

Report of the Fourth Study Commission
62th Annual Meeting, Kazakhstan
September, 15-19, 2019

This year, the topic for the 4th Study Commission was: *Harassment, in a broad sense—moral and sexual—and its consequences on labour relations*. The four questions were:

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 labour code?
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?
3. Do you have examples of judicial misconduct related to harassment or bullying?
4. Does the judiciary have rules, ethics codes, or legislation relating to harassment by judges and judicial staff? What are the procedures for reporting misconduct and enforcing the rules? What sanctions can be imposed against a judge?

Thirty-two countries responded to the questionnaire. It provided a very good overview of the state of the law on this issue in all the regions of the world. A summary of these questionnaires was prepared by a team of young Australian jurists under the direction of the Vice-Chair of the Commission, Judge Josh Wilson. You can find it on the UIM website. It should be noted that the questionnaires from countries that sent them late were not included in the summary.

When examining the questionnaires, we noticed that the extent of the legislation and the protection from harassment vary considerably from one country to another. Some countries have specific legislation defining harassment and providing for sanctions that may be imposed when it occurs in the workplace (Belgium, Australia, Canada, Chile, France, Japan, Liberia, Lithuania, Moldova, Norway, Poland, Republic of China (Taiwan), Romania, United Kingdom, Serbia). In other countries, employees are protected by the Constitution or by more general laws on equality or discrimination. There is often no definition of what constitutes harassment (Austria, Brazil, Denmark, Estonia, Finland, Georgia, Germany, Greece, Israel, Netherlands, Norway, Spain, the Netherlands and the

United States). Finally, in certain countries, there is no law to protect employees or definition of what constitutes harassment at the workplace (Angola, Armenia and Mali).

In a very large number of countries, sexual harassment is a criminal offence and it can lead to a prison sentence.

We also examined the issue of harassment by judges. Several countries reported cases of harassment (Australia, Brazil, Canada, Chile, France, Israel, Liberia, Moldavia, Norway, Panama, Paraguay, Poland, Republic of China-Taiwan, Spain, and the United States).

What constitutes harassment? How can we define it? There are differences of opinion on these issues, particularly with respect to sexual harassment. Prior to the discussion between the members of the 4th Study Commission, we presented a short video entitled: *Is this sexual harassment? Men and women discussion*. This is an illustration, in the workplace, of a situation that can occur frequently. The discussion that followed this presentation was very interesting and allowed us to see that the perception of what constitutes sexual harassment often varies from one country to another.

Our conclusions are as follows:

- 1) It is very difficult to give a universal definition of what constitutes harassment;
- 2) Sexual harassment and harassment in general are very important issues in workplaces;
- 3) The facts in every case are very important to determine if there was harassment;
- 4) Depending on the jurisdiction concerned, it is very useful for judges deciding cases to have clear legislation that defines harassment by reasons of protected characteristics and also impose appropriate sanctions against the harasser;
- 5) The judiciary is not immune from the problems of sexual harassment and all other forms of harassment. Judges should behave ethically at all times and harassing judges should suffer the consequences.

I would like to thank Vice-Chair Justice Josh Wilson, from Australia, for the preparatory work done for our meeting in Kazakhstan, and especially for his contribution to the elaboration of the questionnaire and the summary of the replies received.

I also thank Vice-Chair Justice Margaret McKeown, who was unable to attend our meeting this year, but who helped prepare the questionnaire and translated it into Spanish.

Finally, I thank IAJ and our colleagues from Kazakhstan for providing us with translation in the Study Commissions. It facilitated greatly our work.

The topic for next year is: ***Corruption in the workplace: How does it affect employees?***

Julie Dutil, President of the 4th Study Commission

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