannia Hotels Limited and Another) and make a recommendation that within a specific period the respondent takes specified steps to obviate/reduce the adverse effects on the complainant per s 124(3) of the *Equality Act*. If the respondent fails to comply with the recommendation, a Tribunal may order the respondent to pay compensation (s 124(2)(b)).

Further, the Judicial Grievance Policy applies to Judicial Office Holders and members of the Ministry of Justice Staff. This covers complaints between staff and judicial office holders and provides a framework for dealing with problems informally or through mediation.

**UNITED STATES**

Remedies aim to return persons to the same position prior to the harassment/discrimination. The *Civil Rights Act of 1991* allows jury trials and permits awards for compensatory and punitive damages in certain intentional discrimination cases (s 102 and 103).

The employer required to stop discriminatory practices and implement procedures to avoid future discrimination and harassment. There have been numerous examples of harassment lawsuits involving U.S. law firms predominantly stemming from the increase in the #MeToo movement.

**II GENERAL LAWS**

**CHILE**

Employees can terminate the contract and apply to a court within 60 working days so that the court may order respective indemnities. The right to compensation will be agreed individually or collectively. If no such agreement is reached, compensation has a limit to 11 months’ worth
of salary. Along with orders of compensation, the court may increase the amount of compensation up to 80 percent if workplace harassment is involved.

**GERMANY**

There are no specific remedies for harassment and remedies can only be covered by general civil law rules. These include sanctions prohibiting dismissal of victims reporting misconduct. If the employer does not protect the victim accordingly, the victim may stop working and continue to receive remuneration (s 237 par. 1 BGB *Civil Code*) and claim material and non-material damages (s 280 par. 1 BGB *Civil Code*). Offenders may also face ramifications under their employment contract (s 253 par. 2 BGB *Civil Code*). Offenders may be criminally liable for bodily harm (s 223 *Criminal Code*), insult/slander (s 185), sexual harassment (s 184) or sexual assault (s 177). In this case, the victim may also claim compensation (s 823 *Civil Code*).

**ISRAEL**

Due to the absence of valid legislation, cases are dealt with in their specific legislation, wherein the remedy is determined. Compensation is generally awarded on grounds of violation of the explicit or implied terms of the contract of employment, which give rise to remedies for non-pecuniary damages.

In the *State of Israel v Homesh*, the Regional Court and the National Labor Court in a matter relating to an Israel Land Administration employee whose supervisor harassed him required the State to pay the employee compensation of NIS 90,000 (approx. $36,000 AUD). In the case of *Shoval v Snir*, the Regional Court held that a working environment (circumstances involved cursing and humiliation) was problematic and improper. The court held that the employer was aware of the conduct and the problematic work environment but failed to deal with the complaints. The employer therefore violated the obligations of good faith and fairness and was required to compensate the employee.

**JAPAN**

If workplace misconduct is reported and it fulfils certain requirements such as constituting a criminal act, an investigation is to be conducted and the necessary correction measures are taken. In addition, they must not dismiss or otherwise unfairly treat a person who has made such a report on the grounds that he/she has made the report. Depending on the case, officials other than judges are to be subjected to disciplinary action under the *National Public Service*
Act (dismissal, suspension from duty, reduction in pay or admonition). For judges, procedures for a judgment on the status are necessary to take a disciplinary action (admonition or non-criminal fine) and an impeachment judgment is necessary to dismiss a judge. In general terms, there are examples of court cases/judgments or administrative proceedings involving harassment.

**GERMANY**

There are no specific remedies for harassment but remedies can only be covered by general civil law rules. Sanctions may be placed upon employers prohibiting dismissal of victims reporting misconduct. If the employer does not protect the victim accordingly, the victim may stop working and continue to receive remuneration (s 237 par. 1 BGB *Civil Code*) and claim material and non-material damages (s 280 par. 1 BGB *Civil Code*).

Offenders may face ramifications in the employment contract (s 253 par. 2 BGB *Civil Code*) and may be criminally liable for bodily harm (s 223 *Criminal Code*), insult/slander (s 185), sexual harassment (s 184) or sexual assault (s 177). In this case, the victim may also claim compensation (s 823 *Civil Code*).

**III LITTLE DETAIL PROVIDED**

**CHINA (TAIWAN)**

The offender may face charges from criminal laws. Victims can seek monetary compensation. The *Act of Gender Equality in Employment* states that the harassers shall be jointly and separately liable to make compensation.

**ESTONIA**

An official who is unlawfully released from service may demand that the administrative declare their release to be unlawful and demand amendment of the release and compensation for three months average salary of the official. The court may amend the amount of compensation considering the circumstances, the nature of the relationship and mutual interests (*Civil Services Act* s 105(1)).
GREECE

Victims are entitled to claim civil damages for non-pecuniary damages and claims in relation to employment contract. Inflicting harm caused by an unlawful act to a person gives rise to an obligation of compensation (Article 914 Civil Code) and the court may also award a reasonable amount of money for compensation to redress emotional distress (Article 932 Civil Code).

LATVIA

A victim may apply to the State Labour Inspectorate, The Ombudsman, submit an application to the court and/or if the sexual harassment is aggressive, apply to the police (aggressive sexual harassment is considered a crime ‘sexual violence’). Penalties for a criminal offence is imprisonment of up to 7 years. If serious consequences have been caused, the offender may face 10 years to life imprisonment.

LIBERIA

S 11.8 of the Code of Conduct provides that remedies for sexual harassment are those prescribed under the civil and criminal laws. S 9.4.1 of the Standing Orders for the Civil Service of 2012 states that the examining committee will receive and review complaints.

LITHUANIA

A victim has a right to demand pecuniary and non-pecuniary damages as prescribed by the Civil Code of the Republic of Lithuania. The harasser may be dismissed, subject to administrative or criminal liability and may be required to pay damages. Article 81 of the Republic of Lithuania Code of Administrative Offences imposes a fine on employers from 40 to 560 euros and 560 to 1200 euros for repeat violations.

PANAMA

Applications may be brought for the dismissal of the perpetrator of the misconduct. Authorisation for the dismissal of a perpetrator may be sought before the Labor Court.

Sanctions may be imposed from the internal regulation within the company. The company may alter the working hours and job role of those involved while undertaking an internal investigation. Article 138-A of The Criminal Code of the Republic of Panama carries a five to eight-year prison sentence for those who persecute or harass a woman.
SLOVENIA

Victims reporting sexual misconduct can file a complaint with their employer or in court. Victims may demand that the conduct be stopped, damages be awarded or the employment contract be terminated (retaining rights to severance pay and damages to notice periods). Victims may also press criminal charges. Civil cases of workplace harassment/ misconduct are common however criminal charges are rare.

IV NO LAWS/ NO DETAIL PROVIDED

ANGOLA

No mechanisms are in place for the protection of victims of sexual harassment in the workplace. Workers may argue unfair dismissal and may receive compensation.

ARMENIA

Victims may restore their violated rights by judicial means, applying to the court. Penalties will vary depending on the misconduct/violence.

GEORGIA

Sanctions vary starting from disciplinary and administrative penalties to, inter alia, criminal punishment or imprisonment.

MOLDOVA

A victim, no matter where the crime occurred, may appeal to at least five authorities to initiate a case of sexual harassment including the Police Inspectorate, the Prosecutor's Office, Judged by the Council for the Prevention and Elimination of Discrimination and Equality and the Ombudsman.

PARAGUAY

Criminal penalties which deprive liberty.

POLAND

Polish Penal Code offence. Article 218 covers persistent or malicious infringement on the rights of the employee.
QUESTION 3

Do you have example of judicial misconduct related to harassment of bullying?

I SPECIFIC EXAMPLES/ DETAIL PROVIDED

AUSTRALIA

An Australian Human Rights Commission survey on sexual harassment in Australian workplaces found that only 17% of people experiencing sexual harassment in the workplace over the last five years lodged formal complaints or reports. The states of New South Wales, Victoria and South Australia and the Australian Capital Territory have Judicial Commissions with power to recommend a judge’s removal from office on the grounds of proven misbehaviour or of proven incapacity.

However, no examples of civil litigation brought against or public censure have been administered to a sitting judge for harassment. No examples of bullying arising out of in-court behaviour that have been dealt with by the Fair Work Ombudsman. There are few examples of judicial misconduct (other than harassment or bullying). Parliament is currently considering its decision for a judge’s removal in New South Wales due to inability to deliver reserved decisions in a timely manner.

In Council of the New South Wales Bar Association v Einfeld [2009] NSWCA 255, Einfeld served as Judge of the Federal Court of Australia from December 1986 to April 2001 when he returned to practise at the Bar. Einfeld was sentenced to a maximum three years in prison, with a non-parole period of two years, for knowingly making a false statement under oath and for attempting to pervert the course of justice. In 2009, the New South Wales Court of Appeal ordered that Einfeld’s name be removed from the roll of lawyers and Einfeld agreed not apply for re-admission. Victorian Magistrate Carmen Randazzo was forced to resign after an investigation into an alleged irregularity relating to nine speeding tickets over several weeks. Ms Randazzo informed the Department of Justice that her father, Antonio Randazzo, was driving her car at the time. It was later established that Mr Randazzo was overseas at the time.
**CANADA**

The Canadian Judicial Council anonymously publishes samples of complaints against federal judges (predominantly complaints regarding impartiality, legal knowledge or procedural conclusions). There are some reports by colleagues or court staff regarding misconduct of judges, however these are rare. No complaints of misconduct in the past ten years according to a registrar at the Ontario Judicial Council.

There have been two cases of alleged inappropriate conduct by judges in 2011 according to the Executive Director and Senior General Counsel of the Canadian Council. In the first case, a court employee alleged a judge had shared lewd humorous remarks and inappropriate innuendos with her for over a year. The judge acknowledged the impropriety of his conduct and resigned soon after. In the second case, a judge violated court’s policies regarding use of technology, using his computer for pornographic material (in full view of employees). The Court appointed an external investigator before referring the case to the Canadian Council. The judge acknowledged his responsibility and sourced medical assistance to treat his addiction and apologised to those directly concerned and made a series of undertakings.

**FINLAND**

In *K v. the State of Finland* (3-2) in the Supreme Court of Finland, K was subjected to inappropriate treatment in work from their closest superior which eventually lead to their resignation. K claimed damages from the employer under the *Occupational Safety Act* as K’s employer had not taken the necessary steps to remedy the injustice at work. K demanded compensation of lost salary in the amount of 118 270 20 euros, mental suffering 50 000 euros and of medical treatment 8 846 euros. The Supreme Court upheld the decision of the District court and found that there was a violation of s 28 of the *Occupational Safety and Health Act* as the employer had not done enough to solve the problems. The state was ordered to compensate K for loss of earnings, medical expenses and litigation costs.

**NETHERLANDS**

The District Court of Amsterdam in 2017 granted an equitable payment of EUR 10 000 and a statutory transition payment to a lecturer accused of sexually intimidating behaviour towards several female students. The court held there were reasonable grounds to terminate the employment agreement, the employer seriously disregarded its internal procedures when handling the complaint and the employee was compensated for such failure of his employer.
The District Court of The Hague on 1 March 2018 ruled that the sexual harassment of a female trainee did not result in a culpable act. The employer had already given the employee an official warning following the incident. After the warning the employer initiated court proceedings to dissolve the employment agreement subject to the payment of the statutory transition payment.

In the Court of Appeal of The Hague on 13 February 2018 an employee had acted seriously culpably by demonstrating sexually improper behaviour towards two female colleagues. The employer had suspended the employee and the employer had requested the District Court to terminate the employment agreement. Held the employment agreement must be terminated. The employee was not awarded any statutory transition payment.

In the District Court of Amsterdam on 1 May 2018 – an employee had displayed inappropriate behaviour. After a brief suspension the employer instantly dismissed the employee. The employer justified the dismissal as “fitting in the context of the current #MeToo discussion”. The court ruled the instant dismissal was too severe and the employer had not followed its own internal sanctioning procedure. The employee was entitled to react to the complaint within 48 hours and that he could seek counsel.

**UNITED KINGDOM**

The Judicial Conduct Investigations Office received 498 complaints of inappropriate behaviour and comments from 2017-2018. 39 were upheld. In the Court Judiciary, two judges were removed, and two reprimanded and formal advice given to four others. In Tribunals, four tribunal judges were removed, one reprimanded and one given formal advice. If bullying occurs by a Judge in the court of a hearing, comments are made by a higher court.

In Jan Tomasz Serafin v (1) Grzegorz Melkiewicz (2) Czas Publishers Limited (3) Teresa Bazarnik-Maliewicz 2009, one ground of appeal was unfair judicial treatment. It was alleged that during the trial the High Court Judge showed hostility, rudeness and put the claimant under enormous pressure. The Court of Appeal stated that such action was unusual and troubling. The ground of appeal was upheld.
UNITED STATES

A prominent federal appellate court judge faced multiple allegations of sexual harassment, sexual misconduct, and bulling made by former law clerks and externs. In the days following the allegations the judge retired.

In the Federal trial court, a judge attributed a female federal prosecutor’s mistake to her gender. The judge was recorded as saying ‘it was a lot simpler when you guys wore dark suits, white shirts and navy ties…we didn’t let girls do it in the old days’. The Appellate court regarded the comments as ‘demeaning, inappropriate, and beneath the dignity of a federal judge.’

A State appellate judge asked a fellow justice to have an affair with him, made lewd comments about her body, groped and pawed the other justice and lower level court employees. Case is proceeding to a hearing in summer 2019. A State trial court judge made comments about a female attorney’s appearance in court, as well as other instances of demeaning comments. The case is pending before the state judicial misconduct board.

II GENERAL DETAIL PROVIDED

BRAZIL

One example of a judge asking for a ‘bikini photo of the trainee’ using WhatsApp. The Court of Justice of Bahia was temporarily removed from office when accused of asking the servant to kiss him and not respecting servants, lawyers and PPO members. The court of Justice of Pernambuco retired after being accused of shouting and punishing servants and intimidating them with a firearm.

CHINA (TAIWAN)

A former Taipei High Administrative Court Judge Chen Hung-Ping exercised the power and influence of his higher position over his email assistant. He was convicted of sexual harassment in 2016 and dismissed from his position by the Court of the Judiciary. However, on appeal, the same court overturned its ruling and instead fined Chen a year’s worth of salary.

FRANCE

Superior Council of the Magistracy has on one occasion (2006) sanctioned moral/psychological and sexual harassment conducted by a Magistrate presiding over the
National Court who had an attitude towards female staff, arrogant and uncontrolled behaviour to subordinate staff and adopted brutal management method.

**ISRAEL**

A complaint was filed by a court typist in 2009 regarding sex offences allegedly committed by a Judge of the Magistrates Court. The judge admitted his relations with the typist but claimed the relationship was consensual. Prior to further investigations the judge voluntarily relinquished his duties and stepped down from the bench. Investigations led to a recommendation that a criminal indictment be filed against the judge in an offence of forbidden relations while exploiting his status at work. The case was closed however due to a lack of evidence.

**III LITTLE DETAIL PROVIDED**

**NORWAY**

A judge was dismissed with one topic in the case being harassment of a colleague.

**PANAMA**

Examples can be found in the Human Resources Department of the Institution. One example of a judicial officer having been dismissed in the Province of Darién.

**PARAGUAY**

In 2014 a complaint was filed with the Superintendency of Justice of sexual harassment of a Criminal Judge for Children and Adolescents that ended with a conviction and the resignation of the Magistrate.

**POLAND**

In June 2018, Judge Jacek S. was convicted and sentenced to 1 year in prison (suspended for 3 years) for sexual harassment of a subordinate worker, having used his position of power/dependence over the worker.
SERBIA

A significant number of procedures and verdicts. Most recent was against the president of the Brus municipality, who was accused of sexual workplace harassment by several women.

IV NO EXAMPLES/ DETAIL PROVIDED

ANGOLA

No examples of misconduct. Inappropriate conduct reports with some cases resulting in marriage or children (workplace relationships).

ARMENIA

No examples.

BELGIUM

Adequate jurisprudence in the area however no published case law in relation to Magistrates. Any incidents in the judiciary have likely been resolved through conciliation.

CHILE

There have been administrative cases against officials and judges who have been denounced and convicted of harassment (no further information given).

ESTONIA

No examples.

GEORGIA

No examples.

GERMANY

No examples.
GREECE

No examples. If examples exist, they are not published as they fall under Law 2472/1997 on the protection of individuals from processing of personal data.

JAPAN

No examples.

LATVIA

No examples.

LIBERIA

No examples.

LITHUANIA

No examples.

MALI

No examples.

MOLDOVA

No examples.
QUESTION 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?

I SPECIFIC LAWS OR PROCESSES

AUSTRALIA

The judiciary is also bound by legislation applicable to the workplace, including laws governing bullying, harassment, sexual discrimination and racial discrimination. As Australia is a federation comprised of individual states and territories, the Australian judiciary is divided into federal judges and state or territory judges. The Australian states of New South Wales, Victoria and South Australia together with Australian Capital Territory (not a state) have enacted legislation that regulates and sanctions in certain circumstances behaviour of judges of those states and of that territory. The legislation of those three jurisdictions is not identical.

In New South Wales per the Judicial Officers Act 1986, judicial officers can only be removed from office on grounds of misbehaviour or incapacity upon the presentation to the State Governor of a report by the Conduct Division of the Judicial Commission. Parliament decides whether to remove a judge from office.

In Victoria per the Judicial Commission of Victoria Act 2016, the most severe sanction is the standing down of a judge if the Judicial Commission so recommends. This is not the same as removal from office.

In South Australia per the Judicial Conduct Commissioner Act 2015, the Judicial Commissioner will investigate a complaint made against a judicial officer. It may recommend to Parliament that the judge be removed from office (resemblant of New South Wales approach).

In the Australian Capital Territory per the Judicial Commission Act 1994, the Judicial Commission investigates a complaint against a judge and reports to the Attorney-General. The Attorney-General has power to recommend to the lower house of Parliament that the judge be
removed from office. If a resolution is passed, the government must remove the judge from office.

At a federal level, no federal body presently exists that has power to censure federal judges although a *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012* exists. A Commission under this act may be established if each House of Parliament resolves to establish one. The Commission investigates the allegation of misbehaviour or incapacity and answers are given to Parliament. A federal judge may only be removed from office upon a finding of proven misbehaviour on the address of both Houses of Parliament.

In relation to barristers, in the state of Victoria, Australia, barristers are bound by the provisions of Rule 123 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015*. That rule states as follows. A barrister must not in the course of practice, engage in conduct which constitutes discrimination, sexual harassment or workplace bullying.

**CANADA**

The *Judges Act* created the Canadian Council which has authority over appointed judges regarding Canadian courts. The *Court of Justice Act* covers judges appointed by the Government of Quebec. Each judicial council has their own code or ethical principles which contain the course of judicial conduct. No specific references are made to harassment or bullying. Protections against harassment are embodied within a fundamental principle in the justice system, namely the integrity of the judges’ role and of the judicial power.

*“the judge should perform the duties of his office with integrity, dignity and honour”*  
(s 2, *Judicial code of ethics* adopted by Quebec Council)

*“judges should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed persons”* (*Integrity*, Principle 1 of the *Ethical Principles for Judges*).

Framework for general harassment and misconduct is built around the notion of equality found in the *Ethical Principles for Judges* (*“Equality,”* Principle 1 & 2). The Procedures for reporting
misconduct begin with the filing of a complaint within the relevant judicial council (s 263 of the Courts Act and s 63 of the Judges Act). Investigation is optional if complaint filed by a member of the public (ss 267-269 Courts Act; ss 63(2) Judges Act); mandatory if filed by the Minister of Justice or the Attorney General (s 268 Courts Act; ss 63(1) Judges Act). If necessary, an Inquiry Committee will be established (s 269 Courts Act; ss 63(3) Judges Act). A report is submitted to the Council after a hearing.

Possible sanctions by the Quebec Council include reprimand, the recommendation that the Minister of Justice or the Attorney General file an application to the Court of Appeal (s 279 Courts Act). Removal or dismissal can only take place upon a report of the Court of Appeal made after inquiry (ss 95 and 167 of the Courts Act). Sanctions by the Canadian council include recommending the matter to the Minister that a judge guilty of misconduct be removed from office (ss 65(2) Judges Act), a removal (by vote of parliament). However, the most common result is that the judge will comply with the Council’s recommendation and resign.

ESTONIA

Section 47 of the Estonia Courts Act stipulates that a person may only be appointed as a judge if they are of a high moral character. Once appointed, a judge shall behave impeccably in service and outside service and refrain from acts which may damage the reputation of the court (Courts Act s 70(2)). If a judge commits an indecent act then they may be subject to a disciplinary offence under s 87 of the Courts Act, which can include a reprimand, fine or even removal from office.

Furthermore, the Estonian Judges’ Code of Ethics contains a number of articles, albeit not legally enforceable, specifically aimed at guiding a judge’s behaviour. These include—

- **Article 6**: A judge shall avoid indecency…and behave in a manner compatible with the dignity of the judicial office
- **Article 7**: A judge shall point out to a colleague his/her indisputable indecent behaviour and endeavour to put such a behaviour to an end
- **Article 31**: A judge shall behave properly and with dignity and shall avoid activities that may discredit the profession and administration of justice
FRANCE

The *Compendium of Ethical Obligations* (framework published by the Superior Council of the Magistracy in January 2019) provides that Magistrates are bound by an obligation and duty of dignity in relation to conduct and remarks with regard to third parties, colleagues and collaborators. They must also be respectful of the dignity of the people (including litigants, witnesses and the auxiliaries of justice and partners of the judicial institution) and display qualities of reserve, discretion and care for others.

When misconduct has occurred, there are a range of processes and services available to victims. This includes a telephone service whereby the Superior Council of the Magistracy can be consulted regarding inappropriate situations that may have breached the ethical rules. The Ministry of Justice also provides a 24-hour service which provides help and advice to victims of a Magistrates’ behaviour, while also possessing investigative powers.

An inquiry will then take place and the Magistrate disputing the allegations must be able to denounce them to the authorities, namely the heads of courts or courts of appeal. The courts of appeal possess a power to inquire and issue pre-disciplinary sanctions (warnings) and following that the Minister of Justice may then open a disciplinary investigation and refer the matter to the Superior Council of the Magistracy if necessary.

If misconduct is found, the Superior Council of the Magistracy has the power to impose a range of sanctions ranging from a warning to revoking the duties of a Magistrate. An example of this process in action is currently developing in *Union Syndicale des Magistrats (USM)*, a matter where an employee committed suicide following workplace harassment.

LIBERIA

The *Judicial Canons of the Republic of Liberia* deals with all aspects of life of judicial officers in addition to the aforementioned legislation. It provides the procedures for reporting misconduct. Chapter 5, s 5.9 of the *Code of Conduct* provides that any public official who violates provisions shall be immediately removed from the position or office.
Additionally, Judicial Canon Thirty-Nine states that the penalty for violation of any provision of the Judicial Canon shall be a fine, suspension, impeachment and/or prosecution.

**UNITED KINGDOM**

The guide to Judicial Conduct (latest edition in March 2019) provides general guidelines such as ‘members of the judiciary should seek to be curious, patient, tolerant and punctual and should respect the dignity of all’. The Judicial Discipline (Prescribed Procedures) Regulations 2014 sets out the process for dealing with complaints about Judicial Conduct.

The Lord Chief Justice of England and Wales has the responsibility as Head of the Judiciary for the welfare, training and guidance of the judiciary of England and Wales.

The Judicial Conduct Investigations Office was established by Regulations made under the 2005 Act to assist in the handling of complaints. The Lord Chancellor and the Lord Chief Justice may agree to dismiss a case or to take a particular disciplinary action. There is no subsequent avenue for appeal.

**UNITED STATES**

The federal judiciary reacted to the #MeToo movement in late 2017-early 2018 in an effort to address workplace bullying and harassment. The Chief Justice appointed the Federal Judiciary Workplace Conduct Working Group, a body that has provided various recommendations including –

- establishing a Judicial Integrity Officer that provides advice and assistance with workplace matters and deals with informal and formal complaints from within the judiciary; and
- recognising that power imbalance is a key consideration.

In 2017, Chief Judge of the Ninth Circuit appointed Judge McKeown to chair the Workplace Environment Committee, tasked with developing policies and procedures for the courts. A survey of current and former employees in the Ninth Circuit was carried out leading to various changes including –

- harassment and bullying specifically defined within the Ninth Circuit Employee Dispute Resolution (EDR);
There is also a Code of Conduct for United States Judges (the judicial ethics code) and Federal Judicial Conduct and Disability Rules that apply to all federal judges in the U.S. They prohibit ‘abusive or harassing behaviour’. These were recently updated to address harassment and workplace misconduct. There is an affirmative obligation for judges to report misconduct and any judge who contravenes the code faces disciplinary measures.

Furthermore, Federal judges and court employees must also follow procedures in their individual appellate and trial courts. Similarly, State court judges and judicial employees are subject to the judicial ethical codes and rules imposed by their state.

II GENERAL DETAIL PROVIDED

ARMENIA

No code of ethics/relevant legislation for judges and judicial staff. The Statute of judicial magistrates generally addresses aspects of a judge’s life and conduct that includes penalties for verbal admonition to the inhibition of the exercise of the magistrate’s/judge’s function.

CHILE

The aforementioned rules on harassment have been understood to also apply to Courts, judges and officials. These rules apply in labor sentence, civil procedure and criminal processes. The administrative responsibility of judges and officials handled by the Courts of Appeal and the Supreme Court.

CHINA (TAIWAN)

The Code of Conduct for Judges provides rules relating to judges’ conduct but no provisions relating to harassment.

Article 4 states that:
A judge shall not prejudice, discriminate or act inappropriately against sex, ethnicity region, religion, nationality, age, sexual orientation, physicality, marital status, socioeconomic status, political relations, cultural backgrounds or likewise.

Judges may be sanctioned disciplinarily or by contravention or criminal law.

**FINLAND**

In general, a judge in Finland must obey the same rules and laws as other professionals. However, in 2010 the Finnish Association of Judges with the Association of Supreme Court Justices began a draft of Ethical Principles for Judges which was adopted unanimously in 2012. This contain general principles for the identification and interpretation of ethical issues as well as guidelines for the deliberation and resolution of these issues. The principles do not describe the minimum requirements for ethical action but set out the level that judges should aim at when administering justice. An example of this is contained in s 7 of the Ethical Principles states that –

> A judge must respect the human dignity of all parties involved. A judge must have an appreciative and cordial attitude towards the parties to a court case, the audience, professional colleagues and members of the work community and treat them in a manner that does not negatively affect the authority of the court.

**GERMANY**

There are no specific rules, procedures or ethics code for the judiciary relating to harassment, meaning that general rules therefore apply. Judges can be criminally liable for bodily harm, insult/slander, sexual harassment or sexual assault (*Criminal Code*). Furthermore, judges can face disciplinary action for harassing others.

Disciplinary measures can only be imposed by the Judges Disciplinary Tribunal (excluding admonitions). These can result in fines, admonitions, salary cuts, transfers, reclassifications and dismissals (*Federal Disciplinary Code*). However, salary cuts and reclassification cannot be imposed against judges of the Supreme Federal Courts (*Federal Disciplinary Code*).
GREECE

Greece has no specific code of conduct, however paragraph 4, Article 88 of the Constitution of states that: ‘judicial officers may be dismissed only after a judicial decision on the basis of criminal conviction of gross misconduct’.

Furthermore, the Code of Organisation of Courts and the Status of Judicial Officers regulates the personal and official status of judicial officers.

ISRAEL

Rules of judicial ethics were established in 1993 to guide judges and serve as a toolkit in their practice. These contain fundamental norms that stem from the status of a judge and norms related to the ways of the judge’s daily behaviour.

However, the conduct of judicial personnel and judges are predominantly managed by criminal, legal and disciplinary norms in the following terms –

Criminal –

- the criminal responsibility of a judge is restricted to actions that have been committed by malice or deception.

Civil (Damages) –

- the scope of civil responsibility of a judge is limited. No suit for wrongful action committed in fulfilling his judicial duties will be filed against a judge.
- immunity is not complete however. If a judge exceeds his jurisdiction of judgment their immunity and responsibility for their actions is measured in accordance with the law relevant to the circumstances of the case.

The process for complaints involves the Minister of Justice and the President of the Supreme Court being advised on filing a complaint to the Disciplinary Tribunal of Judges. A private complaint can be submitted on the grounds that a judge did not act properly in fulfilling his duties or the judge behaved in a manner that is unbecoming the status of a judge in Israel.

This procedure ends with a conviction or exoneration and the court is empowered to sentence the judge to punitive sanctions, the most severe being removal from the bench.

Complaints about other judicial employees is subject to the directives of the State Service –
• a state employee who does not fulfil the directives of the State Service or violates the laws of Israel or behaves in a way that is not becoming or negligently pursuant to his duties commits a disciplinary offence.

• a complaint filed against a state worker is invested by the disciplinary unit and may receive a caution, reprimand, severe reprimand, demotion or docking of monthly salary, transfer to another job/workplace, termination of employment or disqualification from fulfilling a state role.

LITHUANIA

Code of Ethics Judges of the Republic of Lithuania defines the rules regarding a judge’s conduct however it has no special provisions regarding harassment by judges and judicial staff. General principles of law apply. If these principles are infringed, a judge may be punished by way of reprimand, strict reprimand or dismissal

MALI

Law no. 2-054/P-RM of December 16th, 2002 regulates ethical issues and sanctions applicable to a judge. These include –

• Article 71 – Any failure by a magistrate to the duties of his state, to honour, delicacy or dignity is a disciplinary offence.

• Article 72 – The disciplinary sanctions applicable to the magistrates are –
  o 1) reprimand with registration;
  o 2) the removal of office;
  o 3) the temporary withdrawal of certain functions;
  o 4) lowering of step;
  o 5) demotion;
  o 6) revocation with or without removal of pension rights.

• Article 73 – Apart from any disciplinary action, the heads of courts and tribunals and the chief inspector, directors or heads of departments of the judicial administration have the power to give a reasoned warning to the magistrates placed under their authority
  o Recidivists are brought before the disciplinary council

• Article 74 – The minister in charge of justice denounces to the higher council of the facts motivating the disciplinary proceedings. May prohibit the offending
magistrate for performing his/her duties until the final decision. Decision is not made public.

- Article 76 – The President of the Supreme Court or the Attorney-General appoints a rapporteur from among the Council members to investigate
- Article 78 – The magistrate is invited to appear in person in the administrative form once the investigation has concluded.

**NETHERLANDS**

There are various codes of conduct but none are specifically related to harassment. These include the *Bangalore Principles and a Code for Judges (NV v R Rechtscode)* and the code of conduct for all persons working in the administration of justice (*Gedragscode Rechtspraak*). The process in obtaining a remedy for inappropriate behaviour in the judiciary under these codes is to make a complaint to the head of the relevant court about the judge’s conduct or to the Supreme Court.

As per the Act on the legal position of judicial officers (2019), disciplinary measures may be taken against a judge with the constitutional guarantee of judicial tenure until 70 years of age where they neglect the dignity of the office, his activities or duties of that office, violate the conditions that prohibit him to exercise a profession, his duty of secrecy or the duty to inform his court of activities in a position he holds outside the office of judge; and seriously harm the proper course of justice or the faith in justice through his conduct or negligence.

Penalties include a written reprimand, withholding of salary of at most half a month’s wages, (conditional) suspension for a maximum of three months; and/or removal from office. Apart from the written reprimand the abovementioned measures may only be imposed by the Supreme Court.

**POLAND**

Avoid any activities that would harm the dignity of the judiciary, including harassment of staff. An infringement of judicial dignity can lead to sanctions such as disciplinary proceedings and a penalty under Article 109 of the *Statute on the System of Common Courts*, namely a reprimand, reduction of salary and/or removal from office. The perpetrator may also face separate criminal proceedings.
SERBIA

The High Judicial Council has adopted an ethical code where a judge has a duty to treat the judicial personnel with decency, consideration and respect. Breaching the Code’s regulations to a greater extent is considered a disciplinary offence. In relation to civil servants, Article 18 (prohibition of mobbing) of the Code of Conduct is most relevant. The High Civil Service Council is in charge of monitoring the application of the Code.

SLOVENIA

Although the Code of Judicial Ethics is not enforceable in itself, it provides general provisions on the attitude of a judge. These include the following –

- ‘a judge shall establish and maintain a correct and respectful attitude to associates and participants in proceedings’
- ‘a judge shall protect the reputation of the judiciary by personal example and in all his activities shall avoid inappropriate behaviour’

However, any violation of the Judicial Service Act can be sanctioned according to the act and the Act on Judicial Council. Sanctions may be imposed on a judge who has violated the judicial duties. Such violations include –

- The conduct and behaviour of a judge which is contrary to judicial independence or violates the reputation of the judicial profession; and
- Inappropriate, indecent or offensive behaviour or expression towards individuals, state bodies and legal persons concerning the performance of or outside the judicial service.

Potential sanctions for the abovementioned conduct include a written reminder, suspended promotion, salary reduction, transfer to another court and/or termination of judicial service.
III LITTLE DETAIL PROVIDED

BELGIUM

The regulations identified apply to both employees under employment contracts and persons with status, including administrative staff or Magistrates.

BRAZIL

Legislation in place includes the Organic Law of the Magistrates, the Code of Ethics of the Judiciary. However, these do not have specific rules for moral or sexual harassment but are general rules of conduct such as dealing with courtesy and behaviour with personal and professional integrity, honour and dignity in public and private life.

GEORGIA

The Code of Judicial Ethics of Georgia regulates violations. If a provision is violated it may result in disciplinary penalties ranging from reprimand to dismissal from office.

JAPAN

There are a number of rules specifically relating to forms of harassment in the workplace, however these are not specific to the judiciary. These include Rules of the National Personnel Authority 10-10 (Prevention, etc. of Sexual Harassment) and the Rules of the National Personnel Authority 10-15 (Prevention, etc. of Harassment Relating to Pregnancy, Delivery, Childcare or Nursing Care) which are applied mutatis mutandis pursuant to the Rules of Temporary Measures Concerning Court Officials.

LATVIA

There are no specific rules relating to harassment by judges and judicial staff. However, under the Code of Judicial Ethics, the judge must avoid unworthy actions. As per the Judicial Disciplinary Law, a judge may be subjected to disciplinary liability for dishonourable actions or gross violations of the Judges Code of Ethics.
The Judicial Disciplinary Board may impose disciplinary sanctions upon a judge including a remark, reprimand, salary reduction for a period up to 1 year (withholding up to 20 percent of salary) or removal from office.

**MOLDOVA**

Judges are regulated by the *Code of Ethics and Professional Conduct*. There is not a separate code or legal provision relating to the judiciary. Judges can be sanctioned by way of disciplinary actions, contravention, and/or criminally.

**PANAMA**

A code of ethics exists for the judicial body however there is no mention of harassment. Law 53 of 27 August 2015 regulates the judicial career and includes articles 190, 191 and 192 regarding minor and serious offences.

**PARAGUAY**

Law No. 5767/16 provides a comprehensive protection of women against all types of violence. If such behaviours are proven the sanctions may be penal, labour sanctions and/or possible dismissal. Those affected can go to the Secretary of Women’s Protection, the Ministry of Public Defence and in more serious cases, the Public Ministry.

The Ministry of Justice and Labor establishes the procedures that companies must follow in the case of complaints. Sanctions are provided in *Article 85* of *The Labor Code*.

**IV NO RULES/ ETHICS/ CODES**

**ANGOLA**

No code of ethics/relevant legislation for judges and judicial staff. Statute of judicial magistrates generally addresses aspects of a judge’s life and conduct that includes penalties for verbal admonition to the inhibition of the exercise of the magistrate’s/judge’s function.
NORWAY

No specific rules, ethics codes or legislation for the judiciary. The judiciary has procedures for reporting and enforcing harassment laws. Judges may also face criticism or receive a warning from the Supervision Board for judges, reactions from the Norwegian Discrimination Tribunal or dismissal and criminal penalties in serious cases.