Moral harassment in the public service: an overview of the Brazilian legislation*

Assédio moral no serviço público: panóptico da legislação brasileira

*Mariah Brochado***
*Lucas Magno de Oliveira Porto****

ABSTRACT

This article aims to review the literature on the sources in Brazilian legislation that regulate, in some way, the practice of moral harassment in the public service. The research deals, firstly, with the conceptual configuration of moral harassment and its legal protection in the public and private sectors. The second section analyzes the panorama of Brazilian legislation regarding the prevention and repression of moral harassment in the public service. In the third section, the legislation of the state of Minas Gerais on moral harassment is discussed, which represents concepts and procedures that can be modeled for other units of the federation and for the federal unit of Brazil. It is concluded that there is a lack of legislation on the subject at

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** Professor of Philosophy of Technology and of Law at the Law Faculty of Universidade Federal de Minas Gerais (UFMG). Post Doctorate in Philosophy at Philosophisches Fakultät/Ruprecht-Karls-Universität Heidelberg. PHd, Master`s and specialism in Philosophy of Law at UFMG. Visiting Professor at Leibniz Institut für Medienforschung/Hans-Bredow-Institut-Universität Hamburg (2023). E-mail: mbrochado@gmail.com.

*** PhD student in Law, specialism in Civil Procedure and Social Security Law and Bachelor in Law at UFMG, Belo Horizonte, Minas Gerais, Brazil. E-mail: lmagnoporto@gmail.com.

the federal level, some states regulate the subject in a more repressive way, others in a more limited way, bringing only programs to raise awareness about harassment, but leaving a serious gap with regard to the monitoring and punishing abusive practices of moral harassment.

KEYWORDS

moral harassment — public service — decent work — dignity of the human person — administrative morality

RESUMO

Este artigo tem como objetivo fazer uma revisão da literatura sobre as fontes na legislação brasileira que regulam, de alguma forma, a prática do assédio moral no serviço público. Primeiramente, a pesquisa aborda a definição conceitual do assédio moral e sua proteção legal no setor público e no privado. Na segunda seção, analisamos o panorama da legislação brasileira em relação à prevenção e repressão do assédio moral no serviço público. Na terceira seção, abordamos a legislação do estado de Minas Gerais relacionada com o assédio moral, a qual apresenta conceitos e procedimentos que podem servir de exemplo para outros estados-membros e para a União. Conclui-se que há uma ausência de legislação sobre o tema no âmbito federal, alguns estados regulam o assédio de forma mais repressiva, enquanto outros de forma mais tímida, limitando-se a programas de conscientização sobre o assédio, deixando uma lacuna grave no que diz respeito ao monitoramento e punição das práticas de assédio moral.

PALAVRAS-CHAVE

assédio moral — serviço público — trabalho decente — dignidade da pessoa humana — moralidade administrativa

Introduction

In 1999, Brazil assumed, with respect to the International Labor Organization (ILO), the commitment to promote decent work,[1] whose definition, according to

[1] REPORT of the director-general: decent work. In: INTERNATIONAL LABOUR CONFERENCE, 87., 1999, Geneva. Geneva: International Labor Organization, 1999. Available at: https://www.ilo.org/public/libdoc/ilo/P/09605/09605(1999-87).pdf. Accessed on: 8 Mar. 2020.

this international standard, is "adequately remunerated work, carried out under conditions of freedom, equity and security, capable of guaranteeing a dignified life".[2] Later, in 2005, the country reaffirmed this pledge within the scope of the United Nations (UN) through Resolution 60/1, adopted at its General Assembly.[3] Ten years later, in 2015, Brazil adopted the Sustainable Development Goals (SDGs) and Agenda 2030, the implementation of decent labor conditions the eighth axis among the national objectivities.[4] In 2019, the ILO adopted Convention no. 190, concerning the elimination of violence and harassment in the workplace[5] and Recommendation no. 206 on violence and harassment.[6]

In general, political authorities in Brazil have not attributed much weight to the topic of moral harassment in terms of national legislation, with no specific law to combat it even in the federal public administration, making it an urgent priority for the Brazilian State. Initiatives to regulate the matter remained relegated to states and municipalities, which lack the broad authority to do so, in lieu of a law of general scope.

Certainly, the topic requires interaction between the law and other, varied disciplines, especially psychology and sociology, since the circumstance of harassment involves aspects of everyday actions and reactions by individuals, which must, in some way, be reflected in legal protection, that is, in legislation. Accordingly, this study is presented in three sections, addressing the following question: has the Brazilian State, especially in the figure of the Union and its federated states, made adequate effort to suppress moral harassment? To this end, the deductive method was employed. The first section covers, conceptually, what moral harassment is, the distinction of the grounds and legal protection of moral harassment in the public service and in the private sector. The second, which suggests the title of the article, concerns legislation on moral harassment at the federal level and the units of the Federation, verifying their correlations and distinctions. Third, mining legislation is addressed, the most consistent

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2 INTERNATIONAL LABOR ORGANIZATION. *Organização das Nações Unidas Brasil*, Brasília, 10 nov. 2017.

3 UNITED NATIONS ORGANIZATION (New York). General meeting. *Resolution 60/1, 16 September 2005*. Adopts the Final Document of the 2005 World Summit. 8th plenary meeting, 60th Session, 24th Oct. 2005.

4 AGENDA 2030. *Organização das Nações Unidas Brasil*, Brasília, 7 maio 2019.

5 INTERNATIONAL LABOR ORGANIZATION. *Convention No. 190 on the elimination of violence and of harassment in the world of work*. Geneva: CH, 21 July. 2019.

6 INTERNATIONAL LABOR ORGANIZATION. *Recommendation No. 206 on violence and harassment*. Geneva: CH, 21 July. 2019.

and complete in the country. Hence, the imperative for a model to be followed, urgently and positively, at the federal level.

1. Conceptual configuration of moral harassment and its legal protection in the public and private sector

In this section, divided into four subheadings, some premises or concepts of moral harassment are highlighted, especially regarding its foundations and the differences in legal protection in private and public law.

1.1 Conceptual difficulty of moral harassment and human dignity as a legal value, to protect subjects

Firstly, it should be clarified that the specialized literature is not unanimous regarding the definition of moral harassment. It can be identified based on the conceptual diversity of the phenomenon in different countries, institutions and organizations, which differently understand the behaviors that can constitute harassment, in the broad sense, and moral harassment, a species of the genus.[7]

Still, based on Jacobson and collaborators, we may identify a unitary descriptive analysis which characterizes moral harassment, in that harass effectively means to insist, reiterate, or persist in the conduct, making the professional life of the person untenable. Its meaning is not restricted, however, to recurrent practice. The conduct may not be repetitive, but the effect produced be of such harm way that is equivalent to reiteration.

Before explaining some of the actions that may constitute moral harassment, it is necessary to understand the difference between the legal consequences of harassment, whether in the public or private sphere, that is, to which principles of the Brazilian legal system the practice is an affront relative to different environments.

In this sense, we note the observation of Laene Pedro Gama, psychologist at the University of Brasília (UnB), who defines moral harassment as the "pathology of loneliness". Harassment walls people off in such a way that they become isolated even by their colleagues, becoming muted, invisible in

[7] JACOBSON, Kathryn; HOOD, Jacqueline; BUREN, Harry. Workplace bullying across cultures: a research agenda. *International Journal of Cross Cultural Management*, v. 14, n. 1, p. 47-65, 14 ago. 2013.

the sector in which they work, no longer able to distinguish their impaired condition in relation to other colleagues, even starting to blame themselves for uncomfortable situation "created".

> This is why these cases are not conveyed by statistics. People suffer, and when humiliation is great, wonder to what extent they provoked the attitude. The strategy of the harasser is precisely to destroy social ties and bargain for the support of colleagues against the harassed, considering that everyone needs their job or the rewards of an extra commission.[8]

As to existing classifications, moral harassment can be vertical, from superior to subordinate; ascending, from the subordinate upwards; and horizontal — aggression committed by a co-worker at the same level as the victim, including through gossip.[9]

We should note that moral harassment in its various forms, from the point of view of law, is always and indisputably an attack on the guiding value of fundamental rights: on *human dignity*. Moral harassment affects the person in their essence and, therefore, our aim is clearly to inform contemporary legal systems. Yet, this is an indeterminate concept difficult to concretize. It is difficult to detect, in reality, which attitudes are assumed with the purpose of violating individual well-being and *dignity*, the irradiation of all rights.

> The word originates from the Latin *dignitas*, the fact of being worthy of deserve or merit. Thus, there are two essential meanings: *a habitual and concrete sense*, vis-à-vis a title, function, etc., that gives a subject an acknowledge position; *and a moral sense*, pertaining to the autonomous subject, representative of an *end in itself*. The principle of human dignity was enunciated by Kant.[10]

Since the central tenet is human dignity, this condition, in turn, presupposes *personal freedom*, that is to say: it is the ability to be free that makes us human and this is our *intrinsic* dignity. And, on top of this,

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8 BATISTA, Vera. Assédio: queixas aumentam, mas processos diminuem. *Correio Brasiliense*, Brasília, 6 maio 2019.

9 HIRIGOYEN, Marie-France. *Mal-estar no trabalho*: redefinindo o assédio moral. Tradução de Rejane Janowitzer. Rio de Janeiro: Bertrand Brasil, 2002. p. 17.

10 RUSS, Jaqueline. *Dicionário de filosofia*. São Paulo: Scipione, 1994. p. 70.

> The assumption of freedom is supported in Law, so it is meaningless to talk about rights and obligations that do not constitute basic characteristics of the person and with them their core value: *human dignity*. This can only be attributed to *human nature*, an attribution that, according to the precise synthesis offered by Karine Salgado, is unlimited and unquantifiable, since it is "a value whose measure is inexpressible". Freedom, the foundation of dignity, is the "differentiating element of man that places him above natural determinations, since rational, and allows him to construct his own labor, to determine how things should be, culture."[11]

Even though it is difficult to detect conduct that violates dignity in cases of harassment (as it often occurs in a perversely covert way), we cannot lose sight of its violent nature, and the law must be especially be vigilant about this. More precisely: such violence damages human dignity, as do other acts, but the oppression undergone by the harassed individual is among the cruellest, legally speaking. Harassment effectively dehumanizes, depriving the subject of the "capacity to construct their own work", which, as referred to in the passage, assaults freedom of action, performance, locomotion, expression, manifestation, locution, etc., in diverse and perverse configurations, attacking human dignity itself.

1.2 Distinction between moral harassment in the public and private sector: incidence of principle.

The scopes of principle and normative incidence suggest relevant applications, for moral harassment committed in the private and public service spheres. However, what distinguishes the practice in different contexts is the fact that moral harassment in public administration, from the point of view of State Theory, configure an injury to the institutional dignity of the State, which must be the first executor of constitutional commandments. This understanding is based on the doctrine of subjective public rights theory of Georg Jellinek, who considers the distinction between people, citizens and subjects essential for the positioning of a State that, in terms of its teleological function, recognizes individuals as parties, who, when subjected to the laws and structure of society

[11] BROCHADO, Mariah. *Inteligência artificial no horizonte da filosofia da tecnologia*: técnica, ética e direito na era cybernética. Belo Horizonte: Dialética, 2023. p. 477.

and state bureaucracy, have a minimum set of protected rights.[12] This is what the author calls a conservation function, based on "the organic theory [of] the concept of State [and] which highlights the State as a collective, spiritual organism, similar to the natural human organism."[13]

Legally, the practice of moral harassment, in the private sphere and public administration context, affront, in the axiological plexus of the Constitution of the Republic of 1988 (CR/88), the dignity of the person, whether as a foundation of the Republic (art. 1, item III), or as an individual or collective right, and the prohibition of inhumane or degrading treatment (art. 5, item III, CR/88) arises from this basis; and as a constituent value of the economic-financial (art. 170, CR/88) and social (art. 193, CR/88) orders, which guides the design of these systems, the creation of their infra-constitutional norms and their interpretation.[14]

In this sense, Luiz Otávio Renault, citing Maurício Godinho Delgado, attests to the need to analyze moral harassment as an attack against the constitutionally affirmed principle of dignity:

> The more forceful the legal system and the more effective the institutions, the greater the degree of effectiveness of the principle, which, due to its importance, constitutes a formal, competing heteronomous source. In the words of Delgado (2006), […] "to have dignity is not necessarily to have positive rights, since dignity is an intrinsic human condition. In any case, regarding its protection, it is recognized that the State, through normative mechanisms, plays a unique role in maintaining human dignity."[15]

Likewise, the practice of moral harassment violates the personal rights of these workers: their flourishing, honor, and moral and intellectual health. Violation of these rights, for the purposes of legal protection, motivates the victim of moral harassment in court, characterizing their legitimacy (art. 5, item

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[12] JELLINEK, Georg. *Teoria general del estado*. Tradução de Fernando de Los Rios. Buenos Aires: Albatros, 1954.

[13] BROCHADO, Mariah. *Ética e direito*: pelas trilhas de Padre Vaz. Curitiba: CRV, 2021. p. 196.

[14] DELGADO, Maurício Godinho; DELGADO, Gabriela Neves. *Constituição da República e direitos fundamentais*: dignidade da pessoa humana, justiça social e direito do trabalho. São Paulo: LTr, 2012. p. 40-43.

[15] RENAULT, Luiz Otávio Linhares; AZEREDO, Amanda Helena Guedes. O princípio da dignidade da pessoa humana como base para a diminuição do assédio moral nas relações de emprego. *Revista do Tribunal Regional do Trabalho da 3ª Região*, Belo Horizonte, v. 49, n. 79, p. 208, jan./jun. 2009.

XXXV, CR/88), while the violation of the principle of human dignity per se is a meta-individual legal precept,[16] allowing legitimate legal proceedings in their favor (art. 18, in fine — Code of Civil Procedure, 2015[17] and (c/c) art. 81, sole paragraph, item II — Defense Code of the Consumer[18] and art. 1st, item IV of the Public Civil Action Law).[19] Note that interpretation and application of this in the employment context implies recognition of the so-called principle of human dignity of the worker, key to the protection of rights in this context.[20] Thus, such harassment is configured as an injury to morality, one of the governing principles of public administration in the lead paragraph of art. 37 of CR/88.

Such consequences are justified by the nature of the special legal relationship that exists between a civil servant and the public administration, which contracts officials who will act on its behalf in performing his duties, and must be guided by the values of legality, impersonality, morality, transparency and efficiency, which reflect the statutes of each public entity. In this way, there is a legal duty-power to raise awareness and create an environment free from moral harassment, to determine responsibility and punish responsible agents.

1.3 Distinction between the legal protection of moral harassment in the civil service and in the private sector

Two consequences arise from the aforementioned principled impact. The first is the so-called double guarantee theory, which determines the procedural illegitimacy of the public official who practices moral harassment, where

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16 BITTAR, Carlos Alberto. *Os direitos da personalidade*. 6. ed. Rio de Janeiro: Forense Universitária, 2003.

17 "Art. 18. No one may claim someone else's rights in their own name, *except when authorized by law*." (emphasis added). In: BRASIL. Lei nº 13.105, de 16 de março de 2015. *Código de Processo Civil*. Brasília, DF: Presidência da República.

18 "Art. 81. The defense of the interests and rights of consumers and injured parties may be exercised in court individually or collectively. Single paragraph. Collective defense will be exercised when it concerns: II — collective interests or rights, thus understood, for the purposes of this code, as transindividual ones, of indivisible property held by a group, category or class of people linked to each other or to the opposing party by a basic legal relationship." In: BRASIL. *Lei nº 8.078, de 11 de setembro de 1990*. Provides for the protection of consumer, among other measures. Brasília, DF: Presidência da República.

19 "Art. 1º. The provisions of this Law are governed by, without prejudice to popular action, liability actions for moral and property damage caused: IV — to any other diffuse or collective interest." In: BRASIL. *Lei nº 7.347*, de 24 de julho de 1985. Regulates public civil liability actions for damages caused to the environment, the consumer, goods and rights of artistic, aesthetic, historical and touristic value, among other measures.

20 Maurício Godinho Delgado e Gabriela Neves Delgado, *Constituição da República e direitos fundamentais*, op. cit., p. 40-43.

only the public entity should be held primarily responsible, allowing for the right of defence.

In the case of moral harassment, within the scope of this special legal relationship, the responsibility of the legal entity governed by public law overlaps, while public administration, as a centralizing entity of the democratic rule of law, imposes itself as the first guarantee of legality and, in the case of moral harassment, the health of the working environment. In this way, the alleged victim must prove his case in court regardless of intent or fault on the part of the administration, in line with the theory of objective liability provided for in art. 37, § 6 of the Constitution of the Republic of 1988. It is in this sense that the Federal Supreme Court (STF) decided on Extraordinary Appeal (RE) no. 1027633/SP, which generated the General Repercussion text on issue No. 940:

> The Federal Constitution preserves both the citizen and the public agent, enshrining a dual guarantee. The premise that gives rise to the civil liability of the State is based on the idea of social justice. The rope should not break on the weakest side. **The State is a powerful agent, relying on the primacy of the use of force. The individual is in a position of subordination, so that objective state responsibility aims to safeguard the citizen.** Regarding the public official, when carrying out the administrative act, he/she must only manifest the will of the Administration, **representing the State itself. The possibility of retrogressive action avoids inhibiting the agent in performance of their functions, safeguarding administrative activity and the public service**. The victim of the injury — whether private or a civil servant — does not have to choose who will judge the petition. The compensation action must be filed against the legal entity of the public law or private law provider of public services.[21]

Note that the theory of double guarantee is not a mere protection for the individual civil servant, but rather a *judgment of proportionality* that considers the supremacy of the public interest in three pillars: (i) the public servant acts

[21] BRASIL. Supremo Tribunal Federal. *Recurso Extraordinário* 1.027.633/SP. Responsabilidade civil Indenização — Réu agente público — Artigo 37, § 6º, da Constituição Federal — Alcance — Admissão na origem — Recurso extraordinário — Provimento. Recorrente: Maria Felicidade Peres Campos Arroyo. Recorrido: Jesus João Batista. Relator: min. Marco Aurélio, 14 de agosto de 2019.

on behalf of the State and represents it; (ii) the State has greater institutional capillarity to defend itself vis-a-vis acts attacked as illicit; (iii) the double guarantee is a protective function for the continuity and efficiency of the public service, so that official will not need to fear performing their duties. This is why the official should only be called in to prove responsibility, materiality, causal link and intent or guilt in relation to their duties, not litigate in relation to individuals with whom there is not prior legal relationship.

In relation to this last pillar, it is worth highlighting that the double guarantee theory provides protection to the injured party, as outlined by the STF decision, and represents for the injured party the burden of proving the intent or guilt of the official concerned. Thus, production of evidence in this requirement of responsibility under civil law, especially in the case of moral harassment, prompts discussions about the organizational culture and other aspects of hierarchical and disciplinary power not cognizable by the Judiciary as by the administration itself. Indeed, bad faith is an indeterminate legal concept mediated by circumstances that bear upon the psychological and moral state of the individual who acted on behalf of the State.

Concerning moral harassment in the private sphere, the injured party is provided the means to investigate the employer and the harassing employee. Regarding the first, the objective civil liability regime is considered (art. 932, item III c/c art. 933 of the Civil Code of 2002 — CC/02) and, in relation to the second, the regime of subjective civil liability. In this case, it appears that there is no rule that that prevents legal process against the employee, precisely due to the lack of an authoritative figure and public administration.[22]

It is in this regard that the second consequence arises, as the public administration has the power-duty to determine the administrative responsibility of the agent of moral harassment, guaranteeing full defence and contradictory proceedings, allowing for applicable penalties in the statute that governs their functional relationships (reprimand, suspension, dismissal, removal from public service, etc.).

Regarding the determination of responsibility and punishment, what prevails is the possibility of dismissal from office for officials hired temporarily, in accordance with the normative act that governs hiring; dismissal from office in

[22] With regard to jurisdictional competence, it is worth mentioning that demands made against the administration must be filed in the Common Court (except for the jurisdiction of the Federal Court, if Union or federal public entities are the defendant — art. 109, item I, CR/88), while demands involving labor relations in the private sector must be filed before the Labor Court (art. 114, item I, CR/88).

in relation to public servants holding positions on freely appointed commissions, and exoneration; and mandatory prior administrative disciplinary process, with broad and contradictory defence in relation to statutory public officials with stable contracts.[23] In the first two cases, Judiciary inquiry is reserved for abusive dismissal, that is, when there is proof that the act of dismissal was falsely motivated. In labor relations, a space that privileges private autonomy, it is the employer's discretion to make decisions regarding maintenance of the employee in the face of various factors that permeate the decision to terminate the employment contract with just cause or not.

In the international order, we should note that the Inter-American Court of Human Rights (CorteIDH) has already expressed its opinion on the content of the duty of the authority to investigate publicly, an obligation of means, not of result. However, this does not imply that an authority can carry out a discretionary investigation. The Court has already established criteria to determine which investigations are effective. In this sense, the CorteIDH established that each process must correspond to the nature of the facts investigated. This was described in the Acosta et al. Case. v. 2017 Nicaragua:

> For an investigation to be effective under the terms of the American Convention on Human Rights, it must be conducted with due diligence, with all the necessary actions and investigations to clarify the facts. Therefore, it must be substantiated by all available legal means and be oriented to the determination of truth.[24]

One of the criteria to consider for serious investigation, according to CorteIDH, concerns the lines of investigation, which have to be methodologically exhausted, including those that involve investigating systematic patterns of violations of norms involving senior management. Thus, the State has the duty to deal with the veracity of the facts based on different hypotheses and alignment with the means of control.

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[23] This understanding is a logical consequence of art. 41, § 1 of CR/88, which establishes the three hypotheses of loss of position. In this case, section II deals with the possibility of loss "through an administrative process in which ample defense is assured." Art. 37, item IX of CR/88 provides for the possibility of temporary hiring and art. 37, item II, in CR/88 provides for free appointments and dismissal.

[24] CorteIDH. *Case of Acosta et al. v. Nicaragua*. Preliminary objections, merits, reparations and costs. Judgment of March 25, 2017. Series C No. 334, para. 136.

Furthermore, Brazil is obliged to comply with the Court decisions and interpretations, in accordance with Decree No. 4,463/2002, art. 1: "the jurisdiction of the Inter-American Court of Human Rights is recognized as mandator, fully right and for an indefinite period in all cases relating to the interpretation or application of the American Convention of Human Rights".[25]

Brazil has been a signatory to the Inter-American Convention on Human Rights (Cadh) since 1992 and accepted the contentious jurisdiction of the CorteIDH since December 10, 1998. Failure to comply with international obligations could result in Brazil facing the court, as it has done in nine cases to date.

Specifically, the case of Gomes Lund vs. Brazil,[26] CorteIDH reaffirmed that Brazilian internal authorities have the obligation to apply the provisions in force in the System of Inter-American Human Rights Committee (Sidh). This application does not just concern Cadh, but also the interpretations given by CorteIDH to the content of the Cadh. Thus, there is a duty to align with the research parameters established in the aforementioned frameworks, in order to comply with the international obligation as well as constitutional obligation vis-a-vis the principles of legality and morality. Hence, the obligation that moral harassment be seriously investigated by the public administration.

Finally, there is a difference for the purposes of quantifying the compensation to be paid as moral damages. In the private and individual sphere, the Labor Court is restricted to the parameters of art. 223-G, § 1 of the Consolidation of Labor Laws.[27] However, this objective limitation in quantifying compensation does not exist in the public administration, so art. 944, sole paragraph of CC/02, is applied, which enables equitable reduction of the compensation where there

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[25] BRASIL. *Decreto nº 4.463, de 8 de novembro de 2002*. Promulgates the Declaration of Recognition of Mandatory Jurisdiction of the Inter-American Court of Human Rights, subject to reciprocity, in line with art. 62 of Convenção Americana sobre Direitos Humanos (Pacto de São José), 22 November 1969. Brasília: DF, 2002.

[26] CorteIDH. *Caso Gomes Lund e outros ('Guerrilha do Araguaia') vs. Brasil*. Sentença de 24 de novembro de 2010. Série C, N. 219, p. 65-66.

[27] "Art. 223-G. When considering the request: § 1. If it considers the request to be valid, the court will set the compensation to be paid to each of the offended parties, according to one of the following parameters, with accumulation prohibited: I — offense of a minor nature, up to three times the last contractual salary of the offended party; II — offense of a medium-level nature, up to five times the last contractual salary of the offended party; III — offense of a serious nature, up to twenty times the last contractual salary of the offended party; IV — offense of a very serious nature, up to fifty times the last salary of the offended party. § 2º If the offended party is a legal entity, the compensation will be fixed in compliance with the same parameters established in § 1 of this article, but in relation to the offender's contractual salary." BRASIL. *Decreto-lei nº 5.452, de 1º de maio de 1943*. Aprova a Consolidação das Leis do Trabalho. Rio de Janeiro, RJ: Presidência da República.

is characterization of excessive disproportion between fault and damage. In the case of an employment relationship, where there is collective interest, art. 223-G, § 1 of the CLT must be removed, for the application of art. 13 of the Action Law Public Civil, so there is no objective limitation to the amount of compensation. This will be directed to the Diffuse Rights Defense Fund (FDD), regulated by Decree no 1.306, of November 9, 1994.

2. Moral harassment in the public service: overview of Brazilian legislation

This section presents an overview of Brazilian legislation on moral harassment, explaining the contours of its enunciation at the federal and state level in two subheadings.

2.1 Moral harassment in federal legislation

Moral harassment is not covered by Brazilian federal legislation, only sexual harassment. Law no. 10,224/200, introduced article 216-A into the Penal Code,[28] making sexual harassment a crime, with the stipulated penalty imprisonment for one to two years, with a third if the victim is a minor.

At the national level, in 2014, Bill (PL) no. 8,178/2014, originating in PLS no. 121/2009, modified Law no. 8,429/1992 (Law of Administrative Improbity — LIA), adding item X to art. 11, with the following definition: "morally coerce a subordinate, through repeated acts or expressions that attack their dignity or create humiliating or degrading feelings, abusing the authority conferred by a hierarchical position".[29] It was not effective.

There was also an archived project (Bill No. 4,591/2001), which attempted to modify Law No. 8,112/1990 with art. 117-A, which prohibited the practice of harassment and imposed sanctions ranging from warning to dismissal. In § 1 it described conduct considered moral harassment:

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[28] "Art. 216-A. Humiliate someone with the intention of obtaining sexual advantage or favor, taking advantage of status as hierarchical superior, inherent to the exercise of employment, position or office." In: BRASIL. Decreto-lei nº 2.848, de 7 de dezembro de 1940. Código Penal. Rio de Janeiro, RJ: Presidência da República.

[29] BRASIL. Câmara dos Deputados. *Projeto de Lei nº 8.178/14*. Amends art. 11 of Law no. 8.429, of June 2, 1992, to characterize moral harassment as an act of administrative improbity. Author: Senado Federal — Inácio Arruda — PCdoB/CE, 3 dez. 2014.

> § 1. For the purposes of this article, moral harassment is considered any type of action, gesture or word that impinges, through repetition, on the self-esteem and well-being of an individual, causing them to doubt themselves and their competence, with resulting damage to the professional environment, career development or the physical, emotional and functional stability of the worker, including, among other things: scheduling tasks with impossible deadlines; movement from an area of responsibility to perform trivial tasks; taking credit for ideas of others; ignoring or bypassing an employee, dealing with through third parties; insistently withholding information necessary for the preparation of work; spreading malicious rumors; criticizing persistently; physically segregating or restricting them to an inappropriate, isolated or unhealthy locale; underestimating efforts.[30]

Attempts to include moral harassment in the Statute of Federal Civil Servants (Law No. 8,112/1990), as seen, remained bankrupt and there is no proposal for a general law on moral harassment in Brazil, so each entity of the Federation must establish its regulations in this regard. PL no. 6,764/2013 is currently under consideration in the National Congress, with proposed provisions "on the practices of moral harassment and abuse of authority within the scope of the direct and indirect Federal Public Administration";[31] attached to it are PLs no. 2,808/2019 (which "requires that public administration bodies and entities provide psychological counseling of a confidential nature to female victims of harassment in the professional environment, by reason of gender, and other measures")[32] and no. 1,458/2023 (which "provides for the Policy for Preventing and Combating Moral and Sexual Harassment in the Public Service").[33] All these legislative procedures are pending as of the date of this article.

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[30] BRASIL. Câmara dos Deputados. *Projeto de Lei nº 4.591/01*. Provides for the application of penalties for the practice of "moral harassment" by civil servants of the Union, local authorities and public foundations, and federal authorities to their subordinates, amending Law No. 8.112, of December 11, 1990. Author: Rita Camata — PMDB/ES, 3 maio, 2001.

[31] BRASIL. Câmara dos Deputados. *Projeto de Lei nº 6.764/2013*. Addresses practices of moral harassment and abuse of authority within the direct and indirect Federal Public Administration. Author: Comissão de Direitos Humanos e Minorias, 14 nov. 2013.

[32] BRASIL. Câmara dos Deputados. *Projeto de Lei nº 2.808/2019*. It imposes on the bodies and entities of the public administration the obligation to ensure confidential psychological assistance to female victims of harassment in the professional environment, based on their gender, among other measures. Author: Edna Henrique. — PSDB/PB, 9 maio, 2019.

[33] BRASIL. Câmara dos Deputados. *Projeto de Lei nº 1.458/2023*. Provides for a Prevention Policy and the Combating of Moral and Sexual Harassment in the Public Service. Author: André Figueiredo — PDT/CE, 28 mar. 2023.

The Comptroller General of the Union (CGU) in a report dealing with penalties applied to moral harassment between 2014 and 2019 indicates that the legal framework is in accordance with

> items IX [conduct [in]compatible with administrative morality] and XI [mistreating people] of article 116, violating the prohibitions of items V, IX, XVII of article 117 or even the commission of conduct included in items IV [administrative impropriety], V [public incontinent and scandalous conduct, in the office], VII [physical aggression, on duty, to a civil servant or to a private individual, except in self-defence or in protection of others] of article 132, all of Law no. 8.112/90.[34]

The National Council of Justice (CNJ) issued Resolution no. 351, October 28, 2020, which establishes, within the scope of the Judiciary, the Policy for Prevention and Confrontation of Moral Harassment, Sexual Harassment and Discrimination, which encouraged the national Courts to develop mechanisms.[35]

The Public Ministry of Labor (MPT) issued the PGT/GE technical note, Moral Harassment in Public Administration no. 1, July 27, 2022, which "reaffirms the role of the Public Ministry of Labor to act in the prevention and combat of practices of organizational moral harassment within the scope of Public Administration".[36]

The Federal Audit Court (TCU) published a report of a survey of a possible system for preventing and combating moral and sexual harassment in Union bodies: the CGU, Federal Senate (SF), Federal Regional Court of the 4th Region (TRF4), and Petrobras (BR). The report again highlights the absence of a national law on the subject, the fragmentation of different ways of preventing and combating the practice of moral harassment, attempting standardization with the proposal of a model of institutionalization, prevention, detection and correction.[37] In the same sense, in 2023, the CGU published the Lilás Guide,

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[34] MIADA, Sandra Yumi. *Estudo temático. Assédio moral*: tratamento correcional do assédio moral no âmbito do Sistema de Correição do Poder Executivo Federal (Siscor). Controladoria-Geral da União, Corregedoria-Geral da União, Diretoria de Gestão do Sistema de Correição do Poder Executivo Federal, Coordenação-Geral de Acompanhamento de Processos Correcionais, 2019. p. 9.

[35] BRASIL. Conselho Nacional de Justiça. *Resolução nº 351*, de 28 de outubro de 2020. Establishes the Policy of Preventing and Combating Moral Harassment, Sexual Harassment and Discrimination. Brasília, DF: 2020.

[36] BRASIL. Ministério Público do Trabalho. Procuradoria-Geral do Trabalho. *Nota técnica PGT/GE denominada Assédio Moral na Administração Pública n. 01*, de 27 de julho de 2022. Brasília, DF: 2022.

[37] BRASIL. Tribunal de Contas da União. *Relatório*. Levantamento de um possível sistema de prevenção e combate do assédio moral e sexual. Brasília, DF: 2022.

with guidelines for preventing and dealing with moral and sexual harassment and discrimination in the federal government.[38]

It is important to mention that the Judiciary, based on the judgment of REsp 1.286.466/RS, recognized moral harassment as a practice that violates the *principles of public administration*, and, in this sense, an act of administrative improbity, under the terms of art. 11 of Law no. 8,429/1992. This case concerned the conduct of a mayor who persecuted a public servant, who then reported him to the Public Prosecutor of Rio Grande do Sul. The mayor allegedly relocated the civil servant to a meeting room for four days and threatened to make her redundant, obliging a forced vacation of 30 days.

In this test case in the treatment of moral harassment as administrative improbity, rapporteur minister Eliana Calmon highlighted that "moral harassment, more than workplace bullying, such as sarcasm, criticism, mockery, and hazing, is a psychological campaign aimed at making the victim a feel rejected. They were subject to defamation, verbal abuse, aggression and cold and impersonal treatment".[39] From this judgment, an understanding was established that to constitute moral harassment as an act of improbity falling within the lead paragraph of art. 11, the intent of the conduct must be verified.

However, article 11 of Law no. 8,429/1992 was amended by Law no. 14,230/2021, which strongly restricted the scope of offense to the principles of public administration and did not create a hypothesis for the protection of moral harassment, emptying the legal protection of the dignity of civil servants and violating the parameters of decency in the workplace that Brazil adheres to.

This regulatory gap, due to the absence of a law of national scope, leads to a fragmentation of the treatment of moral harassment, which is divided into different treatments (when existing) in federal institutions and units of the Federation. The normative dispersion and lack of control over the mechanisms of identifying, treating and correcting moral harassment also violates art. 37, § 16º of CR/88, which demands from the administration an evaluation of its public policies, which cannot be carried out without clear parameters.

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[38] BRASIL. Controladoria-Geral da União. Guia Lilás. Orientações para prevenção e tratamento ao assédio moral e sexual e à discriminação no Governo Federal 2023. Brasília, DF: 2022.

[39] BRASIL. Superior Tribunal de Justiça (Segunda Turma). REsp 1286466/RS. ADMINISTRATIVO. AÇÃO CIVIL PÚBLICA. IMPROBIDADE ADMINISTRATIVA. ASSÉDIO MORAL. VIOLAÇÃO DOS PRINCÍPIOS DA ADMINISTRAÇÃO PÚBLICA. ART. 11 DA LEI 8.429/1992. ENQUADRAMENTO. CONDUTA QUE EXTRAPOLA MERA IRREGULARIDADE. ELEMENTO SUBJETIVO. DOLO GENÉRICO. Recorrente: Ministério Público do Estado do Rio Grande do Sul. Recorrido: Odilon Almeida Mesko. Relatora: min. Eliana Calmon. Julgado em 3 set. 2013, DJe 18 set. 2013.

2.2 Moral harassment in the legislation of the federation units

From the perspective of the federative units, legislation can be systematized as follows: (i) states that do not have legislation on moral harassment at the time of writing; (ii) states that have and limit the configuration of moral harassment only as a hypothesis of repetition of acts; (iii) states that have and do not limit the configuration of moral harassment in cases of repetition of acts.

The states of Alagoas, Bahia, Espírito Santo, Maranhão, Pará, Paraná, Piauí, Rio Grande do Norte, Rio Grande do Sul, Roraima and São Paulo do not have legislation on the topic within the scope of the Executive Power, highlighting the neglect of State Powers in the matter.

No laws were identified in the state of Alagoas[40] on the topic or changes to Law no. 5,247/1991 (Single Legal Regime for Civil Public Servants of the State of Alagoas) or Law no. 6,754/2006 (Functional Code of Ethics for Civil Servants of the State of Alagoas), which deal with it.

The state of Bahia only has Ordinance Sesab nº 613/2022, in the Official State Diary, which establishes the Policy for Preventing and Combating Moral and Sexual Harassment in the Health Department of the State of Bahia. The Ordinance detaches its basis in federal law to propose a particular culture within the scope of the State Health Department of Bahia, pointing to the disarticulation of the Bahian government, to promote institutional integrity aimed at combating moral harassment.[41]

The state of Espírito Santo only has Law no. 10,117/2013, which deals with *Semana da Consciência e do Combate ao Assédio Moral no Trabalho* (Week of Awareness and Combating Moral Harassment at Work), as it without the instruments to classify the conduct of moral harassment as an administrative offense, nor investigate administrative responsibility.[42]

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[40] BRASIL. Estado de Alagoas. Lei nº 5.247, de 26 de julho de 1991. Establishes the Regime Jurídico Único dos Servidores Públicos Civis do Estado de Alagoas, das Autarquias e das Fundações Públicas Estaduais. Maceió: AL, 1991. BRASIL. Estado de Alagoas. Lei nº 6.754, de 1º de agosto de 2006. Establishes Código de Ética Funcional do Servidor Público Civil do Estado de Alagoas. Maceió: AL, 2006.

[41] BRASIL. Bahia. Secretaria da Saúde do Estado da Bahia. Portaria Sesab nº 613 de 09 de agosto de 2022. *Diário Oficial do Estado da Bahia*, 11 ago. 2022.

[42] BRASIL. Estado do Espírito Santo. *Lei nº 10.117*, de 20 de novembro de 2013. Created S*emana da Consciência e do Combate ao Assédio Moral no Trabalho*. Vitória: ES, 2013.

No laws were found in the state of Maranhão on the subject or changes in the Statute of civil servants.[43] The same can be said of Pará,[44] Piauí,[45] Roraima[46] and Paraná.[47] However, in the latter there is a primer in 2021 from the state Comptroller General:

> Within the scope of Public Administration, moral harassment is not yet expressly addressed in the Civil Employee Statute of the Executive Branch of the State of Paraná. According to State Law no. 6.174, of November 16, 1970, however, the harasser's conduct may be punished under violation of generic duties, provided for in art. 279 and 285, and they may suffer disciplinary action, in line with art. 293 of the same law.[48]

In the state of Rio Grande do Norte, no legislation was found on the subject, with the exception of "Awareness raising of Moral Harassment and Sexual Cyberbullying, among other behaviors, via the internet, in public and private schools in the State of Rio Grande do Norte", established by Law no. 10,691, February 12 2020.[49] In 2019, a bill was approved in the Legislative Assembly of State of Rio Grande do Norte, but was vetoed entirely by the governor, and not overturned.[50] The content is not available on the internet so it is difficult to identify the content, yet the veto may be due to a defect of formal unconstitutionality, considering the initiative did not come from the head of the Executive.

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43 BRASIL. Estado do Maranhão. *Lei nº 6.107, de 27 de julho de 1994*. Provides for the status of civil servants in the state and other measures. São Luís: MA, 1994.

44 BRASIL. Estado do Pará. *Lei nº 5.810, de 24 de janeiro de 1994*. Regarding the *Regime Jurídico Único dos Servidores Públicos Civis da Administração Direta, das Autarquias e das Fundações Públicas do Estado do Pará*. Belém: PA, 1994.

45 BRASIL. Estado do Piauí. *Lei Complementar nº 13/1994, de 3 de janeiro de 1994*. Provide for the Estatuto dos Servidores Públicos Civis do Estado do Piauí, of local authorities and state public foundations, among other measures. Teresina: PI, 1994.

46 BRASIL. Estado de Roraima. *Lei Complementar nº 53, de 31 de dezembro de 2001. Provides for the Regime Jurídico dos Servidores Públicos Civis do Estado de Roraima* among other measures. Boa Vista: RR, 2001.

47 BRASIL. Estado do Paraná. *Lei nº 6.174/70, de 16 de novembro de 1970*. Establishes the legal regime for civil servants of the Executive Branch of the State of Paraná. Curitiba: PR, 1970.

48 BRASIL. Estado do Paraná. Controladoria-Geral do Estado do Paraná. *Mude a cultura do assédio*. Curitiba: PR, 2021.

49 BRASIL. Estado do Rio Grande do Norte. *Lei nº 10.691, de 12 de fevereiro de 2020*. Institui o Programa de Prevenção e Conscientização da Prática de Assédio Moral e Sexual, Cyberbullying, among other practices, on the internet, in public and private schools, within the State of Rio Grande do Norte. Natal: RN, 2020.

50 SANDRO PIMENTEL repercute sanção de quatro leis de sua autoria na Assembleia. *Assembleia Legislativa do Rio Grande do Norte*, 10 set. 2019.

On April 11, 2023, the Legislative Assembly of the State of Rio Grande do Norte approved Bill No. 147/2022, which "creates the 'Abaixe o Tom' program, against moral harassment and constraint within the scope of direct and indirect public foundations and authorities in the State of Rio Grande do Norte".[51] The bill was still pending sanction by the Executive Branch, with a deadline of May 22, 2023.[52]

On the other hand, it appears that there is a political movement for the Executive Branch to adopt legislation that combats moral harassment within the public administration, according to news from October 6, 2022 on the website of *Sindicato dos Trabalhadores do Serviço Público da Administração Direta do Estado do Rio Grande do Norte* (Sinsp-RN).[53]

The state of Rio Grande do Sul enacted Supplementary Law No. 12,561/2006, providing for the prohibition of moral harassment in public administration, vis-à-vis repeated incidence.[54] However, the conceptual parts of the Law were vetoed by the governor of the state at the time and, subsequently, the Law was judged unconstitutional by the Court of Justice of Rio Grande do Sul on February 26, 2007, due to a formal defect, as the initiative should have come from the head of the Executive Branch.[55] The state government apparently intended, in 2013, to create new legislation, but it did not come to fruition.[56]

In the list of states that do not have legislation to classify moral harassment as an administrative offense, is São Paulo, which did in fact enact Law no.

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[51] DEPUTADOS da Comissão de Constituição e Justiça aprovam 12 projetos nesta terça (11). *Assembleia Legislativa do Rio Grande do Norte*, 11 abr. 2023.

[52] BRASIL. Estado do Rio Grande do Norte. Gabinete civil do Governo de Estado. *Projetos de Lei pendentes de sanção governamental*, 11 maio 2023.

[53] SINSP e deputado Francisco do PT vão se unir para discutir combate ao assédio moral no serviço público. *Sinsp*/RN, 6 out. 2022.

[54] BRASIL. Estado do Rio Grande do Sul. Lei complementar nº 12.561, de 12 de julho de 2006. Proíbe a prática do assédio moral no âmbito da administração pública estadual. Porto Alegre: RS, 2006.

[55] BRASIL. Tribunal de Justiça do Estado do Rio Grande do Sul. Tribunal Pleno. ADI 70017737511. ADIn. LEI COMPLEMENTAR QUE PROÍBE O ASSÉDIO MORAL NO ÂMBITO DA ADMINISTRAÇÃO PÚBLICA ESTADUAL DIRETA DE QUALQUER DE SEUS PODERES E INSTITUIÇÕES AUTÔNOMAS. Violation of guarantee of initiative by the Head of the Executive Branch in matters relating to state civil servants, the regime and disciplining of structures and duties relating to state public administration bodies. Formal unconstitutionality. A rule that does not establish mere guidelines or principles, but concrete definitions, establishing functional rights and sanctions, interfering in the administrative structure and organization, investing in the legal regime to which state public servants must submit. AÇÃO JULGADA PROCEDENTE. Proponent: Attorney General of the Public Ministry of the State of Rio Grande do South. Assembleia Legislativa do Estado do Rio Grande do Sul. Relator: desembargador Paulo Augusto Monte Lopes, ruled on 26/2/2007, DJe 25/4/2007.

[56] BAMPI, Tânia. Avança debate sobre lei do assédio moral no serviço público. *Governo do Estado do Rio Grande do Sul*, 12 set. 2013.

12,250/2006, prohibiting moral harassment in public administration, in cases of repeated incidence.[57] On November 29, 2019, however, the Law was judged unconstitutional by the STF, as the legislative initiative had not come from the State governor.[58] There are no other specific laws on the subject, especially after the declaration of unconstitutionality of Law No. 12,250/2006, or provisions in the Statute of civil servants in the state of São Paulo.[59]

The states of Acre,[60] Ceará,[61] Goiás,[62] Mato Grosso do Sul,[63] Santa Catarina[64] and Tocantins[65] have legislation strictly based on a configuration of repeated incidence.

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[57] BRASIL. Estado de São Paulo. *Lei nº 12.250, de 09 de fevereiro de 2006*. Prohibits moral harassment within the scope of direct and indirect state public administration and public foundations. São Paulo: SP, 2006.

[58] BRASIL. Supremo Tribunal Federal. Tribunal Pleno. ADI 3.980/SP. DIREITO CONSTITUCIONAL. AÇÃO DIRETA DE INCONSTITUCIONALIDADE. LEGISLAÇÃO ESTADUAL PAULISTA DE INICIATIVA PARLAMENTAR QUE TRATA SOBRE A VEDAÇÃO DE ASSÉDIO MORAL NA ADMINISTRAÇÃO PÚBLICA DIRETA, INDIRETA E FUNDAÇÕES PÚBLICAS. REGULAMENTAÇÃO JURÍDICA DE DEVERES, PROIBIÇÕES E RESPONSABILIDADES DOS SERVIDORES PÚBLICOS, COM A CONSEQUENTE SANÇÃO ADMINISTRATIVA E PROCEDIMENTO DE APURAÇÃO. INTERFERÊNCIA INDEVIDA NO ESTATUTO JURÍDICO DOS SERVIDORES PÚBLICOS DO ESTADO DE SÃO PAULO. VIOLAÇÃO DA COMPETÊNCIA LEGISLATIVA RESERVADA DO CHEFE DO PODER EXECUTIVO. DESCUMPRIMENTO DOS ARTS. 2º E 61, § 1º, II, "C", DA CONSTITUIÇÃO FEDERAL. AÇÃO JULGADA PROCEDENTE PARA DECLARAR A INCONSTITUCIONALIDADE DO ATO NORMATIVO ESTADUAL. Requerente: governador do Estado de São Paulo. Interessado: Assembleia Legislativa do Estado de São Paulo. Relatora: min. Rosa Weber. Julgado em 29 nov. 2019, DJe 18/12/2019.

[59] BRASIL. Estado de São Paulo. *Lei nº 10.261, de 28 de outubro de 1968*. Provides for Estatuto dos Funcionários Públicos Civis do Estado. São Paulo: SP, 1968.

[60] BRASIL. Estado do Acre. *Lei complementar nº 377, de 31 de dezembro de 2021*. Amends Supplementary Law no. 39, December 29, 1993, to provide for application of a penalty for the practice of moral harassment in the scope of the Direct and Indirect Public Administration of the State of Acre, by public servants, among other measures. Rio Branco: AC, 2021.

[61] BRASIL. Estado do Ceará. *Lei nº 15.036, de 18 de novembro de 2011*. Treats moral harassment within the scope of the State Public Administration, aimed at prevention, sanction and promotion of the dignity of public officials in the workplace, among other measures. Fortaleza: CE, 2011.

[62] BRASIL. Estado de Goiás. *Lei nº 18.456, de 30 de abril de 2014*. Provides for the prevention and punishment of moral harassment within the scope of the state Administration, among other measures. Goiânia: GO, 2014.

[63] BRASIL. Estado do Mato Grosso Sul. *Lei nº 2.310, de 9 de outubro de 2001*. Provides for application of penalties for moral harassment within the scope of the State Public Administration, among other measures. Campo Grande: MS, 2001.

[64] BRASIL. Estado de Santa Catarina. *Decreto nº 2.709, de 27 de outubro de 2009*. Establishes the Occupational Health Manual for Public Servants, within the scope of direct and indirect state public administration. Florianópolis: SC, 2009.

[65] BRASIL. Estado do Tocantins. Lei nº 1.818, de 23 de agosto de 2007. Provides for the Statute of Public Servers of the State of Tocantins. Palmas: TO, 2007.

In Amapá, Amazonas, Mato Grosso, Minas Gerais, Paraíba, Rondônia, Sergipe and the Federal District reoccurrence is not an essential criterion of moral harassment.

The state of Amapá has Law No. 1,818/2014 which "provides for prevention and punishment of moral harassment in Public Administration", identified as: "conduct of public officials whose objective or effect is to degrade the working environment of another official, violate their rights or dignity, compromise physical or mental health, or professional development".[66] The legislation of the state of Amapá includes the condition of reoccurrence "I — repeatedly discredit, through words, gestures or attitudes, the self-esteem, security or image of a public official, taking advantage of hierarchical or functionally superior rank, equivalence or inferiority" while, in other cases, the requirement is waived.

The legislation of the state of Amazonas, art. 2 of Law no. 121, September 28, 2012, adopts a restrictive concept, but in art. 3 identifies circumstances of moral harassment in addition to repeated acts, such as "taking credit for ideas, proposals, projects or any other work".[67]

The Federal District, meanwhile,[68] has Law no. 2,949/2002, which covers both public administration and private sector. Therein, companies may be punished through revocation of licenses. However, this legislation is still pending implementation. There was a parliamentary initiative to do so in 2009, but without success or ensuing discussion.[69] The Federal District Civil Servants Statute, Supplementary Law no. 840/2011, typifies moral harassment as a level II medium administrative infraction, allowing for suspension of up to 90 days and dismissal in case of repetition.[70] Decree nº 41,536, December 2020, "provides for procedures for recording and investigating cases of moral

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66 BRASIL. Estado do Amapá. *Lei nº 1.818, de 22 de abril de 2014*. Provides for the prevention and punishment of moral harassment in the public administration of the State of Amapá. Macapá: AP, 2014.

67 BRASIL. Estado do Amazonas. *Lei nº 121, de 28 de setembro 2012*. Prohibits moral harassment at work, in the scope of bodies, departments or entities of centralized administration, government controlled autonomous entities, foundations, public and mixed capital companies, of the Legislative, Executive or Judiciary Power of the State of Amazonas, and concessionaires and licensees of state services of utility or public interest, among other measures. Manaus: AM, 2012.

68 BRASIL. Distrito Federal. *Lei nº 2.949, de 19 de abril de 2002*. Determines sanctions for the practice of moral harassment. Brasília: DF, 2002.

69 CAPUTO, Denise. Lei que trata de assédio moral no DF deve ser regulamentada. Câmara Legislativa do Distrito Federal, 21 out. 2009.

70 BRASIL. Distrito Federal. *Lei Complementar nº 840, de 23 de dezembro de 2011*. Provides for the regime of legal status of civil servants in the Federal District, local authorities and public foundations. Brasília: DF, 2011.

or sexual harassment in the workplace work" and initiates a concern by the Federal District to combat and prevent such behavior.[71]

The state of Paraíba has had two pieces of legislation on the subject. The first, Supplementary Law no. 63/2004,[72] included in the characterisation of moral harassment the need for "repetition and systematization". The new Supplementary Law no. 127/2015[73] includes the expression "repetition or systematization", removing the idea of reoccurrence. This is also the case with the legislation of the state of Sergipe.[74]

In the same vein, legislation in the state of Pernambuco follows the wording of Law no. 13,314/07[75], vis-a-vis the identification of "repeated or systematized" conduct. This law was amended by Law no. 17,065/2020, with new parameters for configuring harassment that do not depend on repetition, with a classification of moral harassment similar to Supplementary Law No. 116/2011 of the state of Minas Gerais, as seen below.

In the state of Rondônia, meanwhile, Law no. 1,860/2008 does not prescribe repetition of acts as a condition of moral harassment. The Law was amended by Law no. 5,034/2021, which taxed the alleged victim, in art. 6th, §1st, with a burden, incompatible with curbing the practice:

> Any acts carried out by the superior officer must be proven by the victim, through legal means, providing a psychological medical report which must identify the damage caused, the consequences, the International Disease Code — IDC and the causal link to the working environment.[76]

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[71] BRASIL. Distrito Federal. *Decreto nº 41.536, de 1º de dezembro de 2020*. Provides for registration and investigation of cases of moral or sexual harassment in the workplace in bodies and entities of the Government of the Federal District. Brasília: DF, 2020.

[72] BRASIL. Estado da Paraíba. *Lei Complementar nº 63, de 9 de julho de 2004*. Treats moral harassment in the scope of state public administration, among other measures.

[73] BRASIL. Estado da Paraíba. *Lei Complementar nº 127, de 20 de janeiro de 2015*. Treats moral harassment within the scope of state public administration and provides other measures. *Diário Oficial do Estado daParaíba*, 21 jan. 2015.

[74] BRASIL. Estado de Sergipe. *Lei nº 5.419, de 31 de agosto de 2004*. Treats moral harassment within the scope of direct and indirect state public administration and public foundations. Aracaju: SP, 2004.

[75] BRASIL. Estado do Pernambuco. *Lei nº 13.314, de 15 de outubro de 2007*. Deals with moral harassment in the scope of the Public Administration of the State of Pernambuco and provides other measures. Recife, PE: 2020.

[76] BRASIL. Estado de Rondônia. *Lei nº 1.860, de 11 de janeiro de 2008*. Prohibits moral harassment at work in the scope of bodies, departments or entities of centralized administration, government controlled autonomous entities, foundations, public companies and mixed-capital companies, of the Legislative, Executive and Judiciary Powers of the State of Rondônia, including concessionaires and licensees of utility or public interest state services, among other measures. Porto Velho: RO, 2008.

The state of Mato Grosso[77] has Law No. 11,882, September 2, 2022, which, despite providing for conciliation commissions and preventive training, defines moral harassment as repeated infractions. The law breaks with constitutional control, it appears, due to an initiative defect, and thus was vetoed by the state governor:

> [Deputy] Lúdio Cabral presented the project in October 2019, and the proposal received favorable opinion from the Labor and Public Administration Commission days later. In April 2020, the project was approved in the plenary in the 1st vote. In May 2021, the Commission of Constitution and Justice (CCJ) argued against the project. In the 2nd vote in plenary, in May 2022, the majority of deputies present voted to overturn the CCJ opinion and approve the project to punish moral harassment. The proposal was vetoed by the governor days later and, once again, the CCJ issued an opinion opposing the project. On August 24, the plenary once again defeated motion and overturned the governor's veto. Finally, the law was advanced and published in the Official Gazette on September 2, 2022.[78]

In Minas Gerais, Supplementary Law no. 116/2011[79] was enacted, which prescribes punishment for harassment, providing a conceptual parameter for such practices in the public service, and a model applicable the federal level, in view of the lack of comprehensive national legislation. Thus, it is not for lack of support in Brazilian law that a national project, linking the Union, states and municipalities, is wanting, given the path paved by pioneering state legislation, especially that of Minas Gerais, as discussed below.

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77 BRASIL. Estado do Mato Grosso. *Lei nº 11.882, de 2 de setembro de 2022*. Provides for prevention and punishment of moral harassment within the scope of the Powers of the State of Mato Grosso. Cuiabá: MT, 2022.

78 LAW that prevents and punishes moral harassment against public servants comes into force. *O Bom Dia da Notícia*, 5 set. 2022.

79 BRASIL. Estado de Minas Gerais. *Lei Complementar nº 116, de 11 de janeiro de 2011*. Provides for the prevention and punishment of moral harassment in state public administration. Belo Horizonte: MG, 2011. Available at: https://www.almg.gov.br/legislacao-mineira/texto/LCP/116/2011. Accessed on: May 13, 2023.

3. Legislation on moral harassment in Minas Gerais: definitions and categorizations and model procedures for Brazil

Legal protection of moral harassment in Brazil is most developed in the state of Minas Gerais, where a more authoritative and sensitive approach provides referrals and protocols. The issue is addressed in Supplementary Law no. 116, January 11, 2011, which defines moral harassment in art. 3, setting out its modalities with examples in § 1:

> Art. 3. For the purposes of this Supplementary Law, moral harassment is considered conduct of a public official, whose objective or effect is to degrade the working conditions of another official, violate their rights or dignity, compromise their physical or mental health or professional development. [emphasis added].[80]

A key characteristic is intentionality, that is, an objective to cause injury. At the same time, the consequences may be foreseen or predictable, even without the specific intention to cause harmful. In an exemplary manner, three generic practices identified as harassment are not tied specifically to repetition or recurrence.

The first is more objective, aimed at the degeneration of the working conditions of the harassed. Damaging the professional environment includes denying access to processes, information, data, or inhibiting contact with colleagues who may assist in carrying out tasks. This provision is too broad, so § 1 of the article provides details about how to detect which actions may be considered harassment, either directly or through association, given "degradation of the working environment" is an indeterminate concept that requires construction on a case-by-case basis.

The second descriptor is "attacking the rights or dignity of the person harassed". Attacks on rights and dignity can take several forms and this definition, by its nature, is less comprehensive than the first, directed as it is at the individual subject. Indeed, arbitrating on the legal category of human dignity is not an easy task. Yet, here, the category facilitates concrete identification, referencing rights provided for in the Public Servant Statute, arising directly

[80] Ibid.

from the Constitution, whether as fundamental rights and guarantees, or according to the principle of dignity.

Finally, acts harming the health of the person (physical or mental) are considered moral harassment, and also offences against professional development. Removing the server from their daily tasks, assigning them to others for which they are not prepared could be interpreted as a way of stimulating professional growth and development; on the other hand, the challenge may be so incompatible with their training and preparation, it results in low self-esteem and feelings of impotence to the point of compromising mental and even physical health. There are many cases of professional sickness resulting from such circumstances.

§ 1 of art. 3 of Supplementary Law no. 116/2011 provides examples of types of moral harassment. The first is "to discredit, repeatedly, through words, gestures or attitudes, the self-esteem, security or image of a public agent, abusing a superior, equivalent or inferior hierarchical or functional position". This descriptor identifies downward, horizontal and upward bullying, demystifying the belief that it is only possible to be harassed by superiors. The Law also describes other examples of conduct that may constitute moral harassment:

> **disrespecting** the individual limitations of public agents, resulting from physical or mental incapacity, assigning activities incompatible with their special needs;
> **discriminating** against public officials, in any capacity, based on race, sex, nationality, color, age, religion, social position, political, sexual or philosophical preference or orientation;
> **frequently assigning public officials a role incompatible** with their academic training or expertise, which requires specialized training;
> **isolating** or encouraging the marginalization of public officials, depriving them of information or training necessary for their development or interaction with colleagues;
> **disparaging** or ridiculing the image of the official, subjecting them to stressful situations, or **fomenting inappropriate rumors** and malicious comments;
> **underestimating**, in public, the skills and competencies of an official;
> **publicly expressing disdain** or contempt for an official or their work;
> **intentionally ostracising**;
> **presenting, as one's own**, any ideas, proposals, projects or work of another official;

> **using a commissioned position** or function to induce or persuade an official to practice an illegal act or fail to perform a specific act; [emphasis added].[81]

These descriptors embody types of harassment frequently practiced in public administration — unequal treatment of employees with the same qualification, assigning servers to inhospitable locales, without any justification; imposing shift work at the end of the week, or the eve of holidays; unfairly awarding promotions and bonuses; seconding workers to positions where daily rates are lower, while others receive privileged treatment; not providing resources to the unit or section under the responsibility of a given server.

> A strategy frequently used is to limit the victim's access to information essential for adequate performance, prevent the use of equipment or data necessary to carry out routine tasks, withhold passwords, placing obstacles so that the person feels marginilized and useless. Thus, the persecution gradually leads the victim to psychological breakdown, inducing submission. The attack is surreptitious and the violence is disguised.[82]

Daily humiliation, aimed at destroying professional competence, may include the apparently legitimate transfer a server to another department, to discredit them, or even reluctance to assign tasks, implicating idleness, can cause irreparable damage. This may constitute harassment, given the impact on professional life and the damage to self-esteem. Managers also have to be careful with "management by insult", for example, punishing those who do not reach targets or praising an employee too much to the detriment of another.

In addition to these classifications of harassment, three provisions deserve to be highlighted in the Law in question, vis-à-vis conciliatory, psychological and awareness-raising. The first is contained in the provisions of art. 10:

> The directors of public administration bodies and entities will create, in accordance with the terms of regulation, conciliation commissions, with representatives of the administration and entities unions or associations

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[81] Ibid.

[82] CÂNDIDO, Tchilla Helena. *Assédio moral, acidente laboral*. São Paulo: LTr, 2011.

representing the category, to seek non-contentious solutions for cases of moral harassment.[83]

The aforementioned commissions are widespread in the state of Minas Gerais, not seen in other units of the Federation.

This innovation is clear in art. 11: "The State will provide, in the form of regulation, *psychological support* for those passively subject to moral harassment, as well as for active subjects, in case of need".[84] Psychological accompaniment is fundamental in cases where harassment occurs, and that the state must bear such a burden is reasonable, as the circumstances occurred in the workplace.

As for the provision of conciliation, this must be rethought in the format in which it was established, as the liberality of the alleged victim of harassment is compromised where there is constraint on the representation of the administration in cases (most commonly) of upward harassment. Even if there is representation, the server knows the managers will continue in authority and that they are responsible for nominating representations on commissions. Conciliation cannot be an institutional cipher, with abstract dialogue between categories of workers, but real appeasement of situations that have occurred on a daily basis between individuals, involving misunderstandings of the values that should guide conduct in the professional sphere.

And, finally, art. 9 points to development of awareness of harassment, as a preventive measure, through long-term education and instruction, and ongoing dialogue and debate. The sole paragraph of the aforementioned article prescribes measures against moral harassment, the provision of education and training courses to disseminate good practice and the removal of inappropriate behavior, holding debates and lectures, and producing booklets and graphic material to raise awareness.[85]

Based on a commission of the state of Minas Gerais, against practices of moral harassment in the public service, Decree No. 47,528/2018 was drafted,[86] with the aim of updating Decrees no. 46,060/2012 and 46,564/2014, applying several details of Supplementary Law no. 116/2011 to implement its provisions.

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[83] Brasil, *Lei Complementar nº 116, de 11 de janeiro de 2011*, op. cit.

[84] Ibid.

[85] Ibid.

[86] BRASIL. Estado de Minas Gerais. *Decreto nº 47.528, de 12 de novembro de 2018*. Regulation, within the scope of the Executive Branch, Supplementary Law No. 116, of January 11, 2011, which provides for prevention and punishment of moral harassment in state public administration. Belo Horizonte: MG, 2020.

Law no. 22,404/2016 was also drafted,[87] creating a State Week of Awareness, Prevention and Combat against the Practice of Moral Harassment, which occurs in the second week of March, promoting specific measures against harassment, in line with the provisions of art. 9 of Supplementary Law no. 116/2011.

Decree no. 47,528/2018, furthermore, facilitated the process of considering complaints of abusive practices, in addition to the Special Advisory Monitoring and Confronting the Practice of Moral Harassment. It is expected that, where there is no conciliation in cases of harassment, the State Ombudsman's Office (OGE) forwards the process to the State Comptroller General (CGE), who must, within 30 days, make a judgment on the admissibility of the complaint. If the complaint is accepted, the CGE must initiate a Disciplinary Administrative Process (PAD).[88]

Finally, Decree no. 47,528/2018 allows for the registering of harassment complaints through the computerized system made available by OGE, to facilitate access to the state protective system. The document made available to the complainant can also be completed in person at human resources units or in the OGE itself.[89]

Conclusion

Moral harassment affronts people in their basic humanity, functioning as an irradiation of rights. Thus, dignity plays a fundamental role in the concept of moral harassment, as administrative offenses consist of practices that violate this essential condition of the person. From the study, it is clear that moral harassment in is an area of principle, with normative impact, moving beyond the scope of public service per se, and constituting an injury to the institutional dignity of the State. This is because public administration must be the first executor of constitutionality and ensure the legality and health of the working environment.

In the case of the civil service, the responsibility of the legal entity for public law overlaps, vis-a-vis the theory of objective liability set out in art. 37, § 6 of the Constitution of the Republic of 1988. In the private sector, labor relations

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87 BRASIL. Estado de Minas Gerais. *Lei nº 22.404, de 15 de dezembro de 2016*. Establishes the State Week of Awareness, Prevention and Combating of the Practice of Moral Harassment in the Scope of Direct and Indirect State Powers. Belo Horizonte: MG, 2016.

88 Brasil, Decreto nº 47.528, de 12 de novembro de 2018, op. cit.

89 Ibid.

are governed by the Consolidation of Labor Laws (CLT) and other specific standards that handle the topic.

A lack of a specific hypothesis for the protection of moral harassment was identified in Law no. 8,429/1992, following its amendment by Law No. 14,230/2021, as well as the absence of rules on the topic in federal legislation. Indeed, the states of Alagoas, Bahia, Espírito Santo, Maranhão, Pará, Paraná, Piauí, Rio Grande do Norte, Rio Grande do Sul, Roraima and São Paulo have no legislation on the subject within the scope of the state Executive Branch.

The states of Acre, Ceará, Goiás, Mato Grosso do Sul, Santa Catarina and Tocantins, meanwhile, have legislation strictly based on proof of repeated occurrence. On the other hand, in Amapá, Amazonas, Mato Grosso, Minas Gerais, Paraíba, Rondônia, Sergipe and the Federal District recurrence is not an as essential requirement for the configuration of moral harassment.

Supplementary Law no. 116, January 11, 2011, of the state of Minas Gerais defines moral harassment in art. 3, lead paragraph, and details its modalities in § 1. In fact, legislation, including regulations, in the state is considered an exemplary and sensitive way of approaching and defining referrals and protocols on the topic, based on awareness, prevention and humane treatment, including conciliation and, subsequently, determination of responsibility where conciliation is frustrated.

A regulatory gap was also identified, due to the absence of a comprehensive national law, leading to a fragmentation of treatment (where it exists) of the issue in institutions and units of the Federation. This normative dispersion and the lack of control over the mechanisms of identifying, addressing and correcting moral harassment also violates art. 37, § 16 of CR/88, which requires the public administration to evaluate its public policies, which cannot be carried out without established parameters.

It is necessary that the units of the Federation of Brazil and the Union coordinate prevention and determination of responsibility for the practice of moral harassment in the public service, maintaining a commitment to the dignity of labor and protection of human dignity in public service.

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