THE GREEK OMBUDSMAN
INDEPENDENT AUTHORITY

SPECIAL REPORT

# Harassment and sexual harassment at work

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# Harassment and sexual harassment at work

(Reference period: 2011-2022)

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# Foreword - Introduction

# Foreword

The Ombudsman, as the national body for the promotion, advancement and protection of the principle of equal treatment and the fight against gender discrimination in the world of work, investigates complaints of harassment, and sexual harassment in particular. This report is a brief record of the findings from the cases handled by the Authority in the period 2011-2022 concerning harassment and sexual harassment in employment and at work.

The problem of harassment, and sexual harassment in particular, in employment and occupation, is not a recent one. It has, however, gained a new and more intense interest after the international #MeToo movement and, in particular, after the Greek #MeToo. However, it did not immediately translate into the expected increase in relevant complaints, mainly because the Greek #MeToo movement emerged and evolved during the pandemic period, when extraordinary labour measures came into force, such as work suspension in entire sectors and the introduction of the framework of teleworking from home. It is indicative that during the pandemic and the extraordinary measures that were imposed, there was a decrease in the total number of labour disputes referred to the Ombudsman by the relevant labour inspectorates. An increase is clearly recorded now in the years 2021 and 2022, during which the total number of relevant complaints per year almost doubled.

This report offers the reader a broad overview of the institutional framework, national, European and international, for the prevention and investigation of harassment and sexual harassment, as well as the imposition of effective, proportionate and dissuasive sanctions. Especially in the Greek context, the impact of Law 4808/2021 is expected to be catalytic, as it introduces a coherent legal framework with an extended scope of protection for dealing with harassment, at least in the private sector.

The report, at the same time, standardises the characteristics of the physiognomy of complainants and respondents, highlights similarities and differences in incidents of harassment and sexual harassment in the private and public sectors, summarises the main problems in the investigation of incidents and suggests measures and tools for a more effective response to such incidents. It is significant that in the majority of sexual harassment cases handled by the Ombudsman, the person who commits acts of sexual harassment in the workplace exercises employer powers and holds a hierarchical position in the company. In the public sector, it is usually a person who holds a position in the hierarchy. In the private

sector, this phenomenon is more noticeable in small and medium-sized enterprises, whether family-owned or not, which are, after all, the backbone of the Greek production model. In large companies, even before the adoption of Law 4808/2021, codes of conduct for employees had already been introduced and training seminars were organised, following the model of practices developed in other countries, resulting in the reduction of incidents and more effective management of complaints.

The report notes the difficulties in gathering the necessary evidence to substantiate a complaint of harassment or sexual harassment. Specifically, in small businesses, there is a great deal of hesitation, often backing down and ultimately refusing to provide witnesses who could support the complaint. Also, importantly, with regard to the effective investigation of harassment and sexual harassment in the public sector, and despite the significant strengthening of the institutional framework, it is still a matter of concern that the complainant civil servants are not legitimised to participate actively in the process of investigating their case. Thus, the complaints concerned are not forwarded to the Ombudsman, the independent, external monitoring body, despite the specific obligation of the departments receiving them to do so. Additionally, the procedure for the examination of complaints is extremely lengthy and, as a result, complainants are left with the impression of a cover-up practice which acts as a deterrent to the lodging of complaints.

In recent years, it is true that remarkable steps have been taken to prevent and thoroughly investigate incidents of harassment and sexual harassment in employment and the workplace in general. The institutional framework has been significantly strengthened, and broader social awareness, particularly following the #MeToo movement, is also more robust. Deepening cooperation between the bodies responsible for implementing measures on preventing and addressing sexual harassment at work and empowering them with the appropriate institutional tools and the necessary resources, both human and material, can make a decisive contribution to the effective management of incidents of harassment at work in our country. The substantial strengthening of the control mechanisms and institutions can have a catalytic effect on the formation of a working environment that is free of harassment behavior, which should be the goal and a requirement for all of us.

**Andreas I. Pottakis**

*The Greek Ombudsman*

# Introduction

Harassment, in its various manifestations, is a real and timeless pathogeny. In the workplace, it is particularly marked, especially because the relationship of dependence, and in particular the relationship of hierarchical dependence and power, appears to be more often associated with exploitation.

The Ombudsman, as a national equality body, has specific competence to examine cases of harassment, as a form of prohibited discrimination, when it concerns a person's gender, national or racial origin, religious or other beliefs, disability, age, or sexual orientation, gender identity or gender characteristics.

The subject of this report is the gender dimension of harassment and specifically sexual harassment in the workplace, which constitutes the vast majority of harassment cases received by the Authority.

What is attempted, for the reference period of the report, is: (a) to consider the tendencies in the relevant complaints and to investigate them (chapter I); (b) to present and highlight the influence of legislative developments at the international and European levels (chapter II); (c) to reflect the Authority's experience from the practical application of the relevant legislation and the examination of cases, (Chapter III and Annex) and finally, d) to outline the conclusions of this experience (Chapter IV), taking into account the momentum generated in particular by the Greek #MeToo# movement and the start of the implementation of the new legislative framework established by Law 4808 /2021.

The approach of different time phases of the Authority's experience, but also of Greek society itself, testifies to the social and cultural dynamics that develop in the way sexual harassment is perceived, registered in public discourse and ultimately dealt with in the country.

The aim of the report is to reflect on the framework that has been established so far, while providing the opportunity for comparative study and evaluation of future developments. After all, the recent developments in terms of social awareness and legislative anticipation are a significant development, the consistent follow-up and feedback of which is absolutely necessary to confirm real progress.

**Kalliope Lykovardi**

*Deputy Ombudsman*

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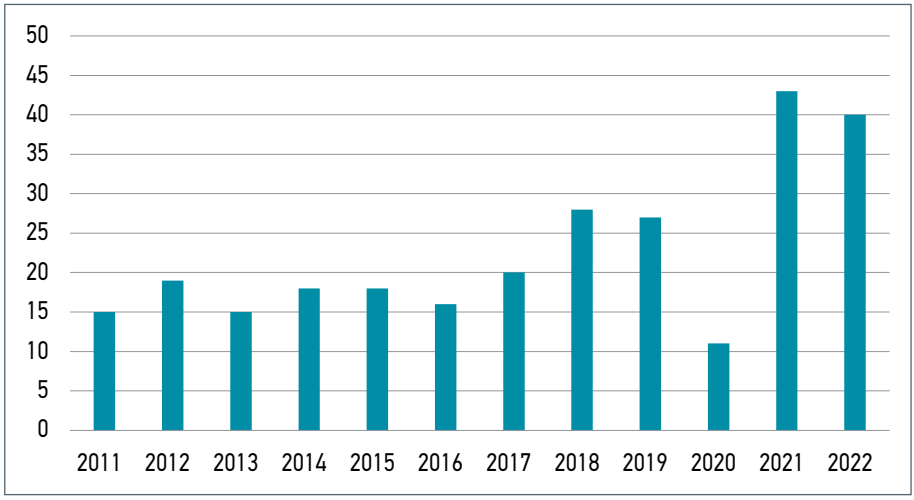
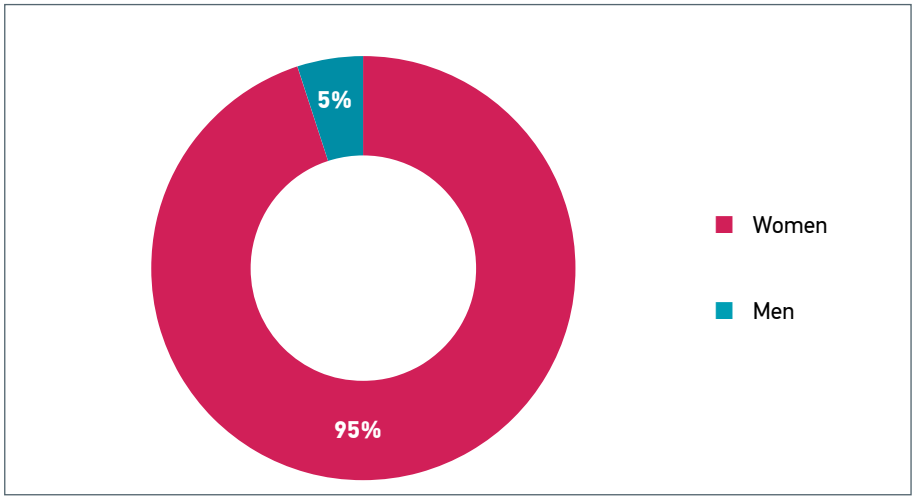
# Statistical Data

# Statistical data for the period 2011-2022

**GRAPH 1: Number of cases per year[1]**

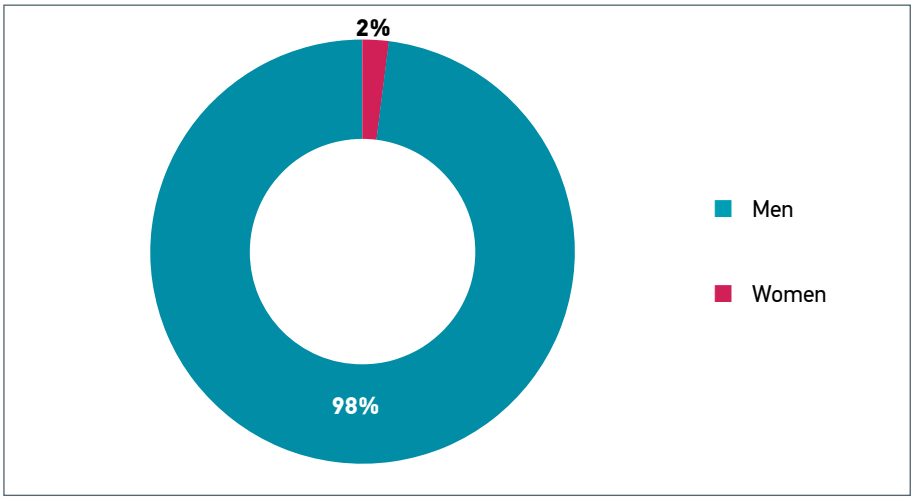



**GRAPH 2: Complainants' gender**

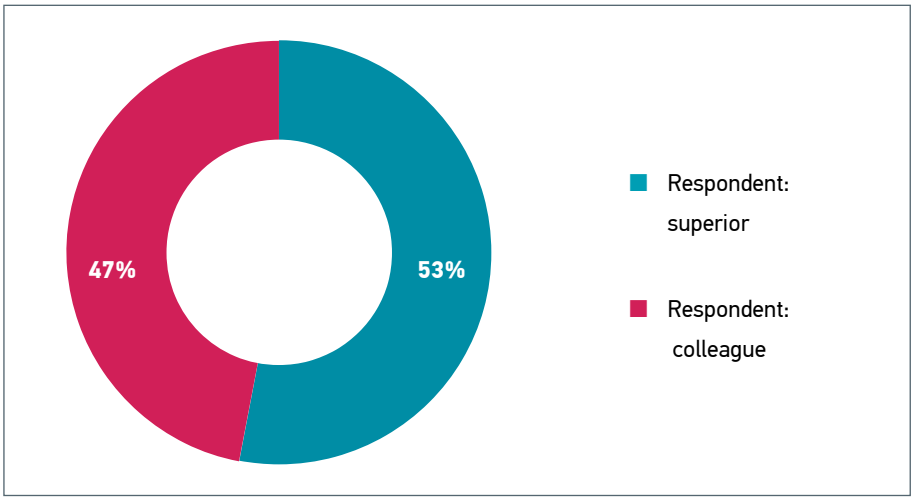



1. Includes 17 out-of-competence reports not counted in the following statistics

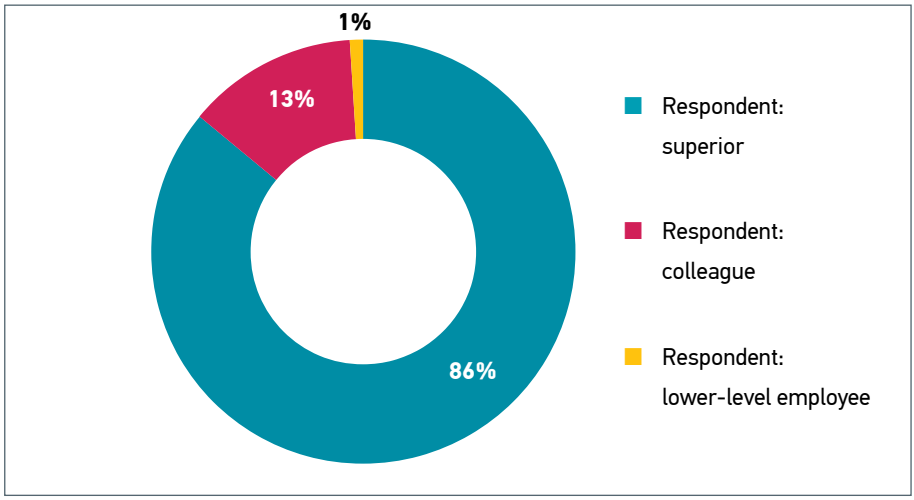
**GRAPH 3: Respondents' gender**



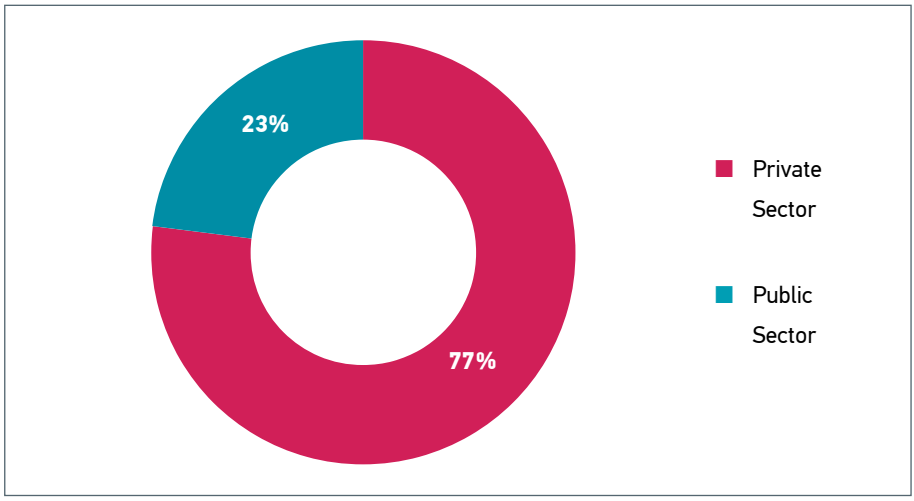

**GRAPH 4: Hierarchical relationship (public sector)**



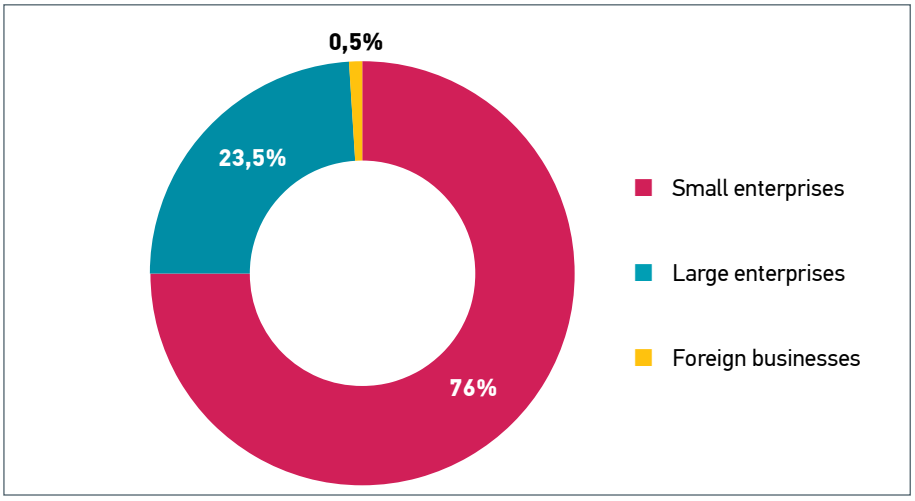
**GRAPH 5: Hierarchical relationship (private sector)**



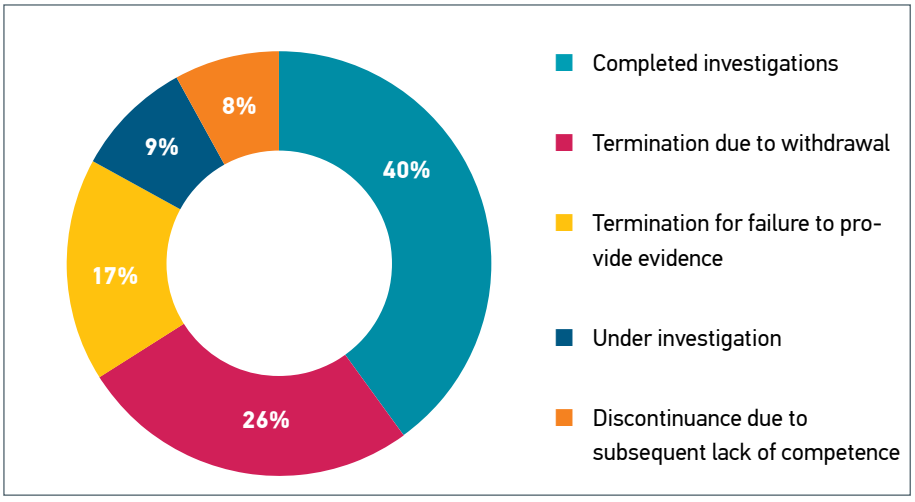

**GRAPH 6: Complaints by professional area**



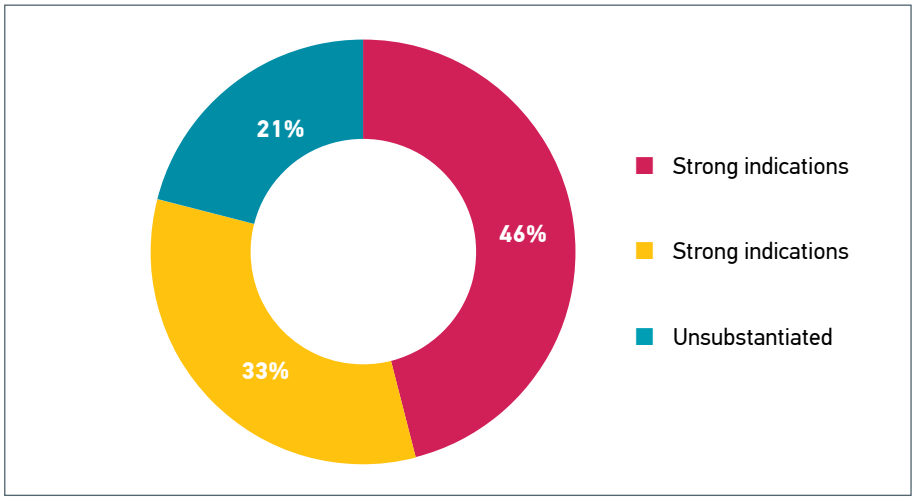
### GRAPH 7: Private sector complaints – Size of enterprises



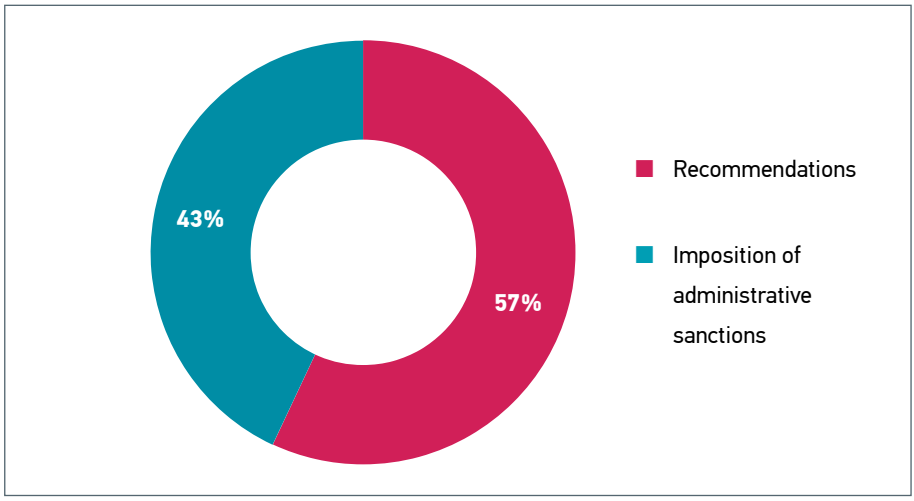

### GRAPH 8: Outcome of complaints



**GRAPH 9: Breakdown of complaints in terms of merits**




**GRAPH 10: Imposition of sanctions**



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# Chapter I

# Chapter I: The Elements of the Complaints

The data derived from the complaints. This chapter presents and analyses the data on the complaints submitted to the Ombudsman between 2011 and 2022 concerning harassment and sexual harassment in employment and occupation. The reporting period starts in 2011, as the Ombudsman had produced a report[2] on the same topic in 2010, covering the period from 2006 to 2010. The empirical material in this report arises in the context of an institutional procedure for the examination of individual complaints, the aims of which are not in principle research and therefore, it is not the product of a research methodology designed from the outset to analyse the phenomenon of gender-based harassment at work. This fact imposes certain limitations[3] on drawing more general conclusions about the social and cultural dimensions of the phenomenon of gender-based harassment in the workplace, both in quantitative[4] and qualitative[5] terms. However, the material allows us to critically comment on the data derived from it, in light of approaches and data highlighted by another related research[6]. In this context, the quantitative data and the cases to which they correspond can serve as indicators or examples respectively, to approximate key parameters of the phenomenon, such as the comparatively small number of complaints, the type and forms of harassment reported, the profile of the *"complainants"* and *"respondents"*, the usual hierarchical relationship between them, the profile of the professional environment in which the harassment takes place, the increased

2. *The Ombudsman's Experience on Sexual Harassment (2006-2010)* https://old.synigoros.gr/resources/docs/203714.pdf.
3. For secondary data analysis in social research, see. Γ. Tsiolis, N. Serdadakis, C. Kallas (eds.) (2011). *Empirical Research and Research Infrastructures in the Social Sciences and Humanities*. Athens: Nisos. For the concept of "archive" from the perspective of the social sciences see. M. Foucault (2017). *The archaeology of knowledge*. M. M. Foucault: Plethron.
4. For the methodological requirements of quantitative social research see. K. Singh (2007) *Quantitative Social Research Methods*. Los Angeles, London, New Delhi & Singapore: Sage.
5. In terms of qualitative analysis, complaints contain limited and/or fragmentary references to data on the social and cultural characteristics of the parties involved, as well as the structural/organisational context in which the alleged acts took place.
6. PRORATA (2021). *Research on sexual harassment and abuse*. Available at https://prorata.gr/2021/01/26/sexoualiki-parenoxlisi-kai-kakopoiisi-ereyna-anixneusis-staseon-kai-antilipseon. Action AID! (2020). This is not our job. [Research Report]. Available at https://notpartofourjob.actionaid.gr/. FRA (2014), Violence against women: an EU wide survey, p. 95 ff. Available at: https://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report.

number of withdrawals of complaints and the difficulties in obtaining evidence.

The following sub-chapters record information resulting from the examination and final outcome of the complaints submitted to the Authority. They concern gender-based harassment and in particular sexual harassment, which constitutes the vast majority of cases.

## 1. The number of references (Graph 1)

Between 2011 and 2022, the Ombudsman received 270 complaints of harassment at work (Graph 1). Investigation was possible in 253 of them, while 17 were put aside without being investigated for formal reasons[7]. For this reason, these 17 complaints are not included in the following counts. From the year 2011 to 2016, the number of complaints averaged around 17 complaints per year. Since 2017, however, an increasing trend is apparent, which in the years 2018 and 2019 reaches 28 and 27 complaints respectively. This increase coincides with the emergence of the #MeToo movement in the US at the end of 2017 and could possibly be linked to the publicity and momentum that this movement has given to the phenomenon and the need to denounce it. Most importantly, however, during that period the Ombudsman intensified its awareness-raising and sensitisation activities and sought to further strengthen and consolidate its cooperation with the Labour Inspectorates (LI) on these issues, both at central and regional level. The aim was to make it easier for the competent inspectorates to identify and become more alert in a timely manner to discrimination issues that are inherent or arise in the examination of labour disputes, even as individual issues, including gender-based harassment, in order to enable their effective investigation.

The Greek #MeToo and the corresponding publicity in 2020, following Sofia Bekatorou's complaint, does not seem to have a corresponding momentum on the filed complaints of harassment at work. It should be considered, of course, that the Greek #MeToo occurs in the period of the pandemic, when the extraordinary measures and in particular the measure of suspension of work, but also of teleworking from home, affects a large number of workers. It is indicative that during the period of the pandemic and the extraordinary measures there is a decrease in the total number of labour disputes forwarded to the Ombudsman by the competent departments of the Labour Inspectorate. In 2021, the number of harassment

7. Anonymity, manifest vagueness, pending litigation, etc.

complaints increases significantly to 43 cases, a number that remains at approximately the same level in 2022.

At this point it should be noted that the Labour Inspectorates throughout Greece, after the entry into force of Law 4808/2021, notify the Ombudsman of complaints of harassment of employees, even if they do not fall under the specific competence of the Authority[8]. This helps to obtain a more complete picture of the overall phenomenon, which includes the complaints of gender-based harassment and sexual harassment that the Ombudsman investigates.

## 2. The type and forms of harassment reported

Of the 253 cases, 196 involve allegations of sexual harassment. In terms of the form of harassment, 56 cases involve verbal sexual harassment, written and/or oral, and 134 cases involve physical contact (touching, gestures). Acts of sexual violence such as rape and attempted rape constitute an extremely limited number of complaints (4 and 2, respectively), which usually follow the path of judicial recourse and investigation.

In the remaining 57 cases, gender-based harassment involving sexist behaviour is reported. In particular, this concerned insult (15 cases), moral harassment (11 cases), violent behaviour (5 cases of beatings), while in 26 cases, the alleged harassment concerned behaviour that the person concerned perceived as generally offensive and degrading because of their gender.

*It is also interesting to note that the forms of harassment differ quantitatively in the public and private sectors.*

Specifically, in the public sector 57% of complaints concern sexual harassment and 43% other forms of harassment. In the private sector, 80.5% of complaints concern sexual harassment and only 19.5% other forms of harassment.

8. Indicatively, in 2021, 5 such cases were reported, while in 2022 the Ombudsman was informed of 35.

## 3. The profile of *"complainants"* and *"respondents"* (Graphs 2 and 3)

Recent research, both internationally and in our country, shows that women are often the "victims" of gender-based harassment and especially sexual harassment[9], that men are much more likely to be harassed by people of the same gender[10], that LGBTQ+ people are much more likely to be harassed sexually or otherwise by people of the same or different gender[11]. Specifically, in our country, a recent survey showed that most Greek women (65%) have been subjected to some form of sexual harassment, but also that work is the predominant place where such behaviour occurs (58% of respondents)[12].

These findings are largely confirmed in the complaints received by the Ombudsman.

*In particular, in terms of gender, in the vast majority of reported cases, the complainants are women. In these cases, the respondents are almost exclusively men. In only 2 cases, both parties involved are women.*

There are only 12 complaints from men, of which in 6 cases, the respondents are also men and, in 2 of the 6 cases with male complainants and female respondents, the sexual harassment was accompanied by derogatory behaviour of the female respondents towards the harassed because of the disclosure of their sexual orientation. Therefore, the relevant complaints to the Ombudsman highlight and confirm the gender dimension of the phenomenon, its most common manifestation against women, but also its direct link to deeply rooted socio-cultural

9. See. Women's Initiative (2018). Gender Matters: women disproportionately report sexual harassment in male-dominated industries". Available at https://www.americanprogress.org/issues/women/news/2018/08/06/454376/gender-matters/ (retrieved: 25/04/2021). S. M. Greathouse, J. Saunders, M. Matthews, K. M. Keller, L. L. Miller (2015). *Review of the literature on the characteristics and behaviors of sexual assault perpetrators*. Research report. Available at https://www.rand.org/content/dam/rand/pubs/research_reports/RR1000/RR1082/RAND_RR1082.pdf Action AID! (2020), n.d.
10. See. B. L. Russell1 & D. Oswald (2016). When Sexism Cuts Both Ways: Predictors of Tolerance of Sexual Harassment of Men. *Men and Masculinities*, Vol. 19 (5), 524-544.
11. See. TUC (2019). *Sexual harassment of LGBT people in the workplace*. Research report. p. 14. Available at https://www.tuc.org.uk/sites/default/files/LGBT_Sexual_Harassment_Report_0.pdf.
12. PRORATA (2021). Research on sexual harassment and abuse, op. cit.

perceptions[13] and norms that characterise men and women and make it difficult to deal with it effectively.

## 4. The professional hierarchy relationship (Graphs 4 and 5)

An important parameter[14] in the profile of "complainants" and "respondents" is their position in the professional hierarchy.

*In the majority of the complaints (198 cases) the respondent of harassment is hierarchically superior, to a much lesser extent (53 cases) a peer/colleague, while in few cases (only 2) a lower-level worker.*

The issue of hierarchy and its influence on the occurrence of harassing behaviour is often linked to gender. It is indicative that even in workplaces with a significant presence or even majority of women, men often continue to dominate the high positions of responsibility[15] and therefore the hierarchically superior positions. It is characteristic that in the European Gender Index, our country occupies the last place in the ranking of European countries in terms of gender equality issues with an overall score of (53.4). In the field of "power", Greece scores (28.8), a score which largely determines its final and extremely low ranking among all countries.

In addition to a number of other differences that will be presented below concerning the manifestation and treatment of harassment in the public and private sectors, an interesting finding from the analysis of the data of the reports is the following: The percentage of complaints by public sector employees against col-

13. See S. Walby (1990). Theorizing Patriarchy. Blackwell Publishers Ltd.: Oxford, UK and Cambridge USA. J. Brewis, & St. Linstead, St. (2000). Sex, Work and Sex Work: Eroticizing Organization, Routledge see. Bourdieu (2007). Male domination. Athens: Patakis.
14. For the structural and related organisational model of interpreting sexual harassment in the workplace, see. J. Sibley Butler & J. M. Schmidtke (2010) Theoretical Traditions and the Modeling of Sexual Harassment within Organizations, Armed Forces & Society, v. 36 (2), 193-222. Also, Action Aid! (2020), op. cit., p. 27.
15. See the country's ranking in the European Gender Index with an overall score (53.4) and a particularly low score (28.8) in the field of occupation of positions of power, available at: https://eige.europa.eu/gender-equality-index/2022/EL

leagues or peers is (47%), while in the private sector in the vast majority of complaints, the complainants are the employers themselves or persons hierarchically above the complainant (86%).

## 5. The profile of professional spaces and the dominance of the private sector (Graphs 6 and 7)

Another interesting element that emerges from the analysis of the relevant complaints to the Ombudsman concerns the profile of the workplaces where the harassment cases take place.

*Of the total 253 complaints, 195 cases concern private companies or individual employers, while the number of complaints in the public sector is significantly lower (58 cases).*

This finding is, in principle, surprising, as the traditional association of the Ombudsman with the control of the legality of public bodies and services would show an increased likelihood that the opposite is the case. It is, however, explained if it is taken into account that the current legislation expressly provides for a specific obligation[16] for the competent Labour Inspection Departments to forward the relevant complaints to the Ombudsman.

Therefore, a special institutional communication channel is provided for **the private sector**, through the competent Labour Inspection Departments around the country (central and regional), in order to facilitate access and contact of affected persons in private enterprises with the competent national body for equal treatment and combating discrimination between men and women. In this context, anything that is complained of as gender-based harassment (sexual or otherwise) in isolation or cumulatively with other claims in the context of labour disputes is forwarded to and examined by the Ombudsman.

16. See Article 25, para. 10 of Law 3896/2010 "10. Complaints or information received by a public authority concerning the application of this Law shall be forwarded by the public authority to the Ombudsman. With regard to the scope of competence of the Labour Inspectorate (S.E.E.), the local Labour Inspectorates shall deal with the above complaints and immediately inform the Ombudsman, and are obliged to submit the results of their actions to the Ombudsman, who reserves, in any case, its competence to investigate and formulate the final conclusion on the complaint." See also Article 20(5) of Law 4443/2016.

On the other hand, in **the public sector**, there is the possibility of lodging a complaint, which must, in principle, initiate an investigation procedure within the service, in accordance with the provisions of the Civil Service Code. In practice, however, it is often found that the relevant rules are not observed with diligence or do not lead to concrete results. It is indicative that out of the total number of relevant complaints concerning the public sector (58 cases), only 12 of them were subject to disciplinary investigations by the service concerned. It can therefore be seen that, although the statutory provisions and procedures provided for in the civil service law provide a means of controlling sexual and gender-based harassment in general, the relevant provisions are not entirely adequate and consistent and, above all, do not always appear to be complied with.

*It should also be stressed that the vast majority of the cases of sexual harassment examined by the Ombudsman were cases in which the affected persons complained directly to the Authority and not cases in which the complaints were forwarded by their services, despite the explicit obligation in the legislation concerning all public authorities.*[17]

The comparatively higher number of complaints of sexual harassment in the private sector shows another interesting parameter. Fairly frequently, harassment is also linked to other violations of labour law by the employer (arrears of accrued wages, bonuses, time off, unfair dismissal, etc.). Sexual harassment could therefore also be considered as an element linked to other aspects of the exploitation of labour, and in particular, in this case, of women's labour. Finally, another interesting point that emerges from the data in the complaints for the private and public sectors is the following:

*The usual outcome of an employee's response to an employer's harassing behaviour, in the private sector, is loss of employment. In the public sector, it is common for the complainant to be transferred to a different job, sometimes even to a subordinate position, but in any case, be subjected to actions that are often punitive in nature.*

17. Article 4, par. 5 of Law 3094/2003, as replaced by article 20 of Law 4443/2016.

## 6. Differences between small and large enterprises

Focusing within the private sector, we find important differences between small enterprises/single employers and large enterprises/companies.

*Of the 195 complaints against private employers, 148 concern small businesses or sole employers, while the number of complaints against large businesses is significantly lower (46 cases). In 1 case the employer is a foreign entity.*

This is in line with evidence from relevant research at international level, according to which workers in small businesses are more vulnerable to sexual harassment[18]. In fact, we can assume that the comparatively higher number of harassment complaints against small enterprises is in practice even more intense than the official figures show, since, although their employees are more often victims of sexual harassment, they report the relevant incidents with greater difficulty than those of large enterprises/organisations.[19] Indeed, in the case of Greece, it should be taken into account that the predominance of small enterprises is also linked to the Greek production model, which is based on small and mainly family-run businesses.

The above finding in relation to the type of enterprises and harassment complaints can also be interpreted in the light of the different business/organisational culture that characterises the different types of enterprises. Large companies are more likely to adopt codes and mechanisms to control the behaviour of their employees, have policies or codes of conduct, specific HR departments and pay particular attention to their public image. This creates the conditions for seeking to curb harassing behaviour and at the same time makes it more likely that incidents will be reported and managed within the company and thus not reported to an external institution such as the Ombudsman or LI.

18. See R. Whitson (2021). Sexual harassment of women in small business is widespread, reporting is rare. https://www.abc.net.au/news/2021-04-13/women-in-small-businesses-vulne-rable-to-sexual-harassment/100062616.

19. Ibid

*In contrast, small businesses are characterised by informal negotiations that often extend the codes of interpersonal relations into the workplace, which makes it easier to relativise the boundaries between intimacy and harassment and the possibility of crossing them.*

Therefore, small companies often lack internal control mechanisms[20] and external audit institutions are the only outlet for employees wishing to report incidents of harassment.

## 7. The increased number of withdrawals (Graph 8)

The dominant perceptions of role allocation are linked not only to different social roles, but also to the different *"sexual ethics"* expected to characterise the two sexes[21]. In this light, the fact that most sexual harassment cases remain in the dark can be interpreted as a result of fear of self-incrimination of the victims. Fear relates first of all, and depending on the case, to retaliation reflecting on the employment conditions or even judicial proceedings and the suffering threatened or initiated by the filing of a harassment complaint.

*Self-incrimination and further victimisation of harassed workers are often linked to the fear of moral stigmatisation in the context of a dominant perception that too often attributes sexual harassment to the "sexually inappropriate" behaviour of the victim (especially women and LGBTQ+ persons).*

The above assumption is consistent with the evidence that emerges from the analysis of the relevant complaints to the Ombudsman. It is indicative that in 66 cases the complaint of harassment was withdrawn before the investigation

20. Ibid.

21. See R. Bongiorno et. al. (2020). Why women are accused of sexual harassment: The Effects of Empathy for Female Victims and Male Perpetrators. Psychology of Women Quarterly, 44 (1): 11-27, https://journals.sagepub.com/doi/pdf/10.1177/0361684319.868730, cited in Action AID! (2020), op. cit. (p.14) Also, Anna Studzińska. Gender differences in the perception of sexual harassment. Psychology. Université Toulouse le Mirail - Toulouse II, 2015, https://tel.archives-ouvertes.fr/tel-01320713/document.

was completed. Of these, in 17 cases the withdrawal was due to a compromise between the two parties which was communicated to us by the complainants. However, in 49 cases the withdrawal was not explained and therefore we do not know the exact reasons why it was requested. This may mean that some cases, in addition to the above 17 cases, were also closed by compromise between the parties, but certainly a significant proportion of withdrawals were also due to the failure to provide evidence. It should be noted that the percentage of withdrawals out of the total number of complaints examined is 26%. In private sector cases it is 30% and in public sector cases it is 20%.

## 8. The shortcomings in the evidentiary means and the evidence normally provided

*Harassment, and primarily sexual harassment, almost by definition, does not occur in front of persons other than the harasser and the harassed. This fact creates de facto serious and sometimes insurmountable difficulties in proving the facts of the harassment.*

It is indicative that 44 complaints were closed due to a complete lack of evidence. If to these 44 cases we add a sufficient number of withdrawals which, as mentioned above, are due to the failure to provide evidence and therefore the inability to further investigate the complaint, one realises the serious difficulty created by the frequent failure to collect and provide evidence.

Where evidence is provided, it can be categorised into two main groups: **a) audiovisual and digital material**, such as photographs, videos, mobile phone and email messages (24 cases) and **b) personal testimonies** (36 cases).

Often, the Authority's investigation also makes use of all the information in the file transmitted by the competent Labour Inspectorates (pleadings of both parties, any lawsuits, affidavits, etc.), or by the public authorities (information from the file of a disciplinary investigation, witness statements, the final conclusion of the Administrative Investigation EDE, etc.).

*Finally, the use of the institutional tool of testifying before the Ombudsman is extremely important. This statutory possibility has proven to be particularly effective in practice for the substantive investigation of the case and the final judgment thereof.*

Of the total number of cases examined on the merits, **in 30 cases** additional witness statements were taken by the Ombudsman. These testimonies were combined, where appropriate, with other available evidence and information from the relevant file, such as lawsuits, nonjudicial notices, pleadings of the parties. They were also assessed in conjunction with specific facts relied upon (dismissal, transfer, demotion, insult to dignity, etc.) in order to assess the necessary causal link with a specific ground of discrimination and to form the Authority's final judgment.

*Finally, it should be noted that the occasionally observed reluctance to provide rebuttal evidence from the side under scrutiny, with the rationale of subsequently weakening the defence in the legal dispute, ends up to the detriment of the respondent,* ***as insufficient rebuttal presumes the existence of harassment*** *and its definitive establishment in the relevant finding of the Ombudsman.*

## 9. Outcome of complaints (Graphs 8-10)

The presentation of the data from the sexual harassment cases examined by the Ombudsman in the period 2011-2022 is completed with the quantitative recording of the outcome of the relevant complaints, the qualitative data of which will be analysed in detail in the following chapters.

Out of a total of 253[22] complaints, 100 cases[23] have been fully investigated, of

22. Not included are 17 reports, which were closed without being examined for formal reasons (see above, sub-chapter 1.)

23. Of the rest, the investigation of 19 cases was discontinued due to subsequent incompetence of the Ombudsman (pending litigation, etc.) or formal impediment (inability to communicate with the complainant, etc.). In 44 cases, the complainant failed to provide evidence requested by the Ombudsman in order to establish a prima facie case, while in 66 cases, as already mentioned, the complaint was withdrawn before the investigation was completed. However, in at least 17 of them, a conciliatory resolution was reached, with

which 29 in the public sector and 71 in the private sector, while 24 cases are pending final conclusions. **Out of the 100 cases, in 21** (9 public and 12 private sector) **the alleged conduct was not proven** and/or the respondent refuted the allegations of the alleged victim with sufficient evidence.

In **33 cases** (6 public sector cases and 27 private sector cases) it was considered that the evidence provided by both parties did not fully prove the alleged harassment, but there were **strong indications** and in particular, **clear failures** of lawful actions on the part of the respondent capable of giving rise to specific strong recommendations to the employers.

Harassment was fully proven in 46 complaints (14 public sector cases and 32 private sector cases), for 20 of which (3 public [private law] and 17 private sector cases) the Ombudsman recommended to the Labour Inspectorate the imposition of administrative sanctions. For the remaining 26, the Ombudsman communicated his final conclusion and requested the employer's actions by addressing specific recommendations.

the payment of financial compensation to the aggrieved person and/or the provision of an explanation satisfactory to the person who suffered the harassment on the part of the harasser.

THE GREEK OMBUDSMAN
INDEPENDENT AUTHORITY

# Chapter II

# Chapter II: The legal treatment of harassment and sexual harassment

## 1. International law

International labour conventions guarantee the equal treatment of men and women and prohibit discrimination against them, including specific provisions on harassment and sexual harassment[24]. Special mention should be made of: a) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was adopted in 1979 by the United Nations General Assembly and ratified by Greece by Law 1342/1983, which provides for equality in employment between men and women *(Article 11 of the Convention)*[25] and b) the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) which was adopted by the Council of Europe in 2011,[26] where sexual harassment is among the conducts prohibited and States assume the responsibility to take all necessary legislative or other measures so that sexual harassment is barred and subject to criminal sanctions and other legal consequences. The aforementioned Convention was ratified by Law 4531/2018 (Government Gazette 62/A/5-4-2018).[27]

Specifically addressing gender-based violence in the workplace, the 108th International Labour Conference (Centenary Session) on 21 June 2019 adopted the International Labour Organisation (ILO) Convention on Violence and Harassment (No. 190)[28] together with the Violence and Harassment Recommendation (No.

24. See. S. Koukoulis-Spiliotopoulou, "International Labour Conventions in the Greek legal order - Convention 100 and equal pay for men and women", Athens-Komotini, 1985, ed. Ant. Sakkoulas, p. 23-24.
25. See the text of the Convention at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women.
26. See the text of the Convention: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008482e.
27. See the relevant press release of the General Secretariat for Equality on the publication of Law 4531/2018 https://www.isotita.gr/%CE%B4%CE%B7%CE%BC%CE%BF%CF%83%CE%AF%CE%B5%CF%85%CF%83%CE%B7-%CF%83%CE%B5-%CF%86%CE%B5%CE%BA-%CF%84%CE%BF%CF%85-%CE%BD-4531-2018-%CE%B3%CE%B9%CE%B1-%CF%84%CE%B7%CE%BD-%CE%BA%CF%8D%CF%81%CF%89%CF%83/.
28. C190 - Violence and Harassment Convention, 2019 (No. 190) https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190.

206)[29]. The Convention establishes a single definition of "violence and harassment", which covers a wide range of behaviours and practices that aimed at, lead to or are likely to lead to physical, mental, sexual or economic harm, while it specifically defines gender-based harassment and sexual harassment as a form of gender-based violence[30]. The scope of protection includes workers regardless of their contractual employment status, as well as persons undergoing training, including trainees and apprentices, workers whose employment has ended, volunteers, and persons seeking or applying for employment (Article 2). The Convention applies to the "world of work", which goes beyond the workplace and includes work-related facilities and communications, travel and social activities, as well as any accommodation provided by the employer along with travel to and from work (Article 3). Finally, the Convention provides for the obligation to adopt and implement a coherent policy to prevent and combat the phenomenon, by implementing a series of measures relating to the enterprises themselves, but also to the access of affected persons to protection mechanisms.

ILO Convention 190 (C190) is important both because it is the first international convention to explicitly recognise the right to work free from violence and harassment for a wide range of workers and because it recognises sexual and gender-based harassment in the world of work as forms of gender-based violence that disproportionately affect women. It covers violence and harassment not only in the workplace per se, but also in any work-related place or circumstance, and regulates for the first time the impact of domestic violence in the world of work. Furthermore, States ratifying the Convention undertake the obligation to take the necessary measures to ensure easy access to appropriate and effective remedies, to recognise the impact of domestic violence and, to the extent reasonably practicable, to mitigate its impact on the world of work, and to ensure that workers have the right to withdraw from a work situation of imminent and serious danger related to violence and harassment (Article 10). The Convention also includes provisions on guidance, training and awareness-raising.[31]

29. R206 - Violence and Harassment Recommendation, 2019 (No. 206) https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:4000085:NO.
30. See. Petroglou, P. (2020), "ICJ 190 and Recommendation 206 of June 2019: Recognition of sexual and gender-based harassment at work as forms of gender-based violence", Labour Law Review 9/2020, pp. 993-1008.
31. C190 - Violence and Harassment Convention, 2019 (No. 190) https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190.

C190 focuses specifically and comprehensively on addressing violence and harassment in the world of work in general, while maintaining the specific focus on combating gender-based violence and harassment and sexual harassment. In this regard, it is worth noting that the Revised European Social Charter[32], which was ratified by Law 4359/2016, has the same general direction and approach in principle. In particular, Article 26 of the Revised Charter entitled *"The right to dignity at work" provides that: "With a view to ensuring the effective exercise of the right of workers to the protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations: 1. to promote awareness, information and prevention of sexual harassment in the workplace or in connection with work and to take all appropriate measures to protect workers from such conduct; 2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.".*

## 2. European Union law

European Union law, both primary and secondary, has helped to promote equal treatment between men and women in employment and occupation and treats gender-based harassment and sexual harassment as an undermining aspect of equal treatment.

In terms of further recent European Union actions, an important development is the pending European Commission proposal for a Council Decision to authorise Member States to ratify the ILO Convention 190 (C190) on violence and harassment for matters falling within the competence of the EU.[33]

As the European Commission states in particular: *" It is in the interest of the EU to promote the implementation of an international instrument to fight violence and harassment in the world of work in line with its internal framework, because the Convention addresses certain areas of EU law and the European Union is not in a position to accede to it. The Convention's substance does not cause concern in*

32. Which was signed in Strasbourg on 3 May 1996.

33. See also the Proposal for a COUNCIL DECISION authorising Member States to ratify, in the interests of the European Union, the Violence and Harassment Convention, 2019 (No 190) of the International Labour Organisation COM/2020/24 final https://eur-lex.europa.eu/legal-content/EL/TXT/?uri=CELEX%3A52020PC0024.

*the light of the existing EU acquis. It is therefore in the interest of the EU that the Convention be ratified by EU Member States. To that aim, and in view of EU competence in the areas addressed by the Convention, it is necessary that any legal impediments at the EU level to the ratification of the Convention by EU Member States be removed."* [34].

Moreover, aspects of C190, as supplemented by Recommendation 206, concern areas covered by Union law, and in particular:

- Article 153(1)(a) and (i) and Article 157(3) TFEU, according to which the Union shall support and complement the activities of the Member States in improving the working environment to protect the health and safety of workers and equality between men and women as regards labour market opportunities and treatment at work, and in adopting measures to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in employment and occupation.
- Framework Directive 89/391/EEC[35], which covers all risks to the health and safety of workers at work, including psychosocial risks such as harassment and violence.
- The *"Framework Agreement on harassment and violence at work"*[36] , concluded by the European social partners in 2007 on the basis of Article 138 of the EC Treaty (currently Article 155 TFEU), which provides employers, workers and their representatives with a framework geared to taking concrete actions to identify, prevent and manage problems of harassment and violence at work.
- The *"EU Strategic Framework for Health and Safety at Work 2014-2020"*[37] and the Commission Communication *"Safer and Healthier Work for All - Modernising EU legislation and policy on safety and health at work"*[38], which high-

34. See the Explanatory Memorandum to the proposal (point 2 Context of the proposal) https://eur-lex.europa.eu/legal-content/EL/TXT/?uri=CELEX%3A52020PC0024#.
35. Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989, p. 1-8).
36. COM (2007) 686.
37. COM (2014) 332 final.
38. COM/2017/012 final.

lights the importance of improving the prevention of psychosocial risks in the workplace.

- Directive 2006/54/EC implementing the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, which includes provisions on the prohibition of harassment and sexual harassment[39].
- Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation[40].
- Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin[41].
- The Council Decisions of 11 May 2017 concerning the signing, on behalf of the Union[42], of the Council of Europe Convention on preventing and combating violence against women and domestic violence (*"Istanbul Convention"*)[43] and the pending Council discussion on the accession of the Union to that Convention, which contains provisions on the prevention of violence against women and domestic violence, including sexual harassment, the protection of victims of such violence and the punishment of perpetrators.

39. OJ L 204, 26.7.2006, p. 23-36. Similar provisions are contained in Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37-43) and Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 implementing the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (OJ L 180, 15.7.2010, p. 1-6).
40. OJ L 303, 2.12.2000, p. 16-22.
41. OJ L 180, pp. 22-26.
42. Council Decision (EU) 2017/865 of 11 May 2017 concerning the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence as regards matters relating to judicial cooperation in criminal matters (OJ L 131, 20.5.2017, p. 11-12). Council Decision (EU) 2017/866 of 11 May 2017 on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence in relation to asylum and non-refoulement (OJ L 131, 20.5.2017, p. 13-14).
43. Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Convention No. 210 https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e.

- Other issues covered by EU law in the areas of judicial cooperation and victims' rights[44], immigration, asylum and freedom of movement[45], in particular where secondary EU law[46] provides rights for victims of crime and their family members in terms of appropriate information, support and protection, participation in criminal proceedings and recognition and treatment with respect and without discrimination.

Finally, reference should be made to the relevant provisions of the Charter of Fundamental Rights of the European Union, which apply to all actions taken by the EU institutions and bodies and by the Member States when implementing EU legislation. Under the Charter, harassment at work is treated as a matter of respect for dignity, health and equality. Without specific reference, the relevant protection is derived from the combination of Articles 21, 23 and 31.

In particular, Article 21, paragraph 1: *"Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited." In particular, on equality between men and women, Article 23 provides that: "Equality between women and men shall be ensured in all areas, including employment, work and pay"*. Article 31(1) also states that: *"Every worker has the right to working conditions which respect his or her health, safety and dignity."* The Charter became legally binding when the Lisbon Treaty entered into force in December 2009 and now has the same legal force as the EU treaties.[47]

## 3. Domestic law

In Greece, efforts to tackle sexual harassment at the legislative level have been going on for several decades. Basically, the relevant framework has been established by the national legislator, in compliance with the provisions of EU law and international law.

Principally, gender-based harassment and sexual harassment have been dealt

44. Articles 82, 83, 84 and 156 TFEU.
45. Articles 21, 46, 78 and 79 TFEU.
46. Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime (OJ 315, 14.11.2012, p. 57-73).
47. https://eur-lex.europa.eu/legal-content/EL/TXT/?uri=LEGISSUM%3Al33501

with, as in European Union legislation, in the context of the prohibition of discrimination in the field of employment and the principle of equal pay between men and women, initially for equal work and subsequently for work of equal value, as provided for in particular in the Directives: (a) Council Directive 75/117/EEC of 10 February 1975 on the implementation of the principle of equal pay for men and women workers; (b) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, as amended by Directive 2002/73/EC of the European Parliament and of the Council of 5 October 2002; (c) Council Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes, as amended by Directive 96/97/EC of the European Parliament and of the Council of 20 December 1996, and (d) Directive 97/80/EC of the Council of 15 December 1997, on the burden of proof in cases of discrimination based on sex, which was extended by Directive 98/52/EC to the United Kingdom. The aforementioned Directives were transposed into Greek law by Law 1414/1998, which was replaced by the newer Law 3488/2006, by PD 105/2003 and by PD 87/2002.

It is worth noting that the term *"sexual harassment"* was first introduced into the academic vocabulary[48] only in 1979, to give a name to a problem that had long been known[49]. The term was quickly adopted and established internationally and in our country. In Greece in particular, *"the phenomenon in sociological terms was first opened up and investigated [...] in 1988, when the Association for Women's Rights attempted a research assessment of the phenomenon in a sample of 1,058 women and 462 men employees in the public and private sectors"*.[50]

For the first time in national legislation, the term sexual harassment is introduced by Law 3488/2006 on the "Implementation of equal treatment of men and

48. In particular, it was proposed by academic Catherine MacKinnon, an influential representative of the second wave of feminism. See C. MacKinnon (1979). Sexual Harassment of Working Women: A Case of Sex Discrimination.

49. See. N. Stark (2015). Millennials Making Meanings: Social Constructions of Sexual Harassment regarding Gender and Power by Generation Y. University of Central Florida. Electronic Theses and Dissertations, 2004-2019. 1183. https://stars.library.ucf.edu/etd/1183. Electronic theses and dissertations, 2004-2019. 1183.

50. See. F. Milioni (2008), Sexual harassment in the workplace: legal regulations and gendered social reforms. In M. Maropoulou (ed.). Gender, the body and gender difference: The meeting of law and social problematics [pp. 22-33]. Athens: Publications of the National and Kapodistrian University of Athens & the Programme of Studies on Gender and Equality Issues, p. 31.

women as regards access to employment, vocational training and promotion, terms and conditions of employment and other related provisions". This law, inter alia, defines sexual harassment, includes it among the forms of gender discrimination, which it also specifically defines, and provides for the partial transfer of the burden of proof in favour of the person affected. This law transposes Directive 2002/73/EC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Subsequently, this law is replaced by Law 3896/2010, which incorporates the recast Directive 2006/54/EU into the domestic legal order. This Directive essentially incorporates into the relevant regulations the developments that have occurred and been consolidated in the case law of the ECJ and expressly provides in preamble 6 of the Directive that *"Harassment and sexual harassment are contrary to the principle of equal treatment between men and women and constitute discrimination on grounds of sex for the purposes of this Directive. These forms of discrimination occur not only in the workplace, but also in the context of access to employment, vocational training and promotion. They should therefore be prohibited and should be subject to effective, proportionate and dissuasive penalties".*

### *3.1. Harassment as a legal concept and its prohibition as a form of discrimination*

The legal connection of harassment with a prohibited form of discrimination was originally introduced in Greek law, already with the transposition of Directives 2000/43/EC and 2000/78/EC by Law 3304/2004, which was subsequently replaced by Law 4443/2016.

This means that harassment, in addition to grounds related to the gender of the person subjected to it, can also exist on other grounds of discrimination specifically provided for in the legislation, namely on grounds of national, ethnic or racial origin, age, chronic illness or disability, religious or other beliefs, sexual orientation, gender identity or characteristics, marital or social status. In particular, the above provisions define discrimination as: *"harassment, which is manifested by unwanted conduct related to one of the grounds of Article 1 and which has the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment"* (see Article 3 of Law 4443/2016).

In the current **Law 3896/2010**, the following definitions are provided (article 2):

*c.* ***"Harassment"****: where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of that person and creating an intimidating, hostile, degrading, humiliating, demeaning or offensive environment,*

*d.* ***"sexual harassment"****: any form of unwanted verbal, psychological or physical conduct of a sexual nature which has the effect of violating the personality of a person, in particular by creating an intimidating, hostile, degrading, humiliating, demeaning or offensive environment around that person. [...]".*

Furthermore, the provisions of **Law 4604/2019** "Promotion of substantive gender equality" introduce changes to the definition of sexual harassment and harassment. Specifically, Article 2 of the Law defines as: *"Harassment: any unwanted conduct related to the gender, sexual orientation and gender identity of a person, with the purpose or effect of violating his or her dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment" and as "Sexual harassment: any form of unwanted verbal, psychological or physical conduct of a sexual nature, which has the effect of violating the personality of a person, in particular by creating an intimidating, hostile, degrading, humiliating, demeaning or offensive environment around that person. Provisions providing for sanctions for the display of such conduct shall apply as they stand."*

Therefore, also with Law 4604/2019 in the domestic legislation, violence and harassment at work were dealt with in the context of protection against discrimination on a number of grounds and in particular: on the grounds of gender according to Law 3896/2010 and on the grounds of race, ethnic or racial origin, age, chronic illness or disability, religious or other beliefs of sexual orientation, gender identity or characteristics, marital or social status, according to Law 4443/2016. The purpose of the relevant regulations and the related specific legislation was to remove the inequalities that existed and to protect human dignity equally regardless of individual characteristics or qualities.

### *3.2. The extended concept of harassment in Law 4808/2021*

The change which occurs with Law 4808/2021, which, among other things, ratifies Convention 190 of the International Labour Organisation concerns, in principle, the scope of protection and the concept of harassment. In particular, Article 4 of the law provides that: "1. All forms of violence and harassment, whether related to or resulting from work, shall be prohibited." Therefore, now the concept of harassment includes any form of violence and harassment, regardless of whether it constitutes a form of discrimination under Laws 3896/2010 and 4443/2016. In particular:

*(a)* ***"violence and harassment"*** *mean any form of conduct, acts, practices or threats thereof, intended to cause, resulting in or likely to result in physical, psychological, sexual or economic harm, whether occurring in isolation or repeatedly,*

*(b)* ***"harassment"*** *means any form of conduct which has the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating, demeaning or offensive environment, whether or not it constitutes a form of discrimination, and includes harassment based on sex or other grounds of discrimination,*

*(c)* ***"gender-based harassment"*** *means any form of conduct related to the gender of a person which has the purpose or effect of violating the dignity of that person and of creating an intimidating, hostile, degrading, humiliating, demeaning or offensive environment within the meaning of Article 2 of Law 3896/2010 (A' 107) and par. 2 of Article 2 of Law 4443/2016 (A' 232). These forms of conduct include sexual harassment under Law 3896/2010, as well as forms of conduct related to the sexual orientation, expression, identity or gender characteristics of the person."*

Following the entry into force of Law 4808/2021, the scope of protection against violence and harassment in employment and work is broadened, while the specific protection against violence and harassment on grounds that constitute prohibited discrimination, according to Laws 3896/2010 and 4443/2016, continues to be the subject of special focus and concern.

### *3.3. The changes brought by Law 4808/2021*

Already at the consultation stage of the draft law, the Ombudsman had sent extensive comments to the Ministry of Labour and Social Affairs[51]. In particular, on violence and harassment in employment and the workplace, it had acknowledged as a positive step the ratification of Convention 190 of the International Labour Organisation, noting that it expands the framework of protection and strengthens the existing context, as it is formed by Laws 3896/2010 and 4443/2016, for the monitoring of the implementation of which the Ombudsman has specific competence, in harmonisation with the relevant EU law.

51. See. Observations on the draft law of the Ministry of Labour and Social Affairs on Labour Protection

*In his general observations, the Ombudsman had stressed the importance of maintaining the necessary consistency with existing legislation and ensuring the necessary legal certainty.*

In this context, it called for clarification of the scope of the proposed regulations[52], the crucial definitions of the concepts of violence and harassment[53] and the responsibilities of the bodies entrusted with the implementation of the regulations. In particular, with regard to the establishment of the Labour Inspectorate as an Independent Authority, the Ombudsman had pointed out the dangers of any overlapping or ambiguity of competences[54], stressing the need for a clear delineation of the competences of the new body and compliance with the provisions of the existing legislation which has incorporated EU law into our domestic legal order (Directives 2006/54, 2000/43 and 2000/78).

The Ombudsman also focused on the importance of maintaining and further strengthening its well-established cooperation with the Labour Inspectorate and the multiple benefits it is already delivering. In this context, specific additions and improvements to articles of the draft law were proposed, with a view to clarifying the cooperation practices already followed (transmission of complaints by the LI, invitation to the participation of a representative of the Ombudsman, the reservation by the Authority of the right to conduct an ex officio investigation and issue a findings' report from which a dissention, is possible after a specific justification is provided)[55], several of which were included in the final draft.

As regards the changes introduced by Law 4808/2021, these can be summarised as follows:

- The scope of protection is broadened to include all forms of violence and harassment, regardless of whether they constitute a form of discrimination
- Violence, harassment and sexual harassment as forms of discrimination remain a specific focus and protection

52. The initial draft did not include the public sector in the scope of the law under consultation
53. The original definitions in the draft under consultation have been changed, taking into account the specific comments and suggestions of the Authority. Ibid. footnote 50, p. 50. 4
54. Ibid. footnote 50, p. 8-12
55. See also Ombudsman, Annual Report 2021, pp. 168 et seq. and Ombudsman, Special Report on Equal Treatment 2021, pp. 75-77, at: www.synigoros.gr.

- **The scope of application** covers all workers and employees, regardless of their contractual status, including those employed under a contract of employment, self-employment, on a remunerated mandate, through third-party service providers, persons undergoing training, such as trainees and apprentices, volunteers, workers whose employment relationship has ended, as well as job applicants and workers in the informal economy
- An obligation for all employers, regardless of the number of staff employed, to make **procedures for reporting and investigating incidents** of violence and harassment at work accessible to employees and, to provide information, assistance and access to the competent authorities
- A specific obligation for employers with more than 20 employees to adopt a **policy on preventing and combating violence and harassment** at work, stating zero tolerance of these forms of behaviour and specifying both the rights of employees and the employer's obligations to prevent and respond to such incidents or forms of behaviour
- Provision is made for the **possibility** for an employee who has suffered and reported conduct constituting violence or harassment **to leave** the workplace for a reasonable period of time, without loss of pay or other adverse consequence, if he or she reasonably believes that his or her life, health or safety is at risk
- Provision is made for the **possibility of individual recourse to external control bodies**, namely: **a)** the Labour Inspectorate and **b)** the Ombudsman, if the case raises suspicions of discrimination and falls within the scope of the provisions of Laws 3896/2010 and 4443/2016 (i.e., cases involving discrimination based on gender, race, national origin, religious beliefs, disability, age, sexual orientation, identity or gender characteristics)
- The model of cooperation between the Labour Inspectorates and the Ombudsman is maintained, as it has been established in the framework of Laws 3896/2010 and 4443/2016 on tackling discrimination, with the transmission of the relevant complaints to the Ombudsman and the invitation to participate in the discussion of the labour dispute.

### *3.4. The additional specific institutional tools of Law 4808/2021*

The combined implementation of Laws 3896/2010 and 4808/2021 strengthens the available institutional tools for the prevention and effective response to gender-related harassing behaviour, such as: specific provisions on the prohibition of retaliation, on protection against retaliatory dismissal, on the right to leave the

employment of the person subjected to harassment, as well as specific provisions on the employer's obligations under the duty of care, the drafting of policies and the effective management of relevant complaints. In particular:

- As regards the prohibition of retaliation and protection against retaliatory dismissal:

  According to Article 14 of the Law. 3896/2010: *"It shall be prohibited to terminate or dissolve the employment contract and the employment relationship in any manner whatsoever, as well as any other unfavourable treatment: (a) on the grounds of gender or marital/family status; (b) when it constitutes retaliatory conduct of the employer, due to the employee's non-submissiveness to sexual or other harassment against the employee, in accordance with the definitions in Article 2; (c) when it is made as a reaction of the employer, or a person responsible for vocational training, to a protest, complaint, testimony or any other action of an employee, a vocational trainee, or his/her representative, in the place of business or vocational training, before a court or other authority, which is relevant to the implementation of this law"*

  *According to article 13 of Law 4808/2021: "The termination or dissolution in any of the legal relationship on which the employment is based, as well as any other unfavourable treatment of a person referred to in article 356, is prohibited and is null and void if it constitutes vindictive behaviour or countermeasure within the meaning of article 14 of Law 4808/2021. 3896/2010 (A' 207) for an incident of violence and harassment referred to in Article 4.".*

- As regards the right to leave work:

  According to Article 12, para. 3 of Law 4808/2021: *"Any person referred to in Article 3 who suffers an incident of violence and harassment against him or her has the right to leave the workplace for a reasonable period of time, without loss of pay or other adverse consequence, if, in his or her reasonable belief, there is an imminent serious risk to his or her life, health or safety, in particular, when the employer is the perpetrator of such conduct or when he or she fails to take the necessary appropriate measures in accordance with par. 2 to restore industrial peace, or where such measures are not sufficient to stop the behaviour of violence and harassment.*

56. According to Article 3, para. 2, of the said law: "As regards the workers and employees referred to in par. 1 in the public sector, as defined in Article 14 of Law no. 4270/2014 (A' 143), regardless of their status, Articles 4 to 8, 13, 14, 15 and, by analogy, Article 12 shall apply."

*In such a case, the dismissed worker must inform the employer in advance in writing, stating the incident of violence and harassment and the circumstances which justify his/her belief that there is a serious risk to his/her life, health or safety. If the risk does not exist or has ceased to exist and the person referred to in par. 3 refuses to return to the workplace, the employer may apply to the Labour Inspectorate for a resolution of the dispute. In this case Article 18 shall apply."*

- As to the employer's obligations:

  According to Article 12, para. 2, of Law 4808/2021: *"When an employee or a person employed under another legal relationship under Article 3 violates the prohibition of violence and harassment under Article 4, the employer is obliged to take the necessary, suitable and proportionate measures, where appropriate, against the complainant, in order to prevent and avoid recurrence of similar incidents or behaviour.*

  *Such measures may include recommending compliance, changing the position, working hours, place or manner of work or terminating the employment or cooperation relationship, without prejudice to the prohibition of abuse of right in Article 281 CC."*

- In particular, as regards the obligation to draw up policies:

  According to Article 9 of Law 4808/2021: *"1. Enterprises employing more than twenty (20) persons are required to adopt a policy on the prevention and combating of violence and harassment at work within the meaning of Articles 3 and 4, which states zero tolerance of these forms of behaviour and specifies the rights and obligations of employees and the employer to prevent and deal with such incidents or forms of behaviour. 2. This policy may be integrated into or accompanied by a policy to promote equal opportunities and combat discrimination and shall include, as a minimum: a) an assessment of the risks of violence and harassment at work, (b) measures for the prevention, control, mitigation and response to such risks, as well as for the monitoring of such incidents or forms of behaviour; (c) information and awareness-raising activities for staff; (d) information on the rights and obligations of employees and the employer, as well as of persons exercising managerial authority or representing the employer, to the extent and degree of their responsibility, in the event of the occurrence, reporting or complaint of such incidents, and on the relevant procedure, (e) the designation of a person as a reference person ("contact person") at enterprise level, responsible for guiding and informing workers on the prevention and treatment of violence and harassment*

*at work; (f) the protection of employment and support for workers who are victims of domestic violence, as far as possible, by any appropriate means or reasonable accommodation."*

According to Article 10 of Law 4808/2021: *"1. Companies employing more than twenty (20) persons are required to adopt a policy for the management of internal complaints of incidents of violence and harassment within the meaning of Articles 3 and 4, which outlines the procedure for receiving and examining such complaints in a manner that ensures the protection of the victim and respect for human dignity. 2. This policy may be integrated into or accompanied by other policies and shall include, as a minimum: a) secure and easily accessible channels of communication for receiving complaints, as well as the identification of competent persons within the undertaking for receiving and examining complaints and informing complainants; b) the investigation and examination of complaints impartially and the protection of the confidentiality and personal data of victims and complainants; c) the prohibition of retaliation and further victimisation of the person concerned; d) a description of the consequences of any violations found; e) cooperation and provision of any relevant information to the competent authorities, upon request.*

Articles 9 and 10 of Law 4808/2021 introduced the obligation for companies employing more than 20 persons to adopt specific policies to prevent and combat violence and harassment at work. In fact, these policies are subject to collective bargaining as the content of the company's collective agreement or work regulations or are drawn up by the employer after consultation with the employees, as defined in Article 11 of Law 4808/2021.

### *3.5. Law 4808/2021 and protection in the public sector*

The provisions of Law 4808/2021 also apply to the public sector. In particular, it is provided that: *"With regard to the employees and workers of par. 1 in the public sector, as defined in Article 14 of Law 4270/2014 (A 143), regardless of their status, Articles 4 to 8, 13, 14, 15 and, by analogy, Article 12 shall apply (see Article 3(2) of Law 4808/2021)."*[57]

57. In particular, with Article 12 par. 1 of Law 4808/2021, it is provided that "Any person of Article 3 who is affected by an incident of violence and harassment against him or her under Article 4, even if the relationship, in the context of which the incident or conduct is alleged to have been committed against him or her, has ended, shall have the right, in addition to judicial protection, to have recourse to before the Labour Inspectorate and the Om-

For the application of the above provisions, Article 22 par. 4 of Law 4808/2021 provides that: *"By decision of the Minister of Interior, the competent bodies may be defined and the measures that may be taken in the context of preventing and dealing with phenomena of violence and harassment in the public sector and any other necessary details may be specified".*

The above ministerial decision (DIDAD/F.64/946/ok.858/19-01-2023 "Prevention and treatment of violence and harassment at work in public institutions") *was finally published on 26.01.2023 with a significant delay compared to the entry into force of Law 4808/2021. The purpose of the relevant regulatory provisions is, according to Article 1, to formulate a modern and coherent framework for the prevention and response to phenomena of violence and harassment at work in the public sector. In this context, it attempts to clarify the definitions and the scope of application of the regulations in the public sector (Articles 2 and 3), specifies the procedure and the competent bodies for examining complaints (Article 5), and also identifies prevention measures (Article 4) and measures to protect the persons affected (Article 6), the prohibition of retaliation (Article 7) and the fact that the deadlines set in the Ministerial Decision are exclusive, that they also cover complaints already pending and that their violation constitutes disciplinary misconduct (Article 8).*

*As regards the designation of the bodies competent to examine complaints, the Ombudsman is designated as one of them, without specifying or delimiting the exact scope of its competence, in accordance with the provisions of Law 4808/2021. This creates confusion, as the relevant provision[58] shows the Ombudsman as being competent for any issue of harassment and intimidation in the public sector, despite the different provision of Law 4808/2021 and the competence provided for in Law 3094/2003.*

It should be stressed that the Ombudsman, according to Law 4808/2021, is a competent body for the examination of complaints on issues of violence and harassment in employment and work in both the private and public sector, only in

budsman, as the body responsible for promoting and the principle of equal treatment, in accordance with the Laws on Equal Treatment. 3896/2010 (A 207) and Law No. 4443/2016 (A΄ 232), as well as the submission of a complaint within the company, in accordance with Article 10"'.

58. Article 5 par. 1 of DIDAD/F.64/946/oik.858/19-01-2023

cases where the complained behaviours against employees are due to one of the grounds of discrimination provided for in the provisions of Law 3896/2010 and Law 4443. /2016 (e.g., on the grounds of gender, race, colour, national or ethnic origin, genetic features, religious or other beliefs, disability or chronic illness, age, marital or social status, sexual orientation, identity or gender characteristics). Therefore, the provision of Article 5 para. 1 of the Ministerial Decision is expected to create confusion regarding the delimitation of competences and the harmonisation of the relevant provision with the provisions of Law 4808/2021.

It is further worth noting that according to the provision of Article 4 para. 5 of Law 3094/2003 as amended and in force: *"Complaints or information received by a public authority concerning the application of the principle of equal treatment in the scope of implementation of this Law shall be forwarded by the public authority to the Ombudsman".*

*The Ombudsman therefore, in addition to examining individual complaints, has a central supervisory role in matters of discrimination in the public sector, where issues of harassment and sexual harassment have a particular place.*

It is doubtful, however, whether it will be possible to carry out the task, in particular with regard to the overall supervision of relevant complaints of discrimination and harassment in the public sector, given the number of competent bodies[59], the ambiguity in the division of their responsibilities and the difficulty, in any case, of tracing the total number and the final outcome of the complaints lodged.

*The provisions of the recent ministerial decision attempt to adapt the provisions of Law 4808/2021 to the data and requirements of the public sector, while leaving gaps in consistency, coordination and compatibility with other relevant provisions of the current legislation.*

Also, although the above ministerial decision largely organises and repeats the basic provisions of Law 4808/2021, in it there is no specific reference to the burden of proof and the way it should be applied by each body or service which in

59. See Article 5 para. 1 and 2, where the competent bodies are the institution where the work is provided, the supervisory body, the integrity advisor)

practice will be called upon to assign it during the procedure for examining a complaint.

### *3.6. The role of sanctions and the need for effective, proportionate and dissuasive enforcement*

To address the phenomena of harassment and sexual harassment, as provided for in the legislative texts, priority seems to be given both to prevention and to resolving the dispute between the parties by eliminating the offence and preventing it from happening in the future. However, as unlawful conduct, such conduct also attracts administrative, civil and/or criminal sanctions. With regard to the sanctions provided for, it should be clarified that, in accordance with the requirements of EU law (see Directive 2006/54), any form of discrimination in the field of employment and access to employment, vocational training and professional development is prohibited and is subject to effective, proportionate and dissuasive sanctions. With the transposition of the above Directive into Greek law, Article 23 of Law 3896/201060 provides for civil, administrative and criminal sanctions.

In particular, in cases where the provisions of the labour legislation are applicable, it is provided that *"(...) The violation of the prohibition of discrimination on the grounds of gender under this law by a person acting as an employer or by the person exercising managerial rights or representative or their appointee, when concluding or refusing to conclude an employment relationship or during its duration, operation, development or termination, constitutes a violation of labour legislation also within the meaning of Article 16 of Law 2639/1998 (Government Gazette 205 A'), for which the administrative sanctions provided for in this article are imposed in accordance with the criteria of paragraph 3 thereof, as amended and in force (paragraph 2 of article 23 of Law 3896/2010)."*

A similar provision for sanctions exists in article 11 of Law 4443/2016 (cf. Articles 15 of Directive 2000/43/EC, 17 of Directive 2000/78/EC): *"Discrimination contrary to the provisions of this Part on the grounds of race, colour, national or ethnic origin, genetic features, religious or other beliefs, disability or chronic illness, age, marital or social status, sexual orientation, identity or gender characteristics, by a person acting as an employer at any stage of access to employment and occupation, in the conclusion or refusal to conclude an employment relationship or in the duration, operation, development or termination thereof, shall constitute a violation of labor legislation for which administrative sanctions of Art. 24, Law 3996/2011 (A' 170) are imposed by the Labour Inspectorate (LI)."*

60. A similar provision exists in the provisions of Law 4443/2016 on harassment on the grounds of discrimination, as provided for in Directives 2000/43 and 2000/78.

It should also be mentioned that, in case of sexual harassment or harassment on the grounds of gender or for the remaining protected grounds of discrimination, apart from the administrative and/or criminal sanctions against the harasser, the victim has a claim for full compensation, both positive and consequential, for material and moral damage caused by the harassment, in accordance with the relevant provisions of Law 3896/2010 (and Law. 4443/2016 for harassment on grounds of discrimination other than sex), as well as pursuant to the provisions of CC 57 and 59 (insult to personality) or CC 914 and 923 (tort liability)[61] . In these cases, the civil or administrative courts are competent to award compensation to the victim of harassing conduct, including sexual harassment in the private or public sector.

### 3.6.1. Sanctioning harassment cases in the private sector

The Ombudsman, as an independent extrajudicial dispute resolution mechanism, does not in principle have the power to issue regulations and impose sanctions. This also applies in the context of its specific competence as a body promoting the principle of equal treatment. However, in the event of a breach of the legislation and in line with the requirements for effective, proportionate and dissuasive sanctions in the relevant directives, the Ombudsman, as the body responsible for supervising the application of the relevant EU framework, may recommend sanctions.

Specifically, in cases which are investigated in cooperation with the competent departments of the Labour Inspectorate, the Ombudsman may recommend the imposition of sanctions, while the adoption of the relevant administrative act is carried out by the Labour Inspectorate, in accordance with the legislation in force[62]. The recommendation of sanctions on the part of the Ombudsman has special weight, taking into account that according to the provisions of Law 3094/2003, as amended and in force by the provisions of Law 3896/2010 and Law 4443/2016, in the event that the Labour Inspectorate abstains from the relevant recommendation and the findings contained in the Ombudsman's conclusion, it must give specific and sufficient reasons for this deviation[63].

61. See Commentary by D. Goulas in ARMENOPOULOS 1/2021 (p. 55) and George N. Diamantopoulos, Legal framework and jurisprudential manifestations of sexual harassment in the workplace, ECJ 2016/1334.

62. See Articles 3 and 4 of Law 3094/2003, as amended and in force

63. See Article 4, par. 5 of Law 3094/2003, as amended and in force

With regard to administrative sanctions, according to article 24 of Law 3996/2011, *"The following sanctions shall be imposed on the employer who infringes the provisions of labour law, after a prior invitation to provide explanations "A. A fine for each violation from three hundred (300) euros to fifty thousand (50,000) euros by reasoned act of either the competent Head of the Labour Inspection Department upon the recommendation of the Labour Inspector who carried out the inspection or the competent Head of the Regional Labour Inspection Directorate upon the recommendation of the respective Head of the Inspection Department or the Special Labour Inspector who carried out the inspection."*

As regards the amount of the fine, its calculation depends on many individual elements (size of the company, number of employees, gravity of the infringement, etc.) and is calculated by the Labour Inspectorate on the basis of an algorithm. Specifically, according to the current legislation[64], the following criteria are taken into account for the imposition of the above administrative sanctions: the seriousness of the violation, any repeated non-compliance with the instructions of the competent bodies, similar violations for which sanctions have been imposed in the past, the degree of culpability, the number of employees, the size of the company, the employment status, the number of employees affected and the inclusion of the company in one of the categories of Article 10 of Law 3850/2010. A decision of the Minister of Labour, Social Security and Social Solidarity categorises the infringements, specifies the criteria, determines the method of calculating the amount of the fine and provides for cases in which the amount of the fine may be adjusted[65].

Already with the provisions of Law 4808/2021, Article 19, concerning the imposition of administrative sanctions by the Labour Inspectorate, provides for the application of the provisions of Law 3850/2010 and Article 24 of Law 3996/2011.[66] In particular, it is provided that in case of violation of Articles 4, 12, 13 of Law

64. See paragraph 2 of article 24 of Law 3996/2011

65. See. MD 291//2019 (MD 29164/755 Government Gazette B 2686 2019). Classification of infringements and the amount of fines imposed by the LI, which was repealed by par.1 of Article 14 of the MD 80016/2022 (Government Gazette B' 4629/01.09.2022) and from the entry into force of this MD, which according to the same article shall commence from its publication, subject to more specific provisions.

66. See Article 19 para. "In case of violation of Articles 5 to 11 by the employer, after a prior invitation to provide explanations, a fine is imposed for each violation, with a reasoned decision of the competent body, according to the general provisions of Law 3850/2010 (A' 84) for compliance with health and safety rules at work and within the framework of sanctions of Article 24 of Law 3996/2011 (A' 170)."

4808/2021 and after a prior invitation to provide explanations, a fine is imposed on the employer within the framework of sanctions of Article 24 of Law 3996/2011, as follows: *"a) Where the employer infringes the prohibition in Article 4, a fine shall be imposed by reasoned decision of the body which carried out the inspection. A breach of Article 13 shall constitute an aggravating circumstance and shall give rise to an increased fine. The administrative fine initially imposed may not be reduced on subsequent compliance by the employer; b) Where Article 4 is violated by an employee or a person other than the employer as referred to in Article 3 and the employer violates his obligations under Paragraph 2 of Article 12 or Article 13, a fine shall be imposed by a reasoned decision of the body carrying out the inspection. The infringement of both par. 2 of Article 12 and Article 13 cumulatively shall constitute an aggravating circumstance and shall incur an increased fine. If the employer complies with the instructions of the body which carried out the inspection and waives the right to appeal within a period of thirty (30) days from the notification of the decision imposing the fine, the administrative fine originally imposed shall be reduced by thirty percent (30%) by a reasoned act of the body which imposed it. (See Article 19(2)".*

In addition to the sanctions, the provisions of Law 4808/2021 also provide for the possibility of taking temporary measures[67] if there is a presumed imminent danger to the life or health or safety of an employee from an incident or behaviour of violence and harassment. The Labour Inspectorate shall invite the respondent to provide explanations without delay and shall issue an order with immediate effect to the employer to take one or more of the following temporary measures of a duration until the imminent danger is proven to have ceased: *"(a) removal of the complainant from the workplace with full payment of wages; (b) change of staff shifts; (c) transfer of the complainant to another work department; (d) employment of the complainant by teleworking depending on the nature of the duties[68]".*

67. See Article 19 para. 3 of Law 4808/2021

68. The repetition of any of the infringements of par. 2 of this Article within a period of four (4) years from the date of the initial inspection shall be considered a repeat offence and by reasoned act of the Special Inspector or the Director of the competent Regional Directorate, following a recommendation of the competent Labour Inspector, temporary suspension of the operation of a specific production process or part or parts or the entire undertaking or holding shall be imposed, for a period of up to five (5) days, plus the new administrative fine. The execution of the administrative sanction of temporary cessation shall be carried out by the competent police authority. The period of temporary suspension shall be counted as normal working time with regard to all rights of employees (see Article 4(19) of Law No. 4808/2021).

The aforementioned provisional measures may be imposed by the Labour Inspector conducting the procedure at any stage after the application for a labour dispute or by the body responsible for the inspection, even before the inspection is carried out, and may be revoked or maintained by the findings on the conclusion of the dispute or inspection or by a new decision of the Labour Inspector. If the employer fails to implement the measures specified in the order, a fine shall be imposed for each day of failure to implement the measure from the date of implementation specified in the order. The employer may appeal against the act imposing the fine or the administrative measures by means of the appeal provided for in paragraph 5 of Article 24 of Law 3996/2011 (A ` 170). An appeal by the employer shall not suspend the enforcement of such measures.[69]

### 3.6.2. Sanctions in the public sector

Similarly, when investigating incidents of harassment in the public sector, the Ombudsman may request the disciplinary investigation of these incidents by the competent bodies or check the legality and integrity of the disciplinary procedure himself. In such cases, the relevant provisions of civil service law shall apply, provided that the complaint concerns a civil servant to whom the provisions on civil servants are directly or indirectly applicable.

Already with the provisions of Law 3769/2009 and subsequently with Law 3896/2010, there is a specific provision for disciplinary misconduct in case of violation of the principle of equal treatment of men and women. Specifically, the provisions of Law 3538/2007 apply in principle to sanctions and the procedure for their imposition against public sector employees (Code of Public Civil Servants and Administrative Officers). In article 107[70] of the Code of Civil Servants and Administrative Employees and Employees of l.e.p.l (Law 3528/2007) an attempt is made to list the disciplinary offences and among them are: undignified or inappropriate or undeserving of an employee behaviour inside or outside the service[71]

69. Article 19 par. 4 of Law 4808/2021

70. Article 107, as amended by a number of provisions (see previous versions) was replaced by Article 6 para. 1 of law 4325/2015, GG A 47/11.5.2015.

71. There was in the above provision a second subparagraph "A special case of similar conduct is any act against sexual freedom or any act of economic exploitation of sexual life involving a teacher or an employee serving in a school", which was repealed by Art. 2 of Law 4795/2021, Government Gazette 62/17.4.2021, according to para. 6 of which: "Pend-

(para. e'), violation of the principle of impartiality (para. f'), violation of the principle of equality, equal opportunities and equal treatment of men and women in matters of employment and occupation, in accordance with Law 3896/2010, and the use of gender discriminatory language in the performance of duties[72] (para. g), any act against sexual freedom, and in particular the violation of the sexual dignity of another person or any act of economic exploitation of sexual life, both inside and outside the service. An aggravating circumstance is the commission of such acts against minors or the commission of such acts by officials in abuse of their official duties[73] (paragraph ld). It is also provided that "the failure of the disciplinary bodies to prosecute and punish disciplinary misconduct, without prejudice to the provisions of paragraph 2 of Article 110 of this Act (paragraph kd)", constitutes a disciplinary offence.

With regard to the sanctions, they are provided for in the provisions of Law 3528/2007[74] as follows: (a) a written reprimand; (b) a fine of up to twelve (12) months' salary; (c) deprivation of the right to promotion from one (1) to five (5) years; (d) deprivation of the right to participate in a selection procedure for the Head of an Organisational Unit of any level from one (1) to five (5) years, (e) disqualification from exercising the functions of Head of an Organisational Unit at any level for the term of office or the remainder thereof; (f) demotion of up to two (2) grades; (g) temporary suspension from three (3) to twelve (12) months with total loss of remuneration; and (h) the penalty of termination of employment.[75]

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ing disciplinary proceedings against teachers or employees for the special case of disciplinary misconduct under case e) para. 1 of Article 107 the Code of Civil Servants and Administrative Employees and Employees of legal entities of public law (Law 3528/2007) which is repealed by para. 1 hereof, shall continue as disciplinary proceedings for the corresponding disciplinary misconduct of paragraph ld) of par. 1 of Article 107 of the Code of Civil Servants and Administrative Employees and Employees of legal entities of public law (Law 3528/2007), as added by par. 3 hereof.".

72. Paragraph g' of article 107 of Law 3528/2007 was amended as above by article 14 of Law 3528/2007. 4604/2019, GG A 50/26.3.2019.

73. Paragraph ld' was added by Article 39(3) of Law 4795/2021, Government Gazette 62/17.4.2021.

74. See article 109 of Law 3528/2021

75. The penalty of definitive termination of employment may be imposed only for the following offences: violation of cases a) and ld) of par. 1 of Article 107, breach of duty under the Penal Code or other special laws, obtaining financial gain or reward for the benefit of the official or of a third person in the course of/ or on account of the performance of his duties, conduct unbecoming or unbecoming an official, whether in/ or out of the service, breach of the duty of discretion, unjustified absence from duty for more than twenty-two (22) working

During the investigation of the above disciplinary offences, the staff member may be placed on automatic or potential suspension.[76]

Indicative cases that have been investigated by the Ombudsman and reflect the way in which harassment cases in the public sector are handled, the stages of examination and the final outcome are presented in the Authority's special annual reports on equal treatment. In parallel, mediation summaries[77] concerning the imposition of disciplinary sanctions on public officials for engaging in conduct that (also) constituted forms of harassment (one concerning a disciplinary sanction on a hospital employee and the other concerning a fine on a municipal company for harassing a disabled employee) have been posted on the Authority's website or are included in the quarterly case complaints published on the Authority's website[78].

The criticism, which is made about the disciplinary procedure and liability in the Public Sector in case of harassment or sexual harassment, is that there are no specific regulations covering all types of harassment, but instead, in these cases, in the absence of more specific regulations, the provisions of Article 107 of the Public Employees Code (Law 3528/2007, as amended and in force)[79] apply. This criticism remains even after Law 4808/2021 and after the issuance of the circular DIDAD/F.64/946/oik.858/19-01-2023 *"Prevention and treatment of violence and*

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days in a continuous period or more than thirty (30) working days in a one (1) year period or more than fifty (50) working days in a three-year period, or extremely serious insubordination, participation, directly or through a third party, in an auction conducted by a committee of which the staff member is a member or, where the committee is attached to the authority to which the staff member belongs, persistent refusal to attend an examination by a medical board.

76. See Article 103 para. 1(c): 'An official against whom a criminal prosecution has been brought for any crime against sexual freedom, or for any crime of economic exploitation of sexual life', as replaced by Article 39 para. 1 of Law 4795/2021, Government Gazette 62/17.4.2021.

77. See Ombudsman's mediation summary dated November 2020 titled "Disciplinary sanction against hospital employee who physically assaulted a female employee", as well as respectively dated December 2020 and titled "Municipal company fined and mayor and councillor referred to disciplinary investigation following complaint by disabled employee for a harassing incident at work" available at: www.synigoros.gr.

78. See the Authority's website, under special reports and quarterly case reports available at www.synigoros.gr.

79. See. and Report of the ADEDY Multipurpose Centre on sexual harassment in the public sector at https://kpolykentro.gr/2022/05/24/ekdosi-sexpar/, as well as in D.Latsiou/B.Tsigarida, The treatment of harassment in the public sector, EErgD, 7/2022 pp. 850.

*harassment at work in public institutions".*

Already the provisions of Law 4725/2021 provide for an Integrity Adviser in the public sector, who is responsible for providing advice and referring cases to the competent bodies[80]. For the public sector there is also the Code of Ethical and Professional Conduct for Public Employees, according to which certain guidelines and behaviours are given for the public sector[81]. Finally, the circular DIDAD/F.64/946/ok.858/19-01-2023, which was adopted on the basis of the delegating provision of Article 22 para. 4 of Law 4808/2021, provides for measures that can be taken in the public sector for the protection of the person affected and opposed to the respondent. These measures may include the recommendation of compliance, transfer to another organisational unit, change of workplace or change of working hours, removal from the workplace with compulsory regular leave or official replacement leave, if he/she has leave days, the investigation of any disciplinary liability of the respondent, the disciplinary prosecution of the respondent and the imposition of a disciplinary penalty in accordance with the applicable provisions or the termination of the employment contract or work contract, in those cases where this is possible on the basis of the employment relationship of the respondent, without prejudice to the prohibition of abuse of rights under Article 281 of the Greek Civil Code. The measure of transfer to another organisational unit, change of workplace or working hours may also be applied to the affected person if a request is submitted and, in this case, the Service is obliged to consider this request as a matter of priority (Article 6(2) of the above Ministerial Decision). At the same time, par. 3 of Article 6 of the same ministerial decision provides that: *"3. Any person referred to in Article 3 who suffers an incident of violence and harassment against him or her shall have the right to be justifiably absent from the workplace for a reasonable period not exceeding three (3) working days, without loss of pay or other adverse consequence, where, in his/her reasonable belief, there is an imminent serious risk to his/her life, health or safety, in particular, where the perpetrator of such conduct is the person's immediate superior or where, despite the submission of a complaint, the necessary and appropriate measures have not been taken in accordance with para. 2, in order to restore the normal functioning of the Agency, or where such measures are not sufficient to stop the behaviour of violence and harassment"*.

80. See more information at: www.ypes.gr.

81. See https://www.ypes.gr/wp-content/uploads/2022/07/Code_final-1.pdf.

*The above interim measures provide a framework of concrete commitments for the entities to which they are addressed, which is to be considered positively. However, a more adequate and coherent framework for dealing with harassment and sexual harassment, particularly as regards its disciplinary aspect, but also as regards general and effective prevention measures and policies, remains to be put in place.*

After all, in accordance with international and EU law, sanctions should have a deterrent role and contribute, in addition to accountability, in a manner proportionate to the offence committed, to the elimination and prevention of illegal behaviour.

THE GREEK OMBUDSMAN
INDEPENDENT AUTHORITY

# Chapter III

# Chapter III: The specific competence of the Ombudsman in matters of harassment and sexual harassment

## 1. The institutional framework

With the establishment of its specific competence as a body promoting the principle of equal treatment and combating discrimination as early as 2005, the Ombudsman now deals with issues that were previously outside its remit. In particular, it acquires special competence in matters of civil service status in the public sector, in the event of a specific ground of discrimination laid down in the legislation. Similarly, it acquires competence to control such matters in employment and occupation in the private sector. Harassment and sexual harassment as forms of discrimination are investigated by the Ombudsman under this specific competence.

Harassment as a legal concept and its prohibition as a form of discrimination, as well as the relevant competence of the Ombudsman, was provided for in Greek law even before the ratification of C190, already with the transposition of Directives 2000/43/EC and 2000/78/EC by Law 3304/2005, which was subsequently replaced by the provisions of Law 4443/2016. As previously noted, harassment, in addition to the grounds related to the gender of the victim, constitutes prohibited discrimination on the other grounds provided for by the applicable legislation, namely race, colour, national or ethnic origin, genetic features, age, disability or chronic condition, religious or other beliefs, sexual orientation, gender identity or characteristics, marital or social status[82]. In particular, the above provisions define discrimination as *"harassment, which is manifested by unwanted conduct related to one of the grounds referred to in Article 1 and which has the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment"*[83].

With regard to the specific competence of the Ombudsman, it should be noted

82. See Article 1 para. 1 of Law 3094/2003, as amended and in force by the provisions of N. 4443/2016.

83. See Article 3 of Law 4443/2016.

that it includes **the promotion of the principle of equal treatment**[84]. This means that the Ombudsman, in addition to examining individual complaints, is also responsible for the promotion of the principle of equal treatment (e.g., update, information, promotion), as well as cooperation with other bodies and social partners [e.g., General Secretariat for Demographic and Family Policy and Gender Equality, Labour Inspectorate, G.S.E.E. (General Confederation of Workers of Greece), ADEDY (Supreme Administration of Associations of Civil Servants) etc.]. Specifically, in order to fulfil this role and the obligations arising from it, the Authority undertakes initiatives and actions (e.g., information material, meetings, visits) to inform potential victims and raise awareness in general, as well as cooperation with institutions, trade unions and civil society for the prevention

84. See Article 3 para. 6 of Law 3094/2003: ""In the context of its mission as referred to in paragraph 1 of Article 1 as a body for monitoring and promoting the implementation of the principle of equal treatment irrespective of race, colour, national or ethnic origin, genetic features, religious or other beliefs, disability or chronic illness, age, marital or social status, sexual orientation, gender identity or gender characteristics, as well as the principle of equal opportunities and equal treatment of men and women, and in addition to the other competences under this Law, the Ombudsman:
(a) provides assistance to victims of discrimination on the grounds of race, colour, national or ethnic origin, genetic features, religion or other beliefs, disability or chronic illness, age, marital or social status, sexual orientation, gender identity or gender characteristics, as well as on the grounds of gender by mediating in every appropriate way to restore the principle of equal treatment within the scope of this Law. If this mediation does not produce satisfactory results, the Ombudsman forwards its findings to the body responsible for the exercise of disciplinary and/or sanctioning powers, which must inform the Ombudsman accordingly; b) carries out investigations into discrimination in accordance with Article 4, c) publishes special reports on the application of the principle of equal treatment in the scope of implementation of this Law, which also include recommendations for measures to eliminate discrimination; d) issues an opinion, ex officio or upon request of another public authority, on the interpretation of this Law; e) exchanges information and cooperates with counterpart bodies of the Member States of the European Union and with competent European organisations, such as on gender discrimination issues with the European Institute for Gender Equality established by Regulation (EC) 1922/2006 of the European Parliament and of the Council of 20 December 2006 (OJ L 403), or on labour issues with European Union-level services such as Your Europe, SOLVIT, EURES and the Enterprise Europe Network; f) cooperates with the General Secretariat for Transparency and Human Rights of the Ministry of Justice, Transparency and Human Rights, the General Secretariat for Gender Equality of the Ministry of Interior and Administrative Reconstruction, the Ministry of Labour, Social Security and Social Solidarity, the social partners, enterprises and non-governmental organisations, in order to inform and disseminate good practices of equal treatment in the field of application of this Law and to organise relevant training events'.

and combating of discrimination, including harassment and sexual harassment.[85]

In particular, the Ombudsman, under this specific competence, **investigates complaints** of possible violations of the principle of equal treatment, including harassment and sexual harassment in employment and occupation[86]:

- in access to employment and vocational training,
- in the private and public sectors,
- in the exercise of liberal/self-employed activities

The Ombudsman's investigation is usually initiated following a complaint from the victim or persons (e.g., proxy lawyers) and/or organisations representing the victim, including trade unions. However, in addition to the investigation of the case following a report, there is also provision for an ex officio investigation of cases, if the requirements of the law are met.[87]

*Furthermore, it should be noted that any public authority or body, if it finds that there are indications of a violation of the applicable legislation on discrimination, must inform the Ombudsman.[88]*

With regard to the investigation of cases of discrimination, including harassment and sexual harassment, the current legislation provides for the reversal, i.e., the shift of the burden of proof from the complainant to the respondent[89]. This shift of the burden of proof constitutes an exception to the basic principle of the evidentiary procedure, according to which each party must prove the facts necessary to support his independent claim or reproach[90]. That allocation of the burden of proof is also applicable in administrative proceedings before the Ombudsman[91].

85. More information and information material are also available on the website of the Ombudsman's website at: www.synigoros.gr.
86. See article 3 of Law 3094/2003, as amended and in force.
87. See Article 4 para. 2 of Law 3094/2003
88. See Article 3 para. 5(b) of Law 3094/2003.
89. See article 24 of Law 3896/2010 and the corresponding provisions of Law 4443/2016, but also the provisions of Law 4808/2021
90. 90. See. D, Labour Law, 2019, p. 307 et seq.
91. In particular, during the evidentiary proceedings before the Ombudsman, there is the pos-

If and when the evidence provided is considered sufficient, the Ombudsman shall activate the provision for shifting the burden of proof[92], in which case the respondent shall be required to prove to the Authority that there has been no unlawful conduct against the complainant[93].

*The investigation of cases of harassment and sexual harassment in the public sector is carried out with the usual method and investigation tools of the Ombudsman, with the additional and exclusive application in these cases of the shifting of the burden of proof, under conditions that will be further analysed below.*[94]

The Ombudsman may also request a disciplinary investigation of the case or, if one has already been ordered, must await the completion of the investigation and the actions of the Administration[95].

It is also noted that in the case of harassment or sexual harassment cases in the private sector, victims can also appeal directly to the Ombudsman without having to previously contact the Labour Inspectorate. In such cases, the Authority follows the method of investigation which will be set out in detail below, but the complainant is encouraged to submit a request for an employment dispute to the relevant Labour Inspectorate in order to benefit from its assistance in resolving the dispute.

If the victim of harassment or sexual harassment in the private sector has already contacted the Labour Inspectorate, the Ombudsman is informed in accordance with the existing legislative framework.[96]

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sibility for the parties to produce any appropriate means of evidence, including witness statements, which may be taken before the Authority anonymously, as provided for in Articles 3 and 4 of the Law. 3094/2003, in accordance with the internal procedure, in order to facilitate the investigation, the case.

92. See Article 24 of Law 3896/2010 in conjunction with Article 9 of Law 4443/2016.
93. See for example on the evidentiary procedure and the establishment of a prima facie case in the investigation of complaints by the Ombudsman in the Special Report on the Equal Treatment 2021, pp. 41- 44.
94. See below, sub-chapter 2.4
95. See Article 4 of Law 3094/2005.
96. See Articles 3 and 4 of Law 3304/2005, as amended and in force.

*In particular, the competent Labour Inspectorates shall invite the Authority to the discussion of the labour dispute, communicating the invitation for the discussion, the request of the person concerned and any relevant documents.*

In labour disputes before the competent Department of the Labour Inspectorate, at least in Attica, a representative of the Ombudsman usually participates. At this point, it should be clarified that in the event that the labour dispute is not resolved during the discussion of the case before the LI, the Ombudsman reserves the right to investigate the case on its own, by collecting further evidence (e.g., documents, witness statements, etc.). Unfortunately, it is usually not possible for a representative of the Authority to be present in the Region, mainly for practical reasons. In these cases, the competent Departments of the Labour Inspectorate, after the labour dispute has been conducted before them, inform the Ombudsman about the outcome of the dispute by communicating the record of the labour dispute and any evidence submitted by the parties (e.g., pleadings, etc.). The Ombudsman also reserves the right in these cases to investigate the case ex officio, following the same procedure as above. The Ombudsman's investigation of the case is usually concluded with the preparation of a findings' report containing the findings and recommendations of the Authority.

*The conclusion of the Ombudsman is sent to the Labour Inspectorate in cases where labour legislation is applicable, or to the competent public service if the complaint concerns the public sector, for their own actions, as well as to the person(s) concerned in order to be informed of the outcome of the case.*

In cases within the competence of the Labour Inspectorate, the labour inspector must take the necessary actions in accordance with the findings of the Ombudsman (e.g., finding a violation or not of the applicable legislation, issuing an administrative fine). If the Ombudsman's findings and recommendations are not accepted in the labour dispute under investigation, the Labour Inspectorate must give specific and adequate reasons for any deviation from the Ombudsman's proposal.[97]

It is clarified that when investigating the relevant complaints of harassment and/or sexual harassment, the Ombudsman acts in principle as a mediator in the con-

97. See ibid., footnote 16.

text of an out-of-court resolution of the dispute in order to eliminate the offence of harassment and/or sexual harassment, secure its nonappearance in the future and the ensure the restoration of legality.

In the instance of a case pending before courts, where the Ombudsman acts as a body to monitor and promote the application of the principle of equal treatment, it shall, by law, deal with cases pending before courts, judicial or prosecutorial authorities up to the first hearing or the activation of criminal prosecution, or until the competent court or judicial authority has ruled on an application for interim judicial protection[98].

## 2. Putting the framework into practice

This sub-chapter will analyse a variety of issues concerning the application of the legislation on harassment and sexual harassment, as highlighted by the way in which complaints to the Ombudsman are handled and examined. These are issues of interpretation, but also issues that highlight difficulties in the process of examining complaints. Attempting to analyse the most important thereof, we start with the concept of sexual harassment.

### *2.1. The concept of harassment and in particular sexual harassment*

#### 2.1.1. The subjective nature of the unwanted behaviour

As already mentioned in the analysis of the legislative framework, sexual harassment is defined as any form of unwanted conduct (verbal, psychological, physical) of a sexual nature, which involves the violation of the dignity of a person, in particular by creating an intimidating, hostile, humiliating, degrading, demeaning or offensive environment (article 2 d' of Law 3896/2010). The main prerequisite for falling within the legal concept of harassment is therefore the existence of unwanted behaviour.

*Furthermore, sexual harassment can take a variety of forms, from mild behaviour to serious criminal offences.*

The relevant complaints to the Ombudsman show, however, that they cannot be easily and a priori identified or categorised. Rather, **each case has specific characteristics** and must be dealt with and assessed on an ad hoc basis. In

98. See Articles 3 and 4 of Law 3304/2005.

attempting to describe the behaviours complained of, these include touching the body of the worker, inappropriate gestures, unwanted sexual advances, pressure for sexual acts, messages of a sexual nature on mobile phones or social media, and acts offensive to sexual dignity.

The above cases have in common the sexual nature of the behaviour and this is the crucial element that classifies them in the case of sexual harassment. However, **harassment can be manifested even if it is not of a sexual nature**, that is, when it does not constitute sexual harassment, but harassment on the grounds of gender. In this case, there may also be unwanted conduct and offence to the dignity of the person, in particular by creating an intimidating, hostile, degrading, humiliating or offensive environment, for reasons causally related to the gender of the victim, i.e., the cause of the harassing conduct is the gender of the victim.

Of course, not every unwanted behaviour constitutes harassment in the legal sense of the term. This requires that the conduct must, in addition, have the purpose or effect of violating the personality of the victim, in particular by creating an intimidating, hostile, degrading, humiliating, demeaning or offensive environment around the person subjected[99] to it. Given that the limits of tolerance of unpleasant behaviour are subjective and vary from person to person, different circumstances will constitute harassment. This finding does not, of course, negate the fact that behaviour not tolerated by the average prudent person may fall within the concept of harassment, even if it is not perceived as harassing by the recipient.

The **judgment of the undesirability of harassing sexual conduct** is in principle subjective[100]. It is sufficient that the person who is subjected to such conduct considers it unwanted and declares it. But even if he or she does not declare it or does not react, the mere absence of an active reaction cannot be considered as implicit consent or as removing the undesirable character of the conduct.

*The criterion for the finding of undesirability is therefore the particular circumstances relied upon and the judgment as to whether the conduct in question, according to the standards of good faith, can be regarded as objectively undesirable for the average prudent person.*

99. For the definition of harassment, see Art. 2 b of Law 4808/2021, D.Wolas, commentary in MEfthes 1196/2020, Armenopoulos 1/2021, pp. 52-59

100. See. D. Goulas, commentary in MEfthes 1196/2020, Armenopoulos, 1/2021, p. 57

A typical case of unwanted and offensive behaviour of a sexual nature is the case of a young worker who, ten days after being hired, was touched in a sexual manner by her employer. The employee reacted immediately and left her job, and the employer terminated her employment contract (case 248315). An illustrative case of the subjective nature of the unwanted conduct is the case of a midwife in a gynecological clinic who perceived sexist comments by her employer as sexual harassment against her, which forced her to leave her job and ultimately to lose her job (case 227476). On the contrary, the unwelcome and offensive nature of the conduct was not proven in a case where it was established by the evidence presented by the complainant in rebuttal to the complainant's allegations that the expression of sexual interest was not unilateral (case 125248).

### 2.1.2. The strict liability of the harasser

In contrast to the subjective character that the unwanted conduct assumes for the harassed, there is a case of strict liability with regard to the conduct of the harasser[101]. The **purpose** of violating the dignity of the person and creating a hostile working environment **is not a necessary condition** for the existence of sexual harassment. On the contrary, it is sufficient, in an objective judgment, to establish the fact, without the subjective element of intent ("purpose") being required.

*Therefore, even when the complainant did not intend to harass the person complaining of sexual harassment, but was instead motivated to create a climate of intimacy in the workplace, the existence of sexual harassment is not excluded, provided that the recipient of the sexual conduct perceives it as harassing and would objectively be undesirable for the average prudent person.*

According to the case-law of the ECJ, the establishment of liability for breach of the prohibition of discrimination on grounds of sex as established in EU law (which includes sexual harassment) cannot depend on proof of fault[102]. In the said Judgment (16-22), the Court held that *"when the sanction chosen by the Member State is provided for in rules governing employers' civil liability, any breach of the*

101. See. I. Koukiadis, Labour law, 6th ed. 2012, p. 790, St. Giannakourou, DEN 2007, p.296

102. See first of all ECJ, 22.04.1997, C-180/95, Draehmpaehl, ECLI:EU:C:1997:208

*prohibition of discrimination must, in itself, be sufficient to render the employer fully liable".* Similarly, in the judgment of the ECJ in Case C-177/88[103], paragraph 22, it was held that *"Directive [76/207/EEC] [...] does not make liability on the part of the person guilty of discrimination conditional in any way on proof of fault or on the absence of any ground discharging such liability".* Thus, even if harassment is "unintentional" or "with good intent", it still gives rise to an obligation to compensate for the damage (whether material or moral), without the court requiring the perpetrator to be guilty of malice or negligence, i.e., without having to prove that the perpetrator did not know that his conduct was unwanted or offensive to the victim. Therefore, an exception to the general system of subjective tort liability is introduced for the award of damages for moral damages and it is sufficient to establish objectively that sexual harassment has occurred.[104]

In this respect, it is worth pointing out that the evidence of the complaints shows that there is no **common meaning in the way** sexual harassment is perceived. On the contrary, there is a divergence in the subjective meaning given to the conduct in question by the two parties. It is indicative, for example, that both parties seem to have a common meaningful place about what constitutes sexual abuse, but this is not the usual case in sexual harassment complaints. Thus, in cases of sexual assault, it is not the complainant who disputes that the specific acts are unlawful; what is disputed is the existence of the facts that constitute them. In cases of sexual harassment, it is not always or necessarily the existence of the facts relied on that are in dispute. What is often argued is that the conduct complained of not only does not constitute harassment, but rather that it is " "not blameworthy"" conduct which is a manifestation of intimacy or even legitimate sexual interest. The issue becomes even more complex in the case of complaints where the conduct complained of is not sexual in nature, but constitutes moral harassment on the grounds of sex, i.e., conduct motivated by sexist motives that offend the personality of the person subjected to it and lead to unfavourable treatment and, ultimately, to gender discrimination.

103. Dekker, ECLI:EU:C:1990: 383

104. See more specific analysis and further references in Boumboucheropoulos, Mobbing (ibid.), pp. 234-240; Zerdeli, European Labour Law, pp. 199-201; Giannakourou, Issues of civil liability of the employer due to violation of fundamental rights of the EU law, ECJ 2017, 317.

### *2.2. Beneficiaries of protection*

The subjective scope of application of Law 3896/2010 (as well as Law 4443/2016) covers not only employees but also apprentices, those in the process of acquiring professional experience or training, as well as job seekers. The definition of an employee in these areas of law is autonomous and much broader than the concept of a dependent employee as it is known in Greek law.[105]

However, even in the case of harassment by a third person not connected to the employment contract, the harassing behaviour constitutes an insult to the personality under the general provisions of the Civil Code and gives rise to the claims of Articles 59 and 932 CC. It is therefore not a necessary condition for the activation of European and national legislation prohibiting harassment in the workplace that the victim be included in the concept of dependent employee, as that concept is known in Greek labour law.

*The widened subjective scope is particularly important in practice, as persons in the field of vocational training, apprenticeship or traineeship are usually young and potentially more vulnerable.*

An illustrative case is that of a student in an organisation who complained of sexual harassment by her supervisor. The complaint in question could not be lodged and examined by the Labour Inspectorate as she did not have an active employment contract with the organisation. The Ombudsman examined the case and came to specific findings, making strong recommendations to the Agency in this regard, due to the failure to apply the burden of proof provision and also due to the employer's failure to comply with its duty of care (case 259820).

Of course, it should be stressed that the majority of complaints of harassment submitted to the Ombudsman are cases involving victims who are employed under a contract of employment or civil servants, i.e., employees who fall within the usual meaning of "employee". Also, the majority of them concern cases where the employment relationship has been established, while complaints of harassment at the stage of access to employment (e.g., during a job interview) are extremely rare, although in these cases there is no fear of losing the job.

105. D. Zerdelis, European Labour Law, 2020, pp. 112-113,122; Temming, Displacements system caused by the change in the concept of worker in law European Union law, EErgD 2017, 1057 et seq.; Morgenbrodt, Developments in European European concept of worker, OJEU 2018, 1095 et seq.).

### *2.3. The obligation of confidentiality and the possibility of anonymity*

During the investigation of sexual harassment cases, de facto incidents emerge and are often made public that may affect the personality of mainly - but not only - the victims of sexual harassment. For this reason, the investigation of sexual harassment cases requires special handling, so that, on the one hand, the personal data of the parties are protected and, on the other hand, relations between the complainant and the respondent are not further deteriorated. Because of this specificity, but also to ensure the credibility of the procedure, it is extremely important that these cases are handled with confidentiality and professionalism as regards the details of the persons involved and the incidents reported.

However, compliance with this obligation raises the question of ensuring equality of arms, particularly as regards the possibility for the person respondent to refute the content of the complaint and, accordingly, to be protected against the possibility of an attack on his or her own personality. The possibility of rebuttal presupposes, in principle, full knowledge of the facts of the complaint, including, in principle, the identity of the person making the complaint. In fact, therefore, the possibility of a meaningful investigation without the disclosure of the complainant's details appears to be objectively extremely limited.

The Authority also received an anonymous complaint against a particular public service employee who was accused of systematically sexually harassing his colleagues. The Ombudsman pointed out that in order to be able to investigate the substance of this complaint, it is necessary to be able to receive the necessary clarifications and additional information. It is therefore necessary to have available, at least to the Ombudsman itself, the details of the person directly concerned, both to ensure that this person exists and to facilitate direct contact in order to seek any required additional information. Besides, according to the Authority's Rules of Procedure (Article 3 of Decree 273/1999), the Ombudsman *"may, if the person concerned so requests in writing and if the investigation of the case is possible without the disclosure of the name, refrain from disclosing the name and other personal details of the person who has lodged the complaint".*

*It is therefore possible to maintain the anonymity of the complainant under the above two conditions of the law: a) if requested in writing by the person concerned and b) if the investigation becomes objectively possible.*

With these facts, the Ombudsman closed the specific complaint, reserving, however, to use its elements in a possible future investigation of the Authority, regarding sexual harassment in public sector services. (Case 310897).

### *2.4. The specificity of the evidentiary procedure in the allocation of the burden of proof*

According to Article 24 of Law 3896/2010, when a person claims that he or she has been subjected to discrimination on the grounds of sex, which includes sexual harassment, he or she must plead before a court or other competent authority facts or evidence that give rise to a presumption of discrimination or sexual harassment. Subsequently, the Respondent bears the burden of proving that there has been no breach of the principle of equal treatment between men and women.

The allocation of the burden of proof provided for in Article 24 of Law 3896/2010 is applied both by the competent administrative authorities, such as the Ombudsman, and by civil and administrative courts (with the exception of criminal courts, where the presumption of innocence applies to the accused)[106].

*It follows from the literal interpretation of the provision that although the complainant is not required to prove his/her allegations in full, s/he must give rise to a presumption of discrimination, i.e., to rely on specific facts and evidence from which the truth of his allegations* ***is presumed****.*[107]

Moreover, it has also been held by case law that it is sufficient for the person claiming to have suffered harassment to merely invoke evidence to that effect, so that the respondent employer now bears the burden of proving that no harassment took place.

In particular, it is necessary to refer to incidents that show the unwanted sexual nature of the conduct of the complainant. The complainant must then link these incidents to the creation of an intimidating, hostile, degrading, humiliating, demeaning or offensive environment. It is therefore not sufficient simply to mention

106. See more in the Special Report on Equal Treatment 2021, p. 54 et seq.

107. See. D. 337 et seq.; D. Goula, The allocation of the burden of proof in the field of prohibition under EU law, in Anniversary Volume of the European Network of Vocational Education and Training Institutions, 2017, p.169 et seq.

the incidents of harassing conduct, it is necessary to describe the time when they took place, their exact content[108], any repetition of such conduct, and any other information which: (a) specifies the characteristics of the conduct complained of; and (b) suggests that the conduct complained of is linked to the creation of an adverse working environment for the complainant.

Indeed, from the long involvement of the Ombudsman in cases of sexual harassment, it is clear that the complainant's invocation of specific incidents of sexual harassment and their connection with the creation of an environment unfavourable to the complainant are the minimum necessary elements that make it possible to investigate these cases. In this context, the complainant does not meet the requirement of invocation when he or she states that he or she has evidence of the alleged sexual harassment but refuses to produce it. In such cases, s/he is invited by the Ombudsman to produce the evidence relied upon within a time limit, after the expiry of which the case is compulsorily closed (see, by way of example, case 163866).

Therefore, once the necessary evidence has been provided by the complainant and the required presumption of discrimination has been established , the Ombudsman invites the respondent to prove that the events brought to the Authority's attention by the complainant did not occur and to refute the allegations.

*That is, if the person who complains of harassment meets the **burden of proof**, the evidentiary relief consists of reducing his/her burden of proof and correspondingly shifting the burden of proof to the employer's side.*

The Ombudsman's investigation of allegations of sexual harassment often highlights evidentiary difficulties, due to the circumstances in which such conduct takes place and in particular the absence of third parties. The frequently occurring lack of sufficient evidence and the consequent difficulties in the evidentiary process, even despite the provision of the shift in the burden of proof, make the implications for the final substantiation of the case obvious.

However, the Ombudsman has investigated several cases of sufficient reliance on evidence capable of giving rise to a presumption of discrimination. In these cases, either the necessary evidence was provided at the outset or it was subsequent-

108. See. Boumboucheropoulos, op. cit. p. 332-333.

ly provided, following a written request by the Ombudsman, in order to assess whether further examination of the case is possible.

*Where sufficient evidence is provided at the outset, the likelihood of a positive outcome of the complaint is particularly high.*

An illustrative case is that of a private sector employee who complained of repeated verbal and physical harassment by her employer, culminating in a gesture of a sexual nature against her, which forced her to leave her job. The complainant provided a printout of relevant messages from her mobile phone, sent by her employer during non-working hours. In these messages, which were of a sexual nature, the employer invited the worker to a business trip. The Ombudsman found that these messages constituted sufficient evidence to shift the burden of proof and asked the employer to provide rebuttal evidence. Although the employer did not deny sending the text messages, the employer did not admit the existence of sexual harassment. In support of his allegations, he submitted affidavits in which the other employees denied that the alleged gestures of a sexual nature towards the employee took place. Having assessed all the evidence, the Ombudsman concluded in his findings that the employer had not adequately rebutted the evidence relied upon by the employee, in particular the evidence relating to the alleged messages, and recommended that the prescribed sanctions be imposed (case 203199).

*In cases where a presumption of discrimination is created, the critical part of the procedure is now shifted to sufficient evidence on the part of the employer.*

Apart from the cases where the employer's rebuttal is insufficient, sometimes the evidence (documents, affidavits of eyewitnesses, etc.) provided by the employer's side of the process can undermine or even completely refute the initial allegations of the complainant.

An indicative case is the one where the complainant (a domestic worker) presented a testimony of a former employee of the same employer, who claimed that she herself had been sexually harassed by the employer's father in the past, but had not reported the incident at the time. This evidence was considered sufficient by the Ombudsman to trigger a presumption of discrimination and therefore the employer's rebuttal was sought under the application of the burden of proof

provision. Affidavits and numerous documents and evidence were submitted by the employer side, including the lawsuit filed by the complainant. The examination of the evidence revealed, on the one hand, strong evidence of rebuttal from the employer's side and, on the other hand, serious contradictions and material differences on the part of the complainant. In view of this, the Ombudsman found that the complainant's allegations were not confirmed as true and sent relevant findings report to the parties and the Labour Inspectorate (case 150987).

*The difficulties in the evidentiary process are further complicated when, in an attempt to establish (on the part of the aggrieved person) or rebut (on the part of the employer), the evidence adduced has not been obtained in a lawful manner.*

An illustrative case is the examination of a worker's complaint that she was sexually harassed by her employer, who subsequently terminated her employment contract. As evidence, the employee provided an affidavit from a customer of the establishment who had been an eyewitness to two incidents of sexual harassment. In reversing the burden of proof, the employer submitted, inter alia, sworn statements and audiovisual material (DVD) from the closed-circuit security camera of the shop, which recorded the movements of the shop on the days in question. However, the Ombudsman did not evaluate the disputed audiovisual material, as it was unlawfully obtained, since it was taken without the permission of the competent Data Protection Authority (case 281310).

*On the contrary, in cases where the respondent's testimony was contradictory or there was strong and legally obtained evidence, the Ombudsman concluded that sexual harassment had occurred and recommended the imposition of administrative sanctions.*[109]

A typical case is that of an administrative employee of a municipal company who complained that she was sexually harassed at her workplace by the president of the municipal company. To prove her allegations, the employee produced a digital video disc with footage recorded by the security camera, which was legally installed and operating at the entrance of the municipal enterprise, with the permission of the competent authority. From the assessment of the content

109. Indicative cases 256770, 210504, 203199, 186339

of the material, a presumption of discrimination was established towards what the complainant had said and, therefore, there was a shift of the burden of proof, that is, the respondent was asked to prove that he did not harass the complainant. The Ombudsman concluded that the employee's allegations were valid, as was undoubtedly evident from the security camera footage produced, and the respondent failed to establish that his movements during the incident in question were acts of discourtesy. The Ombudsman recommended a fine to the relevant Inspectorate (case 196683).

*Allegations of inappropriate verbal, non-verbal or physical conduct amounting to sexual harassment in the workplace shall, under certain conditions, be given particular probative value where they are made by more than one victim, against a specific harasser and in the same workplace, in particular where they show identical and repeated patterns of behaviour.*

The Ombudsman, taking into account the evidence in the case file, where two employees complained to the competent Labour Inspectorate that during their employment they were sexually harassed by a relative of their employer, who was also employed by the company, found that the harasser had a specific and repeated pattern of harassing behaviour in both cases. Namely, initially, he would make verbal comments and harassing gestures to the workers and then, when the incidents were brought to the employer's attention, the harasser would adopt aggressive and generally insulting behaviour towards them in order to 'get even' for the fact that they had disclosed his harassing behaviour to the employer. At the same time, the Ombudsman found that the employer's side failed to make every effort, as it was required under the duty of care, to take appropriate measures to prevent other such incidents of sexual harassment and to safeguard the employees' interests and personality (e.g., by removing the harassing relative from the workplace). On the basis of the above conclusions, the Ombudsman recommended to the Labour Inspectorate to impose a fine, which was imposed (cases 299664, 299665).

*In some cases, it was shown that the allegations were not causally linked to the creation of a hostile, intimidating, humiliating or degrading environment against the complainant.*

For example, a company employee claimed that her supervisor, during their working relationship, used psychological violence, which she linked in her report to her age and possible sexual harassment on his part. On the basis of the evidence provided, and in particular in relation to the issue of sexual harassment, it was established that the facts of the complaint were not objectively linked to the creation of a hostile, intimidating, humiliating or degrading environment against the complainant (case 249541).

*Finally, in some cases, the initial termination of employment was withdrawn following a settlement between the parties on the basis of a private agreement.*

By way of example, we refer to the case of an employee in a company, who complained to the Labour Inspectorate that repeatedly during her work she was subjected to inappropriate behaviour by her employer because of her gender. The Ombudsman opened an investigation into the case, but the investigation was discontinued when the employee's side informed the Ombudsman that an out-of-court settlement had been reached (case 205946). It is worth noting in this respect that it is often the case that the parties reach a compromise agreement and that recourse to the Ombudsman or the LI has a catalytic effect in this direction.

### *2.5. The employer's duty of care*

One of the concomitant obligations pertaining the employer is the obligation to protect the employee's personality, which includes both respect for the value of the person and the right to free development of the personality.[110]

*Any harassing behaviour in the workplace, which does not necessarily come from the employer or its representatives, but may also come from the employee's colleagues or third parties, constitutes a particularly serious violation of personality.*[111].

110. D. Zerdelis, Labour Law, Individual Labour Relations, 3rd ed. p. 774 et seq.

111. EFAth 4937/2001, ElldNi 2001, 1384

The employer must prevent any offence to the employee's personality, whoever it may come from, and in the context of fulfilling the general duty of care to ensure normal employment conditions for the employee. The employer's failure to take appropriate measures constitutes a breach of the duty of care incumbent on him and, accordingly, the employee's right to invoke it in conjunction with the abuse of the right of management or unilateral detrimental change in the terms of employment. More generally, the employer's duty of care in the modern working environment is now linked to the need to ensure a healthy working environment and to safeguard the intangible interests of employees[112].

In case law, the duty of care was based on the general provisions of the Civil Code on offence against personality and tort liability (Articles 57, 59, 914, 932 CC), and in the case where the victim of sexual harassment was forced to leave his/her job or the employer terminated the contract, because of his refusal to accept the harassment, then the employer's conduct was considered a unilateral detrimental change in the terms of employment (Article 7 of Law 2112/1920), and the termination of the contract under the provision of Article 281 CC was considered abusive and invalid, while the employee could also claim compensation for moral damages[113].

Article 14 of Law 3896/2010 already explicitly states that the termination or in any way interruption of the employment contract (as well as any other unfavourable treatment on grounds of gender) out of revenge due to the employee's non-compliance to sexual harassment is prohibited.

This of course presupposes that the complainant has brought the facts of the case to the employer's attention. An illustrative case is one where the employer

112. For the more general concept of the employer's duty of care, see. Koukiadis, I., Labour Law, Sakkoulas Publications, 2005, p. 652 - 672 and for the more specific issue, p. 666. Also see. Koukiadis, I., Sexual harassment in the workplace, Labour Law Review 2008, pp. 449 - 458. Among the relevant case law, of particular interest is Mon. Prot. 1962/2003. In this case, there was sexual harassment by a colleague of the complainant and the relevant court decision refers to the measures that the employer should have taken - but never did - to protect the employee's personality in the context of fulfilling its duty of care. It also refers to the consequences of the employer's omissions (the continuation of sexual harassment by the complainant's colleague and, ultimately, her resignation from the private company where she worked).

113. See. AP 84/2011, Elldni 2011,1621, AP 1655/1999, DEN 2000,1444, Efthes 957/2001, Arm 2001,948, Efath 1139/2007, IEE 2007, 1234, where comments I. Lixourioti and reference to the claim for compensation with references to MPrSam 195/2005, ArchN 2006,369, MPrThes 1936/2005, Arm 59.1423, Goutos, EErgD 2003,198 et seq, Kiose-Pavlidou, Sexual harassment in the workplace, IEE 2008,1214 et seq.).

was first informed during an employment dispute that the employee, a gay woman, claimed that the reason for her dismissal was her sexual orientation and her failure to respond to sexual harassment by her supervisor. The employee stated that for the past few months she had been subjected to sexual harassment by the store manager and her supervisor and because of her non-response the supervisor recommended her dismissal. The employer stated that he was not aware of the supervisor's conduct and that she had not informed him that the employee's dismissal was at the recommendation of the supervisor, but for financial reasons. Within the scope of his competence, the Ombudsman requested the employer to take the necessary steps to examine the employee's complaint and the possibility of her reinstatement (case 211428).

A case of violation of the employer's duty of care is the case of two female employees, who were working in a branch of a chain of shops and who complained to the Labour Inspectorate that they were sexually harassed by their supervisor. After the complaint was lodged, the company fired the two employees and their supervisor. The Ombudsman asked the employer for explanations, and the employer was reminded of its obligations under the employer's general duty of care towards the employee. The employer's explanations were considered unsatisfactory, in particular in view of the disproportionate nature of the measures taken and the failure to exhaust other milder means, such as, for example, transferring the employees to different branches. In this context, the dismissals of the employees were found to be abusive (cases 136373, 136374).

*However, the protection against dismissal, as described in article 14 of Law 3896/2010, is permanent, in the sense that if the dismissal occurs at a later point in time, it must be proven that it is not causally linked to the complaint of sexual harassment, otherwise it will be considered to have been improperly exercised as a countermeasure by the employer to the employee's complaint of sexual harassment.*

### *2.6. The specific obligations arising from Law 4808/2021*

The recent Law 4808/2021 established the employer's obligation to take **specific measures** to deal with violence and harassment in the workplace (see articles 5-12 of Law 4808/2021), which are specified on a case-by-case basis (see articles 9-11 of Law 4808/2021 for companies employing more than 20 employees). It follows from the letter and the intent of the law that it is the basic obligation of the employer to investigate any complaint of harassment and to inform employ-

ees about how to deal with harassment and how to file complaints, both within the company and to external competent bodies.

In this context, an employee who is subjected to gender-based harassment, including sexual harassment, must, in principle, report it to his or her employer, describing the incidents of harassing behaviour. As soon as s/he becomes aware of the reported incidents, the employer must, in compliance with the provisions of Law 4808/2021, take appropriate measures to protect the employee from the reported harassment. This procedure is now controlled by the Ombudsman both in the part concerning the obligation of companies to draw up policies and in the part concerning their compliance.

*The employer, in fulfilling its duty of care and the specific provisions of the law on harassment, is required to investigate the employee's complaint and then take specific measures to prevent, deter and/or suppress it (e.g., removal of the harasser, initiation of a disciplinary procedure to control the harasser, general recommendations to the parties, etc.).*

It should also be noted that in the private sector, prior to the publication of Law 4808/2021 and the raising of public awareness of sexual harassment issues, the Ombudsman was called upon to handle the employer's unwillingness to cooperate in the investigation of sexual harassment (case 271470) and a generally aggressive attitude that is probably attributed to the ignorance of businesses about the competence and role of the Ombudsman. This occurred either through sending documents or during the discussion before the competent Labour Inspectorate (case 225169).

In the public sector, the obligations are specified as far as possible in the circular DIDAD/F.64/946/oik.858/19-01-2023 "Prevention of and response to violence and harassment at work in public institutions". The provision of a short and exclusive deadline for the initiation of the investigation procedure and the disciplinary control in case of failure of the designated bodies to act (Article 5) is positively valued. The National Transparency Authority is assigned a supervisory role in the disciplinary control of bodies that have failed to meet their obligations in a timely manner, in accordance with Article 5 (1) (c). It is obvious that the relevant competence of the National Transparency Authority covers all bodies and departments of the public sector that have received relevant complaints and are examining them in the context of an internal administrative procedure. It is equally obvious, however, that this control does not and cannot concern the functioning of the Ombudsman.

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# Chapter IV

# Chapter IV: Concluding remarks

- From the cases of sexual harassment examined by the Ombudsman, it can be concluded that, in the majority of cases, the person who commits acts of sexual harassment in the workplace exercises employer powers and holds an important position in the company. This phenomenon is particularly prevalent in small and medium-sized enterprises in the private sector. But also, in the public sector, it is often a person who holds a position in the hierarchy. The harasser takes advantage of the fact that s/he is in a **position of power** compared to the harassed, whom s/he perceives as subject to his/her authority for various reasons. Almost always there is some kind of **hierarchical relationship between these two persons, formal or informal.** In the case where the harasser is not formally hierarchically superior, it is often a person who belongs to the employer's inner circle or a person who is surrounded by a special trust from the employer.
- In large enterprises, there are often **mechanisms for controlling and evaluating** employment, because the employer is not able to supervise the execution of work himself, due to the large number of employees. Quite often, in such enterprises, even before the adoption of Law No. 4808/2021, codes of conduct for employees were introduced and training seminars were organised for the smooth cooperation of employees, modelled on practices followed in other countries. The above are aimed, in principle, at preventing incidents of harassment between employees in order to ensure the smooth running of the company. However, even in large companies there are cases where persons high up in the hierarchy harass employees at a lower level. The Ombudsman's experience from relevant cases shows that often, large companies, when they are made aware of a complaint, take some immediate action, e.g., by separating the complainant and the respondent if they are in the same workplace. On the other hand, there have been cases in which the large company's handling of the case was in the completely wrong direction, e.g., the company fired both the complainant and the respondent as soon as it was informed that there had been a complaint of sexual harassment, without even investigating the complaint.
- In small businesses, where the complainant and the respondent are colleagues, in order for the employer to comply with the **duty of care**, s/he should, first of all, examine the complaint as thoroughly as possible and then take measures to protect the complainant's personality (e.g., a written or oral recommendation to the respondent, a decision on the consequences if

it is found that the harassing acts complained of took place, etc.). The investigation of the Ombudsman's cases has shown that, more often than not, when the above occur, the dispute is resolved. It should be noted that some complainants told us that although they were not claiming financial claims, nor did they want to return to work (if they had been dismissed), the purpose of their complaint was to prevent the same thing from happening to other persons who worked or would work in the company in the future. Of course, it is also in the employer's interest to create and maintain a harmonious working environment, since this works positively for the smooth running of the company and for improving the efficiency of the employees.

- From the complaints handled by the Ombudsman concerning private sector companies, it also appears that when the person who displayed harassing behaviour was an employer, very often, he was also reproached about **other violations of labour and social security legislation** - back wages, unpaid overtime, uninsured work, etc. We therefore consider that the specific discussion on the treatment of harassment in the workplace is linked to the broader problem of violations of the provisions of the labour law.
- In the public sector, which is hierarchically structured, sexual harassment is also linked to the abuse of power, but in addition to the fact that people in positions of responsibility believe that they will not be removed from their position or deprived of their responsibilities. The above applies more in cases of gender discrimination, where the harasser believes that because of his or her gender, colleagues may be treated unfavourably. It should be noted that, based on our Authority's statistics, as analysed in the first chapter, there are significantly more cases of sexual harassment originating in the private sector than in the public sector.
- Many of the complaints investigated by the Ombudsman were submitted by the employee (either to the competent Service or directly to the Ombudsman) **after the termination of the employment contract**, i.e., after the employee was dismissed or resigned. Reporting incidents of sexual harassment later than the time they occurred is attributed to the worker's fear of the possible adverse consequences of reporting them. In particular, the employee is reluctant to make a complaint because he or she fears that, as a result, he or she may lose his or her job, or that there will be other consequences, such as the creation of a negative atmosphere against him or her which may affect his or her career development, a detrimental change in his or her working conditions or even the loss of his or her job. Moreover, we should

not underestimate the fact that the disclosure of sexual harassment requires the complainant to have great mental strength, since he or she is called upon to describe and publicise incidents that are particularly unpleasant for him or her, and which, very often, he or she is unable to prove. For all these reasons, **the deferred reporting of sexual harassment cases** should not be considered as the victim's acquiescence or consent to the sexual harassment at the time it took place (see also Article 3(1) of Law 4808/2021). Furthermore, in times of job insecurity, there is a high probability that the fear of dismissal and, in general, of the adverse consequences of filing a complaint, may prevail, thus leading the employee to ultimately avoiding filing a complaint at all.

- There is a **difficulty in gathering evidence** from complainants and even more so when they are the only employees of the company. There were few cases investigated by the Authority in which the complainant had sufficient evidence. In the majority of the cases, the Ombudsman asked the complainant to provide additional evidence in order to give rise to a presumption of discrimination. As sexual harassment obviously does not take place in front of third parties, in most cases of sexual harassment in the workplace, the complainant is unable to prove the harassing acts with witnesses. As a rule, the persons who have been subjected to sexual harassment, who - as it follows from the statistics of our Authority - are mostly women, cannot provide any evidence (e.g., mobile phone messages, letters, witness statements of third parties). This fact does not exclude that harassment has taken place, but it confirms the great evidentiary difficulty that exists, which the individual complainant, and our Authority, has to deal with when investigating cases. Thus, it is often not possible for the Ombudsman to proceed with the investigation of the complaint because the evidence provided is not sufficient to establish the presumption of discrimination required by law.
- In contrast, **the employer respondent to the harassment has access to evidence** that may contradict the allegations of the complainant, since the employer can easily produce witness statements of other employees in his company who agree to testify in his defence. Especially in cases where the complainant had been dismissed, the company often provided testimony from employees who had remained in the company and supported the employer's position. On the contrary, there was great reluctance, often withdrawal and ultimately refusal of other workers to testify in favour of the complainant, even though they had initially agreed (e.g., to come forward to give evidence), because, as they themselves explained, the fear of losing their jobs prevailed.

- The above obstacles (difficulty in gathering evidence, fear of the consequences of filing a complaint, reluctance to expose the incidents in question to the public) explain the fact that the rates of affected persons who file a complaint do not reflect **the actual rates of incidents** occurring in the workplace.
- It is also not uncommon for persons who are sexually harassed to file a **complaint**, overcoming the above difficulties, **but then to withdraw it.** The most common reason for withdrawal is the filing of a complaint of defamation by the respondent, following which the complainant fears that s/he will be trapped in a maelstrom of accusations and confrontations with the respondent, a situation that entails a financial burden in addition to the mental one. Even the invocation, in the form of a threat (e.g., verbally, during the meeting between the parties at the LI, without it being recorded in the minutes of the discussion), that a complaint will be lodged if the harassment complaint is not withdrawn, may act as a deterrent for the complainant. In other cases of revocation, the complainant indicated that it was mentally burdensome to continue the procedure, since s/he had to describe in detail what was complained about, search for evidence, etc. Finally, there were also cases in which a conciliatory resolution of the dispute was reached when evidence was cited that confirmed the facts and the Ombudsman had asked the respondent to reverse the burden of proof. This fact demonstrates that the intervention of the Authority, as an external and independent mechanism, can act as a catalyst for reaching a solution.
- To investigate cases of harassment and sexual harassment as forms of prohibited discrimination in the private sector, **the Ombudsman has been cooperating with the Labour Inspectorate** for more than fifteen years. This cooperation is generally harmonious, has been gradually established and strengthened after Law 4443/2016 and clearly works positively in terms of the necessary institutional cooperation for the effective investigation of cases and the systematisation of efforts to combat discrimination at work. The locally competent departments of the Labour Inspectorate forward to the Ombudsman the complaints that fall within its competence and, very often in cases of harassment, the Ombudsman uses the institutional tool of conducting its own investigation. In general, employees are now aware of the cooperation between the two bodies. The possibility for the employer to be invited to a meeting at the local LI Departments is valuable, and it has been shown that information about the possibility of imposing sanctions motivates the employer to meet the requirements of the examination of the case, in particular the obligation to refute the allegations of the complainant by providing relevant evidence.

- In the **public sector**, there is no central department independently competent to receive, manage and investigate complaints of harassment of public employees, as there is a separate department of the labour inspectorate in the private sector. Furthermore, even in matters of harassment as a form of discrimination, with the exception of the services of the Ministry of Labour & Social Affairs, which often forward to the Authority complaints of which they become aware, the public services do not seem to meet the obligation[114] to forward complaints of discrimination or harassment.
- In practice, therefore, a public employee who suffers harassing behaviour at his/her workplace, if he/she complaints the incident to his/her department, this complaint will, in principle, trigger an administrative investigation, within the framework of the general provisions of the Public Employees Code (Law 3528/2007) concerning the **disciplinary procedure**. However, this procedure is usually extremely lengthy - it may take more than a year - and is not accompanied by any information to the complainant on the progress of the investigation, or even on its completion. Only in the case where the complainant has filed a complaint with the Ombudsman is the complainant informed in the first instance of the relevant developments through the replies received by the Authority and communicated to the person concerned. In most cases, the time at which the Ombudsman is informed of the complaint and the complete case file is not the same as the time at which the critical events took place. This is because usually an appeal to the Authority will also be made as a result of a delay in completing the investigation, or of a refusal to disclose the outcome of the investigation. In this context, the Ombudsman checks not only the **legality** of the procedure followed, but also the **integrity** of the investigative process when it has since been completed.
- However, with regard to harassment in the public sector, it remains extremely problematic: **a)** that the complaining civil servants are not entitled to actively participate in the process of investigating their case (e.g. to take note of the content of the statements given by the witnesses in the case, to support their complaint with additional evidence, etc.) **(b)** the fact that the complaints concerned are not forwarded to the Ombudsman and therefore to an independent external monitoring body, despite the specific obligation of the services receiving them **(c)** the fact that the procedure for examining the complaints concerned is extremely lengthy **(d)** the fact that the complainants are thus left with the impression that an informal resolution or even a

114. Article 4, p.5 of Law 3094/2003, in force

cover-up will be attempted, which in combination discourages them from lodging complaints.

- The awareness of society as a whole about sexual harassment issues, as a result of the #MeToo movement in our country, coincided with the passing of Law 4808/2021. We believe that these developments explain the **increase in the number of complaints** of sexual harassment submitted to the Ombudsman, as well as the number of complaints forwarded to it, in the years 2021 and 2022. It is, however, expected that the data for the following years will be analysed in order to draw more certain conclusions as to the emerging trends.
- With the adoption of Law 4808/2021, there is now a **specific legal framework** for dealing with violence and harassment at work. In this framework, harassment is detached from the characteristics of prohibited discrimination, but the **specific focus on its gender dimension** is maintained. Although the law applies in principle to both the private and the public sector, the provisions relating to the private sector are more coherent and better organised. In addition to the establishment of an Independent Department for the monitoring of violence and harassment at work within the Labour Inspectorate, specific obligations and commitments of employers and, accordingly, easier administrative control of compliance with them are provided for, which is not the case in the public sector. It is indicative that Articles 9-12 of Law 4808/2021, which set out specific obligations for employers, in particular with regard to the establishment of policies and the provision of mechanisms for examining complaints, are not applicable to the public sector, with the exception of Article 12, which concerns the rights of those affected and has a proportional application.
- With regard to the **mechanisms for monitoring the implementation of Law 4808/2021**, there is understandably confusion as to the division of responsibilities and, in particular, as to the possibility of ensuring centralised supervision of these matters, especially in the public sector. This is because in the private sector, in addition to the complaint to the companies themselves, two external control bodies, the Ombudsman and the LI, are provided for, competent to cover the protection foreseen both in the part concerning violence and harassment as forms of prohibited discrimination and as independent forms of abusive behaviour in the working environment. In the public sector, however, the absence of a provision for a body that would have a similar supervisory role to that of the Independent Department of the LI creates a partial gap and confusion, as the Ombudsman has the competence

to examine complaints of harassment as forms of prohibited discrimination in the public sector, but not independently complaints of harassment and workplace bullying, i.e. complaints that are not linked to a ground of discrimination.

- Despite the **positive steps** of the new law, there are still **gaps or failures** in the regulations that do not allow us to consider that there is a fully coherent framework of protection in both substantive law and disciplinary and administrative law, especially with regard to dealing with violence and harassment in the public sector.
- It is undoubtedly important to introduce an obligation for employers to take concrete measures, inter alia, **to prevent and respond to violence and harassment at work** and to provide, in accessible formats information and training on the risks, prevention, protection and obligations of those involved, but also to elaborate and communicate to the staff of the undertaking and its partners the procedures for preventing and responding to incidents of violence and harassment at work.
- However, in addition to dealing with the phenomenon when it has already occurred or preventing it before it occurs in the workplace, **it is crucial to take initiatives to curtaill such behaviour in the first place.** As it is recognised that sexual harassment is inextricably linked to systemic discrimination and inequalities, it is important to shield labour rights in order to strengthen, in practice, policies to prevent and combat discrimination and avoid exploitation.
- For the same purpose, it is necessary to activate channels of close communication and **deepen cooperation** between the bodies responsible for the implementation of measures on the prevention and response to sexual harassment at work (LI, Ombudsman, Ministry of Labour, public sector bodies).
- It is also essential that the staff of the Labour Inspectorate and the Ombudsman are **adequately staffed and receive continuous training** in order to investigate the relevant complaints promptly and adequately, as it has been shown that the examination of the relevant complaints requires a long and complex process of thorough investigation. At the same time, it is also necessary to train and raise awareness among officials and professionals who are called upon to judge or manage such cases (judges, police officers, etc.).
- Similarly, it is important to provide **specialised training** and awareness-raising for all **public services and bodies** that will be called upon to implement Law 4808/2021, which provides for the examination of relevant complaints

by the body or service itself or by the authority supervising it.

- It should be noted that **Law 4808 /2021** establishes a **framework with specific requirements for its implementers** with regard to the provision on the allocation of the burden of proof between the parties, the establishment of prevention and response policies, the taking of appropriate measures with respect to the personality of the complainant, the handling of complaints with confidentiality and secrecy, ensuring the protection of the sensitive personal data of the complainant and the respondent, the short deadlines for the initiation of the procedure for the examination of complaints and the protection of the personal data of the complainant.
- Finally, and given that the aim is to change attitudes, behaviours and perceptions, the **introduction of sex education at all levels of education** will make a decisive contribution to the creation of a culture of respect and empathy regarding these issues.
- In conclusion, considering that there is now a social awareness of these issues and a reformed institutional framework, the aim is to **gradually lead to a change in perceptions and attitudes** and to avoid tolerance of a culture of discrimination and harassment.

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# Summaries

# Summaries of representative cases

## Sexual harassment in vocational training

A student doing an internship in an organisation reported that she was sexually harassed by her supervisor. The competent labour inspectorate did not agree to investigate the complaint as the student had not entered into an employment relationship with the organisation. The Ombudsman examined the case focusing in particular on the actions of the organisation following the complaint, in line with the employer's duty of care. The evidence provided showed that the organisation immediately moved the worker to another working station and interviewed witnesses who stated that nothing had come to their attention. However, at no time was the complainant himself called for an examination nor did the harasser suffer any consequences. The Ombudsman made a strong recommendation to the agency for not only failing to investigate the complaint, but also for failing to comply with the employer's duty of care (Case 259820).

## Dismissal for revenge

An employee complained that the general manager of the company where she worked was sexually, verbally and physically harassing her. She said that she tried to ignore these behaviours because she was afraid of losing her job. A few days later, she was fired. The complainant provided as witnesses her sister and a doctor who confirmed that in recent months, she had increased blood pressure and suffered from symptoms of severe stress. The respondent lodged a complaint against the complainant, seeking criminal proceedings against her for defamation. The company claimed that the employee's dismissal was preplanned, due to her poor performance and misbehaviour. It also stated that the complainant had only made vague complaints to the personnel manager, without mentioning any sexual harassment behaviour. However, the Ombudsman found that the company did not provide evidence of the reasons for her dismissal. Furthermore, the Ombudsman considered that the employee's complaints, however vague, should have triggered the employer's duty of care (case 271470).

Five female employees of a foreign embassy in Greece have complained that they were victims of sexual harassment. Several years after the allegations were made, the respondent was removed from the State's Embassy in Athens. With

the arrival of a new ambassador and while the respondent was no longer serving at the embassy, the workers claimed that they were treated negatively and eventually three of them were dismissed and one resigned. The successor ambassador stated in an affidavit that he was unaware of the allegations of sexual harassment of the embassy workers and that the dismissals were unrelated to the complaints at issue. The employer did not, however, prove the reasons for the dismissal and the Ombudsman found serious evidence that the termination of the employment contract of the employee who had appealed to the Authority was invalid as improper because it was brought for retaliatory reasons and because of the employee's previous complaint of sexual harassment against her. For these reasons, it recommended the imposition of a fine (case 211428).

## Insufficiency of evidence

An employee in an optics shop complained of sexual harassment by her employer. The employer filed a criminal complaint against the employee for misappropriating store merchandise. The Ombudsman requested a meeting with the parties and after considering all the evidence, the Authority concluded that there were completely contradictory allegations of a subjective nature made by both parties, but they could not be supported by other evidence. It was therefore absolutely impossible to make an objective assessment of the existence or otherwise of sexual harassment (case 169675).

An employee hired as a clothing model in a company reported that she was sexually harassed by her employer, with touching and verbal provocation. The complainant claimed that she made it clear that this behaviour was unwelcome, but not only was this not taken into account by the complainant, but instead caused her to be dismissed. The employee provided email messages to her husband describing the situation, as well as an affidavit from a former employee of the company. The employer denied the facts, submitting affidavits from the company's managing director and two employees. In the end, there were no eyewitnesses or other strong evidence, except for a proven incident of the employee's invitation to try on her own clothes in the company, which was perceived by her as a form of unwanted verbal conduct of a sexual nature. However, the conduct in question was not shown beyond reasonable doubt that it was objectively considered to be of such gravity as to create an overall intimidating, hostile, degrading, humiliating, degrading or offensive working environment for her (170935).

## Sufficient rebuttal by employer

A domestic worker alleged that she was sexually harassed by her employer's father. The Ombudsman attended the hearing before the Labour Inspectorate and asked the complainant to give evidence of her allegations. She submitted a testimony from a former employee of the same employer, who also claimed that she had been sexually harassed in the past by her employer's father, without having reported the incident. The employer submitted affidavits, documents and evidence in rebuttal of the complainant's allegations, as well as the complaint lodged by the complainant, in which there were substantial differences in the facts relied on by the employer. The Ombudsman considered that the complainant's allegation had been adequately refuted and sent a findings report to the parties and the Labour Inspectorate (Case 150987).

A worker in a municipal company complained of inappropriate behaviour by her supervisor (sexual innuendos, shouting and insults) in the workplace and outside the workplace in written notes and emails. The case was brought before the Board of Public Administration Inspectors and Auditors (SEEDD) at the request of the complainant. The Ombudsman investigated the documentary evidence, took witness statements, became fully aware of the information in the file of the EDE, discussed with the parties and concluded that the expression of sexual interest was not unilateral and unwanted, but accepted by both parties (case 125248).

An employee of a multinational company reported being sexually harassed by a colleague with whom she had previously had a personal relationship. The complainant submitted a witness statement from her partner. The Ombudsman contacted the employer company in order to obtain information about the measures it had taken to deal with the matter. The company claimed that it had provided psychological support to the worker, temporarily removed the complainant from the workplace and asked the complainant to move to another floor. The worker did not provide additional evidence that she claimed to have (written messages) to further substantiate the sexual harassment. The Ombudsman found that the measures taken by the company under the employer's duty of care were sufficient and complete (case 163866).

## Finding of harassment - Recommendation of sanctions

An employee complained that she was sexually harassed by the President of the municipal company where she worked. In support of her allegations, the em-

ployee produced a digital video disc (DVD) of the footage recorded by the security camera, which was legally installed and operating at the entrance of the municipal enterprise. The Ombudsman concluded that the employee's allegations had been proven beyond reasonable doubt and that the respondent had failed to establish that his actions during the incident in question were acts of discourtesy. In view of this, the Ombudsman recommended that the competent labour inspectorate impose a fine (case 196683).

A worker complained that she was subjected to verbal sexual harassment by her employer during the time she was employed by his company. The employer denied the existence of an employment relationship with the complainant. However, this was not proven, as he did not provide any evidence to support his claim and falsely stated that he had lodged an objection with the IKA when the employee's social security stamps had already become definitive. With regard to the worker's complaint, a witness statement was submitted by a friend of the worker, a hearsay witness, from which it was prima facie established that she had been sexually harassed and thus the investigation procedure was opened. The employer was inconsistent and did not rebut the incidents of sexual harassment alleged by the worker. The Ombudsman recommended to the competent labour inspectorate that the employer be fined (186339).

An employee in a company has complained that she has been subjected to inappropriate gestures and behaviour as well as verbal and physical harassment by her employer, culminating in gestures of a sexual nature which forced her to eventually leave her job. The complainant produced messages from her employer on her mobile phone inviting her on a business trip with sexual innuendos. Although the employer did not deny sending the text messages, he did not accept the allegation of sexual harassment and in support of his allegations he submitted affidavits in which the other employees denied that the allegations of gestures of a sexual nature towards the employee had taken place. On the basis of the evidence submitted, the Ombudsman considered that the allegations and complaints made by the worker had not been adequately refuted by the employer and thus recommended the imposition of a fine (case 203199).

A waitress complained that she was sexually harassed by one of the restaurant's partners, which led to the termination of her employment. The complainant submitted affidavits from two people who claimed to have witnessed the employer's inappropriate behaviour at work. The respondent denied the allegations made by the complainant and submitted a complaint against the employee and three witness statements from non-eye-witnesses. The Ombudsman found that the

employer did not adequately rebut the alleged incidents of sexual harassment and concluded by recommending an administrative fine (210504).

A secretary at a charity complained that she had been harassed by the legal representative of the charity. Witness statements of an eyewitness and a hearsay witness were taken before the Ombudsman. Subsequently, the respondent's side was invited to prove the falsity of the allegations made by the complainant. The employer's side sent the Authority a document from the charity, which in no way answered or contradicted the allegations made by the complainant. The Ombudsman then concluded by recommending an administrative fine against the organisation. The worker was subsequently vindicated in court (225169).

A young employee in a small company complained that, ten days after she was hired, her employer made indecent gestures towards her. The following day she told him that she could not continue working after this incident and the employer terminated her employment contract. At the meeting before the Labour Inspectorate, the employer admitted that he had performed the indecent gesture, but claimed that he did not intend to sexually harass the worker and that he did so as a gesture of encouragement. The Ombudsman concluded in his findings that the employer's action constituted clear sexual harassment against the employee and recommended that a fine be imposed (case 248315).

An uninsured secretary, working without a contract, complained that on an almost daily basis her employer watched pornographic films during working hours, placing the computer screen in such a position that it was visible to the employee. At the same time the employer began to tell the employee in detail about his sexual escapades and to talk to her in a sexually suggestive manner. In parallel , he walked around the office half-naked and sought physical contact with her. Finally, he sent her two e-mails containing photographs of a naked woman in sexual positions. The employee left work and lodged a complaint against her employer. The employer claimed that he had inadvertently sent the e-mails and, in a statement to the employee, claimed that it was a mystery how naked photographs of women could cause fright and alarm to the female recipient. He also urged the complainant to comply with the legislation on the protection of personal data and pointed out that communicating allegations of sexual harassment to third parties constituted defamation against him. The employer failed to prove that no sexual harassment had occurred and the Ombudsman recommended the imposition of administrative sanctions (case 256770).

## The limits of "intimacy"

A midwife at a gynecology clinic complained that she was sexually harassed by her employer. In order to give rise to a presumption of discrimination, witness statements were taken by the Ombudsman. The employer submitted employee affidavits and claimed that, while the employee had reported the incident of sexual harassment to the Labour Inspectorate, on the same day, instead of also stating to the employer that she considered the incident to be a breach of her employment contract, she reported sickness via an e-mail message. On the basis of the evidence gathered, the witness statements and other documents, it has not been possible to establish the fact of the conduct complained of, whereas the delineation of legitimate intimacy and unfair indecency as well as the conflicting claims of the parties in this respect, constituted a serious difficulty in the investigation procedure (Case 201208).

The complainant was employed under an open-ended contract of employment in a company and, according to the complaint, it was agreed that, shortly after her recruitment, she would take up a managerial position. Finally, several months after she was hired, her contract was terminated and the complainant claimed that that this was due of her non-submissiveness to the sexual harassment she received from the managing director. She submitted, as evidence, mobile phone records, sent to her by the respondent suggesting that they meet after work. The company claimed that the CEO was on friendly terms with the employees and that his 'familiarity was misunderstood'. It also submitted three affidavits from company executives. From the evidence available, it was not established beyond a reasonable doubt that sexual harassment had been committed against the complainant, while the boundaries between desirable intimacy and undesirable conduct posed a serious difficulty in the investigation procedure (Case 227476).

## The employer's duty of care

A waitress reported that she was subjected to sexist behaviour by a colleague and that, a few days after she reported the incident to the Police Department, she was fired. The employee provided a copy of an electronic conversation with a former colleague, who was present at some of the incidents. It emerged from the documents, witnesses and other evidence that the employer's attitude was apathetic to the facts and did not protect the worker from the repeated verbal abuse she received at her workplace. Furthermore, there were serious indications of a link between the worker's complaint and her dismissal. The Ombudsman recom-

mended the imposition of an administrative fine against her for violation of the principle of employer's duty of care (250649).

An office worker contacted her employer by phone and reported that a colleague had engaged in verbal and physical sexual harassment behaviour towards her and lodged a complaint with the local police station. The employer asked her to describe in writing the behaviour complained of and the next day informed her that her employment contract was terminated 'due to financial difficulties'. The Ombudsman concluded that the employer had not fulfill her duty of care towards the employee, since, despite the fact that an offence against her personality was brought to her attention, she did not investigate the complaint and did not take any action. The Ombudsman recommended that administrative sanctions be imposed on the company (case 284619).

An employee of a Social Cooperative Enterprise complained that a person acting as a personnel manager - consultant in the enterprise sexually harassed her (verbally and physically). The worker informed the legal representative of the enterprise about the reported incidents. The company claimed that the allegations had already been discussed at three meetings of the Management Committee, which the employee refused to attend, stating that her psychologist would not allow her to attend. The evidence submitted showed that the employing company took steps to investigate the complaint, made efforts to alleviate the strained relations that had developed between the enterprise and the complainant and tried to resolve the matter (Case 254288).

## Withdrawal due to compromise

An employee in a company complained that she was repeatedly the recipient of inappropriate behaviour by her employer because of her gender. The Ombudsman obtained witness statements from witnesses proposed by the employee and wrote to the employer asking for an explanation. The employee's side informed the Ombudsman that an out-of-court settlement had finally been reached. The Ombudsman informed the complainant that the case had been resolved out of court and the complaint was withdrawn (case 205946).

## Recommendation on avoidance of abuse

Employees working in a branch of a supermarket chain complained that they were sexually harassed by their supervisor. After the complaint was made, the company fired the complainants and the respondent. The Ombudsman asked the employer for explanations and reminded it of its obligations under its duty of care towards its employees. The employer did not refute the allegations and did not justify its choices, and the dismissal of all the employees was found to be improper. The Ombudsman made a strong recommendation to the employer to avoid a repetition of similar conduct in the future (cases 136373 and 136374).

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