

## THE FIRST ROMANIAN REGULATION ON MORAL HARASSMENT

F. BEJAN

**Felicia BEJAN**

Lecturer PhD University of Bucharest

\*Correspondence: 59, Calea Plevnei, Bucharest, Romania

E-mail: [felicia.bejan@unibuc.ro](mailto:felicia.bejan@unibuc.ro)

### ABSTRACT

*On August 10<sup>th</sup> 2020 entered into force the first Romanian normative act expressly regulating the moral harassment, Law no. 167/August 7<sup>th</sup> 2020 amending Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discriminations, and Law no. 202/2002 on equal opportunities and treatment for women and men. In July 2020, about one month before the coming into effect of the regulation on moral harassment, the Law 53/2003 -the Labour Code- was amended through Law no. 151/2020 which supplements the provisions safeguarding the principle of equality of treatment and the principle of human dignity. The paper is an analysis of the legal measures having as purpose to improve the protection of these principles, of the rights and obligations provided for by the recently adopted legal framework, identifying the legal aspects of an absolutely new character, highlighting the benefits of the new regulations for vulnerable holders of such rights, as well as some of Romanian legislator's reasons. Even if moral harassment is not a new phenomenon at all, the abuse behaviour and its numerous faces, its consequences on physical, mental and emotional health, the existence of equality and dignity rights and the possibility to defend them are less known in Romania, and therefore less respected. The new regulations above safeguarding against visible and invisible abuse, particularly the Law no. 167/August 7<sup>th</sup> 2020 modifying the Government Ordinance no. 137/2000, should be considered a great first step toward a new age of fundamental rights protection in the Romanian society.*

**KEYWORDS:** *moral harassment, principle of human dignity, principle of equality of treatment, physical, mental and emotional health, stress and physical exhaustion, high liability standards.*

### 1. INTRODUCTION.

Violence is affecting people all around the world and can take multiple forms, making it difficult to distinguish between various types of abuse.

When there's talk about violence, the first thing that comes to mind is domestic violence, especially the physical violence.<sup>1</sup>The physical is the most frequently met type of interpersonal violence, but there are multitudes of ways in which domestic violence can take place: verbal violence, psychological violence, economic violence, sexual violence, social violence, spiritual violence, cyber violence.

Somewhat comparable, these forms of violence, especially the psychological<sup>2</sup> one may

---

<sup>1</sup> The domestic violence it is regulated in the Romanian law by the Law no. 217/2003 on the Preventing and Fighting against Family Violence republished in the Official Gazette no. 948/2020. ”

<sup>2</sup> The psychological domestic violence, according to the Article 4 paragraph 1 letter b is „, the imposition of the will or of personal control, causing state of tension and distress in any way and by any means, violence and animal demonstration objects, through verbal threats, ostentatious display of weapons, neglect, personal life control, jealousy, the constraints of any kind, as well as other actions having a similar effect control, jealousy, the constraints of any kind, as well as other actions having a similar effect.” As examples of comparable meanings, it is considered that one typical reason for harassment is professional jealousy which to a certain extent is similar to the one in private life, or the harassment at work may take the form of physical aggression,

be encountered in political life, in public spaces, including „virtual” public spaces, and particularly at work place.

Domestic violence, the most known form of violence, and violence at work, which is less familiar but also common, must not be confused. The fundamental difference between them regards the area of social relations in which each of them can arise, family relationships or similar to for the domestic abuse or employment relationships for the workplace one. On the other hand, violence at work concept which can be found in some pieces of European legislation does not overlap with harassment at work concept; even the harassment is considered a form of violence at work.<sup>3</sup>

Moreover, the limit between violence and discrimination, including harassment as a form of discrimination, is a very sensitive one. Their common key element is the abuse of power and dominance. The aggressive behaviour is motivated by the intention of hurting the attacked person. The visibility could be the main difference between, but the consequences that are seen to arise from the practice are the same, irrespective such behaviour is visible or invisible. It certainly doesn't make a mistake considering the discrimination through harassment as psychological violence.

Thus, there are different terms that cover the phenomenon of violence at home, at work, in the society as a whole. What is important to stress is the link between them: domestic violence has a negative impact on efficiency at work, the violence at work has consequences on personal life, both of them affecting all the individual life's aspects and needing legal protection.

If for the domestic violence, there has always been a legal basis for defending its victims, with a certain evolution, for the abuse at work the establishment of a relevant protection went differently.

Before the entering into force of the Law no. 167/2020<sup>4</sup>, people who experienced abuses at their workplace<sup>5</sup> on different bases were protected through the provisions of the Article 2 paragraph 5 of the Government Ordinance, which defines the harassment as "any behaviour that creates an intimidating, hostile, degrading or offensive environment on the basis of race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, belonging to a disadvantaged category, age, handicap, refugee or asylum status or any other criterion creating an intimidating effect" and through the provisions of the Article 4 letter d<sup>1</sup> of the Law no. 202/2002 on equal opportunities and treatment for women<sup>6</sup>, governing the psychological harassment, defined as „any inappropriate behaviour that occurs over a period of time, is repetitive or systematic and involves physical behaviour, oral or written language, gestures, or other intentional actions that could affect a person's personality, dignity or physical or psychological integrity ” corroborated with correlative legal rules stipulated in the Labour Code regarding the principle of equal treatment.

Recent legislation, Law no. 151/2020<sup>7</sup> modifying the Labour Code and Law no.

---

form of abuse which is common into family relationships. Also, it was observed that verbal aggression it's just as often encountered in private relationships and at the workplace.

<sup>3</sup>As it is stipulated in the European Parliament resolution of 11 September 2018, the violence at work should include „ co-existence of bullying, sexual harassment and harassment on grounds of pregnancy and motherhood with various forms of unpaid work in the formal and informal economies (such as subsistence agriculture, food preparation, care for children and the elderly) and a range of work experience schemes (such as apprenticeships, internships and voluntary work)”, [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0331\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0331_EN.html), accessed December 2020.

<sup>4</sup> The first European Union Member State that adopted a special normative act against moral harassment is Sweden- Ordinance on Victimization at Work, 1993.

<sup>5</sup> It is to note that The Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work has to be improved, new legal rules aiming to grant a solid legal framework regarding the psychological safety and health at work.

<sup>6</sup> Republished in The Official Gazette no. 326/ 5 of June 2013. Article 4 letter d<sup>1</sup> was introduced through Law no. 229/2015, published in the Official Gazette no. 749/7 of October 2015.

<sup>7</sup> Published in the Official Gazette no. 658/24 of July 2020.

## THE FIRST ROMANIAN REGULATION ON MORAL HARASSMENT

167/2020<sup>8</sup> modifying the non-discrimination Government Ordinance, changes that are the subject of our study, impose higher protection against abuses at workplace. Following a general approach, the analysis starts from the new legal framework on the equality and dignity principles<sup>9</sup> provided for by the Labour Code and continues with the main legal aspects of the moral harassment, emphasising the concept of moral harassment, the employers' obligations, the sanctions for violation of the rights set out by the Government Ordinance no.137/2000, as amended.

### **2. LAW no. 151/2020 AMENDING LAW no. 53/2003 - The LABOUR CODE - A NEXT LEVEL OF EQUALITY AND DIGNITY PRINCIPLES LEGAL PROTECTION.**

The majority of the legal relationships concluded by the subjects to law, natural persons and legal persons, are based on the principle of equality between the parties from the conclusion moment until the end of the agreement.

In case of the work field, the employer and the employee are equal at the labour contract negotiation's stage regarding its clauses. Prior to concluding the contract, the parties agree on the content of the essential provisions, as well as on that of the special clauses regarding their correlative rights and obligations. After the moment of employment contract conclusion, the same fundamental principles have to be respected, without discrimination. This rule is expressly regulated by the Labour Code, in the Article 5, paragraph 1: „ Within the work relationships, the principle of the equal treatment for all employees and employers shall apply.” In addition, the paragraph 2 of the Article 5 regulates very clear the prohibition of any employee discrimination by the employer and the Article 6 paragraph 1 of the Labour Code consecrated the dignity right of the employee as follows: „ Any employee who performs work shall benefit from adequate work conditions for the activity carried out, social protection, labour safety and health, as well as the observance of his dignity and conscience, with no discrimination. ”<sup>10</sup>

The Labour Code has been recently modified in this respect<sup>11</sup>, supplementing the provisions which prohibit and sanction the discrimination in the field of employment.

Thus, paragraph 2 of the Article 5 modified by the Law no. 151/2020 for the amendment and completion of the Law no. 53/2003-The Labour Code- provides the following:„ any direct or indirect discrimination towards an employee, discrimination by association, harassment and victimization, based on race, national origin, ethnic origin, colour of the skin, language, religion, social origin, genetic characteristics, sex, sexual orientation, age<sup>12</sup>, political options, disability, non contagious chronic disease, HIV infection, political options, family conditions or responsibilities, union membership or activity, belonging to a disfavoured category criteria shall be prohibited. ” Furthermore, the paragraph 5 of the Article 5 qualifies, in general terms, as being discrimination „any type of behaviour

---

<sup>8</sup> Published in the Official Gazette no. 713/7 of August 2020.

<sup>9</sup> According to the Article 1 of the Universal Declaration of Human Rights „ All human beings are born free and equal in dignity and rights ”. In the Romanian Constitution provisions, the natural human rights of citizens are stated and guaranteed, as well. The Civil Code gives a more clear regulation of human rights. Under the title „The Right to Dignity”, the Article 72 paragraph 1 stipulates that „every person has the rights to respect for the dignity” and paragraph 2 stipulates that „ any harm brought about a person's honour or reputation is forbidden, given they haven't consented to the respective actions or by trespassing the limits and regulations imposed in article 75”.

<sup>10</sup> Article 10 of the Labour Code.

<sup>11</sup> In the previous form, the paragraph 2 of the Article 5 of the Labour Code had the following content:„ Any direct or indirect discrimination towards an employee, based on criteria such as sex, sexual orientation, genetic characteristics, age, national origin, race, colour of the skin, ethnic origin, religion, political options, social origin, disability, family conditions or responsibilities, union membership or activity, shall be prohibited. ”

<sup>12</sup> See F. Bejan, *Equal Treatment of Young People and Seniors : “Pleading” for a Special Law on Age Discrimination*, Challenges of the Knowledge Society, CKS-eBook, Nicolae Titulescu University Editorial House, Bucharest, 2018, p. 197 and the following.

based on one of the criteria stipulated in the paragraph 2, aiming to or resulting in the violation of dignity, creating an intimidating, hostile, degrading, humiliating or offensive environment". The general formulation allows for a general application and leads to a significant protection of the employee from this perspective, all the more so according to the paragraph 9 „any adverse treatment as a reaction to a petition or a case law regarding the infringement of non-discrimination and equal treatment principles”, known as victimization<sup>13</sup>, is prohibited through a special disposition.

Of an absolutely novelty character is the regulation of the discrimination by association which, according to paragraph 6 of the Article 5, consists in „discrimination against a person who does not belong to a category of persons identified according to the criteria expressly provided by paragraph 2, but nonetheless is associated or presumed to be associated with one or more persons belonging to such a category.”<sup>14</sup>

Finally, it is important to underline that the non-observance of the provisions of paragraph 2 together with those of paragraphs 3 to 9 of the Article 5 of the Labour Code, as were amended, is sanctioned very severely by the law, with a fine between 1.000 lei and 20.000 lei.

As a first remark, taking into consideration the regulations in the work domain, especially the new ones, even though on the base of the employment contract the employee carries out the activity for and under the authority of an employer,<sup>15</sup> the equal treatment and the dignity right have to be the fundamental principles governing their relationship and have to be strictly respected within the employment relationship.

It is worth noting that there are some differences between the discrimination criteria expressly enumerated in the Ordinance no 137/200 and in the Law no 202/2002 and those of the Labour Code, as was amended. In this regard, the criteria enumeration provided by the Labour Code is a limitative one.

Unlike the Labour Code, the Article 2 of paragraph 1 of the Ordinance no 137/2000 establishes the discrimination criteria in a very permissive way, as follows „discrimination is understood as any distinction, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social status, belief, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV infection, membership of a disadvantaged group and any other criteria which has the purpose or the effect of restriction, elimination of recognition, use or exercise of fundamental human rights and freedoms or of rights recognized by the law in the political, economic, social or cultural field or in any other field of public life.”

The conjunction „and ” at the end of the definition followed by the wording „any other criteria” corroborated with the formula „ or in any other field of public life” have the meaning that not so much the criterion is important, but the act of discrimination, that the criteria cannot be limited and each human being has the right to consider any other reason as a criterion of discrimination, without limitation. To illustrate, the physical appearance is not stipulated by the Romanian law as discrimination criteria, but for sure in practice, including in the labour field, many cases of discrimination are based on the physical aspect. Therefore, even though interpretation, new criteria may be invoked as being base of discrimination at work, for a better correlation and application of the overlapping rules, we are of the opinion that the wording of the Ordinance no. 137/2000 has to be inserted in all the existing

---

<sup>13</sup> The sense of legal term „victimization” used in the regulation on discrimination has to be understood with the strictly meaning provided by the law, without adding through interpretations meanings outside the legislator's intention.

<sup>14</sup> For a decision regarding discrimination by association, see the Judgment of the Court (Grand Chamber) of 17 July 2008, Case C-303/06, *Coleman v Attridge Law and Steve Law*-, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-303/06>.

<sup>15</sup> The running of management positions should not be done with the infringing of dignity right and conscience rights, according to Denisa Patrascu, Expert Opinion on Fundamental Principles/Labour Code, Indaco Law 5, available at <https://lege5.ro/Gratuit/gi2tknjxgq/art-6-principii-fundamentale-codul-muncii?dp=gu3dmmjxhezto>, accessed on December 2020.

## THE FIRST ROMANIAN REGULATION ON MORAL HARASSMENT

regulations in the field, including in paragraph 2 of the Article 5 of the Law no. 53/2003 - The Labour Code.

### **3. LAW no. 167/2020 AMENDING GOVERNMENT ORDINANCE no. 137/2000 - THE FIRST ROMANIAN NORMATIVE ACT EXPRESSLY REGULATING THE MORAL HARASSMENT.**

#### **3.1. General Considerations.**

In August 2020, new legal rules were adopted by the Romanian legislative having as goal to safeguard the dignity right at work, with no discrimination.

Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discriminations, and Law no. 202/2002 on equal opportunities and treatment for women and men were amended through Law no. 167/2020, entered into force on 10 August 2020.

The Romanian legislative framework has a greatly anticipated regulation on moral harassment.

In the current medical crisis, having serious social and economic consequences, when many people may experience harassment at their workplace on different grounds, this new regulation could contribute for greater protection of employees against abuses.

The poor education and the conservative culture represent a real problem of our society<sup>16</sup>, and result in discrimination of all types in various fields, especially in the area of work.

Fixing them through legal norms, including them in the Romanian legal order, is the most appropriate solution for a better work environment and for a higher standard of living. It's a fact that people spend at least eight hour per day at work, no matter the modality of how work is organized, and this means a very important part of their lives.

Law no. 167/2020 amended the Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discriminations<sup>17</sup>, completing the Article 2 of Chapter I „Principles and definitions” with seven new paragraphs and Article 26 of Chapter III „Procedural Provisions and Sanctions” with five new paragraphs. Within these provisions, the legislator has regulated moral harassment: it defines the concept, prohibits it and sanctions the infringement of legal rules that protect employees against behaviour that, in general word, embarrasses, demeans, humiliates them.

---

<sup>16</sup> The moral harassment is not a Romanian phenomenon, but a problem of all Member States of European Union . The moral harassment and other forms of violence at the workplace are an important issue on the agenda of all Member States of European Union. Committee on Women’s Rights and Gender Equality has submitted to the European Parliament a Report on measures to prevent and combat mobbing and sexual harassment at workplace, in public spaces, and political life in the EU, on the base of which the European Parliament adopted resolution of 11 September 2018. One of the subtitles of the resolution is *Violence in the workplace*. The European Parliament recommends the Member States to implement active and effective policies to prevent and combat all forms of violence against women, including sexual harassment and acts of sexism and mobbing to which the majority of women are subjected in the workplace ( point 24)and emphasises the urgent need for standards on violence and harassment at work, which should provide a legislative framework for governments, employers, companies and trade union action at all levels( point 25)- European Parliament resolution of 11 September 2018 on measures to prevent and combat mobbing and sexual harassment at workplace, in public spaces, and political life in the EU available at [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0331\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0331_EN.html) , accessed on December 2020.

<sup>17</sup> The Government Ordinance no. 137/2000 was published on the 1<sup>st</sup> of November 2000 with the applicable form from 8<sup>th</sup> of February 2007 until 6<sup>th</sup> of March 2014, being republishing in the Official Journal on 7<sup>th</sup> of March 2014. The law is divided in four chapters: „Principles and definitions”; „Special Provision” which is split in six sections; „Procedural Provisions and Sanctions” and the last one „Final Provision”. Also the six sections of the second chapter are: „Equality in economic activity and in employment matters and professions”; „The access at public administrative juridical, health and other services, goods and facilities”; „Access to education”; „Freedom of transport, of self chosen home and access to public spaces”; „The right to personal dignity”; „The National Council for Discrimination Combat”. The Government Ordinance no. 137/2000 transposed the provisions of the Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and the provision of the Directive 2000/43/EC establishing a general framework for equal treatment in employment and occupation.

### **3.2. The Concept of Moral Harassment.**

The Romanian legislator has decided to choose „moral harassment” as legal term for defining and establishing the legal regime of abusive behaviour at work. The legislative systems around the world use various terms for workplace harassment: mobbing<sup>18</sup>, workplace bullying, victimization, psychological harassment. Irrespective of these terminology differences between national laws, their common denominator is prohibition and sanctioning of any types of conduct having humiliating effects, infringing the dignity, the physical or psychological integrity of the harassed person at workplace, degrading the climate of the workplace, but not limited to these.

Under the Romanian law, according to the Article 2 (5<sup>1</sup>), (5<sup>2</sup>), the following are considered forms of moral harassment and will be consequently sanctioned:

a) Any kind of behaviour exercised towards an employee by another employee who is her/his hierarchical superior, by a subordinate and/or by an employee who is comparable from a hierarchical standpoint, in connection with working relations, with the purpose or effect a deterioration of the work conditions through the violation of rights or dignity of the employee, through harming her/his physical or mental health, or through compromising her/his professional future, such behaviour being is manifested in any of the following forms :

- hostile or undesired behaviour;
- verbal comments;
- actions or gestures;

b) Any kind of conduct which, through its systematic nature, may prejudice an employee's or a group of employees dignity, physical or mental integrity, jeopardizing their work or degrading the working environment

c) Stress and physical exhaustion.

In our opinion, apart from these three forms of moral harassment, very clear expressed, the law establishes another two:

a) The sanctioning, dismissal or discrimination, directly or indirectly, including actions regarding salary, professional development, promotion or the extension of labour relations, on the ground that she/he has undergone or refused to undergo moral harassment at the workplace shall be prohibited ( Article 2 (5<sup>5</sup>)) and

b) Any kind of behaviour exercised by the employer which consists of the establishment „ in any form, internal rules or measures that oblige, determine or urge employees to commit acts or deeds of moral harassment at work.”<sup>19</sup>, or in general terms the employer's behaviour which determines the employees to have any kind of moral harassment conduct at work against other employees. (Article 2 (5<sup>5</sup>))

Our conclusion is based on the following reasons:

- in the first case, stipulated by Article 2 (5<sup>5</sup>)), we consider that the will of the legislator was to regulate a form of moral harassment similar to victimization prohibited in general law on discrimination (G.O. no. 137/2000) having as purpose to protect the employee in case she/he has been subjected or refused to be subjected to moral harassment, particularized to labour field. In the Article 2 paragraph(3) of the Government Ordinance no. 137/ 2000 „any adverse treatment as a reaction to a petition or a case law regarding the infringement of non-discrimination and equal treatment principle constitutes harassment and it's contravenitionally sanctioned. ” Or, all the measures prohibited by the Article 2 (5<sup>5</sup>)), affecting remuneration, promotion , training, contract extension, dismissal, and any other sanctions represent „adverse treatment” and may be applied or used by the employer;

- in the second case we consider that the will of the legislator was to regulate a form of moral harassment not just similar, but better characterized than the instruction to

---

<sup>18</sup> Professor Heinz Leymann, the psychologist who discovered and developed the mobbing concept , referred to this abusive behaviour as being one that terrors the harassed person, an idea that in our opinion may be used more in defining and defending the individuals rights that are subjected to this.

<sup>19</sup> Article 2 (5<sup>6</sup>) of the Law no. 167/2020.



## THE FIRST ROMANIAN REGULATION ON MORAL HARASSMENT

discriminate prohibited in general law on discrimination as follows "The instruction to discriminate a person on any ground provided by paragraph is considered to be discrimination in accordance with the ordinance herein."<sup>20</sup>. Thus, we are of the opinion that the intention of the legislator expressed in the Article 2 (5<sup>5</sup>) was to regulate and to sanction the incitement to moral harassment together with the instruction to moral harassment.

### 3.3.The Employers Obligations.

The law gives the employers more responsibility in order to stop the behaviour and deal with the moral harassment. Many of the employees have been reported to have been part or to have taken part as witnesses in some acts or deeds of moral harassment at work.

It is therefore very important that the Romanian legal framework on moral harassment aims to ensure the right of every employee to a workplace devoid of acts of moral harassment (Article 2 (5<sup>1</sup>)(5<sup>5</sup>) (5<sup>6</sup>) of the G.O. no.137/ 2000), correlated with the general obligation of the employer to guarantee to the employees adequate work conditions for the activity carried on, social protection, labour safety and health, as well as the observance of his dignity and conscience with no discrimination (Article 6(1) of the Labour Code).

As this law has been recently adopted and the infringement of its provisions may have even severe consequences, the employers have to be aware on the following obligations :

a) The employer has the obligation to take any necessary measures in order to prevent and combat acts of moral harassment at the workplace, including by providing in the internal regulation disciplinary sanctions for employees committing moral harassment at the workplace, as it is stipulated in the Article 2 (5<sup>5</sup>) ;

b) The employer has the obligation to not establish, in any form, internal rules or measures that oblige, determine or encourage employees to commit moral harassment at the workplace. In order to regulate any possible face of moral harassment behaviour of the employer, the law imposed that „ *any kind*” of such conduct is forbidden: verbal, non-verbal, spoken or written language, suggestion, recommendation, gestures or other acts.

### 3.4.The Sanctioning of Moral Harassment.

The liability standards for moral harassment at workplace are higher than those for other forms of discrimination, both for the employees and for the employers.

The employees who commit acts or deeds of moral harassment at the workplace are liable to disciplinary sanctions, as well as to administrative sanctions (fines)<sup>21</sup> or penal sanctions<sup>22</sup>, as it is stipulated under Article 2 (5<sup>1</sup>).

---

<sup>20</sup> Article 2 paragraph 2 of the Government Ordinance no. 137/ 2000.

<sup>21</sup> In case of non-respecting of the legal provisions regarding the moral harassment at workplace, the National Council of Discrimination Combat (NCDC) has the competence to investigate, to ascertain and to sanction the discrimination acts. The National Council of Discrimination Combat (NCDC) is the public authority institution which has to guarantee that the anti-discrimination principles are respected and applied according to the national and European legislation, according to the international treaties to which Romania is a party. The National Council of Discrimination Combat have competences in the following domains: prevention of discrimination cases by doing information campaigns on what discrimination means and which are the effects of the discrimination, mediation of discrimination acts between involved parties, investigation, ascertaining and sanction of discrimination acts, monitoring of the discriminatory cases and observation of the implicated parts, providing specialized assistance to the discrimination victims.

<sup>22</sup> The Penal Code criminalizes Harassment and Sexual harassment. Harassment is defined and sanctioned by the Article 208 of the Penal Code as follows: „ (1) The act of a person who repeatedly pursues, without right or without a legitimate interest, a person or supervises his home, work or other places frequented by him, thus causing him a state of fear, is punishable by imprisonment from 3 to 6 months or with a fine. ” „ (2) Making telephone calls or communications by means of remote transmission, which, by frequency or content, causes fear to a person, shall be punished by imprisonment from one month to 3 months or by a fine, if the act does not constitute a more serious crime. ” „ (3)The criminal action is initiated upon the prior complaint of the injured person. ” Sexual Harassment is defined and sanctioned by the Article 223 of the Penal Code as follows: „The repeated request of sexual favours in an employment or similar relationship, if the victim has been intimidated or put in a humiliating situation, shall be punished by imprisonment from 3 months to one year or by a fine. The criminal action is initiated upon the prior complaint of the injured person. ”

The contraventional fine at the workplace which may be applied as a sanction to an employee for the infringement of rights and dignity of another employee through moral harassment is minimum of 10.000 lei and maximum of 15.000 lei.

The administrative sanction is more substantial for the employers who violate the legal rules imposed by the law in the Article 2 paragraph (5<sup>5</sup>) and paragraph (5<sup>6</sup>).

Thus, the non-fulfilment by the employer of the obligation to take any necessary measures in order to prevent and combat moral harassment at the workplace, to establish disciplinary sanctions in the internal regulation for employees committing moral harassment is sanctioned with a fine from 30.000 lei up to 50.000.<sup>23</sup>

It is much more serious in the opinion of the legislator the violation by the employer of the obligation to not engage the employees in direct or indirect harassment against other employees, fixing a more severe sanction with a fine from 50.000 lei up to 200.000.<sup>24</sup>

Moreover, the employer may be sued by the employee and according to the Article 26 paragraph (2<sup>1</sup>) the court of law that will find that an act or deed of moral harassment at work occurred will be able:

- a) to order the employer to be obliged to take all the necessary measures to stop any acts of moral harassment at work at the workplace regarding the employee;
- b) to order the reintegration of the employee in question at the workplace;
- c) to order the employer to be obliged to pay the employee compensation in an amount equal to the salary rights he/she was deprived of;
- d) to order the employer to be obliged to pay to the employee compensatory and moral damages ;
- e) to order the employer to be obliged to pay to the employee the amount necessary for the psychological counselling that the employee needs, for a reasonable period established by the occupational medicine doctor;
- f) to order the employer to be obliged to amend the employee's disciplinary records.

The person subjected to moral harassment at work may file a claim with a Romanian court of law or may file a petition with the National Council of Discrimination Combat for the administrative offence. The National Council of Discrimination Combat has the competence to investigate and sanction through fines the moral harassment acts and deeds, including to decide on two of the measures above as well, stipulated by the letter a) and by the letter e) of the Article 26 paragraph (2<sup>1</sup>). Moreover, it is considered a contravention the failure of the employee to carry out the measures ordered by the National Council of Discrimination Combat and is sanctioned with fine between 100 000 lei and 200.000 lei.<sup>25</sup>

Employees and employers have to be aware of the behaviour the law imposed on them and of the consequences they are exposed to in case of failure to comply with the obligations provided by the law, taking into account aspects that need to be highlighted:

- the quantum of administrative fines is higher than those established for sanctioning of the other types of discrimination and they can be up to 15.000 lei for employees and up to 200.000 lei for employers;

- the sanctions fixed for employers that violate the legal norms on moral harassment are much more severe than those that may be applied to the employees that commit acts and deeds prohibited by the law, and even the latter are substantial if we take into consideration the level of wages at the national level;

- the administrative fine is not the only one sanction the employee and the employer are exposed to;

- the employer is considered by the legislator one of the key factors in informing, educating and respecting the dignity principle and the equality principle at workplace and this explains why the improper attitude and bad decisions of the employer are sanctioned if this is

---

<sup>23</sup> Article 26 paragraph (1<sup>1</sup>) letter a).

<sup>24</sup> Article 26 paragraph (1<sup>1</sup>) letter b).

<sup>25</sup> Article 26 paragraph (2<sup>3</sup>)



## THE FIRST ROMANIAN REGULATION ON MORAL HARASSMENT

the case; however, the Romanian employer need to start thinking harder before initiating harassment actions, before infringing or just ignoring the way it behaves or the obligation to elaborate internal regulations on psychological violence at work.

### 4. CONCLUSIONS.

Dignity is an inherent value of humans and can only be protected by respecting it. The concept of dignity has evolved over the years, and the relevance of legislation as well.<sup>26</sup>

This pandemic period brought in our national legal framework with legislation focused on safeguarding it.

The regulating of moral harassment through special legal rules is one of extreme importance, since humiliation, undermining, malicious gossip, stonewalling, personal information revealing, slandering, isolation, intimidation, exclusion, criticism, contempt, other forms of emotional abuse, verbal and physical aggression affect so many people in Romania every day.

Law no. 151/2020 modifying the Labour Code and, particularly, Law no. 167/August 7<sup>th</sup> 2020 amending Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discriminations, the first Romanian regulation on moral harassment, on discriminatory and abusive conduct at work, violating the dignity, the equality right, the physical or psychological integrity, but not limited to, can play a defining role in the way this multifaceted, complex and devastating phenomenon is perceived and respected within our society.

The existence of a legal framework, the punitive, protective and preventive measures of legislation are to be coordinated with raising awareness of the seriousness of the moral harassment, and not just to combat it, but more to understand how abusive behaviour manifests itself, and to educate people to protect their own rights and respect the rights of others.

### REFERENCES

1. Craig P. and de Burca, G., *Dreptul Uniunii Europene*, Bucharest: Hamangiu, 2017.
2. Leymann H, *The content and development of mobbing at work*, European Journal of Work and Organizational Psychology, Volume 5, Issue 2 1996.
3. Bejan F., *Equal Treatment of Young People and Seniors : "Pleading" for a Special Law on Age Discrimination*, Challenges of the Knowledge Society, CKS-eBook, Nicolae Titulescu University Editorial House Bucharest, 2018.
4. Universal Declaration of Human Rights.
5. Charter of Fundamental Rights of The European Union.
6. Directive 89/391/EEC 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work
7. Directive 2000/43/EC of the Council from June 29<sup>th</sup>, 2000 of implementing the principle of equal treatment between people, without differentiation based on sex or ethnical origin.
8. Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.
9. Law no. 53/2003 -the Labour Code
10. Civil Code.
11. Law no. 167/ 2020 amending Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discriminations, and Law no. 202/2002 on equal opportunities and

---

<sup>26</sup> Since 2000, the Article 15 within Section V- *The right to personal dignity*- of Government Ordinance no. 137/2000, expressly prohibits the infringement of „any public behaviour with a nationalistic- chauvinist character, any incitement to racial or national hatred, or any behaviour aiming to prejudice a person's dignity or to create a hostile, degrading, humiliating or offending atmosphere, perpetrated against a person, a group of persons or a community on the base of race, nationality, ethnic group, religion, social category or belonging to a disfavoured category, on account of beliefs, sex or sexual orientation shall constitute contravention, unless the deed falls under the incidence of criminal law.”

treatment for women and men.

12. Law no. 151/2020 amending Law 53/2003 -the Labour Code.

13. Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discriminations.

14. Law no. 202/2002 on equal opportunities and treatment for women.

15. Law no. 217/2003 on the Preventing and Fighting against Family Violence.

16. Case C-303/06, Coleman v Attridge Law and Steve Law.

17. Cases T-275/17 Michela Curto and T-377/17 SQ.

18. <https://lege5.ro/Gratuit/gi2tknjxgq/art-6-principii-fundamentale-codul-muncii?dp=gu3dmmjxhezto>

19. [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0331\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0331_EN.html)