



Moral and Sexual Harassment at Work: Ethos, Control and Suffering in a Quiet & Lethal Phenomenon

Assédio Moral e Sexual no Trabalho: Ethos, Controlo e Sofrimento num Fenómeno Silencioso & Letal

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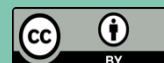
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Abstract

Harassment at work has been the subject of immense research in recent years, not only because it is a topic of relevant importance in the life of a worker, but also because of its great impact on the personal, professional and social life of the Human Person. Harassment in the work context is a form of violence perpetrated using repeated and prolonged conduct and persecutions, through which the aggressor tries to inferior and belittle the person of the victim. The issue of harassment at work is closely related to mobbing and sexual harassment, but also gender discrimination - namely based on gender asymmetries.

Keywords: Mobbing, Harassment, Discrimination, Gender, Labour dignity

Resumo

This article intends to discuss making compliance programs a requirement in the organizational O assédio no trabalho tem sido alvo de imensas pesquisas nos últimos anos, não só por ser um tema de relevante importância na vida de um/a trabalhador/a, mas também pelo grande impacto na vida pessoal, profissional e social da Pessoa Humana. O assédio em contexto de trabalho é uma forma de violência perpetrada por meio de condutas e perseguições repetidas e prolongadas, através das quais o/a agressor/a tenta inferiorizar e menosprezar a pessoa da vítima, não só ocorre por superiores hierárquicos contra quem lhes é subordinado como também entre colegas de trabalho. A questão do assédio laboral está intimamente relacionada com o assédio moral (mobbing) e sexual, mas também com a discriminação de género - nomeadamente assente em assimetrias de género.

Palavras-chave: *Mobbing*, Assédio, Discriminação, Trabalho, Dignidade laboral

1. Introduction

Recognizing the need to better understand the phenomenon it is essential to research this dark and impactful wonder in labour relations, namely harassment.

In a society where competitiveness at work is growing, respect for others is often forgotten. It is in this complex problem that we will work on the impact that bullying at work can have on the life of the worker and on those who are victims of this scourge.

Moral and sexual harassment can occur from superior to a subordinate, between colleagues and even from subordinate to superior, however, it is more frequent from those who have any kind of power over another and use it essentially to inferiors and humiliate their victim.

Our article reveals mainly a study on the state of the art with reference and focuses on the theoretical framework on the subject under study where we will bring specifically article 29 in the Labour Code (LC).

2. Mobbing at work - Moral and Sexual Harassment

Bullying can occur in families, at school and at work. But it is in the workplace that it is most common and the damage caused is most perverse (Caixeta, 2003). Bullying is not a new phenomenon in the world of work, but it has only recently been studied. At the European level, various existing studies have only been published since the 1980s. Similarly, conferences on the subject are a recent development. This reveals a greater interest in the phenomenon (Silva, 2007).

According to Ribeiro *"mobbing is understood as a non-ethical adverse social interaction that is purposely methodically exposed in the work environment, usually for a prolonged time, by one or more people against a given worker"* (Silva, 2007).

Based on the text of the Council Directive 200/43/EC, the Portuguese legislator defines moral harassment as *"undesirable behaviour"*, which may affect the dignity of the employee or even create an *"intimidating, hostile, degrading,*

humiliating or destabilising environment" (CT, 2007).

Despite the different approaches to the concept of harassment, the aim is to demonstrate to the victim that it is a form of ongoing harassment aimed at destroying him or her. This practice is therefore sufficient to make the victim feel offended, inferior, embarrassed and with her self-esteem lowered (Silva, 2007).

We know that a company, just like society, can be a place of tension between people, a tension that can lead to conflict and even, in extreme cases, leads to exclusion or physical destruction (Rebelo, 2008). Not only is the individual penalised by these disagreements (personally) but the company also bears the consequences resulting from these same conflicts.

The worker may be the most correct and exemplary in carrying out his/her function, and this will not prevent him/her from becoming a

possible victim. On the contrary, the aggressors tend to look for people who will stand up to them, i.e., decisive people who carry out their tasks efficiently.

"Moral harassment can happen regardless of whether the worker performs the functions assigned to him with excellent professionalism and responsibility and regardless of his schooling or even his personality" (Avelino, 2016).

Therefore, depending on the reality and the type of victim we come across, there will be different designations to classify the type of bullying or *mobbing* for each of the situations in question.

There are therefore different types of harassment: top-down, horizontal and bottom-up. Top-down harassment is harassment originating from a hierarchical superior, i.e. more specifically from the employer to the employee. According to Hirigoyen (2002),

"experience shows that mobbing from a hierarchical superior has much more serious consequences for health than horizontal harassment since the victim feels more isolated and has difficulty in finding resources to resist" (Castro, 2009).

Horizontal moral harassment is that which comes from work colleagues who are in the same position at the work level, i.e. the same hierarchical level. It may occur due to personal problems, or because some members of the workgroup do not accept the rules expressly accepted by the others. Ascending harassment, on the other hand, occurs when a person who belongs to a higher hierarchical level at work is harassed by one of his subordinates.

In another latitude of analysis, sexual harassment can be defined as a situation in which unwanted conduct of a sexual nature manifests itself in physical, verbal or non-verbal form, intending to violate the dignity of the person and create an intimidating, hostile,

humiliating or offensive environment. This type of harassment affects mostly women and

"constitutes an affront to the dignity of female employees and prevents women from acting to the best of their ability" (IGC, 2013).

Sexual harassment particularly affects the careers of those being harassed. It is therefore particularly serious when there are situations of professional dependency, unemployment, precarious work and lack of professional qualifications.

Sexual harassment can also be epistemologically understood as a form of sex discrimination, as expressly recognised by Directive 2002/73/EC of the European Parliament and of the Council (EU, 2002) - namely that women are the most discriminated against compared to men.

Sexual harassment is, therefore

"the result of a reprehensible attitude towards women because it regards them as a sexual object or reduces their individuality to their physical image. We can say that sexual harassment in the workplace is a barrier to equal rights and opportunities at work and in employment" (CIDM, 2002).

Between seduction games, the man usually initiates a negotiation process with the woman, implicitly or explicitly, in exchange for sexual favours. Physical contact, sexual favours, pressure for "dates" and outings are often tolerated under the (false) expectation created for women of career promotion (Dias, 2008).

Shy women who fear embarrassment or, on the contrary, women who wish to progress in their careers, are more likely to be the target of unwanted proposals from the harasser (CIDM, 2002).

In professions such as nursing or health care, there is also a high risk of sexual harassment, as these professions represent, in the eyes of the harassers, and eroticised image of women providing care and services.

The harasser can be a person or a group of people. The harasser's characteristics have to do with personality, threats of loss of power and control, and negative leadership (Silva, 2007).

In this sense, we can state that the harasser, in a moral harassment process, aims at the control and absolute domination of the harassed. In this way *"the aggressor can magnify himself by lowering the other, without guilt and suffering; this is moral perversion"*. As a rule, he intends to demonstrate his power in the relationship with the harassed and with the group where he is inserted (Silva, 2007).

Using his hierarchical power and in the role of a direct boss or hierarchical superior, mostly male, the aggressor takes a direct or indirect route (discreet or not) by choosing his victim in the work environment and regardless of his sex. Arriving at the victim with behaviours with characteristics typical of harassment, this aggressor tries to attack the victim in the most varied forms and aspects, producing the effects he intends with such behaviours and always with the main objective in mind, which, for example, may include the purpose of obtaining the voluntary dismissal of the victim (Avelino, 2016).

Age, gender and discriminatory motives are three of the main characteristics mentioned and linked to victims of bullying. The main victims of this type of bullying are essentially women.

People affected by violence and harassment in the workplace tend to have even higher levels of work-related health problems. The victim of harassment may begin to suffer from insomnia, panic attacks, tremors and palpitations, diffuse pain throughout the body, extreme tiredness,

feelings of anomie, depression and *burnout* (Torres, Costa, Coelho, & Sousa, 2016).

The worker loses interest in their work, begins a process of abstinence and sees their performance evaluation and progress or ascension in their professional life penalised.

Some studies have shown that harassers are people with strong, active personalities and tend to express their opinion in case of disagreement. They are people who do not allow themselves to be dominated or influenced by their boss's authority without questioning it, thus becoming preferential targets for some "harassing" personalities (Torres, Costa, Coelho, & Sousa, 2016).

The word discrimination, from a legal point of view, can mean to discern, to distinguish, to make a difference, namely between men and women.

Concerning harassment by gender, specialised research shows that women have led the *ranking of victims* of moral harassment. This is due, among other factors, to the growing insertion of the female gender in the labour market, as well as the perpetuation of discrimination on the grounds of sex (Caixeta, 2003).

Women in the labour market have not yet been and may still not be welcome in the work environment, because the economic independence achieved by the exercise of productive activity dismantles the state of subjection to men and makes them invade a sector that was once exclusive and compete for positions of greater prominence which leads women to a "threat" (Higa, 2016).

Another very observable factor is the fact that women can become pregnant, which leads to a hindrance for the company, and they use this argument many times to dismiss from the position.

The Labour Code (LC) makes moral harassment autonomous, classifying it as discriminatory behaviour. The provisions of article 24 of the LC present points of contact with the provisions of articles 13 and 59 of the Constitution of the Portuguese Republic, which ensure the principle of equality and non-discrimination and for the legislator, harassment constitutes above all "*an intolerable form of discrimination, whether in access to employment or any case an illicit practice*" (Rebelo, 2008). Also in the Labour Code, in Article 28, it is reinforced that "*the practice of a discriminatory act prejudicial to a worker or job applicant gives him the right to compensation for patrimonial and non-patrimonial damages, under the general terms of law*".

In people, "*bullying has physical and psychological consequences with symptoms similar to those of stress, anxiety, depression and even psychosomatic disorders*" (Silva, 2007). Indeed, the consequences of bullying are not only reflected in the individual's health but "*also have effects on the organisation, such as absenteeism, long-term sick leave, low productivity, etc... and the added costs of the need to improve the working environment, combat lack of personal motivation and lower productivity*" (Nunes, & Tolfo 2012).

As mentioned, the consequences of harassment situations are not only exclusive to the victim: organisations are seriously affected and often, due to the subtlety of the consequences, they may not realise that such violence can also bring short and/or long-term economic losses.

It is the fear of professional consequences, or even the fear of being fired, which are the reasons most often given by both men and women to explain the lack of action or reaction in these enemy environments.

It is very common in these cases, that the victim is afraid to tell what is happening in her workplace, either because of fear, shame or dismissal, which can lead to serious health problems such as *stress*, depression and in extreme cases suicide. It is with close people with whom they have emotional and affective ties that women and men find their first line of support (Torres, Costa, Coelho, & Sousa 2016).

For effective prevention of situations of violence in work relationships, interventions must be targeted both at the Persons affected (harasser and victim) and at the organizational structure (Glina & Soboll, 2012). The basis for managing bullying and violence at work is zero tolerance for all types of violence, physical or psychological, coming from the outside or inside the workplace.

It is, therefore, all the more important to give responsibility to the work organisation for preventing bullying. As such, it should define prevention strategies and operate with ethical rules, because these policies can dissuade harassers. It is important that the organisation, through its management methods, sets an example of clear operating methods that allow for a good working environment.

Portugal has gradually taken on responsibility for preventing and ensuring support in situations of harassment at work and in creating institutional mechanisms that have sought to develop employers' responsibility for preventing situations of harassment at work.

Created in 1979, the Commission for Equality in Labour and Employment, abbreviated as CIT, is since then an important national mechanism that fights for equality and non-discrimination between men and women in the workplace, as well as in professional training.

The CITE alerts that the practice of these acts leads to the victim's right to compensation for damages suffered, not only at a patrimonial

level but also at a non-patrimonial level within the general terms of the law.

The Authority for Working Conditions (ACT) is also a public entity whose main objective is to achieve a significant improvement in working conditions throughout Continental territory, making sure that all the labour norms were foreseen and applicable to a private labour relationship are complied with by the most diverse entities, as well as promoting health and safety at work in all the various sectors of activity.

The issue of moral harassment also refers us to the current Article 29 of the LC, defining and characterising it as:

"unwanted behaviour, namely that based on a discriminatory factor, practised in the access to employment or in the employment, work or vocational training itself, with the purpose or effect of disturbing or constraining the person, affecting his/her dignity, or creating an intimidating, hostile, degrading humiliating or destabilising environment".

However, the new version of the LC, effective from 1 October 2017, expresses the prohibition of harassment as early as Article 29(1) and its due compensation for damages under Article 29(4) and still constitutes a very serious administrative offence under Article 29(5).

When we are faced with a situation, where the harasser not only aims to cause harm to the victim (moral harassment) but also does not treat the victim in an equal manner concerning his colleagues, we are faced with a situation not only of moral harassment but also discriminatory, and thus it is considered a case of discriminatory moral harassment.

This has not always been the case. In the previous version of the Labour Code, this was not the case, *"it was not possible to consider any form of harassment solely and exclusively*

as discrimination, now admitting that even behaviours considered non-discriminatory can lead to situations of harassment, which, if they occur, can be described as moral harassment or sexual harassment" (Avelino, 2016).

This great legal evolution meant that after Law no. 7/2009, of 12 February, the designation of moral harassment became autonomous at the core of its legal regime because, until then, it was linked to the concept of discrimination and, since then, it is no longer necessary to be linked to another rule to obtain its useful meaning. Thus, Article 29 of the LC ends up distinguishing between the three types of harassment: discriminatory harassment and moral harassment in n.º. 1 and sexual harassment in n.º. 2.

Furthermore, and legally reinforcing this type of situation in article 394 n.º. 2 paragraphs b), d), e) and f) of the current CT, it is revealed that *"the employee who is a victim of harassment has the right to terminate the employment contract with just cause, having the right to a compensation corresponding to between 15 and 45 days of basic salary and seniority per full year of seniority, which may be even higher if the harassed has suffered material or non-material damage of a considerably higher amount"*.

According to the Commission for Equality and Women's Rights (2002) in terms of the Legal Regime of the Individual Labour Contract (LGT) the employer cannot oppose the worker exercising his/her rights, nor can he/she dismiss him/her or impose sanctions because of that exercise (In the same sense it is forbidden to transfer the worker to another workplace, except in the cases legally admitted in the terms of art. 21, n.º. 1, al. e).

In fixed-term contracts, the worker's situation is very vulnerable, as it is relatively easy for the employer or the hierarchical superior to hurry the termination of the contract or not renew it.

This situation is particularly delicate in these cases. However, the Legal Regime of the Termination of the Individual Labour Contract tells us that the employee may terminate his/her labour contract without prior notice if he/she is the victim of an abusive sanction under the terms of art. 35, n.º. 1, paragraph c),

of punishable offences to his/her physical integrity, freedom, honour or dignity practised by the employer under the terms of art. 35, n.º. 1, paragraph f) and, in these situations, he/she may be entitled to compensation under the terms of art. 36 of the CT.

3. Conclusion

As a conclusion to this intensive research on such a complex subject, namely harassment at work, it is worth drawing a general conclusion on the subject.

It is undoubtedly alarming how this perverse phenomenon has increased in day-to-day working life and how it affects the health not only of the individual (stress, anxiety, etc.) but also of the organisation itself.

A company cannot achieve the desired success and success when its organisational environment is compacted with these cases because there is a great lack of effective measures to combat it.

When we are faced with a certain organisation, what normally must be explicit are its values and mission, that is, the "face" of the organisation and how the workers are treated within it, as it is these values that make the difference and result in good functioning and respect between all colleagues, which provides satisfaction and healthy living conditions in the work environment.

However, we don't always see it, there are hidden perversities that are not visible to everyone, and it is only by taking preventive and effective measures by various entities, starting essentially from the organisation itself, that this scourge of bullying in organisations may come to be reduced.

Despite the existence of codes of ethics and the law, there is a lack of initiative and supervision by the Human Resources department to provide management and help in these particular cases. It is therefore urgent to create mechanisms to give the employee the right to report harassment, for example, by putting the situation in a box, anonymously and in writing, and then having someone analyze what has happened.

The victim must feel safe when denouncing because despite having family support, the feeling that the person carries with him/her daily is stressful and can progress to extreme situations (suicide).

It is concluded that the conduct of moral harassment is a process of systematic acts practised in a repetitive and non-consented manner that inevitably leads to the physical and psychological exhaustion of the worker. However, some situations may be confused with harassment, such as abuse of power and conflict.

Finally, and alluding to the practical case exposed in this work, there is still a need for long research work on this theme which is harassment concerning gender, because in Portugal as in the rest of the world we still feel a kind of gender threat in the labour context, which on the one hand is good because women manage to stand out and have a firm hand, and

this "affront" for many top men, But on the other hand, many women, due to their personality, are shyer and limit themselves to doing their work immaculately, which also has negative consequences from the point of view of men, as they don't want to get into trouble and this is already a problem for them, i.e. they are the easiest target for harassment, giving them the right to (unlawful) dismissal.

In this specific case, even if there are witnesses it is very difficult to prove these cases in court, which makes it difficult to make a decision and eventually judge. However, this does not take away her right to due compensation for just cause, since she was pregnant and due to the abuse of power by the superior in keeping the other worker and dismissing her, causing a feeling of injustice and revolt in her.

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