
TRANSPOSITION IN ROMANIA OF INTERNATIONAL PRINCIPLES REGARDING HARASSMENT

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Abstract: *The paper will start from the foundation of international norms regarding the forms in which harassment at work manifests itself, with an emphasis on relevant practical aspects, and then it will analyze how these principles have been applied in Romania over time. The partial intervention in practice of various institutions demonstrates that there are still procedures that can be improved.*

Keywords: *Harassment. International rules. Internal rules. Casuistry.*

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INTRODUCTION

The paper aims to use the descriptive method of analyzing social and legal documents that impact harassment. It starts from findings made in a study conducted worldwide, with reference to aspects found in the I.O.M. Convention on this issue. In the second part of the article, practical aspects encountered in Romania will be reflected upon, correlated with the specific legislation, which has recently undergone a series of changes.

MAIN TEXT

Internationally relevant regulations to address workplace harassment

The International Labour Organization [ILO] Convention No. 190 and Recommendation No. 206, both adopted in 2019, establish the need to strengthen the capacities of employers' and workers' organizations to design and implement effective measures, as well as to provide support services to their members.

Improving dispute resolution mechanisms and services to promptly and gender-sensitively handle cases of violence and harassment is also a stated goal. ILO Convention No. 190 of 2019, adopted in Geneva, deals with the elimination of violence and harassment in the world of work, being a crucial normative act for protecting workers from abuse, sexual harassment and violence.



The collaboration on the part of the authorities and, respectively, the workers, or their representatives - including here both the unions and persons informally designated to represent such interests, in order to prevent the occurrence of situations of violence and harassment in connection with the performance of a certain work activity, although it is still at the beginning of its journey, should not be minimized, post-factum intervention being each time much more costly and difficult to estimate in terms of effects. In particular, the international convention that constituted the premise of this work was also ratified by Romania (through Law no. 69/2024).

In this regard, we consider it relevant to present the content of an extensive study on the impact of harassment in various forms of expression on labor relations. (ILO, 2022).

The ILO-Lloyd's Register Foundation-Gallup¹ study can be an extremely relevant tool for measuring the phenomenon of violence and harassment in the workplace. The estimates from the questionnaire applied in the survey cover realities across the globe, with relevant countries being co-opted at the level of each region.

The various items found in the questionnaire were constructed in such a way as not to influence the results with particular situations, but which could have an impact from a quantitative point of view (for example, in the issue related to the openness of victims of harassment in communicating this fact, the application of the question to the population of China, which is under a communist regime dominated by radical censorship, was excluded, or in another hypothesis, in the United Arab Emirates, Saudi Arabia and Iraq, the question regarding sexual harassment was eliminated due to the sensitivities determined by the impact of religious worship in such a situation. The figures presented in this research were weighted according to the total employed population, consisting of people over the age of 15, for each country.

As such, it was established with regularity that the investigated population be reflected as follows: percentage of employed population and number of countries worldwide included in the analysis: 68.7% (120 countries); and at regional level: Africa: 62.3% (26 countries); America: 95.8% (20 countries); Arab States: 63.2% (5 countries); Asia and the Pacific: 57.8% (23 countries); Europe and Central Asia: 97.1% (46 countries); regarding the economic situation, the structure could be defined as follows: low- and lower-middle-income countries: 85.4% (44 countries); upper-middle-income countries: 35.6% (34 countries); high-income countries: 98.1% (42 countries).

Following the processing of the collected data, a series of extremely worrying conclusions can be drawn:

Workplace violence and harassment are widespread worldwide, with over one in five (22.8% or 743 million) employed people experiencing at least one form of workplace violence and harassment during their working lives. Among those who experienced workplace violence and harassment, approximately one-third (31.8%) reported experiencing more than one form, and 6.3% experienced all three forms in their working lives. The pattern of forms of harassment can be described in percentages as follows: 17.9% or 583 million people experienced psychological violence and harassment, 8.5% or 277 million people experienced physical harassment or violence, and 6.3% or 205 million people experienced sexual harassment. In this latter form of harassment, the gender criterion highlights the significant difference in terms of female victims (8.2%) compared to the number of cases reported for men (5%).

More than three out of five victims of violence and harassment at work stated that such situations had happened to them more than once, and for most of them, the last incident took place in the last five years. From this we can deduce the characteristic of the phenomenon in question, namely recurrence.

Certain demographic groups constitute a certain predisposition to register some forms of harassment or violence (young people, migrants and women). Within these disadvantaged and



vulnerable categories, young women register a risk twice as high compared to young men, and progressively, migrant women assume a risk twice as high as women originating from that region.

If discrimination seems to be a situation of inferiority in which a person finds himself, a position unjustifiably determined by a subjective criterion (sex, special need, ethnicity, race, religion) a notion with a wider degree of generality, harassment is in fact a form of aggression against the individual based on the same unjustified criteria. In other words, it can be said that discrimination is only the antechamber of harassment. Statistically, five out of ten people who have been discriminated against on the basis of gender have also faced harassment or violence, while when the discrimination was not based on this most common discriminatory criterion, mentioned above, the ratio was better than halved (two out of ten people).

Talking about violence and harassment remains a challenge for many victims, with only one in two people willing to share their experience with someone else. The belief that it would be a “waste of time” and “fear for their reputation” were the most common reasons that prevented people from talking about their experience, and where this happened, family or friends were the recipients, avoiding other formal or informal channels in this regard. The share of men who accept a certain openness in communicating such a problematic situation is clearly higher than that of women in the same conditions.

Standardizing the collection of such information is inevitable in order to be able to substantiate the intervention through legislation, policies and programs for prevention but also for the rehabilitation of cases that have arisen. The international organization in the field of labor relations is trying to provide the necessary tools for some measurements.

From the findings made in the survey, the idea emerges that the protection systems regarding occupational safety and health within each organization must be managed in such a way as to include harassment situations. At the same time, labor inspection activities that must intervene from outside the organizations, being the prerogative of the state, will have to discourage in turn the hypotheses in which harassment cases are occasioned.

Discrimination generates vulnerability and from here it is only one step to the emergence of harassment. The state, the community, organizations must ensure equal opportunities that prevent violence and harassment in the variants in which they can be expressed.

Awareness of the effect of harassment will generate greater openness in communicating the emergence of such hypotheses, both the victim and the environment in which violence or harassment occurs, which will benefit.

Both employers and unions are on the same side of the barricade in these situations, trying to provide superior conditions for labor relations. Providing real solutions to settle disputes related to forms of harassment at the workplace may appear as a consequence of the implementation of Convention no. 190/2019 and Recommendation no. 206 of the same year.

A recent paper processes a series of data collected within an informal group of women working in the medical field and presents a series of conclusions that are absolutely necessary in combating sexual harassment. Because awareness of these problems is not enough, we also include suggestions about how can help the victims. It can be risky for those who are targets of this behavior to address it themselves.

People in the environment had to set the tone for what's acceptable and what's not acceptable behavior. Direct confrontation is probably the most effective, though not always safe. For example, a colleague who witnesses harassment might say “Hey, remember the training we had about acceptable behavior at work? This isn't okay.”

Other solutions can be interrupting the situation, changing the subject, distracting the perpetrator, or attempting to defuse the situation, perhaps with humor. Also it is still helpful to seek



out the victim later and let them know that the behavior is not acceptable. It is absolutely necessary to reporting the incident yourself, or offer to help the person who was targeted report the incident to a supervisor, the human resources department, an ethics committee, or other authorities. (Borrero-Mejias et al., 2019).

Forms of harassment are also determined by terminological consensus.

Italy, in academic literature, the word mobbing is the one the most often used and media accounts have popularized the term. But "harassment" and "bullying" are also employed. and exist (prepotenze and molestie, which mean brutality or bullying and harassment).

On the contrary, in France uses the term *Harcèlement moral* (moral harassment). This is the same expression that is used in French academic papers and in the public debate with a rich plurality of significations and connotations.

Differences between clinical observations can be observed via two points: French victims are much more affected by PTSD (Posttraumatic Stress Disorder) symptoms and more by reduction of self-esteem. The combination of a more collective approach of harassment and the perception of violence at work more as a collective question rather than individual question seems to act as protection against this symptom in Italy. (Loriola, Dassistib & Grattaglianob, 2020).

Internal regulations at the Romanian level, designed to limit the development of the phenomenon of harassment at work.

The realities regarding harassment at work that have emerged in Romania must be viewed starting from the breakdown of existing situations up to the year 2020 when a series of preliminary regulations appeared for the accession to the text of Convention no. 190/2019 and Recommendation no. 206 of the same year adopted at the level of the International Labor Organization [I.O.M.] and respectively after that moment.

Chronologically, in Romania we have harassment defined in the Criminal Code, then in the Labor Code and last but not least in Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination.

The targets most affected, by intensity and duration of the effects, are those of mobbing actions. In terms of prevalence, mobbing targets are rare, the individual being the starting point of such behaviors. The victim of mobbing actions ends up propagating the negative effect on the organization as well, since there is not only a degradation on a personal level (damage to dignity, additional stress, poor health, etc.) but also in the ability to concentrate in solving professional tasks, disruption in the functioning of relationships at work. (Gheondea et al., 2010, p. 134)

As such, it is extremely important that public policies that attempt to combat these phenomena are based on well-defined concepts and clear attributions of the bodies that will have a defined role both in the prevention part and when intervening after the appearance of the form of harassment identified in practice. At the level of community law, there was an attempt to establish a generally valid rule in relation to the notion of mobbing, but this failed. The Europeanization process as viewed by Radaelli did not achieve its goal in the sense of transposing what was consolidated at community level, including at national or sub-national level. (Frunzaru, 2012, p. 130).

After all, the member states subsequently had attitudes that can be concentrated in two approaches: one in which they considered it necessary to add specific regulations to this topic and a second in which the pre-existing regulations on occupational health and safety were sufficient to prevent and regulate harassment situations. (Goudenhoft, Brihan & Horga, 2018, p. 227).

Therefore, the current reality, also influenced by the I.O.M. regulation from which we started, will necessarily determine a clarification of the institutional framework in this issue.

In the special normative act on combating discrimination, moral harassment that could occur at the workplace is defined, with the approval of the amendment determined by Law 167/2020, which establishes for such situations the possibility of applying an extremely costly misdemeanor fine (from 10,000 lei to 15,000 lei) to a person with employee status who commits an action qualified as moral harassment against another employee. At the same time, if the employer does not take measures to prevent and combat acts of discrimination and harassment, he also risks a fine of between 30,000 and 50,000 lei.

There is also the possibility of ordering a series of measures to reconsider the status of the harassed employee for whom the employment relationship had ended: reinstatement to the previously held position, retroactive payment of salary rights, coverage of moral damages determined by the occurrence of the harassment, coverage by the employer of any expenses generated by the psychological counseling that the person in question should enjoy, cancellation of any disciplinary sanctions previously applied unjustly to the employee in question. Moreover, if the employer establishes internal rules or measures by which employees are encouraged to carry out acts of discrimination and moral harassment, they risk a misdemeanor fine whose limits range between 50,000 lei and 200,000 lei, respectively. Discriminatory dismissal is also sanctioned with the same type of sanction ranging between 1,000 lei and 20,000 lei. (all these hypotheses described in art. 26 of the special law).

The administrative-jurisdictional body that deals with the investigation of these situations is the National Council for Combating Discrimination [C.N.C.D.]. Its notification can be made by the person who considers himself/herself to be injured, by a profile organization aimed at the protection of human rights or the situation in which the aforementioned authority proceeds to self-notice can also be identified. The activity of analyzing the intervention of a harassment situation at the workplace involves an adversarial debate, with the administration of evidence, including audio-video recordings and with respect for the principle of the right to defense.

At the same time, in parallel, the role of the courts can also be identified, which should order a series of measures to reconsider the status of the harassed employee for whom the employment relationship had ended: reinstatement to the previously held position, retroactive payment of salary rights, coverage of moral damages determined by the occurrence of the harassment, coverage by the employer of any expenses generated by the psychological counseling that the person in question should enjoy, cancellation of any disciplinary sanctions previously unfairly applied to the employee in question.

The courts are the only ones invested with requests regarding the coverage of compensation and the restoration of the situation prior to discrimination or the annulment of the situation created by discrimination, according to common law. The request is exempt from judicial stamp duty and is not conditional on the notification of the Council. Thus, there is greater certainty that we are dealing with a real access to justice for the citizen harmed by the harassment action and not only (including any situations of discrimination based on the criteria set out in the relevant normative acts). In most cases, civil cases involve the payment of court fees that are not at all negligible, so that some people abandon the idea of a possible dispute, starting precisely from the impossibility of covering the respective amounts and at the same time from the rigidity of the limits within which the state grants the necessary legal assistance to people with a low standard of living (exemption from court fees or staggered payment of them, the equivalent value of judicial expertise where applicable, the provision of qualified defense by a free lawyer, etc.).

The presumption of truthfulness of what is reported in the content of the complaint regarding discrimination or harassment is also maintained, which is generally valid in the framework of the investigations carried out by the National Council for Combating Discrimination, in the sense that

the burden of proof lies with the accused, who must demonstrate that the situation is contrary to the incriminating one, reported in the complaint or in the Council's self-referral act.

The legal act that represents the generally applicable rule to labor relations in Romania is represented by the Labor Code (Law no. 53/2003 with subsequent amendments).

According to art. 5 par. (5) in conjunction with par. (2) of this regulation of common law in the case of employment relations, harassment is defined as any type of behavior that is based on one of the criteria of race, citizenship, ethnicity, color, language, religion, social origin, genetic traits, sex, sexual orientation, age, disability, chronic non-contagious disease, HIV infection, political option, family situation or responsibility, union membership or activity, membership in a disadvantaged category.

Another extremely important term in this discussion, seems to be discrimination by association, direct discrimination, respectively indirect discrimination.

Law no. 151/2020, which amends the text of the Labor Code regarding the notions already mentioned above, also introduces the term sexual harassment as a new element: behavior manifested by a person and based on discriminatory criteria (with sexual connotations), expressed physically, verbally or nonverbally, with the aim of damaging dignity, creating an intimidating, degrading or humiliating environment. Sexual harassment can manifest itself in the most diverse forms, from forms considered "mild", which do not fall into the category of direct physical aggression, to forms considered serious, which can go as far as attempted rape or rape. Harassment can be vertical - from bosses to employees and horizontal - between colleagues. It can also take place not only within the organization (at the workplace) but also outside it - at business meetings, conferences, trips or even after the end of the working day.

The sanction that can be imposed in such situations is a misdemeanor fine with limits between 4,000 lei and 8,000 lei, which can be ordered by the specialized labor inspection bodies operating within the Territorial Labor Inspectorates existing at the level of each county. (art.260 letter r of the Labor Code). At the same time, it should be remembered that the harshest form of repression that the state establishes in the event of a form of harassment, namely the activation of criminal liability.

The Criminal Code provides for the application of the penalty of a criminal fine or imprisonment in the event of the commission of offenses of assault or other violence, as well as harassment, the criminal action being initiated upon the prior complaint of the injured person, thus transferring the right to start this investigation to the potential victim who has the possibility of requesting this fact or not.(art.208).

The practical situation of requests addressed to the National Council for Combating Discrimination is one that denotes an overwhelming rejection of the complaints filed, the prevalent reason being represented by the fact that the aspects mentioned by the various persons who considered themselves harassed in connection with the activity performed at the workplace did not fall within the effective competence of this body. This did not exclude the existence of an injury, but which could not be certified in this way, the respective dispute being most often a potential labor conflict or, more seriously, a factual situation that required the intervention of criminal investigation bodies.

Another common situation in which the role of the C.N.C.D. is terminated is represented by the petitioner's renunciation of the content of the registered request, during the analysis of the respective case, which will be equivalent to disinvestment and implicitly the disappearance of a potential solution through which the occurrence of harassment in relation to the employment relationship can be ascertained.



As an example, we refer to a case decision in which an employee in the position of legal advisor was exposed to moral harassment at work - a public institution of the state (County Office for Cadastre and Real Estate Advertising), an extremely serious fact, especially since a series of internal relations were restored at the level of that organization that were likely to simplify the production of such an effect, given that the harassment was carried out vertically, by the head of the institution on a subordinate, and the repetitive nature of the material acts in question emphasizes the need for the harshest possible response from the state, although perhaps the amount of the applied contravention sanction is not extremely rigorously correlated from the perspective of the principle of proportionality (CNCD, 2025).

Everything contained herein is subject to review, which may be ordered by the sanctioned person filing an appeal against what is contained in the administrative decision.

We should not forget the situations in which the Ombudsman, a public institution with the role of mediating potential disputes between citizens and public institutions, intervened, indeed and this time limitedly, when a certain risk regarding the exercise of civil rights and freedoms arises.

It is also interesting that this authority was the one that took the initiative to establish the need for a national legislative intervention, through which the ratification of the 2019 ILO Convention would be achieved, regarding the intervention of the Romanian state in situations of violence and moral harassment at the workplace or in connection with it.(Ombudsman, 2023, p.12)

Also relevant is the case study in which the Ombudsman intervened to manage the conflict situation that could degenerate or that could cover the production of negative effects in the sphere of labor or service relations. Thus, in case no. 450/2022, steps were taken that ultimately led to the disciplinary investigation of the deputy director of the Hunedoara Employment Agency, who had abusive and provocative behavior, and here the issue of a self-notification to the C.N.C.D. could later be raised.

Also, in case 1002/2022, the Ombudsman's own investigation helped to clarify the situation exposed to the public through a newspaper "Observatorul de Covasna" in relation to an alleged non-compliant behavior at work of a doctor G. and regarding which there were a substantial number of supporters (over a hundred signatures from the employees of the public hospital where he worked).

The Ombudsman's requests to the County Council and the hospital management to establish the opportunity for a disciplinary investigation at the workplace of the incriminated doctor, even if they were finalized with a response that did not confirm the complaints, put an end to a situation that did not facilitate a proper working environment.

In another case, no. 616/2023, the Ombudsman's requested details from the Labor Inspectorate B., the Police Inspectorate B and the Prosecutor's Office attached to the S. Court in order to clarify the situation identified at the level of an organization, where an employee with special needs had been the victim of a work accident, determined by the aggressive reaction produced by another employee who hit and caused burns with a deodorant spray used in combination with a lit lighter. The institutional steps confirmed the incident resulting in partial incapacity for work, certified by the labor inspectors and at the same time the investigations within the criminal file confirmed the injuries caused to physical integrity and which had been achieved through the violation of human dignity, speculating on the state of vulnerability in which the victim in question was. Here too, we cannot say that we are beyond any doubt regarding the need to analyze possible forms of harassment within work relationships, this time located on a horizontal plane (between work colleagues).

Another state institution established to prevent the emergence of various forms of discrimination based on the most common criterion - gender - the National Agency for Equal Opportunities has received numerous requests regarding possible moral or sexual harassment at the



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workplace and redirected them to the competent investigation of the CNCD, the police or the courts. In the present case, dismissing the case due to lack of competence established by law is not a solution taken into account, as has largely happened with the Ombudsman's complaints.

The Territorial Labor Inspectorates existing at the county level, where labor relations inspections were also organized, found that there was some overlap in responsibilities in relation to situations that could be determined to be harassment at the workplace, given the incidence of two distinct normative acts - the special normative act (GEO 137/2000) that established the intervention of the CNCD, respectively the Labor Code amended in 2020 which also established the competence of labor inspectors.

If the intervention of the criminal investigation bodies was somewhat distinct since there it was about criminal liability, in the case of the CNCD and the Labor Inspectorate respectively we are talking about the same type of contraventional liability that can be activated, even if the limits of the sanctions are different. The question even arises whether the two types of contraventional sanctions can be cumulated if we are dealing with the same act of moral harassment at the workplace.

Going through the content of the Convention adopted by the I.O.M. with no. 190/2019, we find that most of the levers through which signatory states can intervene in the event of harassment at work pre-existed in the domestic regulations of Romania.

What could constitute a starting point for future regulations in consensus with the international framework referred to earlier would be related to the confidentiality of procedures in this matter; in terms of guaranteeing the exclusion of any negative consequences for employees who give up an employment relationship, in imminent cases in which life, health or security are put at risk due to that employment relationship; the possibility of labor inspectorates to generate enforceable administrative decisions that can culminate in the cessation of activity, when imminent risks for an employee are identified, decisions regarding which possible ways to challenge them before the courts should be provided.

CONCLUSIONS

As a general conclusion, we can say that the alignment of domestic legislation with the provisions found at international level configures better protection of the employee in relation to the risks posed by harassment identified within the organization.

The advantages of applying legal procedures established by the analyzed regulations are not only for workers in various fields but also for employers - the lack of harassment creates a favorable environment for the development of labor relations - as well as for the state - guaranteeing the right to work and related prerogatives allows the retention of qualified employees in the country, as well as attracting others from other countries, which leads to increases at the level of organizations and implicitly to higher taxes and duties collected by the state, but especially to its removal from less desirable pecuniary burdens: social protection and other services that involve budgetary expenditures.

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