

Italian judge's ten-second grope rule does not affect disciplinary action

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Ruling that a 17-year-old student was not sexually assaulted because the complained of groping was under ten seconds in length, a judge's decision to dismiss charges against a 66-year-old janitor has been met with outrage in Italy.

The judge in Rome found that the groping was a clumsy attempt at a joke by school employee Antonia Avola and that the brevity of the act, which he concluded lasted "between five and 10 seconds", ruled out "libidinous intent" towards the girl.

According to court documents, the incident took place last April at a high school in Rome. When walking upstairs to class, the girl, known only as "Laura", felt Avola put

his hands inside her underwear and lift her up into the air. It was alleged that the janitor told her: "Love, you know I was joking."

At court, Avola admitted touching the girl but argued that he did so in jest. Italian prosecutors demanded Avola be handed a three-and-a-half-year prison sentence for sexual assault, but the court concluded that the act was so brief that it left "ample doubts" on whether it was voluntary and found the argument that it was a joke "convincing". Prosecutors are reportedly considering an appeal.

Speaking after the judgment, Laura said she felt betrayed, not only by the court but by her school. Speaking to Italian newspaper [Corriere Della Sera](#) she said: "I'm starting to think I was wrong to trust the institutions. This is not justice."

Rete degli Studenti Medi del Lazio, a student union, expressed frustration with the outcome: "Once again, the patriarchal system has won, with the tacit support of institutions and politics. This model does not represent us, we will always be on the other side of the fence, for a safe society based on respect."

The judge's decision has once again [raised questions](#) about how sexual harassment is viewed in a country that [failed to embrace](#) the #MeToo movement. Successive Ipsos MORI surveys from 2018 and 2019 suggested that a majority of Italians believed violence against women was "over talked" and that "women use their physical appearance in order to be successful".

Perhaps more worryingly, in [a 2019 report](#), Italy's national statistics institute, ISTAT, found that nearly one-in-four Italians felt women could provoke sexual assault by how they dressed, while two-in-five felt that women could avoid sexual intercourse if they really didn't want it.

Describing last week's decision as "a novelty in criminal law", LabLaw's [Michela Bani](#) is hopeful that the public outrage at the decision may help to drive positive change.

"There have been numerous protests and disagreements with the criminal court's decision, both from students and women's associations and from the general public," she says. "It is clear that people are tired of this kind of behaviour and tolerance of it, which represents a retrograde attitude that is no longer acceptable, even in jest."

Although a criminal court decision, does this ruling constitute a dangerous precedent for disciplining employees accused of sexual harassment or assault? Speaking to IEL, employment experts say it should not as the outcome of the criminal case is not relevant for disciplinary purposes.

Indeed, Supreme Court decision 428/2019 upheld a district judge decision that the dismissal of an employee was justified despite the lack of criminal conviction.

The court held that “for the purposes of the legitimacy of the disciplinary dismissal imposed for an act abstractly constituting a crime, the criminalistic assessment of the fact or its sanctionability in criminal law is not relevant, as an independent assessment must be made regarding the capacity of the fact to constitute the grounds for just cause or justified reason for the dismissal”.

So, faced with a similar situation, how should an employer in Italy react? According to Tesoro and Partners’ [Chiara Perrone](#), an organisation does not have to wait for the outcome of a criminal case before it responds to accusations of workplace sexual assault.

“An employer who has become aware of a fact that may have both criminal and disciplinary relevance may – indeed, in my opinion, must – exercise disciplinary power without waiting for the outcome of the criminal proceedings or without basing the decision on its outcome,” she explains.

Even if the employee is acquitted of sexual assault, such as in the Avola case, an employer may still bring disciplinary proceedings against the employee. “What matters is that the conduct engaged in by the employee is capable of damaging the fiduciary relationship, regardless of whether or not such conduct integrates a criminal offence,” Perrone says.

When undertaking disciplinary action, employers should assess the seriousness of the employee’s conduct and whether it negatively affects the bond of trust within the workplace.

In last week’s case, the judge’s definition of “*palpate breve*”, a brief groping, has sparked a flood of videos on social media, with Italians holding themselves for up to ten seconds to demonstrate just how long this period of time is for a victim.

Unfortunately, the ruling echoes another case from 2016, when a court in Sicily [decided](#) that a man accused of groping female colleagues was not guilty of sexual harassment because he was motivated by “an immature and inappropriate sense of humour”, rather than sexual desire.

The following year, the country’s justice minister ordered an investigation after a judge [acquitted a man](#) of sexual assault because the woman did not scream or cry out for help during the alleged attack. That same year the Ancona appeals court [cleared two men of rape](#) because, in the court’s opinion, the alleged victim was “too masculine” to be a target of their attraction.

This spate of controversial rulings raises concerns that harassment victims may refuse to come forward with complaints for fear that they will not be believed or will be retaliated against.

“From a strictly legal point of view, we should not forget the introduction of whistleblowing into our legal system with [Legislative Decree No. 24/2023](#), which transposes the European Whistleblowing Directive,” says Bani.

“It should be remembered that an employee who reports a crime or an illegal act that has come to their attention in the workplace cannot be discriminated against, sanctioned, or dismissed. The new decree has strengthened whistleblower protections and introduced specific sanctions.”