

Background Research – Portugal

This paper is a background research on sexual harassment (SH) in Portugal. We begin with an analysis of SH as a public issue describing the law, data and research. Then we present an overview about feminist campaigns and interventions, as well as political and media debates on SH. We also described the main aspects of the Portuguese educational system emphasizing the educational policies on civic and sex education. These are the two areas where SH can be included in school curriculum and policies. We end this paper summarizing the main points of this background research.

1. Sexual Harassment (SH) as a public issue

a) Law, data and research

The concept of SH as defined by Catharine Mackinnon (1979) recognises this form of violence as discrimination, mainly in the work place although it has been extended to other public spaces. Following pressure from the feminist movement, the European Commission published the first report about SH in 1987. The first Portuguese study on SH in the workplace was developed by Lúcia Amâncio and Maria Luísa Lima and commissioned by the Portuguese Government in 1989 (published only in 1994). This study showed the high prevalence of SH experienced by women. From a list of behaviours, the majority of women (more than 90%) identified the following as SH: unwelcome suggestions to have sexual intercourse; unwelcome touch; forced kisses and groping. These findings are common across ages, profession and academic level. However, there is a small difference between North and South regions. The south, particularly Lisbon (in comparison with Porto) shows a higher prevalence of SH. The same report shows that victims are harassed by colleagues (25.5%) and persons further up the hierarchy (13.6%). This survey also asked about the victims' responses. Just less than half (48.9%) responded that they did nothing.

Twenty five years later, the State commissioned another study (2014-2015) – “Sexual Harassment and Mobbing¹ in the Workplace” – with the main objective to

¹ *Mobbing* is a term used in the context of labour organizations (see ILO 2003-4, for instance), meaning psychological (mostly) violence at the work place, usually by the hierarchy, including the separation of the worker from her/his colleagues, a constant devaluation of his/her work, not attributing work to do. It distinguishes from bullying in the sense that bullying is perpetrated usually by one person and without connotations with the evaluation of the work performed by each individual. In Portugal, it is called *assédio moral*.

gather updated data. This study coordinated by Anália Torres (2016) highlighted once again the prevalence of sexual harassment (and mobbing) at the workplace where women are the majority of victims (14.4% women and 8.6% men). The study also concludes that the victims carry on without appropriate legal support and protection to proceed with charges against their harassers, employers and/or companies.

The European Charter of Fundamental Rights, as well as the Directive 2004/113/CE describe the importance of the elimination of all discrimination and, particularly, sexual discrimination. These were ratified by Portugal in 2004. It was only in 2009 that SH was included in legal provisions - in the labour code (Law 7/2009, artº 29º). More recently, in 2017, Parliament approved a more effective punishment to employers and companies in the labour code.

In 2010-2011 UMAR conducted a survey as part of the project “Feminist Roadshow Against Sexual Harassment”. This was the first attempt to collect data about this form of violence in public spaces. The sample was made up of 920 respondents from different regions within Portugal, 66% of women and 34% of men, between 24-35 and 51-64 years old. More than two thirds of the respondents defined SH as a ‘form of seduction’ or flirting and 27% of the participants stated they knew of SH cases.

Since 2013, left wing parties and one NGO (UMAR) have sought to change elements of the PT law. In the penal code SH is not penalized but some behaviours can be punished in line with articles no. 163, no. 164 and no. 170.

In 2015 the government (a coalition between two right wing parties) in response to discussion about SH in the parliament proposed and approved the Decree-Law n.º 400/82. This includes teasing of a sexual nature in the crime of exhibitionism (article 170º)² and was perceived as a way to criminalize SH in public spaces. This change in the law also made these behaviours when committed against children and adolescence aged under 15 an aggravating offence. This is problematic because it does not consider adolescences aged over 14.

In 2016 the majority government was the socialist party with the support of other left wing parties. In January 2017, the Parliament re-opened the debate about SH and mobbing in the workplace with 4 proposals to change the law. All the proposals demanded a more effective punishment of employers for sexual harassment including

² “Who importunate other person, practicing in front of her acts of exhibitionist of sexual character, making proposals of sexual nature or constraining her for a contact of sexual nature, is punished with one year of imprisonment or punished with a fine up to 120 days, If worse penalty does not fit by virtue of another legal provision.”

protection and support for the victims as well as the right to redress. Later, the left wing parties agreed on a single proposal and a more effective law was approved.

Until now, SH at schools has neither been discussed nor researched. Besides UMAR, which is developing a gender violence prevention programme at schools and indirectly targeting SH, there is no social, political or legal intervention specifically about SH at schools. Bullying in schools has been discussed and researched since the 1990s', but with no gender perspective. This leads to the invisibility of SH since is grounded in patriarchy.

b) Feminist campaigns and debates in the media

In the 1980s and 1990s, there were five events which stand out in relation to the history of intervention on SH in the Portuguese context: 1) a seminary about "SH in the Workplace", organized by the NGOs of the Advisory Council of the National Mechanism for equality(6-th May,1989 in Lisbon; 2) the publication of an article "What is SH?" in the magazine "Sim Mulher" (Yes Woman) in 1989; 3) the publishing of an informative brochure about "SH in the workplace"by CITE³; 4) the publication: "Work and SH" by Fátima Duarte (1999); and 5) the first time a Portuguese court made a judgement which favoured a victim of sexual abuse in the workplace. ⁴

In the first ten years of the 2000's there were few news reports in the media about SH at the workplace. However, since 2010 the debate on SH in Portuguese society has become more prominent. The UMAR campaign – Feminist Roadshow Against SH⁵ – in 2011 was crucial to opening up the debate in the media and in the political arena. At the final Seminar, the then State Secretary for Equality, in agreement with the demands of UMAR, admitted the severity of this form of gender violence against women and girls and the need to criminalize SH.

This was generally well reported by the media. However, the newspapers published several articles by a large number of policy makers and opinion makers against the criminalization of SH. Interestingly the positions of workers' unions were not published by the media.

3 National Mechanism for Gender Equality in the work place

4 This information was taken from the UMAR website:

<http://assediosexual.umarfeminismos.org/index.php/assedio-sexual-1>

5 https://sites.google.com/site/sexualharassmentfeministtour/home_pt

The APAV (Portuguese association for victim support) also contributed to public awareness by launching two campaigns: one on the prevention of sexual violence mainly in campus – “After No, Stop!” (2012) - and another against SH – “It starts with a message and ends up taking over your life” (2015).

Between 2011-2015 the media adopted one of two positions on SH: on the one hand, information about the prevalence of SH, its prevention and the development of legal provisions to punish it; and on the other hand perspectives which stated that SH was already an infringement within the labour code and criminalized in the penal code (as described above). Feminists were accused of being prudish and moralist by the media. The latter position did not frame SH as a form of violence against women and girls. SH was misconceived as “cat calling” and “seduction” diverting the debate from the main issues. The mainstream newspapers contributed to this with headlines such as “How much worth a ‘cat calling’ - Art of courtship or sexist 'mouth', the ‘cat calling’ begins to be also discussed as a crime” (20.05.12 Correio da Manhã). Defenders of “cat calling” claimed that the criminalization of SH was an attempt to destroy Portuguese culture (as part of Latin culture) and make illegal the usual ways in which relationships develop between men and women such as establishing contact, flirting etc. For some years the debate continued to be polarized and it was the views of the defenders of “cat calling” (who were against the criminalization of SH) that were disseminated by the media.

Since 2016 a feminist online platform called “Capazes” (mainly journalists and women opinion makers), started to challenge SH on their website⁶. Furthermore, in January of 2017 in the Women March against Trump, in Portugal, one of the demands was to combat SH.

Increasingly, with the growing of feminist interventions and campaigns against SH the debate has become more open and is slowly giving voice to other stakeholders and perspectives which demand that SH is clearly defined as a form of violence against women and girls that should be criminalized. The media now takes a more sensible position about SH, demanding the effectiveness of policies to combat it in the workplace, public spaces and schools and to support victims. Also, SH perpetrated by and against adolescents has started to be discussed and is visible in the media. Over the years, the public debate in Portugal has increased but, as far as we know, it is still not addressed in schools.

⁶ <https://capazes.pt/>

2. Portuguese educational system

a. Structure of the educational system

Co-education was established in 1971 (educational act by Veiga Simão, see Stoer, 1983) and the democratic governance of schools was established after the revolution on 25th April 1974. The great majority of schools are public and home schooling is possible (regulated by the State). Since 2009 (Decree-Law n.º 85/2009, 27th August) compulsory education for children and young people is up to 18 years of age (except pre-school which is not mandatory). Every school must follow the national curriculum although there is relative autonomy for local education policies.

The Educational System is divided into four stages: pre-school education (from 3 to 6 years old), basic school (primary school 4 years, second grade 2 years and third grade 3 years), high school (3 years) and university. In high school students have to choose between four paths: humanities, sciences, arts or vocational programs. Vocational programmes provide degrees equivalent to high school with the focus on skills for specific occupations (rhetorically vocational paths can lead to university although there are some limitations). Higher education in Portugal has two branches: university and higher technical education. These institutions can be public, private or semi-public and offer bachelor degrees, masters and PhD's (except higher technical colleges).

b. Local educational policies

Currently schools are grouped on a geographical basis, from kindergarten to high school, and these school clusters are designated by *Agrupamento Escolar [Group of Schools]*. The governance of the *Agrupamento Escolar* is usually located in high schools and managed by one principle and two vice-directors, a pedagogic council and the class teacher director (coordinating all the teachers from a single class). The main decisions must be approved by the General Council of the *Agrupamento* which consists of representatives of parents, the Municipality, the School Board, teachers, students and other local institutions. Although there is a national curriculum (Educational Act 1986, Lei de Bases do Sistema Educativo – LBSE), every school has its own local educational policy (named *Projeto Educativo*) - a few principles and objectives that create the ground for the development of a better local educational experience based on the

specificity of each Agrupamento. The local educational policy (Projeto Educativo) is planned for a period of 4 years and approved by the General Council of the Agrupamento. This means that every Agrupamento can use its relative autonomy and can adapt it to its' own context, finding ways to engage students, staff, parents and other local institutions.

In the national curriculum, gender violence or domestic violence is not mentioned and there is nonational policy on these matters. Most schools have a Projeto Educativo that focuses on citizenship/civic education, equal rights and respect for diversity and difference. Since it is unlikely that local educational policies (Projeto Educativo) include gender violence or domestic violence inclusion of SH is unlikely. However it is though citizenship/civic education and/or sex education that SH could be addressed in schools.

Under local educational policy, schools and institutions have commonly created partnerships to teach sex education and the prevention of gender violence. However, because of the recent economic crisis there has been a decrease in these partnerships, less teaching time dedicated to civic/citizenship education and a decrease in the number of teachers and staff.

c. Civic/Citizenship education

At the beginning of the 20th Century, civic education (Educação Cívica) was governed democratically by students through learning rights and duties in schools. But in the last decades two alternative approaches had developed. The first, was still called “Educação Cívica” but changed its focus to teach moral values, norms of coexistence and social skills. The second, known as Citizenship Education (Educação para a Cidadania) is centred in the rights and duties of the students for a democratic citizenship, more close with the aims of civic education in the beginning of the 20th century. These two main approaches co-exist today in schools creating some contradictions, mostly in normative education in Educação Cívica, and debates and projects leaded by students in Educação para a Cidadania.

Civic education started with the first Republic in 1910 but it was interrupted during the fascist regime (1926-1974). Currently, civic/citizenship education is regulated by the Decree-Law nº 286/89, reinforced by the Decree-Law nº6/2001, based on 2 simultaneous curriculum strategies: 1) transdisciplinary – all teachers from the

different subjects should contribute systematically for the learning of rights, duties and civility (nº1, Article 7º); 2) multidisciplinary – introduction of a non-disciplinary subject in which contents are decided by each group of schools. (nº1 and 2, Article 6º).

In 2010, Portugal ratified the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education.

The current Gender and Citizenship Education Guidelines (2011) written by CIG⁷ (Commission for Citizenship and Gender Equality) suggest that according to the grade and the age of the students, teachers should debate and teach the following subjects: gender and human body; gender and health; gender and leadership; gender and information and communication technologies; gender and vocational education choices. These guidelines clearly identify the need to involve the families and the community in the debate. They also suggest providing some training in the following topics: time dedicated to family and working life, leisure time and hobbies, and myths and social expectations about basic care of babies and children.

Last year (2016) the government convened a working group for civic/citizenship education however no conclusions have yet been reached.

d. Sex education

Policies and legislation related to Sex Education started in 1984 with Law n.º 3/84⁸ – Right to Sexual Education and Family Planning. This law was mainly concerned with family planning and reproductive health, with a health and biomedical perspective and an anti-abortion philosophy. Although this law stated the fundamental right to sex education it was not applied.

In 2000, the ministry of education with the Ministry of Health and the Association for Family Planning (APF) produced “Guidelines for Sexual Education in schools”.

The Decree-Law 6/2001 established sex education and civic/citizenship education as a new transdisciplinary subjects. In 2007, following the legalization of abortion after the referendum, a new law establishing sex education in schools was approved (Law nº60/2009) establishing a mandatory curriculum for sex education,

7 Since 1974, the National Mechanism for Women Rights (CIG, former CIDM) has been working on gender equality in schools by both teacher training and creating gender and civic/citizenship education guidelines.

8 This law was followed by the Decree-Law n.º 120/1999 and the Decree-Law n.º 259/2000, following the same perspective but without an anti-abortion philosophy.

taught within a minimum of six hours across the school year. The new legislation, of 2009, still promotes partnerships with local health centres, including sex education in the area of Health Education (PES), but assigned more responsibility to teachers.

Whilst these policies and programmes do not address SH nor sexual violence, there is space for them to do so.

e. Whole school approach in Portugal

A whole school approach is an intervention model which promotes the engagement of students, teachers, other school staff, families, and all the people that are integrated in what we call the school community. As far as we know, there is no whole school approach in Portugal although it has been discussed in academic research. It is also worth mentioning that some prevention programs recognize the importance of the whole school approach and try to apply it.

3. Sexual Harassment in Schools

Most studies on violence in schools focus mainly on bullying or violence among peers. The prevalence of victimization by bullying is around 15% (Carvalhosa, Lima e Matos, 2001; Pereira, Beatriz; Silva, Iossi & Nunes, Berta, 2009; Matos, Margarida Gaspar & Gonçalves, Sónia Pedroso, 2009). Following these studies the National Plans of School Health recognized the need of strategies for intervention on bullying in schools.

A gender perspective was also developed in a study about homophobic bullying which concluded that the majority of the victims are boys (António et al. 2017).

4. Summary

The debate around SH in Portugal has developed very slowly, as well as the political, criminal and juridical transformations related to the the combat and prevention of SH and the protection of victims. There are controversial positions about the combat and prevention of SH and still no specific criminal sanctions for SH offences.

In terms of educational policies, the progression has also been slow and with no specific educational policy on SH. However, civic/citizenship education and sex education has been increasingly linked to a gender perspective. This could allow us to

include SH prevention and combat in the curriculum. Some intervention programmes in schools (for instance by UMAR) refer to SH but there is no specific programme on the subject.

The bystanders Project intervention will be the first specific programme on SH in Portugal (as far as we know).

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Lei 3/84, 24 de Março, Educação sexual e planeamento familiar [Sex Education and Family Planning]

Lei 120/1999, 1 de Julho, Reforça as garantias do direito à saúde reprodutiva [Reinforce the guarantees and rights to sexual and reproductive health]

Decreto-lei 6/2001, 18 de Janeiro, Aprova a reorganização curricular do ensino básico [Established of the reorganization of the curriculum for basic schooling]

Decreto-Lei 18/2011, 2 de Fevereiro, Aprova a reorganização curricular do ensino básico [Established the reorganization of the curriculum for basic schooling]

Decreto-Lei 286/89, 29 de Agosto, Reforma do Sistema educativo [Educational system reform]

Decreto-Lei nº 139/2012, 5 de Julho, organização curricular básico e secundário [curriculum organization of basic and high schooling]

Lei 60/2009, de 6 de Agosto, Estabelece o regime de aplicação da educação sexual em meio escolar [Established the regime for the application of Sexual Education]

List of abbreviations

APAV – Associação Portuguesa de Apoio à Vítima [Portuguese Association for Victim Support]

⁹ The article 143º and the following about simple or aggravated offenses upon the physical integrity of a person: the article 163º about sexual coercion; the article 164º about rape; and the article 170º about exhibitionism. Notwithstanding, this law and respective articles don't specify and so don't criminalize sexual harassment.

APF – Associação para o Planeamento Familiar [Family Planning Association]

CIG – Comissão para a Igualdade de Género [Comission for citizenship and gender equality]

CITE – Comissão para a Igualdade no Trabalho e no Emprego [National Mechanism for Gender Equality in the work place]

UMAR – União de Mulheres Alternativa e Resposta [Women's Association Alternative and Answer]

PES – Programa de Educação para a Saúde [Program for Health Education]