

THE LEGAL ASPECTS OF THE MOBBING IN THE REPUBLIC OF MACEDONIA

Andon Majhosev, Assistant Professor Ph. D, Faculty of Law at the University "Goce Delchev"-Stip, Macedonia, [e-mail: andon.majhosev@ugd.edu.mk](mailto:andon.majhosev@ugd.edu.mk)

Vojo Belovski, Associate Professor Ph. D, Faculty of Law at the University "Goce Delchev"-Stip, Macedonia, [e-mail: vojo.belovski@ugd.edu.mk](mailto:vojo.belovski@ugd.edu.mk)

Sanja Nackova, master student on Faculty of Law at the University "Goce Delchev"-Stip, Macedonia, [e-mail: sanja_nackova@yahoo.com](mailto:sanja_nackova@yahoo.com)

Marija Tomislavova, master student on Faculty of Law at the University "Goce Delchev"-Stip, Macedonia, [e-mail: maretomislavova18@yahoo.com](mailto:maretomislavova18@yahoo.com)

Abstract

Workplace mobbing as a form of psychological terrorism in the Republic of Macedonia is relatively new phenomenon which in the last decade is causing huge attention in the legal theory and practice. The problem with mobbing has also become an object of interest of the Macedonian's trade union since they have seen the danger which this unwanted phenomenon causes in the work environment. That is why the trade union, especially the most numerous and the most representative ones in this country, the Federation of trade unions in Macedonia, has taken initiative to introduce a legislative to protect the workers from harassment in the work place in order to prevent psychological terrorism of the employees, as well as protect the workers from this negative phenomenon. This initiative resulted with the adoption of a special law on 29.05.2013. In this paper we are going to try to analyze the legal framework of the protection from psychological harassment in the work place (mobbing) in the Republic of Macedonia, in terms of the rights, obligations and responsibilities of the employers and employees regarding the prevention of psychological harassment in the work place, as well as measures and procedures for the protection from psychological harassment in the work place of the employer and the proceedings. While analyzing the legal aspects of the psychological harassment we are going to stay focused in the Labor law and Law on Protection from Harassment in the Workplace.

Key words: *discrimination, mobbing, bully, victim of mobbing, legal protection;*

Introduction

The mobbing as negative and unethical form of communication in the working process

is widespread phenomenon that is being very little talked about.

The psychological pressures, humiliations, and abusiveness, the workers' harassment, which cause serious disorders on their mental and physical welfare, are the main characteristics of the mobbing in the working environment. In the Republic of Macedonia, the employees are talking louder about this negative phenomenon. The results of several studies conducted in various working environments undoubtedly indicate that the mobbing among us is increasing. It is present in the private, but also in the public sector, i.e. in all industries and sectors.

Mobbing is a problem of modern society, but it is still insufficiently explored form of violation of human rights. It mainly regards on the psychological part, the negative impact on the health and life, the quality of work, production and provision of services, the productivity, the profitability and it has essential impact of the economic losses in the community.

In the Republic of Macedonia the psychological harassment on the workplace (mobbing) has not been legally regulated for a long time. With the amendment of the Labor law, which was made in 2009, with the article 9-a, the sanctioning of discrimination on the workplace was completed, which would mean raising the protection of labor rights as part of the overall human rights in the Republic of Macedonia. On May 29, 2013, the Assembly of the Republic of Macedonia on the initiative of the Federation of Trade Unions of Macedonia

passed a special law regulating this matter, the Law on Protection from harassment in the workplace¹, with which this phenomenon is detailed and precisely defined, and the protection of mobbing is legally regulated.

1. Term and definition of mobbing

The term mobbing is relatively new; it is an English word, “mob”, which means aggressive crowd and the word “mobbish”, which means brutal, vulgar, and primitive. The scientist Konard Lorenz compares mobbing with the behavior of an animal pack towards their unwanted member, his persecution until the member leaves them by himself. The word mobbing comes from these two words which mean intimidating methods of cruelties, psychological crush, social degradation, destruction of personal dignity and exclusion from society.²

In literature the term *bulling* appears as a synonym of mobbing, but with different meaning – derived from the English word bully: abuse, persecution without a special motive, i.e. kind of psychological terror. However there is an essential difference between the terms mobbing - workplace harassment and bulling - harassment at school. Other terms for mobbing are “psychological terror” or “psychological aggression”, “emotional violation”, “trauma in workplace”, “hostile environment”.³ Based on the above we can make an obvious difference in the terms mobbing and bulling, whereas the term mobbing refers to the psychological terror in workplace, while the term bulling refers to the psychological as well as on the physical terror on a group of students towards another group of students in a school.⁴

There are many definitions about mobbing. Therefore, Leymann, as leading expert

in this field, defines mobbing as: *hostile and unethical communication which is directed in a systematic manner by one or more individuals, mainly toward one individual, who, due to mobbing, is pushed into a helpless and defenseless position and held there by means of continuing mobbing activities. These actions occur on a very frequent basis at least once a week and over a long period of time at least six months duration. Because of the high frequency and long duration of hostile behavior, this maltreatment results in considerable mental, psychosomatic and social misery.* There have been other definitions about mobbing from many experts, but H. Leymann’s definition has been accepted as the most suitable. With minor adjustments, this definition is taken for the Labor law of the Republic of Macedonia (Government Gazzete of RM no.)

2. Reasons for mobbing on workplace

Main reasons for mobbing on workplace are personal conflicts on workplace, which are connected with improper organization of work and work process, the conditions of the working environment (exposure to hazardous substances, noise, vibration, temperature), inappropriate management’s methods – lack of communication, frequent changes of the working conditions, frequent deployment on other working positions, the uncertainty in the aspect of improvement at work etc. Illegality in the operation of the employer is another reason for mobbing, i.e. indication of corruption, i.e. when the employee is addressing the authorities, that creates a reaction with the employer as a form of mobbing.

Actually, the mobbing appears as a consequence of disrupted human relations with the employers, i.e. it is a result of the unsolved conflicts between the employees, improper work organization, as well as because of a collective work conflict between the employees and the management.

Unsolved and long term personal conflict between the employees, especially when they are competing about gaining a professional affirmation by the employer, a horizontal

¹ Law on Protection from harassment in the workplace (government gazette of RM, no.)

² K. Westhues, op. cot., p. 1; E. Koic et al, op. cit., p. 2

³ N. Zanolli Davenport, R. Distler Schwartz, G. Pursell Elliott, Mobbing-USA. –*Emotional Abuse in the American Workplace*, BookMasters, Inc, 2005, p. 20

⁴ H. Leymann, op. cit. file 11130e.

mobbing is applied, because of the unfair elimination of the competitor, associated with envy and jealousy. Many researches have shown that the victims of the horizontal mobbing are: *by default exceptional individuals who are characterized by intelligence, competence, creativity, integrity, dedication to work.*⁵

The process of globalization and liberalization in a certain way has an impact on the increasing of the mobbing, i.e. violation of the European social model, which is based on the concept of market economy and the concept of socially responsible management.

3. Types of mobbing

Depending on the direction of mobbing-actions, actually of who is a bully and who is a victim, in the literature the mobbing is divided into the following types: horizontal, vertical, and strategic.

Horizontal mobbing exists when mobbing-actions appear between the employees/coworkers who are in the same position in a hierarchical organization. In this type of harassment there is not subordination between the parties, because the bully and the victim work on the same or similar position. Mobbing victims who are ambitious and creative workers usually become objects of envy and jealousy by their bullies and usually are of the same sex. On the other hand, the bullies feel threatened, jealousy, and envy, which stimulate the urge to eliminate some coworker, especially when the bully believes that the elimination leads to career progression.

Vertical mobbing exists when a supervisor is harassing, abusing an inferior worker or one by one until he/she destroys the whole group (strategic mobbing – bossing) or there is a possibility of a reversed vertical mobbing in which a group of workers (subordinated) harass one superior. The most common mobbing in practice is the vertical one. It is characterized by the subordinated

relationship between the parties, where the low position is the mobbing-victim (employee) and the bully is the superior. The bully is manifesting the mobbing in a way that he/she restricts the communication of the mobbing-victim, he/she assigns tasks to the victim for which the victim is not qualified, does not possess the knowledge or the skills and is limited in the aspect of regular social contacts, does not have contact with other employees, and very often the supervising is increased, there are unjustified criticism and humiliation for the work addressed to the victims by the bully.

Strategic mobbing is most common when in a company or institution structural reforms are being implemented (rationalization or when redundancy is assigned), whereas the management compiles a list of unwanted employees towards which mobbing is performed in order to make the employees themselves, after some time, and because of the unbearable conditions and harassment, to quit without claiming redundancy payments, damages etc.

Legal aspects for protection on mobbing

The Constitution of the Republic of Macedonia does not use the work psychological harassment on workplace (mobbing) but it guarantee that the citizens of the Republic of Macedonia are equal in their freedom and rights. The Constitution defines the country as a sovereign, independent, democratic and civil country in which the sovereignty comes from the citizens and it belongs to the citizens,⁶ and the article 8 defines the fundamental values of the constitutional order of the Republic, in which among others *humanism, social justice and solidarity* are included.

In Section II, titled Basic freedoms and rights of the individual and citizen, part 1 contains the articles from 9 – 29, which refer to civil and political freedoms and rights and in which is guaranteed that: “*citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race,*

⁵ N. Zanolli Davenport, R. Distler Schwartz, G. Pursell Elliott, Mobbing-USA. –*Emotional Abuse in the American Workplace*, BookMasters, Inc, 2005, p. 21.

⁶ Constitution of RM from 07.11.1991, Government gazette of RM no. 52 from 22.11.1991.

color of skin, national and social origin, political and religious beliefs, property and social status."⁷

In Section II, titled Basic freedoms and rights of the individual and citizen, part 2 contains the articles from 30-49, which refer to economic, social and cultural rights and exercise and editing employees' rights and their position by the law and *collective arrangement, establishment of trade unions and strike*.⁸ Article 32 from the Constitution, guarantees the right to work, i.e. "everyone has the right to work, to free choice of employment, protection at work and material assistance during temporary unemployment." This article further indicates that "the exercise of the rights of employees and their position are regulated by law and **collective agreements**."⁹

Citizens are guaranteed with the Constitution of RM freedom of association to exercise and protect their political, economic, social, cultural and other rights and convictions (article 20). Closely related to this constitutional regulation is article 37 of the Constitution, which refers to the citizens' right to *establish trade unions* for protection and promotion of the socio-economic rights throughout different methods, institutional forms, including the right of trade unions (initially the majority, and subsequently the representatives) to participate in the procedures of the *collective arrangement*.

Labor law (*lex fundamentalis*) from 2005 (Government gazette 62/05) which aimed at the respect of employees' right, on the dignity and protection of the workers on their workplace, or rather, it emphasizes preventive measures (technical, medical, ergonomic, social, etc) which eliminates the risks of health endangering on the employees. Thus article 6 has defined the term discrimination as a type of harassment. In article 7 of the Law the direct and indirect discrimination on the job candidates are elaborated in details, article 8 refers to

exceptions of the prohibition of discrimination, while in article 8 harassment and sexual harassment is strongly prohibited. The following are definitions of harassment or sexual harassment in the workplace.

By passing the law for amendments and additions of the Labor law on 14.09.2009, a new article 9-a was introduced. This article explicitly prohibits all kinds of psychological harassment in the workplace and specifically highlights the term mobbing, which officially is mentioned for the first time in the Macedonian labor laws.

Article 9-a, paragraph 3 from the Labor law defines mobbing as: *any negative behavior by an individual or group that is often repeated (at least for six months), and a violation of dignity, integrity, reputation and honor of the employees and causing fear or creates a hostile, humiliating or offensive behavior, whose final objective may be employment termination or abandonment of workplace*. By the law one or more individuals, with negative behavior may be performing mobbing, the employer as an individual, the responsible person or employee.¹⁰

In order to exercise the right to protection from harassment, legislator predicted in case of a lawsuit the burden of proof falls on the employer.¹¹ Further on the law determinates that "In the event of a lawsuit, if someone acted contrary to article 9-a the burden of proof falls on the individual or group against whom proceedings are initiated for psychological harassment (mobbing) at work, unless they prove that different treatment is made as exceptions under article 8 of the law."¹² In order to ensure the protection of the person who initiated proceedings for legal protection from psychological harassment in the workplace (mobbing), as well as during the testimony, it is prohibited by Law to worsen the working conditions, directly or indirectly, i.e. to be placed at a disadvantage, especially by reducing

⁷ Article 9, Section 2, Basics freedoms and rights of the individual and citizen, Constitution of RM from 17.11.1991.

⁸ Ibid.

⁹ Article 32 from the Constitution of RM.

¹⁰ Article 9-a from Labor Law paragraph 4 (Government gazette of RM, no. 52 from 23.04.2012)

¹¹ Article 11 paragraph 1 from the Labor law

¹² Ibid, paragraph 2.

earnings, moving to another place or prevent the progression or professional development.¹³

Law on Safety and Health at Work (Government Gazette br.92/07) does not explicitly talk about protection from psychological harassment in the workplace (mobbing), but this is indirectly derived from the established rights and obligations of employers and employees in terms for measures for safety and health at work, as well as preventive measures against occupational hazards, removal of risk factors for accident, information, consulting, training of workers and their representatives and their participation in planning and taking measures for safety and health.¹⁴

Law on prevention and protection from discrimination (Government gazette of RM, no. 50/10) is a general law that defines all grounds of discrimination. In article 3 of the Law, as fundamentals of direct and indirect discrimination are: calling and encouraging discrimination and discriminatory treatment on the basis of sex, race, color, gender, belonging to a marginalized group, ethnicity, language, nationality, social origin, religion or religious belief, education, political affiliation, personal or social status, mental or physical disability, age, familial or marital status, economic status, health status or any other basis provided by law or by international agreement. The provisions of the law protect all persons who are threatening discrimination, including in the field of work and labor relations.

The law uses the terms harassment, degrading treatment, sexual harassment and discrimination against persons with physical and mental disabilities, but does not specifies mobbing as one of the types of harassment in the workplace.

Law on protection of harassment in the workplace (Government gazette of RM, no. 79/13). The Law is brief and consisted of 40 articles. The Law regulates the rights, duties and responsibilities of employers and employees

about the prevention and protection from physical and sexual harassment in the workplace, measures and procedures to prevent and protect from harassment in the workplace and to provide a healthy work environment. The main objective of the law is to prevent and protect from physical and sexual harassment in the workplace, or place of work and to provide a healthy work environment.¹⁵

The law applies to employers, employees, candidate for employment, to persons engaged with contracts that participate in the work of the employer.¹⁶ Unlike the definition for Labor law, with which the regulation for harassment applies only to the employees, the Law on protection from harassment on work place has a board purpose and applies to all persons which are included in the work process on any ground, who do not have an employment relationship with the employer, but have stroke a deal for volunteering, contract work, copyright agreement and other types of agreement. It is particularly important that this law covers applicants for employment, persons applying for certain jobs, especially the female, where the very job interviews are subjected to sexual harassment.

The term is determined by law, i.e. it is defined what is considered to be psychological and sexual harassment in the workplace.

Psychological harassment in the workplace, in terms of this law, is any misbehavior of an individual or group which is repeated continuously and systematically, and presents a violation of dignity, integrity, reputation and honor of the employee and causes fear or creates discomfort, humiliation which ultimate goal may be a violation of the mental and physical health, compromising future professional employee, termination of employment or leaving the workplace.¹⁷

¹³ Ibid, paragraph 3

¹⁴ Article 1 from Law on safety and protection at work (Government gazette of RM, 92/7).

¹⁵ Article 1 and 2 from the Law on protection from harassment on a workplace;

¹⁶ Article 3 from the Law on protection from harassment on a workplace;

¹⁷ Ibid, article 5, paragraph 1

If we compare this definition with the definition of psychological harassment of Labor Law which foresees harassment for a period of six months, for this law it is enough for the harassment to be repeated, continuous and systematic, and it is unnecessary to pass a period of six months in order to start a procedure for protection from harassment. *Sexual harassment* under this law is any verbal, non-verbal or physical conduct of a sexual nature which has the purpose or represents a violation of the dignity of a job applicant or employee, and that causes fear or creates discomfort, humiliation. In this kind of harassment, what matters is the effect, or the feeling that arises in the employee, and it is not necessary to repeat the disturbance, it is enough to cause discomfort humiliation and annoyance in the employee.¹⁸

As performer of harassment in the workplace can be one or more persons with negative behavior regardless of their function – the employer as an individual, responsible person of the employer – legal person, employee or group of employees of the employer or a third party with which the employee or employer encounters while performing the duties at work.¹⁹

When the place of performance of harassment in the workplace is considered workplace where the employee is exposed to harassment at work, usually work or the place where the employee is sent to work by the employer, and the place through which the employee normally passes coming in and out of the workplace, but only if the harassment is performed by an employee of the same employer or another person working with the same employer.

As a time of performance of harassment in the workplace, is considered the time within working hours and traveling time to and from work.²⁰

Also regulated with the law are the rights, obligations and responsibilities connected with the harassment on workplace. The employer is obligated to provide the employees with work in a healthy work environment under conditions which ensure respect of the dignity, integrity and health of employees in the workplace. At the same time, the employer is obligated to take the necessary measurements in order to prevent harassment in the workplace and to protect employees and other persons who on any grounds participate in work with the employer.

In order to prevent and reduce the possibilities of harassment of the employees in the workplace, the employer has an obligation to introduce the employees with: the prohibition of harassment in the workplace, the rights, obligations and responsibilities of employers and employees and the procedure, and the procedure for the protection in case of harassment in the workplace.

The law also regulates the issue of liability in case of harassment in the workplace. Also penalties are provided for the employer because of the failure to take measurements to prevent harassment in workplace, which as a responsibility of the employer are regulated by the law.

The law specifically regulates the *procedure for protection* against harassment in the workplace by the employer.

In this part of the law, the previous procedure for protection against harassment in the workplace by the employer is regulated as prior and preventive action.

The deadline for applying for protection from harassment in the workplace is six months from the date when the last conduct that indicates harassment on workplace is committed, and after this period the right to initiate proceedings for protection against harassment in the workplace expires.

The Law regulates the questions related to the legal protection in case of harassment in workplace. An employee who believes he was subjected to harassment in the workplace, and who is not satisfied with the outcome of the

¹⁸ Article 8, paragraph 2 from the Law on protection from harassment on workplace

¹⁹ Article 6, from the Law on protection from harassment on workplace

²⁰ Article 7, from the Law on protection from harassment on workplace

procedure for protection against harassment in the workplace by the employer, may file a complaint with the court of jurisdiction. These disputes have the character of labor disputes.

The law has provided inspection for law enforcement conducted by labor inspection. The law contains misdemeanor charges for failure to implement the law for the employer as an individual or legal person and for the responsible person, as well as for transitory and final provisions.²¹

All employers are required under the law within three months to introduce the employees with the prohibition of harassment on workplace, how to recognize it, the obligations if harassment exists, and the possibilities for protection.

Surely extremely important for successful implementation of this law will be the training, education of employees, and raising their awareness for reporting harassment in the workplace.

This law is in the interest of workers and employers, and of the society, because it provides a strong promotion of workers' rights and their protection, and democratic and universal principles and values. It also provides an environment for efficient, effective and productive performance of work tasks and objectives of the organization.

According to the Law on protection against harassment in the workplace, the procedure for protection against harassment in the workplace goes through several stages: prior proceeding in which the person who is considered to be victim of mobbing shall address in writing the person who is harassing him/her and to point the unacceptable behavior; mediation procedure, which is urgent and which should be completed within fifteen days by the mediator, making references (if the mediation was successful), with written notice (if the mediation was unsuccessful), or with a conclusion to stop the procedure (if the two parties express in written that they want to drop the procedure); legal protection in which the

²¹ Law on protection from harassment on workplace, Government gazette of RM, no. 79 from 31.05.2013

victim may require determination that he/she has been subjected to harassment on workplace, prohibition of a conduct which indicates harassment, prohibition to repeat the behavior, taking actions to remove the consequences from the harassment and compensation of material and non-material damage.

The default set by the Law on Protection from harassment in the workplace provides penalties for employer - legal person, responsible person, and the employer - individual.²²

Research

In the Republic of Macedonia in the period from 2007-2014 year several researches on mobbing are conducted by several organizations, unions, institutions, scientific institutions, NGOs and others. One of the first researches that were conducted in the country about the presence mobbing is a survey of the Federation of Trade Unions of Macedonia in 2007 and 2008 through a survey which polled 510 respondents. Moreover, 41% said they were victims of mobbing, 30% that suffer because of political pressures, 40% said that they have serious health problems as a result of the pressures they experience in the workplace.

In 2012, as part of a research project at the Law Faculty of the University "Goce Delchev" in Stip entitled "*Legal aspects and forms of mobbing factors in the Republic of Macedonia*", there was also a survey. The survey results show that in Macedonia there are a significant percentage of employees who are exposed to harassment and that percentage is between 35-40%, which is a worrying number.²³

Recent research on psychological harassment in the workplace (mobbing) was conducted by the Independent Union of Journalists and Media Workers (IUJMW) in

²² Dr. Lence Kocavska, representative of the Ministry of Labor and Social Policy, Statement of counseling "Mobbing under the new Law on Protection from harassment in the workplace", organized by the Association of Lawyers of the Republic of Macedonia, held on the 25/06/2013.

²³ White Paper on professional and labor rights of journalists, IUJMW, Skopje, 2014, p. 73-74

2014 on a representative sample of 300 participants, of which 98% were journalists. According to the results, 16% of the employed journalists felt pressure in a form of mobbing, and in the editorial board more than 60% of that pressure was directly or indirectly felt by the employees.

In RM in the period of September 2009 to February 2012 were filed 11 charges, but none of the mobbing cases had closure, and two cases were solved with mediation. In 2012 a group charge was filed on the bases of mobbing by 10 employees. In 2012 in the Republic of Macedonia an average number of 35% of employees were psychologically abused.

According to the Report of the Commission for Protection against Discrimination of Macedonia, in 2012 a total of 75 complaints arrived, 28 of which relate to discrimination in labor relations, and 2 of which are related to mobbing.²⁴

CONCLUSION

The practice so far has shown that very small amount of cases for mobbing at workplace are being reported to the competent inspection services, and also a very few lawsuits were filed to the competent courts. The adoption of the Law on Protection from harassment in the workplace creates a procedural opportunity for the legal protection of employees from harassment, on the one hand; and familiarizes employees with their rights for protection against harassment in the workplace, on the other hand. Also, the law also determines the obligations of employers, and fines are provided for those who fail to act in accordance with legal provisions.

Studies have shown that men and women are equally subjected to this kind of harassment. Also, increasingly comes to the fore the so called political mobbing, in which the harassment is made on the basis of political background. In the Republic of Macedonia the mobbing still does not have a final court judgment.

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²⁴ Commission for Protection against Discrimination taken from www.kzd.mk