

SUMMARY

2016/61 The court awards for victimisation resulting from sexual harassment, even though the claim for sexual harassment itself was time-barred (CY)

<p>The Industrial Disputes Court considered certain substantive and procedural issues in the context of a claim for sexual harassment and victimisation. This case provides a good illustration of the principles the tribunals apply when examining sexual harassment cases and how these are interpreted by Cypriot employment courts.</p>

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Facts

The employee was a public servant working as an Inspector at the Department of Fisheries and Marine Research in Paphos District (the 'Department'). The employee was supervised by a Chief Inspector and by the Director and Chief of the Department (the 'Director'). The Director was not based in the Paphos District, but in Nicosia, the capital of Cyprus.

In May 2006, the employee filed an oral complaint to the Director about sexual harassment committed by the Chief Inspector. Over eight months after the complaint, on 30 January 2007,

the employee submitted a written complaint against the Chief Inspector to the Director. Following receipt of the complaint, the Director commenced a formal investigation. Six months later, on 6 August 2007, the General Director of the Ministry of Agriculture and Environment submitted the findings of the report to the Public Service Commission (the 'PSC'). Based on these findings the PSC initiated disciplinary proceedings against the Chief Inspector. On 29 October 2008, following the conclusion of the disciplinary hearing, the Chief Inspector was found guilty of, inter alia, disciplinary charges relating 'to an act or mode that is equal to a breach of any of the duties or obligations of a public servant' and was in breach of Articles 73(1)(b) and 73(2) of the Civil Service Laws of 1990 to 2006 and Articles 2 and 12(1) of the Equal Treatment of Men and Women in Employment and Vocational Training Law 205(I)/2012. On 1 December 2008, the PSC imposed the following disciplinary measures:

the transfer of the Chief Inspector to the district office of Fisheries and Marine Research in Limassol as of 2 January 2009 for the period of three years; and
a severe reprimand.

On 21 October 2009, the employee brought proceedings against the Department, the Chief Inspector and the Director claiming, amongst other matters: (i) damages for sexual harassment and (ii) damages for injuries to feelings and physical health suffered by the employee and caused by the respondents' act and omissions (i.e. unfavourable treatment) within the meaning of Law 205(I)/2002.

The employee stated in her claim that from January to May 2006 (when she made an oral complaint to the Director) she was sexually harassed by the Chief Inspector, despite raising the issue with him. After making the complaint to the Director in May 2006, the Chief Inspector, together with other employees under his supervision, acted negatively towards her. She claimed these actions generated a hostile work environment. The Director failed to protect the employee and ignored the situation. She therefore made a formal written complaint to the Director about the Chief Inspector. According to the employee, after she had made this complaint, the already negative working environment deteriorated further and the Director urged her to withdraw her complaint. The same situation arose when the employee made a claim in court. In a nutshell, the employee faced insults, social exclusion and work isolation, psychological warfare, poor performance reviews (i.e. cancellation of employee performance appraisals), reduction of tasks and unequal treatment in relation to the tasks and volume of work.

The Department and the Chief Inspector alleged there was no sexual harassment against the

employee and that there was no breach of the provisions of the Equal Treatment of Men and Women in Employment and Vocational Training Law. Further, he argued that the employee's application was time barred. The Director did not turn up to the court hearing.

Judgment

The Court ruled that the Chief Inspector had sexually harassed the employee in the period between January and May 2006. However, the Court also found that the employee's claim was time barred. Therefore the Court did not award any compensation to the employee.

The Court then examined the acts of both the Department and the Director of the Department. The Court ruled that the employee had suffered unfavourable treatment in the workplace and was victimised by the Chief Inspector and Director following the submission of her sexual harassment complaint. The Department failed to show that it has taken sufficient measures to prevent the sexual harassment continuing, such as the introduction and implementation of a code of conduct. The Court therefore found the Department guilty of the offence to the same degree as the Chief Inspector and the Director. The Court noted that even if the employee had not informed her superiors about the actions of the Chief Inspector, the Department would have been negligent, as it had failed to adopt preventive measures in accordance with Law 205(I)/2012.

The Court set out the general legal principles governing injury to feelings and took into consideration the facts of the case (particularly the surrounding circumstances of discrimination based on gender). The relevant facts included:

The unfavourable treatment the employee suffered as a result of the Director's request to the employee to withdraw her sexual harassment complaint. This included insults, social exclusion and work isolation, psychological warfare, poor performance reviews, reduction of tasks and unequal treatment in relation to the tasks and volume of work.

The length of time between the employees' first (oral) complaint and the date when the PSC found the Chief Inspector guilty of sexual harassment (more than three years, from May 2006 to October 2009).

The hierarchical relationship between the employee, the Chief Inspector and the Director. The length of time following the written complaint during which no measures were taken to protect the employee. (The written complaint was made in January 2007, the findings of the investigation were reported in August 2009 and the Chief Inspector was found guilty in October 2009 – more than 33 months later.)

The disciplinary measures taken as a result of the disciplinary process against the Chief Inspector and the cancellation of the employee performance appraisals for the years 2007 and 2008.

The negative treatment experienced by the employee when disciplinary measures were imposed on the Chief Inspector. (This involved a continuation of the unfavourable treatment, an unequal distribution of work and threats that she would be moved to another department). The fact that the employee continued to work at the Department of Fisheries and all other consequences of the unfavourable treatment to the employee.

The Court upheld the employee's claim for injury to feelings caused by the Respondents based on unfavourable treatment and was awarded € 22,000 for this. The Respondents were made jointly and severally liable to pay these damages.

Commentary

The Court focused on two important aspects of the case: firstly whether the actions fell within the definition of sexual harassment and the continued adverse treatment the employee suffered was a reaction to the complaint about sexual harassment that she had lodged. Secondly, what type of damages the employee should be entitled as a result of victimisation. To address these, the Court systematically classified the evidence against Law 205(I)/2002, Directive 2006/54/EC (consolidating Directive 76/207/EC) and Directive 97/80/EC and case law.

This case should provide useful guidance in future cases, not only in terms of the clear specification of what is relevant in considering victimisation and injury to feelings but also in that although the Court was prevented from awarding compensation for the sexual harassment itself, as this claim was time-barred, it illustrates that the fall-out from sexual harassment can still be compensated.

Subject: Discrimination, sexual harassment

Parties: Anthi Phylactou – v – Republic of Cyprus and others

Court: Industrial Disputes Court

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