

European  
sources on sexual  
harassment:

Dir. 2002/73/CE

Dir. 2006/54/CE

Italian sources on  
sexual harassment:

D. Lgs. 145/2005

D. Lgs. 198/2006

## European definition of 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”

## Italian definition of Sexual harassment (in the plural):

“where forms of unwanted verbal, non-verbal or physical conducts of a sexual nature occur, with the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment”

## Differences between the two definitions:

1. The Italian definition is in the plural
2. In the Italian definition the words “in particular” do not appear

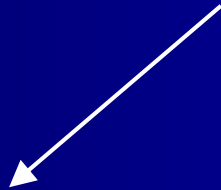
**For Italian doctrine and case law:**

**These differences do not have legal relevance**

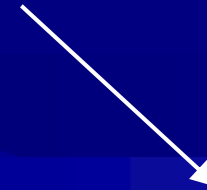
From this definition derives



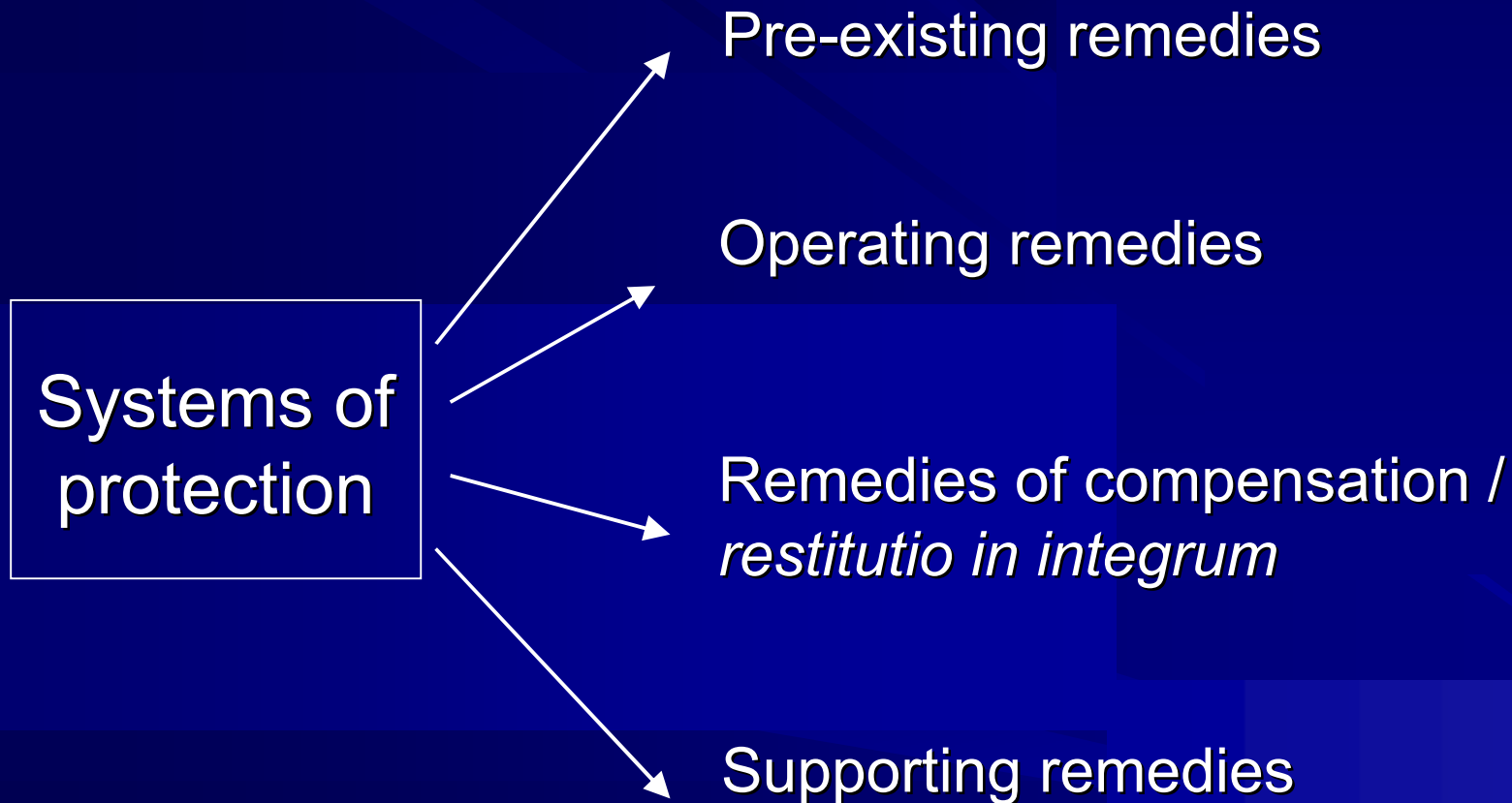
**Sexual harassment is considered as a form of  
discrimination**



The same systems of  
protection



The same  
burden of proof



If sexual harasser is a colleague ?

## Burden of proof in the EU

Principle from Dir. 97/80/CE:

*... in case of discrimination (now also sexual harassment), the respondent has to prove the inexistence of violation in case of victim provides presumptive evidence ...*

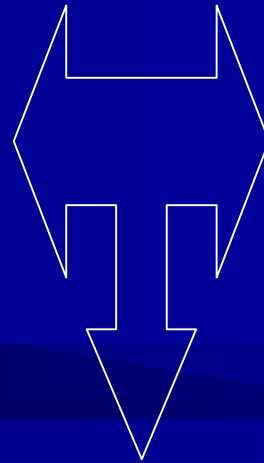
# Burden of proof in Italy

For discrimination / sexual harassment

L. n. 125/91

Presumptive elements:

1. Even statistics
2. Precise
3. Concordant



General principle

Civil Code of 1942  
(Art. 2729)

Presumptive elements:

1. Serious
2. Precise
3. Concordant

What is the prevalent application in case of discrimination / sexual harassment?

## The relationship between sexual harassment and sexual violence (rape?) in Italy

### Sexual harassment

“where forms of unwanted verbal, non-verbal or physical conducts of a sexual nature occur, with the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment”

### Sexual violence

Art. 609-bis of Criminal Code:

“Whomever, with violence or threat or abuse of authority, compels somebody to achieve or suffer sexual acts, is punished by confinement from 5 to 10 years”

What kind of relationship exists between these two rules?

(following)

The importance of linking sexual harassment to sexual violence

Equality bodies

Burden of proof

(following)

The  
thorniest  
issues

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graph LR; A[The thorniest issues] --> B[Double jurisdiction]; A --> C[Double remedy];
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Double jurisdiction

Double remedy

## The relationship between sexual harassment and the Italian article on “ill-treatment”

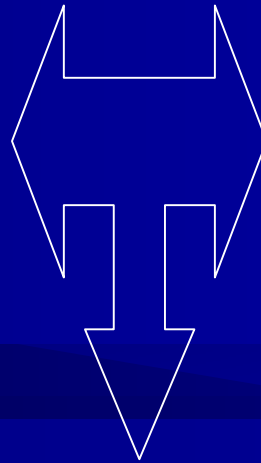
sexual harassment

“where forms of unwanted verbal, non-verbal or physical conducts of a sexual nature occur, with the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment”

ill-treatment

Art. 572 of Criminal Code:

“Whomever ill-treats a person that is under their authority or assigned to him/her for a specific job is punished by confinement from 1 to 5 years”



For doctrine and case law:  
what is the relationship between these two rules?

## Conclusions

Objectives in the  
immediate future

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graph LR; A([Objectives in the immediate future]) --> B[To make the burden of proof more effective]; A --> C[To connect civil and penal remedies];
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To make the  
burden of proof  
more effective

To connect civil and  
penal remedies