

Moral Harassment at Work—The Portuguese Conceptual Case: Persecution vs Intentionality

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Abstract

Equality and access to work are structuring principles of our constitutional system that aim to guarantee an equal condition in terms of rights and duties, fulfilling the basis of the social dignity of the human person. Within the scope of the protection of equality and non-discrimination, we find harassment, as unwanted behavior, with the aim of affecting that very dignity of the human person, whose article 1 of the Constitution of the Portuguese Republic calls for its protection, always based on personality rights, and it is in this sense that I propose to analyze the other concepts, causes, subjects, effects and ways to fight and prevent. This investigation intends to analyze, through a cognitive framework, in a precise and direct way, the relationship between persecution (determining factor) and intentionality (conditioning factor), based on the aforementioned concepts and their relationship with Portuguese jurisprudence, seeking to locate trends and characterize them, discussing the limits and potential of their effects.

Keywords

Bullying, Besieged, Stalkers, Well-Being, Prevention

1. Introduction

Moral Harassment is a social phenomenon and, according to Pacheco (2007: p. 271), “in order to be legally relevant, moral harassment must have as its objective or effect treatments that are objectively degrading, humiliating or vexatious that affect the moral integrity of workers.”

The labor context in Portugal with characteristics of precariousness not only in the first job but also in the maintenance of the employment contract, whether

its typology or the intensification of work rhythms, given that the organizational concern, in part, is the increase in productivity regardless of the reflection in interpersonal relationships.

From the approach to harassment conduct, specifically in the workplace, national and international legislation has been undergoing continuous changes in the search for correct ways to analyze and prevent this problem, both in the socio-occupational context, and in the way in which the person's health is concerned.

Moral harassment has two subjects, the harassed and the harasser. The harasser can be characterized both with the abuse of power as a hierarchical superior and with the envy of the colleague, and it arises when the harassed subject (victim) is faced with acts that hurt him or make him feel intentionally small. And anyone can be the harassed, the victim (Silva, 2012).

In this sense, society's attention and concern for human conduct in the organizational environment is indispensable, for an environment free of embarrassing, oppressive and humiliating situations or acts, without fear and violence, so that we can be successful, both in the company's results and in the workers' personal and professional lives.

The problem that is intended to be investigated has the purpose of assertively approaching the theme for adequate awareness, whose central theme is the interpretation and relationship between the type of crime related to the intentionality associated with moral harassment at work, seeking the correct perception and resulting relevance legislation in force, through a closer approach to the other concepts, acts, subjects, procedures and objectives of this problem.

The methodology used consisted of an empirical study, where through the analysis of a cognitive map (causal map) the relationship between persecution (determining factor) and intentionality (conditioning factor) was explored, relating the concepts to Portuguese jurisprudence, seeking to locate trends and characterize them, discussing the limits and potential of their effects, in order to obtain answers that allow framing the legislative context to the value spectrum that can condition and explain the reason, efficiency and effectiveness of other legal diplomas.

This work is structured in five chapters. The first is the Introduction, which addresses the context, issues, methodology and purpose of the investigation.

The second chapter translates the Literature Review/State of the Art, in which it addresses the theoretical framework of the theme, identifying concepts and other theoretical developments related to workplace bullying. This chapter is divided into six points.

The first point addresses the concept of moral harassment from the perspective of researchers.

The second point describes and analyzes the different terminologies, in a global approach.

The third point presents the causes related to the problem, where possible situations, factors and the environment that promote moral harassment at work

are addressed.

The fourth point identifies the subjects and determining factors of moral harassment.

The fifth point deals with the entire international legal framework of moral harassment at work.

The sixth point clarifies the effects of harassment on workers.

The third chapter deals with research using Methodology (Empirical Research), followed by the Analysis and Interpretation of Results, in the fourth chapter.

Finally, it ends with the Conclusions of the work carried out, through a summary of the relevant aspects.

2. Literature Review

This chapter aims to clarify the subject under study that, through a review of existing literature, we will try to frame and detail a problem that, although current, has always existed throughout history.

This chapter is divided into eight points: the first defines the concept of harassment, the second describes the different terminologies, the third the causes, the fourth clarifies the subjects and determining factors (Ferreira, 2016), the fifth informs the international legal framework, the sixth addresses the effects of harassment.

2.1. Concept of Harassment

According to the *Priberam Online Portuguese Dictionary (2021)*, the word harassment means “unpleasant or uncomfortable behavior to which someone is subjected repeatedly”, and the word moral means “a set of principles and values of human conduct”, that is, Moral harassment only exists in its genesis when the insistence hurts or diminishes the values of conduct and principles of Man.

The concept of morality, mentioned by Hirigoyen in 2006 (Alves, 2011), allows us to distinguish the notion of right or wrong that, differing in different societies based on customs and religion, allows us to understand what is or is not acceptable in that society.

This concept focuses on Personality Rights, which according to Cordeiro (2011) are rights that serve the person who presents himself as a human person, that is, they are integrating rights of particular relationships.

According to Hirigoyen (2002: p. 16) “not all those who say they are being harassed are necessarily so”, that is, there may be certain situations that, by themselves, are not considered to be moral harassment, namely different ideas, mere misunderstandings, or simply, incompatibilities that can also cause stress and conflicts.

Both Hirigoyen (2002) and Barreto and Heloani (2015) approach moral harassment as a violation of a set of previously accepted behaviors in society, these abusive behaviors, embarrassing, oppressive and humiliating acts, with the in-

tention of injuring their personality and dignity., leading to the termination of the employment relationship, either by dismissal or denouncement, often caused by despair itself.

Considering the different approaches to the non-exclusive concept of moral harassment, some definitions are presented.

Hirigoyen (2002: p. 14) refers to moral harassment as “any abusive behavior (gesture, word, behavior or attitude) that violates, by its repetition or systematization, against the dignity or the psychic or physical integrity of a person, endangering his job or degrading his work environment”.

The *União Geral de Trabalhadores (UGT)* (2017) defines moral harassment as “unjustified and continuous behavior towards a worker or group of workers, likely to constitute a risk to health and safety”.

Torres et al. (2016: p. 5) define moral harassment as “a set of unwanted behaviors perceived as abusive, persistently and repeatedly practiced, which may consist of a verbal attack with offensive or humiliating content, or subtle acts, which may include psychological violence or physical. It aims to lower the self-esteem of the target person/s and ultimately call into question their attachment to the workplace. Victims are involved in situations in which they generally find it difficult to defend themselves”.

Barreto (2008: p. 29) defines moral harassment at work as the “exposure of male and female workers to humiliating and embarrassing, repetitive and prolonged situations during the workday and in the exercise of their functions, being more common in authoritarian hierarchical relationships and asymmetrical, in which negative conduct, inhuman and unethical long-term relationships predominate, by one or more bosses directed at one (or more) subordinate(s), destabilizing the victim’s relationship with the work environment and the organization, forcing him to give up his job”.

These definitions can be clarified in five factors (Lima & Barros, 2013) specifically:

- 1) Intentionality;
- 2) Systematic repetitions related to the duration of the acts;
- 3) Direction of the acts;
- 4) Deliberate degradation of the worker’s working conditions.

Despite the existence of several definitions, it is possible to perceive that all researchers converge on the consequences of physical, psychological and moral problems, through a continuous act of injury and reduction, which can lead to serious and irreversible illnesses, leading to a reduction in their performance in the organization, termination of employment and sometimes suicide.

2.2. The Different Terminologies of Harassment

The culture, customs, traditions, ideals and ideologies, religious beliefs, characterize the different peoples of the world. These differences also result in various ways of interpreting, or simply recognizing and identifying, situations that figure in the theme, and on which several authors and researchers have focused in ac-

cordance with the characteristics, above all, economic, cultural and social that characterize an organization it's a country.

In this sense, and because there are differences in society, we find different factors that characterize the theme, which broadens the definition of moral harassment at work. Even Hoel et al. (2010) refer to this view that these economic, cultural and social differences increase not only the diversity of terminologies used but also their approach.

This consequence of differences between peoples is clarified by Andolpho et al. (2006: p. 184), referring that “the diversity of expressions obeys the cultural variety and the emphasis that one wishes to place on one of the multiple aspects that lead to psychological violence at work”. Further on, they state that “the attempt to define and describe this phenomenon at a universal level is compromised and requires a progressive approximation and an exchange of knowledge, theories, studies and cross-cultural practices”.

Thus, considering the perspective of researchers from different countries, the most used terminologies are: Bullying; Mobbing; Injime; harassment; Moral Acoso; Harcèlement Moral.

2.3. Causes of Moral Harassment

Just as the consequences of cultural diversity can give rise to different terminologies, the underlying cultural context also determines different perceptions of identical behavior.

According to the European Agency for Safety and Health at Work (2002), moral harassment results from the aggravation of a situation of interpersonal conflict or in a situation in which the victim, even though he is not in any conflict, is still exposed to violence by part of the stalker.

Still on this information sheet, it is possible to identify the following factors that may increase the possibility of the existence of moral harassment at work:

- 1) An organizational culture that does not recognize harassing behavior as a problem;
- 2) Unforeseen changes in the organization;
- 3) Job insecurity;
- 4) Unpleasant relations between workers and managers, as well as high dissatisfaction with corporate leadership;
- 5) Undesirable relationships between colleagues;
- 6) Excessive work;
- 7) A disabled staff policy;
- 8) High levels of stress at work;
- 9) Conflicts regarding the positions held.

Thus, we can summarize the above by dividing it into two factors, individual and organizational (adapted from European Agency for Safety and Health at Work, 2002).

The risk factors mentioned in the table above reflect what can be the result of

a leadership style, either among the hierarchical superior or among co-workers, whose pressure can cause situations of frustration and stress.

The permanence of these acts may be, above all, related to the fact that that particular job is the only means of subsistence for a certain family, which ends up accepting any acts against them, reducing their capacity to produce work and health. These situations are mainly visible when the harasser exposes the harassed person, taking advantage of the moments of a larger group of colleagues (Santos et al., 2009).

2.4. Determining Subjects of Moral Harassment at Work

Bullying at work implies the existence of three subjects, the harasser, the harassed and the organization, and it can happen to any worker, in any organization and at any time.

The harassers, active subjects in an act of harassment, can either be hierarchical superiors or any colleague or group of co-workers.

According to Pacheco (2007: p. 66), the aggressor makes use of his power of oratory, internal status, physical appearance, transversal and horizontal popularity in hierarchical terms, to provoke harassing behavior in the victim.

According to the same author, harassers are perceptive people, who perform and manage their work well, with effective results in the fulfillment of their stipulated tasks.

Thus, one can interpret the harasser as an agile and masterful subject in his actions who, for his own benefit, is not concerned with the health and well-being of the other to achieve his goals.

The harassed, passive subjects in an act of harassment, are the victims. And this victim figure can have as a profile the subject that creates the annoying harasser, who have different characteristics that distinguish him within the organization and that cause negative sensations and emotions to the aggressor.

According to Pacheco (2007: p. 67), the victims “are those workers whom the active subject submits to persecutory, humiliating, vexatious acts, generating a degrading, intimidating or destabilizing work environment”.

Organizations are the environment where the episode of moral harassment happens, whose importance of the work environment determines, or can determine, as well as other reasons, that the episode happens.

For Hirigoyen (1999) there are organizations that perversely use manipulation in order to achieve their goals and increase their income. In this way, it can be considered that, in certain cases, organizations can be the harassers themselves.

Thus, the organization becomes involved in a single commitment whose results are based on the need, in these cases beyond what is financially necessary, to increase productivity which, in turn, increases internal competitiveness whose results are reflected in efficiency, degrading labor relations and the environment in the organization.

3. Methodology

The objective of this work is to relate, through a cognitive map (causal map), the determining factors (pursuit) with the conditioning factors (intentionality).

The Empirical Investigation aimed to identify and get to know other players in the process, understand the concepts, evaluate subjects, factors, causes and effects/consequences on the health and well-being of victims of Moral Harassment at Work.

This research process initially sought to assess a set of facts that would point to an important direction of investigation. Initially with framing propositions that allowed me to collect data and later compare them.

In this context, the fact that helped and determined the researcher in the collection of information is presented, in order to pose the starting question:

The current Jurisprudence presents shortcomings in the scope of interpretation and legal application in the face of practices of Moral Harassment at Work, caused by omissions and inconsistencies of the legislation in force regarding the factors that condition or result in means of proof, to which the legislator and the political forces authorities were not capable of trying to typify, in a particular way, criminally, and clarify the criteria for analysis of the Means of Evidence.

The researcher chose to carry out a qualitative research in order to deepen the problem and transmit knowledge about the experienced reality. This research is an investigation method that uses a qualitative data technique, through a Cognitive Map (Causal Map) of the relationship between two axes, Persecution and Intentionality.

The Cognitive Map used in this investigation (Causal Map) was based on the Case Study of Antônio Virgílio Bittencourt Bastos, in 2002, in which he explored methodological aspects regarding cognitive maps and organizational research.

For (Bastos, 2002: p. 66) “the term ‘organizational cognition’ is broadly applied to the field of studies that, supported by a cognitive perspective, investigates individuals and organizations and builds their environments and how such processes are developed, relates to important organizational products”, and for this perspective cognitive maps are applied that involve the concepts and their relationships with the subjects to understand the problem.

According to (Bastos, 2002: p. 67), cognitive maps are representations/models built by individuals to relate the problems with the challenges that they present to them, not being static representations, since they are constantly updated from the adjustment of the changes that occur. The contexts impose, above all, the incorporation of new information and, therefore, “the maps are being reconstructed by the learning process”.

Of the different construction methodologies regarding cognitive maps in organizational studies presented by Bastos (2002: p. 71), the researcher used Causal Maps as the methodology of this investigation, given that they seek to “understand the conditions that generate decisions of singular subjects, given to the need to share visions” that can generate actions.

This methodology aims to identify the influence and causality relationships in an argumentation system, whose assumed assumptions about cognition are related by different interpretations of similar facts, through documentary data, identifying both the subjects, the concepts, and the relationship of causality of effects, being a basic cognitive process of explanation that is based on the relationship between literature and the letter of the law and the spirit of the law, of critical dimensions of analysis of representation based on justifying arguments, in a graphic format of a network of association between concepts with the use of arrows in the sense of relating causality with signs (base of the nature of the relationship), where the relevant product generated is a network of causalities.

These Causal Maps, according to Bastos (2002: p. 71), can have three methodological strategies for construction, and the model used by the researcher is the model developed by Colin Eden in 1988, called SODA (Strategic Options Development Analysis), in which the application will result in a graph where the concepts will be linked by arrows representing the causal relationships. Since in this case, the final result will not create the need for courses of action for a given organization, but the causal relationship of the problem under investigation in the face of the interpretation of data collection and the need for a different interpretation.

Applying the rules for collecting data from documentary data (doctrine, jurisprudence and legislation), we will, without technological resources (software), analyze the history and content of Portuguese legislation on the subject of Moral Harassment at Work, the means of proof and the analysis of the pursuit/intentionality relationship, two axes that are the basis of the investigation and interpretation that will allow the creation of the final product, a network of causalities.

The steps taken to collect information were research into current legislation and jurisprudence (judgments whose identical subject matter had different interpretations) that allowed analyzing the duality of applied criteria.

In this sense, we will analyze the content of Portuguese jurisprudence relating it to Portuguese legislation.

4. Results

Portuguese legal recognition of moral harassment at work had its first initiative in 2000, through Bill No. 252/VIII (Labor Protection Against Psychological Terrorism or Moral Harassment), presented under article 167 of the Constitution of the Republic Portuguese.

The aforementioned Bill was the subject of reports and opinions from the Commission on Constitutional Affairs, Rights, Freedoms and Guarantees (which unanimously approved), from the Labor, Solidarity and Social Security Commission (which unanimously approved), which previously submitted public discussion, having received two opinions, one from UGT and the other from CGTP-IN. It was a document of analysis and regulation in view of the rights in-

herent to the dignity and integrity of the human person, there were divergences regarding important factors, whether the legal classification of crime, regarding the identification of objective elements (threats/innuendo or wrong information) and subjective (the need for a specific intention to be foreseen), regarding the sanctioning regimes, specifically the conviction to a prison sentence (proceeded by the Court) or administrative offense (prosecuted by the administrative entities), and other interpretations of the Unions.

Despite the importance of the scope of the Bill, it was not discussed in detail by the Assembly of the Republic. However, it was the beginning of an approach to the effects that moral harassment has on work and the awareness that it would be important to integrate, clarify, define and legally regulate.

Subsequently, and only in 2003, with the 2003 Labor Code (Law n° 99/2003, of 27 August – currently repealed), in article 24, it was possible to see recognized in the Portuguese legal order the behaviors of moral harassment that, until on that date, were neither foreseen nor sanctioned in the Portuguese legal order.

Thus, until 2003, for the courts, even though they were aware of the problem (and in the event that these types of situations were judged), the only legal precepts that could be used in their analysis would be the Constitution of the Portuguese Republic, the Civil Code or the Employment Contract Law (Decree-Law No. 49408, of November 24, 1969).

In 2009, with the approval of Law n° 7/2009, of February 12 (Labor Code), the concept of moral harassment is enshrined in article 29. Since that approval, the Labor Code has been subject to amendments, such as Law n° 73/2017, of August 16, with the aim of strengthening the powers of workers and their promotion in the face of the problem, specifically, strengthening the legislative framework for the prevention of harassment.

5. Discussion

The practice of Moral Harassment, according to article 29, n° 5 of Law n° 7/2009, of February 12, constitutes a very serious offense, without prejudice to possible criminal liability. This criminal liability, based on the rules of Portuguese criminal law, makes it possible for a criminal complaint to be filed based on respect for the protection of personal freedom, protected both by the Constitution of the Portuguese Republic (articles 26 and 27) and by the Portuguese Penal Code (Articles 154-A).

In the world of human relations, especially at work, approaching the act of persecuting is restricting it to the motive of disturbance or obsession in an insistent and permanent way, that is, a “form of violence, usually being identified as a pattern of intrusive, repeated, intentional behavior and unwanted by the victim, which induce fear” (Ferreira, 2016: p. 9).

Evidence, an instructive element of the criminal procedure, is a constitutional guarantee, pursuant to article 38, paragraph 8 of the Constitution of the Portuguese Republic (CRP), in accordance with the provisions of article 124, para-

graph 1 of the Code of Criminal Procedure (CPP), is consisting of “all facts legally relevant to the existence of a crime”, the most common means of proof being testimonial evidence (article 140 of the CPP); confrontation (interrogation/confrontation between subjects who have provided contradictory statements in order to allow the Court to ascertain the truth); recognition (identification and description, with details of what the subject remembers); the reconstitution of the fact (exact reconstruction of what is supposed to have happened); expert evidence (assessment by experts, services or laboratories given the technical, scientific or artistic requirement); and documentary proof (per document).

These practices have been, over the years, judged in several Portuguese courts, in their other instances, never existing an exhaustive criterion with regard to the clarity with which the means of proof are analyzed and their relationship persecution/intentionality in the interpretation and application of the letter of the law.

The Judgment of the Court of Appeal of Porto, of February 2, 2009, Case n° 3819/08 of February 2, 2009, concluded that the author was a victim of Moral Harassment based on discriminatory factors, specifically the restriction of computer use, non-attribution of bonuses or annual salary increases, condemning the harasser to abstain from new discriminatory facts, giving the victim equal treatment.

Regarding the criterion of intentionality as a factor of Moral Harassment, it should be noted that, on the one hand, the Judgment of the Supreme Court of Justice, of May 9, 2018, Process No. 532/11.5TTSTRE.E1.S1, refers in the Summary that The legislator, in article 29 of the Labor Code, omits the need for the intentional element, therefore dismissing it, that is, we are dealing with Moral Harassment at Work if the organization exercises intense and unequivocal behaviors that disrespect the worker’s psychological and moral integrity.

On the other hand, the Judgment of the Supreme Court of Justice, of January 13, 2010, Process n° 1466/03.2TTPRT.S1, according to the provisions of the Summary, states that “the figure of mobbing is characterized by three facets: the practice of certain behaviors; its duration, and the consequences of these, being usual to associate the intentionality of the persecutory conduct, its repetitive nature and the verification of consequences on the physical and mental health of the worker and on the job itself”.

From the analysis of these Judgments it is possible to verify that there is a relationship between persecution (as a determining factor, previously foreseen and typified in the Penal Code) and intentionality (conditioning factor, omitted in the Labor Code), and that in the face of the same legal diplomas there are different interpretations.

6. Conclusion

This work is the result of a long but productive process. Long, because it started with the dilemma related to choosing the theme of the dissertation, which, as a rule, a Master’s student already has as a purpose when starting the research.

Productive, as the initial idea of the researchers about the problem was different, both in terms of instructive and regulatory factors, which allowed it to serve, essentially, as a learning experience and a challenge for a future legal analysis of a problem intrinsic to management of human resources.

Throughout the research, the authors sought to relate the subjects with the theme in order to find approaches that would allow bringing the paper closer to the purpose, and in this sense, it was a work developed throughout the year, on an ongoing basis.

Thus, after some reflections and brief investigations on the topic, and in agreement with the advisor, the topic was chosen for the reasons explained in the Introduction.

Firstly, it was necessary to deepen the theme through concepts and frame it in theoretical terms, in which it was possible to resort to master's and doctoral theses of graduates in this area, which allowed a greater approximation to the Portuguese context and the importance that has been given to the problem.

The investigation in question is related to the issue of moral harassment at work, with the general objective of addressing the issue by relating intentional conduct to a crime provided for in Portuguese law.

The general objective was achieved, as through a framework of history, concepts and material elements (legislation and jurisprudence) it was possible to perceive that there seem to be different interpretations, but, above all, there is a greater consensus insofar as there is a relation between the intentional factor and the crime of persecution.

Based on the above, we can state that Moral Harassment is considered an explicit form of persecution, and if persecution is a crime provided for in the Penal Code that applies to acts that are intentional in nature, we do not agree with the terms, for example, of the decision of the Judgment of the Supreme Court of Justice, Process n° 532/11.5TTSTRE.E1.S1, since the existence of harassment has, as we saw in the other Judgments, intentionality as a factor, that is, with the clear objective of reducing the personal freedom of others. However, it is possible to verify that, regarding the interpretation and application of the law, it is not unanimous.

We can now, reflecting on the work carried out, feel that the duty has been fulfilled, as we think we have managed to achieve its general purpose, relating the intentional conduct to the crime of persecution related to Moral Harassment at Work.

Thus, and given that the matter is of high interest in the calculation of labor relations, future investigations suggest a deepening of other cognitive axes that may be generating different legal interpretations on the same problem as the case of witnesses and their involvement in the cause/effect relationship of the same.

Since the analysis of the two axes of the cognitive model chosen for the investigation made it possible to verify the legislative fragility in the protection of victims of moral harassment, it is also suggested scientific studies that can be the

subject of political debate so that measures can be adopted to combat and prevention and, above all, clarifying the letter of the law.

Some Limitations to the Study

It was only realised in the Portuguese context, it is important for the future research work, to identify some practices in Europe and other parts of the world, in order to better identify if the determinant factors of moral harassment at work are generally accepted or not.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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Appendix: Causal Map

