

The New European Union Directive on Sexual Harassment and Its Implications for Greece

by Mary Ellen Tsekos*

In May 2002, the European Union Parliament passed legislation that for the first time provides a legal definition of sexual harassment applicable throughout the European Union (EU). This latest legislation comes in the form of an amendment to the 1976 Council Directive 76/207/EEC (Directive), which attempted to effectuate equal treatment for men and women in the workplace. Prior to the passage of the May amendment (Amendment), sexual harassment was not considered a violation of equal treatment; however, the latest amendment specifically classifies sexual harassment as a form of discrimination in violation of equal protection. In addition, the new directive establishes guidelines for sanctions, legal action, and potentially unlimited compensation for sexual harassment victims. Pursuant to the directive, member states must establish agencies to promote equality and enforce anti-discrimination laws. The Amendment also requires member states to encourage employers and those responsible for vocational training to institute preventative measures to protect against sexual harassment in the workplace. The Amendment requires that states meet these objectives by 2005. Although the Amendment is not limited to addressing abuse against women, focus has been placed on its effects on sexual harassment against women.

Human Rights Implications of Sexual Harassment

Sexual harassment has historically been overlooked as a human rights concern. In recent years, however, sexual harassment in the workplace has been recognized as a serious form of violence against women. The world community is increasingly recognizing that the right to feel safe and free from gender harassment is a human right. In 2001, at its 45th session, the Commission on the Status of Women (Commission), a UN charter body, stated that all forms of violence against women, including sexual harassment, impair the enjoyment of human rights. The Commission further commented that gender-based violence, including sexual harassment, is "incompatible with the dignity and worth of the human person and [should] be combated and eliminated."

Sexual harassment is also increasingly considered a violation of the right to protection against discrimination, which is recognized by the Universal Declaration of Human Rights. The Amendment specifically states that "Harassment related to the sex of a person and sexual harassment are contrary to the principle of equal treatment between women and men; it is therefore appropriate to define such concepts and to prohibit such forms of discrimination."

Whether viewed as a form of violence against women or as discrimination, it is clear that the international community is increasingly concerned about sexual harassment as a human rights abuse. The passage of the Amendment emphasizes this growing concern.

General Implications of the Amendment for Europe

While most EU member states have already implemented domestic legislation addressing sexual harassment, this new directive marks the first time that a Union-wide policy regarding sexual harassment will be implemented. The impact of this policy will vary depending on the current law of the individual member states. For instance, states such as the

United Kingdom, which already have strong sexual harassment laws, will likely not need to make significant changes to domestic legislation. The British Sexual Discrimination Act defines sexual harassment as "Unwanted or uninvited sexual conduct, or other unwelcome conduct with sexual connotations, including unwelcome physical, verbal or non-verbal conduct." The Union-wide definition provided in the Amendment targets situations in which "any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment." The language used in the British Act closely corresponds with the definition provided in the Amendment, necessitating few changes. For countries such as the United Kingdom, the Amendment will likely have more of an effect on employers, requiring them to take a more proactive role in preventing sexual discrimination. For countries such as Greece and Portugal, however, which currently have no specific legislation that addresses sexual harassment, the directive will have a more substantial impact.

United Nations Concern about Greece's Efforts

The Greek government, in particular, has been under international pressure to develop sexual harassment legislation for some time. In order to comply with its commitments under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Greece must report on its implementation of the Convention at least once every four years. Since CEDAW's adoption in 1981, Greece has submitted periodic reports only three times. Greece submitted a combined second and third periodic report in 1999. In response to this report, the Committee on the Elimination of Discrimination against Women (CEDAW Committee), a UN treaty body charged with the implementation of CEDAW, expressed "concern that, notwithstanding a high level of incidence of sexual harassment in the workplace, [Greece's] legal regulation remains unclear, and women do not avail themselves of available complaint mechanisms." That same year, the Greek General Secretariat for Equality, the government body responsible for addressing gender equality issues, stated that by the end of 1999, in cooperation with the Ministry of Justice, special provisions would be implemented to fill in the gaps in the legislative regulations regarding forms of violence against women. Although the Secretariat has been successful in bringing about many improvements to the situation of women in Greece, it has been unable to make a difference on issues of violence against women in general and sexual harassment in particular. Despite the statements of the General Secretariat, specific legislative regulations regarding forms of violence against women are not yet in place.

Sexual Harassment in Greece

The extent to which Greek legislation ignores the issue of sexual harassment is particularly problematic considering the pervasiveness of the problem. Few studies have been conducted in Greece regarding sexual harassment, and those that have been conducted are based on very small population

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samples. Nonetheless, what is apparent from these studies is that sexual harassment affects over 70 percent of women in Greece, is typically perpetrated by superiors, and is not perceived by the harassers as constituting harassment. In the absence of a national survey on the issue, two non-governmental organizations, the Greek Helsinki Monitor (GHM) and the World Organisation against Torture (OMCT), published a report entitled, "Violence against Women in Greece" in July 2001. GHM and OMCT prepared the report for the Exceptional Session of the Committee on the Elimination of Discrimination against Women, held from August 5-23, 2002. The report was based on information collected from ten discussion groups with Greek women.

While the majority of the women in the studies had experienced sexual harassment, few had reliable information about how to handle it. None of the women participating in the study had received any information about sexual harassment at work, and most learned what little they knew from the media. All of the women participating in the study understood the concept of harassment, but some considered harassment as being limited to the actions of superiors, not those of co-workers.

The women reported sexual harassment by superiors, customers, and other co-workers, taking the form of direct and indirect advances, humiliating compliments, and offers of money to spend the night. One group of sexually harassed women said that when they challenged their harassers, they were told that the actions of the harassers were paternal. The youngest women in the group explained that often their acceptance of sexual advances determined whether or not they were hired.

The participants seemed to reject the notion that they could take any action against their harassers. Most of the women thought that the only thing they could do to make the sexual harassment stop was resign. Yet, they added that this was not a realistic option due to the difficulty of finding work in Greece's tight economy. The fact that very few of the women indicated that they had or ever would attempt to pursue legal remedies to address sexual harassment is indicative of the extreme difficulty in pursuing legal options. A majority of the women chose simply to accept the situation or to pursue non-legal strategies. Most of the women surveyed were in favor of some type of law dealing with sexual harassment, and some said the law should include severe penalties. The results of the discussion group demonstrate that sexual harassment is a major problem in Greece.

Greek Legislation Related to Sexual Harassment

Currently, individuals seeking redress for sexual harassment in Greece may utilize certain general provisions of the Greek Penal Code. These provisions, however, do not address all forms of sexual harassment. For example, Law 1414/1984, which bans sex discrimination at work, could be employed to address employer's patterns of sexual harassment against employees. This law is deficient in that it is unlikely to be useful for individual harassment claims unless the employee can prove that the employer engaged in systematic sexual harassment. Article 57 of the Greek Civil Code provides another possibility for redress. It states that "any person whose personal dignity has been affronted unlawfully can demand that such affronts cease and are not repeated in the future." This article, however, will be ineffective for all but the most extreme claims of sexual harassment, as the term "affront

to one's personal dignity" has been interpreted to mean a very severe violation. Similarly, Articles 337, 343, and 361 of the Penal Code, which provide for penalties for criminal acts that are an affront to personal dignity with respect to a person's sex life, punishment of any state employee who sexually abuses a subordinate, and punishment for insult by word or deed, respectively, each require extensive proof, and are generally useful only in addressing the most extreme cases of harassment. The crime of "indecent abuse of power," which is probably most closely related to the common notion of sexual harassment, is punishable only when perpetrated against employees in the public sector. Employees in the private sector do not have comparable protection.

While the Greek Civil and Penal Codes can theoretically be employed to deal with some cases of sexual harassment, the reality is that currently very few lawyers attempt to bring such cases. The public perceives Greek judicial proceedings as extremely insensitive to gender issues. Thus, it is virtually impossible to attempt to address even severe cases of sexual harassment. If a sexual harassment victim chooses to pursue a claim despite the legal difficulties, other factors will often prove restrictive. Pending civil lawsuits, including sexual harassment suits, take on average two to five years to be adjudicated. Sexual harassment suits in particular often provide very low levels of compensation. Furthermore, the risk of reprisal from the harasser is a significant disincentive to pursuing claims through legal channels. It is indeed fairly common for victims to be sued for defamation by their harassers.

In general, women are not reporting instances of sexual harassment. Case law on issues of sexual harassment is extremely scarce. In fact, representatives from the Greek Research Center for Gender Equality, under the auspices of the General Secretariat for Equality, were unable to provide the text of any cases when asked in the summer of 2002. Between 1995 and 1999, the Greek Federation of Labor Unions received only 20 sexual harassment claims. Of these, only two reached the courts. Because most Greek workers are unionized, they often report work-related problems to their labor unions and rely on them for assistance with general employment matters. The small number of complaints made to the Greek Federation of Labor Unions indicates that sexual harassment victims are not reporting the problem. In the absence of other government outlets for dealing with incidents of sexual harassment, the Greek Federation of Labor Unions would likely hear of many sexual harassment complaints.

European Union Law and Implementation Mechanisms

Thus far, international pressure has been ineffective in influencing Greece to alter its sexual harassment legislation. This latest EU amendment, however, is likely to have a significant effect because it will have concrete legal implications for Greece. As a member of the EU, Greece will not only be encouraged to implement sexual harassment legislation, but will indeed be required to do so.

European Union law is an independent legal system that takes precedence over national legal provisions of the member states. There are two different types of EU legislation. Treaties are the only primary EU legislation. Member states must agree to treaties by direct negotiation, and the treaties must be ratified by the member states' national parliaments. Secondary EU legislation has its basis in the treaties and may take different forms. One type of secondary legislation, an EU regulation, has a direct effect on member states. Regulations

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are directly binding on all EU member states, and do not require the adoption of domestic legislation to implement them. On the other hand, directives are not directly applicable. The directives are legally binding on member states; however, they require that national authorities implement directive objectives. Thus member states are given more flexibility to tailor the implementation of directives to their national norms. This flexibility is not present with regulations, which are applicable without the implementation of domestic legislation. It is, however, important to note that the European Court of Justice has held that directives are directly applicable if the member state has not adopted adequate domestic legislation implementing them within the allotted time frame and if the provisions confer rights to individuals.

Although this new definition of sexual harassment is included in an amendment to a directive, and thus will not be as immediately applicable to the member states as a regulation, the sexual harassment amendment expressly states that the identified objectives must be met by 2005. EU directives might appear to have more weight than UN conventions such as the CEDAW or the Convention on Economic, Social and Cultural Rights, which Greece has largely ignored, particularly with respect to its obligation to address sexual harassment. In fact, EU directives have significantly more force than such UN conventions in this respect, primarily because of the stronger implementation mechanisms of the EU.

While the UN must rely on subtle international pressure in order to implement its agreements, the European Commission has direct mechanisms to put its legislation into practice. The Commission can utilize economic incentives to enforce its rules, or initiate legal proceedings against a state before the European Court of Justice where it believes a state has violated EU legislation. Member states of the EU are also required to accept the supremacy of EU legislation in their own national courts. Thus, victims of sexual harassment in Greece will now be able to cite directly to the new amendment when bringing claims in their national courts.

Conclusion

It is difficult to predict exactly how soon the Amendment will positively impact Greece and cause a decrease in the prevalence of sexual harassment in the workplace. After all, Greece has disregarded international pressure on the issue of sexual harassment for many years, and little has changed up to this point. Nonetheless, the legally binding nature of the latest amended EU directive offers the most hopeful possibility of true change to date. The Greek government will now not only be encouraged to implement sexual harassment legislation, it will indeed face the much more ominous possibilities of having EU funds withdrawn or being brought before the European Court of Justice. By 2005, the deadline for full implementation of the new directive, victims of sexual harassment in Greece will ideally be able to point to national sexual harassment legislation passed as a result of the implementation of the amended directive. Undoubtedly, implementing legislation alone will not bring an end to sexual harassment in the workplace. It will, however, be a significant first step in the direction of true change. ☺

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