

Italy – legislation on sexual violence and sexual harassment

1. Definitions

a. Sexual Violence (*Violenza Sessuale*)

Italian legislation places sexual violence among the crimes against personal freedom. Law 66 of 1996 introduced a new notion of sexual violence in **article 609 bis of the Penal Code (PC)**.

This article reads:

*Anyone who **forces** someone to perform or undergo **sexual acts with violence or threats or through the abuse of authority** is punished with imprisonment from **five to ten years**.*

*The same punishment applies to whomever **induces** someone to perform or undergo sexual acts **abusing his or her physical or psychological inferiority at the time of the act**; or misleading him or her **by assuming a fake role or identity**.*

In cases of minor gravity, the sentence can be decreased by no more than two thirds.

The major, positive innovation of this text concerns the wide **definition given to sexual acts**.

In order to define what sexual acts are one must refer to an objective and a subjective criterion. According to the **objective criterion**, a sexual act concerns exclusively the parts of the body that medical science defines as "erogenous zones", i.e. those areas capable of stimulating the sexual instinct (genital organs, thighs, lips, etc.).

According to the **subjective criterion and jurisprudence of the Court of Cassation**, however, sexual violence is committed even when the part of the body subject to attention cannot be defined erogenous, but the behavior of the subject is unequivocally aimed at achieving sexual pleasure. According to this theory, therefore, even a kiss on the cheek, even without direct physical contact with the victim, if given with the clear purpose of enjoying a particular voluptuousness ends up being covered under the crime of sexual violence.

This extends the reach of the crime of sexual violence even to acts that would otherwise be classified as private violence or sexual harassment. As a consequence, what in other jurisdiction would be prosecuted as sexual harassment could, in principle, be defined as sexual violence under Italian law.

b. Sexual Harassment (*Molestia sessuale*)

Sexual Harassment is not a crime specifically defined in the Criminal Code. Only Art. 26 of the Code of equal opportunities between men and women - Legislative Decree No. 198/2006) defines **sexual harassment** as:

Any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, with the purpose or effect of violating a person's dignity, or by creating an intimidating, hostile, degrading, humiliating or offensive environment. Sexual harassment is a form of discrimination.

This definition is the same found in art. 2.1.d of the European Union's Directive 2006/54/EC on the equal treatment of men and women in matters of employment and occupation. However, sexual harassment is generally conceived as a continuous and insistent courtship that is unwelcome to the recipient.

The sanction is the same as for general harassment (art. 660 PC): arrest up to six months or payment of a fine for a maximum amount of 516 euros.

2. Prosecution

The Italian (predominantly) inquisitorial system, is based upon the principle of mandatory prosecution. The public prosecutor has the duty to initiate criminal proceedings if (s)he or the judiciary police become aware of any crime (*obbligatorietà dell'azione penale*). **The crimes of sexual violence and stalking, however, can only be investigated if the victim files a formal complaint (*delitti punibili a querela della persona offesa*).** This procedure usually applies to the least serious offences. In the case of sexual/gender-related violence, it was provided to respect the will of the victims and preserve them from further psychological. **The complaint must be filed within six months from the alleged violence.** Once filed, **the victim cannot take back the complaint.**

The crime of sexual harassment, instead, can be prosecuted *ex officio*.

Law 205/2017 established that **any dismissal dictated by any form of discrimination (e.g. sexual harassment), is null and void.** This is also the case for retaliatory dismissals, demotions, transfers, etc. Thus, the company will have to reintegrate the victim in his or her place and pay her unpaid wages. The article also establishes that every employer has the obligation to protect the physical integrity and the moral personality of the worker, i.e. the duty to refrain from behaviors that harm psycho-physical integrity, such as sexual harassment. The employer can be responsible even if such harassment is committed by other subjects such as the hierarchical superiors of the employee. In this case, however, his liability is only civil and limited to compensation for damages.

3. Statute of limitations

5 to 14 years for sexual violence, depending on whether aggravating circumstances (crime committed against a minor, disabled, person in custody, by public officials, etc.) apply.

4. Legal Aid

Victims of sexual violence are entitled to legal aid in spite of the amount of their revenue.

5. Data

The Citizen Security Survey by the Italian National Institute of Statistics (ISTAT) focuses on harassment and sexual blackmail in the workplace.

Based on the survey conducted in **2016**, ISTAT estimated that there are **one million 403 thousand women who have suffered, during their working life, sexual harassment or blackmail in the workplace. They represent around 9 percent (8.9%) of current or past workers, including women seeking jobs.**

In particular, sexual blackmail to get a job or to maintain it or to achieve career progression have affected, over the course of their lives, one million and 100 thousand women (one million 173 thousand or 7.5% of women with the characteristics illustrated above).

Only one in five women, among those who have suffered a blackmail, told their experience, talking with their colleagues especially (8.1%), much less with the employer, managers or trade unions. **Almost none reported the fact to the police force (0.7%)**