

COUNTERACTING AND PREVENTING MOBBING IN LABOR RELATIONS: THEORETICAL AND PRACTICAL ASPECTS

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Annotation. The article thoroughly investigates the theoretical and practical aspects of counteracting and preventing mobbing in labor relations, which is gaining increasing importance in the modern labor market. The essence of the concept of “mobbing” is revealed as systematic psychological pressure, harassment, or bullying of an employee by colleagues or management, leading to a deterioration of the psychological climate and reduced work efficiency. The concept of mobbing and the main forms of psychological and economic pressure on the employee are analyzed in detail.

The article provides a critical analysis of the current legislation of Ukraine, particularly the Labor Code and other normative legal acts regulating the protection of employees from psychological violence in the workplace. The Ukrainian legal framework is compared with international standards and the practices of other countries in combating mobbing. Significant gaps and shortcomings in national legislation that hinder effective counteraction to mobbing and protection of employees' rights are identified.

Special attention is paid to the necessity of amending the legislation to clearly define the measures that employers should introduce and implement to counteract and prevent mobbing in the workforce. The need to introduce controlling bodies as a stimulus for employers to carry out preventive measures against mobbing in the workforce is also determined.

The importance of raising the level of legal culture in society and forming zero tolerance for any forms of psychological violence in the workplace is emphasized.

Key words: mobbing, labor relations, psychological violence, legislation, prevention, counteraction, employees' rights.

1. Introduction.

Mobbing (bullying), as a negative social phenomenon, is widespread in every country of the world, making it a global problem that hinders the realization of fundamental human rights and freedoms in the sphere of labor relations.

Each state chooses its own legal mechanisms to counteract and prevent this phenomenon, as well as mechanisms to hold those guilty of mobbing legally accountable.

Today, many countries have significantly strengthened the legal protection of employees from mobbing in the workplace through legislative instruments.

Despite the fact that mobbing as a phenomenon has existed in Ukraine for a very long time, and the necessity of introducing a legislative framework for counteracting and preventing mobbing has been discussed by both scientists and practitioners for many years, the legislator only began creating legislative norms and implementing mechanisms of legal responsibility for mobbing in 2022.

Although the legislative framework regarding counteracting and preventing mobbing has been in operation in Ukraine for only a few years, courts have already formed certain practices

in considering disputes concerning the establishment of facts of mobbing in the workforce and have developed certain conclusions in such categories of cases, indicating the imperfection of this legislative base.

2. Analysis of scientific publications.

The problem of mobbing (bullying) has always been the subject of research by both foreign and domestic specialists who have studied both individual aspects of mobbing and conducted a systematic analysis of this phenomenon.

Regarding the content of mobbing, L.O. Ostapenko defined that mobbing in our culture is an antisocial problem, often a way of self-affirmation for both the employer and colleagues. Creating an atmosphere in companies where the only possible way to build a career is to “step over others” still works but increasingly indicates not a strong team but emotional immaturity and a lack of corporate governance [1; p.191].

Many scientists have investigated the causes of mobbing. For example, L.V. Shchetinina, S.G. Rudakova, and K.O. Drobynska in their study identified several causes of mobbing: firstly, anger, the desire for revenge for past grievances, the need for self-affirmation; secondly, the encouragement of mobbing by management, intimidation of subordinates by the manager to increase authority among the team; thirdly, conflict situations, misunderstandings in the team [2; p.316].

In turn, K.B. Marysiuk defined a somewhat broader list of causes of mobbing: 1) personal resentment; 2) envy not only from the initiator of oppression but also from other persecutors (for example, regarding wealth, age, intelligence, skills, professional achievements); 3) non-acceptance of new employees; 4) the management’s desire to dismiss a certain employee; 5) the desire to subordinate the subject of persecution; 6) a significant number of applicants for one job position, etc. [3; p.134].

Kulochok-Titova L.V. and Pakhomova I.A. in their study determined that the problem of mobbing is not new and is characteristic not only of Ukrainian society; in any country—somewhere more, somewhere less—such situations arise. One of the main negative features of this phenomenon is that it manifests itself only at extreme stages; at early stages, such processes are very difficult to notice. The consequences can be very serious—from a bad climate in the team to suicidal tendencies among victims [4; p.142].

3. The aim of the work.

The aim of the article is to draw the attention of scientists, legislators, and practitioners to the problem of mobbing in labor relations and to contribute to the development of effective mechanisms for its prevention and counteraction, which is an important step towards creating a healthy and productive work environment.

4. Review and discussion.

The issue of counteracting signs of mobbing in the workplace has long been regulated at the legislative level in European countries.

For the first time, the fight against mobbing at the legislative level began in Europe in 1993 in Sweden with the adoption on September 21, 1993, of the Ordinance of the Swedish National Board of Occupational Safety and Health regarding the counteraction of victimization in the workplace. This ordinance obliges the employer to develop a system for identifying and correcting unsatisfactory working conditions, organizational problems, or cooperation deficiencies that may lead to victimization (Article 4). Also, the employer must have procedures for providing assistance or support to employees who are subjected to victimization (Article 6) [5; p.96].

On January 17, 2002, France adopted the Law on Social Modernization, which establishes both criminal and disciplinary responsibility for “moral harassment” (mobbing) [5; p.96].

In Germany, there is no separate normative act dedicated to the prohibition of mobbing or psychological harassment of employees; there is also no legislative definition of mobbing. However, numerous German enterprises at the level of local regulation establish rules regarding the prevention of mobbing and dealing with stress at work. Signing so-called “anti-mobbing agreements” is common in Germany and Luxembourg [5; p.97].

Overall, at the legislative level, the prohibition of mobbing and its manifestations is introduced in Germany, Denmark, Norway, the USA, Great Britain, Italy, Quebec, Poland, and France.

There are also many international acts that contain norms regarding the prohibition and counteraction of mobbing in labor relations.

It should be noted that the introduction of measures to counter mobbing is mentioned in the European Union Directives No. 89/391/EEC of June 12, 1989, on the introduction of measures to encourage improvements in the safety and health of workers at work, and No. 2000/78/EC of November 27, 2000, “Establishing a general framework for equal treatment in employment and occupation,” which directly establish the provision of protection of the employee’s health in the workplace, equality of treatment in the field of labor and employment, defining behavior aimed at degrading human dignity or creating an offensive environment as harassment of the employee, which is equated to discrimination of labor rights [6].

In June 2019, the ILO Convention No. 190 on the Elimination of Violence and Harassment in the World of Work (hereinafter—ILO Convention No. 190) and the accompanying ILO Recommendation No. 206 were adopted. ILO Convention No. 190 and Recommendation No. 206 are the first international labor standards that provide a general framework for preventing and eliminating violence and harassment in the world of work, including gender-based violence and harassment. For the first time in international law, the Convention contains a specific recognition of everyone’s right to a world of work free from violence and harassment and defines the obligation to respect and promote the realization of this right (Article 4) [7].

ILO Convention No. 190 provides for ensuring compliance with legal acts, access to remedies, and assistance as key components of any efforts to end violence and harassment. This includes dispute resolution mechanisms at and outside the enterprise level, courts and tribunals, as well as access to support, services, and remedies, especially for victims of gender-based violence and harassment [7].

ILO Recommendation No. 206 also recognizes the importance of obtaining and monitoring data on cases of mobbing. According to paragraph 22 of the Recommendation, ILO member states should strive to collect and publish statistical data disaggregated by gender, form of violence and harassment, and sector of economic activity, as well as characteristics of vulnerable groups [7].

Ukraine only began creating a legislative framework regarding counteracting and responsibility for mobbing in 2022; thus, in the same year, several changes were made to the Labor Code of Ukraine (hereinafter—LC) and the Code of Ukraine on Administrative Offenses.

In November 2022, the Law “On Amendments to Certain Legislative Acts of Ukraine on Preventing and Counteracting Mobbing (Bullying)” was adopted [8], which introduced a new Article 22 “Prohibition of Mobbing (Bullying)” into the LC [9].

This article defines mobbing as systematic (repeated) prolonged intentional actions or inaction of the employer, individual employees, or a group of employees of the workforce, aimed at humiliating the honor and dignity of the employee, his business reputation, including with the aim of acquiring, changing, or terminating his labor rights and obligations, which are manifested in the form of psychological and/or economic pressure, including with the use of electronic communication means, creating a tense, hostile, offensive atmosphere towards the employee, including one that forces him to underestimate his professional suitability.

This article also defines the forms of psychological and economic pressure, which are:

creating a tense, hostile, offensive atmosphere towards the employee (threats, ridicule, slander, derogatory remarks, behavior of a threatening, intimidating, humiliating nature, and other ways of destabilizing the employee's psychological balance);

baseless negative singling out or isolation of the employee from the team (not inviting to meetings and conferences in which the employee, according to local normative acts and organizational-administrative acts, must participate; hindering the performance of his labor function; denying access to the workplace; relocating the workplace to unsuitable places);

inequality of opportunities for training and career growth;

unequal pay for work of equal value performed by employees of equal qualification;

groundless deprivation of the employee of part of payments (bonuses, incentives, and other rewards);

unreasonable uneven distribution by the employer of workload and tasks among employees with equal qualifications and labor productivity performing equivalent work [9].

In addition, according to Article 158 of the LC, the employer is obliged to take measures to alleviate and improve the working conditions of employees by introducing modern technologies, achievements of science and technology, mechanization and automation means, ergonomic requirements, best practices in occupational safety, reducing and eliminating dust and gas pollution of air in production premises, reducing the intensity of noise, vibration, radiation, etc.

The employer is obliged to take measures to ensure the safety and protection of the physical and mental health of employees, to prevent risks and stress in the workplace, and to conduct informational, educational, and organizational measures to prevent and counter mobbing (bullying) [9].

Also, according to Article 13 of the LC, the collective agreement establishes mutual obligations of the parties regarding the regulation of production, labor, and socio-economic relations, including measures aimed at preventing, counteracting, and stopping mobbing (bullying), as well as measures to restore rights violated as a result of mobbing (bullying) [9]. However, the legislation does not define even an approximate list of such measures. This means that the issue of counteracting mobbing was not properly studied by the legislator before making the relevant changes to the legislation, and imposing the definition of the content of such measures on the parties to the collective agreement is not a guarantee that the measures will be of high quality, effective, and will contain a clear mechanism for their implementation. Moreover, as can be seen from open data, not all collective agreements contain a list of the specified measures.

In this context, the conclusion reached by V.Yu. Kikinchuk, I.M. Ryazantseva, and D.O. Leshchenko in their study is appropriate: despite significant progress in counteracting violence at work achieved by the Ukrainian authorities during 2022, there are currently no mechanisms aimed at re-educating mobbers, special preventive records for them, or registries [10; p.57].

We believe that measures such as conducting regular trainings and seminars, implementing anonymous feedback channels, and periodic anonymous surveys of employees regarding facts of mobbing would contribute to raising the level of legal culture in society and forming zero tolerance for any forms of psychological violence in the workplace.

It should also be noted that the legislator does not define any mandatory control measures by the state or other bodies, for example, trade union bodies, regarding checking the employer's compliance with the norms of legislation on counteracting mobbing, such as whether measures aimed at preventing, counteracting, and stopping mobbing (bullying) are indeed introduced and carried out by the employer.

5. Conclusions.

Having studied the issue of counteracting and preventing mobbing in labor relations, we conclude that although the legislation defines the employer's obligation to take measures to counteract and

prevent mobbing, it does not specify what these measures should be. We believe that imposing the definition of the content of such measures on the parties to the collective agreement is not a guarantee that the measures will be of high quality, effective, and will contain a clear mechanism for their implementation.

Also, we conclude that the absence of controlling bodies that would monitor the employer's implementation of the necessary measures to counteract and prevent mobbing leads to the continuation of this phenomenon in labor relations.

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