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NEWS REPORT

Country:	Cyprus
Title:	Complaint of an employee to the Equality Authority for harassment in employment and discrimination on the grounds of sex and national origin.
Date:	6 January 2017
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<u>Context</u>	
Issue at stake:	The employer is found to be liable for discrimination by failing to impose satisfactory disciplinary measures against an employee who had posted discriminatory comments on Facebook against the complainant.
Ground of discrimination:	Sex, national origin
Source:	National equality body (Report of the Equality Authority regarding a complaint for harassment at work and discrimination on the grounds of sex and national origin of an employee at the Cyprus Broadcasting Corporation, File No. A.K.I. 45/2015, 12 October 2016).
Field:	Employment
Applicable law:	The Equal Treatment of Men and Women in Employment and Vocational Training Law No. 205(I)/2002 as amended, the Equal Treatment in Employment and Occupation Law No. 58(I)/2004, as amended, The Combating of Racism and Other Discrimination (Commissioner) Law No. 42(I)/2004, as amended.

Content

Case development: On the 30 September 2015, a female employee from Bulgaria, who was a TV presenter at the state TV channel Cyprus Broadcasting Corporation (CyBC), submitted a complaint at the Equality Authority against CyBC. The complaint was based on the grounds of harassment in employment and sex discrimination. In particular, according to the complainant, a work colleague of hers was repeatedly insulting her by posting negative posts on Facebook regarding her gender and nationality, as well as by talking in a derogatory manner about her at the workplace.

The Commissioner for Administration and Human Rights (Ombudsman), based on the Equal Treatment of Men and Women in Employment and Vocational Training Law No. 205(I)/2002 as amended, has the authority to investigate the complaint and the issues that arise in regard to harassment in employment. Moreover, for the purposes of investigation, the Ombudsman has all the powers and responsibilities provided by the Combating of Racism and Other Discrimination (Commissioner) Law No. 42(I)/2004.

In addition, Articles 3 and 8 of the Law No. 205(I)/2002 as amended guarantee the principle of equal treatment for men and women at work in both the public and private

sectors. The Law No. 40(I)/2006, which amends the Law No. 205(I)/2002 provides in Article 12, inter alia, for the prohibition of any act, whether single or repeated, by any natural or legal person which constitutes harassment or sexual harassment. Importantly, Article 12(2) provides that employers and their representatives are required to protect workers, trainees or applicants for employment or training, from any act of their supervisor or of a person in charge or responsible, which constitutes sex discrimination and in particular harassment or sexual harassment and, from any act which, directly or indirectly, constitutes discrimination in any way. Furthermore, Article 12(3) provides that employers have an obligation towards the person who has suffered harassment or sexual harassment, to take all measures for the termination and removal of the consequences, or otherwise is deemed to be responsible under the Law.

Harassment is defined in Article 2 of Law No.205(I)/2002 as the undesirable behaviour expressed by words or acts and regards inter alia ethnic origin. This behavior aims or has the effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. Moreover, Article 17A(2) of the abovementioned Law provides that any person who considers that he/she has been affected by a breach of this Law, has a right to submit a complaint to the Ombudsman. Finally, according to Article 30(1), anyone who violates the law is guilty of an offense and in the case of conviction the penalty is either a fine up to GBP 4000 (EUR 6,834.41), or imprisonment not exceeding six months, or both.

Decision: Mr. 'S.A.' (hereinafter 'the perpetrator'), an employee at CyBC, with a series of posts on the social networking site, "Facebook", was directly and/or indirectly making continuous negative comments against the complainant, who was also an employee at CyBC. The complainant, since she was feeling humiliated and unwanted in her own workplace, had complained and reported the perpetrator's behaviour to the board of the TV channel through several letters. Initially the board of the channel had applied disciplinary measures against the perpetrator, however, these measures came to an end at an early point, when the director of the board was changed. Following a letter from the Ombudsman, the CyBC began to reexamine the complaint, based on the legal framework of the applicant's complaint in the application (file number A.K.I. 45/2015, 12 October 2016). The Ombudsman had asked to be informed on the real and legal basis on which the board decided to terminate the disciplinary measures that were initially imposed on the perpetrator. The new deputy director of the board had informed the Equality Authority that the decision to terminate the disciplinary procedure was based on legal advice and was in line with the disciplinary code of CyBC, pointing out that such termination is at the absolute discretion of the Director General. Nevertheless, the board instructed the perpetrator to remove the negative posts concerned from Facebook and the perpetrator had acted accordingly.

In addition, CyBC contended that reasonable care of the employees was taken, that a spirit of cooperation and mutual respect had been maintained between the personnel of the channel and that all its actions were in conformity with the Law and the Governance Code which is in force since 2011. Furthermore, being aware of the power of new technology means and aiming to protect both the public image and the channel's employees, the board had determined a detailed framework on the use of the Internet and social media by preparing a manual named "Use Policy and Security of Electronic Network, Internet and Media Networking". Based on the above, CyBC did not agree with the allegations of the complainant.

The Equality Body of the Commissioner for Administration and Human Rights (Ombudsman), found in its report that:

- a) The way the complaint has been dealt with was undoubtedly derogatory and the fact that the other disciplinary cases within CyBC had the same fate is not an excuse in favor of the employer.

- b) It is indisputable that the posts of the perpetrator on Facebook were targeted to the complainant herself and that some of those posts were referring to her national origin and sex. The report of the Equality Body found that the insulting behaviour of the perpetrator against the complainant, which resulted in the creation of a hostile work environment, amounted to direct discrimination prohibited by law on the grounds of gender and national origin.
- c) The report has also found CyBC equally liable for direct discrimination due to the breach of the duty of care it owed to the complainant, as an employee and its failure to adopt effective measures and policies to combat the discrimination the complainant had suffered at her workplace.
- d) The Ombudsman recommended that the board of CyBC should introduce, within the next three months, a code aiming at the prevention and combating of harassment and sexual harassment at workplace. Besides, this is required by the Equal Treatment of Men and Women in Employment and Vocational Training Law No. 205(I)/2002 as amended and, according to the Ombudsman's recommendation, the code should include and regulate specific guidelines and procedures to be followed in the event of further harassment and sexual harassment complaints at the workplace.

Key points of analysis: The report was submitted on 30 September 2015. The decision of the Ombudsman was issued on 12 October 2016. Apart from the complainant's legal right to submit her complaint to the Ombudsman, according to Law No.205(I)/2002 as amended, the complainant can also be protected against harassment and sexual harassment by claiming her rights in court before the Industrial Dispute Tribunal. However, the deadline for bringing a claim at the Industrial Dispute Tribunal is 12 months from the day the breach of the Law takes place. We are not aware of the date the complainant had left her employment at CyBC. If the date of her withdrawal from work is the date on which she submitted the complaint at the Ombudsman, unfortunately she is subsequently deprived from her right to bring a claim before the court. Otherwise, if her voluntary withdrawal took place within one year, she would then be allowed to refer her case to the Industrial Dispute Tribunal and to claim compensation. It should also be noted that the Ombudsman has asked for the amendment of the limitation period allowed for bringing a claim before the court, so that the time period when the complaint is examined by the Office of the Commissioner for Administration and Human Rights would not be included. However, no such amendment has taken place.

Internet link source:

[http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/0A52E0036CDFD812C2258060003466A9/\\$file/%CE%91%CE%9A%CE%9945_2015_12102016.doc?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/0A52E0036CDFD812C2258060003466A9/$file/%CE%91%CE%9A%CE%9945_2015_12102016.doc?OpenElement) accessed 20 December 2016.