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### **CASE REPORT**

## **THE LABOUR DISPUTES COURT MAKES AN AWARD FOR INJURY TO FEELINGS WHILE REJECTING THE SEXUAL HARASSMENT CLAIM**

**CONTRIBUTOR** Anna Praxitelous\*

### **Summary**

In the decision *AP v (1) Republic of Cyprus and others* issued on 22/04/2016, the Industrial Disputes Court considered a variety of 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.

### **Facts**

The Applicant is an employee working in the public sector. AN and Respondent 3 were at the said time employees of Defendant 1 and the Applicant's superiors. AN was a Chief Inspector of the relevant public Department where the Applicant was working and up to the 01/02/2009 he was the manager of the District Offices of the Department. Respondent 3 was the director of the Department and the chief of the Department.

In May 2006, the Applicant filed an oral sexual harassment complaint against AN to Respondent 3. Then, on the 30/01/2007, the Applicant submitted a written complaint against AN to Respondent 3. Following receipt of the complaint, a formal investigation commenced. On 06/08/2007, the General Director of the Ministry of Agriculture and Environment submitted the findings of the report to the Public Service Commission (PSC). Based on the findings of the report, the PSC initiated disciplinary proceedings against AN. On 29/10/2008, following the conclusion of the disciplinary hearing, AN was found guilty, amongst others, on 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' in breach of articles 73 (1) (b) and 73 (2) of the Civil Service Laws of 1990 until 2006 and articles 2 and 12 (1) of the Equal Treatment of Men and Women in Employment and

Vocational Training Law 205(I)/2012 ('Law 205(I)/2012. On 01/12/2008, the PSC imposed as means of disciplinary measure the following: (a) the transfer of AN to another district as of 02/01/2009 for the period of 3 years and (b) severe reprimand.

On 21/10/2009, the Applicant brought proceedings against the Respondents claiming, amongst other, damages for sexual harassment and damages for injuries to feelings and physical health that the Applicant suffered and that was caused due to the Respondents' actions and omissions within the meaning of Law 205(I)/ 2002.

In her claim, the Applicant stated, amongst others, that from the commencement of the year 2006 up to May 2006 she was sexually harassed by AN (despite raising the issue with AN) and that as a result of making an oral complaint to Respondent 3 she suffered negative actions inflicted by the behavior of AN (along with the support of employees working in the District Office whose performance was evaluated by AN). She further claimed that such actions resulted in the creation of a hostile working environment and Respondent 3 did not take any measures to protect the Applicant or erect the situation. She therefore filled a formal written complaint to Respondent 3 against AN. It was the Applicant's position that following the submission of the complaint the negative working environment deteriorated and that Respondent 3 urged her to withdraw her complaint. The Applicant claimed that following the submission of the written complain and up to the submission of the court application she faced problems in the workplace and unfair treatment.

Respondents 1 and 2 alleged that there's no sexual harassment against the Applicant in accordance with the provisions Equal Treatment of Men and Women in Employment and Vocational Training Law, and that the Applicant's application is time barred. Respondent 3 did not file an appearance.

## **Judgment**

In order to render its ruling, the Court took into consideration the evidence presented and ruled that the behavior of AN for the period January 2006 - May 2006 constituted sexual harassment against the Applicant in accordance with the provisions of the Equal Treatment of Men and Women in Employment and Vocational Training Law, Law 205(I)/2002. However, the Court found that the Applicant's claim was time barred and did not award compensation for the sexual harassment the Applicant suffered for the period January 2006 - May 2006.

The Court then examined whether there was a breach of the Law 205(I)/2002 by Respondents 1 and 3. Based on the facts presented by the Applicant, the Court ruled that the Applicant had suffered unfavorable treatment in the workplace and was victimized by AN and Respondent 3 due to the submission of the sexual harassment complaint. Further, Respondent 1 failed to prove that it has taken any action to prevent from happening the sexual harassment in the Applicant's workplace and the actions that lead to the victimization of the Applicant. The Court therefore found Defendant 1 guilty of the offence, alongside and to the same degree with AN and Respondent 3. The Court noted that even the Applicant did not inform her superiors of the actions of AN, Defendant 1 would still be found guilty and to the same degree alongside Defendants 2 and 3 as Defendant 1 fail to adopt the preventive measures in accordance with Law 205(I)/2012.

### **Awards**

The Court upheld the Applicant's claim for injuries to feelings that resulted from the Respondents and the Applicant was awarded €22.000 for injury to feelings. Respondents were made jointly and severally liable for the unfair treatment award.

Upon issuing the award, the Court noted the general legal principles governing injuries to feelings and took into consideration the facts of the case and in particular the surrounding circumstances of the discrimination the Applicant suffered due to her gender, as (i) the nature of unfavourable treatment the Applicant suffered due to the prevention/filing a sexual harassment complaint (insults, social exclusion and work isolation, psychological war, poor performance reviews, reduction of tasks and unequal treatment in relation to the tasks and the volume of work), (ii) the substantial period that lasted (from May 2006 up to September 2009), (iii) the hierarchical relationship between the Applicant, AN and Respondent 3, (iv) the long period that the examination of the written complaint of the Applicant lasted (22 months approximately) during which no measures were taken to protect the Applicant, (v) the disciplinary measures taken following the conclusion of the disciplinary process against AN and the cancellation of the Applicants appraisals for the years 2007 and 2008, (vi) the negative treatment the Applicant experienced following the imposition of the disciplinary measures to AN (continuation of unfavourable treatment, unequal distribution of work and threat to be moved to another department), (vii) that the Applicant continues to work at the Department and the consequences of the unfavourable treatment to the Applicant.

## Commentary

The Court focused on two important aspects while examining the case concerned: firstly whether the actions concerned fell within the definition of sexual harassment and whether the treatment the Applicant suffered was due to the prevention of the sexual harassment and secondly the type of damages the Applicant is entitled due to her been victimised. In order to address the latter questions the Court proceeded with a systematic classification of the case's evidence in the light of the relevant legal framework, namely Law 205(I)/2002, the respective Directives 2006/54/EC (consolidating Directive 76/207/EC) and 97/80/EC and a number of case law.

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