

EBH Booklets

1

*The Hungarian Equal Treatment Authority's Manual
on Preventing Workplace Harassment and on the
Forms of Rights Enforcement*

EBH Booklets 1

The Hungarian Equal Treatment Authority's
Manual on Preventing Workplace Harassment and
on the Forms of Rights Enforcement

Budapest
2017

EBH Booklets 1

The Hungarian Equal Treatment Authority's Manual on Preventing Workplace Harassment and on the Forms of Rights Enforcement

Published by Equal Treatment Authority
1013 Budapest, Krisztina krt. 39/B, Hungary

Responsible: dr. Honecz Ágnes

Editors: dr. Varga Judit, dr. Pánczél Márta, Kollár Levente

Series Editor: dr. Gregor Katalin

Typography: Kollár Levente

Illustrations: flickr.com, pixabay.com, careerplus.ch, Northfoto

Press: Pauker Holding Kft.

HU ISSN 2498-5732

The pictures in this booklet are only illustrations.



Contents

About the EBH booklets	5
1. Harassment as a form of discrimination	6
1.1. The concept of harassment in the Ebktv	6
1.2. Characteristics of workplace harassment, the issue of responsibility	9
1.3. The concept of harassment in community law	10
1.4. Who could be a victim?	11
1.5. Who can be a harasser?	11
2. Demarcation - what does NOT qualify as harassment as defined by the Ebktv	12
2.1. Harassment in the Criminal Code	12
2.2. "Mobbing"	13
2.3. "Plain" workplace conflicts, labour disputes	14
3. Examples, case-law	14
3.1. Sexual harassment	14
3.1.1. Not a good idea to sweep it under the rug	14
3.1.2. The funny boss	15
3.1.3. Harassment can be realised through SMS as well	15
3.2. Other cases	16
3.2.1. Two men in one room	16
3.2.2. Not funny	16
3.2.3. Gay pride (and prejudice)	17
3.2.4. Termination is not the only appropriate measure	17
3.2.5. Test tube baby	18
3.2.6. The "Arab spy"	18
3.2.7. The trade union member who was harassed	19
3.2.8. A co-worker with disability	19
3.2.9. Gypsy jokes	19
4. Preventing and scaling back workplace harassment	20
5. When the problem has emerged already...	21
5.1. Enforcing your rights before the Equal Treatment Authority	21
5.2. Enforcing rights in court	23
5.3. NGOs and trade unions, helplines	24
5.3.1. Why can it be helpful to turn to an NGO or trade union?	24
5.3.2. NGOs and contacts with civil society	25

About the EBH booklets

The **Equal Treatment Authority** (Egyenlő Bánásmód Hatóság (EBH), hereinafter referred to as the Authority) is an institution created to safeguard human dignity, to serve as a public body to redress violations of the principle of equal treatment and to monitor the enforcement of said principle. It seeks to exert a positive social impact by intervening in processes of discrimination, and is actively engaged in preventing and recognising such processes and in promoting an attitude of non-discrimination. In addition to its activities aimed at enforcing non-discrimination laws, it also supports these goals with thematic and general informational publications, programmes and events.

The Authority typically proceeds in response to petitions (in a limited range of cases it may also launch ex officio proceedings), and based on **Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities** (hereinafter referred to as the Ebktv pursuant to the Hungarian abbreviation) it investigates whether in given instances the principle of equal treatment was violated and discrimination was realised.

The first in the series of thematic booklets published by the 10-year-old Equal Treatment Authority, the present manual on the subject of **workplace harassment**, was written by the Authority's staff. As a result of hierarchical structures in the workplace and the nature of employment relationships, the ratio of incidences of harassment in employment tends to be fairly high when compared to other areas of social life. Hence a majority of harassment cases in the Authority's case-law are employment related.

Informed cooperation between employers and employees provides the most effective instrument for preventing workplace harassment. By publicly presenting its experiences in the realm of enforcing the law, and by clearly delineating the concept of harassment and sharing the relevant case-law, the Authority provides expert information that assists compliance with the law. It also presents the possibilities for enforcing individual rights and offers specific information about forums and procedures that provide legal remedies.

Who is this publication intended for?

- For employers, in order to help them pre-empt violations of the law and to recognise in time when these are happening, and to take appropriate action to protect employees;
- For employees, to know their rights and the possibilities for asserting them;
- For non-governmental organisations (NGOs) and trade unions, so that they can provide proper information and effective protection to those who turn to them for help.

The Equal Treatment Authority's central address: 1013 Budapest, Krisztina krt. 39/B

Telephone number: (+36-1) 795-2975 | (+36-80) 203 939

Fax number: (+36-1) 795-0760

Website: www.egyenlobanasmod.hu

<https://www.facebook.com/egyenlo.banasmod.hatosag/>

1. Harassment as a form of discrimination

1.1. The concept of harassment in the Ebktv

Harassment is one of the specifically mentioned forms of harassment in the Ebktv.

The **Ebktv** provides that “[h]arassment is a conduct, of a sexual or other nature, violating human dignity in connection with the relevant person’s [protected] characteristic defined in Article 8, with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment around that person”¹

Harassment as defined in the Ebktv need not be limited to the workplace (it can also occur in the areas of healthcare, education, etc.), but, as the title of our publication implies, in this particular discussion we will focus exclusively on workplace harassment.



Protected characteristic

The first feature of the underlying concept that we need to stress is that of protected characteristics, which need to apply in order to determine that harassment as it is defined in the Ebktv has occurred.

The Ebktv tends to extend protections to characteristics we are born with; which are permanent and either immutable or difficult to change; which are essential aspects of a person’s character; which lend themselves to group formation and may give rise to prejudice. At the same time, however, the enumeration of characteristics in the law is not a closed list, for the last line in the list refers to “other situation, characteristic or feature” (Section 8 (t) of the Ebktv). Nevertheless, this does not imply, that the law regards the differential treatment

and harassment of any and all persons or groups based on any type of characteristic as discrimination. The provision concerning “other situation, characteristic or feature” must to be construed more narrowly; only characteristics and situations that are essentially similar to those enumerated in the law can be construed as protected characteristics.

A further condition is that the harassment in question must be connected to the complainant’s



Source: Northfoto

THE HUNGARIAN EQUAL TREATMENT AUTHORITY'S MANUAL ON PREVENTING WORKPLACE HARASSMENT AND ON THE FORMS OF RIGHTS ENFORCEMENT

protected characteristic. However, there is no requirement that persons suffering from harassment must actually possess the protected characteristic; it is sufficient if they are being harassed because they are presumed or thought to possess a protected characteristic.

Conduct that violates human dignity

Harassment – typically – manifests itself in the form of verbal abuse, or in offensive and degrading conduct or set of conducts that violate human dignity, which are liable to undermine the victim's self-confidence and human dignity, and to infringe on his/her right of self-determination.



Source: careerplus.ch

According to Position Paper No. **384/5/2008. (IV.10.) of the Advisory Board** that previously operated alongside the Equal Treatment Authority, *“the Hungarian concept of harassment prohibits conduct that violates human dignity; such conduct may manifest itself in a variety of ways. Generally, conduct that is derogatory, degrading, disparaging or offensive is also injurious to human dignity. Conduct that pokes fun at a person's human characteristics, ridicules said characteristics, makes them the subjects of mockery or rough practical jokes, or humiliates the person through physical contact, also falls into this category”*.

Nevertheless, though individual sensitivities differ, in order for a given conduct to qualify as harassment as defined in the law **it must rise to a level – based on an objective standard** – that can actually provide the grounds for a determination that harassment has taken place. This must be ascertained in each case relative to the specific relation that prevails between the person who has engaged in a harassing conduct and the person who has suffered from said conduct. Thus for example even an explicit sexual advance towards a female employee by her boss does not necessary constitute sexual harassment if the circumstances reveal that the other party had also expressly advocated a sexual liaison between the two parties, or has in fact initiated such a relationship, for one precondition that must prevail for harassment to apply is that the given conduct must infringe on the other party's right of self-determination and thereby his/her human dignity.

Intimidating, hostile, degrading, humiliating or offensive environment

Another key conceptual feature of harassment is that as a result of the conduct that is injurious to human dignity, an intimidating, hostile, degrading, humiliating or offensive environment must emerge with respect to the targeted person.

The negative change is caused by the harasser. An important criterion is therefore that the environment has changed as described above as a **result** of the harassing conduct. Nevertheless, it is not necessary for a hostile environment to emerge in order for harassment to be realised; it is sufficient for conduct to be **directed** at bringing about such an environment.



Source: flickr.com

It also needs to be emphasised that it is not a conceptual element of the definition that the harasser harbour the intention of creating such an environment. Hence actions that “merely” have the effect of creating an environment as defined in the Ebktv may qualify as unlawful even if the creation of said environment was not actually intended. (For example joking, teasing, banter – in other words all types of conduct that are liable to create an environment that violates human dignity, regardless of whether there is an underlying intention to do so).

Sexual harassment

Sexual harassment is a special type of harassment. When this occurs, then the previously described conduct, which violates human dignity, takes on a sexual character. The law does not contain a distinct conceptual definition of sexual harassment. Instead, it incorporates sexual harassment into the conceptual range of general harassment. In other words the criteria laid out above can be applied to sexual harassment as well, with the distinction that in order to **realise sexual harassment**, the emergence of **a hostile, degrading, etc. environment** is not always necessary, precisely because by its very nature sexual harassment often occurs in private, without the knowledge of others. The legal underpinnings of this concept are laid down in the definition of sexual harassment provided by **Directive 2002/73/EC**, which is also applicable in Hungary based on the doctrine of the supremacy of EU law.

Typical examples of sexual harassment include text or image-based messages with sexual content; attempts at physical contact that cause embarrassment; the promise of promotion, rewards or other benefits in exchange for sexual services; embarrassing or dubious signals and gestures; in certain instances regular remarks, innuendo, , concerning the victim’s outward appearance, etc..

The victims of sexual harassment need not necessarily be women. Sexual harassment may affect persons of the opposite or of the same gender. Nevertheless, typically the complaints received by the Authority concern the harassment of women by men. In these cases the implicated protected characteristic is the female gender of the employee who was subjected to the offending conduct.



To sum up - the conceptual elements of harassment

- protected characteristic
- conduct that is injurious to human dignity a connection between the two aforementioned

1.2. Characteristics of workplace harassment, the issue of responsibility

In defining harassment and sexual harassment, the abovementioned Position Paper No. 384/5/2008. (IV.10.) TT points out that such offending acts can be realised through **active and passive conduct** alike, *through singular acts as well as continuous, regularly recurring acts*, and even *in the absence of an intention* to actually engage in harassment.

The possibility that the employer was negligent – a passive behaviour – applies especially in situations when it learned that an employee was “harassing” a co-worker but failed to take adequate measures, or any measures at all, to prevent this from happening. In such instances employers may be held accountable because they failed to take appropriate action.

It is all the more important to stress this because **harassment as defined in the Ebktv cannot occur in relations between private persons**, for the Authority’s competencies do not extend to conflicts or disputes between private persons. Though harassment is usually realised by a co-worker or a superior at the place of employment, **the Authority conducts its proceedings against the employer** (e.g. a business corporation or a body of public administration). The law obligates the employer to comply with the requirement of equal treatment, and the employer is also accountable for the conduct of its employees.

In instances of workplace harassment the **victim can file a complaint with the Authority against the employer**, and the Authority investigates the responsibility of the employer rather than the specific employee who is accused of the injurious conduct.

Should a complainant insist on holding a co-worker who has harassed him/her accountable, then he/she must enforce that claim in court, by initiating a lawsuit concerning the infringement of his/her personal rights (see Section 5.2). Alternatively, if the given conduct constitutes a criminal offence, then the victim may also file a police report (see Section 2.1).

The Equal Treatment Authority cannot proceed directly against employees who engaged in harassment and cannot sanction them. It also follows that in an administrative procedure a person who has engaged in harassment is not examined as a client but as a witness.

A specific feature of the concept explored in this publication, i.e. workplace harassment, is the relationship between employer and employee, between **superior and subordinate**. Workplace harassment is often the result of harassers abusing their position, making the subordinate aware of their power over him/her.

It is at the same time also important to emphasise that often it is not the superior who engages in harassment but rather a co-worker of the victim who is **not in a superior status to the victim** (for example an immediate colleague who makes comments about the other’s ethnicity or pries into his/her sexual orientation, for example). In proceedings



Source: flickr.com

before the EBH, the employer is nevertheless held accountable if it fails to properly address the victim's complaints and does not make an effort to redress the degrading situation.

Harassment or sexual harassment in the workplace may also be determined to apply when the rights infringement occurs after **working hours** at an organised or spontaneous friendly gathering of employees, if the meeting is in some way connected to the employment relationship – argued the Advisory Board's previously cited Position Paper.

It is important to highlight, however, that the mere circumstance that the person who engaged in harassment is a co-worker is not sufficient for the determination that workplace harassment as defined in the Ebktv applies. For the latter to be established, the harassing conduct must be in some way connected to the work relation in question. Hence if a workplace superior or a co-worker engaged in harassment outside working hours and outside the workplace, at an event that is unrelated to work, then that conduct does not fall into the employer's sphere of responsibility, which is why the Authority cannot make a determination that a violation of rights has taken place, since – as we pointed out above – its competence is limited to examining the responsibility of the employer. (Nevertheless, harassment as defined in the Criminal Code, or an infringement of personal rights as laid down in the Civil Code may still apply. See Sections 2.1 and 5.2).

1.3. The concept of harassment in community law

Community directives, which provided the framework for the relevant domestic legislation, also lay out in detail the conceptual criteria that define harassment. The term harassment first appeared in community law in the Directive on racial or ethnic discrimination.²

We first encounter workplace harassment as a distinct concept in the Council's Directive 2000/78/EC. This directive concerns the establishment of a general framework of equal treatment in employment and occupation.³

Complementing the aforementioned, 2002/73/EC of the European Parliament and of the Council stressed that harassment and sexual harassment related to a person's gender do not necessarily manifest themselves only in the context of employment, during the performance of work and/or at the workplace, but may be present already in the process



Retribution

Another violation of the principle of equal treatment (and one form of discrimination) is „retribution“. The Ebktv defines retribution as conduct that infringes, is directed at infringing or threatens to infringe on the rights of a person who has objected to violations of the principle of equal treatment (thus for example to harassment), has launched proceedings to this end or cooperates in such proceedings.

The present publication will not discuss this concept in detail, we only wish to allude to it since retribution often comes up in the context of harassment as a potential consequence of efforts directed at enforcing one's rights, or as a potential object of apprehensions by the person who suffered a violation of his/her rights or by the person who is involved in the proceedings as a witness, for example.

1.4. Who could be a victim?

No matter what their protected characteristic, anyone can become a victim of harassment in their workplace, for example because they are women, men, homosexuals, trade union members, etc.

We should note once again that the Ebktv does not establish as a criterion that the harassment victim must in fact possess the protected characteristic in question. The victims of sexual harassment predominantly tend to be



Source: flickr.com

women, but even in the specific context of sexual harassment the possibility that a man may become the victim of harassment cannot be ruled out. As a result of the hierarchical relations in the workplace, it is typical for employees to become the targets of harassment by their superiors, but at the same time potential victims may also be co-workers, that is parties who are not superior to the victims in terms of their rank in the workplace hierarchy. There are numerous instances in practice when that is the case.

1.5. Who can be a harasser?

Harassment can occur both in subordinate-superior relationships as well as among co-workers without a hierarchical relationship between them; harassing conduct may be manifested by any co-worker, subordinate or superior.

It must be pointed out again that in each and every case the Authority launches proceedings against the employer (business corporation, organisation, institution, authority, municipal government, etc.), which has a legal obligation to comply with the principle of equal treatment. If the employer fails to take the necessary measures despite being aware of harassing conduct, and fails to extend protection to the victim against the harasser, then it may be held accountable.

You do not have to tolerate being the target of offensive comments or inappropriate behaviour in your workplace on account of your gender, disability, sexual orientation, etc. You do not have to put up with uninvited sexual advances. All such conduct qualifies as harassment that violates the principle of equal treatment.

A person who protests harassment may not be subject to unfavourable treatment or retribution. The employer is responsible for ensuring that employees can work in a harassment-free work environment.

If you are harassed by a colleague or superior, then it is advisable to report this as soon as possible (ideally in writing) to the person(s) who represent your employer in the context of work-related issues.

2. Demarcation - what does NOT qualify as harassment as defined by the Ebktv

2.1. Harassment in the Criminal Code

The Criminal Code (abbreviated as Btk in Hungary) also refers to the concept of harassment. It must be noted that its understanding of harassment is not identical to the concept as it is defined in the Ebktv, which was discussed in detail above. While harassment as defined in the Ebktv is a form of discrimination, harassment in the Criminal Code is a criminal offence.

Including it among crimes against human dignity and certain fundamental rights, Section 222 of the Btk defines the concept of harassment as follows:⁴

*“(1) Any person who engages in conduct intended to intimidate **another person**, to disturb the privacy of or to upset, or cause emotional distress to another person arbitrarily, or who is engaged in the pestering of another person on a regular basis, is guilty of a misdemeanour punishable by imprisonment not exceeding one year, insofar as the act did not result in a more serious criminal offence.*

(2) Any person who, for the purpose of intimidation:

*a) conveys the threat of force or public endangerment intended to inflict harm upon **another person, or upon a relative of this person, or***
b) giving the impression that any threat to the life, physical integrity or health of another person is imminent, is guilty of a misdemeanour punishable by imprisonment not exceeding two years.

(3) Any person who commits the act of harassment:

a) against his/her spouse or former spouse, or against his/her domestic partner or former domestic partner,
b) against a person under his/her care, custody, supervision or treatment, or
c) if abuse is made of a recognized position of trust, authority or influence over the victim,
shall be punishable by imprisonment not exceeding two years in the case provided for in Subsection (1), or by imprisonment not exceeding three years for a felony in the case provided for in Subsection (2).”

Though there is some overlap between the Ebktv’s and the Btk’s respective definitions of harassment, we can nevertheless observe that the acts of harassment defined in the Btk are typically more grievous than the conducts captured by the Ebktv’s definition.

A fundamental difference between the two concepts is that while a protected characteristic is an ineluctable statutory element of the Ebktv’s understanding of

4 Section 222 of Act C of 2012 on the Criminal Code.

THE HUNGARIAN EQUAL TREATMENT AUTHORITY'S MANUAL ON PREVENTING WORKPLACE HARASSMENT AND ON THE FORMS OF RIGHTS ENFORCEMENT

harassment as a form of discrimination, in the Btk's approach **no protected characteristic needs to apply in order to realise harassment as a criminal offence.**

The Equal Treatment Authority may not proceed when a criminal act has been committed, and in such cases the Authority must file a report with either the prosecutor's office or the investigating authorities (the police).

It is important to be aware that harassment as defined by the Btk can only be prosecuted in response to the submissions of an individual, that is only a report by the aggrieved party may trigger proceedings, official bodies may not do so within their own authority.

A report may be filed orally or in writing, there are no set formal requirements in that regard. An oral report must be recorded in a protocol. An individual petition must be filed within thirty days of the date when the victim has learned about the identity of the person who committed the crime. An individual petition may not be retracted.



Turn to the police if as an employee you perceive that your life, bodily integrity or health may be in immediate danger due to the harasser's conduct!

2.2. "Mobbing"

Mobbing - also known as *psycho-terror* - is also a conduct associated with the workplace. What it has in common with harassment is that in instances of mobbing, too, the victim is subject to ramifications that infringe on her human dignity. In extreme cases, workplace terror can have such far-reaching consequences as the victims' inability to perform their work or continue in their



Source: flickr.com

work. Typical forms of mobbing are social exclusion, the isolation of victims in the workplace, the ongoing disparagement of the quality of their work, the threat to fire them, the spreading of groundless rumours about them, constant public criticisms, etc.

The fundamental difference between workplace harassment and mobbing is that in the case of the latter there is no protected characteristic that serves as the grounds for harassment; for harassment to be realised, however, the Ebktv's Article 8 specifies that a (perceived or real) protected characteristic must apply, and that this characteristic must be in some way connected to the harassing conduct. Insofar as the harassment is not performed in connection with some protected characteristic, therefore, but for other reasons (e.g. jealousy, pure personal antipathy or even without any reason), then the given conduct does not qualify as harassment as defined by the Ebktv, even if the given conduct otherwise matches the conditions laid out in law.

2.3. "Plain" workplace conflicts, labour disputes

Workplace conflicts and the negative conduct of employees towards one another – regardless of whether they have a negative, humiliating, degrading or intimidating impact on the workplace environment and the affected employee – only qualify as harassment according to the law when all the conceptual elements enumerated in the Ebktv apply simultaneously. **The concept of harassment as it is defined in the Ebktv differs from the everyday usage of the term.**

A lawful exercise of a super-subordinate (power) position, thus for example the exercise of disciplinary powers, the use of performance review schemes, and incidental workplace conflicts do not fall into this category, nor do discussions about problems or instructions to remedy them, as long they are related to the performance of work, and as long as the way in which these are conducted does not violate human dignity.⁵ Similarly, for example, the occasional compliment of a co-worker's appearance does not constitute sexual harassment.

3. Examples, case-law

In the following we discuss a few select cases from the practice of the Equal Treatment Authority and from judicial case-law involving actual harassments in the sphere of employment. We hope that the synopses below will help us illustrate what the obligations of employers are, what their typical failures are in terms of complying with the law, and what type of conducts constitute harassment.

3.1. Sexual harassment

3.1.1. Not a good idea to sweep it under the rug

A co-worker of the employee sought physical contact with her, which led to increasingly embarrassing and frequently even degrading situations for the petitioner. After rejecting the advances, the situation became the subject of hearsay at the workplace, and as a result the petitioner felt increasingly uncomfortable. The petitioner filed a complaint with her superior, who failed to take any action against the harasser's conduct, however, and only initiated an effort at settling the dispute through a joint discussion. At this meeting the co-worker who had engaged in harassment denied that the alleged events had transpired, while the superior called on him to refrain from any comments that could be injurious or offensive to co-workers. Once the Authority's proceedings were launched, the superior sought to influence the employees who were scheduled to be heard as witness and also called the petitioner to task for turning to the Authority.

5 Position Paper No. 384/5/2008 of the Advisory Board

THE HUNGARIAN EQUAL TREATMENT AUTHORITY'S MANUAL ON PREVENTING WORKPLACE HARASSMENT AND ON THE FORMS OF RIGHTS ENFORCEMENT

The Authority established that the employer was responsible as it had failed to stop the harassment even though it had been aware of it. The employer is responsible for employees' workplace conduct during working hours. Workplace harassment is not a private conflict and the employer is duty-bound to interfere. The employer realised harassment through its passivity, by failing to take the appropriate measures to protect the employee despite the fact that it was aware of the events in question. The Authority reviewed not only what measures the employer took but also investigated what further reasonable and practicable measures it could have taken to redress the injurious situation.

3.1.2. The funny boss

The senior-level co-worker of a female complainant working for a multinational company made several advances towards the petitioner, in which he proposed sexual liaisons, and regularly made remarks about the female co-worker's outward appearance. He questioned her about her bra size, commented on her figure and called her "my little puppy" and "my little piggy". The complainant repeatedly called on her co-worker to stop this behaviour, to no avail. Though there was an ethics investigation within the company on the matter, but the petitioner objected to both the method used and the actual outcome. The male co-worker received a written reprimand admonishing him for his "style of speaking". In the resultant proceedings, the Authority did not accept as a discharge of the burden of proof the notion that the peculiar form of communication merely constituted jesting that resulted from the man's individual "style of speaking". Nor did it accept the argument that the petitioner was "overly sensitive". The Authority also found that the ethics investigation was not sufficiently thorough, and it rejected the claim that the employer could not have done anything further to put an end to the situation in question.

The employer appealed the Authority's decision, which had established a violation of the principle of equal treatment, in the Metropolitan Court of Budapest. The Court rejected the petition and affirmed the Authority's reasoning. It stressed that other persons' assessment of the conduct complained against was immaterial in this case. The judgment also held that harassment need not necessarily be a deliberate form of conduct, and that a manager has an increased level of responsibility in shaping the workplace environment because he/she has a direct influence thereon. The Court also agreed with the Authority's observation that the employer had failed to show sufficient determination vis-à-vis the harasser.

3.1.3. Harassment can be realised through SMS as well

According to a judicial verdict, the employment status of a civil servant may be terminated without reason. Nevertheless, the employer's legal statement to this effect is unlawful if it can be conclusively shown that the



Source: pixabay.com

termination was grounded in the given civil servant's rejection of conduct that constitutes sexual harassment.⁶ Any type of conduct referring to sexual relations (be that verbal remarks, comments sent by phone text messages (SMS) or actions to that effect) may be liable to offend the human dignity of employees. In the case investigated by the Authority it was shown unequivocally that SMS messages sent by the municipal clerk working for the respondent were offensive to the plaintiff and very personal in nature. Nor was this impression mitigated by the argument – presented during the judicial review – that the prevailing atmosphere between co-workers in this workplace was friendly and direct.

Sexual harassment is not the only form of harassment that occurs in the workplace, however. In the following, we have selected examples that involved other forms of harassment.

3.2. Other cases

3.2.1. Two men in one room

The workplace manager harassed the male complainant on the grounds of his presumed sexual orientation, because during a vacation abroad the latter had stayed in the same room as another male co-worker. As a result of the manager's hostile conduct, other co-workers also grew increasingly alienated from these employees, and the sexual orientation of the complainant and of his colleague became the subject of conversations. All co-workers were witness to the harasser's impugned conduct, which reinforced the degrading and humiliating character of the workplace environment. In addition to resulting in the termination of the complainant's employment contract, the harassment also led to a deterioration in his health condition.

When it comes to complaints about harassment, it is rather difficult to assemble the evidence, considering that the alleged incidents often occur in private and that witnesses are frequently lacking. In this case the employee relied on witness testimony and audio recordings to successfully show that the harassment had occurred.

We should note that it is practical to save written communication between the parties (letters, e-mails, SMS) because it can be used subsequently in the evidentiary procedure.

The employer turned to the court and asked it to review the Authority's decision. The court rejected the appeal on the grounds that it lacked merit.

3.2.2. Not funny

The complainant's immediate superior had created a degrading and humiliating environment for the petitioner in connection with the latter's homosexuality. Witness statements confirmed this. He made jokes and offensive remarks in the presence of co-workers about the employee in question, ridiculing him and mimicking his gestures and tone of speaking. The jokes made by the male co-workers – which were of a sexual nature – were offensive to women as well. The degrading environment was palpable for

THE HUNGARIAN EQUAL TREATMENT AUTHORITY'S MANUAL ON PREVENTING WORKPLACE HARASSMENT AND ON THE FORMS OF RIGHTS ENFORCEMENT

all. It should have been obvious for the superior, too, but he failed to take the appropriate measures to eliminate the offensive conduct, and indeed he even partook in the latter, which is why the Authority ruled against the employer.

3.2.3. Gay pride (and prejudice)

In another case the employer learned that the employee participated in the parade held on the Budapest Gay Pride Day, and in response his immediate superior made it impossible for him to continue to work in the given workplace. Ultimately, the employee resigned his employment. The Authority determined that harassment had occurred and condemned the complainant's former employer.

3.2.4. Termination is not the only appropriate measure

In contrast to the previous instance, the Authority **rejected** a complaint in which the petitioner invoked that her direct superior had harassed her for a protracted period of time on account of her sexual orientation, but the employer failed to terminate the employment of the superior complained against. In its proceedings the Authority sought to find out when the employer learned about the harassment complaint; what measures it took subsequently; and whether these proved effective in terms of ending the harassment. It was clearly discernible in the case that the employer immediately began investigating the complaint as soon as it learned about it, and transferred the superior complained against to another plant in order to put an end to the harassment. In light of the fact that by the time the employer carried out its investigation, the petitioner was already officially in a status of being unable to work, the Authority was not in a position to examine whether the employer's measures were actually effective in attaining the desired impact (i.e. ending the harassment).



Source: flickr.com

With respect to the specific grievance in the petitioner's complaint, namely that the employer failed to terminate the employment of the superior complained against, the Authority explained that in the given context the employer was not duty-bound to apply further sanctions against the employee who had engaged in the offensive conduct beyond ensuring that his harassment of the other employee cease. Nor could the employer have been expected to specifically apply the sanction requested by the petitioner against the superior complained against, especially when it was not possible to ascertain unequivocally that the harassment had in fact occurred. The Authority explained further that the employer could not be held responsible for the petitioner's mental illness, which had

developed over the years, since the petitioner had previously failed to inform it about the grievances she had suffered, which is why it could not have acted earlier in the interest of ending the conduct that the petitioner found injurious.

3.2.5. *Test tube baby*

The petitioner worked as a language teacher at a school. The head teacher sought to terminate her employment but did not have a chance to do so because the complainant was protected from termination as she was undergoing fertility treatment.

In response, the head teacher sought to undermine her work as a teacher. For example, the teacher's language classes were assigned to another, newly hired language teacher, while the complainant was assigned to substitute in physical education classes and had to return immediately the textbooks that she used to teach.



Source: flickr.com

Voice recordings showed that the head teacher's arrogant manner and tone led to the emergence of a degrading and humiliating workplace environment. Though the abovementioned conduct also led several members of the faculty to sympathise with the victim, the atmosphere was occasionally hostile towards her. The head teacher even went so far as to contact the petitioner's attending physician in order to verify the petitioner's claims regarding her treatment.

The petitioner was given her extraordinary notice of termination while the proceedings were ongoing. The Authority's decision determined that harassment on the grounds of motherhood (pregnancy) had occurred, and it assessed

that the extraordinary termination of the complainant's employment was retribution for the latter's initiation of proceedings with the Authority.

The educational institution that was the subject of the procedure failed to show that it had complied with the principle of equal treatment vis-à-vis the petitioner.

3.2.6. *The "Arab spy"*

A music teacher of Arab ethnicity, who has been living in Hungary for decades, was deeply offended in her human dignity by the school's deputy head teacher. The latter continuously made remarks about the teacher's ethnicity, referring to her as an "Arab spy" and starting rumours about her. The deputy head teacher's conduct was well-known and was discussed among the complainant's colleagues, but the head teacher still failed to take reasonable measures to end the situation that infringed upon the rights of the teacher in question. Though the head teacher did give the deputy head teacher a written

THE HUNGARIAN EQUAL TREATMENT AUTHORITY'S MANUAL ON PREVENTING WORKPLACE HARASSMENT AND ON THE FORMS OF RIGHTS ENFORCEMENT

warning, he failed to conduct disciplinary proceedings, which is why the sanction employed was not considered proportional in light of the injury suffered by the teacher. The head teacher's actions were neither effective nor determined enough, which is why the Authority held that the subject of the procedure had violated the principle of equal treatment.

3.2.7. The trade union member who was harassed

The relationship between the complainant and his superiors deteriorated when it emerged that the employee was the member of a trade union. His superior began to harass the employee in connection with his membership in the union. The superior continuously criticised the employee's work in the presence of their co-workers, and sought to have him transferred into a position that required a lower level of education and degree; the latter only failed to materialise because the complainant's immediate superior intervened to prevent it. Several employees left the company on account of the changed and hostile environment. The Authority determined that the principle of equal treatment had been violated.



Source: flickr.com

Several employees left the company on account of the changed and hostile environment. The Authority determined that the principle of equal treatment had been violated.

3.2.8. A co-worker with disability

The employee with disability was subject to slurs by his co-workers, who made comments about his condition and blamed him for the slow pace of work and work performance. This conduct also gave rise to a determination that harassment had occurred and to the condemnation of the employer on those grounds.

3.2.9. Gypsy jokes

Co-workers made degrading remarks about a colleague who belongs to the Roma national minority, referring to petitioner's Gypsy ethnicity and regularly telling Gypsy jokes in his/her presence. They failed to cease the offensive conduct even when the employee reported the issue to a superior. The superior belittled the problem, however, and concluded the matter by arguing that it was not within his/her competence to instruct the other employees on this matter, noting that if the complainant has a "problem" with co-workers, then they should settle it outside the workplace. In this case, too, the Authority held that the law had been violated.

4. Preventing and scaling back workplace harassment

In order to prevent cases such as the ones outlined above from happening in the workplace, it takes positive measures by employers that extend to all employees.

A minimum level of required expectations is that there be organised events to make employees **aware** of the issue, to provide them with **information** about harassment; on how and when complaints may be filed; about the process of investigating complaints; and potential measures that can be taken in response to harassment.

It is important to reassure employees that the victims of harassment **may not be subject to disadvantages** for reporting the case.

Further suggestions

- » Coming up with internal regulations – ideally based on preliminary surveys; these should include suggestions for managing conflicts, a procedure for investigating complaints and appropriate sanctions. Everyone should be able to learn what the regulations say and they should be accessible to all.
- » Determining – and when necessary applying – sanctions (written warning, other adverse legal consequences) that are proportional to the gravity of the rights infringement. Terminating the employment of the employee who engages in harassment is one of the most serious sanctions, and before taking such a measure it is always necessary to weigh whether it is proportional to the seriousness of the offence committed. The employer's sanctions against the employee who engaged in harassment must of course be in line with the provisions of the Labour Code.
- » Organising trainings (for managers and subordinates) about harassment and sexual harassment.
- » An appropriate support and consulting network, the creation of a reporting system (including the possibility of anonymous reporting) for all organisational units and at every level.
- » Safeguards to ensure that there is no retribution and that information is handled confidentially – support for the complainant, the employee complained against and the staff members involved in the investigation.
- » The involvement of external experts when necessary (e.g. mediator, persons with experience in conflict management).
- » Documenting written communication between the parties, e.g. storing e-mails and SMS messages.
- » If a works council operates at the employing organisation, then pursuant to the Labour Code the employer must consult the council 15 days prior to its own decision about its opinion concerning any measures by the employer that impact a significant group of employees and about drafts of internal regulations. (According to the Labour Code, measures and rules aimed at ensuring compliance with the principle of equal treatment and ensuring equal opportunities qualify as such measures by the employer).
- » Consultation with trade union representatives at the workplace.



GOOD ADVICE FOR EMPLOYERS

Take employees who complain about harassment seriously, immediately investigate their grievances, take appropriate and effective action and measures to end and prevent harassment.

5. When the problem has emerged already...

If you have become the victim of workplace harassment then you might consider taking the following advice:

- inform the harasser first verbally, and then if necessary in writing, that his/her conduct is disturbing to you, and call on him/her to stop said conduct;
- should that prove insufficient, then inform a higher level person you trust about the events, and file a complaint orally or in writing with your employer;
- if the employer fails to address your case or implements ineffective measures in response, then turn to the Equal Treatment Authority or consult an NGO (or its legal aid services) that can provide expert advice that is mindful of your personal circumstances concerning your protected characteristic (you will find a list of NGOs that may be able to assist you at the end of this manual),
- you should make a note of the facts you experienced in the course of the harassment (who, when, where and how), and collect evidence that may be used to substantiate your claim (letters, messages, the names of witnesses, audio or video recordings, photos, etc.), and use these during the investigation conducted by the employer or the Equal Treatment Authority. It will be much more difficult for the employer to discharge the burden of proof if you have specific information and evidence at your disposal.

5.1. Enforcing your rights before the Equal Treatment Authority

EGYENLO= BÁNÁSMÓD HATÓSÁG

Persons who feel that they are being harassed by their co-workers, subordinates or superiors on account of a protected characteristic they possess may turn to the Equal Treatment Authority for remedy.

In detail:

A complaint may be submitted by **mail** (mailing address 1539 Budapest, Pf.: 672.) or online, through the government's **official Client Gateway (Ügyfélkapu)**. **Complaints may also be filed in person** by making an appointment for a meeting during the Authority's office hours (Monday from 9AM to 4PM at the address Krisztina krt. 39/B.,

1013 Budapest). Complaints may also be registered in county seats, during the office hours of equal treatment consultants.

(For details see: http://www.egyenlobanasmod.hu/article/index/megyei_referensek).

The petition must include the name of the petitioner, his/her address, other contact information, the name of the employer complained against, its address, and an express request for a decision by the Authority.

In proceedings initiated on the grounds that the principle of equal treatment was violated, it is the complainant who must render it probable that he/she has been subjected to discriminatory treatment, and he/she must also show that a protected characteristic applied to him/her – actually or at least in the presumption of those who violated his/her rights – at the time when his/her rights were violated.

As part of rendering the disadvantage suffered probable, the events must be presented in detail. The complaint should thus not discuss general information, nor provide a personal assessment of the conduct complained against (e.g. “I am constantly subject to comments that severely offend my human dignity”), but should instead list specific events and specific actions (who, when, where; what they did, what they said, who else was present, etc.), even if recalling these or writing them down is uncomfortable for the petitioner.

In the case of verbal harassment, for example, the petitioner must share what was said even if the verbatim rendering contains “ugly” (read inappropriate, foul) words. In the interest of proving that a disadvantage was suffered and that a protected characteristic applies, the petitioner should also include any documentation at his/her disposal. (If for example age is the protected characteristic that was the grounds for harassment, then the petitioner should attach a copy of the official document attesting to his/her age – e.g. personal identification, etc.) The petitioner must also attach harassing e-mails, letters and other documents at his/her disposal which show that the harassment did indeed transpire; and he/she must also attach a copy of his/her employment contract.

When the above have been rendered probable by the petitioner, then it is up to the subject of the procedure (the employer) to discharge its burden of proof and to show that the circumstances rendered probable by the party that suffered the rights violation did not in fact apply, or that its actions were either in compliance with the principle of equal treatment or that it was exempt from compliance in the context of the relevant legal relationship. In the course of the evidentiary procedure the employer may present the action it took to end the harassment, and it may rebut the claim that the impugned conduct violated human dignity or that an intimidating, hostile, degrading, humiliating or offensive environment had emerged; or that the latter emerged as a result of the employer’s conduct that the petitioner complained about.

The employer may be exempt from responsibility if its conduct was justified on the basis of the nature or character of the work in question, and if the differential treatment in question was based on a material and lawful condition that the employer was entitled to take into account, and if it was proportional to the needs it had to consider. The employer might show, for example, that it took all potential measures to prevent harassment, for instance by assigning the person engaged in harassment to a different physical location; that it had conducted disciplinary proceedings against him/her or terminated his/her employment;

THE HUNGARIAN EQUAL TREATMENT AUTHORITY'S MANUAL ON PREVENTING WORKPLACE HARASSMENT AND ON THE FORMS OF RIGHTS ENFORCEMENT

or if it can show, for example, that it only obligated an employee to remove a necklace with a cross or other religious symbol because it might cause an accident if it was caught up in a machine used at the workplace.

If the Equal Treatment Authority has made a determination that the principle of equal treatment was violated, then it can order that the infringement cease; it may interdict future manifestations of the conduct that violates the principle of equal treatment; it may order the public dissemination of the binding decision in which it determined that the principle of equal treatment was violated; and it may also issue a fine. The Authority may also impose more than one legal consequence at the same time.

Witnesses may request that the Authority treat any information that may be used to identify them, as well as their home address, confidentially, in order to ensure that they do not suffer potentially severely disadvantageous consequences as a result of their involvement in the proceedings – that is in situations when cooperation might result in retribution or revenge.

In these situations the Authority will handle any information that may be used to identify them personally or their address separately from the documentation of the case. It will seal such information and ensure that they do not become known during the proceedings. Only a certain pre-defined group will be authorised to view the sealed information (case-worker, keeper of the minutes, transcriber, the president of the Authority, the prosecutor and the judge during a judicial review).

In these situations the Authority will handle any information that may be used to identify them personally or their address separately from the documentation of the case. It will seal such information and ensure that they do not become known during the proceedings. Only a certain pre-defined group will be authorised to view the sealed information (case-worker, keeper of the minutes, transcriber, the president of the Authority, the prosecutor and the judge during a judicial review).

5.2. Enforcing rights in court

In regulating *personal rights*, Act V of 2013 on the *Civil Code* (abbreviated as Ptk in Hungarian) states that human dignity and the resulting personal rights must be respected by everyone. As a general rule, personal rights may be enforced by the affected person. A person whose personal rights were violated may demand – as long as the statute of limitations has not run out –, among other things, that a court determine that his/her rights were infringed upon; that the infringement end; that the violator be enjoined from further violations; that the detrimental situation cease; and that **damages** be paid as compensation for non-material damages. Moreover, if someone suffers damages as a result of violations of his/her personal rights, he/she may demand to be *indemnified* by the violator based on the rules in the Civil Code.

Based on the Civil Code, therefore, a person whose personal rights were violated – **thus including a person who was subject to workplace harassment may also turn to a court for judicial remedy.**



Source: flickr.com

Act I of 2012 on the *Labour Code* also stipulates that the principle of equal treatment must be adhered to in the context of employment, especially with respect to the remuneration of work. If there is a violation of this principle, then one can turn to the labour court.

If one asserts one's rights in court (be it in a case involving personal rights or in a labour dispute) the person who suffered a violation of his/her rights may receive more comprehensive legal remedies, primarily in the area of material compensation and the restoration of the status quo ante.

It is important to note that the Equal Treatment Authority conducts its proceedings in the framework of an administrative procedure; that compensation claims cannot be enforced by the Authority; and that the Authority can also not obligate the employer to restore a petitioner to his/her previous work position.

Nevertheless, during each stage of the Authority's proceedings the parties have the opportunity to agree on a settlement. When a settlement is concluded, the Authority does not take a position on the case, as the parties settle the dispute by coming to an arrangement that lays down mutually acceptable conditions. It is important for the settlement to comply with the relevant legal provisions, and it may not contravene public interests or the rights or rightful interests of others. It must also make provisions regarding the deadline to fulfil its terms and the costs of the procedure. These are basic conditions for the Authority to approve a settlement.

5.3. NGOs and trade unions, helplines



Source: flickr.com

5.3.1. Why can it be helpful to turn to an NGO or trade union?

Among the objectives pursued by certain NGOs (so-called civil and interest representation organisations as defined in the Ebktv) are the promotion of equal opportunities and the social inclusion of underprivileged groups with **protected characteristics** and/or the protection of human and civil rights. With regard to a given national minority, the respective **minority self-government**, and with regard to issues involving employees'

material, social and cultural circumstances, as well as their life and working conditions, **trade unions** also fall into this category.

In proceedings initiated in response to violations of the principle of equal treatment – thus especially in lawsuits involving personal rights or labour law – **an NGO or trade union** may comprehensively **represent the complainant** (it may draft the petition, may be present at the hearings, may make statements on behalf of the petitioner, etc.) if the party that is the victim of the violation of the principle of equal treatment authorises this.

THE HUNGARIAN EQUAL TREATMENT AUTHORITY'S MANUAL ON PREVENTING WORKPLACE HARASSMENT AND ON THE FORMS OF RIGHTS ENFORCEMENT

Already during the stage of drafting the petition, the complainant may receive effective help by involving an organisation that has experience in enforcing rights related to the protected characteristic in question.

It is important, however, that the NGO or trade union verify its powers of representation by submitting its articles of association or its memorandum of association, along with a written authorisation by the client. It cannot proceed as the representative of an individual complainant (or of individual complainants) without such an authorisation.

As a **public interest litigant**, an NGO or trade union is also authorised to initiate **proceedings with the Authority**, in addition to representing complainants in court. A civil and interest representation organisation may also initiate proceedings before the Authority on its own volition (that is without authorisation by a specific victim) in cases in which a violation of rights or the impending threat thereof affects an extensive group of persons with protected characteristics that cannot be clearly defined.

If for instance the harassment of women (or persons with other protected characteristics) is pervasive or common in a workplace, then it is advisable to take this problem to an experienced NGO and ask it to initiate proceedings with the Authority. In these cases the petitioner/client in the case is the civil organisation, which allows, if necessary, for the possibility of safeguarding the anonymity of persons who were the actual victims of harassment. In these cases victims are not involved in the proceedings as clients, but potentially as witnesses whose anonymity – as we pointed out above – can be protected if they render it likely that their cooperation in the proceedings will result in adverse consequences for them. At the same time we emphasise that proceedings may only be launched at an NGO's own initiative (as opposed to on the basis of an authorisation it received) if a large group – whose members cannot be clearly delimited – of persons with protected characteristics are subject to harassment.

An NGO or trade union may file a **personal right or labour law claim** in **court** with reference to violations of the right to equal treatment if said violation or its imminent danger are based on a protected characteristic, or if the violation or its imminent danger affect a large group of individuals that cannot be clearly delimited.

In such cases the NGO or trade union is not required to obtain an authorisation from the group with the protected characteristic.

5.3.2. NGOs and contacts with civil society

Depending on what (real or perceived) protected characteristic the harassment was aimed at, the person who suffered a violation of his/her rights can turn to the following NGOs, among others:

Háttér Társaság (Háttér Society)



Háttér is a nationally operating charitable foundation that offers services to assist lesbian, gay, bisexual, transgender, queer and intersexual persons. It operates (among other services) the Háttér Information and Counselling Hotline, the Háttér Legal Aid Service and legal protection for the abovementioned groups.

Contact:

Mailing address: 1132 Budapest, Csanády utca 4/b

Information and Counselling Hotline:

Telephone: +36 1 329 33 80 (from 6PM-11PM every day, free when called from a landline)

skype: lelkesegely, chat: chat.hatter.

E-mail: lelkesegely@hatter.hu

E-mail: jogsegely@hatter.hu

Web: www.hatter.hu

KézenFogva Alapítvány (Hand in Hand Foundation)



**KÉZENFOGVA
ALAPÍTVÁNY**

The Hand in Hand Foundation has been working since 1993 for a tolerant society that allows individuals with disabilities to live their lives with dignity. It is active in supporting the interests of the most underprivileged persons with mental disabilities or with multiple disabilities. It reaches out to persons with disabilities directly or indirectly through their social environment, in all phases of their lives.

Contact:

1093 Budapest, Lónyay u. 19.

Telephone: +36 1 215 52 13

Email: kezenfogva@kezenfogva.hu

Web: www.kezenfogva.hu

Magyar Helsinki Bizottság (Hungarian Helsinki Committee)



The Hungarian Helsinki Committee monitors the implementation of human rights enshrined in international human rights documents. In addition to informing the public, the organisation also provides legal aid to those who seek its assistance concerning legal grievances involving issues that the Committee deals with.

Contact:

1054 Budapest, Bajcsy-Zsilinszky út 36-38.

Mailing address: 1242 Budapest, Pf. 317.

Telephone: +36 1 321 43 23

Email: helsinki@helsinki.hu

Web: www.helsinki.hu

Másság Alapítvány (Otherness Foundation)



Nemzeti és Etnikai Kisebbségi Jogvédő Iroda

The main objectives of the Máság Foundation are to combat discrimination, promote equal opportunity and protect the rights of national and ethnic minorities in Hungary. The Foundation also operates the Legal Defence Bureau for National and Ethnic Minorities (Nemzeti és Etnikai Kisebbségi Jogvédő Iroda, NEKI). The Bureau

THE HUNGARIAN EQUAL TREATMENT AUTHORITY'S MANUAL ON PREVENTING WORKPLACE HARASSMENT AND ON THE FORMS OF RIGHTS ENFORCEMENT

is focused on strategic litigation, primarily with respect to the Roma minority, and on providing legal aid services.

Contact:

Mailing address: 1447 Budapest, Pf. 510.

Telephone: +3613038973; Fax: +3613144998

E-mail: info@neki.hu, Web: www.neki.hu

Menedék Migránsokat Segítő Egyesület (Hungarian Association for Migrants)



Menedék-Hungarian Association for Migrants has been involved in promoting the social integration of foreign citizens migrating into Hungary, as well as of Hungarian

and other citizens emigrating from Hungary, for almost two decades. It uses social, educational, labour market and cultural programmes to this end.

Contact:

1081 Budapest, Népszínház utca 16. III/3.

Telefon: +36 1 322 1502

E-mail: menedek@menedek.hu

Web: www.menedek.hu

NANE Egyesület - Nők a Nőkért Együtt az Erőszak Ellen (NANE Association - Women for Women Together Against Violence)



The association relies on female volunteers to operate a hotline for abused and battered women.

Contact:

Mailing address: 1447 Budapest, Pf.: 502.

Telephone: +36/80505 101

(Weekdays between 10AM and 6PM)

E-mail: info@nane.hu, Web: www.nane.hu

Patent Egyesület - Patriarchátust Ellenzők Társasága (Patent Association - Society Against Patriarchy)



The main activity of the Association is the provision of legal aid and psychological assistance to victims of violence by men against women and children, and assistance for the

enforcement of the rights of victims. The operation of a legal aid service for women who were victims of violence is an important activity of the Association.

Contact:

Phone-based legal aid:

+36/70 252 52 54 (Wednesday between 4PM-6PM 16-18)

+36/70 252 52 54 (Thursday 10AM-12AM)

E-mail: jog@patent.org.hu

Web: www.patent.org.hu

Társaság a Szabadságjogokért



(TASZ - Hungarian Civil Liberties Union)

TASZ is a civil rights NGO that is active in disseminating knowledge and awareness of human rights and helping their enforcement. It provides legal representation in strategically important lawsuits and offers a legal aid service.

Contact:

Mailing address: 1136 Budapest, Tátra u. 15/B

Telephone: +36 1209 0046

E-mail: tasz@tasz.hu

Free legal aid: jogsegely@tasz.hu

Web: www.tasz.hu