



POLICY AGAINST SEXUALIZED DISCRIMINATION, HARASSMENT AND VIOLENCE

FOR THE MAX PLANCK SOCIETY

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The Max Planck Society embraces the ideal of a culture free of discrimination and in which the variety and diversity of its employees are seen as a resource and all are shown the same respect and recognition. No differences of any kind, whether in ethnic origin, family or background, gender, sexual identity or orientation, religion, ideology, disability or age should be permitted to lead to personal or professional disadvantages or affect any individual's chances of acceptance, promotion or qualification.

As a successful research organization with many thousands of employees, the Max Planck Society takes the protection of its employees against all forms of discrimination very seriously. It sees its obligation to prevent discrimination and to provide information and help, and is uncompromising in opposing any behaviour which violates the dignity of its staff.

All those working in the Max Planck Society and its associated organs are expected to cooperate in maintaining an environment for work, research and vocational training which is characterized by mutual respect and tolerance, and in which there is no room for prejudicial treatment or discrimination.

This Policy sets out how, on the basis of these principles, the Max Planck Society deals with sexualized discrimination, harassment and violence, by providing protection against:

- sexualized discrimination in the form of personal, gender-based degradation,
- sexualized harassment in the form of verbal, pictorial, written and/or physical assault with sexual reference,
- sexualized violence in the form of coercion and rape.

1. Scope and objectives

This Policy applies to all employees, scholarship holders, trainees and guests of the Max Planck Society. It also applies to persons who are charged with tasks related to the work of the MPG but are not directly employed by it, and to third parties who are bound by contract with the Max Planck Society. The Max Planck Society also applies the Policy to persons not covered by the Works Constitution Act, such as the Management Board, the Scientific Members and senior executives.

The aim of the Policy is

- to counteract all forms of sexualized harassment, discrimination or violence by providing employees and third parties with appropriate procedures,
- to heighten awareness of and watchfulness regarding all forms of sexualized harassment, discrimination and violence and to counter the taboos associated with this subject,
- to contribute towards the prevention of sexualized harassment, gender discrimination and sexualized violence,
- to offer help to employees of the Max Planck Society and all who are associated with it, e.g. through trainee contracts or scholarships, if they are victims of it, and by providing links to appropriate resources for advice in the event of concrete suspicions).

2. Definitions

a) Sexualized actions

An action is considered to be sexualized if it relates directly, even if only subtly, to a person's sexual nature, or if sexuality is used to demonstrate power and superiority over other people. Whether this is the case or not is not determined by the perpetrator's motivation but by an outwardly discernible reference to sexuality. The motivation for sexualized behaviour does not need to have anything to do with sexual lust but can equally be rage, sadism, hatred, superstition, competition, power-mongering, etc.

b) Sexualized discrimination

Discrimination is the infringement of dignity, rights and freedoms of other persons. It can be direct or indirect.

Direct sexualized discrimination applies if for reasons of gender, their sexual identity or orientation, a person experiences treatment less favourable than another person in a comparable situation experiences, has experienced or would experience.

Indirect sexualized discrimination applies if seemingly neutral regulations, criteria or procedures could place certain persons at a special disadvantage vis-à-vis other persons for the reasons mentioned above.

No indirect discrimination applies if the relevant regulations, criteria or procedures are objectively justified by a legal objective and the means for achieving this objective are appropriate and necessary. This would apply, for example, to instruments which serve to increase the proportion of a gender which is under-represented in a particular area.

c) Sexualized harassment and violence

All types of conduct and actions which are humiliating in a sexual respect and result in the person affected being threatened, debased and/or harassed, are deemed to be sexualized harassment or sexualized violence. In principle, such sexualized or sexual types of conduct or actions are also covered by the terms sexualized harassment or sexualized discrimination if they are perceived by the person affected as degrading, hurtful or unwanted. They can be manifested in verbal or non-verbal form or through physical assault, as in:

- remarks of a sexual nature, sexually degrading use of language, sexually debasing and depersonalizing remarks about people and/or their bodies, or degrading comments about their sex lives and or their bodies.
- unwelcome display and visible exhibition of pornographic materials, the verbal, pictorial or electronic presentation of obscene, sexually degrading materials, the copying, application and use of obscene, sexually degrading computer programs and internet sites.
- unwelcome physical contact, encouragement of sexualized or sexual behaviour, stalking and coercion with a direct or indirect sexual background, physical assault and rape.

Sexualized violence is seen as particularly serious if it is associated with insinuations regarding a possible link between the fulfilment of sexual demands and an advantage in the person's working life, research or vocational training.

3. Legal classification

a) The Penal Code (Strafgesetzbuch) uses the term nonconsensuality in legislation on sex offences — the principle embodied in “no means no”. This means that an offence can lie not only in coercing sexual acts through violence or the threat of violence. It is a criminal offence even to ignore the “discernible will” of the victim. The “discernible will” must be expressed either verbally or, for example, by resistance.

Cases in which the culprit makes use of an element of surprise are also covered. Such breaches of sexual self-determination are punishable by law. This can result in a prison sentence of between six months and five years.

Sexualized harassment is also punishable. Any person who touches another person in a sexually motivated manner and thereby harasses them is committing a punishable offence.

b) The General Act on Equal Treatment (AGG - Allgemeines Gleichbehandlungsgesetz) protects, among other things, against discrimination on grounds of gender and sexual identity. It applies not only to all employees and trainees, but also to job applicants and former employees. The present Policy fulfils in part the obligation (incumbent on the employer under the General Act on Equal Treatment) to protect and inform employees.

The General Act on Equal Treatment explicitly forbids sexualized harassment as a form of gender-based discrimination. Under the General Act on Equal Treatment, this is a sexually motivated behaviour which violates the dignity of the affected person.

The Act explicitly defines unwanted sexual acts, the request for unwanted sexual acts, sexually motivated physical contact, remarks of a sexual nature and the unwelcome display and visible presentation of pornographic materials as sexualized harassment.

c) The Management of the Max Planck Society, together with the General Works Council, recommends the conclusion of a Works Agreement on social conduct in its facilities. The Template Works Agreement drafted for this purpose in 2012 reinforces the Max Planck ideal of fairness among colleagues and, in this context, explicitly forbids all forms of sexualized harassment. To be effective, a corresponding Works Agreement must be concluded between the relevant parties at the Institutes and facilities.

4. Obligations and behaviour

Sexualized discrimination, harassment and violence are forbidden in the Max Planck Society.

By taking the required steps (e.g. providing information, training, and sanctions), the Max Planck Society protects against sexualized discrimination, harassment and violence within its sphere of influence.

Employees of the Max Planck Society, scholarship holders, trainees, job applicants and guests must not be discriminated against or placed at disadvantage on grounds of their gender, sexual identity or orientation. They are required to refrain from all forms of sexualized discrimination, harassment or violence towards employees or other third parties.

The Max Planck Society pursues breaches of this Policy and punishes them. It has established a procedure for this purpose which ensures that

- persons who make a justified complaint do not incur any disadvantage as a result
- any steps that may be taken are agreed upon as far as possible with the person who made the complaint, and their anonymity is guaranteed as far possible unless disclosure is necessary for legal or other overriding reasons
- the presumption of innocence on the part of any persons accused is respected.

5. Procedure for handling sexualized discrimination, sexual harassment and violence

a) Resources for support of victims

Several resources are available within the Max Planck Society:

- The direct supervisor or supervisors and other persons with leadership and supervision responsibilities can be consulted in the context of the employer's duty of care.
- The local Gender Equality Officers have an advisory and support function, and can be consulted by individual employees on questions including protection against sexualized discrimination, harassment and violence at the workplace.
- The Central Gender Equality Officer is available to advise all employees of the Max Planck Society.
- The Works Council or the General Works Council and representatives of the severely disabled are authorized to receive complaints of sexualized discrimination, harassment and violence.
- Both the complainant and the accused can involve a person of their choosing in the discussions. To protect all parties, this person is also sworn to confidentiality.
- Those involved are of course also free to contact external bodies.

b) Training

The Max Planck Society offers training in receiving complaints in this area and in conducting the relevant discussions.

c) Complaints

Complaints can be made in any appropriate form: in writing, electronically or verbally.

Depending on the seriousness of complaint, it is imperative that the deadlines for any consequences under labour legislation are observed after the incident has come to light. Here, the Unit for Labour Law and Collective Wage Agreement Law in the Personnel and Personnel Law Department at Administrative Headquarters is available to provide advice in confidence.

Contacts between those seeking advice and those involved in the event concerned should be minimized as far as possible until the circumstances and any consequences have been clarified.

All persons with leadership and supervisory responsibilities are obliged to follow up any hints of sexualized discrimination, harassment and violence and, if concrete suspicions exist, to take suitable measures towards clarification, pursuit and prevention.

After the complaint has been received, the person or body consulted arranges a confidential initial meeting with the person complaining, to explain his or her rights and the legal and procedural options.

The person complaining then decides what steps are to be taken. However, he or she can neither demand unreasonable responses nor hinder further steps (such as those required under employment law) that the seriousness of the charges might necessitate.

As long as the charge has not been confirmed, care must be taken to ensure that the accused person does not suffer any disadvantages through the proceedings.

d) Continuation of the proceedings

Before the matter is taken any further, a written complaint must be prepared which contains a concrete description of the incident. This includes details of the date and place of the incident, the persons involved, witnesses, evidence (if available) and information on steps already taken and on persons already informed. The person who has received the document will immediately and confidentially send a copy of it to the Central Gender Equality Officer of the Max Planck Society. From then on, the local Gender Equality Officers concerned will be included in the complaints procedure unless the complainant explicitly requests otherwise.

Following the initial consultation, an interview should be conducted with the person accused. This can be conducted by the local or Central Gender Equality Officer, or by another person in supervisory function selected for this purpose, with or without the participation of the complainant. The person accused must be informed of the circumstances to be discussed at least one day before the interview.

The interview gives the accused person the chance to respond to the complaint. It will include a reminder that gender discrimination, sexual harassment and violence are forbidden and, where appropriate, recommendations on behaviour and an agreement on rules designed to prevent further incidents.

If the charge is not confirmed, care is taken to ensure that the person who has been unjustly accused does not suffer any disadvantages from the proceedings.

e) Consequences and action

If an interview does not appear to have clarified the incident and to prevent recurrences, the Personnel and Personnel Law Department at the MPG's Administrative Headquarters should be informed and the next steps defined in consultation with this Department.

A variety of steps can be taken by those responsible, namely the Institute Management. Subject to appropriateness and relevance, these may include:

- written warning,
- formal written warning,
- requirement to make use of coaching or other professional counselling opportunities,
- transfer to a different task or location
- exclusion from use of facilities of the Max Planck Society
- exclusion from the premises
- dismissal
- filing a criminal complaint