

# Protection Against Violence in the Workplace: International Standards and Labor Legislation of Russia and Kazakhstan

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## ABSTRACT

The issue of psychological violence in the workplace or any other place where the employee is obliged to be is currently becoming more acute and relevant, particularly with respect to numerous women reporting workplace harassment. The greatest difficulty for those suffering various forms of harassment is to prove the fact of psychological or physical violence, and the need to expose these private facts of life to the public eye. In both Russia and Kazakhstan, the society usually condemns victims of violence, and the legislation ignores them restricting itself to the existence of criminal law norms, which, however, are virtually not applied. The paper reveals not only the problems of legal regulation in the field of labor legislation, which does not protect employees against sexual harassment and other forms of violence at work. It shows practical solutions for Russia and Kazakhstan to establish transparent and effective standards for protection of employees, since these countries are bound by international conventions on discrimination and violence in the workplace.

**Keywords:** *labor legislation, mobbing, harassment, violence in the workplace, international labor standards*

## 1. INTRODUCTION

The most important indicator of the quality of work life is working conditions in the workplace. The level of physical and mental comfort at work can be referred to this indicator. Physical comfort in labor legislation is provided by the labor protection institute, which is the basis of the system aimed to preserve the life and health of employees during labor activity, including legal, socio-economic, organizational and technical, sanitary and hygienic, treatment and prophylactic, rehabilitation and other measures.

Mental comfort implies employee's satisfaction with work and his position in the team, the absence of stress and moral discomfort, favorable socio-psychological climate, awareness of his significance and role in the general work process. The most important component of psychological comfort is the absence of workplace violence.

Unfortunately, neither Russian nor Kazakh lawmakers pay due attention to mental comfort, though mobbing and harassment are not rare in our life. Russia and Kazakhstan, the largest States Parties of the Eurasian Economic Union, actually set the tone for harmonization of labor legislation of all members of the international treaty [1].

Therefore, the issue of the status of legal regulation in this sensitive sphere in labor relations as combating sexual harassment and violence at work is of current interest.

## 2. INTERNATIONAL ACTS ON COMBATING VIOLENCE IN THE WORLD OF WORK AND PRACTICE OF THEIR APPLICATION

The most important international tools in the field of violence and harassment prevention are the European Social Charter ETS No. 163 of October 18, 1961, the United Nations Convention on the *Elimination of all forms of discrimination against women* of December 18, 1979, International Labor Organization Violence and Harassment Convention No. 190 of June 10, 2019, and the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 [2].

To date, Kazakhstan has not ratified the European Social Charter, since it is not a member of the Council of Europe. Russia ratified it partially in 2009 (Federal Law No. 101-FZ of June 3, 2009 on the *Ratification of the European Social Charter (revised)* of May 3, 1996), having excluded Art. 26 from the scope of its international obligations, which regulates the obligations of the state to protect employees against sexual harassment, bullying, clearly hostile and offensive actions in the workplace or in work-related situations.

The Convention on the *Elimination of all forms of discrimination against women* was ratified by the USSR in 1981 with a reservation (Decree of the Presidium of the Supreme Soviet of the USSR of December 19, 1980 N 3565-X), which was withdrawn in 1989 (Decree of the

Presidium of the Supreme Soviet of the USSR of February 10, 1989 No. N 10125-XI). Russia joined the Optional Protocol to the Convention of October 6, 1999 on May 8, 2001. Kazakhstan ratified this convention in 1998 (Law of the Republic of Kazakhstan of June 29, 1998 No. 248 About accession of the Republic of Kazakhstan to the Convention on the *Elimination of all forms of discrimination against women*), and the Optional Protocol to the Convention in 2001 (Law of the Republic of Kazakhstan of July 4, 2001 No. 220). The ILO Violence and Harassment Convention No. 190 of June 10, 2019, adopted at the 100th Anniversary Conference, has not yet entered into force [3], but the attitude towards its acceptance is demonstrative. The Russian government abstained from voting, and representatives of Russian employers ignored the vote: as a result, Russia found itself with noticeable minority status, since 438 voters voted for adoption of the Convention, 30 voters abstained, and 7 voters were against [4]. Representatives of employees, employers and the government of Kazakhstan did not participate in the vote. It should be noted that according to some data, in Russia, 16% of women and 7% of men have been harassed in the workplace at least once in their careers. At the same time, about a third of employers in Russia recognizes the problem of harassment as relevant and adequately responds to complaints about sexual harassment from employees [5]. According to the website of the Committee on Statistics of the Ministry of National Economy of the Republic of Kazakhstan, 2.9% of women have experienced physical violence from a person who is not an intimate partner. Similar studies in Kazakhstan showed that 42.3% of women employed had faced sexual harassment [6]. It is apparent that harassment is not a far-fetched issue in both Russia and Kazakhstan. Mobbing and harassment are reported in the media and in the researches [7–9]. Moreover, the problem is universal and many countries that face harassment as a phenomenon are adapting legal mechanisms to protect employees, for example, India [10] and Africa [11].

The main mobbing tools can be spreading rumors, intimidation, unfounded criticism, social isolation, direct aggression, humiliation and boycott. The most aggressive is regarded to be managed mobbing, i.e. moral persecution aimed at fulfilling covert directives of the employer's representatives by a group of attackers or direct persecution by officials representing the employer's interests. Experts assert that managed mobbing can be an element of the employer's personnel policy. In addition, it can be an employer's problem solving technique when dealing with dismissal of employees ignoring the Labour Law [12].

Mobbing can have a negative effect on a particular employee and cause depression, anxiety, complexes, fears, feelings of hopelessness, professional and personal failure to fulfill and inferiority. This often forces employees to dismiss and lose their jobs, and, hence, unemployment increases. Thus, mobbing poses a threat not only to an individual, but to society as well. Nevertheless, the state does not pay due attention to violence and harassment in the world of work despite such negative effects.

Among the most notable steps of Russia and Kazakhstan in combating mobbing and harassment is adoption of

international obligations to protect employees (women) against workplace violence and harassment in accordance with the UN Convention on the *Elimination of all forms of discrimination against women* (hereinafter the Convention).

Implementation of the norms of an international treaty into national legislation and practice is the responsibility of the States Parties, and theoretically this process includes not only implementation of the text of an international treaty, but also its official interpretation.

It should be noted that interpretation of international treaties is dynamic in nature, that is, in fact, international bodies endowed with the right of official interpretation of the text of an international act root not from the literal text of the norm but from the conditions of its application and rely on the 'living' nature of the norm. According to the provisions of the Vienna Convention on the *Law of treaties* of May 23, 1969, it should be interpreted in the light of the current conditions with regard to the evolving norms of national and international law. In practice, possible expansive and dynamic interpretation of international treaties in the world of work should be based on the agreement of the parties to the contract in order to apply the corresponding interpretation to each of the parties.

Russia and Kazakhstan expressed such consent in Art. 17 of the Convention and in the Optional Protocol to the Convention of October 6, 1999. This document empowered the Committee on the *Elimination of discrimination against women* (hereinafter – the Committee) to make general recommendations on application of the Convention, as well as recommendations in the form of opinions addressed to the states violating the Convention, taken after consideration of complaints from citizens of the States Parties to the Convention. These acts of the Committee form a body of new knowledge about the legal nature of harassment as a form of discrimination in the world of work and require the States Parties to perform appreciable internal work on implementation of the recommendations into legislation and practice.

The States Parties to the Convention regularly submit reports on the status of legal protection of women against discrimination, which show that implementation of the Convention norms into the legislation and practice of Russia and Kazakhstan lags behind the Convention norm development, and no proper attention is paid to the issues of violence and harassment in the world of work.

General Recommendation of the Committee on the *Elimination of discrimination against women* No. 19 states that one form of discrimination against women is violence, in particular gender-based violence committed against a woman because she is a woman and violence that disproportionately affects women. Violence implies actions that cause physical, mental or sexual harm or suffering, the threat of such actions, coercion and other forms of impairment of freedom. According to Para 7 of the General Recommendation, this conclusion follows from the implication of Art. 1 Conventions and protection against violence in the workplace, which includes: the right to life, the right to be free from torture and cruel inhuman or degrading treatment or punishment; the right to equal

protection in accordance with humanitarian standards during a time of international and internal armed conflicts; the right to liberty and security of the person; the right to equal protection of the law; the right to equality in family relations; the right to the enjoyment of the highest attainable standard of physical and mental health; the right to fair and safe and healthy working conditions.

According to Art. 2 (e) of the Convention, States Parties accepted responsibility to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. The international law can place the onus on states for acts committed by private persons, in case these states do not show due diligence to prevent violations of rights or investigate acts of violence, punish those responsible and pay compensation.

General Recommendation No. 19 states that the principle of equality in employment can be seriously violated when women, due to their gender, suffer violence in the form of sexual harassment at work, which imply unwanted sexually motivated behavior in the form of physical contact, harassment, sexually suggestive remarks, display of materials with sexual content and sexual claims in the form of statements or actions that can be humiliating or threaten the woman's health and safety. Such behavior becomes discriminatory when a woman has reasonable grounds to believe that objection on her part would put her in a disadvantageous position in terms of her job, including employment or promotion, or if it causes an unfriendly workplace atmosphere.

Para 36 of the General Recommendation No. 28 of the Committee on the *Elimination of discrimination against women* indicates that States Parties should take practical measures to ensure the elimination of discrimination against women and equality between women and men. These include measures that: ensure women can complain about violations of their rights under the Convention and have access to protection of the law; enable women to actively participate in elaboration and implementation of appropriate measures; ensure governmental accountability within the country; promote the development of education in support of the objectives of the Convention throughout the education system and in society; encourage the activities of human rights and women's non-governmental organizations; provide for establishment of adequate national human rights institutions or other mechanisms; provide adequate administrative and financial support to ensure practical measures to change the lives of women.

Thus, in 2015 based on communication No. 45/2012, the Committee adopted a View of 13 July 2015 in the case of *Anna Belousova v. Kazakhstan*, which stated violation of the Convention by State Party and failure to comply with the obligations under Art. 2, interpreted in conjunction with Articles 2, 1, 5 (a) and Art. 11, Paragraphs 1 (a) and (f) of the Convention. The Committee not only declared that A. Belousova had been harassed by the newly appointed school principal, but also stated the ineffectiveness of legal tools to protect against workplace harassment. Virtually none of the state authorities to which the applicant addressed her reports listened to her on the merits and investigated the question of why the fixed-term

employment contract, which had been extended with her over the past 10 years, was not renewed after the change of the school principal. Neither the prosecutor's office, nor the internal affairs bodies, nor the court showed due attention to the complaints of harassment. Instead of being protected against harassment, A. Belousova actually faced reprisals when the court brought her to civil liability on the claim of the school principal for libel in connection with her complaints of harassment. At the same time, the court ignored A. Belousova's petitions to check audio recordings and to question witnesses. Having established the facts of harassment and the lack of effective legal tools for the employee against workplace harassment, the Committee recommended Kazakhstan to compensate A. Belousova for loss of income, legal costs, and moral damage, and to make essential amendments to the legislation of the Republic of Kazakhstan in order to provide effective protection against workplace harassment. Kazakhstan did not fulfill the recommendations of the Committee, and the courts of Kazakhstan refused A. Belousova to satisfy the claim for compensation, citing the following arguments: 1) in the Republic of Kazakhstan 'there is no universal legal toolkit for execution of views adopted by UN committees'; 2) the View of the UN Committee related to the position of the court of the Republic of Kazakhstan, is recommendatory and not mandatory, therefore it is not a prejudice in a civil process, that is, it does not relieve the plaintiff from the obligation to prove the case of inflicting moral damage in a separate civil process (Resolution of the judicial board in civil cases of the court of Astana city of July 17, 2018 in case No. 2a-4520-18).

That is, in fact, the court ignored the View of the UN Committee and proceeded from the fact that the plaintiff was obliged to reprove the fact of inflicting moral damage on her, the unlawfulness of the school principal's behavior and the connection between such behavior and moral damage.

No Russia-related cases were considered by the UN Committee on Harassment, however, the problem of the effectiveness of legal protection of employees against harassment in the workplace is relevant for the reason similar to that in Kazakhstan, that is, due to the lack of effective legal tools.

### **3. LEGAL TOOLS FOR PROTECTION AGAINST VIOLENCE AND HARASSMENT**

Harassment, mental abuse, mobbing or violence in the workplace are not defined in Russian and Kazakh legislation. According to D. V. Chernyaeva, the terms 'sexual harassment' or 'violence in the workplace', 'mobbing', 'harassment' are just emerging and do not exhibit uniformity and consistency are not uniform and consistent in definition [13]. M. M. Kharitonov defines sexual harassment as any form of overt sexual behavior, unwanted and offensive to the victim and unconditioned by a formal model of the relationship between the victim and the persecutor [14]. The concept of 'violence and

harassment in the world of work' has been formalized at the international level only. The Violence and Harassment Convention (2019) defines violence and harassment as 'a range of unacceptable behaviors and practices or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic damage, including gender-based violence and harassment.'

The term 'gender-based violence and harassment' refers to violence and harassment directed at individuals because of their sex or gender identity, or these disproportionately affecting individuals of a particular sex or gender and including sexual harassment. At the same time, harassment is considered not only as part of the concept of discrimination, but also in the context of occupational safety and health, as a psychosocial risk [15], as an element of precarious employment [16].

The Labor Code of the Russian Federation (hereinafter referred to as LC RF), as well as the Labor Code of the Republic of Kazakhstan (hereinafter referred to as LC RK), does not provide for special legal norms aimed at preventing violence and harassment in the workplace or in any other place where an employee performs his duties. The right to protect an employee against manifestation of these forms of unlawful behavior on the part of colleagues, managers or other representatives of the employer can be exercised, for example, when the specified behavior is regarded as a violation of the employer's code of ethics. In Russia, the codes of ethics in some large companies contain provisions on the inadmissibility of sexual harassment and other illegal forms of behavior that degrade an employee (Codes of Corporate Ethics of the State Corporation Rosatom, KAMAZ PJSC, NRU Higher School of Economics, Condé Nast International (Vogue) magazine). However, the effectiveness of legal regulation cannot depend solely on the degree of social responsibility of the employer.

We believe that local regulation is insufficient to solve the problem of prevention and combating violence in the world of work. However, the current legislation of Russia and Kazakhstan lacks effective legal mechanisms which can help employees to effectively protect themselves against violence and harassment. The principles of legal regulation of labor and other directly associated relations give employees a remote possibility to defend their rights to physical and mental integrity. From the perspective of international labor law, gender-based violence is discrimination on ground of sex. Violence and harassment undermine the right to equality at work. For example, the Legal Practice Guide of the European Committee of Social Rights defines: 'Sexual harassment qualifies as a breach of equal treatment manifested mainly by an insistent preferential or retaliatory conduct of a sexual nature, directed towards one or more persons which may harm their dignity or their career their' (Conclusions 2005, Statement of Interpretation, Art. 26, Para 1).

According to Art. 3 of the LC RF, discrimination in the world of work based on sex, race, skin color, nationality, language, origin, property, family, social and official status, age, place of residence, attitude to religion, beliefs,

membership of public associations or any social groups, as well as on other circumstances not related to the professional qualities of the employee, is prohibited. A similar prohibition is specified in Art. 6, Para 2 of the LC KR: 'No one shall be subjected to any discrimination in the exercise of labor rights on grounds of origin, social, official and property status, sex, race, nationality, language, attitude to religion, beliefs, residence, age or disability, as well as associations.'

The LC RF contains other fundamental principles that guarantee protection against harassment – the right of employees to protection their dignity during employment, the obligation to compensate for harm caused to the employee when performing his labor duties, the right of everyone to protection of labor rights and freedoms, including judicial protection, by the state (Art. 2). The LC RF establishes the employee's right to compensation for moral damage caused by unlawful actions or inaction of the employer (Art. 237, LC RF), which is reimbursed in cash in the amount determined by the employment contract, and in the case of a dispute, it is assessed by the court.

The legal mechanism for forcing the employer, the head of the organization or colleagues to comply with the principle of non-discrimination is ensured by the employee's right to apply to the court. In this case, the proof of the fact of discrimination, the presence of characteristics in the plaintiff, which cause discrimination and adverse consequences for the employee (in the form of unlawful refusal to employ or illegal dismissal, illegal disciplinary or material liability, lower wages, moral damage, etc.) is formal legal responsibility of the plaintiff, who, due to the the principle of civil procedure "non ultra petita", is obliged to prove all the circumstances which are the cause of action [17].

There are no official statistics in Russia on the number of complaints against discrimination, harassment or mental abuse in the workplace, submitted to the court or the labor inspectorate, as well as against the facts of being brought to civil liability on these grounds [18].

Open sources, such as the Rostrud's website [онлайнспекция.рф](http://онлайнспекция.рф), provide the texts of employees' complaints against harassment, mobbing and other forms of mental abuse or physical violence in the workplace. We found at least 100 appeals over the period of 2014–2018 based on employees' demands to protect them against sexual harassment and workplace mobbing. The results of the consideration of complaints show that in the overwhelming majority of cases the employee was sent a response from the State Labor Inspectorate and only in a few cases the problem was resolved. We suppose that the employees were recommended to apply to the court, since individual complaints against discrimination are considered directly in the courts (Part 4 of Art. 3, Art. 391 LC RF).

In the Republic of Kazakhstan, a special anti-discrimination act has been adopted by the Law of the Republic of Kazakhstan of December 8, 2009 No. 223-IV *On state guarantees of equal rights and equal opportunities for men and women* (hereinafter Law). The Law establishes the basic principles and norms concerning the creation of conditions for gender equality in all spheres of state and

public life, including in the world of work. According to Para 1, Art. 10 of the Law, men and women are guaranteed equal rights and equal opportunities in labor relations, including: 1) when concluding an employment contract; 2) equal access to vacant jobs; 3) advanced training, retraining and career advancement.

However, as noted by academics, in Kazakhstan there are no legal tools against harassment, since harassment is not a criminal or administratively punishable act, and the mechanism of prohibition and legal protection is not established in special legislative acts. There is no concept of harassment in the labour legislation of the Republic of Kazakhstan; there is no authorized body in the field of ensuring equal rights and opportunities for men and women that coordinates the implementation of gender policy and consideration of complaints of harassment; there is no obligation of the employer to prevent cases of harassment; there is no effective way of filing a complaint and its consideration [19].

Academics note that discrimination against women and gender inequality occurs throughout Kazakhstan, but court precedents are extremely rare. It should be noted that the absence of women's complaints of discrimination does not indicate the absence of inequality. According to experts, this is rather an indicator of insufficient access to justice [20].

Thus, the legal framework for regulation of relations in the field of protection against violence and harassment at work is inadequate both in the Russian Federation and in the Republic of Kazakhstan.

#### **4. ON THE NEED TO BALANCE NATIONAL LEGISLATION IN COMPLIANCE WITH INTERNATIONAL MEASURES FOR FIGHTING VIOLENCE IN THE WORKPLACE**

In contrast to the national codified acts, the International Labor Organization explicitly points out the inadmissibility of violence in the workplace. After the *Violence and Harassment Convention* (2019), the ILO adopted the *Violence and Harassment Recommendation* (2019). It is for the states to ratify the convention, implement it into their national legislation and monitor its observance. The issues of monitoring compliance with ILO conventions are reported in [21]. The ILO proposes to implement 'an inclusive, integrated and gender-sensitive approach to preventing and eliminating violence and harassment in the world of work'.

This approach should primarily provide for the legal prohibition of violence and harassment. This prohibition should become one of the basic principles of legal regulation of labor and other directly associated relations, as well as the prohibition of forced labor and discrimination in the world of work.

No doubt, one principle only cannot adequately protect employees against violence and harassment in the workplace. It is also necessary to provide for a mechanism

for implementing this principle in other norms of the Labor Code, in particular, indicate legal tools. For example, Art. 379 of LC RF should be amended with an additional basis for the use of self-defense in the form of refusal to perform work – violence and harassment. Moreover, the *Violence and Harassment Convention* proposes that states guarantee employees the right to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to life, health or safety due to violence and harassment without suffering retaliation or other undue consequences, and the duty to inform management (Art. 10, subpara g). The state labor inspectorate should be authorized to deal with cases of violence and harassment, including the right to issue an immediate order to the employer to implement measures to eliminate and prevent mobbing and harassment.

The ILO refers the requirement for the prevention and elimination of violence and harassment in the world of work to occupational safety and health, i.e. to the labor protection institute. Therefore, the rules aimed at protecting employees against mobbing and harassment should be included in the labor protection sections of the Labor Codes of Russia and Kazakhstan. In particular, the definitions of concepts must be disclosed in Art. 209 of LC RF, and Art. 210 should include counteracting violence and harassment in the world of work as one of the main directions of state policy in the field of labor protection.

Kazakh academics note the need to define the term harassment and introduce a mechanism for filing and considering harassment complaints, as well as to supplement the Labor Code of the Republic of Kazakhstan with the duty of employers to eliminate harassment and ensure confidentiality when considering complaints and the corresponding rights of employees, in conjunction with an effective legal mechanism to compensate for damage caused by sexual harassment [19].

The implementation of such proposals can contribute to the creation of a mechanism for combating violence and harassment in the workplace, but it cannot be effective without involvement of representatives of employers, employees, and the government, which necessitates a social dialogue on this issue in both Russia and Kazakhstan.

#### **5. CONCLUSION**

Labor legislation in Russia and Kazakhstan needs to be amended with norms that allow states to protect individuals against physical violence and mental abuse in the workplace. Even if states do not intend to ratify ILO Violence and Harassment Convention No. 190 (2019), they must follow the mainstream of global policies aimed at creating decent working conditions and improving the quality of working life.

First, it is necessary to establish a legislative prohibition of violence and harassment against both women and men, at the level of the principle of legal regulation of labor and other work-related relations, as well as to legally recognize the right to protection against violence and harassment in the workplace, with these concepts being defined. Legal

recognition of the right is an important component of access to justice.

Second, an effective mechanism should be developed to implement this right in the framework of both judicial and non-judicial procedures. The availability of affordable and reliable legal tools is the key to the effectiveness of the relevant legal regulations.

Third, legal liability should be established for violation of prohibitions on harassment and mobbing. These can be measures of disciplinary, material, administrative and criminal liability.

Fourth, an effective mechanism must be developed to consider harassment complaints, when the victim's explanations are regarded as sufficient evidence of the violence, if they are complete, detailed and plausible.

Considering labor law as a social value, we propose introduction of legislation norms to preserve not only physical health of the employee but also his psychological state.

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