

LEGAL PROTECTION OF WORKERS FROM MORAL HARASSMENT IN THE WORKPLACES: A COMPARATIVE STUDY OF THE UAE LAW AND FRENCH LAW

Mohammad AlKrisheh*, Nour. Alhajaya**, Khawlah M. AL-Tkhayneh***

Abstract: *The study tackles the worker's protection under the purview of criminal and civil laws from harassment in the workplace. The researchers point out that the UAE legislator has not addressed moral harassment in the workplace either in the Penal Law or in the Regulation of Labor Relations. Meanwhile, the French legislator criminalizes moral harassment acts in the French Penal Law and regulates that in the respective labor law. This motivates us to examine this subject with sights set to have this study as a proposal for the UAE legislator to draft provisions that criminalize moral harassment in the workplace. This study provides the punishment prescribed for this crime. It also describes this act in the Labor Law to determine the procedures set to protect the victims from harassment, to empower them to receive fair compensation, and to prevent the employer from harassing workers to push them to abandon work.*

Keywords: *moral harassment, workplace, criminal protection, civil protection, UAE Penal Code, French Labor Law*

1. INTRODUCTION

The Universal Declaration of Human Rights of 1948 and international conventions guarantee many rights of workers. One of the most notable rights is the commitment of states to draft and implement a national policy intended to promote equal opportunities and treatment in employment and profession to eliminate any discrimination.¹

As everyone, the worker should enjoy the highest level of physical and mental health (Article 12 of the International Covenant on Economic, Social, and Cultural Rights). Therefore, labor laws make sure that the employer has an obligation to take all measures

* Mohammad AlKrisheh, Associate Professor of Criminal Law, Public Law Department, College of Law, Al Ain University, United Arab Emirates

** Nour. Alhajaya, Professor of Private Law, Private Law Department, College of Law, Al Ain University, United Arab Emirates

*** Khawlah M. AL-Tkhayneh, Assistant Professor of Criminology, College of Education, Humanities and Social Sciences, Al Ain University, United Arab Emirates

¹ See Article 23 of the Universal Declaration of Human Rights and Article 2 of Convention No. 111 on Discrimination in Employment and Profession. This convention is issued by the ILO. Article 7 of the International Covenant on Economic, Social and Cultural Rights of 1966. Also, see the decision of the European Court of Human Rights in the case Number C404/18 Issued on 20 June 2019. In: *Souffrance & Travail* [online]. 22. 11. 2011 [2020-02-28]. Available at: <<https://www.souffrance-et-travail.com/magazine/dans-la-loi/arret-de-la-cour-europeenne-des-droits-de-lhomme/>>. See Articles 7, 10, 11, 12, 13, 14, 15, 16 and 17 of the International Convention for the Protection of the Rights of All Migrant Workers and Their Family Members, 158/ adopted by resolution of General Assembly 45 of 18 December 1990.

necessary to protect the workers' physical and mental health.² This includes providing them with hygiene and fully ventilated workplaces. Laws also compel employers to provide workers³ with medical care.

As part of the UAE's efforts to fulfill such an obligation, the UAE Constitution guarantees the right of human beings not to be subjected to torture or degrading treatment. This includes, in general, prohibiting physical and psychological torture (Article 26 of the UAE Constitution), the right not to be enslaved (Article 34 of the UAE Constitution), and the right of individuals to equality before the law without discrimination on the basis of origin, religious beliefs or social status (Article 25 of the UAE Constitution).

Article 7 bis of the Federal Decree-Law No. 6 of 2019 amending certain provisions of the Federal Labor Law No. 8 of 1980 Regulating the UAE Labor Relations prohibits 'discrimination, which prejudices equal opportunity employment, equal access to jobs, continuity of employment, and enjoyment of rights. Discrimination is also prohibited between those with the same employment duties'.

Acts of moral harassment against workers in workplaces shall be a source of threat to their rights referred to earlier in particular and to work in general. Thus, this study aims to respond to these key questions:

1. Do the UAE Labor Law and its counterpart, the French Law, ensure that their legal provisions eliminate moral harassment in the workplace? Is the employer compelled not to exercise moral harassment against workers in the workplace? What are the means of providing the necessary legal protection to respond to such abuse?
2. Is moral harassment in the workplace a punishable offense in France and UAE? If so, what are the grounds for such a crime and the punishment specified?

Moreover, the study aims to provide a definition of moral harassment in the workplace. This includes identifying its concept, forms, the civil and criminal protection tools provided for the victim in terms of penalizing the perpetrator's acts, and ensuring that the victim receives the appropriate compensation.

2. WHAT IS MEANT BY MORAL HARASSMENT IN THE WORKPLACE?

This section identifies the meaning of moral harassment in the workplace and the most significant forms thereof.

² Article L4121-1 The government's policy of 'de-empowerment' is a very good way to ensure that the people of the country are able to make the most of their development. The government's policy of 'de-amalifying' the state of the country's economic and political system is a fundamental issue that has been the main cause of the crisis. These measures include: The government's policy of 'de-amalifying' the government's policy of 'de-amalifies' is a very important one. The government's support for the government's work in the country is a very good one.; 2 ° Information and training actions; The government's policy of 'ensuring the rights of the people of the country' is to provide the necessary support to the people of the country. The government's policy of 're-entering' the country is a very important one.

³ In that sense. See Article 94 And Article 96 of Labor Relations Regulation Act. France or United Arab Emirates, No. 8, 1980 and its amendments.

2.1. Definition of Moral Harassment in the Workplace

Moral harassment is a compound term of two words: the word ‘harassment’, and the word ‘moral’. As for ‘harassment’, it is derived from the verb ‘harass’. For example, ‘to harass a person’ means a person is harassed to infuriate and disturb him/her. It is said that he/she wanted to harass him/her, i.e., to annoy and provoke him/her.⁴ Meanwhile, the word ‘moral’ is the opposite of the word ‘material’. Therefore, the term ‘moral harassment’ means to expose a person to a psychological situation with the intention to provoke and infuriate him/her.^{5, 6}

In terminology, the UAE legislator and judiciary system have not defined the term ‘Moral Harassment’. On the other hand, Article L1152-2-2 of the French Labor Law has indicated that no worker may be subjected to any recurrent morally harassing behavior, which aims or has an impact on the deterioration of working conditions, which constitutes an abuse of the worker’s rights and dignity and put his/her physical or mental health or future career at risk.

Based on the abovementioned Article of the French law, moral harassment in the workplace could be defined as: ‘Any recurrent behavior that could be expressed verbally, in writing, intimidation, deeds, or insinuation meant to assault the worker’s personality, dignity, or his/her mental and physical well-being while at work and jeopardizing their work and creating a workplace characterized by intimidation, bullying, and hostility.’⁷

According to this definition, the researchers conclude that no action could be deemed moral harassment unless the following conditions are met:

The harasser’s act must be arbitrary. For example, the employer, worker, or group of workers behave in a manner that deviates from the work purpose, such as refusing to deal with the worker or addressing a serious criticism about his/her work. In the meantime, if

⁴ In: *almaany.com* [online]. [2020-02-28]. Available at:

<<https://www.almaany.com/ar/dict/ar-ar/%D8%A7%D9%84%D8%AA%D8%AD%D8%B1%D8%B4>>.

⁵ GUNTHER, COCHRAN, A. The singularities of moral harassment and its classification as personal injury and/or existential damage. *Revista Juridical*. 2017, Vol. 3, No. 48, p. 62.

⁶ NASCIMENTO, A. M. *Ordenamento jurídico trabalhista*. São Paulo: LTr. EDITORA LTDA, 2013, p. 344.

⁷ The government’s policy of ‘de-amalifying’ the government’s policy of ‘de-amalife’ the ‘state of the world’ is a very important issue. In the same sense, see the ruling of the European Court of Human Rights of 13 July 2018, which stated: ‘The definition of the concept of ‘moral harassment’ contained in article 3.6.1 of the code of conduct requires repetitive character, moreover ‘over a fairly long period’, of hostile comments, attitudes or actions or moved so that they can come under this notion. From this point of view, this definition has an analogy with that, referred to in Article 12a of the Staff Regulations, which defines ‘moral harassment’, for officials and agents under this status, as ‘abusive conduct’ ‘Which takes the form of behaviors, words, deeds, gestures or writings manifested’ in a lasting, repetitive or systematic manner’, which implies that bullying must be understood as a process that must take place over time and implies existence of repeated or continuous actions which are ‘voluntary’, as opposed to ‘accidental’ (see judgments of 13 December 2017, HQ / OCVV, T 592/16, EU: T: 2017: 897, point 101, and of 17 September 2014, CQ / Parliament, F 12/13, EU: F: 2014: 214, points 76 and 77) In: *InfoCuria Judikatura* [online]. [2020-03-01]. Available at:

<<http://curia.europa.eu/juris/document/document.jsf?text=&docid=204011&pageIndex=0&doclang=fr&mode=req&dir=&occ=first&part=1&cid=726310>>. In the same sense: DESRUMAUX, P., CHACUS, S. Bullying at work: Effects of the victim’s pro and antisocial behaviors and of the Harasser’s over victimization on the judgments of help-giving. *Studia Psychologica*. 2007, Vol. 51, No. 4, pp. 357–368. DESRUMAUX, P. Moral harassment at work, victimization and problems of the harasser: when the victims are judged as responsible as their harassers. The international notebooks of social psychology. *University presses of Liege*. 2007, Vol. 36, No. 73.

the employer requests the worker to fulfill his/her obligations as stipulated in the employment contract, such behavior shall not be deemed arbitrary.

Recurrent arbitrary behavior over a period of time. This means that individual behavior, even if it involves assaulting the worker's personality and dignity, does not constitute an act of moral harassment if it is not repeated over time. Moral harassment requires the repetition of abusive behavior while dealing with the worker, which features moral harassment from sexual harassment.

The question here is whether it is necessary to repeat the same arbitrary behavior, or it is enough to repeat any arbitrary behavior. Indeed, to be a victim of moral harassment, the repetition of the same abusive behavior is a must, such as an employer repeatedly making rude remarks about the quality of the work provided by the worker. If the employer criticized, on a single occasion, the quality of work, and committing another act in a different situation by criticizing the work harshly regarding the quality of the work requested, such conduct does not constitute moral harassment for not repeating the same behavior.

Noteworthy, the law does not specify the period of time during which the arbitrary behavior, deemed as an act of moral harassment in the workplace, is repeated. It should be noted that according to the legal opinion, it is agreed that the period of time during which the repetition of abusive behavior is committed shall not be less than six months.⁸

In this regard, the researchers see that the time limit for a repeated abusive behavior, which constitutes psychological persecution of the worker in the workplace, should be left to the discretion of the trial court.

3. To commit abusive behavior that constitutes moral harassment in the workplace. If this act is committed outside the workplace, it does not constitute an act of moral harassment with regard to the subject matter of our study. It should not be understood that moral harassment outside the workplace is not taken into consideration and not to rule on the harasser's responsibility. It should be considered as long as it is committed while doing the job itself, noting that certain workers' jobs are field ones and done outside the workplace, such as the delivery services workers and commercial agents.
4. The harasser's intent is to commit repeated arbitrary behavior, which constitutes an explicit moral harassment act within the workplace. In addition, the behavior causing moral harassment constitutes an assault on a worker's personality or dignity, and jeopardizing the work and creates a work epicenter that is based on hostility.

As for this point, the researchers see that this conclusion should not be considered on the pretext that repeated arbitrary behavior is sufficient to say that moral harassment exists or not.

2.2. Forms of Moral Harassment

In practice, moral harassment does not have a single form, but is divided into multiple images and forms that could be recognized through the following:

⁸ DEVEAUD-PLÉDRAN, M. *Harassment in labor relations*. Zürich: CERT, Schulthess, 2011, p. 22.

2.2.1. Moral Harassment Committed by a Senior Officer

This is practiced by a senior officer at work due to their mismanagement. Such acts lead to the deterioration of working conditions, and they include exerting pressure on workers, forcing them to work overtime, and issuing control orders. Such acts increase competition between workers excessively.

Examples of acts committed by the administrative officer, which constitute moral harassment against the worker in the workplace, include tasking him/her to conduct duties and tasks that go beyond their mental or physical capabilities or to marginalize them by exempting him/her from doing anything at work. The latter situation is related to the worker who has an influence over their colleagues and who always has direct clashes with his/her seniors. This is why the employer or the front-line manager issues his/her orders to marginalize that worker or leave him/her with no tasks so that such negative behavior does not spread among the rest of the co-workers at work.⁹ It is also considered to be moral harassment in the workplace when the senior officer issues various unjustified decisions forcing the worker, for example, to work when he/she is in sick leave, unsettling the worker's wages during his/her sick leave, in addition to describing him/her with qualities entailing inherent racism meanings.

2.2.2. Bullying

It means that the assailant or employer malpractices his/her power to intimidate the worker, and this might be through verbal abuse, intimidation, insult, contempt, and ridicule. This is a form of moral harassment, whether such an act is committed by a worker against another, by a worker against a group of workers or committed by several workers against a single worker. The latter is considered one of the most serious and real psychological assaults on the worker, as this means that the assailed worker will have no chance to take a breath to defend him/herself.¹⁰

2.2.3. Spreading rumors that constitute an insult to the worker

It is believed that if such an act should be looked at as moral harassment, it should be recurrent. They also believe that such repetition does not require stating a derogatory rumor about the worker in the workplace as the rumor has a continuous impact, and in such cases it is considered a form of moral harassment in the workplace.

2.2.4. Isolating the worker and not dealing with him/her in the workplace by the front-line manager or certain or all of the workers

2.2.5. Denying the worker's access to the tools necessary for fulfilling his/her tasks and attacking their privacy rights

Undoubtedly, such pressures, in the workplace, make the worker's social and health life difficult to endure. At the health level, they might be exposed to various mental illnesses

⁹ Ibid., p. 31.

¹⁰ NETO, J. *Responsabilidade civil no direito do trabalho*. São Paulo: LTr. EDITORA LTDA, 2014.

that might result in committing suicide.¹¹ Hence, moral harassment must be considered as one of the work risks; besides, it is a form of work injuries that the harassed worker must receive appropriate compensation for.

3. CIVIL PROTECTION OF WORKERS FROM MORAL HARASSMENT IN THE WORKPLACE

If a worker is exposed to moral harassment in the workplace, how he/she could be protected based on the provisions of the UAE and French laws. What is the deterrent penalty for repeating damages resulting from such an act? The answer to these two questions is as follows:

3.1. Legal Provisions that Protect the Worker from Moral Harassment in the Workplace

This section illustrates the standings of the UAE and the French labor laws of moral harassment in the workplace:

3.1.1 Position of the UAE Law

The UAE Labor Law has no provisions that specifically address the issue of moral harassment of workers in the workplace. The UAE Labor Law, which should basically be dedicated to articulating all facts related to moral harassment in the workplace, is devoid of the direct and explicit provisions that compel the employer to prevent any behavior that would expose the worker to moral harassment in the workplace.

This requires to refer to the various UAE laws to identify the reasonable legal provisions to provide civil protection to the worker from moral harassment in the workplace. Perhaps the first of these laws is the Federal Law On Regulation of Labor Relations, which provides for general texts that could be used to detect whether there is an obligation of the employer to prevent any act or behavior that would threaten the workplace or constitute an assault on the worker's personality or dignity. Part of these legal provisions is Article 7 bis of the Federal Decree of Labor Law, which prohibits discrimination that prejudices equal opportunity of employment, equal access to jobs, continuity of employment, and enjoyment of rights. Discrimination is also prohibited between those with the same employment duties. Additionally, Articles 94 and 96 of the same law stipulate that the employer shall ensure that each workplace is perfectly clean, ventilated, and shall provide them with medical care facilities.

Noteworthy, all the rights guaranteed by the federal Regulation of Labor Relations are classified as moral harassment, if violated due to any behavior. In such a case, the worker might demand the dissolution of the employment contract by the judicial authority or abandon his/her work. However, the researchers discourage workers from referring to the

¹¹ CASSITTO, M. G. Le harcèlement moral conséquences sur la santé et la personnalité des victimes, stress et trauma. *Revue francophone du stress et du trauma*. 2004, Vol. 4, No. 3, pp. 173–180.

latter act and urge them to claim compensation against the damages suffered as a result of the moral harassment acts.

The employer may not terminate a worker's contract for being physically unfit while he/she is on sick leave (Articles 90 and 124 of the Federal Regulation of Labor Relations in UAE). On the other hand, the UAE Labor Law permits the worker to abandon their work if they are assaulted by the employer, and the term assault includes material and physical assault (Article 121 of the Labor Law). From the researchers' point of view, the worker's reaction should not be limited to leaving work when the employer assaults them or if the employer violates his/her obligations under the labor contract and the law. The worker should require that the contract be terminated as per the law provisions, and also claim compensation for moral harassment in the workplace as implemented in France.

Article 90 of the UAE Civil Transactions Law that stipulates 'whoever has been subject of an unlawful infringement to one of the rights intrinsic to his personality may ask for the cessation of such infringement and payment of damages for the prejudice sustained'. Perhaps the most important intrinsic rights of the worker's personality, in general, is his/her right to life, body's integrity, mental health and dignity, and the right to express his/her opinion.

Through the above-mentioned texts, it is believed that the worker could refer to the trial court to halt any assault on his/her right to work in a clean environment free from intimidation, bullying, and assault on his/her personality and dignity, in addition to demanding compensation for the harm he/she suffered.

3.1.2 Position of French law

Through the provisions of the first six paragraphs of Article 1152 of the French Labor Law, the French legislator has regulated and articulated the details of acts deemed to be moral harassment in the workplace.

Accordingly, Article 1152-1 prohibits repeated acts leading to the deterioration of an employee's working conditions and those likely to infringe his/her rights or dignity, alter his/her physical or mental health, or compromise his promotion. Based on that, the French legislator has established several criteria that would help the judge determine whether or not there has been moral harassment. They are as follows:

1. Deterioration in the Working Conditions Without Requiring the Harasser's Intent.

This criterion requires repetition in committing the behavior aiming at the deterioration of the workplace, and based on that, the judge could determine whether such behavior constitutes moral harassment or not. The judge could also determine whether the behavior is committed by accident or repeatedly over a period of time under his/her discretion to rule that moral harassment exists or not.

A judgment issued by the French Court of Cassation states: 'Whereas, the behavior of the supervisor constitutes harassment to the workers and that he was facing difficulties in communicating with the workers at the establishment, even those who are close to him described him as a disturbing person. And whereas, this behavior resulted in the worker to suffer from interactive depression that affected her personality and identity. And whereas, the Court of Appeal ruled that the behavior of the officer in charge does not rise

to the level of moral harassment, justifying that such behavior is not related to the female worker's personality even though she has personally suffered from the behavior of her senior officer. Accordingly, the Court of Cassation ruled that the Court of Appeal violated the provision of the first paragraph of Article 1152 of the French Labor Law. Additionally, moral harassment could be realized without requiring the harasser's intention as long as the recurrent behavior is described as the behavior that would lead to the deterioration of the working environment'.¹²

2. Assault on Workers' Rights. Moral harassment leads to violations of the worker's rights, such as the right to equality, equal opportunities, and promotion, the right to get paid, the right to apply for leaves, the right not to be suspended from work without reason, the right not to be tasked to do a job that is not his/her or not even similar to his/her previous one, which he/she was assigned to do after returning from his/her leave or before he/she was granted such leave. The latter case was considered by the French Court of Cassation as a case of moral harassment.

Moreover, the Court of Cassation ruled that the Court of Appeal had failed to take into account the medical certificates provided by the worker to demonstrate the occurrence of moral harassment, in which her health was deteriorating due to labor pressures.¹³

The French Court of Cassation also ruled that the trial judge should not take into account the facts presented by the worker to demonstrate the existence of moral harassment, such as the employer's modification of working conditions without the worker's consent, which constitutes an amendment to the working conditions without the worker's explicit consent as evidence of moral harassment. This is undoubtedly deemed to be a violation of the provisions of Article 1152-1 and Article 1154-1 of the French Labor Law.¹⁴ Noteworthy, the abuse of the worker's rights is closely linked to the assault on the worker's dignity and as explained in the below paragraph.

3. Assault on the Worker's Dignity. Assaulting the worker's dignity means derogating his/her personality as a human being. For example, cursing and slandering a worker, moving him/her to another place of work, stripping him/her of the tools of work, isolating him/her, and attacking his/her right to private life, such as defaming his/her family.¹⁵

4. Jeopardizing the Worker's Psychological and Physical Health.

This criterion is often referred to by workers to claim that they were subject to moral harassment in the workplace. Workers usually present medical certificates stating that they suffer from severe depression or excessive anxiety due to psychological pressures at

¹² Court of Cassation, social chamber, Public hearing of December 11, 2019, Appeal number: 18-24204. In: *Légifrance* [online]. [2020-03-01]. Available at: <<https://www.legifrance.gouv.fr/initRechJuriJudi.do>>.

¹³ Court of Cassation, social chamber, Public hearing of January 8, 2020, Appeal number: 17-27940. In: *Légifrance* [online]. [2020-03-01]. Available at: <<https://www.legifrance.gouv.fr/initRechJuriJudi.do>>.

¹⁴ Court of Cassation, social chamber, Public hearing of January 8, 2020, Appeal number: 17-27940. In: *Légifrance* [online]. [2020-03-01]. Available at: <<https://www.legifrance.gouv.fr/initRechJuriJudi.do>>.

¹⁵ BONAFONS, C. et al. Clarification of the definition of bullying at work Clarifying the definition of bullying. *L'Encéphale*. 2008, Vol. 34, pp. 419–426. See also Court of Cassation, social chamber Public hearing of January 16, 2019, Appeal number: 17-26763. In: *Légifrance* [online]. [2020-03-04]. Available at: <<https://www.legifrance.gouv.fr/initRechJuriJudi.do>>.

work resulting from stress, especially if they deal with a provocative manager.¹⁶ There is no doubt that this matter would jeopardize the worker's career. Furthermore, the deterioration of the work conditions is the result of the nature of arbitrary behavior that constitutes moral harassment committed by the employer.

Article 1152-2 of the Labor Law touches upon a very important provision that stipulates, 'Employees may not be penalized, dismissed, or subjected to discriminatory measures for being or refusing to be subjected to repeated instances of moral harassment, or for being a witness of or reporting such actions. Article 1152-3 also states breach occurred in ignorance of the protective measures on harassment is null. Article 1152-4 provides that employers must take 'all measures necessary to prevent moral harassment in the workplace'. As for Article 1152-5, it stipulates that disciplinary measures are taken regarding any worker who commits a behavior that constitutes moral harassment.

Through these provisions, it is noted that the French legislator regulated the subject of moral harassment in the workplace explicitly in the labor law, unlike the Emirati legislator, who did not do so. This requires the UAE judiciary to punish the perpetrator of moral harassment in the workplace by referring to general provisions in the labor law. This is deemed difficult as it is possible to confuse between the employer's due diligence obligations not to violate the worker's rights stipulated in the law and the contract vis-à-vis the safety of the worker's physical and psychological health in contrast to the employer's obligations regarding moral harassment in which the employer's obligation is to achieve a result, i.e., to prevent any repeated behavior that constitutes moral harassment affecting working conditions and endangering the worker's personality and dignity, physical and psychological health or their career.

In this case, the employer must conduct an internal investigation to verify the facts that indicate moral harassment and prevent it if it exists; otherwise, it will be an infringement of the employer's commitments.

3.2. Civil Penalty for Ascertained Moral Harassment

Discussing the issue of the penalty resulting from proving an incident of moral harassment in the workplace requires identifying the type of civil penalty, and then identifying how it is inflicted on the harasser in both the UAE and French labor laws.

¹⁶ Court of Cassation, social chamber, Public hearing of November 6, 2019, Appeal number: 18-21490. In: *Légifrance* [online]. [2020-03-04]. Available at: <<https://www.legifrance.gouv.fr/initRechJuriJudi.do>>. See also the decision of the following French court of cassation 'ALORS QUE to rule on the existence of moral harassment, it is up to the judge to examine all the elements invoked by the employee, taking into account the medical documents, if any; that in her writings, the employee described the medical follow-up at the end of which two different occupational physicians had noticed a deterioration in her state of health, to the point that the employee had started, on their concordant recommendations, a biweekly psychiatric follow-up with Dr LL ..., psychiatrist, in March 2014 (conclusions p. 117–118); that in support of her writings, she had produced her medical file (exhibits no. 38 and no. 134); that by not retaining this established material element suggesting moral harassment and by not carrying out any analysis, even summary, of the medical file, the Court of Appeal, which therefore did not examine all of the elements invoked by the employee, deprived her decision of legal basis with regard to L. 1152-1 and L. 1154-1 of the labor code'. Court of Cassation social chamber, Public hearing of November 27, 2019, Appeal number: 18-19237. In: *Légifrance* [online]. [2020-03-04]. Available at: <<https://www.legifrance.gouv.fr/initRechJuriJudi.do>>.

3.2.1. The UAE Labor Law

The researchers have already indicated that the UAE legislator has not explicitly stated any provisions pertaining to moral harassment in the workplace. However, referring to legal provisions on human rights in general and workers' rights in particular, it could be argued that there must be a distinction between whether the harasser is another worker, the employer, or the officer responsible for that worker per the job hierarchy.

If the behavior that constitutes moral harassment is committed by the officer in charge or the employer, then the worker is entitled, according to the general sense of Article 121 of the UAE Labor Law, to terminate the employment contract by the worker's sole will without notifying the employer if the employer breaches his/her obligations stipulated in the employment contract, such as compelling the worker to do a job other than specified in the contract that does not match his/her qualifications and moral status. Such a compulsion constitutes an act of moral harassment as it degrades the worker's dignity.

The contract may also be terminated without notifying the employer in case of a moral assault, such as cursing, insult, slander, defamation of the worker's family reputation.¹⁷ The worker could take advantage of Article 913-H of the UAE Civil Transactions Law to request the termination of his/her contract and compensation if the employer does not observe the requisites of ethics and morality while dealing with the worker.

The question that arises here: Is it permissible that a worker requests compensation for the damage they suffer from as a result of moral harassment in the workplace? The UAE Labor Law does not give an explicit answer to this question. However, the general rules of contracts give the right for the contractor to refrain from fulfilling his/her obligation in view of the fact that the other party does not pay compensation once it is proved that the damage has occurred. Also, the worker is entitled to place a request for compensation in accordance with the general rules of liability, against the moral damage they suffer from assaulting the worker's and their family's dignity.

The worker may claim compensation for damages caused by the arbitrary termination of their employment contract on the grounds that the worker is physically unfit if the worker proves that the reason for their physical unfitness is due to the psychological pressures imposed by the employer and his/her behavior. This is based on the fact that such a case is not one of the cases where the employer may terminate the contract by his/her sole will without notifying the worker.¹⁸

If moral harassment is committed by a worker against another one, and whereas the UAE Labor Law does not regulate such a case, the researchers believe that the harassed worker should notify the employer to conduct the appropriate investigation and impose the proper disciplinary penalty against the harassing worker.

¹⁷ Al-SARHAN, A., Al-MAHDAWI, A. *Provisions of the Labor Code, Regulation and Amendments of Federal Labor Relations No. 8 of 1980*. UAE: University Library, 2012, p. 301.

¹⁸ About these cases see Article 120 of the UAE Labor Relations Regulation Act. On the legislative and judicial applications of the arbitrary termination of the employment contract. See also: NAJDA, A. *Brief in the labor law and social legislation of the United Arab Emirates*. UAE: Dubai Police Academy, (1st Ed.), 1997–1998, p. 652.

The researchers also believe that the employer should prevent such behavior. If the employer fails to do so, the worker may file a case against the employer before the competent court per the general rules that enshrine the responsibility of the employer for the actions of the harassed worker (See Article 313-1 Clause B of the Civil Transactions Law). Equally, the employer could, later on, file a case against the harassed worker to pay amounts paid for the harassment victim by the employer. (See Article 313-2 of the UAE Civil Transactions Law).

As for how the penalty is imposed in the UAE law, according to Article 121 of the Labor Law, the worker may leave his/her work without notifying the employer if the latter does not meet his/her obligations and if the employer or his/her representative assault the worker as if such an abandonment means that the contract has an explicit terminating condition that gives the worker such a right. It should be stated that the worker's use of this right does not mean that the worker may lose any fixed right before abandoning his job, such as receiving the end-of-service compensation. The worker is also entitled to claim compensation, if necessary.

The worker may, if exposed to moral harassment in the workplace, report such an incident to the competent labor department, which in turn shall summon the disputing parties, and take what it deems appropriate to settle such a dispute between them amicably. If the department fails to do so, it shall occur within two weeks from the date of receiving the application to refer the case to the Labor Court. The court shall, within three days of the date of receiving the request, set a date for the hearing session. If the claim proved to be valid, then the court shall rule on the case and identify the appropriate compensation. Noteworthy, the lawsuit must be filed within one year from the date of the damage; otherwise, it shall be dismissed in form.

A worker's service shall be deemed to be arbitrarily terminated by his/her employer if the reason for termination is irrelevant to the work. More particularly, termination shall be regarded as arbitrary if it is prompted by a formal complaint filed by the worker with the competent authorities or a legal action instituted against the employer that proved to be valid. Where a worker is arbitrarily dismissed, the competent court may order the employer to pay him/her compensation, to be assessed by the court with due regard to the nature of the work, the extent of damage sustained by the worker and his/her period of service, and after investigating the work circumstances, provided that such compensation shall in no case exceed the worker's wage for three months, calculated on the basis of his/her last wage (Article 122 of the Regulation of Labor Relations, UAE).

3.2.2. The French Law

The French Labor Law grants the worker exposed to moral harassment in the workplace the right to report the incident to the employer to take the necessary disciplinary actions against the harassing worker. The employer shall take all the measures necessary to cease such acts of harassment. If the employer fails to do so, he/she is deemed not to fulfill his/her obligations and shall be held liable to pay the compensation.

The employer may refer to the judge to sentence the harassing worker and to pay an appropriate compensation commensurate with the damage that occurred. The employer could also request the trial court to dismiss the harasser from work. If the employer or the officer in charge, as per the job hierarchy, commits any act of moral harassment, the

worker shall be entitled to request the trial court to terminate his/her contract and to be compensated against the moral harassment he/she suffered from in the workplace. If the worker and employer have a mutual agreement to terminate the employment contract, the worker could request the court to annul the contract on the basis that such a request is made as a result of the impact of moral harassment.¹⁹

As for how the penalty is imposed, the French law has given the victim of moral harassment in the workplace two options. The first is to refer to mediation. The mediator is selected by both parties, and he/she inquires about the relationship between the two parties, and provides the parties with written proposals to end the harassment. If the mediation process fails, the mediator informs the parties of possible penalties and all the stipulated procedural guarantees for the advantage of the victim of harassment. (Article 1152-6 of the French Labor Law).

The French legislator has also granted the victim of moral harassment or the professional union of the worker the right to submit a written request to refer to (the Labor Court) to cease acts of moral harassment and to claim compensation for the damages resulted by means of such an act. The worker, in such a case, is only required to state the facts that constitute moral harassment. The employer should prove that these facts do not constitute moral harassment and that his/her decisions are objective and have nothing to do with moral harassment (Article 1154-1 of the French Labor Law).

If the worker refers to the court to cease the harassment and claim compensation for the damages he/she suffered from as a result of moral harassment in the workplace, any termination of their contract by the employer is null and void. Also, referring to the court to cease the assault and claim compensation for damages as a result of moral harassment must be before the elapse of five years as of the date of the moral harassment incident (Article 1134-5 of the French Labor Law). The limitation period specified by Article 1174-1 of the French Labor Law shall not be applicable to such cases (two years or 12 months).

4. CRIMINAL PROTECTION OF THE HARASSED WORKER IN THE WORKPLACE

4.1. The UAE Law

Upon reviewing the UAE legislative system, it is evident that it does not expressly provide legal provisions specifying criminal liability for committing acts of moral harassment in the workplace. There are no criminal statutory provisions criminalizing moral harassment acts committed by the employer against the worker or by the worker against his/her co-worker.

In the absence of such provisions and considering that certain forms of moral harassment presented in this study are deemed illicit acts and constitute a criminal offense, it is, therefore, essential to refer to the general and traditional rules spelled out in the Penal Code.

¹⁹ Court of Cassation, social chamber, Public hearing of January 23, 2019, Appeal number: 17-21550. In: *Légifrance* [online]. [2021-03-04]. Available at: <<https://www.legifrance.gouv.fr/initRechJuriJudi.do>>.

Under Articles (248, 348)²⁰ of the Penal Code, assault on employees is criminalized. Under Article (348),²¹ the law criminalizes endangering people's lives, health, security, or freedoms. The law also regulates crimes against reputations, defamation, insults, and divulging secrets under Articles (371 to 377). Additionally, under the provisions of Articles (378 to 380) of the law, any violations to the private or familial life of individuals are criminalized. In the absence of an explicit provision criminalizing acts of moral harassment, these provisions could be applied if they correspond to the forms of moral harassment.

4.2. The French Law

The French legislator takes into account the importance of protecting the worker from moral harassment in the workplace, and so imposes criminal protection against risks of being exposed to such acts. Article (222-33-2) of the Penal Code amended by the Law No. 873 of 2014 issued on 4th August 2014 under Article (40) stipulates that 'the fact of harassing others through repeated actions with the purpose or effect of leading to a deterioration of his/her working conditions likely to result in the infringement of his /her rights and dignity, of affecting his/her physical and mental health or of jeopardizing his/her career is punished by two years of imprisonment and a fine of € 30,000'.²² As stated by this provision, we are required to indicate the grounds of such a crime and its punishment.

4.2.1. Crime grounds

As specified by the legal model, the three grounds of the crime are as follows: 1. The status of the perpetrator and the victim. 2. The physical element. 3. The moral element. The following paragraphs tackle each one of these grounds as follows:

1. The Status of the Perpetrator and the Victim

The French legislator requires the availability of special status of the perpetrator and victim at the time of the crime, i.e., to be committed in the workplace, but does not assign a specific status for them as the act of moral harassment could be committed by a subordinate or a co-worker. Therefore, the crime is a must to be committed in the workplace between the harasser who could be the employer or another worker who is a co-worker.²³

²⁰ Article 248 of the UAE Penal Code stipulates anyone 'shall be sentenced to detention or to a fine, whoever makes use of force, violence or threat against a public servant or person in charge of a public service for the purpose of unduly having him do or abstain from doing any of the acts pertaining to his office without attaining his objective there from and, if he does reach his objective, the penalty shall be detention for a minimum term of one year. Should the crime be premeditated or perpetrated by more than one person carrying an arm or if the crime is accompanied with battery, the penalty shall be detention for a minimum period of six months'.

²¹ Article 348 of the UAE Penal Code stipulates 'Shall be sentenced to detention and/or to a fine, whoever deliberately perpetrates an act that exposes the life, health, security or freedom of human beings to danger. Without prejudice to a prejudice any more severe penalty prescribed by law, the penalty shall be detention in case the act results in a prejudice of any kind'.

²² LEROUGE, L. *Workplace bullying and harassment in France and few comparisons with Belgium: a legal perspective*. Workplace Bullying and Harassment, 2013, p. 39.

²³ Court of Cassation, Criminal Chamber, public hearing of May 7, 2019, appeal no.18-83510. In: *Légifrance* [online]. [2020-03-01]. Available at: <<https://www.legifrance.gouv.fr/initRechJurijudi.do>>.

2. The Physical Element

Based on the provision of the aforementioned Article (222-33-2), the physical element of the crime of moral harassment is recognized in the criminal act committed by the perpetrator, i.e., harassing others repeatedly in any form of harassment. For example, the manager exerts pressure over the workers, forces them to work overtime and issues controlling orders, which extremely intensifies the competition between them. Another example is when the manager harasses the worker by recurring phone calls or e-mails, which makes the worker depressed, which has negative impacts on the workplace.²⁴

In addition, there must be essential elements of the physical ground of the act of moral harassment, which include:²⁵

a. Reiteration:

To consider an act as a crime, the legislator requires that act of harassment as this feature turns the moral harassment into a hostile act targeting the worker. The French legislator has not specified the number of frequencies of this act to prove the moral harassment. In such a case, it could be referred to the content and nature of repeated acts, so that they have an impact on the deterioration of working conditions and constitute a violation of the worker's rights and dignity. Hence, in the event a perpetrator commits the act of harassment only once, then such an act is not considered a crime in accordance with the aforementioned Article.

b. Damage:

The legislator demands that the criminal behavior of the moral harassment crime should lead to a deterioration of working conditions and cause harm to the worker by violating his/her rights and dignity, weakening his/her physical or mental health, or threatening his/her career. If such acts result in no harm, then the crime shall not be realized as damage element is one of the physical grounds of this crime. The legislator does not require that the damage should be realized or immediate, but it is sufficient that the damage is the potential to call it a crime.

3. The Moral Element

The moral element of this crime takes the form of general criminal intent with the two elements of knowledge and will. This means that the perpetrator's will should be directed towards committing the crime, knowing its elements as required by law, i.e., the act is not committed due to an accidental mistake.

As for knowledge, it includes all elements of the physical ground of the crime, as stipulated by the legislator. The perpetrator should know that he/she is committing a repeated moral harassment act and that this entails a deterioration in working conditions and a violation of the worker's dignity and rights. If it is proved that the perpetrator is not aware of the crime, this invalidates the moral ground of such a crime as if it did not occur at the time. If the manager's act is a reaction to the worker's failure to

²⁴ Ibid.

²⁵ EZER, M., EZER, O. Workplace harassment, mobbing phenomenon. *Persp: Bus. LJ.* 2012, Vol. 1, p. 298.

fulfill their obligations or due to their inefficiency in dealing with subordinates in a manner consistent with the work environment without intending to harm these subordinates, then the crime cannot be recognized.

The criminal intent is not realized solely by means of knowledge, but the perpetrator's free and flawless will must be directed to commit the act of moral harassment against the worker and harm him/her. If there is no will, the moral ground is not fulfilled, and the crime does not occur. Therefore, the perpetrator who morally harasses the worker under the influence of coercion or insanity is exempted from criminal accountability for the lack of intention to commit such an act consciously. The intent or aim to commit the crime could be acknowledged by proving the harasser's repeated act. This is the point, which the French Court of Cassation raised when examined the judgment of the trial court when it required to have the intent available as an independent condition for criminalizing moral harassment.²⁶

4.2.2. The Penalty Established for the Offence

The French legislator specifies the penalty within the provision of Article (222-33) as the legislator has various punishments for moral harassment to be simple or associated with aggravated circumstances. Article 222-33-2 punishes the perpetrator of the moral harassment crime by two years imprisonment and a fine of € 30,000.

Article 222-33-2-1 (as amended by Law 703/2018) also stipulates: Harassing one's spouse, partner bound by a civil solidarity pact, or cohabitant using repeated words or actions with the aim or effect of degrading the living conditions of the victim, affecting his or her physical or mental health, is punishable by three years' imprisonment and a fine of € 45,000 when these words and/or actions have caused a complete inability to work for eight days or fewer or have caused no inability to work. Such harassment is punishable by five years' imprisonment and a fine of € 75,000 when the words and/or actions have caused a complete inability to work for over eight days.

The same sentences apply when this offense is committed by a former spouse, a former cohabitant, or a former partner bound to the victim by a civil solidarity pact. The penalty under article 222-33-2.2 (amended by Law 703/2018 on 3/8/2018) shall be a one-year-imprisonment and a fine of €15,000 when such acts cause a complete incapacity to work for eight days or less or do not cause any incapacity to work. The crime also includes:

When these remarks or behaviors are imposed on the same victim by several people, in concert or at the instigation of one of them, even though each of these people did not act repeatedly;

When these remarks or behaviors are imposed on the same victim, successively, by several people who, even in the absence of consultation, know that these comments or behaviors characterize a repetition.

The acts mentioned in the first to fourth paragraphs are punishable by two years' imprisonment and a € 30,000 fine 1), when they caused total incapacity for work of more

²⁶ Court of Cassation, Criminal Chamber, public hearing of November 13, 2019, appeal no.18-85367. In: *Légifrance* [online]. [2020-03-04]. Available at: <<https://www.legifrance.gouv.fr/initRech/Jurijudi.do>>.

than eight days; 2) when they were committed against a minor of fifteen years of age; 3) When they were committed on a person whose particular vulnerability, due to his age, to an illness, a disability, a physical or mental impairment or a state of pregnancy, is apparent or known to the author; 4) when they were committed by the use of an online public communication service or through a digital or electronic medium; 5) when a minor was present and attended.

The legislator thus provided for a stronger penalty if the offenses mentioned in paragraphs 1 to 4 by a three-year-imprisonment and a fine of € 45,000 when committed with two of the circumstances mentioned from 1 to 5 occur.

The researchers believe that the position of the French legislator is sound and establishes the worker's security and safety in the workplace from moral harassment. It is a position that we hope the UAE legislator would adopt.

5. CONCLUSION AND RECOMMENDATIONS

The French legislator has addressed the issue of moral harassment in the workplace explicitly in the French Labor Law, unlike the UAE legislator, who has not done so. This entails that the UAE judiciary system is to punish the perpetrator of moral harassment in the workplace by referring to the general provisions in the labor law. While UAE legislation is devoid of any explicit legal provisions specifying the criminal liability for acts of moral harassment in the workplace. Meanwhile, the French legislator takes into account the importance of protecting the worker from moral harassment in the workplace and imposed criminal protection against the risk of being exposed to such acts.

Therefore, it is recommended that the UAE legislator should follow the approach of his counterpart, the French legislator, to address the crime of moral harassment in the UAE Labor Law - the Regulation of Labor Relations. This would help in criminalizing these acts in the UAE Penal Code, so that special protection is imposed for the worker in the workplace by the effect of explicit provisions in the Federal Penal Code and the Regulation of Labor Relations.