

MOBBING AS A FORM OF PSYCHOLOGICAL ABUSE IN THE WORKPLACE, LEGAL ASPECTS AND DIFFICULTIES TO PROVE IN THE COURT!

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ABSTRACT

In this research I will treat legal aspects and difficulties to prove emotional and psychological abuse of employees in their working environments. "Mobbing"- (*work abuse or employee abuse*) - is a specific form of behaviour at work place that has do with abuse-ill-treatment of the employee. It is also known as emotional or psychic abuse. One or more person's jointly abuse in a psychological or moral manner another person (employee). This is done with the purpose of stigmatising, damaging reputation, image, honour, human integrity and personality, aiming at excluding the person from the social surrounding and culminating with total removal from its workplace as a result of continuous emotional attacks. Consequently, mobbing has to do with a whole set of above-mentioned actions directed from a group of people or even from a person directed at another person-employee for the aforementioned purposes. Persons that have been subject to mobbing at their workplace have usually lots of difficulties to defend themselves and to resist. This is because they have been subject to systematic emotional attacks which lead to total psychological fatigue so that they cannot any longer bear the resistance and they spontaneously search for ways to leave that work place as a salvation and the only breakthrough. Various scientific-social researches have shown that in majority of cases those who have been subject to mobbing are persons that demonstrate intelligence, competition, integrity, progress and commitment, who represent a risk, threat to persons or certain clans-groups in a place or segment of work which in the majority of cases belong to supervising or managerial hierarchy. Mobbing started to be used as a term in the 80s (Heinz Leymann). While as a phenomenon it can be found among the employees of the same ranks related to work hierarchy and in the society. The other form of mobbing is known as "bossing" and is exercised by persons who occupy higher ranks, towards employees that are in lower working ranks and who resist and submit to their supervisors in a servile manner.

Keywords: Mobbing, workplace abuse, emotional, intelligent, work, legal system, etc.

INTRODUCTION

How does "Mobbing" begin and what are its symptoms? Mobbing begins with unresolved contests between employees at a workplace and then passes in other phases that are much difficult and painful which culminate with exclusion from social surrounding and leaving the workplace. The employee that has been subject to mobbing feels demoralised, without support and without value, constantly fighting to survive at the workplace and in defence from continuous attacks from a person or certain groups. Persons that are subject of such pressure, usually, because of lack of information connect and compare this situation in an unconscious way with depression, discrimination at workplace or even blackmail. In fact, all these are a consequence of a well-prepared mobbing from certain persons who may be in the same ranks of work hierarchy or as I have mentioned above, in vast majority of cases persons who exercise mobbing belong to managerial ranks who by abusing their competences and authorisations, pressure and bring stress in a systematic manner which culminates into mobbing. Psychic consequences from this form of pressure are many and they reflect also in

other issues of social-economic and health character including also creation of numerous problems in the private life as a result of repeated intimidation. Mobbing is characterised by spreading rumours, verbal abuse, threats, stigma, labelling, slander, creation of factions amongst colleagues in the workplace.¹ Intrusion in private life, spreading lies, and ill-treatment based on gender and sexually can be characterised as one of the most serious forms of mobbing.² Even the most developed countries of the globe face problems and continuous conflicts in the working environments. The European Parliament has adopted a resolution related to prohibition of discrimination at workplace. Latest research in the developed countries that faced such issues has shown that there were complaints of such nature filed by the employees that include: Finland, Sweden, Belgium, Netherlands, Greece, Portugal, England etc. This shows that "mobbing" is not specific only to the undeveloped countries and those in transition. It is a phenomenon that is present and represents a problem almost in all work environments, in some places is underlined more and in some with lower intensity.³ The difference being that in the European countries the awareness and information of employees regarding this issue is at a much higher level and that is why their reaction and defence by respective institutions is timely and effective including here their protection by law. Whereas, in the countries of the region, in majority of cases employees are not aware that they are being subject to such pressure by certain persons and have no faith in the competent organs inside and outside of workplace. Therefore, in majority of cases employees overcome such pressure in an unconsciously or they bear consequences of such attacks without addressing their complaints before the competent organs.

Types of mobbing!

Mobbing begins from fear of the mobber and his insecurity towards other persons, and this situation can continue because of fear of the person who is subject to created pressure, stress and panic, not knowing who to address and seek assistance. Based on aforementioned elaboration it can be associated that almost any person can face such attack, but a characteristic of mobbing is that it has to do exclusively with workplace and is exercised only in the workplace. Various scientific researches have concluded that there are certain types of mobbing and the most known are the following: Vertical Mobbing – known in the literature as "bossing" which has to do with exercise of psychological violence or emotional abuse by the supervisors towards their employees. This type of mobbing is applied in most cases when owners of different companies plan to decrease number of employees in their companies. Horizontal Mobbing is manifested amongst employees of the same level, who for certain reasons exercise emotional abuse in majority of cases because of jealousy, antipathy, envy etc.

What are the characteristics of persons that exercise "mobbing"!

- Mobbers are persons who appear powerful and have influence but who in reality are very weak.
- Persons that are deeply unsatisfied with themselves, with their career and their characteristics. They are not real professionals and through psychological and emotional abuse of other persons attempt to hide their failures (usually of personal

¹ What Is Mobbing in the Workplace? Authored by Jose Rivera, LegalMatch Legal Writer

² Priručnik - Mobing i kako ga sprečiti ISCOD page 5

³ www.internetslang.com/MOBBING-meaning-definition

and professional life). Ordinarily, these persons have had a difficult and traumatic past.

- These persons have fake belief in themselves, insecurity, great fear in them and fear from others.⁴

Who are victims of "mobbing"?

- Very professionally capable persons, who are creative and in most cases who are not prone to destructive debates.
- Persons that identify problems in working processes and stand by their stances.
- Young employees in the workplace who are full of ideas and enthusiasm for work.
- Persons that suffer from an illness, individuals of different ethnic communities.
- Persons whose career is developing etc.⁵

Which are phases of mobbing?!

First phase **I.** of mobbing has to do with unresolved or silent and undiscussed problems between the employees. **II.** Second phase has to do with psychic and emotional attacks where the victim begins to feel insecure. **III.** Third phase has to do with stigmatising the victim and labelling for each failure or lack of functioning of processes and they are blamed for. **IV.** Fourth phase is when the situation starts to get serious and it has to do with continuous fight of the employee to stay at work, trying to show the necessary qualities. At this phase, psychic, emotional fatigue and depression is noticed in the victim. **V.** Fifth phase and last presents most serious phase of this process where usually victims change also in their looks by showing visible signs of fatigue and in these cases they take the decision to leave the work by all means and in certain cases they even take decisions of morbid nature.⁶

Is "mobbing" punishable by law and how difficult is to prove in the court proceedings?

In the Kosovo courts it is very difficult to prove "mobbing"! All organisations, lawyers and other official persons that deal with defence of rights of employees and human rights as a whole, refer to various laws to evidence mobbing. This happens because of the lack of laws that regulate this issue! These institutions usually refer to the Labour Law, more concretely to its articles that regulate discrimination at workplace, Law on Safety and Health at Workplace or even to the Criminal Code, more concretely articles related to threats and incitement and abuse of official position depending from the nature of the case. Reference is also made to different international conventions that have to do with protection of human rights and freedoms. Court cases in such matters are prolonged and painful, that is why there are very few cases denouncing this phenomenon because in absence of proof it is very difficult to evidence the pressure claimed by the parties in conflict and the part of identification between the victim and the person who exercises "mobbing" is very delicate, since the pressure and such blackmail are well prepared and go unnoticed by other members of the work environment. In Kosovo there is no law that regulates the issue of mobbing and ill-treatment at workplace. One can refer this issue in the following legislation: Criminal Code of the Republic of Kosovo and Criminal Procedure Code respectively certain articles-provisions. One can refer to Law on Contested Procedure and the Kosovo Law on Obligations which in

⁴ Mobbing: Personal, workplace or public health problem? Prof.dr.sc. Gordana Pavleković, dr. med.pag 2

⁵ Priručnik - Mobing i kako ga sprečiti ISCOD page 7 and 8

⁶ Priručnik — Mobing i kako ga sprečiti ISCOD

2017 is expected to be amended in various parts, with emphasis to the part on moral damages that have to do with satisfaction, honour, reputation etc. As I mentioned above, one can refer to articles that regulate discrimination in the workplace, gender discrimination, various ill-treatments at workplace, damage to image and reputation, honour, destroying family etc.

Complaints that citizens have filed at the Ombudsperson Institution Kosovo wide related to labour rights and exercise of profession, damage to human integrity and personal integrity for year 2013/2014/2015 and that could be related to exercise of "mobbing" in the workplace without prejudice to on-going cases

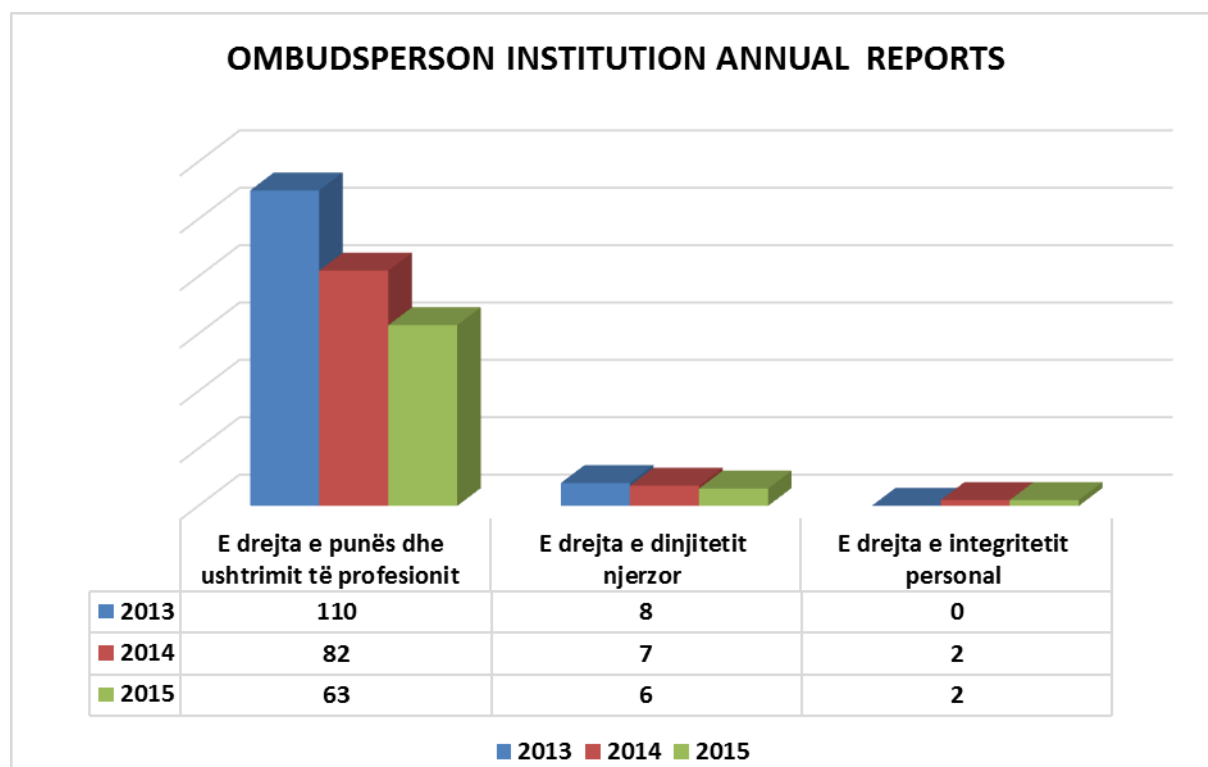


Table A⁷

Legal aspects and court proceedings of labour contests

Based on different practices, most conflicts in workplaces end up in court proceedings and as I mentioned above, those are very difficult and stressful for the parties in the procedure, especially for the plaintiffs who have the great burden of proof to evidence their innocence in such contests.

A great number of researches show that labour contests in majority of cases have been initiated because of corruption, misuse and abuse of official duties, misuse of information in the workplace and trading personal data that are protected by law.

Throughout these contests in the courts, the employees are usually accused of corruption and misuse of official position which in itself include also other criminal offences that are

⁷ <http://www.ombudspersonkosovo.org/>

extended during the procedure including here emotional abuse, sexual harassment, misuse of personal data etc.

During the research I have secured some official data for 2013, 2014 and 2015 from the Annual Reports of the Ombudsperson who operates in the territory of the Republic of Kosovo and that have to do with complaints that citizens have filed related to labour rights, exercise of profession, right to human dignity and human integrity and these complaints can be linked to mobbing and other criminal offences that directly relate to workplace and abuse-misuse of official duties (See Table A).

All of these criminal offences that are directly related to workplace, without a doubt include in itself also emotional or psychological abuse which because of the difficulty to argue and present original and substantial evidence, it is hard to believe and as such is consumed by other criminal offences such as corruption and other offences (Table A 1).

Court contests because of confidentiality and protecting data of clients in workplace

Professional miss-management of personal data and non-respect of confidentiality of client data shows negligence and non-seriousness of the institution. Such issues can cause damages with fatal consequences to the institution itself, to clients and other partners that are involved in the certain business. Therefore, certain companies in their mission, among other promote and guarantee confidentiality as one of the important principles in the society and especially in the business world. These subjects are in conformity with their internal regulations and the latter should to be in compliance with applicable laws in force to ensure data protection and confidentiality of personal data as well as of other relevant data of the client.

However, despite of all this engagement and preventions, there is an opportunity of misuse of personal data by irresponsible persons within and out of certain subjects. These persons abuse their official authorisations for personal benefit and all this abuse happens through misuse of information and personal data, aimed at others, these persons achieve that by exercising mobbing against their employees. These personal data could be shared only with competent organs and only in cases foreseen by law or by prior authorisation from the client itself, any other share is contrary to the law and it is sanctioned. Therefore, certain persons that want to get such information, they exercise pressure, blackmail and other forms of emotional and psychic abuse by misusing their official positions, authority and authorisations, consequently by exercising direct pressure towards certain employees in order to secure the requested access.

Punitive provisions on misuse at workplace

Criminal Code of the Republic of Kosovo in chapter XVII - "*Criminal offences against human rights and freedoms*", more concretely Article 202 and 203 foresees sentences related to infringing privacy in correspondence and computer databases (202) and unauthorised disclosure of confidential information (203). Moreover, Article 422 and 423 of the Criminal Code of the Republic of Kosovo, chapter XXXIV - "*Official Corruption and Criminal Offences Against Official Duty*", foresees sentences also for cases of abuse of official position of authority (422), respectively misusing official information (423) that provide quite severe sentences with fine and imprisonment, depending on qualification of information and of the

amount of loss caused from the aforementioned misuse.⁸ In fact, all these criminal offences in themselves can consume also highlighted elements of mobbing or abuse of employees with purpose of realizing certain material benefits by misusing official duties.

RECOMMENDATIONS

In order to combat and control in an effective manner the psychic abuse with employees, I recommend that all states should sanction mobbing by law, in a decisive and clear way, as a criminal offence and also determine concrete sentence for it.

All states should ratify international conventions that regulate protection of employees, freedoms and their rights at work and to combat abuse in the workplace.

All employers should be obliged to organise more professional trainings to make aware employees on how to protect their right at work so that cases of abuse would be addressed for assistance in the respective professional institutions/departments.

Persons who suffer such pressure should be given full support in order to overcome such situations in which they are without being guilty. While there is grounded and substantiated suspicion for irregular/deviant behaviour of these employees that exercise such pressure, it should be made known to them that they are exercising pressure based on certain personal goals and that they will be reported for their abuse. At the same time, one should be very careful during the time of communication and access with such persons, by recording and proving before competent structures and departments any irregular/deviant behaviour of such persons!

One of the most complete definitions of "mobbing" can be found in the legal framework of France where mobbing is defined as follows: *"abuse and psychic violence directed at employees systematically with aim of degrading the private life and professional future of the employee."*

CONCLUSIONS

I can conclude that an employee is a victim meaning being psychically abused at workplace if the following characteristics are visible:

- The victim cannot express its opinion because every time finds lack of understanding and is not listened to.
- The victim is excluded from social life, decisions and information at workplace.
- The victim is target of attacks and continuous criticism.
- The victim is discriminated in the workplace, being put at an inappropriate location.
- The victim is mocked about private life, way of speech, looks etc.

Additionally, I can conclude that any victim of psychic abuse in workplace unquestionably passes on the following phases:

⁸ Criminal Code of the Republic of Kosovo

Mobbing phases development

- Conflict and continuous attacks "silently"
- Severe and systematic attacks
- Labelling and stigma of the employee
- Continuous combat of employee to survive at work
- Revealing mobbing, aggressive confrontation of two parties in the process.

Proportion between types of mobbing is as follows: Vertical Mobbing (55%) vs. Horizontal Mobbing (45%) which means that the most present form of abusing with employees is the bossing meaning vertical mobbing which comes from senior ranks directed at employees with lower ranking positions.

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