

Mobbing and Sexual Harassment in the Workplace in Russia: Why It Still Hasn't Been Actually Outlawed?

Abstract

It is widely known that Russian legislation does not contain any special provisions on mobbing or sexual harassment in general or on their occurrence in the workplace in particular. Even the concepts and the corresponding terms are new to the Russian language and were introduced during the last two decades. The first sources for the explanation of them were international agreements and internal regulations of the Russian subdivisions of transnational corporations. Surprisingly these norms, - supplemented with research papers and scholarly discussions, - are still the primary sources of interpretation of these two concepts by Russian lawyers.

However there are some clauses and machinery that makes the situation not that hopeless. There are several statutory norms that allow protecting the harassed and mobbed in some particular circumstances. And there are enterprise regulations and procedures that help to prevent the adverse practices in the workplaces. And the Russian legislation is still in the process of active evolvement. This paper attempts to outline the state of the art and the major tendencies in legal regulation of these phenomena.

Introduction

According to the sociological data² many Russian people believe that the problem of harassment is substantially exaggerated while in fact it is almost inexistent in the Russian society. The idea of harassment is seen as related mostly to sexual assault against women, but the very term is mostly used ironically and is widely perceived as an “invention of American feminists with their hang-ups”.

The harassment issue is seen is related to women rights. Harassment towards men is rare if any. There is not enough statistics covering such cases and the public attitude towards them is puzzling.

What is treated as harassment in many western countries and have serious legal consequences is still perceived as a “nothing special” in Russia. Many people still share typical bias about the woman’s role in society. In many sectors a glass ceiling is still in place: many jobs and positions, - from that of a police officer to a CEO of a large corporation, - are still seen as purely “male”, while those of school teachers or nurses are seen as “feminine”. Women are still often considered to be unreliable employees for whom family and children are of much more

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² See: Stuchevskaya, O. Harassment i rossiyskie jenschiny (Harassment and Russian women). // Vestnik obshchestvennogo mneniya (Public opinion bulletin). – 2008. – No. 4 (96). – 43-49. Available online (in Russian): <http://ecsocman.hse.ru/data/2010/12/23/1214864532/5.PDF/>. This Bulletin is published by the “Levada-Center”, the major Russian nongovernmental center of sociological and marketing research: <http://www.levada.ru/>. A presentation of the statistical results of the same joint research project in English is available on the CSIS website: http://csis.org/files/media/csis/events/081208_csis_gender_presentation.pdf. In this paper I use the findings of this almost unique research as one of the major statistical and sociological sources.

importance than a job, a career and/or a professional development. In some enterprises this entails a comparatively low level of investment into their in-house training and promotion.

It is widely believed that a victim provokes harassment by his/her own behavior, make-up and/or the way (s)he dresses, and the harassment and even violence is either a logical outcome or a fair punishment for this. There is also a gap between public attitude towards male and female harassers. While a male harasser is perceived with a sympathy and is considered just a slightly too “passionate” or too playful person, the same behavior of a woman is seen as unacceptable and “bitchy”.

Typical victim’s response in a case of harassment is mostly passive. Victims prefer to keep it to themselves or to quit if the situation goes too far. An intention to resist, protect her/his rights and/or sue the harasser is often perceived as a strange and disproportionate reaction to a minor issue³.

Similarly, mobbing as a term is also still not common and is perceived as completely foreign, though different types of this behavior are widely spread in schools, army and prisons yet since the early years of the Soviet state. There is even a well-known poster of some 1920-1930s with a slogan “Experienced worker, do not jeer at a younger, we shall teach him and set him on the feet”, which demonstrates that such problems were of a common occurrence even then. While now mobbing is internationally believed as an interdisciplinary issue, at that time it was seen as mostly a problem of a workplace discipline which has nothing to do with occupational safety and health, organizational psychology, business effectiveness, etc. If it was censured, this was done because such “behavior is not acceptable for a Soviet citizen”, “...a Komsomol member”, “...a communist”, etc. though it could entail various derogatory consequences up to an employment contract termination or an expulsion from the Komsomol or the Communist party which actually meant serious social and professional exclusion and made the person an outcast.

At the same time I would say that in general mobbing flourished mostly in some particular sectors, where there were much low-skilled work and/or special discipline requirements which created necessary preconditions for misuse of authority, intimidation and unwarranted violence. And such practices were often authorized, directly or just with connivance, by the state authorities, especially when related to some specific groups like those with a “non-proletarian” background, Jews, “enemies of the nation”⁴, etc.

But unlike the administrative system, the Soviet society itself in general was rather intolerant towards such practices. Actually it was not mobbing but bullying which was really widespread in the workplaces of that time. Wars and army-like discipline running through all aspects of the public life, especially in 1930-1950-s (i.e. during the Stalin rule), only added to the problems. As mobbing, bullying was a common practice of the Soviet senior managers, prison officers or school teachers⁵.

Now the society has somewhat changed. But we still see some traces of this old problem in all the same spheres. And we still do not have legislative provisions addressing mobbing and harassment. However fortunately we still have some norms and machinery to combat these two evils, though with a specific legislation this task would obviously be performed much more efficiently.

³ See: “Rossiyskie mujchiny sokrushayutsya, chto harassment obhodit ih storony” “(Russian men grieve that harassment passes them over)”. – A sociological research conducted by the Research center of the SuperJob.ru website. – 08.09.2008. – Available online (in Russian): <http://www.superjob.ru/community/kollektiv/18364/>.

⁴ This group may be more known in connection to the term “vrag naroda” – a cliché used mainly to define those opposed Stalin’s regime or accused (often falsely) of committing crimes/offences against the existed political order.

⁵ The traces of these practices may now be found in the Russian army where harassment towards conscripts is still far from being defeated.

Mobbing and sexual harassment in the Russian legal environment.

Statutory concepts and definitions

It's widely known that workplace discrimination can or can not entail harassment. It depends on particular circumstances, on the primary intention of the discriminating/harassing person, on the effect the situation produces onto the discriminated/harassed person's health and feelings, etc.

There are several features that allow distinguishing these two concepts. First is that while discrimination can have positive results for a person when it is positive itself or when others are discriminated in his/her favor, harassment and especially sexual harassment is always offensive and intended towards abasement, disdain and/or ignoring of the human dignity of a harassed.

Second is that a negative, unlawful discrimination is punishable as it is, it is not the particular actions of an employer but the entire approach behind the scene which is considered unacceptable. In the cases of mobbing and harassment it is the deeds that are punishable, not just silent thoughts or passive prejudices.

Third is that discrimination relates mostly to the behavior of a supervising person, an officer in charge of some formal procedures, towards his/her subordinate(s) or dependent(s). On the contrary, mobbing and harassment can be committed by anybody to anybody.

Fourth is that discrimination can be absolutely impersonal; it can exist as a general approach without any connection with the discriminated. On the contrary, mobbing and harassment are a very personal and imply active behavior, and they seriously depend on the psychological characteristics of the aggressor(s) and the victim.

Unfortunately these distinctions remain unaddressed in the Russian legislation. And the concept of mobbing has got an even less fortunate lot in Russia. It is mentioned nowhere and neither kind of regulative sources contain it in explicit form. I would suggest that one of the reasons for such ignoring is its name itself which sounds extremely foreign for the Russian language, has unclear meaning indefinable from the first sight and still does not have clear and unique definition in any legitimate source.

Thus, Russian laws do not acknowledge sexual harassment or mobbing per se. However there are several legal concepts that can be applied towards cases of either harassment or mobbing or both:

- for harassment these are two notions which are relatively close to them: (1) general or workplace discrimination; (2) criminal cases of sexual abuse. These two notions are directly mentioned in (and strictly prohibited under) statutory law. Hence they can form a legal background for claims concerning cases where mobbing or harassment is involved. We will discuss this in more details below.

- for mobbing the criminal law of the Russian Federation offers something which indirectly refers to the idea of mobbing: a concept of grouping in the criminal law. Grouping is perceived as a feature aggravating criminal liability⁶. This concept runs through the entire Criminal Code and can be found in provisions on most of the offences: human trafficking, infringement of voting right, copyright, larceny, etc., and sexual crimes as well. Hence when we have a criminal offense related to interpersonal communication committed in a group (which could actually be qualified as mobbing) and it is committed in the course of the victim's employment (i.e. as a workplace mobbing), the mobbed person gets chances to be protected by the criminal law machinery. Unfortunately civil and employment legislation does not recognize this approach at all, giving no distinction between, for instance, non-criminal discriminatory approach practiced by a bully alone or by a group (mob).

⁶ Article 35 of the Criminal Code of the Russian Federation.

Another reminiscence of the phenomena of mobbing and harassment can be found in the Code of Administrative Infractions, in the article devoted to a “minor disorderly conduct”⁷. While it refers towards disturbance of public order and indirectly implies that it is committed by a stranger, the wording of this norm allows its application to those mobbing and harassment cases which happens in public. Thus, if it can be proved that the offender’s behavior constitutes a “disturbance to public order expressing evident disrespect to society” accompanied by, inter alia, an “insulting importunity to citizens” – it entails administrative liability⁸. However as for now there exist neither legal cases nor court rulings with such interpretation of this norm.

The Labor Code shows no signs of any knowledge of any mobbing or harassment. It touches upon only general concept of discrimination in employment⁹. The Code stipulates the equality of employment rights, prohibits infringement of these rights on the basis of various discriminatory reasons, excludes positive discrimination from the prohibition, and provides for reinstatement in the rights infringed and for the compensation of material and moral damages.

The general idea of the Code is that nobody shall be restricted in [enjoying] his/her employment rights or receive any advantage on the basis of circumstances not related to his/her professional qualities. As with other cases of a major importance, the cases involving discrimination in employment shall be filed directly to court without prior hearing in a bilateral labor disputes commission¹⁰. An affected employee may also apply to a prosecutor who is allowed to protest the act violating the human rights. The prosecutor may also order that the violation to be removed and commence administrative proceedings or inform the relevant administrative authorities of the violation if the latter is of administrative nature. In more serious cases the public procurement office may also make efforts to have the guilty criminally punished¹¹.

Another opportunity to obtain protection against mobbing or harassment provided for in the Labor Code is established for cases when the harasser or the mobbing person(s) performs educational work. According to the Labor Code, if the situation bears signs of immorality (which is often the case for the most crying instances of sexual harassment and sometimes for sexually tinged mobbing) and this misdemeanor is considered incompatible with continuation of this job, the offender may be fired with no compensation¹². If the immoral behavior occurred out of the workplace or in it but with no connection to the employee’s job duties, termination shall take place within a year from the date of the discovery of the offence.

Apart from this Russian law contains at least three special provisions on a liability for discrimination itself (which is often an integral part of harassment or mobbing): (1) criminal, targeting discrimination in general¹³; (2) administrative, targeting discrimination developed into violation of employment law¹⁴; (3) disciplinary liability, targeting the same; to be enforceable

⁷ Article 20.1 of the Code of Administrative Infractions of the Russian Federation.

⁸ An administrative fine of 500-1000 rubles (\$15-30) or administrative arrest for the period up to 15 nights.

⁹ Article 3 of the Labor Code of the Russian Federation.

¹⁰ Articles 3(4), 391(3) of the Labor Code of the Russian Federation.

¹¹ Articles 27 and 28 of the federal Act No. 2202-1 of 17.01.1992 “On the Public Prosecutor’s Office of the Russian Federation”.

¹² Part 1(7) of the article 81 of the Labor Code of the Russian Federation.

¹³ Article 136 of the Criminal Code of the Russian Federation. The Code provides for criminal fines, revocation of right to hold specific positions or perform specific activities, mandatory or compulsory works or imprisonment.

¹⁴ Article 5.27 of the Code of Administrative Infractions of the Russian Federation. The norm provides for administrative fines for employers or disqualification of the guilty, if this is a repeated violation.

this liability shall be stipulated in the enterprise internal regulations according to the Labor Code¹⁵.

At the same time the Criminal Code contains at least four specific provisions that may be also applied to the specific cases of mobbing and harassment with a sexual background: (1) forced actions of sexual nature; (2) compulsion to actions of sexual nature; (3) sexual intercourse and other actions of a sexual nature with a person aged less than 16 years old; (4) lecherous actions.¹⁶ All four may be a part of harassment or mobbing if each of them has gone too far. Since the Labor Code allows conclusion of employment contracts since the age of 16 or, with some limitations and additional prerequisites, even since the age of 14, a problem of harassing or mobbing of minors is also on the agenda. Punishment for these offences embraces criminal fines, mandatory, compulsory or corrective works and imprisonment.

I would suggest that for now the only legislative norms that directly outlaw harassment and mobbing is the revised European Social Charter, which Russia ratified in the year 2009. It bears all signs of a serious legislative and terminological innovation at statutory level¹⁷. The Charter does not only contain a provision about the all-workers' right to dignity at work¹⁸. It also requires the state to undertake, in consultation with employers' and workers' organizations, two very impressive campaigns: one to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct; and the other one – the same for recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work¹⁹. As we may see, the first part of this clause relates to sexual harassment in the workplace and the second – towards other adverse practices there²⁰ which may of course include mobbing.

As we already admitted above, unfortunately, even this international norm made yet little effect on the everyday life of an employee in Russia. We need more time, may be decades, to implement these principles in every workplace.

Company regulations and collective agreements.

When the concepts of mobbing and harassment entered the Russian legal context in early 1990s, it was neither through the legislative reform nor out of international agreements ratification. These were internal regulations and collective agreements²¹ of large international corporations opening subsidiaries in Russia which introduced these concepts to the Russian public. Curiously enough, both concepts made an impressive progress during the past decades.

¹⁵ Article 192 of the Labor Code of the Russian Federation. Generally the Code provided for three types of disciplinary liability: rebuke, reprimand and dismissal.

¹⁶ Articles 132, 133, 134 and 135 of the Criminal Code of the Russian Federation (respectively).

¹⁷ According to the article 15(4) of the Constitution of the Russian Federation, generally recognized principles and norms of international law are considered a part of the legal system of the Russian Federation.

¹⁸ Par. 26 of the Part I of the European Social Charter.

¹⁹ Article 26 of the Part II of the European Social Charter.

²⁰ See also Article 26 of the Annex to the Charter, defining its scope of application.

²¹ I use here the term “collective agreements as a more conventional and internationally recognized while the Russian legislation distinguish “collective contracts” (collective agreements concluded as a result of collective bargaining at an enterprise level) and “agreements” (collective agreements concluded at higher levels of collective bargaining: sectoral, intersectoral, regional, interregional, territorial, federal (Article 45 of the Labor Code of the Russian Federation).

Hence as for now it is not the statutory law but legislative sources of lower levels that present an example of the accommodation (if not implementation) of these concepts. Surprisingly these days norms that outlaw harassment and prohibit something similar to mobbing (though without using this particular term) can be found in internal regulations of not only private transnational enterprises, but of public bodies of the Russian Federation as well. It may be interesting to emphasize that many of these norms and clauses were introduced during the last 4-5 years, after the economic crises with inter alia brought about a call to administrative reforms and other systemic changes in the state and the society.

Thus Code of Professional Ethics of “bodies of interior”²² workers explicitly utilizes the term “sexual harassment”²³. Together with “...compulsion to a sexual affair” it is included into the list of gross violations of the ethical principles and norms of the profession in the field of informal relationship between the workers, especially when it is “...expressed in aggressive and insulting conduct, humiliating woman’s or man’s dignity and accompanied by a bodily assault, psychological pressure, blackmail or threatening”. I would suggest that this verbose description is meant to implicitly include mobbing into this norm without naming it.

At the same time I can not help making a remark though, that I doubt that this document has wide application. It is not only because the Russian police is still in deepest need of deepest systemic reforms, but first of all because ethical norms do not have effective machinery of enforcement in the Russian legal system. And it is explicitly displayed in the Code, “...For violations of the ethical principles and norms of the profession, established by this Code, a worker bears moral liability against the society, his work team and his conscience”²⁴. I would suggest that in the context where even obligatory norms are not always enforceable, this “soft law” is almost unenforceable at all.

However the Code makes an attempt to surmount this tendency, establishing disciplinary liability for its violation, but again the form is more than mild: the punishment includes “public warning” or “public censure”²⁵. At the same time here lies the ruse: according to the Labor Code an employee can be dismissed without compensation after committing more than one breach of his job duties in the absence of a reasonable excuse if (s)he had already have a disciplinary punishment imposed on him/her before²⁶. Hence the norm is not that feeble. But it should be observed that the Labor Code has limited and not always direct application towards public servants.

Harassment is also mentioned in a couple of standards of state services: a Standard on quality control of public social services²⁷ and a Standard on public social services provided for women²⁸. Both standards perceive an experience of being sexually harassed at work or of being a victim of psychophysical violence as two kinds of a “psychologically traumatic experience” which is then

²² The term embraces police forces, internal military forces, investigation department, etc. More information can be obtained from the official website of the Ministry of Interior: <http://eng.mvdrrf.ru/> (in English).

²³ Article 17 of the Code of Professional Ethics of the workers of the bodies of interior of the Russian Federation, approved by the Order of the Ministry of Interior No. 1138 of 24.12.2008. There is also a reminiscence of prohibition of bullying in the norm concerning the moral rights of the superiors in this sphere: it’s explicitly stated that a superior has “no moral right... to manifest formalism, conceit, rudeness, use battery towards the subordinates” (Article 16(8) of the Code).

²⁴ Ibid. Article 3(1) of the Code.

²⁵ Ibid. Article 3(2) and 3(3) of the Code.

²⁶ Par. 1(5) of the article 81 of the Labor Code of the Russian Federation.

²⁷ See the Preamble of the GOST (State All-Russian Standard) P 53062-2008, approved by the Order of the Federal Agency for Technical Regulation and Metrology No. 439-st of 18.12.2008.

²⁸ See the preamble of the GOST P 52886-2007, approved by the Order of the Federal Agency for Technical Regulation and Metrology No. 564-st of 27.12.2007.

included in the general concept of a “trying life situation” constituting a prerequisite for eligibility to enjoy the social services.

Turning from public bodies towards private companies we may notice that they are slightly more generous and active in stipulating protective clauses against mobbing and harassment at work. As we already mentioned above, many of those practices and wording of the clauses have been borrowed from those of the large international enterprises operating in Russia. In early 1990s foreign enterprises extended their habitual practices onto the workplaces in their Russian subdivisions, utilizing the classical “*in favorem laboratories*” principle²⁹. In some sectors it has even become common to use collective agreement samples promoted by the relevant foreign or international employees’ organizations (trade unions or trade union federations and confederations). Thus, the Seafarers Union of Russia (SUR), an affiliated member of the International Transport Workers Union (ITF), endorses the ITF Standard Collective Agreement³⁰ as a sample of a collective agreement between seafarers and their employers. This Agreement sample explicitly prohibits harassment (and even bullying) in the article devoted towards equality: “...Each Seafarer shall be entitled to work, train and live in an environment free from harassment and bullying whether sexually, racially or otherwise motivated, in accordance with ITF policy guidelines”³¹.

Unfortunately company internal regulations sometimes while prohibiting either harassment or mobbing or both, rarely go further, towards an establishment of a strategy for combating these phenomena and of a procedure for consideration of relevant cases and mitigating the consequences³². In other words, declarative words of the prohibitive norms are not followed by any procedural clauses aiming at enforcement of these principles. Moreover, there many evidences in the media that even companies that had introduced such procedures (and even established ethical committees), rarely implement them in practice, and even they do implement – it’s usually very technical and not really aimed at settlement and prevention³³.

²⁹ Confirmed by the international agreements and articles 8(4), 50(3) of the Labor Code of the Russian federation.

³⁰ Available at the SUR official website: <http://www.sur.ru/sailor/cont/8/2012ItfStandardAgreement.pdf>.

³¹ Ibid. Article 28 of the Agreement.

³² For example, HR policy of the Russian subsidiary of an international construction company, LLC B**, states that “...All employees working in the company irrespectively of nationality, race, color, religion, sex, sexual orientation, civil status, age, physical disability are provided with equal opportunities and protection against any forms of harassment. We are against child labor, coercion and violence”. Chapter 5 of the HRM practice of the large Russian piping company, public corporation K**, states that “...Oppression and harassment defined as undesirable and unasked impact or verbal statements or written messages, including electronic ones, performed at the workplace or in the work context and related to age, race, religious or political beliefs, skin color, origin, sex, physical or mental limits, marital status, income sources, criminal conviction with the followed amnesty, or sexual orientation, are prohibited. Oppression and harassment are also prohibited in connection with unwanted disrespectful behavior, humiliating or insulting a person”.

³³ There is a rather comprehensive review of this problem published in a popular magazine “Sekret firmy” (Secret of the Firm) yet in the year 2005: Fukolova, Yu. Corporate pariahs. // Sekret firmy. – 2005. – No. 13 (100). - Available online in Russian: <http://www.a-training.ru/sources/mobbing/> (in Russian). But there are plenty of other publications on websites, newspapers, magazines, and even in scholarly journals. See also: Balabanov, S.S., Saraliev, Z. H-M. Seksualnie domogatelstva na rabote v Rossii (Sexual harassment at work in Russia). // Bulletin of the Nijegorodsky University of N.I. Lobachevsky. Series: Social sciences. – 2010. – No. 1. – Pp. 7-12. – Available online: <http://82.179.249.32:2139/item.asp?id=15142471> (in Russian); Yuldashev, R., Kornilova, I. Vlast and seks na rabochem meste (Power and sex in the workplace). // Kadrovik. Kadrovij menedgment. – 2007. – No. 8. – Pp. 30-42; Maylenova, F.G. Mobbing: nasilie i apparat vlasti v office (Mobbing: coercion and instrument of power in the office. // Filosofskie nauki. – 2008. – No. 6. – Pp. 63-68; Sychenko, E.V. Problema mobbinga v oblasti pravovogo regulirovaniya truda (Problem of mobbing in the sphere of legal regulation of labor). // Jurnal pravovykh i ekonomicheskikh issledovaniy. – 2011. – No. 1. – Pp. 65-69. – Available online: <http://82.179.249.32:2139/item.asp?id=16398705> (in Russian, for a fee); etc.

Another problem with internal regulations is that not all of them are considered “legal norms” according to Russian law, and hence not all of them are enforceable in Russia regardless of the will of employers enacting them. For example, it is widespread practice of transnational corporations to adopt ethical codes or similar ethical regulations which often do incorporate clauses on harassment and/or mobbing. But in Russia these clauses or even entire acts often turn to be unenforceable since the norms containing there are considered not “legal” but rather just “ethical”, which, - according to Russian law, - implies that they are absolutely not ordaining but are just some “good wishes” of the company towards its employees. Hence disobedience or violation of these codes shall not entail any liability or punishment.

To be enforceable such codes have to comply with the requirements imposed on internal legal regulations of an enterprise by the Labor Code.³⁴ It means that their clauses shall be: (1) formulated in an imperative language; (2) issued or approved by an authorized governing body of the corporation as provided for by the corporation statute; (3) if the code contains something that requires consulting employees organization according to the law or collective agreements, this consultation shall be arranged; (4) once the code is properly issued or approved, all employees shall read it, and all new employees shall read it prior to signing an employment contract. These simple steps may make a fully enforceable legal norm out of inefficient ethical one.

I must add that we may be on the threshold of an interesting legislative innovation in this sphere: in May 2012 President ordained the government to draft a complex of measures aimed at development of institutions of self-government and adopting codes of professional ethics. This is announced as a step towards development of expansion of employees’ participation in enterprise management³⁵. So may be we will have more material to discuss the legal nature and other specific features of the codes of ethics in the nearest future. And I am sure many of them will incorporate clauses prohibiting harassment and may be even something that will resemble mobbing.

Sometimes clauses are not explicit. For instance, a Resolution of the VII Congress of the Federation of Independent Unions of Russia states that a decent wage is that “...which is earned in conditions which do not disparage human dignity”³⁶. Similarly a Sectoral tariff agreement of organizations of oil-processing industry and the system of provision of oil products of the Russian Federation for the years 2012-2014 stipulates, that the organizations shall “...purposively work to create a healthy moral and psychological climate” in the organizations³⁷.

Apart from sectoral, intersectoral and other collective agreements of highest level of collective bargaining, norms concerning mobbing and harassment are still more common for personnel regulations (codes of conduct, rules of internal order, HR policy, etc.) and collective agreements of large enterprises, often multinational or having either foreign business partners or foreign investment. And very often these norms are not an authentic product but rather a translation of the parent company regulations, possibly with minor adjustments.

Small and medium-sized companies usually do not have collective agreements. But if they do, they still contain no provisions for such exotic concepts as mobbing and harassment, even in other, more habitual wording, neither there nor in any internal acts.

³⁴ Article 8 of the Labor Code of the Russian Federation.

³⁵ Par. 1”z” of the Decree of the President of the Russian Federation No. 597 of 07.05.2012.

³⁶ Resolution of the VII Congress of the Federation of Independent Unions of Russia, adopted on 14.01.2011.

³⁷ Par. 2.1.4 of the Sectoral tariff agreement of organizations of oil-processing industry and the system of provision of oil products of the Russian Federation for the years 2012-2014.

It worth mentioning that theoretically nothing prevents parties from incorporating an anti-harassment (and even anti-mobbing) clauses into the employment contract since the Labor Code allows to stipulate there additional terms and conditions apart from those directly named in the Code if these terms and conditions "...do not worsen the employee's state in comparison to what is provided by employment legislation, other legal regulations containing employment law norms, collective contract, agreements and enterprise regulations"³⁸. But there is no reliable evidence that such practice exists.

All this indicates that Russian enterprises still lack the necessary rule-making culture and experience in this field. With gradual legislative amendments and innovations the situation gradually improves, but the process advances slowly indicating an obvious lack of both political will and public interest to the issue.

Court hearings as a "reality test".

Norms mean nothing if they can not be enforced, if for some reason one can not use them to defense his/her ground in a dispute and to protect his/her rights. But a much worse situation is when the legislation lacks necessary norms. While in a common law system courts can help to fill in the gaps, a civil law system to which Russia belongs provides little means to cure the problem.

Since the Russian employment legislation does not contain particular provisions on mobbing or harassment, most cases that find their way to a court, relate to either discrimination or unfair dismissal. In such cases mobbing or harassment are usually named among the grounds for the termination of employment contract. In the environment of the deficiency of the necessary norms such cases are rather complicated and are not welcomed by courts.

If an employee states that the employer compelled him/her to file a statement of a "voluntary" resignation³⁹, the employee is required to prove the circumstance (s)he refers to. And the court is required to undertake examination of this circumstance. But obtaining an evidence of such facts is a "mission impossible" for an employee in many cases involving mobbing and harassment since the Russian employment law contains neither a concept of "constructive dismissal" nor an idea that an employee *can be driven to a termination* of employment by his/her employer's attitude, unreasonable requirements, unfair working conditions, hostile working environment, verbal or physical violence, etc.

There are several similar concepts in the Russian criminal law (driving to a suicide or to an attempt to [commit] a suicide⁴⁰) and banking law (driving to a bankruptcy⁴¹), but nothing of this kind can be found in the employment legislation. Thus for now a harassed or mobbed employee

³⁸ Article 57(4) of the Labor Code of the Russian Federation.

³⁹ Par. 22(a) of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 2 of 17.03.2004.

⁴⁰ Punishment embraces custodial restraint for 1-3 years, or compulsory work for up to 5 years, or imprisonment for the same period. See article 110 of the Criminal Code of the Russian Federation. I ought to make a remark that the norm concerning "driving to a suicide" exists in the Russian law since it was yet Soviet. The Criminal Code of the RSFSR (in force from 1960 till 1997) had a similar article 107 that criminalized the similar activity: "...driving a person to a suicide while (s)he is in material or any other dependency from the guilty, or an attempt on the life of a person by means of cruel treatment with the complainant or systematic humiliation his/her personal dignity is punished by an imprisonment for up to five years". As we may see, the Criminal Code of the Russian Federation contains a considerably widened provision.

⁴¹ Penalties embrace criminal and administrative fines, disqualification, prohibition to work on certain positions or in certain fields, and mandatory work. See Articles 14.12(2) of the Code of Administrative Infractions of the Russian Federation; article 169 of the Criminal Code of the Russian Federation; article 399 of the Civil Code of the Russian Federation; article 14 of the Federal Act No. 40-FZ of 25.02.1999 "On the insolvency (bankruptcy) of credit institutions".

has to wait until the circumstances of his life form a *corpus delicti* for a being driven to a suicide or to an attempt to a suicide or other grave crimes to have chances to win the suit. It means that the employee should wait until threats, cruel treatment or a systematic humiliation of his/her human dignity will lead him/her very close to death - and only then (s)he has chances to be able to obtain a defense. Grievously this statutory approach seems remind a common reaction of the Russian policemen towards domestic violence in 1990s: "...you're being killed? OK, but not yet, ha? Come when he has killed you and we'll register your application". Unfortunately it was not and still is not a joke.

Another problem for bringing a harassment case to court lies in finding witnesses and persuading them to come to a hearing. It's not easy to find a witness who would be ready to confirm that the plaintiff is a victim of some adverse practice of an employer since the Russian legislation contains neither effective protection for whistleblowers nor effective procedure⁴² or serious liability for witnesses for not showing up at hearing, providing false evidence or a refusal to give them at all. There are some provisions concerning protection of witnesses in criminal cases⁴³ but civil procedure contains nothing similar. Thus the plaintiff's co-workers that agreed to witness for him/her in a civil case (including employment dispute concerning discrimination) sometimes literally doom themselves towards adverse actions from the defendant (employer) after the hearing is finished. And the only protection they may rest upon is the very anti-discriminatory norms which involved them into trouble.

Sometimes in the cases of discrimination a victim is lucky to have a video or audio record which indicates a discriminatory practice: behavior, reasoning, attitude, etc. Since the year 2003 audio and video records are seen an acceptable evidence⁴⁴ once "...a person submitting audio and (or) video records on the electronic or other information medium or applying for their reclamation" states "...when, by whom and in what circumstances the records were performed"⁴⁵. Hence for the last decade the Russian courts began to consider such evidence in civil cases (including employment disputes), though still with minor restrictions and... with a visible reluctance.

However I would not say that this practice is of much help to the victims since in contrast to discriminatory treatment, the occurrence of harassment is often unpredictable, may happen tête-à-tête and leave little opportunity to do any recording. For instance, in the year 2007 I in a case of a pre-term termination of the office a judge A. it was found that witnesses Al. and S. had complained to the Qualification Board of Judges about his constantly harassing behavior, but had decided not to sue him for criminal offence because they had thought they would have never be able to prove this since all sexual activities had always been done one-to-one⁴⁶. But anyway the above mentioned amendment to the courts procedure is a good sign that the legal landscape is

⁴² According to Article 168(2) of the Code of Civil Judicial Procedure of the Russian Federation, witnesses that didn't show up at the hearing after being exacted, shall be fined (up to 1000 rubles, which equals to approximately \$30) if the court finds his/her excuses unreasonable. If the witness fails to show up for the second time the court *may* (but is not obliged to) issue an order for his/her compulsory attachment. But these provisions are obviously not practicable and are almost never used by courts since it's impossible to clarify the reasons and excuses of an absent person and civil courts demonstrate no interest in searching and waiting for an absent witness and no liability for not making efforts for conveying the absent witness to the hearing.

⁴³ See Federal Act No. 119-FZ of 20.08.2004 "On the governmental protection of complainants, witnesses and other participants of criminal court proceeding".

⁴⁴ Article 55(1) of the Code of Civil Judicial Procedure of the Russian Federation: "...Evidential documents are legally obtained information on facts, on which a court ascertains existence or nonexistence of the circumstances which substantiate claims and objections of the parties, as well as other circumstances significant for the correct investigation and adjudication for the case. This information can be obtained out of explanations of the parties and the third parties, witnesses' evidence, written and material evidence, audio and video records, and expert opinions".

⁴⁵ Article 77 of the Code of Civil Judicial Procedure of the Russian Federation.

⁴⁶ Decision of the Supreme Court of the Russian Federation No. KAS07-25 of 03.04.2007.

gradually changing in favor of the harassed. For instance, if the above mentioned example took place now, those witnesses could have been able to win the criminal case if they have cared to have a dictating machine with them to be ready for the next occurrence of harassment, taking into account that the harassment happened regularly.

This specific atmosphere makes it almost surprising that we do have, - though still very few, - disputes on discrimination, harassment and even mobbing. The legal reasoning for claims is rarely taken from internal regulations or collective agreements. More often the plaintiffs base their claims on the Labor Code provisions and relevant Plenum resolutions aimed at employee protection from unlawful dismissal, attempts to drive him/her to resign (i.e. “constructive dismissal), health and moral damages and wage arrears. Unfortunately even these very few cases are almost never judged for a plaintiff. Case reports demonstrate poor judicial technique and lack of the judges’ will to carefully examine cases, all this in obvious defiance of the ruling of the Plenum of the Supreme Court of the Russian Federation⁴⁷.

Thus, in a rare legal case concerning mobbing and constructive dismissal a plaintiff complained that her former employer, a scientific and production corporation N**, compelled her to resign⁴⁸. The plaintiff filed a claim stating that though it was she who had initiated the termination of the employment contract, the termination was involuntary. She demanded reinstatement, recovery of uncollected wage and compensations recovery, judicial expenses coverage, and financial compensation for material and moral damages. The total sum to be recovered amounted to 81 900 rubles (about \$2 500, of which \$400 were due wage and compensations, \$600 were proved medical expenses, and \$1 500 were moral damage). The court of first instance, - Ordjonikidze district court, - had dismissed her case.

During the hearing the plaintiff stated that she was compelled to terminate her employment contract because of mobbing, unfair and systematic disciplinary punishments (including reprimands and a bonus reduction) which had been found unlawful by a commission on labor disputes she applied to in regard to these punishments only a month before she quit. She stated that after the commission hearing the shop manager demanded that she terminate her employment contract and threatened to fire her if she refuses. After she opposed that, her working conditions were made unbearable: there were daily disciplinary reprimands and suggestions to resign. As a result her health had become worse and she had a week on a sick leave. Disciplinary reprimands were recommenced after she had returned to work. Eventually she could not stand it any more and quit having written in her letter of resignation that she did this because of constant mobbing (yes, this term was directly used in the letter) and unsatisfactory wage. She also claimed that after that she felt herself badly, could not sleep, lost appetite, had recurring headaches and she had to apply for medical help.

The Court of Cassation examined the witnesses of the defendant (all of which were managers involved in the process of making the plaintiff quit and who unanimously assured the Court that nobody compelled the plaintiff to resign), rejected the plaintiff’s motion for delaying the hearing because of her lawyer’s illness, and rejected examination of the plaintiff’s witnesses because they were either her friends or relatives, who had not been present when the plaintiff had been filing the letter of resignation and thus could give only a hearsay evidence which could not be considered objective. As a result the Court found no violations of the law in her case either by her employer or by the court of first instance and confirmed that the termination was voluntary according to the form it had been done in. The case was dismissed and no compensation was awarded. It is noteworthy that the public prosecutor presenting at the hearing, supported the case dismissal holding that everything done to the plaintiff was fully lawful.

⁴⁷ Par. 22(a) of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 2 of 17.03.2004

⁴⁸ Decision on the case No. 33-4995 of 23.05.2011 of the Perm Regional Court of Cassation.

We can make interesting and effective comparison of this decision, - both in essence, reasoning and the level of compensation, - with lots of just the opposite decisions in similar cases issued by the courts of various other countries.

For example, six years ago in the UK in the case of Sarah-Lyn McKenna v. Pizza Express Restaurants Limited Employment Appeal Tribunal awarded the plaintiff totally € 62 546.16 (more than \$76 000) for being bullied by a senior operations manager and constructive dismissal resulted from the plaintiff's inability to attend a disciplinary hearing because of her pregnancy complications⁴⁹. And the Bullyonline.org website reports lots of examples when cases are settled out of court with 2-3 times higher compensations⁵⁰.

Three years ago in Italy the Supreme Court of Cassation in its Decision No. 6907/2009 had held that a sequence of disciplinary measures can be considered victimization or bullying if they are groundless, disproportionate or manifestly exaggerated and are intended to bring about the employee's resignation or dismissal. The Court also found that such behavior amounts to "mobbing" and issued a compensation of € 9 500 (more than \$ 11 500, and it was noted that this was much less than the plaintiff had applied for) for damage from mobbing and another €3 000 (about \$ 3 650) for fees⁵¹.

The European level gives even more impressive examples. Thus, in a MacDonald v. United Kingdom case⁵² there was even no need for hearing in the European Court of the Human Rights because the representative of the defendant (a lawyer of the UK Ministry of Defense) agreed to voluntarily pay £ 115 000 (almost \$180 000) to the plaintiff for the harassment and discrimination based on his sexual orientation. And the plaintiff was even not satisfied and asked the Court, though unsuccessfully, to dismiss this motion of the defendant, inter alia, because of insufficiency of the compensation offered.

As we may see, even when the Russian legislation do have norms which could have been used for employees' protection in the cases of mobbing and harassment, the systemic problems in the judicial system still leave little hope for an employee to win the case. And a hope to get even a minor compensation is questionable. This is reflected in a further decrease of a number of references to the court for protection against mobbing and harassment in Russia.

Conclusion

It goes without saying that the main reasons for employees to put up with adverse workplace practice like harassment, bullying or mobbing are economic or political instability, inadequate professional skills and personal psychological problems of an employee. The more secure is an employee's financial situation, the higher is his/her qualification, - the less (s)he tends to be vulnerable to any hostile workplace environment.

In Russia we may find additional reasons for this vulnerability and many of them are historical. First of I would suggest that in Russia there was no considerable struggle for gender equality, at least not to the level comparable with what it was in many western countries since the late XVIII

⁴⁹ EAT WT331/2006, UD1062/2006.

⁵⁰ See "Case Law and out-of-court settlements" at the BullyOnline.org, the UK National Workplace Bullying Advice Line website: <http://www.bullyonline.org/action/caselaw.htm>.

⁵¹ Cassazione civile, sez. lavoro, sentenza 20.03.2009 n° 6907 (in Italian). - Available online: <http://www.altalex.com/index.php?idnot=45614>. The description of this case (in English) is available here: Stanchi, A.N. Can Constructive Dismissal Amount to "Mobbing"? - International Law Office. - 20.05.2009. Available online: <http://www.internationallawoffice.com/newsletters/Detail.aspx?g=35609c44-0ff0-4775-bc1a-742eb451e038>.

⁵² Decision of the European Court of Human Rights No. N 301/04.

century. If anything like this did take place, it was not independent but rather was often tightly connected to the socialist movement and promotion of revolutionary ideas⁵³.

Secondly for some reason the Russian history is a history of regular social destabilization⁵⁴. The lack of stability posed serious problems for people, and especially women⁵⁵, to find a partner not to speak of entering wedlock. It is hardly possible to find a century in the history of Russia which did not have a couple of revolts, revolutions or wars or all of them at once. This has created an atmosphere of constant welfare insecurity, fears for loss of ability or opportunity to earn a living, and a rivalry for men's attention which left little place for independency, self-confidence, ability to insist on one's rights and real equality.

Equality between women and men *was* proclaimed yet in the earliest Soviet legislation⁵⁶. But that equality related mostly, if not only, to the public life of a woman and even there it was mostly a declared ideal than a reality. At the same time Soviet legislators "forgot" to make efforts to ensure the granted equality, to eliminate grounds for gender discrimination in the society, which had not yet gone far from a patriarchic and nearly feudal social structure. It is true that there were women successful in science, sports, art, etc., even in the Soviet (previously Red) army in the time of two major wars of the XX century. But the common belief was perfectly in line with a once popular Russian saying "Hen is not a bird, woman is not a human being"⁵⁷.

Public and communal way of living of the Soviet people, in which many private and personal things and feelings were either minimized or unattainable, also did not dispose to being sweet, contributing to further toughening the style of interpersonal communication. Do were wars and general social instability. Since the first years of the Soviet rule most workplaces were organized as if they belonged to army forces, with similar disciplinary requirements, subordination and control. Occupational safety and health was comparatively poor developed and self-denial and self-sacrifice were considered heroic deeds, not carelessness, thoughtlessness or infantilism. "Labor (battle)front" was a commonly used periphrasis for "work", and "labor (heroic) deed" was used to describe examples of particular self-sacrifice in the interest of the employer, state and/or society. And sometimes they literally were these.

⁵³ For those interested, a rather truthful and objective description of the issue can be found in: Noonan, N.C., Nechemias, C. Encyclopedia of Russian Women's Movements. – Greenwood Publishing Group, 2001.

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

⁵⁵ Because every war, especially the last two, took lives of the youngest men of a childbearing age and left behind lots of widows, orphans and unmarried women with little hope to find a spouse.

⁵⁶ See: Code on Marriage, the Family and Guardianship of 1918 in: The marriage laws of Soviet Russia. Soviet Russia pamphlets No. 2. – NY: The Russian Soviet Government Bureau, 1921. Available online: <http://archive.org/details/marriagelawsofso00sovi>. See also an analysis of this Code and other relevant legislation in: Berman, H. Justice in the USSR: An Interpretation of Soviet Law. Cambridge, MA: Harvard University Press, 1963; Goldman, W. Women, the State and Revolution: Soviet Family Policy, 1917 - 1936. New York: Cambridge University Press, 1993; Hazard, J. Communists and Their Law. Chicago: University of Chicago Press, 1969; Stites, R. The Women's Liberation Movement in Russia: Feminism, Nihilism and Bolshevism, 1860 - 1930. Princeton, NJ: Princeton University Press, 1978; Wood, Elizabeth. (1997). The Baba and the Comrade: Gender and Politics in Revolutionary Russia. Bloomington: Indiana University Press, 1997; etc.

⁵⁷ It is hard to believe, but this perception is still alive in some parts of the country and on some levels of the Russian society. The society again and again paradoxically reproduces in this perception its own old prejudices, though fortunately it manifest itself more and more rarely with every decade. We are happy to see that nowadays this saying is perceived mostly as a rather impolite joke and is rarely used as a crushing "final argument" in disputes. But one should not underestimate its influence until it exists in the language.

Such is the historical background of the problem which now Russian people have to overcome if we want a more stable, decent and harmonious society. From what has been said above it is obvious that the task has not been completed. But at the same time there are obvious signs of ongoing change and improvement of the situation. New norms are introduced, old acts and procedures are replaced or amended, international norms are ratified and become a part of the Russian legal system, etc. All this gives a viable hope that harassment and mobbing will not flourish in Russia for too long.

The changes are very evident in younger generations which seem to be leaving the old-fashioned and ineffective practices behind in both professional and interpersonal communication. And I do hope that with the advancement of the legislative provisions concerning mobbing and sexual harassment in the workplace the proverbs similar to the mentioned above will soon lose their meaning and will bring about nothing more than an embarrassed confusion.