

Protection against Sexualized Discrimination, Harassment and Violence

Code of Conduct: Code of Conduct for the Max Planck Society

The Max Planck Society encourages the maxim of a non-discriminatory culture, in which the variety and diversity of employees are seen as an opportunity and in which all are met with equal respect and shown the same esteem. Neither ethnic origin, descent nor other categories of origin nor sex, gender nor sexual orientation, religion nor world-view, disability nor age may lead to personal or professional disadvantages and influence the opportunities of an individual to access to the organization or to promotion and qualification within the organization.

As a successful research organization and employer of many thousands of employees, the protection of its employees against all forms of discrimination is a concern of great importance to the Max Planck Society. It is therefore committed to providing prevention, information and assistance and consistently opposes any form of behaviour that violates the dignity of its employees.

All persons working in and in relation to the Max Planck Society are invited to participate in the design of a place of work, research and vocational training which is characterized by mutual respect and tolerance, and in which there is no room for disadvantage and discrimination.

On this foundation, this code of conduct defines the Max Planck Society's policy of handling sexualized discrimination, harassment and violence.

This includes protection against

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

1. Scope and objectives

This Code of Conduct is applicable to all employees as well as scholarship holders, trainees and guests of the Max Planck Society. In addition, it applies to persons who are integrated into the organization of work in the Max Planck Society and bound by instruction, which does not necessarily entail the existence of an employment relationship. Moreover, it applies to third parties in a contractual relationship with the Max Planck Society. The Max Planck Society extends application of the Code of Conduct also to persons who are not subject to the Works Constitution Act, such as the Management Board, the Scientific Members and senior executive staff.

The Code of Conduct aims to

- effectively counter all forms of sexual harassment, discrimination and violence by equipping employees and third parties with a procedural tool,
- raise awareness of and alertness to forms of sexual harassment, discrimination and violence and to break the taboo surrounding the subject,
- contribute to the prevention of sexual harassment, discrimination and violence,
- provide help to employees of the Max Planck Society and to anyone who comes into contact with the research organization, for example through vocational training contracts or scholarships, in cases of sexualized assault (including by naming contact points for the specific suspected case).

2. Definitions

a) Sexualized actions

An action is deemed sexualized when concerned with the sexual in the human being directly – even subtly – and when instrumentalizing sexuality to demonstrate power and superiority to other people. Whether this is the case or not is not determined by the offender's motivation but only by sexual relatedness that is recognizable from the outside. The motivation for sexualized forms of behaviour does not have to be sexual lust but can also be anger, sadism, hate, superstition, competition, power striving, etc.

b) Sexualized Discrimination

Discrimination is the reduction of the dignity, rights and liberties of human beings. Discrimination can take place in direct or indirect ways.

Direct sexualized discrimination occurs when a person experiences less favourable treatment on the grounds of sex, gender or sexual orientation than another person in a comparable situation experiences, has experienced or would experience.

Indirect sexualized discrimination occurs when apparently neutral rules, criteria or procedures may potentially place persons at a particular disadvantage compared to other persons on the grounds listed above.

Indirect discrimination does not occur when the rules, criteria or procedures in question are objectively justified by a legitimate objective and where the means of achieving that objective are appropriate and necessary. Among other things, this may apply to instruments that serve to increase the proportion of a gender underrepresented in a specific area.

c) Sexualized harassment and violence

All forms of behaviour and action are deemed sexual harassment and/or sexual violence that are sexually humiliating and that threaten, humiliate and/or harass the person concerned. In principle, such sexualized or sexual forms of behaviour and action also fall under the concept of sexual harassment or discrimination which the person concerned perceives as degrading, offensive or undesirable. These may manifest themselves in verbal and non-verbal form or through physical assaults:

- Remarks with a sexual content, sexually degrading language, sexually degrading and depersonalizing remarks about individuals and/or their bodies, degrading comments about intimacy and the body.
- undesirable showing and visible display of pornographic images, the verbal, pictorial or electronic presentation of obscene, sexually degrading representations, the copying, application and use of obscene, sexually degrading computer programs and websites.
- undesirable physical contact, prompts for sexual or sexualized behaviour, stalking and coercion with a direct or indirect sexual background, physical assault and rape.

Sexual violence is considered to be particularly severe if associated with hints towards a possible link between the fulfilment of sexual demands and an advantage for the work, research and vocational training of the person concerned.

3. Legal classification

a) The Penal Code (Strafgesetzbuch) enshrines the non-agreement solution in sexual criminal law - the principle that "no means no". This not only makes it a punishable offence to force sexual acts with violence or the threat of violence. It is already punishable if the perpetrator overrides the "recognizable will" of the victim. The "recognizable will" must be expressed either explicitly verbally or, for example, through defence.

Cases in which the offender exploits a moment of surprise are also concerned. Such violations of the sexual self-determination of an individual are punishable by law. The law provides for a prison sentence of between six months and five years.

Sexualized harassment is also punishable. Accordingly, anyone who physically touches another person in a sexually determined manner and thus harasses them is liable to prosecution.

b) The General Act on Equal Treatment (Allgemeine Gleichbehandlungsgesetz – AGG) protects against discrimination based on gender and sexual identity, among other things. It is aimed at all employees as well as trainees and already applies to applicants and former employees. The employer's obligation under the General Act on Equal Treatment to protect and inform employees is fulfilled by these rules of conduct, among other things.

The General Act on Equal Treatment expressly prohibits sexualized harassment as a form of gender-based discrimination. According to the Act, sexual harassment is sexually determined behaviour that violates the dignity of the person concerned.

The Act explicitly defines undesirable sexual acts, the request for unwanted sexual acts, sexually determined physical contact, remarks of sexual content and the unwanted showing and visible display of pornographic representations as sexual 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 for the organization's facilities. The Template Works Agreement drafted in 2012 underlines the Max Planck model of fairness among colleagues and explicitly prohibits any kind of sexual harassment in this context. In order to take effect, a corresponding Works Agreement must be concluded at the Institutes and facilities between the stakeholders.

4. Duties and behaviour

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

The Max Planck Society provides protection against sexualized discrimination, harassment and violence by taking the necessary measures (e.g. information, training, sanctions) within its sphere of influence.

Employees of the Max Planck Society as well as scholarship holders, trainees, applicants and guests must not be discriminated against on the grounds of sex, gender or sexual orientation. They are required to refrain from any form of sexual discrimination, harassment and violence against employees and other third parties.

The Max Planck Society investigates and punishes violations of this Code of Conduct. To this end, it adopts a procedure to ensure that

- complaining persons shall not suffer any disadvantage from the justified report of misconduct.
- all steps potentially taken are coordinated with the complaining person as far as possible and their anonymity is ensured to the greatest extent possible; provided that disclosure is not mandatory due to legal provisions or substantially overriding interests.
- the presumption of innocence in favour of accused person is respected.

5. Procedure for handling sexualized discrimination, harassment and violence

a) Points of contact for persons affected

Several points of contact for persons affected exist within the Max Planck Society:

- The direct supervisor or supervisors and other persons with leadership and supervision responsibilities may be approached within the framework of their employer's duty of care.
- The local Gender Equality Officers have advisory and support functions and are contact persons for individual employees, including with regard to the protection against sexualized discrimination, harassment and violence in the workplace.

- The Central Gender Equality Officer is another contact person for all employees of the Max Planck Society.
- The Works Council, the General Works Council and the Representation of Individuals with Severe Disabilities are authorized to accept complaints about sexual discrimination, harassment and violence.

Both the complaining person and the accused person can include a confidant in the interviews if they wish. For the protection of all parties involved, this person also has the obligation to maintain confidentiality.

Of course, affected persons also have the right to contact external facilities.

b) Training

The Max Planck Society offers training for receiving complaints and conducting interviews in this context.

c) Complaints

Complaints may be made informally, including verbally or electronically.

Depending on the severity of the accusations, the deadlines applicable for potential consequences under labour law must be observed once the incident has been taken note of. The Department for Labour and Collective Wage Agreement Law of the Department "Personnel and Personnel Law" at Administrative Headquarters provides confidential advice in these matters.

Until the clarification of the facts of the matter and of possible consequences to be taken, the points of contact between the person seeking advice and persons involved in the case reported should be minimized as far as possible.

All persons with leadership and supervision responsibilities are obliged to investigate indications of sexualized discrimination, harassment and violence and to take appropriate measures for clarification, prosecution and prevention in the event of suspicion.

Upon receipt of a complaint, an initial confidential consultation shall be held by the point of contact chosen in consultation with the person complaining, to inform them about their rights, possible courses of actions and ways to proceed.

As a rule, the person complaining decides after the initial consultation whether and what steps shall be taken. However, they may not demand undue consequences nor prevent further steps, such as those that may be required under labour law due to the severity of the incident.

As long as the accusation has not been confirmed, care will be taken to ensure that the accused person does not suffer any disadvantages as a result of the matter.

d) Continuation of procedures

Before any further proceedings in the matter, a written complaint must be made containing a specific description of the incident. This includes information on the place and date of the incident, persons involved, witnesses, evidence (if any), information on measures already taken and on persons who have already been informed. The Central Gender Equality Officer of the Max Planck Society shall immediately receive a copy in strict confidentiality of the written complaint from the recipient of the complaint. From this point onwards, the local Gender Equality Officers responsible shall also be involved in the complaint procedure, unless the person complaining expressly opposes this.

Following the initial consultation, the accused person shall be interviewed. This can be done by the local or the Central Gender Equality Officer or by a superior with or without the involvement of the complainant. The accused person must be informed of the matter to be discussed at least one day before the interview.

The interview gives the accused person an opportunity to comment on the complaint and includes information about the prohibition of sexual discrimination, harassment and violence, as well as behavioural advice and the agreement of rules of conduct to prevent future misconduct.

If the allegation is not confirmed, care will be taken to ensure that the wrongly accused person does not suffer any disadvantages from the matter.

e) Consequences and measures

If an interview does not appear to be sufficient to remedy the incident and to ensure protection against further incidents in the future, the "Personnel and Personnel Law" Department at the Max Planck Society's Administrative Headquarters shall be informed and the further course of action shall be determined with that Department.

Various measures may be taken by the competent bodies, i.e. the Institute Managements. Depending on appropriateness and proportionality, these may be, for example:

- written reprimand,
- written formal warning,
- obligatory availment of coaching or other professional advice,
- transfer of the person(s),
- exclusion from the use of the facilities of the Max Planck Society,
- exclusion order from the buildings,
- termination of contract,
- criminal charges.