



XIV.1.1.01 Equal Opportunity, Diversity – Fundamentals of Equal Opportunity

Contact person:

Dr. Ulla Weber Email: ulla.weber@gv.mpg.de Extension: 1421 Central Gender Equality Officer (IV)
Department Central Services IV

Sabine Jochens Email: zgb@gv.mpg.de Extension: 2578 Gender Equality Office

Table of contents

| | |
|---|---|
| 1 How to Deal with Cases of Sexual Harassment and Sexual Violence – A Practical Guide for Max Planck Institutes | 1 |
| 1.1 Legal evaluation of sexual assaults | 1 |
| 1.2 Sexual harassment..... | 2 |
| 1.3 Sexual violence | 2 |
| 1.4 The role of the employer | 3 |
| 1.5 Legal possibilities for those concerned | 3 |

1 How to Deal with Cases of Sexual Harassment and Sexual Violence – A Practical Guide for Max Planck Institutes

Recommendation

Sexual assaults are a daily reality. The International Labour Organization ILO assumes that one out of two women has suffered sexual harassment at least once in her professional life. In the great majority of cases, it is women who are the victims of sexual harassment, but also men are concerned in individual cases. Sexual assaults are experienced by victims as offensive and demeaning. They represent an attack on their emotional and psychological balance. The associated stress can lead to insecurity, anxiety, depression, physical and/or psychosomatic discomfort and failure to perform well at work.

At an institutional level, sexual harassment and sexual violence imply a massive disturbance of cooperation as well as a breach of duties under labour and service law.

1.1 Legal evaluation of sexual assaults

According to the German Penal Code an act is sexual if it directly involves the sexual aspect in a human person, using one's own body or that of another person. Whether this is the case or not is not determined by the offender's motivation but only by sexual relatedness that is recognizable from the outside. Taking photographs of a person, for example, is no sexual act even if the person who takes the photographs feels excitement in doing so. The motivation may also be anger, sadism, hatred, superstition etc. And the other way round: Physical intrusiveness is considered a sexual act, even if the intrusive person feels no excitement.

A distinction is made between

- Sexual violence, which constitutes a crime and is punishable by a minimum sentence of one year up to a maximum sentence of 15 years' imprisonment.
- Sexual harassment, which is no criminal offence and cannot be prosecuted as such. Many assaults nevertheless include forms of behaviour which are relevant under criminal law and can be punished depending on the facts:
 - as "insult committed by means of an assault" according to § 185 of the German Criminal Code (Strafgesetzbuch - StGb) by imprisonment of up to two years or a fine,
 - as "using threats or force to cause a person to do, suffer or omit an act" according to § 240 of the German Criminal Code by a fine or imprisonment of up to five years,
 - as "stalking" (§ 238 StGb) by three months' up to five years' imprisonment.

Only the German version is authoritative.

1 How to Deal with Cases of Sexual Harassment and Sexual Violence – A Practical Guide for Max Planck Institutes

Whether a sexual act is sexual harassment or sexual violence depends on the "relevance" of the act: its meaning, its intensity, duration and concomitant circumstances.

1.2 Sexual harassment

The General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz - AGG § 3) defines "sexual harassment" as an unwanted conduct taking place with the purpose of violating the dignity of the harassed person. In detail, the following forms of behaviour are sexual acts:

- requests to carry out sexual acts
- physical contact of a sexual nature
- comments of a sexual nature
- the showing or public exhibition of pornographic images (cf. AGG § 3).

Among other things, sexual harassment is deemed to be:

- brushing against the genitals of a dressed person
- touching the genital area over clothing
- touching the breasts
- repeated touching of the back, shoulders, thighs, hair, ...
- intrusive insults
- crude remarks and acts which are not felt to be sexually significant, such as kisses and hugs, for example
- unsuccessful attempt of kissing
- caressing thighs over clothing
- patting a person's behind
- repeated non-observance of the usual physical minimum distance
- stalking
- utterances about choice of partner, appeal, appearance (but not references to the dress code, e.g. "no overly sexy outfit, please!")
- telephone calls, letters, emails and SMS with sexual contents

Examples for sexual harassment:

During his lectures, a professor repeatedly cracks crude and disparaging jokes about women.

A Research Group Leader informally addresses a female doctoral student at the summer festival of the Institute. He is obviously tipsy, sits down closely by her side on the beer bench and confesses to her that he has fallen in love with her.

A doctoral student feels persecuted by a young man from her halls of residence. she reports that he frequently waits for her in the common room and writes to her that he loves her and believes he must protect her from harm.

A supervisor invites his doctoral student to his home in order to discuss the doctoral thesis. The doctoral student accepts the invitation. At home, the supervisor confesses his deep affection to him.

1.3 Sexual violence

Sexual violence is understood as any situation in which a person coerces another person

- by force,
- by threat of imminent danger to life or limb, or
- by exploiting a situation in which the victim is unprotected or at the mercy of the offender,

to suffer sexual acts by the offender or a third person on their own person or to engage actively in sexual activity with the offender or a third person.

Sexual violence applies, among other things, to

- sexual intercourse or its heterosexual or same-sex substitute acts
- denuding – and depending on intensity – touching of the genital, also under clothing, and of the female breast

1 How to Deal with Cases of Sexual Harassment and Sexual Violence – A Practical Guide for Max Planck Institutes

- touching the naked body near the genital
- vehement intrusiveness (attempt of undressing) to allow for sexual intercourse with open trousers and erect genital
- pressing the face of a person against the excited genital
- grabbing into the pubic hair
- movements similar to sexual intercourse carried out with a child when dressed
- violent deep kiss
- mutual simultaneous masturbation or masturbation shown to another person

1.4 The role of the employer

The employer is obliged (§ 12 (1) of the General Act on Equal Treatment) to take the measures required for the protection against sexual harassment and sexual violence.

They can decide on different types of disciplinary action – ranging from admonition and warning to transfer to a different workstation or transfer to a different workplace up to dismissal. Admonitions and warnings are to be combined with adequate rules of conduct such as participation in trainings, communication bans etc. The application of disciplinary action is recorded in the personnel file for a period of two years.

Please note: If a person has been admonished because of a fact, a warning or dismissal in the same matter is no longer possible. Of course, this does not apply if the imposed rules of behaviour are not complied with because non-compliance would be a new element of the offence.

Apart from individual measures, the employer must point out the inadmissibility of undesired sexually-driven behaviour by further training or similar arrangements and see to it that such behaviour does not exist at the workplace.

Even if there is no imminent reason, it is advantageous to discuss the topic at an early stage at the management level. The Institute Management, the local Gender Equality Officer and the Works Council should clarify how all sides would conceive of handling sexual harassment at the workplace and what kind of support they would be prepared to provide in terms of protection against harassment and violence. Ideally, the Institute provides itself with guidelines on the handling of sexual harassment which define possible actions for those concerned and those involved, along with the consequences for the offenders, and ensure clarity about formal responsibilities and ways as part of an Institute "complaint management". Up to now, no MPG-wide guidelines exist to this effect.

1.5 Legal possibilities for those concerned

There are different MPG-internal first contact points for those concerned by sexual harassment and sexual violence in addition to an employee's superiors:

- The Gender Equality Officer for an Institute or facility has an advisory and supporting function for individual employees, including with respect to the protection against sexual harassment at the workplace (Section 11.1 of the MPG Principles of Gender Equality), among other things.
- The Central Gender Equality Officer is the interlocutor for all employees of the Max Planck Society if in spite of the involvement of the Gender Equality Officer of the respective Institute or facility no solution has been found (Section 4.4 of the MPG General Works Agreement on Gender Equality).
- The Works Council is also authorized to receive complaints about sexual violence and sexual harassment (General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz - AGG § 13).

Complaints may be made informally, including verbally or electronically. The person against whom the complaint is directed does not initially have to be informed. The person concerned must only be informed if the complaint is to have consequences for him or her.

Please note: After the Works Council or the employer (not the Gender Equality Officer) have taken note of the incident, the possible consequences must be initiated within 14 days. This deadline can be extended if owing to certain circumstances more time is required to clarify the facts. Until the facts are clarified and possible consequences have taken place, the points of contact between the person seeking advice and the harassing person should be minimized as far as possible.

**1 How to Deal with Cases of Sexual Harassment and Sexual Violence – A Practical Guide for
Max Planck Institutes**

No such deadline applies for taking note by the Gender Equality Officer.

Authored by Sabine Jochens on 16/07/2015