

THE PHENOMENON OF MOBBING

Roxana Diana PASCU¹

ABSTRACT:

UNFORTUNATELY, THE PHENOMENON OF MOBBING, INCREASED DRAMATICALLY, LATELY. ALTHOUGH, THERE HAVE BEEN SOME INITIATIVES TO DEMONSTRATE THE NECESSITY OF LEGISLATING THIS PHENOMENON, UNTIL NOW THIS HAS NOT HAPPENED.

THIS ARTICLE AIMS TO PRESENT THE PHENOMENON AND ITS CONSEQUENCES, IN DETAIL, AND DRAW A WARNING ABOUT THE NEED OF LEGISLATING IT AND TO DESCRIBE HOW OTHER STATES MANAGED TO DO IT.

KEYWORDS: MOBBING, BULLYING, DISCRIMINATION, PSYCHOLOGICAL HARRASMENT, MEASURES FOR PREVENT AND CONTROL, MORAL DAMAGES

INTRODUCTION

In Romania, very few people know the meaning of the concept of "mobbing", the term "workplace harassment" being used, most of the times. Although the term is not very popular, unfortunately the phenomenon is, and we can encounter it in most labor relations, many of the employees not even being aware of the fact that they are victims of this phenomenon.

Mobbing in the workplace is a form of psychological aggression exercised for a period of at least several months, through a series of actions intended to isolate the subject. The role of the employee in the company and his/her professional abilities are underestimated, intentionally, through various types of disparagement, humiliation, rumors, in order to isolate the person concerned.

Although the phenomenon of mobbing differs from the concept of "discrimination", since the target of mobbing is the victim for some personal and individual characteristics, whereas "discrimination" does not target a person but a group of people, defined by different criteria, there are times when the phenomenon of mobbing can also include the presence of a classical phenomenon of discrimination.

Classic discrimination is a type of unequal treatment of a person due to criteria such as gender, ethnicity, age, country of origin etc. Specific to discrimination is that what is reproached does not concern the personality traits of the person who is the object of discrimination, but the characteristics of the group to which he/she belongs.

A specific form of discrimination in the workplace is sexual harassment. Sexual harassment occurs most frequently in women (but rarely, also to men) and, most of the

¹ Attorney-at-law, Bucharest Bar, Profeanu Rosca Ilin Murgu (PRIM LAW), diana.pascu@primlaw.ro

times it comes from someone who holds a hierarchical position of superiority in the workplace.

Mobbing and bullying are categories of relationships in the workplace which violate the principles of equal opportunities that have gained momentum lately, especially due to the evolution of the society we live in.

Mobbing refers to subtle, repetitive actions, designed to undermine or compromise the performance and professional image of the employee. Therefore, it is defined by reference to the duration and frequency of actions and it may not be linked to certain objective causes of occurrence. Mobbing can be also defined as a form of coercion against a person in order to remove the potential threat that his/her presence induces, by highlighting the lower competence of colleagues. It is usually about the removal of the target, but the stake may be that of showing that the person concerned is not as competent as he/she seems. Therefore, the removal of the threat is achieved by attacking the credibility of the victim or by undermining the performance of the victim of mobbing.

They are not derived from classical forms of discrimination but have particular forms of manifestation, and may be based on discriminatory stereotypes which "strengthen the conviction" of the attacker that he/she acts "rightfully" by attacking his/her colleague. The phenomenon of mobbing is therefore different from that of discrimination, but its substrate may be discriminatory values of the person who carries out the mobbing action.

THE CONCEPT OF MOBBING

The term mobbing originates from the English "to mob" which means to attack and represents physical exercise at the place of work. The first person who introduced the term "mobbing" was Konrad Lorenz in 1963, to describe animal behavior, thus defining the threatening attack or behavior of a group of smaller animals on a larger animal, with reference to rabbits and geese at the occurrence of a fox.

The implementation of this term in the context of work and organizational psychology is due to Leymann, the German psychiatrist who, in 1996, shaped the most famous definition of mobbing "psychological terror or mobbing in the workplace involves a hostile communication which lacks ethics, initiated by one or more individuals and directed in a systematic manner to an individual who, because of mobbing, is found in a situation of helplessness". From an operational perspective, we can talk about mobbing behaviors when dealing with harassment at least weekly, for 6 months². Mobbing is a process of destruction, it is constructed from hostile actions which, taken in isolation, may seem unimportant, but through constant repetition have dangerous effects. In Leymann's view, the term mobbing has two senses, ie, *attenuated*, and it is aimed at persecution at work, namely, *tough*, and it represents the psycho-terror in the workplace.

Mobbing research made its debut in Scandinavia, United Kingdom, the Netherlands, Germany, and the interest in this phenomenon has increased lately also in countries such as: South Africa, Australia, the USA, and countries in Southeastern Europe.

Marie France Hirigoyen, a French psychiatrist, highlights the devastating nature of this phenomenon, stressing that "through seemingly harmless words, through hints, suggestions or silences, it is actually possible to destabilize someone or even to destroy him/her, without the intervention of the entourage".

Sackett and Devore, defined mobbing as "part of deviant and counterproductive behaviors in the workplace that refers to intentional, illegitimate acts addressed to a member of the organization". These behaviors were categorized according to their severity: minor or

²Leymann, H. (1996), The content and development of mobbing at work. *European Journal of Work and Organisational Psychology*, 5; 165-184.

severe, and depending on the target: directed to the organization or to relationships. Shallcross conceptualized mobbing as a passive-aggressive behavior of a group that uses a deliberate strategy to sabotage another employee and Hugo Meynell, in 2008, called mobbing "mini holocaust" because of the prolonged and devastating effects over the victim.

Factors that may energize psychological harassment include: unprincipled hierarchical relationships, poor relationships between co-workers, job insecurity, an applied misunderstood competitive spirit, etc..

Although distinct in some dimensions, the concepts of "mobbing" and "bullying" also have an area of common meaning. They both indicate systematic application of ill-treatment to a victim, with negative consequences on both the individual and on the organization to which he/she belongs. Mobbing involves a more subtle, less physically expressed aggression, unlike bullying, rather resorting to physical aggression. Therefore, in cases of bullying, the abuser is more likely to be punished than in cases of mobbing.

According to Harald Ege, PhD in labor psychology, who first introduced the concept of mobbing in Italy, this phenomenon is a social one and it consists of an "aggressive drama comprising two parties: the aggressor (the mobber) and the victim".

Harald Ege identified different types of mobbing, ie vertical and horizontal mobbing. Vertical mobbing occurs in the situation when the mobber is a higher position and he/she takes advantage of his/her privileged position to harass employees. Horizontal mobbing occurs when the mobber and the victim have similar positions at work, it occurs between colleagues and it can have more serious consequences at emotional level than vertical mobbing.

Participants in this phenomenon are the aggressors, the victims and the witnesses. We can distinguish three types of offenders, respectively, bosses, colleagues and clients. Victims are usually people with very clear principles, confident in organizational values. Victims are often exemplary professionals or people who are different than the group norm (a woman in a group of men, an older worker in a group of young people). Witnesses are people who are present at the actions taken by the aggressors, they can indirectly be embedded into the category of aggressors. Regarding the victim, consequences are: somatic disorders (anorexia, bulimia, insomnia), mood disorders (melancholy, sadness, apathy), relational and behavioral disorders, social phobia. Consequently, job satisfaction decreases, which lowers efficiency and performance, which can be used by aggressors against victims as evidence of incompetence.

THE REGULATION OF MOBBING AT EU LEVEL

At European level efforts have been made to promote some actions to prevent and combat these phenomena, starting from the acknowledgement of the negative social and economic effects of the phenomena of mobbing, bullying, harassment, intimidation and discrimination in the workplace.

In 1989, the European Council Directive no. 89/391, which contained specific provisions on occupational health and safety issues, has established that the employer is responsible for the health and safety of employees in the workplace, including in relation to the risk of mobbing. Member States were required to implement this Directive through the development of legislation or non-legislative measures to eliminate or reduce the phenomenon.

The Charter of Fundamental Rights of the European Union, article no. 31 of the chapter on Fundamental rights of EU citizens blames mobbing, stating that *"every employee has the right to working conditions which comply with his/her health, safety and dignity"*.

Two other Community Directives with social impact preventively act in the field of ensuring equal opportunities of those employed. They are: Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

In 2002, the European Commission issued a statement on "*Adapting to change in work and society: a new Community strategy on health and safety at work 2002–2006*". The statement described a new policy of implementing the Community strategy on health and safety at work by developing a preventive culture and involvement of all social factors in the education and training on the principled relations between employer and employee in order to promote the quality of the working environment. The express objectives of the European Commission include "examining the opportunity of a Community instrument on psychological harassment and violence at work".

In mobbing management, European countries have addressed two major categories of approaches. The first approach is illustrated by those countries which have established specific legislation on combating the phenomenon of mobbing. For example, Sweden has introduced two specific government ordinances since 1993: Violence and Menaces at the Workplace (FS 1993) and Victimization at Work (ASF 1993). Through these legislative instruments, they established a coherent framework for preventing and combating violence in the workplace, focusing on aspects of organizational management.

In line with this legislation, employers must clearly state the anti-mobbing policy of the organization they manage, prepare procedures to manage information, education, prevention and sanction measures related to the phenomenon of mobbing. They are responsible for ensuring a good working climate, for the provision of training programs for managers and employees on the issue of anti-mobbing policies and for the application of specific organizational procedures to implement this policy.

Based on the conclusions and recommendations of the Debout Report (2003), France also introduced specific legislative provisions. As submitted to the Economic and Social Council, this report certifies the great magnitude and severity of problems related to violent manifestations in the workplace. The report generated a series of decisions of the specialized courts that produce jurisprudence in the field, culminating in two key decisions of the Supreme Court in 2000/2001, which define the responsibilities of the employer regarding employee behavior. The Social Modernization Act (Loi de la modernisation sociale nr 2002/73, of January 2002) introduced explicit provisions aimed at combating "moral harassment". Subsequently, certain provisions of the Labour Code were also amended, introducing the concept of moral harassment and giving greater power to trade unions, in the prevention and resolution of moral harassment cases.

Belgium is another example of a country where they adopted legislation to prevent the phenomenon of mobbing. In 2002, they enacted a law aimed at "the protection against violence, moral harassment and sexual harassment in the workplace". Similarly to the legislation in Sweden or France, this law requires employers to establish preventative measures to reduce the risk of some forms of violence, within organizations.

A second type of approach characterizes countries which introduce rules in preventing and combating violence and psychological harassment in the workplace, in labor law and in collective labour agreements, without adopting specific anti-mobbing legislation.

Such a country is Germany, where employees are given protection by the legislation within the scope of labor protection. Details of the obligations of managers of organizations are set out in the Labour Code and the Criminal Code. In Germany, since 1996, collective labor agreements progressively included rules to prevent and combat psychological violence

in the workplace, clearly specifying that these provisions are aimed at achieving a positive work environment, a prerequisite for the economic success of companies.

In Italy, the phenomenon of mobbing is indirectly regulated by law, by reference to moral discrimination and harassment. People who suffer due to discrimination or other more subtle forms of discrimination: mobbing and bullying, can address the unions to which they are affiliated, receiving support and a lawyer specialized on this matter. In court, the company is the one which must provide evidence that it is innocent and did not carry out mobbing over that person, and the victim is not the one who must prove mobbing. If it cannot provide evidence in court, then it must bear the consequences under the law and furthermore, by court order, it must pay moral damages to the victim and the costs of treatment.

THE REGULATION OF MOBBING AT NATIONAL LEVEL

In Romania, the legislation stipulates equal rights for all citizens regarding the participation in economic and social life, education and vocational training, employment and promotion, participation in the distribution of economic benefits and social protection in cases provided by law.

Although there is no official regulation, the phenomenon of mobbing also exists in Romania. Since 2000, there is an increased general interest in Romania, including in terms of development of legislation and institutional framework regarding those policies meant to prevent and combat unprincipled labor relations and some forms of discrimination.

In 2002, Law no. 202 on equality of opportunity and treatment for women and men was promulgated, which thus implemented Directive 2002/73 / EC8 on equal treatment between men and women in matters of employment, vocational training and promotion and working conditions.

Government Ordinance no. 84/2004 amending and supplementing Law no. 202 on equal opportunities for women and men was adopted in 2004. In 2005, the Romanian Government also adopted Decision no. 1258 approving the National Action Plan for Combating Discrimination and the National Council for Combating Discrimination (NCCD) was established in 2003.

The role of NCCD is to inform and influence Romanian society towards the elimination of all forms of discrimination, to investigate and punish acts of discrimination, thus contributing to generating a social climate of trust, respect and solidarity. Along with NCCD there are also other public authorities with responsibilities in this field: the Ministry of Interior, the Ministry of Education, the Ministry of Justice, the Ministry of European Integration, the Ministry of Foreign Affairs, the National Audiovisual Council, etc..

The National Agency for Equal Opportunities for Women and Men was founded in 2005, but it was disbanded in 2010. The Committee on Equal Opportunities for Women and Men currently operates within the Chamber of Deputies.

As reflected in the normative acts of Romanian legislation regarding certain practices for combating discrimination, Romania has no explicit, direct legislation on the mobbing and bullying phenomena so far, although we find some indirect, incipient elements of addressing the issue through public policies.

On the axis of preventing and combating undesirable phenomena in the field of labor relations quality, there are some provisions on the health and safety of employees at work. This axis contains two types of interventions: non-legislative interventions, such as codes of good practice, provisions of collective agreements, other non-legislative measures; and legislative interventions based on specific provisions addressed to combat violent behaviour at work, including psychological violence.

In Romanian legislation there are specifications which, by interpretation, may also include the management of phenomena such as mobbing. We exemplify art. 5 of the Labour Code which provides that: "1) *Within labour relations operates the principle of equal treatment for all employees and employers.* (2) Any direct or indirect discrimination against an employee, based on gender, sexual orientation, genetic characteristics, age, nationality, race, color, ethnicity, religion, social origin, disability, family status or responsibility, union membership or activity is prohibited. (3) Acts and facts of exclusion, distinction, restriction or preference, based on one or more of the criteria set out in para. (2) that have the purpose or effect of denial, restriction or elimination of recognition, usage or exercise of rights under labor law, are considered direct discrimination. (4) Acts and facts apparently based on criteria other than those referred to in para. (2), but which produce the effects of direct discrimination, are considered indirect discrimination and, in fact, art. 175 of the Labour Code provides that "(1) The employer is obliged to ensure the safety and health of employees in all aspects connected to work. (2) If an employer uses external services or persons, this does not exempt him/her from liability in this respect. (3) The obligations of employees in the field of health and safety at work cannot affect the responsibility of the employer. (4) Measures for safety and health at work cannot determine, in any case, financial obligations to employees.

Non-legislative interventions to combat certain activities or actions which could be described as mobbing can also be undertaken based on some indirect elements specified in collective agreements. For the first time, such provisions were introduced in the unique collective labor agreement at national level, for the years 2007/2010. Article 96 of the the unique collective labor agreement at national level for the years 2007/2010 stated that: "(1) The Parties agree to make efforts to promote a normal work climate in establishments, in compliance with the law, with collective labour agreements, internal regulations and the rights and interests of employees and union members. (2) To create and maintain a work environment that encourages respect for the dignity of each person, the unique collective labor agreement at unit level will establish procedures to resolve complaints of individual employees amicably, including those relating to violence or sexual harassment in addition to those provided by law."

Some private organizations, especially multinational companies, have codes of good practice in labor relations. They also contain some elements for the prevention and combating of mobbing. The institution which has a vital role in ensuring the implementation of legislation on the practice of principled labor relations is the Labour Inspection (LI).

Strictly concerning the issue of mobbing, LI does not take any measures for prevention and control. Theoretically, through its own system of monitoring the implementation of legislation, through Labor Inspectorates, this institution should collect data on deviations from the law, which will then be analyzed centrally and used in the preparation, review and evaluation of public policies in the field. Because the monitoring system is deficient, the system of indicators used is incoherent in relation to public policy objectives in the field of labor relations. This "supply" with structured information regarding the compliance with legal conditions in the field of safety and health at work is not properly carried out. And regarding the implementation of control activities there are shortcomings, this control being often strictly formal and superficial.

Hence, the current Romanian legislation contains some provisions to prevent and combat various forms of discrimination, but mobbing differs in many respects from what is understood by discrimination today. Therefore, to effectively prevent and combat mobbing, Romania should also adopt specific, well centered measures.

So far, in Romania, the phenomenon of mobbing has not been detected as a social problem by authorities. The only legal provisions which operate are indirect and provide some attack elements against events of mobbing only when they are also accompanied by manifestations of discrimination.

Until 2010, the civil society in Romania has not discussed about the phenomenon of mobbing and people did not know how often this phenomenon occurs in labor collectives. Studies carried out before 2010, at the initiative of public or private organizations (NGOs) concerned only the collection and analysis of data on some forms of multiple discrimination (age, sex, ethnicity, race) in the workplace, without specifically addressing the issue of mobbing.

Currently, there are no draft laws in the field of mobbing. For this, mobbing first needs to be acknowledged as a social problem by public authorities and key stakeholders. Then, an effort needs to be made, in order to find solutions and to allocate resources to implement these prevention and combating solutions. The first step was taken by the discussion about the phenomenon of mobbing, within the Commission on Equal Opportunities of the Chamber of Deputies in December 2010.

At present, in Romania, individual risk issues are managed by anti-discrimination policies or policies on the promotion of equality of opportunity. Social risks related to the organizational environment, to management practices or some economic and social circumstances are usually managed by specific policies in the field of health and safety at work and policies for maintaining principledness in labor and employment relations.

In terms of the public policy framework, the issue of mobbing is at the junction of two major areas of public intervention, namely preventing and combating discrimination and policies in the area of labor relations regulation. Therefore, the lines of action may be directed in this direction. The solutions chosen by various other countries actually represent a combination of legislative and non-legislative, direct and indirect measures and interventions. What makes the difference between these public policy approaches is the key focus on a particular type of intervention.

CONCLUSIONS

In Romania, there is no specific legislation on combating violence and mobbing in the workplace, nor draft laws in the field. There are only several articles which, by interpretation, may also include the management of phenomena such as mobbing in the Labour Code, namely **art. 5** (equal treatment), **art. 8, para. 1** (according to which, labour relations are based on the principle of good faith, which means that all actions of the employer must pursue the goal of the proper functioning of the unit), **art. 39 para. 1** (the employee is entitled to health and safety at work) and **art. 171 para. 2** (the employer is obliged to ensure the safety and health of employees in all matters relating to work).

There is also the possibility of recognizing moral damages under **art. 253** of the Labour Code which provides that *"the employer is obliged, under the rules and principles of contractual civil liability to compensate the employee, when he/she suffered a pecuniary or moral damage due to the fault of the employer during the fulfillment of his/her duties or related to the job and para. 2 states that if the employer refuses to indemnify the employee, he/she may submit a complaint to the competent court of law"*.

Another solution would be to apply the provisions of art. 2 para. (5) of GO no.137 / 2000, under which any behavior on grounds of race, nationality, ethnicity, language, religion, social status, beliefs, gender, sexual orientation, membership of a disadvantaged category, age, disability, refugee status or asylum seeker or any other criteria which leads to creating intimidating, hostile, degrading or offensive circumstances, represents harassment and is

sanctioned contraveniently. This article also concerns moral harassment of employees who face rejection and marginalization behaviors, discriminatory behaviors in relation to other employees, behaviors which shall involve civil, administrative or penal liability, as the case may be, under the law. These forms of liability are not mutually exclusive.

De lege ferenda, we believe that moral harassment should be expressly and distinctly regulated in Romanian legislation. This new regulation should reflect the recommendations of the European Parliament so that the new law will have to include a large array of social relationships from both public and private sectors.

The law should provide a precise definition of moral harassment in the workplace and should reflect the best ways to prevent it, it should provide legal procedures for resolving conflicts that affect social relationships in the workplace and regulate the burden of proof in this context.

REFERENCES

Books and Studies:

1. **Bultena, C., Whatcott, R. B.**, Bushwhacked at work: A Comparative Analysis of Mobbing and Bullying at work, în „Proceedings of ASBB”;
2. **Aninoșanu, L., Marțiș, D., și Sorescu, I.**, Diversity management in labor relations: How effectively manage cases of discrimination in the workplace;
3. **Einarsen, S. and Skogstad, A.**, Harassment at work and the victimization of men. Violence and Victims;
4. **Kovacs**, Organizational-managerial Psychology - Current Trends Polirom, Iași;
5. **Leymann, H.**, The content and development of mobbing at work. European Journal of Work and Organizational Psychology;
6. **Lorenz, K.**, The so-called bad, Humanitas, București
7. **Debout, M.**, Violences au Travail: Agressions, Harcelements, Plan Sociaux, Editions de l'Atelier;
8. **Hirigoyen, M-Fr**, Le harcèlement moral. La violence perverse au quotidien, Syros, Paris.
9. **Einarsen, S. Hoel, H. Zapf, D. Cooper**, Bullying and Emotional Abuse in the Workplace. International perspectives in research and practice;
10. **Paoli, P. Merllie, D.**, Third European survey on working conditions, Luxembourg, European Foundation for the Improvement of Living and Working Conditions;
11. **Westhues, K.**, The Remedy and Prevention of Mobbing in Higher Education, Lewiston, NY, The Edwin Mellen Press;
12. **Sackett, P. R. and DeVore, C. J.**, Counterproductive behaviors at work: In Anderson, N., Ones, D. S., Sinangil, H. K., and Viswesvaran, C. Handbook of Industrial, Work and Organizational Psychology (Vol 1) London: Sage Publications;
13. **Shallcross, L. Z.**, The Pecking Order: Workplace Mobbing in the Public Sector, Unpublished Master of Public Sector Management thesis, Griffith University, Brisbane;
14. **Ege, H.** "The Role of Time in Mobbing Behavior on Workpace: an Italian Investigation." International Journal of Psychology;
15. Study on the phenomenon of mobbing and discrimination at work in Romania, COLFASA, 2011;
16. Mobbing or harassment of psychology at work, project "Women Matters", COLFASA, 2010;

LEGISLATION:

1. Romanian Labour Code;
2. European Council Directive no. 89/391
3. The Charter of Fundamental Rights of the European Union
4. Directive 2000/43/EC;
5. Directive 2000/78/EC;
6. Government Ordinance no. 84/2004.