

**DIGNITY IN THE WORKPLACE: THE ASPECT OF MORAL HARASSMENT AND CONCERNS ABOUT THE ADEQUACY OF GREEK LEGISLATION**

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**ABSTRACT:** *Dignity at work is related to a wide range of employment issues that face the basic and general question how employees are valued and respected as humans in the workplace. This paper focuses on the psychological and moral harassment, which is considered to be one of the most serious threats of employees' dignity. First, it examines the broad concept of psychological and moral harassment and its various definitions. Then, it analyzes the legislative framework in Greece and traces the extent in which harassed employees are protected by the general provisions of the Greek Constitution, the Civil Code, the Labor Law, and the Penal Code, since there is no specific legislation regulating workplace harassment. Finally, this paper makes suggestions about the need for a specialized legal framework to be established regulating the psychological and moral harassment in the workplace and highlights the advantages of such an initiative.*

**KEYWORDS:** dignity, harassment, mobbing, non-discrimination, rights' abuse

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## **INTRODUCTION**

Workplace dignity is a fundamental issue in modern anthropocentric labor law. Since the employee's personality is actively involved in the process of work and work is dominated by the employer's authority, there is an increasing concern of social sciences, both in the fields of management and law, how to create and maintain a work culture that preserves and honors dignity in the workplace.<sup>1</sup> Every employee has the right to feel valued, respected and appreciated for who he is and what he contributes to the company-team, regardless of his job, role or level. The feelings of self-worth, self-respect and psychological safety are often more important to the employee than the material aspects of work and, ultimately, these feelings lead to personal happiness as well as organizational success.

Moral and psychological harassment is considered to be one of the most serious forms of disrespect that may lead to injury or denial of the employee's dignity. The

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<sup>1</sup> See Caprino, K. (2018). Interview with Hicks, D. How to build a culture of dignity, and what happens if you don't. Retrieved from <https://www.forbes.com/sites/kathycaprino/2018/08/21/how-to-build-a-culture-of-dignity-and-what-happens-if-you-dont/#74618cdf6c17> (12.3.2020).

harassing behaviors have serious negative consequences on the physical, moral, and mental health of employees, endanger their safety, and worsen the quality of their working and living conditions.<sup>2</sup>

The phenomenon, as it is expected, worsens and evolves in times of financial and social crisis, while the fear of losing a job and the inability of finding a new job or finding another job inactivates victims, leaving space for employers or managers to abuse their power and position. Although companies have made progress in understanding the problem, especially under the principles of corporate social responsibility, they seem, in most cases, incapable or unwilling to deal with the problem; some of them appear apathetic or, even worse encourage it. Some (fortunately not many) employers believe that by systematically harassing employees, they have stronger control over them and shall achieve greater productivity and profitability. But they are wrong. The worker is productive when he feels valued and respected and not when he is abused. The derogated worker becomes inattentive and ineffective, and the quality of his work constantly declines. Thus, it should be in every employer's interests to build a positive culture based on dignity and respect and promote a safe, healthy, fair, and friendly environment in which people can work and develop their personality.

In Greece there is no specific legislation regulating moral and psychological workplace harassment<sup>3</sup>. Employees are protected by the general provisions of Civil Law concerning the protection of personality and the protection of health and safety in the workplace, by the provisions of the Labor Law concerning harassment in general, non-discrimination and harmful change of working conditions and by the provisions of criminal law. The interpretation of the above legislation is always made in the light of the constitutional provision for the protection of human value, which governs, as fundamental principle, our entire legal system. Greek courts often apply

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<sup>2</sup> Tsiama, M. C. (2013). The Workplace Ethical/Mental Harassment Phenomenon: Conceptual Definitions. National Institute of Labor and Human Resources. Vol. 9, pp. 3-4. Retrieved from <https://www.eiead.gr> (26.2.2020).

<sup>3</sup> In other countries, however, legislative action for protection against workplace harassment has been initiated already in the past decades. Sweden was the first country to adopt 'victimization at work' rules in 1993, followed by France, which instituted civil and criminal law, Ireland, Belgium, Canada, and the United Kingdom. See Browne, Neil M./Smith, Mary A. (2008). Mobbing in the Workplace and Individualism: Anti-bullying Legislation in the United States, Europe and Canada, Employee Rights and Employment Policy Journal. Vol 12: 131, 8-2008, pp. 131, 135, Guerrero, M. (2004). The Development of Moral Harassment (or Mobbing) Law in Sweden and France as a Step Towards EU Legislation. Boston College International and Comparative Law Review. Vol 27, 1-2004, p. 477.

these rules in a variety of cases that have the characteristics of harassment<sup>4</sup>, but they don't address the concept of workplace harassment itself.<sup>5</sup>

### **The broad conceptual content of moral and psychological harassment and its various definitions**

#### **General observations**

Moral and psychological harassment is defined by the science of psychology as psychological violence, perpetrated by a person or group of individuals, against a person or group of individuals. It is expressed through a chain of unethical behaviors that, while seemingly unrelated to one another, are in fact part of a strategy of intimidation, humiliation, and weakening of the target.<sup>6</sup> What distinguishes this form of harassment from the usual stressors is that it is a systematic, long-lasting and insidious tactic that, through frequent and repeated negative behaviors, aims at the psychological and occupational extermination of the victim.<sup>7</sup>

One of the first scientists involved in the research and description of moral and psychological harassment in the workplace is H. Leymann, a Swedish psychologist who introduced the term "mobbing" from the verb "mob" (surround and attack), which he considered more appropriate than the term "bullying". French psychiatrist Marie France Hirigoyen defined harassment in the workplace as "any abusive behavior that is manifested in words, deeds, and can damage one's personality, dignity or physical or mental integrity, endanger work or disrupt the working climate."<sup>8</sup>

Various terms have been used to define the phenomenon, such as "harassment", "bullying", "workplace trauma", "abusive behavior", "emotional abuse", "scapegoating", and of course "mobbing". According to Chirila and Ticu, these definitions are characterized by a similarity in their content: the concepts are defined through several negative behaviors; these behaviors are performed by a person towards one or more persons with the aim of producing physical, mental or moral harm. Another common feature of all these definitions is that the targeted person reaches in a position in which he can't defend himself anymore, thus becoming a victim.<sup>9</sup>

<sup>4</sup> See Judgments of the Greek Supreme Court 967/1991 and Court of Appeal 2018/1989. Retrieved from [https://lawdb.intrasoftnet.com/nomos/3\\_nomologia\\_rs.php](https://lawdb.intrasoftnet.com/nomos/3_nomologia_rs.php) (2/3/2020).

<sup>5</sup> See Lorho, Fr./Hilp, U. (2001) *Bullying at work*. European Parliament. Directorate – Generale for Research. SOLI108en, p. 17.

<sup>6</sup> See Leymann, H. (1996). *The Content and Development of Mobbing at Work*. European Journal of Work and Organizational Psychology. Vol 5: 2, pp. 165-184. <https://doi.org/10.1080/13594329608414853>.

<sup>7</sup> See Tsiama, M. C. (2013). *The Workplace Ethical/Mental Harassment Phenomenon: Conceptual Definitions*. National Institute of Labor and Human Resources. Vol. 9, p. 5. Retrieved from <https://www.eiead.gr> (26.2.2020).

<sup>8</sup> See Hirigoyen, M. F. (2000). *Ethical Harassment. The Hidden Violence in Everyday Life*. Patakis Publications, p. 66. The author uses the term "perverse violence" as a synonym.

<sup>9</sup> See Chirila, T./Ticu, C. (2013). *Understanding workplace bullying phenomenon through its concepts: A literature review*. Procedia - Social and Behavioral Sciences. Vol. 84, pp. 1175 – 1179, doi: 10.1016/j.sbspro.2013.06.722.

Various behaviors can be identified as workplace harassment: refusing to communicate with an employee, absence of instructions or contradictory instructions, denial of work, or excessive assignment of work, senseless tasks or assignments that exceed the employee's competence, shunning, degrading working conditions, incessant criticism, repeated sarcasm, bullying, humiliations, slanderous comments, insults, and threats.<sup>10</sup> Workplace bullying may occur between colleagues at the same organizational level or between superiors or subordinates, and the harasser may be either the superior or the subordinate. It may arise from an existing conflict that has deteriorated or from a situation deliberately set up to humiliate the target employee. There is no typical profile for moral harassment victims: They may be male or female, young or old, and newly promoted or longtime employees -not necessarily fragile individuals.<sup>11</sup> An absence of support or recognition on the part of superiors or colleagues is one of the aggravating factors of the effects of moral harassment in the workplace.<sup>12</sup>

The above behaviors create a persecutor-victim relationship, which puts the worker in a state of constant uncertainty and fear of the timing and conditions of the next attack. This intimidation is systematic, repetitive, persistent, and gradually escalates, turning the workplace into a hostile place and work itself into a torture process.<sup>13</sup>

### **Definitions at national and international level**

In Greek law, the term 'harassment' is found in the anti-discrimination regulation, whereas it is defined as 'unwanted behavior related to the sex of a person with the purpose or effect of violating that person's dignity and creating an intimidating, hostile, humiliating, degrading or aggressive environment' (Article 2 of Law 3896/2010 as replaced by article 22 par. 2 Law 4604/2019). However, there is no definition of the broader term of moral and psychological harassment.

At European level, the prohibition of moral and psychological harassment is not explicitly provided for, but it is in fact based on the values and principles laid down in the Treaties and is covered by Article 31 of the Charter of Fundamental Rights, which provides that 'every worker has the right to working conditions which respect his or her health, safety and dignity'.<sup>14, 15</sup> The General Court, at first, conceives moral

<sup>10</sup> See Whitman, James Q. and Friedman, Gabrielle S. (2003). The European Transformation of Harassment Law: Discrimination versus dignity. Faculty Scholarship Series, p. 647. Retrieved from [https://digitalcommons.law.yale.edu/fss\\_papers/647](https://digitalcommons.law.yale.edu/fss_papers/647).

<sup>11</sup> See Yuen, R. (2005). Beyond the Schoolyard: Workplace Bullying and Moral Harassment Law in France and Quebec. Vol. 38 (2), p.626 with further citations. Yet, Yuen states that "*Victims tend to be females, likely due to the prevalence of male-dominated professions and work cultures, and bullies tend to be males, likely due to more aggressive personalities and the typically supervisory positions they hold in the workplace.*"

<sup>12</sup> See Whitman, James Q. and Friedman, Gabrielle S., supra note 9.

<sup>13</sup> See Carouzos, J. Mobbing, Moral and psychological harassment in workplace. Retrieved from <https://dikigorosergatologos.gr/gnomi-ton-eidikon/item/2824-mobbing-ithiki-psyxologiki-parenoxlisi-ston-ergasiako-xoro.html> (5.9.2019).

<sup>14</sup> Judgment of the General Court of 13 July 2018, Curto v European Parliament, T-275/17, EU: T: 2018: 479, paragraph 81.

harassment as an “improper conduct”, which takes place ‘over a period’ and is ‘repetitive or systematic’, suggesting that psychological harassment must be understood as a process that occurs over time and presupposes the existence of repetitive or continual behavior, which is ‘intentional’, as opposed to ‘accidental’.<sup>16</sup> Secondly, in order to fall under that definition, such physical behavior, spoken or written language, gestures or other acts must have the effect of undermining the personality, dignity or physical or psychological integrity of a person.<sup>17</sup>

According to the case-law of the General Court, it is not necessary that the physical behavior, the spoken or written language, the gestures or other acts in question were committed with the intention of undermining the personality, dignity or physical or psychological integrity of a person. In other words, there can be psychological harassment even if there has been no intention on the part of the harasser, by his conduct to discredit the victim or deliberately impair the latter’s working conditions. It is sufficient that such conduct, provided that it was intentional, led objectively to such consequences,<sup>18</sup> in the sense that an impartial and reasonable observer, with common sense and in the same situation, would consider the behavior or act in question to be excessive and open to criticism.<sup>19</sup>

At the international level, the International Labor Organization recently adopted the Violence and Harassment Convention No 2019, which defines violence and harassment as “a range of unacceptable behaviors and practices” that “aim at, result in, or are likely to result in physical, psychological, sexual or economic harm”. It covers everyone who works, including interns or apprentices and persons who exercise the duties or authority of an employer, and applies to the public and private sectors, the formal and informal economy, as well as urban and rural areas.<sup>20</sup> Besides, the General Conference recalls the Declaration of Philadelphia, which affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their

<sup>15</sup> About the different American approaches to the concept of “dignity” see Whitman, James Q. and Friedman, Gabrielle S. (2003). The European Transformation of Harassment Law: Discrimination versus dignity. Faculty Scholarship Series, p. 647. Retrieved from [https://digitalcommons.law.yale.edu/fss\\_papers/647](https://digitalcommons.law.yale.edu/fss_papers/647).

<sup>16</sup> On the contrary, Hirigoyen broadens the definition of moral harassment by recognizing that even “*a single act of aggression could constitute moral harassment if it is intentionally humiliating*”. Guerrero, M. (2004). The Development of Moral Harassment (or Mobbing) Law in Sweden and France as a Step Towards EU Legislation. Boston College International and Comparative Law Review. Vol 27, 1-2004, pp. 484,485.

<sup>17</sup> Judgment of the General Court of 13 July 2018, *Curto v European Parliament*, T-275/17, EU: T: 2018: 479, paragraph 81, Judgment of 13 December 2017, *HQ v CPVO*, T-592/16, not published, EU:T:2017:897, paragraph 101; see, also, judgment of 17 September 2014, *CQ v Parliament*, F-12/13, EU:F:2014:214, paragraphs 76 and 77 and the case-law cited.

<sup>18</sup> Judgments of 5 June 2012, *Cantisani v Commission*, F-71/10, EU:F:2012:71, paragraph 89, and of 17 September 2014, *CQ v Parliament*, F-12/13, EU:F:2014:214, paragraph 77 and the case-law cited.

<sup>19</sup> Judgments of 16 May 2012, *Skareby v Commission*, F-42/10, EU:F:2012:64, paragraph 65, and of 17 September 2014, *CQ v Parliament*, F-12/13, EU:F:2014:214, paragraph 78.

<sup>20</sup> Retrieved from

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C190](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190).

material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.<sup>21</sup>

The literature, conclusively, lists three characteristics that distinguish moral harassment from other counterproductive acts. (a) The repetition of negative acts or behaviors that endures over time, (b) the focus of those acts and behaviors on specific person and (c) the stigmatization and victimization of the harassed person, leading to the violation of its physical, mental, moral and social development.<sup>22</sup> It is important to point out that the offense of psychological harassment does not require an abuse of authority, although this is the most frequent origin of the harm. The moral harassment may be top-down (harassment by a superior), horizontal (harassment between colleagues), or bottom-up (harassment by a subordinate).<sup>23</sup>

The consequences to the health of the worker and his family are not only serious but often incalculable. Harassment is the leading cause of severe mental and physical illnesses, both associated with work stress and burn-out syndrome (the total exhaustion of the worker who is no longer able to perform his professional duties). These may consist of symptoms as sleep disorders, physical fatigue, increased aggression, depression or even suicidal tendencies. It is no coincidence that mobbing is already associated with the cause of occupational disease or the occurrence of serious occupational accidents in many jurisdictions. The effects of workplace harassment are particularly negative for businesses, as well. The disruption of working peace coupled with the cultivation of a model of working life in which the worker ends up mentally exhausted leads to a marked decrease in efficiency, creating strong work disincentives. The result is a gradual decline in productivity and a consequently reduced business performance.

## **Legislative framework in Greece**

### **Constitution's provisions**

Article 2 (1) of the Greek Constitution explicitly provides for the protection of the value of the human being and therefore of the worker.<sup>24</sup> Indeed, this provision is contained, not in the second part of the Constitution concerning individual and social

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<sup>21</sup> The Declaration of Philadelphia was adopted at the 26th Conference of the International Labour Organization in 1944 and was added as annex to the ILO's constitution. The Declaration focused on a series of key principles to embody the work of the ILO. Retrieved from <https://definitions.uslegal.com/d/declaration-of-philadelphia> and <https://www.ilo.org/legacy/english/inwork/cb-policy-guide/declarationofPhiladelphia1944.pdf>.

<sup>22</sup> See Gwenaelle, P.R., Winter, R. (2007). Combating Psychological Harassment in the Workplaces: Processes for Management intervention. *International Employment Relations Review*. Vol. 13(1), pp. 67-83, halshs-00268083.

<sup>23</sup> See Yuen, R. (2005). Beyond the Schoolyard: Workplace Bullying and Moral Harassment Law in France and Quebec. Vol. 38 (2), pg.626, 637.

<sup>24</sup> The Greek constitution uses the word "value" (in Greek "αξία") rather than "dignity" (in Greek "αξιοπρέπεια"), because "dignity" only means value in relation to others, while the word "value" expresses the substance of the right itself without relevance to third parties. See Paulopoulos, P. (2019). The human value as the foundation of the anthropocentric character of the Constitution. Retrieved from <https://www.amna.gr/home/article/369468/l-axia-tou-anthropou-os-themelio-tou-anthropokentrikou-charaktira-tou-Suntagmatos>.

rights, but in the first part ("fundamental provisions"), and, in particular, the provisions governing the "form of the state". It is clear that the legislator wanted to make this provision a fundamental principle for the country's constitutional order. The provision in Article 2 (1) is not merely a "guiding" or "programmatic" provision of the Constitution, but a legally binding provision, which applies in cases not covered by other specific provisions. It, therefore, excludes it, together with that of Article 7 (2), from revision or suspension.<sup>25</sup> In this sense, the right to mental integrity, serenity, and health, which is not directly protected by any constitutional provision, may be subject to the general provision of Article 2 (1) and the provision of Article 7 (2). The latter states that "*torture, any bodily harm, health injury, or the use of psychological violence, as well as any other breach of human dignity, are prohibited and punishable as provided by law.*" Other relevant forms of provision of the Constitution are contained in Articles 5 (1), 22 (1), 25 (2) and 106 (2) of the Constitution.<sup>26 27</sup>

The Greek constitutional provision of Article 2 (1) corresponds to Article 2 of the Treaty on European Union, as developed after the Treaty of Lisbon. "*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men prevail.*" Besides, article 1 of the Charter of Fundamental Rights of the European Union states that "*human dignity is inviolable*", while Article 31, as it has been stated, explicitly guarantees the protection of the dignity of the worker. The principle of the protection of human dignity is at the core of the fundamental principles of European culture.

### **Greek Civil Code (GCC)**

#### **Article 57: The protection of personality**

The employee who is subjected to moral and psychological harassment is mainly protected through the provisions of several articles of the Greek Civil Code (GCC). According to article 57 of the GCC: "*Anyone who is illegally offended in his or her personality has the right to demand the offense to be abolished and not repeated in the future. Claiming compensation under the provisions of the penal code is not*

<sup>25</sup> See Dactoglou, Pr. (1991). Constitutional Law. Individual Rights, Volume II, Sakkoulas Publications. p. 1135.

<sup>26</sup> Article 5 (1): All persons have the right to develop freely their personality and to participate in the social, economic and political life of the country, insofar as they do not infringe the rights of others or violate the Constitution and the moral ethics. Article 22 (1): Work constitutes a right and shall enjoy the protection of the State, which shall care for the creation of working conditions for all citizens and shall pursue the moral and material advancement of the rural and urban working population. Article 25 (2): The recognition and protection of the fundamental and inalienable rights of humans by the State aims at the achievement of social progress in freedom and justice. Article 106 (2): Private economic initiative shall not be permitted to develop at the expense of freedom and human dignity, or to the detriment of the national economy.

<sup>27</sup> See Mitrika, A. (2014). Ethical Harassment as Discrimination at Work and its Treatment in European and Greek Law, *Nomiko Vima* 2014, pp. 2004, 2009.

*excluded.*” According to Article 59 of the same Code “*in the cases of Articles 57 (and 58) the court, at the request of the person that has been offended, after taking into account the nature of the infringement, may additionally order the offender to make up for the non-material damage and, in particular, to oblige him/her to pay a sum of money, make a publication or anything else required by the circumstances*”. The above articles, thus, protect the personality and the value of the person as an individual right registered in Article 2(1) of the Greek Constitution.

According to Greek jurisprudence, personality includes the physical, mental and social individuality of a person.<sup>28</sup> These aspects of individuality are not autonomous rights, but parts of the whole right to personality. In this sense, the value of every person is fully protected as a part of his personality and so is the social value, which is the value an individual enjoys in society, as a result of his compliance with legal and ethical obligations. A form of social value is considered to be the appreciation that a person enjoys in society, as a result of his competence and ability to fulfill his particular work or profession.<sup>29</sup> Thus, acts that humiliate or insult the employee or question his professional ability or competence at work lead to a straight violation of the right to personality. In the same way, feelings such as sadness, distress, anxiety, fear, and agony, which can be caused by harassing acts, violate the mental health and the emotional world of the employee and consequently violate the right to personality.<sup>30</sup>

According to the above jurisprudence, the employee has the right to demand the harasser to cease infringement immediately and not to repeat it in the future, while there is no need for the employee to prove other subjective circumstances or conditions referring to the infringer (objective responsibility). The employee may also claim compensation for non-material damage and compensation for any positive material damage if the offender is held liable.<sup>31</sup> The calculation of financial compensation shall take into account all relevant facts, under the rules of common sense and logic, in particular: the nature of the infringement, the extent of the damage, the circumstances of the offense, the fault of the offender, the gravity of his liability and the economic and social situation of the parties.<sup>32</sup> The Court Judgment, however,

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<sup>28</sup> Judgments of Supreme Court 1295/2015, 1566/2014, 1309/2014, 1652/2013. Retrieved from [https://lawdb.intrasoftnet.com/nomos/3\\_nomologia\\_rs.php](https://lawdb.intrasoftnet.com/nomos/3_nomologia_rs.php) (4/3/2020)

<sup>29</sup> The Greek jurisprudence follows the classification of dignity into two types: the internal and the external dignity. According to Tiwari and Sharma, internal dignity is described as a gift of God that no one can take from us; we are the sole owner of internal dignity. The external dignity, represented by symbol of the values, is shaped by actions, events and individuality. It could be impacted by others' judgment, one's productivity and other types of contributions which a person makes to the outer world. See Tiwari,A./Sharma,R. (2019). Dignity at the workplace: Evolution of the Construct and Development of Workplace Dignity Scale. *Frontiers in Psychology*, 10:2581, p.2, doi.org/10.3389/fpsyg.2019.02581.

<sup>30</sup> Judgments of Supreme Court 109/2012, Single members Piraeus Court of First Instance 964/2018. Retrieved from [https://lawdb.intrasoftnet.com/nomos/3\\_nomologia\\_rs.php](https://lawdb.intrasoftnet.com/nomos/3_nomologia_rs.php) (3/3/2020).

<sup>31</sup> See Ladas, J. (2018). *The Right to Worker Personality*. Law Library Publications, p. 190.

<sup>32</sup> Judgments of Supreme Court 9/2015, 574/2019, 1113/2019. Retrieved from [https://lawdb.intrasoftnet.com/nomos/3\\_nomologia\\_rs.php](https://lawdb.intrasoftnet.com/nomos/3_nomologia_rs.php) (1/3/2020)



must respect the fundamental principle of proportionality in the sense that there must be a tolerable proportionality relationship between the financial and non-financial sanctions imposed on and the purpose pursued by each measure.<sup>33</sup> In this sense, a decision imposing an extremely low compensation humiliates respect for the victim's value or a decision imposing an excessively large compensation offends the harasser's right to property. The court, while intervening in the dispute between the individuals, must maintain a fair balance between the opposing interests.<sup>34</sup> However, if the dispute is between the employer and the employee, the legal position of each party must be taken into account when calculating the compensation.

### **Article 281: The general prohibition of rights' abuse**

According to Article 281, the exercise of any right is prohibited, if it obviously goes beyond the limits imposed by good faith or good morals or the social or economic purpose of the right. Particularly in the field of labor relations, the managerial right of the employer, as accepted, entitles him to specify the job of the employee concerning the place, the time, the manner and the conditions of employment, provided that they are not regulated by any other legal provision. Exercising the managerial right, the employer gives general or specific instructions that regulate the behavior of the employee in the performance of his/her work, concerning daily working life (non-essential working conditions). Even in this case, however, the managerial right is neither uncontrollable nor unlimited. It must be exercised within the framework of the employment contract and under the provisions of the Civil Code, that is to say objectively, fairly; respecting the interests of both parties and taking into account the specific circumstances of the particular case.<sup>35</sup>

Although the managerial right is at the bottom of the hierarchy of the rules that regulate the employment relationship, the exercise of this right is of great practical importance for daily routine work.<sup>36</sup> This is because everyday work is a traditional field of tension, conflicts, and individual pursuits and claims, which create unpleasant and pressing situations that must be resolved by the employer and certainly cannot be considered pathological. A remark even intense or exaggerated, a comment using harsh language in a time of frustration or malice or coercive work as an isolated incident may, in common sense and reason, be justified. On the contrary, repeated insults, humiliations, hints, sarcastic comments, threats, insults and screams tend to

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<sup>33</sup> At the level of European legislation, the principle of proportionality is based on art 52 (1) of the Charter of Fundamental Rights of the European Union: *'Any limitation on the exercise of the rights and freedoms recognized by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others'*.

<sup>34</sup> Judgments of Supreme Court 76/2016, 9/2015.

Retrieved from [https://lawdb.intrasoftnet.com/nomos/3\\_nomologia\\_rs.php](https://lawdb.intrasoftnet.com/nomos/3_nomologia_rs.php) ( 4/3/2020)

<sup>35</sup> See Leventis, G./Papadimitriou, K. (2011). Individual Labor Law. Deltio of Labor Law Publications, pp. 712, 717., Koukiades, J. (2005). Labor Law. Individual Labor Relations and the Law of Work Flexibility, Sakkoulas Publications, pp. 368-373, Zerdelis, D. (2007). Labor Law, Individual Labor Relations, Sakkoulas Publications, pp. 552-561.

<sup>36</sup> See Zerdelis, D. (2007). Labor Law, Individual Labor Relations, Sakkoulas Publications, p. 554.

create a psychological dominance over the victim and therefore constitute the concept of moral harassment.<sup>37</sup>

However, article 281 of the GCC provides no assistance, when the harasser is not the employer but other colleagues of the harassed worker. In this case, the employee may rely on the application of Article 57 of the GCC, requesting the termination of his personality abuse, non-infringement in the future and the payment of financial compensation for non-material damage under Articles 59 and 932 of the GCC.

### **Article 662: The employer's welfare obligation**

Article 662 of the GCC establishes the employer's general welfare obligation. Article 662 states that "*the employer must regulate the work and the workplace as well as the residence, premises and machinery or tools properly in order to protect the life and health of the employee*". Infringement of this provision, if it results in damage of employee's body or health, constitutes illegal activity, provided that the damage is employer's fault or his representatives'. In this case, the employer is liable for damages.<sup>38</sup>

The general welfare obligation requires the employer to take all appropriate measures to safeguard the employee's work interests and personality and, at the same time, omit any act that may unduly prejudice those interests. Of course, health and safety issues are fundamentally regulated by specific compulsory provisions of public law, because the multiplicity of risks that threaten human labor requires taking specific measures.<sup>39</sup> However, the general welfare obligation under Article 662 may include protection against risks, threats, and damages to employees' health that are not dealt with by the compulsive provisions of public law. In this sense, the introduction of the general welfare obligation broadens employees' protection and creates a direct claim against the employer, when he does not comply with his duties under Article 662.<sup>40</sup>

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<sup>37</sup> See Guerrero, M. (2004). The Development of Moral Harassment (or Mobbing) Law in Sweden and France as a Step Towards EU Legislation. *Boston College International and Comparative Law Review*. Vol.27:477, p. 484.

<sup>38</sup> Supreme Court 11/2012. Retrieved from [https://lawdb.intrasoftnet.com/nomos/3\\_nomologia\\_rs.php](https://lawdb.intrasoftnet.com/nomos/3_nomologia_rs.php) (5/3/2020).

<sup>39</sup> These provisions have been enacted in Laws 1568/1985 and 3850/2010, while the presidential decree 17/1996 harmonized Greek legislation with 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.

<sup>40</sup> There is a similar argue between scholars in the EU whether the employer's obligation to take measures to protect the mental and psychological health of workers corresponds to the specific obligations established by the directive 89/391/EEC. The current position of the European Commission is that moral harassment is covered under this directive. However, the opposite opinions argue that the European Council adopted the Safety and Health Framework Directive in 1989, well before public awareness about moral harassment and before the adoption of any legislation. As a result, this directive covers physical rather than psychological safety and health. See Guerrero, M. (2004). The Development of Moral Harassment (or Mobbing) Law in Sweden and France as a Step Towards EU Legislation. *Boston College International and Comparative Law Review*. Vol.27:477, pp. 493,494, Liu, K. (2015). Comparative Study of Regulating the Moral Harassment: Lessons for China. *Occup Med Health Aff*. Vol. 3(4), p. 4. Doi: 10.4172/2329-6879.1000214 with further citations.

The welfare obligation is essentially a compensation for the employee's dependence on the employer's power to manage and organize his work and is based on the principles of the social state, which impose that the employee's interests are taken seriously into account, in decision making. In other words, the obligation to provide welfare could be characterized as an expression of the employer's social responsibility towards the employee.<sup>41</sup> The general obligation for welfare, therefore, derives also from the employer's obligation to respect the employee's personality (Article 57 of the GCC).<sup>42</sup> The employer must, in accordance with the foregoing, respect the honor, reputation, and dignity of the employee as well as abstain from any act or omission which may result in his personality's abuse. He must contribute to the creation and maintenance of a climate of peace and smooth co-operation between staff and impose good behavior not only on the subordinates but also on the superiors and executives and employer's representatives. The employer should avoid anger outbursts, insults and generally any offensive or abusive behavior that could harm the employee's personality and, as a result, cause work-related difficulties, anxiety, fear, instability, and mental illness.

However, while harassment is a serious offense to the victim's personality, establishing a hostile work environment is a serious violation of the employer's welfare duty and therefore financial compensation cannot be limited to a 'symbolic amount' but must take into account the need to protect the -fundamental and superior according to the constitutional order - right to human dignity.<sup>43</sup>

## **Labor Law**

### **Unilateral Harmful change of working conditions**

The employee has also the discretion to view the harassing behavior as a "unilateral harmful change of his/her working conditions". According to Article 8 of Law 2112/1920, "unilateral change" means any change of employment terms by the employer, when he has no right to such change entitled to him by law, individual contract or employment agreement nor is it permitted by his managerial power to regulate all matters relating to the organization and operation of the company or is considered to be abuse of managerial law (Article 281 of the GCC). It is also required that the unilateral change causes direct or indirect material or moral damage to the worker. Therefore, a change in working conditions is considered to be harmful to the employee, not only when it causes material damage but also when it causes non-material damage. Given the overwhelmingly personal nature of the employment relationship, the brutal or offensive behavior of the employer (or of the person

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<sup>41</sup> See Koukiadis, J. (2005). Labor Law, Individual Labor Relations and the Law of Work Flexibility, Sakkoulas Publications, pp. 652, 654, Zerdelis, D. (2007). Labor Law, Individual Labor Relations, Sakkoula Publications, p. 873.

<sup>42</sup> See Koukiadis, J. (2005). Labor Law, Individual Labor Relations and the Law of Work Flexibility, Sakkoulas Publications, pp. 652, 654, 657,666, Zerdelis, D. (2007). Labor Law, Individual Labor Relations, Sakkoulas Publications, p. 873.

<sup>43</sup>See Boubouheropoulos, P. (2015). Mobbing-Moral Harassment, Unilateral Harmful Change, and Financial Satisfaction Due to Moral Damage, Labor Law Review (Greek Journal) 2015, pp. 169, 177.

representing him/her at workplace) towards the employee causes profound moral damage, as it affects the core of the employee's dignity.

Employee's moral injury occurs even if the employer has no intention to harm the working conditions or force the employee to resign. It is sufficient that the employer's conduct has created such conditions that, objectively and in good faith, make no longer possible for the employee to work in a spirit of mutual understanding and co-operation, or has caused such a moral decline in the employee's personality that continuing to work at the employer's business may be impossible or extremely difficult for him/her.<sup>44</sup>

In case of "unilateral harmful change of working conditions", the employee has, in general, the following options: (a) to accept the change, which obviously refers to change that causes material damage; (b) to consider employer's behavior as a dismissal and demand payment of the compensation as it is provided by Law 2112/1920; (c) to demand compliance with the contractual conditions and take the matter to court. If the "unilateral harmful change of working conditions" offends the employee's personality, as far as his/her professional value and professional status are concerned, then the employee can claim financial compensation due to moral damage (Articles 57 and 59 of the GCC).

### **Non – discrimination regulation**

If the personality disorder is caused by a prohibited discrimination (such as race, color, national or ethnic origin, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, identity, sex characteristics), then it falls within the scope of Laws 3896/2010 and 4604/2019 and it is classified as "harassment", resulting in the civil, administrative and criminal sanctions of the aforementioned legislation (article 9 (2) Law 4443/2016 and article 23 Law 3896/2010, which were brought into force to harmonize Greek legislation with Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation).<sup>45</sup> However, even though a prohibited discrimination may cause moral and psychological harassment, there is no doubt that a serious number of non discriminative (in the above sense) behaviors may also have harassing results and thus the non–discrimination regulation cannot provide full protection for employees against the broader danger of being ethically and psychologically harassed. Furthermore, the prohibition of moral harassment is considered to be more of a matter of dignity's protection rather than a matter of equality.<sup>46</sup>

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<sup>44</sup> Judgements of Greek Supreme Court 173/2016, 861/2015, 1138/2010, 1839/2008, 1426/2004, 13/1987. Retrieved from [https://lawdb.intrasoftnet.com/nomos/3\\_nomologia\\_rs.php](https://lawdb.intrasoftnet.com/nomos/3_nomologia_rs.php) (25/2/2020).

<sup>45</sup> Official Journal of European Union, L204/23, 26.7.2006.

<sup>46</sup> See Yuen, supra note 10, and Whitman, James, and Friedman, supra note 14.

**Criminal Code: Article 361**

According to Article 361 of the Criminal Code, "*Whoever ... offends the honor of another by reason, by deed or in any other manner, shall be punished by imprisonment of up to one year or by a fine. The fine can also be imposed along with the sentence of imprisonment*". Harassment offends the employee's honor, value, and dignity and can, therefore, be regarded as insulting in the light of Article 361 of the Greek criminal law. According to Greek jurisprudence, the existence of this crime requires the perpetrator to know and act with the power to offend the honor and reputation of the victim.<sup>47</sup> But, as it has been stated, there can be psychological harassment even if there has been no intention on the part of the harasser, to discredit or humiliate the victim, as far as the harasser's intentional conduct led objectively to such consequences. But CC 361 does not make the employer criminally liable for the acts of moral and psychological harassment by his superintendents, representatives, assistants or employees. In this sense, the criminal code offers partial rather than complete protection of the employee's legal interests, plus the fact that it is particularly difficult for the employee to provide in court adequate evidence, in order to prove the harasser's knowledge and intention to offend his honor and reputation.

**Suggestions - Concluding remarks**

Protecting the employee's dignity is a fundamental element of the employment relationship. The employee is not only interested in the financial terms of his employment and employer's compliance with formal labor laws (as far as salaries, working hours, dismissal, etc. are concerned), but he attaches particular importance to the qualitative characteristics of his employment, such as fair and equal treatment, justice in the resolution of disputes, implementation of non-discrimination policies, reward of effort, recognition of ethical integrity, communication with manager, friendly working environment that encourages and supports the right to dignity at work.<sup>48</sup>

Moral and psychological harassment is a direct attack on working (and living) conditions' quality, an invisible threat that can directly endanger the health of workers, the peace in the workplace and the smooth operation of the company. It is primarily the employer who is obliged to take all necessary measures to achieve a positive and mutually supportive working environment and detect cases of harassment at the earliest possible stage in order to take effective and immediate action to eliminate them.

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<sup>47</sup> Judgment of Supreme Court 15/2018.

Retrieved from [https://lawdb.intrasoftnet.com/nomos/3\\_nomologia\\_rs.php](https://lawdb.intrasoftnet.com/nomos/3_nomologia_rs.php) (26/2/2020).

<sup>48</sup> These quality characteristics are criteria for evaluation in the Great Place to Work competition, which takes place across Europe - and in Greece, where employees themselves evaluate their employer, not for the compliance with the minimum formal requirements, but also for the construction of a friendly work environment based on the principles of fairness, consistency, solidarity, and companionship. After all, companies that build relationships of trust and recognition of personal contribution create a workplace culture that enhances their financial performance.

However, as the phenomenon of harassment is real, complex, multi-factored and, at the same time, indistinguishable, it is now necessary to establish a specialized legal framework, which shall define the concept of moral and psychological harassment, shall establish adequate judicial or administrative procedures for the effective implementation of legal provisions, shall describe the employers' obligations and the responsibilities of the competent authorities, shall determine the legal consequences and, where appropriate, shall regulate issues related to the procedural burden of proof. A specific authority could also be set up to advise the parties, investigate complaints, evaluate their reliability and mediate in order to resolve disputes. The above procedures should be held promptly, confidentially and objectively, while every complaint must be seen as a serious case and must be dealt with sensitively and fairly.

The introduction of specific legislation will certainly improve the level of judicial protection, since, currently, harassed employees are reluctant to seek justice either because they are ignorant of the phenomenon itself or because they feel unprotected in the absence of a legal framework. At the same time, the Courts going deeper in the concept of workplace harassment, they will provide evaluation criteria based on the actual facts of the cases they judge and help raise awareness of the whole community on this problem. The silence of the legal system holds in obscurity a serious pathogenesis of labor relations. After all, through the adoption of specific provisions, the Legislator will respond to modern social concepts that put the protection of employee dignity as an absolute priority, seek to create conditions of job satisfaction and happiness and certainly consider moral and psychological harassment intolerable in any workplace.