Resolution Nº 351/2020 of the National Council of Justice and the conventionalization of Law: the conceptual revisitation of moral harassment and the safe and healthy working environment right

A Resolução Nº 351/2020 do Conselho Nacional de Justiça e a convencionalização do Direito: a revisitação conceitual do assédio moral e o direito ao meio ambiente do trabalho seguro e saudável

Resolución Nº 351/2020 del Consejo Nacional de Justicia y la conven- cionalización del Derecho: la revisión conceptual del acoso moral y el derecho al ambiente de trabajo seguro y saludable

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ABSTRACT
Violence in the working environment is a phenomenon that challenges workers, employers and the Public Administration in combating and eliminating it. Among the multiple types of hostile acts is moral harassment, which, although it appears as a psychosocial risk in Brazilian labor relations, has not been autonomously disciplined by any federal law of private law, relegating the adequate implementation of the fundamental human right to a safe and healthy work environment. In this context, since 2019, the International Labor Organization (ILO) has included Convention No. 190 in its normative list, which deals with the elimination of violence and harassment in the world of work. In Brazil, the theme, within the scope of work relationships occurring in the Judiciary, is guided by Resolution No. 351/2020 (and its subsequent amendments) of the National Council of Justice, which established the Policy for the Prevention and Confrontation of Moral Harassment, of Sexual Harassment and Discrimination. This article aims to identify and trace evolutionarily the position of the National Council of Justice regarding
the material aspect of the ILO's conventional law, notably regarding the concept of moral harassment, taking into account the minimum duty of conventionalization of the Law, even in the face of non-ratification of the commented international treaty. It concludes that, originally, the text of Resolution No. 351/2020 chose a criterion for identifying moral harassment adopted by classical doctrine and Brazilian majority jurisprudence. However, in 2023, imbued with the duty to conventionalize the law and inspired by the guiding nature of the material legal source of treaties on human rights not yet ratified, it aligned itself with the concept of moral harassment enshrined in Convention No. 190, positioning itself on the flank axiological approach to realizing the fundamental human right to a safe and healthy working environment in the sphere of public servants of the Judiciary.

**Keywords:** Moral Harassment, Resolution 351/2020/CNJ, Safe and Healthy Working Environment.

**RESUMO**
A violência no meio ambiente de trabalho é fenômeno que desafia trabalhadores, empregadores e a Administração Pública no seu combate e eliminação. Dentre as múltiplas modalidades de atos hostis está o assédio moral, que, embora apareça como risco psicosocial nas relações de trabalho do Brasil, não foi disciplinado autonomamente por nenhuma lei federal de direito privado, relegando a segundo plano a efetivação adequada do direito humano fundamental a um ambiente de trabalho seguro e saudável. Nesse contexto, desde 2019, a Organização Internacional do Trabalho (OIT) tem no seu elenco normativo a Convenção nº 190, que trata sobre a eliminação da violência e do assédio no mundo do trabalho. No Brasil, o tema, no âmbito das relações de trabalho ocorridas no Poder Judiciário, orienta-se pela Resolução Nº 351/2020 (e suas alterações posteriores) do Conselho Nacional de Justiça, que instituiu a Política de Prevenção e Enfrentamento do Assédio Moral, do Assédio Sexual e da Discriminação. Tem o presente artigo o objetivo de identificar e trazar evolutivamente o posicionamento do Conselho Nacional de Justiça quanto ao aspecto material do direito convencional da OIT, notadamente quanto ao conceito de assédio moral, levando em conta o dever mínimo de convencionalização do Direito, mesmo diante da não ratificação do tratado internacional comentado. Conclui que, originariamente, o texto da Resolução Nº 351/2020 elegeu um critério de identificação do assédio moral adotado pela doutrina clássica e pela jurisprudência majoritária brasileira. Todavia, em 2023, imbuído pelo dever de convencionalização do direito e inspirado pelo caráter orientativo da fonte jurídica material dos tratados sobre direitos humanos ainda não ratificados, alinhou-se com o conceito de assédio moral consignado da Convenção nº 190, posicionando-se no flanco axiológico de concretização do direito humano fundamental ao meio ambiente de trabalho seguro e saudável na esfera dos servidores públicos do Poder Judiciário.

**Palavras-chave:** Assédio Moral, Resolução 351/2020/CNJ, Meio Ambiente de Trabalho Seguro e Saudável.
RESUMEN
La violencia en el medio ambiente de trabajo es un fenómeno que desafía a los trabajadores, a los empresarios y a la Administración Pública a combatirla y eliminarla. Entre los múltiples tipos de actos hostiles se encuentra el acoso moral, que, si bien aparece como un riesgo psicosocial en las relaciones laborales brasileñas, no ha sido disciplinado de manera autónoma por ninguna ley federal de derecho privado, relegando la adecuada implementación del derecho humano fundamental a un lugar seguro, y ambiente de trabajo saludable. En este contexto, desde 2019, la Organización Internacional del Trabajo (OIT) incluye en su lista normativa el Convenio núm. 190, que trata sobre la eliminación de la violencia y el acoso en el mundo del trabajo. En Brasil, el tema, en el ámbito de las relaciones de trabajo que ocurren en el Poder Judicial, está orientado por la Resolución nº 351/2020 (y sus posteriores modificaciones) del Consejo Nacional de Justicia, que estableció la Política de Prevención y Enfrentamiento a la Moral. Acoso, de Acoso y Discriminación Sexual. Este artículo tiene como objetivo identificar y rastrear evolutivamente la posición del Consejo Nacional de Justicia respecto del aspecto material del derecho convencional de la OIT, en particular respecto del concepto de acoso moral, teniendo en cuenta el deber mínimo de convencionalización del Derecho, incluso frente a de no ratificación del tratado internacional comentado. Concluye que, originalmente, el texto de la Resolución nº 351/2020 eligió un criterio de identificación del acoso moral adoptado por la doctrina clásica y la jurisprudencia mayoritaria brasileña. Sin embargo, en 2023, imbuido del deber de convencionalizar el derecho e inspirado en el carácter rector de la fuente jurídica material de los tratados de derechos humanos aún no ratificados, se alineó con el concepto de acoso moral consagrado en el Convenio núm. 190, posicionándose se sitúa en el flanco enfoque axiológico de la realización del derecho humano fundamental a un entorno de trabajo seguro y saludable en el ámbito de los servidores públicos del Poder Judicial.

Palabras clave: Acoso Moral, Resolución 351/2020/CNJ, Ambiente de Trabajo Seguro y Saludable.

1 INTRODUCTION
A well-known character from Greek mythology carries symbolism that permeates human interpersonal relationships, a tale told since the beginning of time: violence as a shaping element and a consequence of power manifestations. This character is the myth of Medusa, the only mortal among the Gorgons, sister to Euryale and Stheno.

The result of reading Homer, Ovid, and Apollodorus’ narratives about Medusa leads to a story of multiple violences exacerbated by those who had the duty to protect. As a maiden of Athena, Medusa was renowned for her unique beauty, with remarkable
and beautiful hair capable of attracting various gazes. Due to a disagreement between Athena and Poseidon, followed by the sea god's advances, Medusa was raped by him in the temple of Pallas. Instead of embracing the victim, Athena, driven by a previous aesthetic rivalry with her servant, imposed on Medusa the punishment of living in seclusion, with her hair transformed into snakes, and anyone who gazed into her seductive eyes would be turned to stone (Hilgert, 2020).

The violence inflicted upon Medusa is the subject of various studies in the fields of philosophy, social sciences, and gender studies, primarily. And rightly so. The multiple meanings embedded in the presented myth bring valuable reflections on the post-modern real world, whether in the public arena or private spaces. Whether concerning the duty to protect those in positions of vulnerability or addressing victim-blaming and the minimization of the aggressor's actions, there is an implication to focus on and generate actions for the redefinition of historically and socially constructed themes.

The working world, as one of the human activity and existence domains’, reveals itself as a facilitator, stimulator, or rewarmer of violent and harassing behaviors. However, the primary focus of debate, legislative production, and doctrinal discussions has often been limited to private-sector employment relationships, even though the Brazilian constitutional text guarantees civil public servants, by virtue of Article 39, §3, a reduction in the inherent risks of work through health, hygiene, and safety regulations.

Taking a focused analytical approach, research on violence and harassment perpetrated within the scope of the Judiciary is even more limited. According to the results of the bibliometric study outlined in the 2nd National Survey on Harassment and Discrimination in the Judiciary (CNJ, 2023), a search using the terms "harassment" and "Judiciary" in the databases such as Scientific Electronic Library Online - Scielo Brazil, the Thesis and Dissertations Bank of the Coordination for the Improvement of Higher Education Personnel (Capes), Google, Google Scholar, and references from previously published works on the subject, revealed that between the years 2003 and 2019, only ten scientific studies were identified.

Because psychological violence is a recognized psychosocial risk under international, community, and national law regarding the work environment, it is
necessary to analyze the regulations on the topic of moral harassment in the public sphere, particularly within the core of the Brazilian justice system. The starting point will be Resolution No. 351, dated October 28, 2020, from the National Council of Justice (CNJ), which instituted the Policy for Prevention and Confrontation of Moral Harassment, Sexual Harassment, and Discrimination, aiming to promote dignified, healthy, safe, and sustainable work within the Judiciary.

The need to discuss the topic from a legal perspective arises from the scarce doctrinal approaches (which do not presume the non-existence of the social phenomenon) and the actions of the International Labour Organization (ILO) on the issue of violence and harassment at work. The combat, prevention, and elimination perspective advocated by the ILO encompass both the private and public sectors, whether in terms of conventional law or soft law. This includes Convention No. 190, 2019, on the elimination of violence and harassment in the world of work, and Recommendation No. 206 on the elimination of violence and harassment in the world of work, also from 2019.

At this point, the present work faces the following problem: given the fact that Brazil has not ratified ILO Convention No. 190, under what aspect would it be possible to analyze the conventionalization of the content of CNJ Resolution No. 351/2020, particularly concerning the concept of moral harassment?

The first section focuses on presenting the presence of moral violence in employment relationships and the emergence of the subject as a specialized doctrine. Subsequently, reflections are provided on the state of the art regarding conventional production in human rights and the Brazilian legislative gap regarding the need to systematically regulate moral harassment. In the third part, some considerations are made about the general theory of conventionality control in Brazil along with the specificities of international labor treaties of the ILO. The final section delves into discussing possible incongruities regarding the concept of moral harassment adopted by Resolution No. 351/2020 and the current state of the regulation concerning the substantive content of ILO Convention 190.
2 EMPLOYMENT RELATIONSHIPS AND MORAL HARASSMENT: FROM OBSERVATION TO SCIENTIFIC APPROACH

Violence has existed as a social phenomenon as ancient as human existence itself. Acts of violence are intrinsic to social coexistence, reconsidered, redefined, and studied as levels of civilization progress, and the notions of ethics and morality are redefined. From major global conflicts between states, through educational relationships to intra-family injuries and aggressions, manifestations of violence spare no area of life in society.

The definition of violence varies depending on the life interest under discussion. The World Health Organization (WHO), for instance, adopts the criterion of intentional use of physical force or power, whether real or under conditions of direct threat, directed at the perpetrator or "against another person, or against a group or a community, resulting or likely to result in injury, death, psychological harm, developmental impairment, or deprivation" (Krug, Dahlberg, Mercy, Zwi & Lozano, 2002).

The broader concept adopted by WHO is intentional. The evolution of literature and norms shows that seemingly lawful acts, under certain circumstances, are silent expressions of violence, or acts that were historically undervalued or dissociated from the concept of violence (e.g., discrimination is now understood as a form of violence).

Approaching violence prevention from the perspective of protecting and preserving public health is likely to have the broadest scope of incidence, adopting transdisciplinarity in pursuing collective action and considering the direct impact on individual and social well-being. From this premise, it is observed that behaviors deemed acceptable and non-violent in certain cultures do not cease to be acts of violence as they affect the physical, sexual, and psychological integrity of the victim, with the identification criterion being the repercussion on systemic health.

The reductionist idea of individualized and physically oriented violence is outdated. The treatment provided by the United Nations agency classifies violence into self-inflicted, interpersonal, and collective categories, with violent acts occurring in physical, sexual, psychological, or involving deprivation or neglect (Krug, Dahlberg, Mercy, Zwi & Lozano, 2002).
In the Brazilian context, Law No. 11,340, dated August 7, 2006, aimed at preventing violence against women, defines, in its article 7, four forms of violence: physical, patrimonial, psychological, moral, and sexual. Subsequently, Law No. 14,188, dated July 28, 2021, introduced into the national legal system the provision of the crime of psychological violence against women. Although the rules are aimed at women, they innovate by introducing differentiations regarding the types of violence. For didactic, methodological, and the purposes of the ongoing work, the term "moral harassment" will be adopted here to encompass psychological and moral violence.

As a social fact and cultural element, violence is reflected in employment relationships. Beyond the discursive illusion of corporate training regarding the separation of workers from the consequences and repercussions of labor in their private lives or the compromise of productive efficiency due to extraneous personal setbacks, the real world indicates that workers and employers influence and are influenced by multifactorial processes. However, when analyzing the intensity of the phenomenon in the workplace and the lack of specific systematization regarding moral harassment, one must question the reasons for such silence or omission.

The mere domination, to a greater or lesser degree, of human beings by others has always instrumentalized an expression of physical violence, carrying with it the idea of appropriating the individuality and dignity of the dominated. Thus, the main foundation of power manifested in the employment relationship lies in the inequality between people. It is in this difference determined and potentiated by economic superiority resulting from being the owner of the means of production that one of the first origins of workplace moral harassment is situated.

The survival of slavery for millennia, tempered by the figure of serfdom and relativized by the emergence of the first labor laws in the context of the Industrial Revolution, indicates that progress in the protection of labor social rights is a slow, non-linear process that advances and retreats depending on the economic, social, and political conditions of a particular state and people.

Democratic constitutionalism and international human rights law have fundamentally contributed to expanding the incidence of human rights protection beyond
purely economic and contractual issues. However, the context created by economic transformations, the rise of global conglomerates, and capitalist formatting, notably from the 1960s regarding the production model, imposed an organizational and revamped guise of moral and psychological violence, under the morphology of new relational and accountability techniques in employment relationships. This is the adoption of the Toyota production model in replacement of the Fordist production model.

In the Toyota organization, there is a latent decentralization of activities considered secondary, the specialization of services, and an emphasis on productivity and efficiency, along with a focus on cost reduction, precariousness, and flexibility of employment relationships. In this organizational form, people management also underwent profound changes, adopting methods such as goal setting, just-in-time work, the concept of total quality, competitiveness, individualism, and the breakdown of professional solidarity (Brito, 2016).

From this model of productive restructuring, the subordination present in employment relationships, while undergoing an attempt at terminological softening (e.g., replacing the term "employee" with "collaborator"), adopted measures of demand and productivity capable of compromising the worker's health, especially in terms of psychological well-being. In this form of work management, increasingly higher results are demanded, even if it requires stress management typified by excessive surveillance and demand for results; fear, using threats of dismissal and coercions against the worker; and shame management, evidenced by "(...) public humiliations such as shouting, insults, and the creation of productivity rankings for each employee" (Brito, 2016).

The first studies on harassment have their roots in the research of ethologist Konrad Lorenz in 1963. In the work "On Aggression," Lorenz coined the Swedish expression "mobbning" while studying the behavior of smaller animals that restricted and attacked larger ones, sometimes even their respective predators (Duarte, 2019).

Since the conclusions drawn about the impulsivity of behaviors produced by Lorenz, other studies have been conducted related to interpersonal relationships. In 1972, German physician Peter Paul Heinemann analyzed violence in the school environment among adolescents. Heinemann's observations considered the behavior of a group against
a specific individual (Fernandes & Dell’Aglio, 2023) when their space was invaded and served as the basis for the research developed by Swedish-Norwegian psychologist Dan Olweus, published in 1993, which introduced the term "bullying" in the physical and verbal perspective in the school environment, considered one of the theoretical references in the field.

Since the 1990s, the analysis and refinement of research have ceased to consider only the psychological role of the harasser and the victim (the traditional and interpersonal approach to harassment) but have also included in the psychosocial risk field the layout of the economic and business activity in which the employee is inserted—namely, organizational culture and work structure.

Despite the abundant academic production on moral harassment and the recurrence of the conduct in legal actions and labor inspections, conventional production in the field of public international law has historically focused more on combating discrimination, racism, and protecting vulnerable groups. The framing of moral harassment has occurred through the intertwining and systematic interpretation of multiple legislations, with moral violence seen, from a regulatory standpoint, as of lesser importance and treated more as a qualifying characteristic of discriminatory or racist conduct.


However, what is observed in the Brazilian infraconstitutional normative framework, more than forty years after the first doctrinal systematizations and the initial
international treaties on the subject, is a deliberate legislative silence specific to the appropriate treatment of workplace violence.

3 MORAL HARASSMENT AND THE OMISSION IN BRAZILIAN FEDERAL LEGISLATION

The specific legislative vacuum creates an illogical structure of conceptual causes and consequences (of moral harassment) without the formal existence of the category in the legal system. This normative absence results in a non-incidence of positive law defining behaviors and sanctions, at times distancing or relativizing the state punitive action based on the fluidity and plasticity of jurisprudence. Behavioral punishment is constructed without defining, from the perspective of the principle of strict legality, what constitutes the behavior.

The social and qualitative balance for labor relations is undoubtedly negative, both because punitive paradigms, definitions of harassing conduct, and cultural understanding of workplace violence in the Brazilian context are not created. From the employer's perspective, there is insecurity regarding the moral and legal obligation to combat and prevent moral harassment without having a prior legislation that objectively outlines it, relegating possible offenses to the discretionary and subjective decision-making of the specific case. On the employee's side, there is dissent regarding the elements forming the recognition of harassment, such as the concept of "repetition," "intent," among others, leading to the non-recognition of violence or the fixation of underestimated compensations.

Consider the case of Law No. 14,457, of September 21, 2022, as an example of this legal uncertainty. Among other regulations, this legal instrument establishes the prevention and combating of sexual harassment and other forms of violence in the workplace (Art. 1, VI), changes the name of the Accident Prevention Internal Committee (CIPA) to the Prevention of Accidents and Harassment Internal Committee, and requires companies with a constituted CIPA to adopt measures (exemplified only) to prevent and combat sexual harassment and other forms of violence in the workplace (Art. 23).
These measures feature the inclusion of conduct rules regarding sexual harassment and other forms of violence in the company's internal regulations (Art. 23, I); the establishment of procedures for receiving and monitoring complaints, investigating facts, and, when necessary, applying administrative sanctions to those directly and indirectly responsible for acts of sexual harassment and violence, ensuring the anonymity of the complainant, without prejudice to the appropriate legal procedures (Art. 23, II); inclusion of themes related to the prevention and combating of sexual harassment and other forms of violence in the activities and practices of the CIPA (Art. 23, II); and conducting, at least every 12 (twelve) months, training, guidance, and awareness actions for employees at all hierarchical levels of the company on topics related to violence, harassment, equality, and diversity in the workplace, in accessible and effective formats for such actions.

The significant changes introduced by the discussed law and impacts the protection of human rights for workers. However, despite legislative progress, once again, the combat and prevention of something not precisely defined is mandated: moral harassment, framed in the category of "other forms of violence."

In other legislative areas, moral harassment is indirectly or directly addressed. Law No. 8,112, dated December 11, 1990, in articles 116, IX, and 117, V, imposes on civil public servants the duty to maintain conduct compatible with administrative morality and prohibits the expression of approval or disapproval within the office. Continuing the trend of sparse and fragmented regulations, Law Nº 14,612, dated July 3, 2023, which amends Law No. 8,906, dated July 4, 1994 (Lawyer Statute), to include moral harassment, harassment sexual and discrimination between ethical and disciplinary infractions within the scope of the Brazilian Bar Association (OAB)\(^1\).

The deafening infraconstitutional silence described so far challenges a basic constitutional pillar of the Democratic Rule of Law: strict legality, substantiated in Article 5, paragraph II, of the Brazilian Federal Constitution of 1988. Considering that the

\(^1\)The art. 34, §2º, item I of the Law Statute was born out of tune with ILO Convention No. 190, as it establishes the presence of repeated conduct as a requirement for moral harassment, incurring the same conceptual problem as criminal provisions.
regulations mentioned allude to the combat against moral harassment and, by logical deduction, will involve either the action of punitive administrative law (labor inspection) or labor jurisdictional action, there is naturally a gap in formal legality regarding the figure of moral harassment. Therefore, from the perspective of constitutional and administrative doctrine, "(...) the Public Administration cannot demand certain behaviors from citizens that are not explicitly stated in strict law" (Correia, Silva & Bilhim, 2015).

Although not delving into the merit of alleged incompatibility or constitutional non-reception of constitutional integration carried out by administrative authorities, it must be recognized that the tool of integrative hermeneutics is not to be applied as a temporary solution mechanism for the Legislative's inertia. The incapacity, inability, or deliberate inaction of the Brazilian Federal Parliament to legislate on social and legal facts that daily afflict workers indicates a mismatch between the society project structured by the 1988 constitutional order and the misguided paths that the ordinary legislator has taken in labor matters.

The withdrawal of the federal legislator from the regulatory duty is not new. The merely symbolic effect that Article 7, paragraph I, of the Republic’s Constitution has assumed represents such inertia. This provision ensures a protected employment relationship against arbitrary or unjustified dismissal, according to a complementary law, with compensatory indemnity, among other rights. Even though it is part of the set of rights considered as a fixed or fundamental clause by the jurisprudence of the Supreme Federal Court (ADI 1,946 MC, rapporteur Min. Sydney Sanches, j. 29-4-1999, DJ of 14-9-2001), the necessary enactment of a complementary law, thirty-six years after the promulgation of the constitutional text, has not occurred.

A relevant issue is the discussion of the nature of legislative omission in labor regulation, particularly regarding moral harassment. The seventy-seven thousand and five hundred labor lawsuits on the subject filed in 2022 in the Labor Court (Superior Labor Court, 2023) have not been sufficient for a legal approach that sheds light on the problem of legal omission and robust legislative mobilization at the federal level or, at least, the ratification and incorporation of ILO Convention No. 190 by Brazil until now.
Legislative insufficiency ends up attracting the defense of the application of other legal branches that would be supplementary, such as criminal law. Configuring the presence of the social fact and its harmful aspect to labor relations, combined with the precarious response of the legal system in this matter, reinforces the increase in penal punitivism (e.g.: articles. 146-A, 147-A and 147-B of the Brazilian Penal Code2) without even creating regulations in the labor and administrative spheres of moral harassment. The defense of criminal openness is seen as an alternative given the "(…) lack of a national general law to prevent and combat workplace harassment, making the response of other legal branches insufficient to address the problem" (Gomes & Silva Neto, 2019).

The approach becomes even more thorny when dealing with workplace harassment in the public administration. The scant existing legislation is found in specific municipal and state laws, applicable to public servants governed by their respective legal regimes, with no general law for federal public service.

Is one facing an eloquent silence, a non-right, or a mere legislative gap? The theory of eloquent silence is within the concept of constitutional silence as one of the hypotheses of incompleteness of the constitutional system itself, which, due to its political nature and generic evaluative archetype, cannot regulate all areas and situations applicable to human life. It differs from legislative gaps in the strict sense. When it comes to constitutional silence on a particular issue, the will of the original constituent power must be considered because silence expresses the will and manifestation of what is understood as constitutional within a certain legal order.

Silence is a form of constitutional communication, either because the regulated hypothesis is the only possible one, making analogy or any filling of a supposed constitutional gap inappropriate, or because the legal interest has its regulation in the infraconstitutional level, allowing the confrontation of political forces or because there

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2The advance in criminal legislation regarding crimes against personal freedom independently typify conduct that characterizes moral harassment, without, however, providing a qualification regarding the work environment. As moral harassment is a behavior characterized by multiple attack, isolation, relationship and punitive techniques (Barros, 2005), characterized and with aspects that only occur in the face of psycho-social risks at work, each criminal type described above only meets certain aspects, sometimes peripheral and eminently overt, more violent and easier to detect behaviorally. It should be noted that both art. 146-A and 147-A use the expressions “systematically” and “repeatedly”, moving away, as will be seen, from the concept of violence and harassment in ILO Convention No. 190.
should be no constitutional message on the matter, that is, consciously decided void (Garcia Gil, 2020).

There is no uniformity in understanding eloquent silence as a constitutional category, as the jurisprudence of the Supreme Federal Court (STF) has not maintained methodological unity when addressing it. Although mentioned as a restraint of the Court itself in the Direct Action of Unconstitutionality No. 54-DF (ADI 54), which dealt with the legality of abortion of anencephalic fetuses, it was relativized in the Direct Action of Unconstitutionality No. 3,510/DF (ADI 3,510) in the discussion on stem cells by delegating to the interpreter the aspects of protection of the right protected by constitutional prescription (right to life, in casu). There is a position of the Supreme Court that goes further: it absolutely rejects the theory of eloquent silence based on the principle of human dignity and evolutionary principiological interpretation, as in the decision in the Direct Action of Unconstitutionality No. 4,277/DF (ADI 4,277), on the constitutionality of stable unions between people of the same sex (Garcia Gil, 2020).

Obviously, workplace harassment is not a matter to be specifically regulated by the constitutional text due to the lack of typical materiality required for what is called the “constitutionalization” of private law in the form of constitutional elevation. There is an eloquent silence for the exercise of ordinary legislative function, based on the values and fundamentals inscribed in the constitutional text.

The Brazilian Federal Constitution establishes human dignity and the social values of labor and free enterprise as some of the foundations of the Federative Republic of Brazil (art. 1, III and IV). It elected the promotion of the well-being of all, without prejudice to origin, race, sex, color, age, and any other forms of discrimination, as one of the objectives of the republic (art. 3, IV), and defined as a fundamental right the inviolability of the intimacy, private life, honor, and image of individuals (art. 5, X). It also guarantees the reduction of inherent risks to work through health, hygiene, and safety standards (art. 7, XXII) and bases the economic order on the valuation of human labor and free enterprise, aiming to ensure a dignified existence for all (art. 170). It also places health as a right for all and a duty of the State, guaranteed through social and economic
policies aimed at reducing the risk of disease and other harms and ensuring universal and equal access to actions and services for its promotion, protection, and recovery (art. 196).

In all Brazilian mentioned federal laws, there was no conventional alignment with the content of ILO Convention No. 190 concerning the concept of workplace harassment. Even though this convention has not been ratified by Brazil until now, given the absence of national regulations on the matter, the ILO's role is seen as a legislative compass in labor matters, and it is about how this prior or subsequent control was conducted by the National Council of Justice that the following section deals with.

4 CONVENTIONALITY CONTROL IN BRAZIL: THEORITECAL NOTES AND APPLICATION TO THE LABOR WORLD

Intending to achieve the intended purpose of the current dissertation, it is essential to differentiate between the control of conventionality of internal norms and the phenomenon of conventionalization of law. This section addresses the first type in order to clarify the scope and possibilities for the institute to reach the topic under discussion.

In the post-World War II period, there was a great international effort, which continues to this day, to regulate, grant some type of control, and normative effectiveness of human rights. From then on, since 1945, with the creation of the United Nations - UN, and in 1948 with the Universal Declaration of Human Rights, there has been a structuring, publication, and adherence to Declarations, Conventions, and Treaties on Human Rights.

However, it was not enough to simply list and recognize basic rights in the international community, mediated by public international law. The creation of global and regional systems and organs for the protection and monitoring of human rights was imperative. The methodological set of the institutional structure and protective normativity of human rights was called international human rights law. Within such a scenario, “the International Labour Organization (ILO) was a precursor to this movement,
as it was created in 1919, having since then established an international system aimed at protecting labor human rights³ (Beltramelli Neto & Marques, 2020).

Since the process of growth of international human rights law, a dialogue has been opened between sources of national law and public international law, made possible by provisions for incorporation, application, and systematization of the hierarchy or heterarchy of human rights treaties. This intersectionality is observed both in the field of constitutional law, echoing in jurisprudence and doctrine, or in the action of Regional Courts for the Protection of Human Rights, such as the I/A Court H.R., as well as in the control of internal acts based on conventional law.

It is in this context that the control of conventionality of internal norms arises. In brief, it is the "process of vertical compatibility (especially material) of domestic norms with the commands found in international human rights conventions" (Mazzuoli, 2019). It is not limited only to the textual and content comparative criterion of national positive law with human rights treaties but considers the interpretations established by international bodies (jurisdictional or not) responsible for monitoring and investigating human rights violations (Beltramelli Neto & Marques, 2020).

The phenomenon operates in a dual manner. In the first line, abstractly, through the actions of global and regional bodies that, with their decisions, aim to ensure compliance and implementation of international human rights law by national States, notably for failing to comply with international treaties to which they are directly or indirectly obligated. On the other hand, it materializes concretely or diffusely from the conformation of national law with the provisions of treaty law, embodying the so-called principle of good faith, expressed by Article 26 of the Vienna Convention on the Law of Treaties of 1969, according to which the contracting parties must make efforts to voluntarily comply with international law norms. In certain cases, such as the provision of Article 2 of the American Convention on Human Rights, it even has the power to

³Despite most international labor law rules has been produced by the ILO, there is provision for labor human rights disseminated in regional systems of protection, such as the Inter-American Court of Human Rights – I/A Court H.R., the Inter-American Declaration of the Rights and Duties of Man of 1948, and the American Convention on Human Rights of 1969, all within the framework of the Organization of American States - OAS.
amend local legislation to comply with the dictates of obligations assumed within the framework of international law (Beltramelli Neto & Marques, 2020).

The diffuse alignment of domestic law with the paradigm of public international law essentially occurs through judicial action, but also through the actions of the Executive and Legislative branches, concerning their competencies and typical functions within the legislative process, whether in a preventive or repressive manner. From the perspective of the normative acts’ chronology, in-conventionality is present when the law is subsequent to the international human rights treaty and conflicting with it, declaring its invalidity, unlike the hypothesis of the anteriority of the act with reference to the paradigm treaty, cases where the phenomenon of *lex posterior derogat priori* will occur (Moreira, 2015).

Regarding conventional production for the world of work the ILO elected eight fundamental conventions, within its scope, it enshrined the Declaration of Philadelphia of 1944, annex to the Constitution of that body, and the Declaration on Fundamental Principles and Rights at Work of 1998, as fundamental documents for the construction of the remaining conventional rules and recommendations to member countries.

Article 2 of the ILO Declaration on Fundamental Principles and Rights at Work and its follow-up declares that all Member States of the ILO, even if they have not ratified the fundamental conventions, have a commitment derived from the fact of belonging to the Organization to respect, promote, and realize, in good faith and in accordance with the Constitution, the principles relating to fundamental rights that are the subject of basic conventional law.

The principles adopted in Article 2 of the aforementioned Declaration with their respective conventions constitute the framework of the concept of decent work and are as follows: a) Freedom of association and the effective recognition of the right to collective bargaining (Convention No. 87, on Freedom of Association and Protection of the Right to Organize, 1948, and Convention No. 98, on the Right to Organize and Collective Bargaining, 1949); b) Elimination of all forms of forced or compulsory labor (Convention No. 29, on Forced or Compulsory Labor, 1930, Convention No. 105, on the Abolition of Forced Labor, 1957, and the 2014 Protocol to Convention (No. 29) on Forced or
Compulsory Labor, 1930); c) Effective abolition of child labor (Convention No. 138, on the Minimum Age, 1973, Convention No. 182, on the Worst Forms of Child Labor, 1999); d) Elimination of discrimination in respect of employment and occupation (Convention No. 100, on Equal Remuneration, 1951, and Convention No. 111, on Discrimination in Respect of Employment and Occupation, 1958).

On June 10, 2022, the 110th International Labour Conference added, through Resolution No. 1, "safe and healthy working environment" to the existing four Fundamental Principles and Rights at Work (FPRW). As a result, two conventions dealing with occupational health protection received the status of "fundamental conventions": Convention No. 155, on Occupational Safety and Health, 1981, with Recommendation No. 164; and Convention No. 187, Promotional Framework for Occupational Safety and Health, 2006, and its respective Recommendation No. 197 (Miné, 2023).

The recognition of a safe and healthy working environment as a fundamental principle to be observed by countries, regardless of the ratification of conventions, represents a significant advancement in recognizing the human right to a balanced work environment. The definition of a worker here is not limited solely to the employment relationship but to a broader range of relational possibilities in labor, whether paid or unpaid, employed, self-employed, public servants, outsourced employees, interns, or any individuals providing some form of service, but who are within the context of this working environment (Melo, 2013).

At this point, it is noted that the ILO had a still conservative position regarding the psychosocial aspects of occupational environmental risks. Workplace violence should also be associated as a harmful and hindering element to the human right to a healthy work environment. In times of overproductivity, acceleration, and competition in socio-labor relations, it becomes increasingly evident that psychological terror, manifested in the form of psychological harassment, whether individualized or in association with chemical, physical, biological, mechanical, ergonomic agents, has the potential to "trigger biopsychophysiological and social reactions with repercussions on the health, physical integrity, and quality of life of the worker" (Gonçalves, 2011).
Convention No. 190 (and its respective Recommendation No. 206), on the elimination of violence and harassment in the world of work, adopted in June 2019 by the International Labour Conference, entered into force on June 25, 2021, after ratification by Uruguay and Fiji Islands. The 110th International Labour Conference took place one year after the entry into force but remained silent on combating and eliminating violence and harassment in the world of work. Even though Article 3(e) of Convention No. 155 clarifies that the term "health" concerning work encompasses the absence of affections or diseases, physical and mental elements that affect health and are directly related to safety and hygiene at work, it is seen that the ILO, by not including Convention 190 in the list of fundamental conventions, opted for a predominantly occupational, technical, and hygienist view of the work environment.

The choice for a less holistic policy regarding the work environment ultimately affects national decisions on the elaboration of laws, regulations, or, in their absence, on the application of the core obligations to resolve conflicts involving violations of the human right to a balanced and healthy work environment in private or public sectors. The resistance and difficulty of Brazilian legislative system regarding moral harassment were reinforced by an erroneous strategy of the specialized UN agency, since, strictly speaking, the Brazilian State would not be obliged to comply with the dictates of Convention No. 190, even if it did not ratify it.

The message conveyed by the ILO involves a symbolism that more delays than contributes to changing a culture of violence in labor relations. This study has, as a methodological approach, the analysis of addressing moral harassment within the scope of the Brazilian Judiciary, that is, in labor relations of eminently administrative nature, which itself indicates the handling and treatment of thorny matters in subordinate labor relations and scant jurisprudential discussion regarding the facts occurring internally within the judicial organic structure.
The public servant is also a worker, target of constitutional and international protection, and mere approval for a public position does not remove him from the typical attributes of a worker and essential to his dignity (Leite, 2016). The constitutional provision of labor rights applicable to the legal-administrative regime, with the appropriate adaptations, indicates what is called the substantive dimension of constitutional equality, because "(...) constitutions are intended both to change things, in the real world, and to make things more equal in all socially significant dimensions of difference" (Ginsburg, 2023).

The mental disorders of public servants, the abuse of power practiced by bosses, persecutions, horizontal, vertical, and transversal discriminations, as well as psychological terror have never had adequate treatment in the public sphere. There are one-off initiatives, such as the legislation of the Municipality of Iracemápolis, in the State of São Paulo, from the year 2001, being the first in the Brazilian territory to regulate moral harassment within the scope of local administrative law and there are currently eighty bills approved or in progress in the municipal or state sphere regarding their respective public servants (Leite & Malaquias, 2023).

The Judiciary Branch is inserted in this set of institutional changes, as it composes the public administration, it is affected by the universal transformations of the production model that transit between a Fordism and a management for efficiency, consecrated by art. 37, caput, of the Brazilian’s Republican Constitution. The judicial public service adopted typical criteria of the private initiative in the accomplishment of its activities, such as the policy of adoption of goals and the valorization of statistical data, which do not always imply in qualitative results.

The justification of the institutional ends of justice distribution, of the service to the effective jurisdictional provision, besides the award competitiveness promoted among judicial organs and courts of the various units of the federation and the numerical adoption
of rankings in management indices, provides ambiances for control of subjectivities of public servants and other agents who act in the judicial structure (Moraes, 2015).

Taking into account this problem that directly reflects from work relations in the Judiciary Branch, the National Council of Justice has inserted in its people management policy a series of actions to combat violence in the judicial work environment, highlighting Resolution No. 198 of July 1, 2014, which provided for Planning and Strategic Management within the Judiciary Power, and Resolution No. 240 of September 9, 2016, which provides for the National Policy of People Management within the Judiciary Branch.

On October 28, 2020, Resolution No. 351 was published, which established within the Judiciary, the Policy for the Prevention and Confrontation of Moral Harassment, Sexual Harassment, and Discrimination. The original text of the Resolution was amended by Resolutions No. 413, of August 23, 2021, No. 450, of April 12, 2022, No. 518, of August 31, 2023, and No. 538, of December 13, 2023.

The scope of the policy includes, by virtue of the amendment made by Resolution 518/2023, all harassment and discriminatory behaviors within the socio-professional relations and the Judiciary, practiced by any means, including those against interns, apprentices, volunteers, outsourced workers, and any other service providers, regardless of the legal bond maintained.

The purpose of the instituted policy was to create an umbrella of comprehensive protection for all those who directly or indirectly have some type of administrative link with the Judiciary. This change is of substantial significance as it considers that moral harassment and other forms of violence are practiced in an ascending, descending, horizontal, and mixed manner, setting aside the strictly hierarchical view of violence.

Originally, Article 2, items I and II, of the Resolution No. 351/2020, defined harassment as:

Moral Harassment: a continuous and repeated process of abusive behaviors that, regardless of intentionality, attack the integrity, identity, and human dignity of the worker, through the degradation of socio-professional relations and the work environment, demand for the fulfillment of unnecessary or
exorbitant tasks, discrimination, humiliation, embarrassment, isolation, social exclusion, defamation, or psychological shock;

Organizational Moral Harassment: a continuous process of abusive behaviors supported by organizational strategies and/or managerial methods aimed at obtaining intensive engagement from employees or excluding those that the institution does not wish to keep in its staff, through disrespect for their fundamental rights. (CNJ, 2020)

At the time, ILO Convention 190, adopted in June 2019 by the International Labor Conference, came into effect on June 25, 2021, after ratification by Uruguay and the Fiji Islands. Regarding the concept of harassment, Article 1, item 1, letter "a" provides:

The term "violence and harassment" in the world of work refers to a set of unacceptable behaviors and practices, or their threats, of single or repeated occurrence, that aim, cause, or are likely to cause physical, psychological, sexual, or economic harm, and includes violence and harassment based on gender (ILO, 2019).

Item 2 of Article 1 of Convention 190 stipulates that, without prejudice to the above provision, definitions in national legislation and regulations may provide for a single concept or separate concepts for "violence" and "harassment". Then, Article 2, item 2, records that the convention applies to all sectors, whether public or private, in the formal and informal economy, and in urban or rural areas.

Even in the face of the conventional authorization to separate treatment by internal normativity, the conventional understanding treats violence and harassment as common categories, with the same meaning and content. The more generic proposal aims to cover a larger number of types of violence, recognizing that harassment (among them moral), interpreted in a more elastic way, is on the same level of relevance capable of compromising and degrading the multiple constituent vectors of workers health. The epistemological innovation regarding the concept is positioned from the forecast of a single occurrence as facts sufficient to trigger the concept of harassment or violence, "(...) which includes for its regulatory scope several other situations, which ended up being excluded from the characterization of moral harassment" (Cruz, 2021).

The original definition adopted by the CNJ, however, was the reflection of the main doctrine and jurisprudence in force at the time and that prevails to this day. The
The most used literature has understood moral harassment as "repeated and reprehensible actions, or clearly negative, offensively directed against employees, which can lead to their isolation from the group at the workplace" (Hirigoyen, 2005). Along the same lines, quick jurisprudential research with the Courts of Justice, Federal Regional Courts and Superior Court of Justice verifies a decision pattern regarding the definition as a classifying premise of conduct, namely the systematization and repetition of conduct with the purpose of causing humiliations, vexations, isolation, embarrassments, and disqualification of the victim.

Even though Brazil has not yet ratified ILO Convention No. 190 at the time of the publication of Resolution 351/2020/CNJ, the conventional text had already been discussed and approved by the ILO. Considering that Brazil did not have and does not have specialized labor legislation on moral harassment, the concept of the CNJ originally went against the conventional text, given that "although the ILO has not included it in the list of fundamental conventions, everything indicates, it is just a matter of time, given the essential nature of the norm" (Cruz, 2021).

According to Article 20 of the ILO Constitution, member states are bound only by the conventions they have ratified. It is important to underline that ILO conventions belong to the category of open multilateral treaties, as they allow the accession (embodied in the term "ratification" used by the ILO) of member states and have the nature of law treaties or normative treaties, with typically positive legal content capable of changing customs practiced by states (Mazzuoli, 2015). Thus, by virtue of Article 5 of the Vienna Convention on the Law of Treaties (1969), promulgated in Brazil by Decree No. 7.030, of December 14, 2009, this convention should be applied to the conventional law of the ILO, except for the application of relevant norms of the organization, understood as special norms provided for in the treaties themselves that conflict with the general rules of the Vienna Convention.

Ratification/accession, therefore, is configured, according to Article 2, item 1, letter b⁴, as the international act so named by which a state establishes on the international

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⁴⁵ In the case of a convention: (...)
level its consent to be bound by a treaty. The procedure provided for by Articles 13 and 14 of ILO Convention 190 stipulates that ratification will be binding for the member state only when communicated to the Director-General of the International Labor Office and registered by him.

As for the incorporation process, to produce its effects internally it is conditioned on the proof of international validity, with a starting term on June 25, 2021 for the convention under discussion. However, the conventions produced by the ILO differ from other treaties because they are not signed by the representatives of the member states, the signature of the document being made by the President of the Conference and the Director-General of the International Office (interpretation of Article 19, item 4, of the ILO Constitution combined with Article 10 of the Vienna Convention).

Thus, there is no figure of the signature of the convention, which has its authenticity recognized by the mentioned authorities. This does not imply, however, that the state, even if it has not ratified or signed the convention, may behave contrary to the content of the treaty before its entry into force. In this sense, Article 18 of the Vienna Convention imposes on the state the duty to abstain from the practice of acts that would frustrate the object and purpose of a treaty, when it has signed or exchanged constitutive instruments of the treaty, subject to ratification, acceptance or approval, while it has not manifested its intention not to become a party to the treaty; or has expressed its consent to be bound by the treaty in the period preceding the entry into force of the treaty and on condition that this is not unduly delayed.

It is true that in the case of ILO Convention 190 there is no signature by the member state, whose purpose is to grant authenticity and recognition. The approval by the 2/3 quorum of the International Conference, the provision already alluded to in Article 19, item 4, and the message of item 5, letter b of the ILO Constitution indicate that, even in the face of the non-ratification of the conventional instrument, there is a minimum commitment to submission to the competent authority, in the Brazilian case, the National

b) Each Member State undertakes to submit, within a period of one year, from the closing of the Conference session (or, when, due to exceptional circumstances, this is not possible, as soon as it is, without ever exceeding the period of 18 months after said closing), the convention to the authority or authorities whose competence includes the matter, in order for them to transform it into law or take other measures.
Congress, in order to deliberate on what action will be taken, whether incorporation in the legislative modality or adoption of other measures.

Applying to the concrete case, it is known that at the date of publication of the original text of Resolution 351/2020/CNJ, there was no ratifying act of Convention 190/ILO by Brazil. In truth, even the production of its effects in the international arena had not begun officially, occurring only on June 25, 2021. The incompatibility did not occur in the classic perspective of vertical control of internal norms, as there was no ratified international treaty, incorporated into the Brazilian legal system, nor in force. The mismatch presents itself in the molds of the concept of the material source of law, that is, a socio-legal fact manifested by the production of a specialized convention on the subject.

The inaugural text of Resolution 351/2020 did not imply direct and frontal frustration of the object of Convention No. 190/ILO nor resulted in the emptying of the purpose of combating harassment and violence. On the contrary, even in the face of Brazilian legislative silence, the National Council of Justice, albeit in partial harmony with the international predictions of human rights, demonstrated proactivity and commitment to the prevention and combat of moral harassment in internal relations.

The classic doctrine has taught that unratified conventions do not dress in absolute irrelevance, as they constitute a material source of law, insofar as they position themselves as a model, north or inspiration for the ordinary legislator (Süssekind, 1986). The path traced by the international body in dealing with moral harassment, although it does not imply objective binding of Brazil as to the content, here specifically as to the concept of moral harassment, fits as an inspiration for the creation and applicability of positive internal law, as can be seen from the wording of art. 8 of the CLT, foreseeing analogy and comparative law as integrating methods of labor law.

The devices already referenced about the Vienna Convention seem to point to a duty of conventionalization of law, whose principiology is reinforced by the determination of submission of the topics to the already ventilated Constitution of the ILO to the internal authorities to examine the feasibility of conversion into law or adoption of other measures. Indeed, integration into international human rights law and the adoption of its axiology should spread to all public spheres. Legislative and
jurisdictional action, evidently, must be guided by the promotion and protection of human rights listed in international treaties, but also the Public Administration, through its various bodies, in the exercise of its administrative function, must have both in executive action and normative international treaties that deal with human rights as a legal source (Hachem, 2021).

It seems that the CNJ itself noticed this dissociation of the more sophisticated and protective normative trend practiced by the ILO. CNJ Resolution No. 518, of August 31, 2023, amended various points of CNJ Resolution No. 351/2020, among them the concept of moral harassment and organizational moral harassment (art. 1):

Moral Harassment: violation of the dignity or psychic or physical integrity of another person through abusive conduct, regardless of intentionality, through the degradation of socio-professional relations and the work environment, which can be characterized by the demand for compliance with unnecessary or exorbitant tasks, discrimination, humiliation, embarrassment, isolation, social exclusion, defamation or humiliating and embarrassing situations susceptible to causing suffering, physical or psychological damage;

Organizational Moral Harassment: a continuous process of abusive or hostile conduct, supported by organizational strategies and/or managerial methods aimed at obtaining intensive engagement or excluding those that the institution does not wish to keep in its staff, through disrespect for their fundamental rights (CNJ, 2023).

The new statement of moral harassment has removed the expression "continuous and repeated process of abusive behaviors", allowing a broader recognition of episodic behaviors as a type of harassment, aligning with what is provided in Article 1, item 1, letter "a", of ILO Convention 190.

The effort of the text to align itself with the materiality of the ILO is evident. However, the subsequent change to the definition of organizational moral harassment maintained the continuity and repetition of behaviors as a necessary element for the characterization of this type of violence. In fact, the only significant change in this concept was the introduction of hostile behaviors as a new possibility of framing in organizational harassment.

There is no manifestation of the CNJ about the permanence of the conceptual nucleus regarding organizational harassment but considering that it is a standard
recognized from the structural, corporate, and managerial action, it is understood here that the continuous process of abusive or hostile behaviors refers to the continuity and repetition of the abusive model and not to the determined victim. In organizational moral harassment, the behavior is systematic and a strategy of conducting the activity, being irrelevant the individualization of those who will have their dignity vilified. Therefore, there would be no way to configure an organizational harassment if there is no spreading over time, since the categorization in this modality requires the recognition of repetition to prove that the managerial method is abusive.

The compatibility of the normativity produced by the CNJ is in line not only with the valorization of human work, provided for in Article 170 of the Constitution of the Republic, with the recognition of the balanced work environment (Article 200, II, VIII, Article 225, CRFB/1988), but above all with the entire architecture of human dignity projected by the Brazilian constitutional text and which is placed as the centrality of the national political and legal order (Delgado, 2007). In addition, it anticipates the forthcoming ratification of ILO Convention 190 by Brazil, avoiding a possible derogation of the resolution text regarding the category of moral harassment, compromising the proposal of the CNJ policy to guarantee healthy, respectful work environments free from any form of violence, discrimination or harassment in the organs of the Judiciary.

6 CONCLUSION

Violence is a social fact that accompanies human relationships. It manifests itself in the most varied areas of human life, including the world of work. Among the multiple forms of violence is moral harassment or psychological terror, the subject of various studies in the academic world and which represents a true violation of workers’ fundamental human rights.

The existence of a given reality does not mean, however, that it should be condescended to. In fact, the corrective and deontological function of Law requires normative implications, public and private policies capable of preventing, combating and detecting harassing behaviors. For this reason, international human rights law has
produced a series of international treaties with the aim of combating discrimination, racism, violence and harassment in labor world.

It appears that, although there are international documents and some local effort within the scope of Brazilian legislation regarding combating moral harassment, there is no specific legislation that disciplines and conceptualizes the figure of psychological terror, which ends up weakening the effective combat and providing a decisionist subjectivism, whose deleterious effect is legal uncertainty for employers and employees.

Next, the tendency to make the Brazilian legal system compatible with international treaties was addressed through the control of conventionality and the duty to conventionalize the law. The first line of action assumes the existence of a prior international treaty, duly ratified by Brazil, being implemented through jurisdictional, legislative and executive channels. This inclination, fundamentally motivated by specialized doctrine, affects various legal branches, including labor law and administrative law.

In this scenario, the text on screen also addressed moral harassment within the public sector, with a focus on the Judiciary and the necessary fight against this thorny and harmful practice, considering that the Constitution of the Republic guarantees public servants, among other social rights, the reduction of risks inherent to work, through health, hygiene and safety standards.

In addition to the constitutional provisions, the central point of the analysis took into account the provisions of Convention 190 of the ILO, of 2019, and Resolution No. 351/2020 of the National Council of Justice. The convention represents an important milestone in the recognition of violence and harassment in the workplace as fundamental violations of human rights. Among other relevant points, the convention seeks to expand the concepts related to violence and harassment at work.

Although Brazil, until the conclusion of the current conclusion, has not ratified and incorporated the convention into its national order, it has been demonstrated that there is a minimum obligation on the part of the Member States regarding its content, due to the mentioned provisions of the Vienna Convention, the ILO Constitution and the content of ILO Convention 190 itself. This is where the duty to conventionalize the law lies.
It was identified that the Policy for the Prevention and Confrontation of Moral Harassment, Sexual Harassment and Discrimination, capitulated by Resolution No. 351/2020, in its original wording regarding the concept of moral harassment, distanced itself from the ILO's conventional prediction, having there was the respective material alignment with the publication of Resolution No. 518/2023. Therefore, two direct effects appear: a) there is a strengthening of the application of the fundamental human right to a safe and healthy working environment in the sphere of public servants of the Judiciary; b) if Brazil adheres to ILO Convention 190, the change in conceptual direction will prevent the concept of moral harassment from being revoked by the conventional text due to material incompatibility and hierarchical subordination of the resolution.
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