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Sexual harassment prevention: brief contribution from Portugal context

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Abstract

Sexual harassment (SH) is the most prevalent form of violence against women and girls (VAWG) and gender violence; gender inequality, prevailing for centuries in Western societies, strongly contributes to its naturalisation. Since the 1970's, feminist movements have been struggling against, and the more recent year's European policies and directives have recommended gender equality, hence changes in laws and social practices to combat and prevent SH.

Some EU Member States have been establishing measures and working to prevent SH, as in the countries here concerned – DK, NL and PT. A long way has been done; changes are slowly being implemented. However, there are still lacking policies to support the victims specially in the workplace. Moreover, vulnerable social groups still need specific measures to be protected and support in recovering and redressing.

Introduction

In this paper, the Portuguese context concerning sexual harassment (SH) will be described, regarding the prevalence of the problem as well as the legal and public policies framework.

Good practices and possible actions transferable across national contexts will also be briefly sketched along with comments on the DK Discussion Paper and the NL Discussion paper. Finally, a set of recommendations will be outlined for further development of SH prevention.

1. Sexual Harassment in PT

1.1 Public debates and studies on the prevalence of SH

- Prevalence and incidence of SH

Data from the Fundamental Rights Agency (FRA 2014) shows that SH was the most prevalent form of violence against women and girls across the 28 EU Members States, including Portugal. Following feminist activism and campaigns, the PT State commissioned a national study on SH and mobbing in the workplace (Torres et al

2016)¹. The study shows that the prevalence of SH (and mobbing) was higher among women – 14.4% of women and 8.6% of men answered they had been victims of SH in their workplace. The study also concluded that victims do not have appropriate legal support and protection to proceed if they report situations of SH. This is the most recent and extensive study about SH in the workplace.

Previously, in 2010-11, UMAR conducted a survey as part of the Project “Feminist Roadshow Against Sexual Harassment”. This was the first attempt to collect data about SH in public spaces in Portugal, with a total of 920 respondents (66% women, 34% men, 10% without gender identification) from different regions of the country. More than two thirds of respondents defined SH as a “form of seduction” or flirting and 27% stated that they were aware of SH cases among their circle of acquaintances². Since then, many changes have happened in the Portuguese culture surrounding sexual harassment. However, apart from a few master dissertations and PhD thesis (focusing particular groups, especially university students), there are no national studies to allow an accurate comparison.

There is no data available concerning the incidence of SH in the workplace (including organisations and institutions).

- Feminist campaigns and advocacy and public debates

Feminism activism against SH in Portugal can be found since the 1980's. In the first two decades, actions and campaigns focused in the workplace. UMAR (Association of Women, Alternative and Response) and MDM (Democratic Movement of Women) were the organisations fighting against SH in the workplace with articles in their journals (respectively, *SIM*, *Mulher* and *Mulheres*). Both publications stopped in the 1990's, but they continue working on the issue.

Since 2010, SH has become a more prominent public issue. UMAR initiated the Feminist Roadshow Against Sexual Harassment³, with many activities all over the country, accompanied by the aforementioned survey on the topic. Since then, the organisation has a Work Group on SH and sexual violence, running several projects and campaigns in several cities (Lisbon, Porto, Braga, Coimbra), collecting information and supporting victims. The various teams have published articles, brochures and guidelines.

APAV (Portuguese association for victim's support) also contributed for public awareness by launching two campaigns: one, preventing sexual violence in

¹ Torres, Anália; Costa, Dália; Sant'Ana, Helena, Coelho, Bernardo & Sousa, Isabel (2016) *Assédio Sexual e Moral no local de trabalho em Portugal*, Lisboa: Comissão para a Igualdade no Trabalho e no Emprego [Sexual harassment and mobbing in the work place in Portugal].

² Report on the Project “Feminist Roadshow Against Sexual Harassment”, funded by the Embassy of the Netherlands in Portugal, see <http://assediosexual.umarfeminismos.org/>.

³See: <http://assediosexual.umarfeminismos.org/index.php/rota-dos-feminismos-contra-o-assedio-sexual-2012>

campuses (After No, Stop, 2012); and another more specifically against SH (“It starts with a message and ends up taking over your life”, 2015).

During the years 2010-17, the media adopted one of two positions on SH: on the one hand, some display information about SH, the need for prevention and for developing legal provisions and public policies to support the victims; on the other hand, others stated that SH was already an infringement in the Labour Code and criminalised in the Criminal Code. In the latter position, SH was not framed as a form of violence, rather a form of “seduction”, such as “cat calling”, and attributed to a Portuguese culture (as part of the Latin culture) that should be defended. By these journalists, feminists were portrayed as prudish and moralist.

Since 2016, a new organisation, a feminist online platform called “Capazes” (mainly journalists and women opinion makers) started to challenge SH, in their website.

The #MeToo movement had a great impact in PT society. In the beginning, people and the media were divided in the two positions already described (and also criticising the “American way of life”), but the balance began to tend in favour of acknowledging victimisation by SH. In 2020, some well-known women journalists, TV hosts and others⁴ from the area of Culture and the media, became publicly disclosing situations of SH in their careers. This was called the Portuguese #MeToo, and was followed by several debates on TV and other media outlets. The disclosure of SH by Portuguese women raised a wave of solidarity and public debates were more focused in stopping and preventing SH and protecting the victims.

Differently from Denmark, this movement did not originate any kind of Alliance against SH. Although I have no evidence to base my opinion, I believe the pandemic following two major economic crises most likely explain some of the difficulties felt by the activists.

1.2 Legal framework and public policies

There are some published articles about legal framework and public policies in PT on SH showing the strengths and weaknesses of Portuguese legislation⁵. Here, I will briefly describe the main legal documents.

- Criminal Code

SH is not criminalised as such in the Criminal Code. Some authors claim that it is included in the crimes against sexual self-determination, others argue that this inclusion does not account for the impact of such offensive behaviour(s).

⁴ Among others, Catarina Furtado, a well-known and renowned journalist and tv host, as well as Sofia Arruda, Jessica Athayde, Cláudia Lucas Chéu.

⁵ See, for instance: Morais, Tatiana; Múrias, Cláudia & Magalhães, Maria José (2014) Assédio Sexual no Trabalho: Uma reflexão a partir de ordenamentos jurídicos, *International Journal of Working Conditions*, nº 7, link: <https://repositorio-aberto.up.pt/bitstream/10216/84853/2/90929.pdf>

Some behaviours can be penalised under article 163, “sexual coercion”⁶. Victims could hardly take this article to defend themselves against sexual harassment, since it demands that behaviours are carried out “by means of violence or severe threat” (n1) or constitute a “relevant sexual act” (n2).

Another article, the 170, concerns “sexual badgering”⁷. This article is more likely to include SH behaviours, however, they are considered minor offenses and would need to be “proposals of a sexual nature” or “contact of a sexual nature” under constraint.

Some authors also state that SH behaviours could be included under article 164, “rape”. Nevertheless, the behaviours punished under this article should be even more severe than those under article 163.

For the last twelve years, many victims have reported SH, either in the workplace or in public spaces, and they have had to withdraw their complaints due to the insufficient juridical basis.

- Labour Code

The regulation of the formal work market and work conditions is the result of tripartite negotiations, as reported by the NL discussion paper – between employers’ representatives, union representatives and the State. After negotiations, a set of regulations is annually established for the formal work market which should follow the actual Labour code.

In the Labour Code, SH is included and prohibited for decades. It follows the European Charter of Fundamental Rights (ratified by PT), the recommendations of the EU directive 2004/113/CE and those of the International Labour Organisation (ILO).

Currently, SH in the workplace is clearly defined in Law n. 73/2017, article 29⁸, and punished under article 28. The responsibility to prevent SH in the workplace relies on the employer or the board of the institution, and compensation is foreseen for property or non property damages. However, nothing is established concerning the protection of the victim and the preservation of their employment.

Besides formal market work, there is a range of sectors that operate out of the Labour Code. Some authors call this “parallel economy” or “informal labour market”. The

⁶ The translation of the Portuguese criminal code 163 article can be found in the link : 163.^o Coação Sexual: <https://www.linguee.pt/portugues-ingles/search?source=auto&query=Coação+Sexual>

⁷ The translation of the Portuguese criminal code 170 article can be found in the link : 170.^o - Importunação Sexual: <https://www.linguee.pt/portugues-ingles/search?source=auto&query=Importunação+Sexual>

⁸ Labour Code, Art. 29^o : 2- Harassment is understood as an unwanted behavior, namely based on a factor of discrimination, practiced when accessing employment or in the job itself, work or professional training, with the aim of disturbing or embarrassing the person, affecting their dignity, or to create an intimidating, hostile, degrading, humiliating or destabilising environment for them.

3 - Sexual harassment is unwanted behavior of a sexual nature, with a verbal, non-verbal or physical form, with the objective or effect referred in the previous number.

people who work in these sectors are the most vulnerable and poor, mostly women, youth and immigrants. They have no protection against any arbitrary behaviours, including SH.

- CITE

The government agency responsible for monitoring gender equality in the workplace and market and receiving complaints about gender discrimination at work is the *Comissão para a Igualdade no Trabalho e na Empresa* [Commission for Equality in the Work and Enterprises]. CITE has been attentive about SH in the workplace since the 1990's. They have published brochures⁹ and guidelines, of which the latest one, resulting from the tripartite negotiations, was published in 2016¹⁰.

1.3 Public policies

- Gender Equality legislation and National Action Plans

Gender Equality has been taken seriously by Portuguese governments since the 1990's, under National Action Plans.

Currently, prevention of SH can be found in the National Strategy for Equality and Non Discrimination (Resolução do Conselho de Ministros nº 61/2018, Portugal 2030) with explicit measures to combat and prevent this form of violence.

- Local policies – municipality action plans

The recent governments also have stimulated municipalities to elaborate their respective Municipal Action Plans for Equality and Non Discrimination. However, not all municipalities have come forward with these plans and most of them do not mention SH.

- Citizenship Education and Sex Education (including backlash)

In the Education sector, sexual harassment could and should be handled under Citizenship Education (currently governed by the National Strategy for Citizenship Education, Despacho nº 6173/2016) and under Sex Education (Law n 60/2009). Both disciplines are mandatory in schools.

As in the Netherlands, sex education curricula rarely addresses topics such as SH or sexual violence. Citizenship Education implies addressing several topics, including gender equality and the prevention of gender violence. However, notwithstanding a few specific projects being applied in some schools, SH and sexual violence are not tackled in schools.

⁹ The first one is Duarte, Fátima (1999) *Assédio Sexual no Mercado de Trabalho*, Lisbon: CIDM, coleção Ditos e Escritos, nº 12.

¹⁰ See the link (in Portuguese) :

https://cite.gov.pt/documents/14333/193244/MONOFOLHA_assedio_16.06.2016.pdf/95c123db-9b38-47c2-bbc0-54a46d1fc251 .

In recent years, the discipline of Citizenship Education has been under attack, following the general attacks against gender equality by conservative forces. This can contribute, in part, for a sort of “paralysis” in some schools. However, there are some teams running intervention projects that deal with SH and gender violence in schools, as will be described below.

2. Good practices examples: prevention of SH

We define prevention by a wide range of activities, ranging from supporting victims (secondary and tertiary prevention) to primary prevention (following what is usually called the health model).

- Secondary prevention

As stated above, victims of SH cannot be adequately protected in Portugal due to light legal provisions. In spite of this, a few feminist organisations have fought in order to support victims of sexual violence and, due to their efforts, there are now two counselling centres for sexual violence victims: one in Lisbon, run by AMC (Association of Women Against Violence); another in Porto, run by UMAR (Association of Women, Alternative and Answer).

Although there has been no report published specifically for SH, we know that the professionals of both teams find it very hard to support victims of SH, both in the workplace and in public spaces. We have hope that the future will bring about some changes.

- Primary prevention

Since 2004, UMAR has run a school-based gender violence primary prevention after formal protocols signed between the organisation and the school boards. This intervention is now being developed under the Project Art’Themis+UMAR¹¹. This Project is a three-year pedagogical programme, in cooperation with teachers, mainly Citizenship Education teachers, but it is sometimes implemented with teachers of other disciplines. The Project is present in several districts – Porto, Braga, Coimbra and Funchal (Madeira Island) with a pedagogic philosophy based in Paulo Freire, and works on promoting human rights and preventing several forms both of gender violence and other forms of violence (homophobia, racism, ableism, among others). The intervention also follows the whole school approach (pupils, teachers and parents), including direct intervention with groups of students (ranging from kindergarten to high school), teacher training, and intervention with parents. The programme is evaluated every year and after the full three years of intervention, both quantitatively and qualitatively.

Specifically concerning SH primary prevention, the Faculty of Psychology and Sciences of Education of the University of Porto, in partnership with other

¹¹ For more information on the Project, see: <http://artthemis.umarfeminismos.org>

organisations in 4 European countries (England, Malta, Portugal and Slovenia), ran the Project Bystanders, funded by the EU (Rights, Equality and Citizenship Programme), which resulted in a Programme for intervention with bystanders¹². From this Project, the international team was able to produce a manual¹³ guiding intervention with bystanders in high schools, which has been replicated in many schools and several countries (including Brazil).

- Universal prevention

Since 2010, several initiatives to raise public awareness on SH, both in the workplace and in public spaces, have been carried out by various organisations, including feminist NGOs, unions and government agencies (CITE and CIDM). It would be almost impossible to list them all here, due to the scarcity of the space. However, it is undeniable that they have contributed to the culture change towards SH in Portugal.

3. Transferability and lessons learnt

There are many lessons useful to implement cultural and social change for a society free of SH.

From the NL discussion paper, we can learn how to implement prevention of SH in a sustainable basis through sex education and sexual health intervention. Moreover, the relevance of appointing a Commissioner specifically concerned with SH (the example of Mariette Hamer) makes it possible to transfer to other countries and it could be a guarantee that SH would be tackled both for supporting victims and for social and cultural change. However, the focus on sexual violence in general can deviate the attention from SH. That has been the experience of the counselling centres for victims of sexual violence in Portugal. SH would seem like minor offenses in comparison with more severe sexual violence, which will, in many social and cultural contexts, subsume SH. As expressed by the author, it would “fall short”. The author also noted the need for professionals to identify gender as the main cause for this form of violence, which is a common need for Portugal.

From the DK Discussion paper, there are many ideas that could and should be implemented in other countries. Particularly, the Alliance Against Sexual Harassment is an important and relevant idea to replicate. The authors explain the process very well, as well as the expected outcomes and possible difficulties. It should be widespread and replicated out of DK. The authors also pointed out the need to pay attention to SH in some sectors where it has not been so visible – culture, sports, among others.

¹² For information about the Project Bystanders, please see the link : https://www.fpce.up.pt/love_fear_power/bystanders/bystanders_en.html

¹³ The manual is published in the 4 languages of the Project : https://www.fpce.up.pt/love_fear_power/bystanders/publications.html

From the Portuguese experience, I would point out the careful and long term primary prevention programmes that may have a wider and larger impact on culture and society.

4. Conclusions and recommendations

Concerning SH, legal and public policies provisions are still in an early stage. This brings several difficulties in supporting victims, especially in the workplace. It seems that in DK, NL and PT, this is a matter that needs further development. Supporting the victims (secondary and tertiary prevention) and holding the perpetrators responsible for their behaviours can be part of an effective action to change society and cultural country contexts regarding SH.

For PT, for instance, the main issue is protecting the workplace of women and men victims of SH for the preservation of their self-determination and economic independence.

Building society alliances to combat SH and develop a society based on gender equality and peace (without violence) is also of primary importance. Engaging various sectors of the society and elaborating common plans will be also part of a pathway contributing towards social and cultural change.

Effective primary prevention programmes in schools, adequately designed for several audiences (according to their age and emotional and cognitive development), are also crucial to complement the other strategies. These programmes, according to our experience, should be funded regularly (not subjected to precarity) and implemented by professionals with both pedagogic and violence prevention expertise – a partnership between schools and other experts on the issue.

A special attention should be paid to the more vulnerable groups of the population, as stated in the discussion papers. People from poor populations, immigrants, racialised people (mostly women), LGBTQIA+ people, and people with functional and cognitive disability(ies) are especially vulnerable to diverse forms of violence, SH included, and especially powerless to recuperate (or even search for help).

Cyber SH through social networks is an emerging problem, with few research and intervention projects, therefore a new area needing research and intervention.

Finally, it is worth noting the crucial relevance of research: on the prevalence and incidence of SH, on the cultural perceptions of the general public, on the cases that have reached the courts and how they have been finalised, on young people's perceptions, on concrete situations of specific vulnerable people (such as the aforementioned examples).

Besides the need for many social, legal and cultural changes, we can say that the pathway is already opened and, if we can prevent steps backwards, maybe we can hope for a better future.