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ILO Convention No. 190 concerning the Elimination of Violence and Harassment in the World of Work and Recommendation No. 206[1]

Summary

Violence and harassment are present in the world of work in the most diverse forms[2]. The ILO Violence and Harassment Convention 2019[3] should therefore be of great importance for labour law practice. It was adopted on 21 June 2019, together with the non-binding Recommendation for Implementation (No. 206)[4], on the occasion of the centenary of the ILO.

As the Convention falls partly within the competence of the European Union, with the EU not being able to ratify the Convention itself[5], the European Commission has invited the member states to ratify the Convention by the end of 2022[6]. The German Federal Government is currently planning ratification[7].

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[2] European Foundation for the Improvement of Living and Working (Eurofound), *Sixth European Working Conditions Survey: 2015*, 2015; European Agency for Safety and Health at Work, *Factsheet 24 – Violence at work*, 2002.

[3] ILO- Convention No. 190 concerning the elimination of violence an harassment in the world of work, of 21 Jun 2019.

[4] Recommendation 206 concerning the elimination of violence and harassment in the world of work, of 21 Jun 2019.

[5] According to Art. 1 sec. 2 of the ILO Constitution, members of the ILO shall be the States.

[6] European Commission, 22.1.2020, *Proposal for a council decision authorising Member States to ratify, in the interest of the European Union, the Violence and Harassment Convention, 2019 (No. 190) of the International Labour Organization*, COM(2020) 24.

[7] Coalition Agreement for 2021-2025, available at https://www.bundesregierung.de/resource/blob/974430/1990812/04221173eef9a6720059cc353d759a2b/2021-12-10-koav2021-data.pdf?download=1 (accessed 28 Oct 2022).

In the following, I give an overview of the Convention and, using German law as an example, discuss how it could be implemented in a legal system shaped by EU law.
Keywords: Labour law; violence; harassment; domestic violence; occupational health and safety; vulnerability; International Labour Organization

1. ILO Convention 190 and Recommendation 260: Overview

The aim of the Convention is to abolish and prevent violence and harassment in the world of work. To this end, the Convention obliges ratifying member states to respect, promote and realise the "right of everyone to a world of work free from violence and harassment" (Art. 4 para. 1). According to Art. 4 para. 2, an "inclusive, integrated and gender-responsive approach" should be chosen, which includes a legal prohibition of violence and harassment, mainstreaming of all relevant policies (cf. Art. 11 lit. a)),‟ guidance and awareness-raising campaigns (cf. Art. 11 lit. b) and c)), in sum: a comprehensive strategy against violence and harassment at work.

The Convention consistently recognises the role of gender violence and harassment it thus implements a gender mainstreaming approach. Furthermore, Art. 6 not only emphasises the need for protection against discrimination for women workers in general, but also calls for a specific prohibition of discrimination for all persons who, due to specific vulnerabilities, are "disproportionately affected by violence and harassment in the world of work".

1.1 Definitions, prohibition and fields of application

Artt. 1–3 in sections I. and II. form the basis of the Convention by defining the key terms "violence and harassment" (Art. 1) as well as the personal and material scope of application (Artt. 2, 3). According to Art. 7 in conjunction with Art. 4 para. 2 lit. a) of the Convention, ratifying states are obliged to adopt "laws and regulations to define and prohibit violence and harassment in the world of work". Art. 1 para. 1 lit. a) of the Convention describes violence and harassment as "a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm (...)".

Sexual harassment is defined under international law in Art. 40 of the Istanbul Convention as "any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment". These definitions, for one, explicitly cover one-off incidents. On the other hand, the definition of the ILO Violence and Harassment Convention covers a conduct or the threat thereof not only if it aims at harm, but also if it results in harm or even if there has not been any harm, but the conduct is likely to result in harm or a violation of legally protected interests. The Convention therefore qualifies the objective probability of a violation to be sufficient to establish violence or harassment. Fault on the part of a penetrator will therefore not be a prerequisite for establishing a violation.

Violence has not been defined explicitly. However, the ILO Code of Practice "Workplace violence in services sectors and measures to combat this phenomenon" of 2003 also contains the following definition: "Any action, incident or behaviour that departs from reasonable conduct in which a person is assaulted, threatened, harmed, injured in the course of, or as a direct result of, his or her work"[8]. The European Framework Convention on Harassment and Violence (No. 3 para. 3) also contains a definition, albeit vague: "Violence occurs when one or more worker or manager are assaulted in circumstances relating to work".

1.2 Prevention

In section IV, the Convention obliges member states to make employers responsible for the prevention of violence and harassment. Preventive measures are set out in Art. 9 in particular, which requires legislation to oblige employers to take "appropriate steps commensurate with their degree of control". A number of concrete measures (Art. 9 lit. a)–d)) are listed here, which employers must be obliged to take, provided that the measures are "reasonably practicable", in particular "identify hazards", "assess the risks of violence and harassment" and "take measures to prevent and control them" (Art. 9 lit. c))

[8] On this definition cf. J. Pillinger: *Violence and Harassment Against Women and Men in the World of Work. Trade Union Perspectives and Action*. ILO (ed.) 2017, pp. 5–6.

as well as provide workers and other persons concerned with information and training (Art. 9 lit. d)). Psychosocial risks shall be given special consideration in the management of occupational safety and health (Art. 9 lit. b)).

1.3 Sanctions and enforcement

Section V is dedicated to enforcement and remedies. Member States must ensure sanctions and monitoring as well as provide effective enforcement and remedies for the persons concerned. The concrete obligations of the Member States are described mainly in Art. 10.

On the one hand, there are requirements for monitoring and supervision by public authorities and other external bodies (Art. 4 para. 2 lit. d), f), h); Art. 10 lit. a), h)[9]). According to Art. 10 lit. h), the member states will have to "ensure that labour inspectorates and other relevant authorities, as appropriate, are empowered to deal with violence and harassment in the world of work, including by issuing orders [...]".

On the other hand, legal requirements are formulated in order to give persons likely to be affected by violence or harassment, to access to remedies (Art. 4 para. 2 lit. d), e), f); Art. 10 lit. b), d), e), g)). Complainants, victims, witnesses and whistle-blowers must be protected from victimisation or retaliation (Art. 10 lit. b) iv) of the Convention); complainants and victims must have access to legal, social, medical and administrative support measures (Art. 10 lit. b) v) and e)). No. 17 of the Recommendation mentions 24-hour hotlines or specialised police units as examples. The privacy of the persons concerned must be protected through confidentiality (Art. 10 lit. c)).

No. 14 of the Recommendation mentions reinstatement and compensation for damages as possible remedial measures; No. 15 proposes compensation for illness. No. 16 contains minimum standards for complaint and dispute resolution mechanisms in cases of sexualised violence and harassment.

[9] Cf. Violence and Harassment Recommendation 206, Para. 21, on the necessary mandates of national bodies responsible for labour inspection, occupational safety and health, and equality and non-discrimination.

2. Current German law against violence and harassment in the world of work

The Recommendation indicates, under No. 2, that implementation should take place in particular in "labour and employment, occupational safety and health, equality and non-discrimination law, and in criminal law, where appropriate".

In fact, in German law, issues of violence and harassment, also with regard to the world of work, are regulated in a whole series of norms. The constitution imposes duties on the state to protect, in particular, the general right of personality (Art. 2 para. 1 in conjunction with Art. 1 para. 1 of the Constitution (Basic Law, GG))[10] and physical integrity (Art. 2 para. 2 s 1 of the Basic Law)[11]. Art 3 para. 2 and Art. 3 para. 3 of the Constitution protect against direct and indirect discrimination on grounds of gender, and oblige the state to provide protection in this respect as well[12].

General prohibitions of violence and harassment are found in criminal law as well as in general contract law and tort law. However, all of these offences presuppose fault. These norms fall short of the systemic approach of the Convention, which already applies when an injury is only the possible consequence of conduct. The existing norms are also not specific enough for the prevention of violence and harassment in the world of work.

More interesting for an implementation of Convention 190 in this respect are labour law regulations, especially the rules against harassment, anti-discrimination law and the law on health and safety at work. The existing European social partner framework agreements are also of interest. The Framework Agreement on Work-Related Stress of October 2004 already recognised that "harassment and violence at the workplace are potential work-related stressors"; however, it explicitly excluded "violence, harassment and post-traumatic stress" from its scope. Therefore, the European Framework Agreement on Harassment

[10] U. Di Fabio, in T. Maunz, G. Dürig (eds.): *Grundgesetz Kommentar*. 2020, Art. 2 Abs. 1, marg. 127., marg. 135.

[11] U. Di Fabio, in T. Maunz, G. Dürig (eds.): *Grundgesetz Kommentar*. 2020, Art. 2 Abs. 2, Nr. 1 marg. 51, marg. 81, 86.

[12] S. Baer, N. Markard, in H. v. Mangoldt, F. Klein, C. Starck (eds.): *Kommentar zum Grundgesetz*. 2018, Art. 3 GG, marg. 352 f., marg. 414 ff.

and Violence at Work that was concluded in 2007[13], pursues the goal to "increase the awareness and understanding of employers, workers and their representatives of workplace harassment and violence" and "provide […] at all levels with an action-oriented framework to identify, prevent and manage problems of harassment and violence at work" (No. 2 of the Framework Agreement). According to No. 5 of the agreement, the members of the European social partners[14] have committed to implementing the agreement in the EU Member States.

2.1 Prohibition of violence and harassment in the workplace

The introduction of a new statutory offence is therefore recommended in order to meet the Convention requirements. A new definition of harassment could be based on the general definition of harassment or on the definitions of discriminatory and sexual harassment in Sec 3 paras. 3 and 4 of the German General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz, AGG).

Although the Federal Labour Court (Bundesarbeitsgericht, BAG) still emphasises that harassment (German term: "mobbing") is not a fixed legal concept, it has found a definition that is now regularly applied. According to this definition, molesting means "systematic hostility, harassment or discrimination of employees against each other or by superiors"[15]. In harassment, therefore, it is not a single act that is legally relevant, but only "the combination of several individual acts in a comprehensive process". It does not matter whether the individual acts that form part of the process are illegal in themselves[16].

The BAG based its definition on the legislator's definition of the term "discriminatory harassment" in the AGG; here, the legislator "ultimately also circumscribed the term [...] insofar as [the harassment]

[13] European Commission: *Communication from the Commission to the Council and the European Parliament transmitting the European framework agreement on harassment and violence at work*. COM (2007) 686 fin.

[14] BUSINESSEUROPE, UEAPME, CEEP and ETUC (and the liaison committee EUROCADRES/CEC).

[15] Federal Labour Court (BAG), 16 May 2007 - 8 AZR 709/06; BAG, 15 Jan 1997 – 7 ABR 14/96.

[16] BAG, 16 May 2007 - 8 AZR 709/06; BAG, 25 Oct 2007 - 8 AZR 593/06; BAG, 24 Apr 2008 - 8 AZR 347/07.

has its causes in [a category of discrimination law]"[17]. Discriminatory harassment within the meaning of Sec. 3 para. 3 AGG (German term: diskriminierende "Belästigung") is therefore a special form of harassment ("mobbing"). The definition is derived from Art. 2 para. 3 of Directives 2000/43/EC and 2000/78/EC, or Art. 2 para. 1 c) of Directive 2006/54/EG. According to these norms, (discriminatory) harassment occurs "when unwanted conduct related to a ground referred to in [the Directive(s)] [has] the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment". Conduct is unwanted if the undesirability of the conduct is visible from an objective perspective; "discernible disapproval" by the person affected is not required[18]. For the acknowledgment that harassment has occurred, German law also does not require that a violation of the dignity of the person concerned was intended or caused. A violation of dignity is already considered to have been caused if it has actually occurred according to objective standards; intentional conduct is not required[19].

However, the offence can only be considered if a "hostile environment" has arisen[20]. Even if it is acknowledged that in individual cases a (particularly serious) one-off behaviour can influence and create an entire environment, in principle, one-off conduct is not acknowledged to lead to the creation of a hostile environment in German law; conduct of a certain duration and continuity is usually required.

Sec. 3 para. 4 AGG contains a special provision for sexual harassment. The norm specifies which conduct is to be regarded as discriminatory; it contains an exemplary list: "unwanted sexual acts and

[17] BAG, 25 Oct. 2007 - 8 AZR 593/06; BAG, 28 Oct 2010 − 8 AZR 546/09; BAG, 24 Apr 2008 - 8 AZR 347/07; BAG, 15 Sept 2016 – 8 AZR 351/15; A. Panzer-Heemeier, in I. Grobys, A. Panzer-Heemeier (eds.): *Stichwort-Kommentar Arbeitsrecht*. 2017, "Mobbing", marg. 4; P. Schrader, J. Schubert, in W. Däubler, M. Bertzbach (eds.): *Allgemeines Gleichbehandlungsgesetz*. 2008, AGG § 3, marg. 15, 91.

[18] M. Schlachter, in R. Müller-Glöge, U. Preis, I. Schmidt (eds.): *Erfurter Kommentar zum Arbeitsrecht*. 2021, AGG § 3, marg. 16; P. Schrader, J. Schubert, in W. Däubler, M. Bertzbach (eds.): *Allgemeines Gleichbehandlungsgesetz*. 2008, AGG § 3, marg. 85.

[19] M. Schlachter, in R. Müller-Glöge, U. Preis, I. Schmidt (eds.): *Erfurter Kommentar zum Arbeitsrecht*. 2021, AGG § 3, marg. 18.

[20] M. Schlachter, in R. Müller-Glöge, U. Preis, I. Schmidt (eds.): *Erfurter Kommentar zum Arbeitsrecht*. 2021, AGG § 3, marg. 19; J. Schubert, in W. Däubler, M. Bertzbach (eds.): *Allgemeines Gleichbehandlungsgesetz*. 2008, AGG § 3, marg. 84.

requests to do so, sexually specific physical touching, remarks with sexual content as well as unwanted showing and visible display of pornographic images")[21]. As with Sec. 3 para. 3 AGG, sexual harassment under Sec. 3 para. 4 AGG is "caused" by its mere objective occurrence. In contrast to Sec. 3 para. 3 AGG, even one-off incidents can constitute sexual harassment[22].

Sec. 3 para. 3 AGG covers any conduct and thus all "behaviours and practices" mentioned in Art. 1 para. 1 of ILO Convention 190. Just as the Convention, Sec. 3 para. 3 AGG chooses a victim-centred approach: the offence is considered to have taken place if harassment has objectively occurred. Whether or not this was intentional is irrelevant. However, the norm is currently not applied to one-off or first-time acts. Moreover, with regard to the Convention, it does not cover instances where a violation has not yet been caused or intended, but will probably be caused in the future.

The concept of violence has not yet been explicitly used in German civil and labour law norms; it is not formulated outside of criminal law.

2.2 Prevention

Anti-discrimination law also contains far-reaching and concrete organisational obligations for employers; Sec. 12 AGG obliges them to prevent discriminatory and sexual harassment. Above all, occupational health and safety law concretises the employer's preventive duties, in accordance with Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work. The German Occupational Health and Safety Act (ArbSchG) serves to "ensure and improve the safety and health

[21] M. Schlachter, in R. Müller-Glöge, U. Preis, I. Schmidt (eds.): *Erfurter Kommentar zum Arbeitsrecht*. 2021, AGG § 3, marg. 21; J. Schubert, in W. Däubler, M. Bertzbach (eds.): *Allgemeines Gleichbehandlungsgesetz*. 2008, AGG § 3, marg. 96. See also the definition in Art. 2 para. 1 d) Directive 2006/54/EC: sexual harassment: "where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment".

[22] M. Schlachter, in R. Müller-Glöge, U. Preis, I. Schmidt (eds.): *Erfurter Kommentar zum Arbeitsrecht*. 2021, AGG § 3, marg. 20; J. Schubert, in W. Däubler, M. Bertzbach (eds.): *Allgemeines Gleichbehandlungsgesetz*. 2008, AGG § 3, marg. 97.

of employees at work through occupational health and safety measures" (Sec. 1 para. 1 s 1 ArbSchG). Sec. 4 lit. 1 ArbSchG clarifies that this also covers psychological factors[23]. Since occupational safety and health law is preventive in nature, it provides employers with binding guidelines for the design of workplaces. It does not define prohibited behaviour, but names the legal interests to be protected.

In this context, the basic preventive obligation of Sec. 3 ArbSchG is concretised by a whole bundle of obligatory measures. All measures must be based on the principles laid down in Sec. 4 ArbSchG (e.g. hazard reduction, structural measures before individual measures, consideration of scientific findings, non-discrimination, protection of special needs). A central instrument is the risk assessment (Sec. 5 ArbSchG). Employers must "evaluate the risks to the safety and health of workers" (see Art. 6 Abs. 3 lit. a) of Directive 89/391/EEC) and determine on this basis which occupational safety and health measures are necessary.

Overall, these standards comply with the prevention requirements of the Convention; however, German law should make it explicitly clear that these norms are also about the prevention of violence and harassment at the workplace, as this has hardly been the focus in company practice so far.

2.3 Sanctions and enforcement

According to Sec. 17 para. 1 s 1 ArbSchG, the competent occupational health and safety authorities are responsible for monitoring compliance with the employer's occupational health and safety obligations. At the same time, they must advise workers in this regard (Sec. 17 para. 1 s 2 ArbSchG). Furthermore, Sec. 17 para. 2 ArbSchG guarantees "effective reporting […] mechanisms and procedures" (as regulated by Art. 10 lit. b) introductory sentence of ILO Convention 190): Workers can turn to the competent authority if they are of the opinion that the measures taken and means provided by the employer to protect health and safety are not sufficient. There is also a special provision for the protection of whistleblowers[24].

[23] Cf. Art. 3 lit. e) ILO Convention No. 155 (Occupational Safety and Health Convention), 1981.

[24] See also the "Whistleblower Directive" (Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law).

The German legal situation also provides for the full range of remedies required by ILO Convention 190, ranging from rights to refuse performance ("right to remove oneself from a work situation", as defined in Art. 10 lit. g) of the Convention: Sec. 9 para. 3 ArbSchG, Sec. 14 AGG, Sec. 275 para. 3 BGB), special termination rights (Sec. 626 BGB), damages and compensation (e.g. Sec. 15 AGG, Sec. 280 BGB), to warnings and dismissals against third party penetrators. However, German law does not regularly provide for company dispute resolution mechanisms. The conciliation hearing in labour court proceedings (Sec. 54 ArbGG) serves as an equivalent, but extra-company dispute resolution mechanism.

2.4 Employer's responsibility for colleagues and third parties

Anti-discrimination law also contains provisions regarding the employer's responsibility for the conduct of colleagues or third parties (especially customers). In the event of discriminatory harassment by colleagues (Sec. 12 para. 3 AGG) or third parties (Sec. 12 para. 4 AGG), employers are obliged to take "appropriate, necessary and reasonable measures in individual cases", for example "warning, relocation, transfer or dismissal"[25]. Occupational safety and health law and its preventive obligations also cover the dangers posed by third parties, insofar as these dangers exist in connection with the employment relationship.

3. Challenges

3.1 Scope of application of the Convention: "In the world of work"

Art. 3 defines the material scope of application as to when violence and harassment occur "in the course of, linked with or arising out of work", as, for example, in "employer-provided accommodation", or while "commuting to and from work".

[25] M. Schlachter, in R. Müller-Glöge, U. Preis, I. Schmidt (eds.): *Erfurter Kommentar zum Arbeitsrecht*. 2021, AGG § 12 marg. 3; R. Buschmann, in W. Däubler, M. Bertzbach (eds.): *Allgemeines Gleichbehandlungsgesetz*. 2008, AGG § 12 marg. 22.

The last aspect in particular raises questions about the state of affairs in current German law. For example, the scope of the preventive obligations of anti-discrimination law is disputed: according to one view, a close connection of the occurrence to the workplace is required[26]; according to another view, the employer's duty to protect does not relate solely to the workplace *per se* (since the wording of Sec. 12 para. 1 AGG avoids any reference to the establishment/company), but generally to the workers' professional sphere[27]; according to the third view, the duty to protect against discrimination exists independently of company causation[28]. Accordingly, the question of how far employers are obliged to protect workers outside the workplace in the strict sense is controversial[29]. Certain functional limits result from the fact that protective duties can only go as far as employers are legally and actually able to fulfil them[30]. In sum, for an effective implementation of ILO Convention 190, extensions of the existing duties will be necessary.

3.2 Sector-specific hazards

Art. 8 lit. b) and c) of ILO Convention 190 oblige ratifying states to identify the sectors, occupations or work situations in which workers are most exposed to violence and harassment in order to protect them effectively. According to No. 9 of Recommendation 190, special attention should be paid to "night work, work in isolation, health, hospitality, social services, emergency services, domestic work, transport, edu-

[26] G. Thüsing, in J. Säcker, R. Rixeker, H. Oetker, B. Limperg: *Münchner Kommentar zum Bürgerlichen Gesetzbuch*. 2020, AGG § 12, marg. 4.

[27] M. Schlachter, in R. Müller-Glöge, U. Preis, I. Schmidt (eds.): *Erfurter Kommentar zum Arbeitsrecht*. 2021, AGG § 12 marg. 1.

[28] R. Buschmann, in W. Däubler, M. Bertzbach (eds.): *Allgemeines Gleichbehandlungsgesetz*. 2008, AGG § 12 marg. 1, 10–11.

[29] See on the one hand (no obligation): S. Krieger, in J.-H. Bauer, S. Krieger, J. Günther (eds.): *Allgemeines Gleichbehandlungsgesetz und Ent"gelttransparenzgesetz*. 2018, AGG § 12, marg. 6; on the other hand: R. Buschmann, in W. Däubler, M. Bertzbach (eds.): *Allgemeines Gleichbehandlungsgesetz*. 2008, AGG § 12 marg. 10.

[30] Bundesregierung, *Entwurf eines Gesetzes zur Umsetzung europäischer Richtlinien zur Verwirklichung des Grundsatzes der Gleichbehandlung*, BT-Drs. 16/1780, available at https://dserver.bundestag.de/btd/16/017/1601780.pdf; cf. R. Buschmann, in W. Däubler, M. Bertzbach (eds.): *Allgemeines Gleichbehandlungsgesetz*. 2008, AGG § 12 marg. 11.

cation or entertainment". These examples are based on international studies that indicate that particular vulnerabilities can arise on the one hand from the concrete organisation of work (relevant here are above all stress, pressure and unrealistic production targets)[31], and on the other hand from the fact that workers can easily get into conflictual situations with third parties such as customers due to the nature of the work or the workplace. The umbrella organisation of the German Social Accident Insurance, for example, assumes that the risk of violence against workers is increased for workers in banks or public transport, as well as judicial and social authorities, especially when the work combines several risk factors, such as the handling of cash, the carrying out of control tasks, the dealing with difficult groups of people, the public accessibility of workplaces or the fact that work is carried out in customers' private rooms[32]. Workers in passenger transport (bus drivers, ticket inspectors) also confront specific hazards which exist for anyone on their way to work[33].

Instead of excluding, for example, high-risk workers such as domestic workers from occupational health and safety[34], stronger protection would be necessary. In the future, ILO Convention 190 could promote the development of sector-specific regulation[35]. In addition, there has been evidence for a long time that violence has gradually spread from companies working with high-value goods to state actors and other organisations that symbolically represent society[36].

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[31] J. Pillinger: *Violence and Harassment Against Women and Men in the World of Work. Trade Union Perspectives and Action*. ILO (ed.) 2017, pp. 48–49.

[32] Spitzenverband der Deutschen Gesetzlichen Unfallversicherung (DGUV) (ed.): *Lexikon der Gewalt*. 2009

[33] J. Pillinger: *Violence and Harassment Against Women and Men in the World of Work. Trade Union Perspectives and Action*. ILO (ed.) 2017, p. 51.

[34] Art. 3a) Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work excludes domestic workers from its scope, it contrast to German law. This European rule may however be invalid, due to discrimination based on sex (cf. ECJ 24 Febr 2022 – C-389/20 (CJ ./. Tesorería General de la Seguridad Social (TGSS)), ECLI:EU:C:2022:120).

[35] For examples from collective agreements see J. Pillinger: *Violence and Harassment Against Women and Men in the World of Work. Trade Union Perspectives and Action*. ILO (ed.) 2017, p. 63.

[36] J. Pillinger: *Violence and Harassment Against Women and Men in the World of Work. Trade Union Perspectives and Action*. ILO (ed.) 2017, p. 49; European Agency for Safety and Health at Work, *Factsheet 24 – Violence at work*, 2002.

3.3 Vulnerable groups

A recent international study emphasises the particular vulnerability of migrant workers and the relevance of poverty, low pay and precarious employment beyond the criteria mentioned above[37]. These vulnerabilities are not directly related to the type of work, but to social structures and discrimination. Art. 6 of the Convention addresses such issues; it requires that women workers, as well as all other groups of persons disproportionately affected by violence and harassment in the world of work due to particular vulnerability, be protected by a specific prohibition of discrimination. According to No. 13 of the Recommendation, the concept of vulnerability is to be interpreted in accordance with international labour standards and international instruments on human rights[38].

The extent to which, for example, remedies for victims of gender-based violence and harassment in the world of work (Art. 10 lit. e) of the Convention) are already "gender-responsive, safe and effective" will require concrete empirical studies, in order to be able to draw concrete conclusions for regulation[39]. For example, complaints mechanisms and support services must be designed in a "gender-responsive" manner (Art. 10 lit. e)).

3.4 Effects of domestic violence

Art. 10 lit. f) of the Convention calls for the effects of domestic violence in the world of work to be recognised and mitigated as far as possible. To this end, No. 18 of the Recommendation makes proposals such as leave for affected workers, or the inclusion of domestic violence in workplace risk assessments. The Istanbul Convention of the Council of Europe (Council of Europe Convention on Preventing and

[37] J. Pillinger: *Violence and Harassment Against Women and Men in the World of Work. Trade Union Perspectives and Action*. ILO (ed.) 2017, p. 42; F. Ippolito, S.I. Sánchez (eds.): *Protecting Vulnerable Groups, The European Human Rights Framework*. 2017.

[38] Cf. D. Bedford, J. Herring (eds.): *Embracing Vulnerability. The Challenges and Implications for Law*. 2020.

[39] S. Berghahn, V. Egenberger, M. Klapp, A. Klose, D. Liebscher, L. Supik, A. Tischbirek: *Evaluation des Allgemeinen Gleichbehandlungsgesetzes*. Antidiskriminierungsstelle des Bundes (ADS) (ed.), Berlin 2016, p. 8.

Combating Violence against Women and Domestic Violence) suggests similar obligations[40].

These regulations are based on the realisation that, on the one hand, threatening situations by household members and partners often occur in the workplace; violent relationship patterns can have a destructive effect on the working lives. On the other hand, the psychological and health consequences of domestic violence can lead to impaired performance and sick leave. In view of the fact that the workplace can provide a protective space for those affected by domestic violence, the importance of raising awareness to these questions can hardly be overestimated[41]. This becomes particularly urgent with the pandemic-related huge increase in home office in 2020 and 2021, which is expected to anchor home office more firmly in working life in the long run. In this context, the links between domestic violence and occupational health and safety should be obvious.

German law does not yet provide for specific regulations in this respect. But there are already a number of other countries that provide for paid or unpaid leave from work in cases of domestic violence (between 5 days and 17 weeks in Canadian countries, 10 days in New Zealand and the Philippines, up to 30 days in the province of Córdoba/Argentina). A number of global companies have already adopted company policies that provide for leaves of absence, flexible working hours and other measures for these cases. The pioneers in this respect were the Australian trade unions, which for the first time developed appropriate clauses in close cooperation with organisations of the women's movement[42].

[40] See also the definition of "domestic violence" in Art. 3 b) of the Istanbul Convention**:** "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim".

[41] J. Pillinger: *Violence and Harassment Against Women and Men in the World of Work. Trade Union Perspectives and Action*. ILO (ed.) 2017, p. 55; J. Pillinger: *Safe at home, safe at work, Trade Union strategies to prevent, manage an elimante work-place harassment and violence against women*. European Trade Union Confederation (ETUC) (ed.) 2017, p. 54; BT-Drs. 18/12840, S. 222.

[42] J. Pillinger: *Violence and Harassment Against Women and Men in the World of Work. Trade Union Perspectives and Action*. ILO (ed.) 2017, p. 56; J. Pillinger: *Safe at home, safe at work, Trade Union strategies to prevent, manage an elimante work-place harassment and violence against women*. European Trade Union Confederation (ETUC) (ed.) 2017, p. 62.

4. Conclusion

Despite all the rights and obligations that are already regulated in German law with regard to violence and harassment in the workplace, it is still a serious problem that negatively affects the everyday working lives of many workers. Acts of violence and harassment are often a form of exercising power that arises from the structural power relations of the social order; they serve, among other things, as instruments of power against women and marginalised groups[43]. Because of the serious consequences for the health and professional development of those affected, violence and harassment in the world of work must be taken seriously.

Occupational health and safety law is an excellent regulatory system to regulate employers' preventive obligations in accordance with Art. 9 of the Convention[44]. In addition, however, an overall concept is needed to respect, promote and implement "the right of everyone to a world of work free from violence and harassment" (cf. Art. 4 para. 1 of the Convention).

The Convention not only calls on governments, politics and administration to create appropriate regulations and framework conditions. Employers' associations and trade unions can create structures and collective agreements that are sensitively tailored to sector-specific particularities – especially in questions of appropriate grievance mechanisms or the protection of vulnerable groups and the consideration of domestic violence. This feature of ILO Convention 190 on Violence and Harassment in the World of Work is perhaps its most interesting and important one: the law should provide specific regulation and protection for vulnerable groups as well as take into account the links between paid work and domestic violence.

[43] Antidiskriminierungsstelle des Bundes (ADS) (ed.): *Gleiche Rechte – gegen Diskriminierung aufgrund des Geschlechts, Bericht der unabhängigen Expert innenkommission der Antidiskriminierungsstelle des Bundes*. 2015, p. 7.

[44] J. Pillinger: *Violence and Harassment Against Women and Men in the World of Work. Trade Union Perspectives and Action*. ILO (ed.) 2017, p. 33; J. Pillinger: *Safe at home, safe at work, Trade Union strategies to prevent, manage an elimante work-place harassment and violence against women*. European Trade Union Confederation (ETUC) (ed.) 2017, p. 24.

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Konwencja MOP nr 190 dotycząca eliminacji przemocy i molestowania w świecie pracy oraz Zalecenie nr 206

Streszczenie

Przemoc i molestowanie są obecne w świecie pracy w najróżniejszych formach. Konwencja MOP dotycząca przemocy i molestowania z 2019 r. powinna mieć zatem duże znaczenie dla praktyki prawa pracy. Została ona przyjęta w dniu 21 czerwca 2019 r. wraz z niewiążącym Zaleceniem do wykonania (nr 206), z okazji setnej rocznicy powstania MOP. Ponieważ Konwencja wchodzi częściowo w zakres kompetencji Unii Europejskiej, przy czym UE nie może sama ratyfikować Konwencji, Komisja Europejska zaproponowała zaproszenie państw członkowskich do ratyfikacji Konwencji do końca 2022 r. Obecnie ratyfikację planuje niemiecki rząd federalny.

W przedstawionym artykule dokonuję przeglądu wymogów Konwencji oraz na przykładzie prawa niemieckiego omawiam możliwości ich wdrożenia w systemie prawnym ukształtowanym przez prawo unijne.

Słowa kluczowe: prawo pracy, przemoc, molestowanie, przemoc domowa, bezpieczeństwo i higiena pracy, bezbronność, Międzynarodowa Organizacja Pracy