

OPEN ACCESS

ISSN 2280-4056

*E-Journal of
International and Comparative*

LABOUR STUDIES

Volume 3, No. 2 May-June 2014



ADAPT *International School of Higher Education in Labour and Industrial Relations*

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Online Publication of the ADAPT Series
Registration No. 1609, 11 November 2001, Court of Modena
www.adaptbulletin.eu

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Mobbing and Harassment Regulation in Russia: Problems and Prospects

Daria V. Chernyaeva *

1. Introduction

Workplace mobbing and harassment in Russia started to receive scholarly attention in the 2000s. This is relatively late in comparison with the majority of developed countries¹. Today, research on this topic is still limited² and mostly addresses specific aspects (sexual harassment against

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¹ For instance, more or less consistent case law on sexual harassment emerged in the USA as early as in the XIX century, while relevant legislation was developed in 1970s. Research on mobbing as a psychological phenomenon dates back to H. Leymann's works published in the 1980s. See also R.B. Siegel, *A short history of sexual harassment*, in C.A. MacKinnon, R.B. Siegel (eds.), *Directions in sexual harassment law*, Yale University Press, 2003, 1-39, and H. Leymann, *Mobbing and psychological terror at workplaces*, in *Violence and Victims*, 1990, vol. 5, 119-126 (where reference is made to the first studies on this topic).

² O.I. Osipova, *Vzaimosvyaz organizatsionnoi kultury i fenomena harassmenta (Interrelation between organizational culture and the harassment phenomenon)*, in *Chelovecheskiy kapital (Human capital)*, 2012, no. 12(48), 28-30, www.imtp.ru/upload/medialibrary/1d0/1d001c5446d6033dead95e79694a8c44.pdf (accessed May 05, 2013).

women, correlation between harassment and Human Resource Management (HRM) policies, the mobber's psychological portrait, etc)³. Some data on harassment have been collected while investigating more general topics – for example gender discrimination and human trafficking. Such studies show the peculiarities of this phenomenon in Russia and the public attitude towards it.

One of the most recent and comprehensive surveys on harassment jointly conducted by US and Russian scholars⁴ demonstrates a mixed attitude towards mobbing and harassment, at least when they involve women. About 25% of respondents are inclined to take an escapist approach, saying that there is nothing particularly wrong with the harasser's behaviour. This assumption is supported by the fact that as many as 43% of respondents are of the opinion that the harasser should not be punished and 26% put the blame on victims. As many as 24% of interviewees would advise the victim to avoid conflict and defuse the situation with humour, while 22% of them would advise the victim to resign. The number of those who suggest taking more reasonable steps – seeking help from the principal or a lawyer – falls below 20%. The authors of the study observe that by and large Russian people do not believe that harassment and mobbing deserve serious consideration.

At the national level, sociological research on harassment reveals a widespread tendency to assume that it is the victim who provokes the harasser (by means of certain behaviour, make-up, clothing, etc.) and that harassment and even violence is either a logical outcome of or a fair punishment for this⁵.

³ Based on the analysis of the papers published in Russian since 1990 (and collected in the Russian State Library databases: www.rsl.ru/ru/s97/s977242/, on the Federal Legal Portal *Juridicheskaya Rissiya (Juridical Russia)*: www.law.edu.ru/search/search.asp?docType=0 and in the Russian Index of Scientific Citation (RINTZ): http://elibrary.ru/project_risc.asp). The analysis took into account the variations in the Russian terminology used in different contexts and branches of science.

⁴ See: O. Stuchevskaya, *Harassment i rossiyskie jenshiny (Harassment and Russian women)*, in *Vestnik obshchestvennogo mneniya (Public opinion bulletin)*, 2008, No. 4(96), 43-49, <http://ecsocman.hse.ru/text/33513026/> (in Russian, accessed April 28, 2013). This Bulletin is published by “Levada-Center”, a major Russian nongovernmental center of sociological and marketing research: <http://www.levada.ru/>. A presentation of the statistical outcomes of the same joint research project is available in English at the CSIS website: http://csis.org/files/media/csis/events/081208_csis_gender_presentation.pdf. In this paper, I use the findings of this almost unique research project as one of the major statistical and sociological sources.

⁵ O. Stuchevskaya, *op.cit.*

Some differences have been found in the general attitude towards this issue when it comes to the harasser's gender. A male harasser is treated with sympathy and considered just slightly too "passionate" or too playful, while a female would be accused of acting with impudence. This aspect shows that the traditional perception of women as "the root of all evil"⁶ is still widespread in Russia despite all the political, economic and social changes that took place in the last century.

In today's Russia, the victim's reaction to harassment is usually a passive one. People prefer to keep this embarrassing experience to themselves or to resign if things go too far. An intention to resist, to protect the victim's rights and/or to sue the harasser is often perceived as a strange and disproportionate reaction to a minor issue⁷.

It would have been interesting to compare these results with those concerning harassment against men. It would have been likewise interesting to investigate the relations (if any) between the statistics on harassment and mobbing, both considered as two different forms of workplace violence. Unfortunately, no comparable studies have been found and there are reasons to believe that they do not exist at all. Apart from some scattered research projects⁸, the data on mobbing and harassment come primarily from the press. A newspaper article is published from time to time considering a particular group that has become the target of male harassment (taxi drivers, chauffeurs, accountants, bodyguards, mid-level managers)⁹ or describing a case of

⁶ See f.i.: Ph. Vivian, *The churches and the modern thought*, London, Watts, 1911, 277-286 (in particularly, citations on 284).

⁷ See: *Rossiyskie mujchiny sokrushayutsya, chto harassment obhodit ih storonoy* (Russian men grieve that harassment passes them over). A sociological research conducted by the Research center of the SuperJob.ru website, 08.09.2008, www.superjob.ru/community/kollektiv/18364/ (in Russian, accessed May 02, 2013).

⁸ O. Stuchevskaya, *op.cit.*; S.S. Balabanov, Z.H.-M. Saraliev, *Seksualnye domogatelstva na rabote v Rossii* (Sexual harassment at work in Russia), in *Vestnik Nijegorodskogo Universiteta* (Bulletin of the Nijniy Novgorod University), 2010, vol. 1, 7-12, <http://82.179.249.32:2139/item.asp?id=15142471> (in Russian, accessed May 02, 2013); Ya.I. Alferova, *Sravnitelnyy analiz socialno-psihologicheskikh harakteristik sotrudnikov, podvergayuschih mobbing v organizatsiyah* (Comparative analysis of socio-psychological characteristics of staff members exposed to mobbing in organizations), in *Sovremennye issledovaniya socialnykh problem* (Modern Research in Social Problems), 2012, vol. 11(19), 42-50, <http://elibrary.ru/item.asp?id=18763977> or <http://cyberleninka.ru/article/n/sravnitelnyy-analiz-sotsialno-psihologicheskikh-harakteristik-sotrudnikov-podvergayuschih-mobbingu-v-organizatsiyah> (in Russian, accessed April 29, 2013)-

⁹ See: D. Prihodko, "Shef, trogay!" *Taksisty prosyat zaschitit ih ot seksualnykh domogatelstv passajirok* ("Chef, get going!" Taxi drivers demand a protection from being sexually harassed by female

mobbing occurred in a particular sector (the army, the office, and so forth)¹⁰. Newspaper articles usually contain an overview of the opinions on the problem from various stakeholders, which vary from legislative initiatives to amend the Criminal Code – which still lacks some necessary provisions, for instance those protecting men from being raped – to sceptical comments reflecting the widespread belief that the problem has been greatly and groundlessly exaggerated¹¹.

2. Terminology Issues

There are two main sources, which have traditionally been used for naming and interpreting the discussed phenomena. On the one hand, international scholarly work provides the terminology, which can be borrowed as it is, possibly after a slight adaptation to another language if necessary. On the other hand, national research data can reveal the most appropriate or at least the most widespread terms, which can be further promoted and supported by relevant authorities and legislative provisions. On this score, mobbing and harassment are unfortunate terms. In Russian, they are barely understood in their original pronunciation without a special clarification and explanation, and their understanding is limited to English speakers who are familiar with the phenomena as such. Additionally, each of them has more than one option when translated from English, thus posing objective obstacles to uniform terminology.

Despite this, Russian scholars use both approaches, at times employing the original terms to name these phenomena, i.e. transliterating them into Cyrillic, and at times resorting to their official translations. Russian possesses terms that can – and have recently begun to – be applied to each of the concepts¹². However, the Russian terminology in this field is

passengers), in *AiF St Petersburg newspaper*, 26.03.2013, www.spb.aif.ru/society/article/56070 (in Russian, accessed April 28, 2013). See also: Z.A. Hotkina, *Mujichiny – jertvy seksualnyh domogatelstv* (Male sexual harassment victims), Center for Social and Labor Rights (CSLP), <http://trudprava.ru/index.php?id=1534> (in Russian, accessed April 29, 2013).

¹⁰ G. Bryntzeva, *Mobbing dik*, in *Rossiiskaya gazeta. Federalnyy vypusk* (Russian Newspaper. Federal Issue), 2010, no. 5139(60), www.rg.ru/2010/03/24/mobbing.html (in Russian, accessed April 29, 2013). The article presents an interview with a director of the Clinical psychology department of the Scientific Center of Mental Health of the Russian Academy of Medical Sciences.

¹¹ D. Prihodko, *op.cit.*

¹² For those who know Russian it might be interesting to learn that harassment is more and more often called «ДОМОГАТЕЛЬСТВО» (domogatelstvo', i.e. importunity) or

currently at the very beginning of its development and as of yet demonstrates neither consistency, nor uniformity, nor common recognition. The Russian lawmaking system is not inclined to work on a consistent regulative approach without receiving a clear message from stakeholders on the preferable terminology and its uniform understanding. Unfortunately, no stakeholder has yet shown interest in this field in modern Russian society. This results in the scarcity of scholarly work and in the reluctance to regulate these aspects on the part of the relevant authorities. Thus the prospects for establishing consistent terminology in the field will remain bleak, unless some kind of force will prompt action in any particular, reasonable and substantial direction.

3. The Regulatory Framework

Statutory Norms

Case law and legislation have not addressed mobbing and harassment in a consistent manner. Russian laws do not acknowledge harassment or mobbing *per se*. However, there are several legal concepts that can be applied to cases of mobbing, sexually tinted harassment or both:

- sexual harassment can fall under: (1) the Criminal Code provisions on sexual abuses that entail criminal fines, mandatory or corrective works and imprisonment; or (2) the Labour Code provisions on “immoral behaviour” of those employees with an educational function (mostly school and kindergarten teachers, but also staff performing such function as specified in their job description), which may entail dismissal without compensation¹³.

- mobbing can constitute grounds for “grouping” (i.e. when a group of people commits a crime), which aggravates one’s criminal liability¹⁴,

- both phenomena can also have elements that cause them fall under a number of other provisions:

(1) if the case contains elements of workplace discrimination, the general prohibition of discrimination in employment¹⁵ may apply,

«приставание» (‘pristavanie’, i.e. pestering), while mobbing has been identified with «травля» (‘travlya’, i.e. persecution), «групповщина» (‘gruppovshchina’, i.e. “grouping for a definitely ill purpose”) or «дедовщина» (‘dedovshchina’, a hardly translatable term initially used to describe violence against younger conscripts in the Russian army).

¹³ Part 1(7) of the article 81 of the Labor Code of the Russian Federation.

¹⁴ Article 35 of the Criminal Code of the Russian Federation.

which might result in (1) criminal liability for discrimination in general¹⁶; (2) administrative liability, related to discriminatory practices violating employment law¹⁷; (3) liability to disciplinary action provided in the enterprise internal regulations and applicable to the same practices¹⁸. In such cases, a plaintiff is also allowed to submit a complaint directly to a court without complaining to the bilateral labour disputes commission, which represents the first instance for labour dispute consideration in many other cases¹⁹. The plaintiff can also apply to a public prosecutor, who is authorized to issue an order to stop the violation and to initiate administrative proceedings, or to inform the relevant administrative authorities in the event of an administrative offence. In the most serious cases, the public prosecutor may also seek grounds for assessing criminal liability²⁰. (2) If the case contains elements of “minor disorderly conduct” (i.e. “public order disturbance which is clearly disrespectful of society” accompanied by “insulting importunity to citizens”), it entails administrative liability²¹. Yet at present, neither legal cases nor court rulings have been reported employing such an interpretation of the norm.

¹⁵ Article 3 of the Labor Code of the Russian Federation.

¹⁶ Article 136 of the Criminal Code of the Russian Federation. The Code provides for criminal sanctions, revocation of the right to hold specific positions or perform specific activities, imprisonment, mandatory or correctional works (these are two types of criminal sanctions according to which convicts are required either to work without being paid for some 60-480 hours for the benefit of a community/society – mandatory works, article 49 of the Code – or to work in their regular workplace for a period of 2 months to 2 years while the state deducts some 5-20% of their remuneration to the state budget (correctional works, article 50 of the Code).

¹⁷ Article 5.27 of the Code of Administrative Infractions of the Russian Federation. The norm provides for administrative fines for employers or disqualification of the employee in case of a repeated violation.

¹⁸ Article 192 of the Labor Code of the Russian Federation. Generally the Code provided for three types of liability to disciplinary action: rebuke, reprimand and dismissal.

¹⁹ Articles 3(4), 391(3) of the Labor Code of the Russian Federation.

²⁰ Articles 27 and 28 of the federal Act No. 2202-1 of 17.01.1992 *On the Public Prosecutor's Office of the Russian Federation*.

²¹ An administrative fine of 500-1000 rubles (\$15-30) or imprisonment for up to 15 nights.

In Russian labour legislation, the concept of “constructive dismissal” and the more general idea of *being (directly or indirectly) driven to terminate one’s employment contract* are unknown. Therefore, it is almost²² impossible for the employee to prove that (s)he has been forced to resign – whether directly or indirectly – by an employer’s or a fellow employee’s attitude, unreasonable requirements, unfair working conditions, a hostile working environment, verbal or physical violence, etc. There is no general idea of driving somebody to do something but only its branch-specific interpretations, which entail various forms of liability (fines, disqualification, or even imprisonment). Thus, Russian criminal law contains provisions for a person who might be “driven to suicide” or “to attempt suicide”²³, and Russian bankruptcy law operates with the concept of “driving to bankruptcy”²⁴. Employment legislation does not regulate this aspect, which is only dealt with in a rather general instruction issued by the Plenum of the Supreme Court²⁵. There is no legal definition and comprehensive guidelines in relation to this concept, nor are there norms outlining its legal consequences.

International law²⁶ could have served as a driving force in the development of this field, but Russian lawmakers have not yet given it a chance. Among the many international agreements, which Russia has signed and/or ratified, only the European Social Charter contains explicit provisions concerning mobbing and harassment and provides specific guidelines for national governments. However, the essence of these provisions, set forth in Art. 26 of Part II of the Charter, has been overlooked during the 2009 ratification of the Charter.

²² We will address the exceptions to this rule when analyzing relevant case law.

²³ Article 110 of the Criminal Code of the Russian Federation. Punishment includes custodial restraint for 1-3 years, or mandatory works (see above, the footnote 16) or imprisonment up to 5 years.

²⁴ Articles 14.12(2) of the Code of Administrative Infractions of the Russian Federation; Article 169 of the Criminal Code of the Russian Federation; Article 399 of the Civil Code of the Russian Federation; Article 14 of the Federal Act No. 40-FZ of 25.02.1999 “On the insolvency (bankruptcy) of credit institutions”. Penalties include criminal and administrative fines, disqualification, prohibition to work on certain positions or in certain fields, and mandatory work.

²⁵ We detail this issue below when analyzing case law. However, the Plenum of the Supreme Court of the Russian Federation does not consider any disputes itself but is authorized to issue rulings clarifying and interpreting statutory norms to ensure their unified application by courts.

²⁶ According to Article 15(4) of the Constitution of the Russian Federation, generally recognized principles and norms of international law are considered as being part of the legal system of the Russian Federation.

As a result, the only provision on workplace violence laid down in the Charter that is now applicable in Russia is par. 26 of Part I, establishing a general right of all workers to have dignity at work. Unfortunately, this wording is too vague to ensure its enforceability in the Russian legal system. The non-ratified Art. 26 of Part II of the Charter – remaining inapplicable and unenforceable – has nevertheless the indirect effect to disseminate an official European interpretation of the “dignity at work” concept that can be invoked in court. However, this avenue has not been pursued so far, because of the little support and promotion on the part of the government.

Regulations at Sectoral and Company Level

Laying down anti-harassment or anti-violence clauses has become fashionable among large corporations and, surprisingly in public institutions. Unfortunately being “fashionable” does not immediately impart a proper scope to such clauses and/or make them mandatory and enforceable. They usually find a place in “codes of ethical norms”²⁷ which generally are not considered enforceable by default according to Russian law and do not fall under the general Labour Code provision obliging an employer to familiarize employees with the relevant company regulations²⁸.

The very idea of these codes is relatively new for the Russian regulatory framework. Consequently, employees have no reasons to expect their employer to adopt such instruments, let alone to make use of them. If an

²⁷ See for instance Article 17 of the Code of Professional Ethics of the workers of the interior bodies of the Russian Federation, approved by the Order of the Ministry of Interior No. 1138 of 24.12.2008 which contains both a direct reference to sexual harassment (which can also be accompanied by bullying) in the list of gross violations of professional ethical standards and a reminiscence of prohibition of bullying in the provision concerning the moral rights of superiors in this sphere: it explicitly states that a superior has «no moral right [...] to manifest formalism, conceit, rudeness, use battery towards subordinates» (Article 16(8) of the Code). The term ‘interior bodies’ embraces police forces, internal military forces, investigation department, etc. More information can be obtained from the official website of the Ministry of Interior: <http://eng.mvd.f.ru/> (in English). Other examples can be found in the Standard on quality control of public social services (see Preamble of the GOST (State All-Russian Standard) P 53062-2008, approved by the Order of the Federal Agency for Technical Regulation and Metrology No. 439-st of 18.12.2008); Standard on public social services provided for women (see Preamble of the GOST P 52886-2007, approved by the Order of the Federal Agency for Technical Regulation and Metrology No. 564-st of 27.12.2007), etc.

²⁸ Article 22(2) of the Labor Code of the Russian Federation.

employer cares to adopt an ethical code in the form of a “local normative act” (i.e. normative acts at a company level or a regulation issued by the employer), it becomes legally binding and imposes legal liability for its non-compliance. However, employers are not accustomed to this option as yet and rarely undertake to implement the necessary procedure, thus leaving their impressive ethical standards hollow and unenforceable in the Russian legal system²⁹.

Recently, a step has been made to popularize ethical codes. In May 2012, the Russian President ordained the government to draft bills concerning the development of institutions of self-government and the adoption of codes of professional ethics³⁰. This initiative could be used for efficiently tackling workplace violence, all the more so that it has been announced as a step to increase employee involvement in enterprise management.

Unfortunately, the Presidential Decree did not provide explanations of the status of such codes. It also gave no specific instruction to incorporate any particular anti-harassment, anti-mobbing or other anti-violence provisions into the codes. It has become evident that the authors of the code samples did not plan to address harassment and mobbing as such when in September 2012 the government adopted the Complex of Measures aimed at the implementation of this initiative in the field of social services (i.e. in educational, research, health, cultural services and in the field of social protection)³¹ and several draft codes had already been published online. What code samples do mostly contain are general anti-discrimination provisions and clauses imposing politeness and abstention from using rude language when communicating with clients and colleagues, but nothing more. Therefore, another chance to introduce the concept of a violence-free workplace seems to have been lost.

²⁹ For instance, Article 3(1) of the Code of Professional Ethics establishes a form of ‘moral liability’ for those committing violations against humanity, conscience, and teamwork as a measure supposed to ensure compliance with the Code’s provisions; similarly, article 3(4) of the Code establishes liability in the form of ‘public warning’ or ‘public censure’ for the violations of the Code. Liability to disciplinary action (that may serve as a ground for dismissal according to par. 1(5), Article 81 of the Labor Code) is assigned only in cases where a legal offence or a breach of the disciplinary provision is committed in connection with the violation of the provisions laid down by the Code.

³⁰ Par. 1’z’ of the Decree of the President of the Russian Federation No. 597 of 07.05.2012 (hereinafter – Social Policy Decree).

³¹ Complex for institutions of self-government development and codes of professional ethics adoption for social services employees No. 5324 p-P12 of 08.09.2012. According to this Complex, code samples and code drafting manuals shall have been made available by July 2013 to be submitted for public debate in October 2013.

Nowadays in Russia neither ethical codes nor more traditional regulations implemented at the company and sectoral level perform a serious protective function. Regulations usually do not address the workplace violence problem while ethical codes remain vague and employees are reported to be hardly aware of their existence.

At times enterprises that belong to large transnational organisations benefit from having access to model company regulations drafted by their headquarters or just use their direct translations³². Such regulations are usually well laid-out acts that outline not only company values and approaches to doing business but also corporate strategies, policies and procedures to promote proper conduct and approaches and tackle improper ones. They usually contain examples explaining all these aspects in a graphic manner and in understandable language. Such companies have particular procedures of familiarizing their employees with the regulations and they do take this task seriously. As a result, most of their employees know from their first day in the company what is tolerated and what is not, when and where to complain, what help can be obtained, what measures ensure compliance with the regulations, etc. However, if such company regulations are not enacted as a “local normative act” in full compliance with the Labour Code procedures, they remain just a company’s “wish list” and risk having little to no effect on the workplace relations and environment.

Small and medium-sized companies are reported to have a small number of brief and simple regulations that use standard wording borrowed from various legal databases. Unfortunately, the drafters of such standard regulation samples seldom include anti-harassment and anti-mobbing provisions in their products, and when they do, companies that use these samples usually remove all such provisions as strange and “alien”.

³² Thus, for instance Thomson Reuters has a single Code of Business Conduct and Ethics with particular anti-harassment (20-21) and anti-violence (22) provisions. This Code has been translated into 20 languages (according to the countries in which the company conducts its business) without any changes or amendments, or without drafting separate versions for every country. The Code preamble says that it «[...] applies to all directors, officers and employees of Thomson Reuters and its subsidiaries». Available online: <http://ir.thomsonreuters.com/phoenix.zhtml?c=76540&p=irol-govConduct>.

Collective Agreements

Collective agreements rarely include anti-mobbing and anti-harassment provisions, and when they do, they hardly go beyond the enterprise level. Their initial sources are either model agreements of international trade unions, or agreements in force at parent or affiliated foreign companies.

Recently, the government has also taken a step in this direction. Pursuant to the Social Policy Decree³³, collective agreements at both the sectoral and company level should include clauses concerning “professional ethics”. By now, several measures have been taken to implement this Decree:

- in 2013 the Sectoral agreement between the Ministry of Culture of the Russian Federation and the Russian Culture, Art and Entertainment Industries Trade Union for 2012-2014 was amended³⁴ to include a provision on the parties’ participation in the drafting, discussion and promotion of the adoption and compliance with the “model codes of professional ethics for the most widespread professions in the field of culture, art and cinematography”; about two months earlier the Moscow Tripartite Commission for the Regulation of Social and Labour Relations issued a similar decision³⁵ aimed at the employees of the Moscow social services sector;

- in 2014 the Ministry of Education and Science of the Russian Federation issued an official letter³⁶ with Recommendations on organization of actions to promote the drafting, adoption and application of the Code of Professional Ethics by the pedagogical community.

However, the codes of professional ethics do not necessarily contain anti-violence provisions, and even when they do, such provisions are rarely implemented. Further, when industry is represented by powerful trade union federations or confederations at the international or supra-national level, the relevant collective agreements may resemble the samples

³³ Par. 5 of the Complex of measures for institutions of self-government development and codes of professional ethics adoption for social services employees No. 5324p-P12 of 08.09.2012.

³⁴ Amendments to the Sectoral Agreement between the Ministry of Culture of the Russian Federation and the Russian Trade Union of Art Workers for 2012-2014, approved by the Ministry and the Trade Union on June 07, 2013.

³⁵ Decision the Moscow Tripartite Commission for the Regulation of Social and Labor Relations of April 25, 2013.

³⁶ Letter of the Ministry of Education and Science of the Russian Federation of February 06, 2014 No. 09-148.

promoted by them³⁷. Such clauses can be applied effectively when the whole framework has also been borrowed (in terms of interpretation, institutions, procedures, and so forth) and complies with national legislation. However, such “comprehensive” borrowing is a rare occurrence in Russia and its application is even rarer.

In the Russian Federation, the absence or ineffectiveness of the anti-mobbing and anti-harassment clauses laid down in collective agreements can be attributed to a number of reasons.

First, most of them are introduced through general wording: for instance, a “proper workplace environment” is referred to as «[...] *conditions which do not disparage human dignity [...]*»³⁸; «[...] *healthy moral and psychological climate in the organization [...]*»³⁹, etc. Such wording neither explains what exactly they are supposed to mean, nor does it give any reference to relevant international treaties or doctrinal definitions and typologies. The lack of explicitness makes these provisions as inapplicable and unenforceable as the European Social Charter mentioned above, proving useless and irrelevant to the noble cause of workers’ protection. Such clauses are seldom applied, mostly for form’s sake⁴⁰.

³⁷ Thus, the Seafarers Union of Russia (SUR), an affiliated member of the International Transport Workers Union (ITF), endorses the ITF Standard Collective Agreement as a sample of a collective agreement concluded between seafarers and their employers. Article 28 of this agreement sample explicitly prohibits harassment (and even bullying) which is devoted to equality: «[...] Each Seafarer shall be entitled to work, train and live in an environment free from harassment and bullying whether sexually, racially or otherwise motivated, in accordance with ITF policy guidelines». Available at the SUR official website: www.sur.ru/sailor/cont/8/2012ItfStandardAgreement.pdf.

³⁸ Resolution of the VII Congress of the Federation of Independent Unions of Russia.

³⁹ Sectoral tariff agreement of the organizations of the oil-processing industry and the system of provision of oil products of the Russian Federation for the years 2012-2014.

⁴⁰ The comprehensive review of this problem appears in a popular magazine *Sekret firmy* (“Secret of the Firm”) yet in the year 2005: Yu. Fukolova, *Korporativnye izgoi (Corporate pariahs)*, in *Sekret firmy (Secret of the Firm)*, 2005, No. 13(100), www.a-training.ru/sources/mobbing/ (in Russian, accessed April 29, 2013). But there are many other publications on websites, newspapers, magazines, and even in scholarly journals. See also: S.S. Balabanov, Z.H. M. Saraliev, *op.cit.*; R. Yuldashev, I. Kornilova, *Vlast and seks na rabochem meste (Power and sex in the workplace)*, in *Kadrovik. Kadrovyy menedzhment (HR Manager. HRM)*, 2007, No. 8, 30-42; F.G. Maylenova, *Mobbing: nasilie i apparat vlasti v office (Mobbing: coercion and instrument of power in the office)*, in *Filosofskie nauki (Philosophic Sciences)*, 2008, No. 6, 63-68; E.V. Sychenko, *Problema mobbinga v oblasti pravovogo regulirovaniya truda (Problem of mobbing in the sphere of legal regulation of labor)*, in *Jurnal pravovykh i ekonomicheskikh issledovaniy (Journal of Legal and Economic Research)*, 2011, no. 1, 65-69, <http://82.179.249.32:2139/item.asp?id=16398705> (in Russian, accessed May 03, 2013).

Secondly and logically, no collective agreement has been found that contains– or obliges the parties to develop and implement – particular provisions to combat workplace violence or preventive measures to safeguard victims. Collective agreements make no explicit reference to the employer’s obligation to take particular steps – even the simplest ones (e.g. poster placement and booklets distributions) – to raise employees’ awareness of established instruments and channels.

This can be attributed partly to a lack of awareness of the parties that the problem can and should be addressed in collective bargaining, and partly to the well-known weakness of the majority of Russian trade unions that results in their inability to efficiently push employers to take measures for workers’ protection, even when they succeed in having new concepts introduced in the agreements.

The Employment Contract as a Last Resort

Theoretically, nothing prevents parties from incorporating anti-harassment and/or anti-mobbing clauses in an employment contract. The Labour Code allows for the stipulation of terms and conditions other than those directly named in the Code, if these terms and conditions “...do not worsen the employee’s conditions in comparison with what is provided in employment legislation, other legal regulations containing employment law norms, collective contracts, agreements and local normative acts”⁴¹. However, there is no evidence of whether such practice exists even in relation to employment contracts of management.

4. Case Law and Court Hearings

Most workplace violence cases are not brought before the court because both lawyers and police investigators are reluctant to help victims, and because the latter prefer to endure this situation or resign instead of fighting, filing claims and making the case public. The number of court cases dealing with these issues is few and far between and is mostly the consequence of the increasingly widespread implementation of the “Western” model of human resources management and workplace relations.

⁴¹ Article 57(4) of the Labor Code of the Russian Federation.

The hearings discussing these issues relate to either discrimination, unfair dismissal, or both, but do not aim at tackling harassment or mobbing *per se*. If ever mentioned, harassment and/or mobbing are named as secondary grounds of claims. Since Russian legislation does not directly recognize the “constructive dismissal” concept, employees that have been forced to resign have little chance to have their cases considered.

Another opportunity to make the court consider a case of workplace violence is to provide evidence of its criminal nature. It might be the case in which threats, cruel treatment or one’s systematic humiliation have led the victim very close to death. Criminal Code provisions are clear enough to be efficiently applied, and Russian courts are experienced in their application. They are not afraid of accepting such claims as much as new and embarrassing harassment and mobbing cases which are not statutorily regulated.

Aware of this problem, the Supreme Court of the Russian Federation made a step to address cases of constructive dismissal (though without specifically naming it). For ten years now, a plaintiff that claims to be obliged by the employer to file a letter of resignation has been required to prove the circumstances (s)he refers to, whereas the court has been required to examine these circumstances⁴². Unfortunately, little progress has been made on this aspect, whether in conceptual or procedural terms. Evidence and witnessing are also serious problems which stem from some legal shortcomings. Audio and video recordings have been recognized as legitimate tools of evidence in civil disputes only in 2003⁴³, and can be used provided that the plaintiff specifies “...when, by whom and under which circumstances the record was performed”⁴⁴. Apart from the difficulty of obtaining audio and video tape recordings (which is possible mostly for recurrent and somewhat predictable acts), the recourse to this evidentiary tool in civil cases (including those on workplace violence) is still limited and made with reluctance.

⁴² Par. 22(a) of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 2 of 17.03.2004.

⁴³ Art. 55(1) of the Code of Civil Judicial Procedure of the Russian Federation: «[...] Evidentiary documents are legally obtained information on facts, thanks to which a court ascertains the existence or nonexistence of the circumstances which substantiate claims and objections of the parties, as well as other significant circumstance for the correct investigation and adjudication of the case. This information can be obtained out of explanations of the parties and the third parties, witnesses’ evidence, written and material evidence, audio and video recordings, and expert opinions».

⁴⁴ Art. 77 of the Code of Civil Judicial Procedure of the Russian Federation.

Russian legislation provides neither adequate protection for whistleblowers nor effective procedures for ensuring the presence of the witness⁴⁵, nor serious legal consequences for not attending the hearing, false evidence provision or the refusal to testify. Some provisions do exist for the protection of witnesses in criminal cases⁴⁶, but civil proceedings contain nothing of the sort.

Case law suggests that these practices are so widespread that they also involve public officials. In 2007, there was a case in which a constantly harassing behaviour on the part of a judge had come to light only in the period prior to the end of his term. His subordinates had complained to the Qualification Board of Judges but decided not to sue him for criminal liability because they thought they would never be able to provide evidence, being that the alleged sexual offences always took place in private⁴⁷.

However, the number of cases that come to light and result in disputes on workplace violence is slowly increasing. Without specific statutory anti-mobbing and anti-harassment provisions, plaintiffs and courts base their reasoning on much more traditional Labour Code and Plenum provisions on unlawful dismissal, compulsion to resign (i.e. constructive dismissal), health and moral damage and wage arrears.

Unfortunately, the judiciary usually rules against the plaintiff⁴⁸ and case reports reveal poor judicial technique and no willingness to examine the facts carefully, somehow defying the ruling of the Plenum of the Supreme Court of the Russian Federation⁴⁹. There is also a significant difference in

⁴⁵ According to Art. 168(2) of the Code of Civil Judicial Procedure of the Russian Federation, the witnesses failing to appear at the trial after being exacted shall be fined (up to 1000 rubles, which is equal approximately \$30) if the court finds their justification unreasonable. If the witness fails to show up for the second time the court *may* issue an order for his/her compulsory attendance. Yet these provisions are obviously not practicable and are almost never used by courts since it is impossible to clarify the reasons and justification of an absent person. Plus, civil courts demonstrate no interest in searching for their absence and no liability is assigned for not making efforts for conveying the absent witness to the hearing.

⁴⁶ See Federal Act No. 119-FZ of 20.08.2004 *On the governmental protection of complainants, witnesses and other participants of criminal court proceeding*.

⁴⁷ Decision of the Supreme Court of the Russian Federation No. KAS07-25 of 03.04.2007.

⁴⁸ *V Rossiyu prishel mobbing (Mobbing has come to Russia)*, in *Profsoyuzy segodnya (Trade Unions Today)*, 16.05.2008., www.unionstoday.ru/news/analytics/2008/05/16/7128 (in Russian, accessed May 03, 2013).

⁴⁹ Par. 22(a) of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 2 of 17.03.2004

the awards made by the courts. While in Europe compensation awarded to a harassed or mobbed employee may amount to tens⁵⁰ or even hundreds of thousands of US dollars⁵¹, in Russia courts dismiss the claim in which the plaintiff asks for compensation amounting to as little as \$600 corresponding to his certified medical expenses, without even taking into account compensation for wages and moral damage⁵².

5. Conclusion

Russian legislation does have norms, which can be used to safeguard employees experiencing mobbing and harassment. Yet they lack efficient implementing procedures.

Without a consistent legislative approach and no direct instructions from both the President and the Parliament, government authorities do not address this issue at all. The same can be said of the judiciary, which shows reluctance in addressing the problem and does not endeavour to carefully examine such cases, unless prompted by clear Supreme Court instructions. This leaves little hope for an employee to win the case and obtain at least modest compensation. As a result, the judicial recourse to mobbing and harassment in Russia reported little increase with time.

Trade unions show no particular interest in tackling workplace violence. Employers lack the necessary rule-making culture and experience in this field to introduce special procedures to deal with the problem. They often prefer to have professional in-house psychologists to solve the problems

⁵⁰ See *Case Law and Out-of-court Settlements* at the *BullyOnline.org*, the UK National Workplace Bullying Advice Line website: www.bullyonline.org/action/caselaw.htm (accessed May 03, 2013). Further, the *Bullyonline.org* website reports many examples when cases are settled out of court and compensation is assigned which is 2 to 3 times higher than compensation determined in court.

⁵¹ Decision of the European Court of Human Rights No. N 301/04; EAT WT331/2006, UD1062/2006; Cassazione civile, sez. lavoro, sentenza 20.03.2009 No. 6907, www.altalex.com/index.php?idnot=45614 (in Italian, accessed May 03, 2013). The description of this case (in English) is available here: A.N. Stanchi, *Can Constructive Dismissal Amount to "Mobbing"?*, in *International Law Office*, 20.05.2009, www.internationallawoffice.com/newsletters/Detail.aspx?g=35609c44-0ff0-4775-bc1a-742eb451e038 (accessed May 03, 2013).

⁵² Decision on the case No. 33-4995 of 23.05.2011 of the Perm Regional Court of Cassation.

without making them public or bothering to develop special regulations relating to the matter⁵³.

With no efficient ways to resist or tackle workplace violence, Russian employees have limited choice: to suffer or to quit. All over the world the main reasons for employees to put up with adverse workplace practices are economic instability, inadequate professional skills and personal psychological problems. The more secure the employee's financial situation, the higher their qualification, the lower is their vulnerability to any hostile workplace environment irrespective of the country and region (s)he works and lives in.

At the same time, I would also suggest the understanding that in Russia some specific historical reasons exist, which may add to the state or feeling of vulnerability. First, the Soviet tradition (especially during Stalin's era) had been cultivating intolerance to diversity, thus implicitly providing fertile ground for mobbing and harassment despite the official anti-discrimination rhetoric. It was mostly a governmentally induced and supported climate of intolerance, which had been suppressing the individual's courage to fight for equality and other rights.

Additionally, for some reason Russian history is characterized by regular episodes of social destabilization⁵⁴. The lack of stability posed serious problems for people, especially women⁵⁵, to obtain stable economic and social status: to own a house, to find a job and a partner, to satisfy children's basic needs, etc. It is hardly possible to find a century in the country's history without revolts, revolutions, wars or all of them at once. This has created an atmosphere of constant insecurity in terms of welfare, the fear for losing the ability or the opportunity to earn a living, and rivalry for men's attention (especially after wars). Having somebody to

⁵³ *V Rossiju prishel mobbing (Mobbing has come to Russia)*, *op. cit.* Among other evidence, the paper says that the Moscow HR agencies are overloaded with employers' inquiries for 'relationship professionals' that could «[...] stop this nightmare».

⁵⁴ For instance, 2 revolts and 3 wars in the XVII century, 3 revolts and 4 wars in the XVIII century, again 3 revolts and 4 wars in the XIX century, and in the XX century there were 3 revolutions (in 1905, and then in February and October of 1917) and again 4 wars (world war I and II, a Civil War which partly coincided with the First World War, and the so 'Japanese War'). More detailed information on this subject may be obtained online, e.g. on the "History of Russia" website: www.historbook.ru/voiny.html and the "Agitmuseum" (Agitation museum) website: www.agitclub.ru/museum/revolution1/revolution1.htm.

⁵⁵ This is because these and other wars took the lives of youngest men of childbearing age and left behind lots of widows, orphans and unmarried women with little hope to find a spouse.

rely on and being an integral part of some group were much more useful strategies than fighting for independence and individual freedoms.

Another reason may lie in the traditional organizational of the Russian workplace. During the first few years of the Soviet period, most workplaces had military-like discipline requirements with similar levels of subordination and control. Self-denial and self-sacrifice were considered heroic deeds. Individualization and reluctance to collective life were considered contrary to communist ideals. The “Labour (battle)front” was a commonly used periphrasis for “work”, and “labour (heroic) deed” was used to describe special forms of self-sacrifice in the interest of the employer, state and/or society. There is a famous Stalin’s saying “We do not have irreplaceable people!” which communicated the idea of insignificance of individuals for the success of the state and society. It was a common belief that the feelings of an individual were not important at work and that an employer should not care about an employee’s individual problems, but only of production efficiency and compliance with the communist moral requirements.

Such is the historical background that Russian people have to overcome for a more stable, decent and harmonious society. From what has been said above, it is obvious that the task has not been completed. However, we do observe clear signs of ongoing change and improvement. New norms are being introduced, old acts and procedures are being replaced or amended, international norms are being ratified and becoming part of the Russian legal system. These changes are more evident in the younger generations, who seem to be leaving the old-fashioned and ineffective practices behind in both professional and interpersonal communication, providing hope that harassment and mobbing will soon be eradicated in Russia.



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