To The International Association of Judges – IAJ-UIM

The Romanian Magistrates’ Association (AMR) is a professional and national, apolitical, non-governmental organization, stated to be of „public utility” through Government Decision no. 530/21 May 2008 – with the headquarters in Bucharest, Regina Elisabeta Boulevard no. 53, District 5, e-mail amr@asociatia-magistratilor.ro, tax registration code 11760036 – legally represented by Judge dr. Andreea Ciucă as President.

Taking into consideration the Forth Study Commission Questionnaire for the IAJ annual meeting in Astana – „Harassment, in a broad sense—moral and sexual—and its consequences on labor relations”, AMR sends the following

ANSWERS TO THE FORTH STUDY COMMISSION QUESTIONNAIRE

1. Does your country have laws or regulations that cover workplace harassment?
   Is harassment defined separately or is it incorporated within other provisions of the labor code?

   According to article 5 of the Labor Code, equal treatment of all employees and employers constitutes a principle within the labor relationships. Any direct or indirect discrimination against an employee, based on gender, sexual orientation, genetic characteristics, age, national membership, race, color, ethnicity, religion, political option, social origin, disability, family situation or responsibility, union membership or union activity, is forbidden. The following acts constitute the meaning of a direct discrimination: acts of exclusion, distinction, restriction or preference, based on one or more of the criteria set out above, which have as their purpose or effect the non-granting, restricting or removing the recognition, use or exercise of the rights provided for in the labor legislation. Also, acts apparently based on criteria other than those listed above, but which produce the effects of direct discrimination, represent indirect discrimination.

   Art. 8 para 1 of the Labor Code stipulates that labor relations are based on the principle of good faith. Therefore, the employer has the obligation to respect this principle that is to avoid the actions / inactions that could constitute workplace harassment.

   Art. 39 of the Labor Code establishes the right of the employee to dignity in work, the right to equal opportunities and treatment, the right to safety and health at work. The obligation to respect the dignity and conscience of the employees, without any discrimination, as well as the obligation to respect the right to social protection, safety and health at work are also provided in article 6 of the Labor Code.
The right to equal opportunities and treatment is a constitutional right (article 16 para 1 of the Constitution), and the right to dignity in work derives from the right provided by article 1 para 3 of the Constitution (human dignity as the supreme value in a democratic state of law). Article 58 of the Civil Code provides that every person has the right to dignity, and this right is not transferable.

There are also provisions contained in other laws that define "mobbing" as a form of discrimination or violation of the right to equal opportunities and treatment.

Thus, according to Government Ordinance no. 137/2000:

- it is constituted as harassment and sanctioned as a contravention any behavior based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, belonging to an underprivileged category, age, disability, refugee or asylum status or any other criteria which creates an intimidating, hostile, degrading or offensive environment;

- it is constituted as victimization and sanctioned as a contravention any adverse treatment, in response to a complaint or legal action regarding the violation of the principle of equal treatment and non-discrimination.

Law no. 202/2002 on equal opportunities and treatment between women and men includes definitions of different types of harassment:

- harassment means the situation in which an unwanted behavior is manifested, related to the sex of the person, having as its object or effect the harm of the dignity of the person concerned and the creation of an intimidating, hostile, degrading, humiliating or offensive environment;

- sexual harassment means the occurrence of an unwanted behavior with a sexual connotation, expressed physically, verbally or nonverbally, having as object or effect the injury of a person’s dignity and, in particular, the creation of an intimidating, hostile, degrading, humiliating or insulting environment;

- psychological harassment means any inappropriate behavior that occurs in a period, repeatedly or systematically and involves physical behavior, oral or written language, gestures or other intentional acts and which could affect the personality, dignity, physical or psychological integrity of a person.

At the same time, through art. 6 para 1 of Law no. 202/2002 it is emphasized that any harassment behavior, sexual harassment or psychological harassment is prohibited, both in public and in private. In art. 6 para 4, it is stipulated that the rejection of a harassment behavior by a person or the submission of a person to such behavior cannot be used as a justification for a decision affecting that person.
There are also provisions detailing sexual harassment / harassment. Thus, it constitutes as discrimination any unwanted behavior, defined as sexual harassment or harassment, having as its purpose or effect:

- to create an intimidation environment, hostility or discouragement for the person affected;
- the negative influence of the situation of an employed person regarding the professional promotions, income value or the access to professional training and improvement, in the case of their refusal to accept an unwanted behavior, pertaining to sexual conduct.

In Government Decision no. 49/2011 for the approval of the framework Methodology on prevention and intervention in a multidisciplinary team, it is specified that, in agriculture, where most cases of dangerous work occur in the world and in Romania, there are several dangers to be evaluated, through which “psychosocial dangers” which include ”sexual or other harassment”.

Harassment and sexual harassment are two offenses punishable under the Criminal Code.

According to article 223 of the Criminal Code, sexual harassment consists in repeatedly soliciting sexual favors as part of an employment relationship or a similar relationship, if by doing so the victim was intimidated or placed in a humiliating situation.

According to article 208 of the Criminal Code, harassment is the act of an individual who repeatedly, with or without a right or legitimate interest, pursues an individual or supervises their home, work place or other places attended by the latter, thus causing them a state of fear. Phone calls or communications through remote communication devices which, through their frequency or content, cause a state of fear to an individual, shall be also punishable under article 208.

The abuse of power for sexual gain is another offense laid down in the Criminal Code (article 229) and it consists of the following:

- the action of the public servant who, for the purpose of performing or not performing, speeding up or delaying the performance of an act related to their professional duties or for the purposes of performing an act contrary to such duties, solicits or is awarded sexual favors by a person who has a direct or indirect vested interest in that professional act;
- the solicitation by or the award of sexual favors to a public servant who uses or takes advantage of a situation of authority or power over the victim, arising from the office held.
2. What remedies exist for victims reporting workplace misconduct? What penalties or ramifications do offenders face? Do you have examples of court cases/judgments or administrative proceeding involving harassment?

Infringement of the rights listed above entails material, administrative and / or disciplinary liability. In the event that the act constitutes a midsdemeanor, it entails the contraventional liability or, if it is a crime, it involves the criminal liability.

In exercising its prerogatives, the employer must not prejudice the fundamental rights of a person. Moral or sexual harassment, discrimination on any grounds, etc. represent violations of dignity at the workplace. For example, dignity at the workplace is violated when the employer shows abusive, insulting, contemptuous behavior towards his employee, in order to intimidate, humiliate them, as well as when the employee is forced to perform (other) service tasks lower than their training, when the employer discretionarily moves the employee and without their consent to another job, or when when the employer sanctions the employee for no reason.

According to article 253 of the Labor Code, the employer is obliged, according to the norms and principles of the contractual civil liability, to compensate the employee in case they suffered a material or moral injury due to the employer during the fulfillment of the work obligations or in connection with the work.

In Law no. 74/1999 for the ratification of the revised European Social Charter, it is stipulated that, in order to ensure the effective exercise of the right of all workers to the protection of their dignity at work, the parties undertake to promote awareness, information and prevention of sexual harassment at the workplace or in connection with work and to take any appropriate measures to protect workers against such behaviors.

In order to prevent, combat and eliminate discrimination based on sex, employers must apply the following prevention and action measures:

- developing a clear internal work relations policy aimed at eliminating tolerance for workplace harassment and establishing anti-harassment measures. The internal policy must also include elements regarding: workplace harassment, detailing the definition of the harassment and unwanted behaviors and attitudes; sexual harassment, detailing the definition of sexual harassment and unwanted behaviors and attitudes; preventive measures, detailing the possible measures and sanctions that can be applied in case of workplace harassment; proactive measures, establishing the role and the specific responsibilities both for the employer and the employees; preliminary measures regarding the settlement of complaints at the level of the employer; the modalities of solving the complaints at the level of the employer;

- carrying out projects, training programs, actions, information campaigns, education and awareness of the employees in order to ensure a common understanding,
the internal politics regarding workplace harassment and on the ways to report such a situation;

- providing information sessions and specialized training in the field of equal opportunities and treatment between women and men for the management of the institution and other management positions;

- promoting an attitude based on mutual respect and good collaboration that will generate professional behavior at all times, including during meetings organized outside the office and outside working hours, as well as in the online environment;

- informing the employees about the procedure for filing a complaint of sexual harassment / inappropriate behavior at the workplace and about how to resolve complaints made by the persons harmed by such a conduct.

Employees have the right, if they are feel discriminated against, to file complaints to the employer or against them, if they are directly involved, and to request the support of the union organization or the employees' representatives in order to resolve the situation at the workplace.

If the complaint has not been resolved at the level of the employer through mediation, the employee has the right to notify the competent institution, respectively the Labor Inspectorate, the National Council to Combat Discrimination, the National Agency for Equal Opportunities between Women and Men, National Civil Service Authority, etc.

Also, the employee may file a complaint with the court or the prosecutor's office or the police, and may also ask for payment of material and / or moral damages in compensation.

For example, we refer to Decision no. 1082 / 2018, by which the Court of Appeal of Bucharest approved the payment of moral damages in the amount of 18,000 lei (3,870 €) to the employee for workplace harassment.

The Court held that the manner in which the employer ordered the appellant's disciplinary investigation and sanction caused him psychological distress to the extent of a workplace harassment, seeing as that he – the employee – has received more than 8 disciplinary sanctions in only 4 months, mainly due to delays at work, without taking into account the fact that during this time the employee was using crutches to go to work, as a result of a knee surgery. Thus, although the employee moved with difficulty, after returning to work from medical leave, the employer ordered the disciplinary sanction for delays of service of only a few minutes. So, the employer created and maintained a stressful working environment.

By Civil Decision no. 6858 / 2016 of the Tribunal of Bucharest (which remained final by the Decision no. 2861 / 2017 of the Court of Appeal of Bucharest), the court awarded moral damages in the amount of 45,000 lei (9,955 €). The court held that the applicant's employment relations had gradually deteriorated, with the working environment becoming hostile to him. After 7 years, the plaintiff was never evaluated with a grade below 3, for the first time in the
second semester of 2014 he was evaluated by his supervisor with grade 2, which meant, from a financial point of view, losing the bonus equal to a salary, as well as some career opportunities. The statements included in the assessment to justify the grades, regarding the failure of the applicant to correctly perform the tasks given to the plaintiff, were contradicted by the evidence of the file. The defendant was required to ensure a safe, calm working environment, and for this the employer should have allowed the plaintiff, who had previously been an employee who had not raised any problems, to change the team he worked in - and about which he had reported problems and incidents -, in order to give him the opportunity to work, but also for the employer to check the source of the tensions.

By Decision no. 2658 / 2016, the Court of Appeal of Cluj awarded moral damages in the amount of 100,000 euros (about 22,000 €). The Court held that the plaintiff had been subject to harassing treatment because as a result of his complaint to the hierarchically superior institution regarding the operation of the radio studio at which he worked the only step of the employer was to start and to complete two disciplinary proceedings against the plaintiff himself. This fact is evidence of the harassing treatment to which the plaintiff was subjected at the workplace. Law no. 571/2004, regarding the protection of personnel in public authorities, public institutions and other units that report violations of the law, indicates in the content of art. 1 the purpose of the law, namely to regulate "several measures regarding the protection of persons who have complained or reported violations of the law within public authorities, public institutions and other units, committed by persons with management or execution functions (...) ".

In the case of these whistle-blowers, the legislator has assumed the role of a protector, not allowing their protection to be decided at other levels of the exercise of power in the state, precisely because of the difficulty of the situation of the whistle-blowers, by choosing to warn of any illegalities that they find in the management of the institution in which they operate. The plaintiff was sanctioned not following the intended purpose for which the legislator had regulated disciplinary action workplace relationships, but by diverting this purpose to intimidate and discourage complaint initiatives so that the employees who feel marginalized or harassed within the regional management do not to notify the central management.

If the employer has the right to evaluate his employees, they, in turn, can make axiological assessments of their own professional activity and of that of their colleagues, having the right to their own appreciation on their professional value and that of other workers, without bringing any offense. Although the employee will not be able to impose on the employer his appreciation of the value of his own professional activity compared to the activity of other employees, he will be able to challenge the evaluation made of him and, at the same time, he will be able to express his opinion on the value of the activity of other employees. The plaintiff's address was filed at the Bucharest administration to signal the mobbing to which he was subjected. But the recipient of the correspondence - from which the applicant practically requested assistance considering himself to be a victim of mobbing - has done nothing to resolve the situation, but instead sent the address of the plaintiff to the alleged aggressor, thus joining him in the act of mobbing.
Therefore, the addressee did not do any research regarding the substantiation of the workplace harassment problem about which he was notified, so the employer's response to disciplinarily sanction the employee who revealed that he is the victim of mobing constituted, in turn, a new act of harassment, in addition to those which the plaintiff has asserted.

3. **Do you have examples of judicial misconduct related to harassment or bullying?**

_We have no knowledge of such situations._

4. **Does the judiciary have rules, ethics codes, or legislation relating to harassment by judges and judicial staff? What are the procedures for reporting misconduct and enforcing the rules? What sanctions can be imposed against a judge?**

There are no explicit legal provisions relating to harassment by judges and judicial staff. However, there are provisions in the Code of Ethics, in Law no. 303/2004 regarding the status of judges and prosecutors and in Law 317/2004 regarding the Superior Council for Magistracy that offer protection against such behaviors.

In article 1 of the Code of Ethics it is stipulated that it establishes the standards of conduct in accordance with the honor and dignity of the profession, and in art. 2 it is emphasized that the observance of the norms included in the Code is a criterion for evaluating the efficiency of the quality of activity and integrity of judges and prosecutors.

According to article 30 para 1 of Law no. 317/2004, the Superior Council of Magistracy has the right and the obligation even ex officio to defend the judges and prosecutors against any act that could affect their independence or impartiality or create suspicions about these attributes.

In the Practical Guide of Professional Ethics for Judges and Prosecutors (2017) it is emphasized that the magistrate must carefully and correctly identify his own feelings, sentiments, especially those that might prevent him from being independent and impartial, such as fear, pity, resentment, desire for revenge, etc. Therefore, it is recommended and, in some cases, even necessary for the magistrate to simplify and separate, as far as possible, the professional aspects of life and personal ones, without giving up his private life.

According to article 16 para 2 of the Code of Ethics, judges and prosecutors with management positions cannot use the prerogatives they have to influence the conduct of the trials the decision making.

Judges and prosecutors are obliged to refrain from any acts or deeds that may compromise their dignity in function and in society (art. 17 of the Code of Ethics). In the Practical Guide of professional ethics for judges and prosecutors it is mentioned that the magistrate must be not only a good professional, but also a good person. Views on what it means to be a good person may
vary at a societal level, but decency and good-will represent (international) values / principles related to the dignity and honor of the magistrate profession.

Article 18 of the Code of Ethics stipulates that the relationships of judges and prosecutors within the groups to which they belong must be based on respect and good faith, regardless of their seniority and their function. Judges and prosecutors cannot express their opinion regarding the professional and moral probity of their colleagues. According to the Practical Guide of professional ethics, the behavior towards colleagues reflects how the magistrate sees his own role and the function of magistrate. In other words, if magistrates have inappropriate behavior towards their colleagues, this raises doubts about their own attitude towards the profession.

As provided in art. 94 of Law no. 303/2004 regarding the statute of judges and prosecutors, judges have civil, disciplinary, criminal liability, according to the law.

Judges and prosecutors are subject to disciplinary action for breaches of duty, as well as for acts affecting the prestige of justice. The law provides for 20 detailed misconducts, among which the unworthy attitudes during the exercise of duties of service towards colleagues and the interference in the activity of another judge or prosecutor. The disciplinary investigation procedure is established by Law no. 317/2004 regarding the Superior Council of Magistracy and is within the competence of the Judicial Inspection. The disciplinary sanctions are applied by the Judges Section of the Superior Council of Magistracy, if the disciplinary action filed by the Judicial Inspection is accepted. The decisions of the Section for Judges in disciplinary matters can be appealed to the High Court of Cassation and Justice.

According to article 100 of Law no. 303/2004, the sanctions that can be applied to the judges, in accordance to the gravity of the misconduct, are the following: (written) warning; decrease of the monthly income by up to 25% over a period of up to one year; the disciplinary transfer for an effective period of one to three years to another court even of a proximately lower degree; suspension from office for up to 6 months; professional relocation; exclusion from the judiciary.

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