

Biljana TODOROVA

MOBING IN LABOUR LEGISLATION OF REPUBLIC OF MACEDONIA VS. THE REGULATION OF THE EUROPEAN UNION COUNTRIES

Introduction

The structural reforms as an important process within the transitional changes in the Macedonian economy caused significant changes in many segments of organization and functioning of the economic system and its sub-systems. These frames incorporate the changes in the labor market in the field of labor relations, both in terms of normative regulation and in terms of actual conditions and trends. The process of privatization and the structural reforms in legal entities (reorganization, modernization), the reduction of business activities in times of economic crisis, the low level of investment and job opening and over employment (hidden unemployment) present in the past, led to extremely unfavorable situation in the labor market (high unemployment) and to changes in the quality of working relationships that influenced the position of workers in their working engagement.

The responsible people in the legal entities

The author is Associate Professor at the Faculty of Law, First Private University European University, Skopje

were authorized to apply all means to achieve the set goal, gaining high profits for a short time. Largely overlooked was the fact that labor productivity, which obviously influences the profitability of work, among other things depends on establishment human working atmosphere and good interpersonal relations. In reality, managing human resources is often accompanied with insults, criticism of the employee, overload assignments, and work in non-working days, holidays and unused vacation. Unfortunately, this is everyday experience in the working environment that large numbers of employees face, who having no other alternative in conditions of high unemployment, do not leave the workplace. The employees often complain of violation of working hours from superiors who on the other hand require full dedication to work, threatening to fire them if their demands are not respected. As a result of high supply of labor force the threats for firing are more and more “stronger”. The employees accept every order, having no protection at all, unlike the countries of the European Union where there are powerful trade union organizations. The Macedonian workers develop the feeling of hopelessness, which is beginning of serious psychological reactions.

Psychological pressures, humiliations and abuses, the mistreatment of workers that cause serious damage to their mental and physical health characterize the so-called mobbing which has long been known in the working environment in many countries. Republic of Macedonia is no exception to the global phenomenon of massive mistreatment of workers. The psychological mistreatments and attack on the moral norms of behavior become more visible than ever. However, it seems that lately, the barriers are falling the question of presence of mobbing is becoming bigger issue, there are counseling and also the Macedonian Mobbing Association was recently established. The question is open and it is necessary to regulate this issue through appropriate norms and standards and prepare strategy to fight against this social-psychological phenomenon.

The Law on Working Relations of Republic of Macedonia guarantees certain rights to the worker. The problem here is not that the worker is unprotected, but we are talking about proper regulation of a completely different issue – the psychological mistreatment of the employee, that is for mobbing.

This paper gives answer to the questions: what is this phenomenon and what are its victims, in which extent is the mobbing present in Macedonia, what and is the current legislation good in this area. The idea of this paper is to initiate further actions to improve the current legislation in Republic of Macedonia. It also provides an overview of the situation in different countries of the European Union and their legislations.

What is mobbing and who are the victims?

In literature there are different definitions of mobbing. The term “mobbing” is commonly used in Swedish, German and Italian literature, while in the English-speaking countries the term “bullying” is used. In USA the most common terms for this phenomenon are “work abuse” or “employee abuse”. Also, there are several terms that try to translate the term “mobbing” such as: “psychological harassment”, “psychological abuse”, “psychological terrorism”, “moral harassment”, “moral abuse” etc. (Heinz, 1996).

The word mobbing comes from the English verb “to mob” which literally means to fill (space), to gather, to form a gang¹.

By its structure the mobbing is violation of honor and reputation, and contains libel, insult and violation of fundamental human rights, such as prohibition of torture and forced labor, but in Republic of Macedonia it is not specifically designated as criminal offence.

According to the definitions found in literature mobbing is psychological harassment in the work place, which involves giving humiliating duties to the worker, gossiping, constant control and criticism by the management and the colleagues, endangering the health of the employee (not getting sick leave, vacation, sexual harassment...), ignoring, mocking, threat, reduction of earnings, transfer to another office or work unit, not calling at a meeting, withdrawal of working assets (syndrome of empty desk), overstocking with obligations (syndrome of full desk) (Heinz, 1996).

Precise definition of mobbing is listed in the French legislation where mobbing is defined as psychological harassment repeated through action that has purpose or consequence, degradation of the working conditions of the employee, which can endanger and cause violation of human rights and dignity, damage to the physical or mental health or to jeopardize the professional future of the worker. (Lorho, p.18).

Because the mobbing is widespread phenomenon, mostly studied in the workplace and with consequences that reflect on the social environment, the work environment and on the individual, the problem is observed from

1 As an expression of certain behavior in the workplace, the mobbing for the first time was used and started to be explored by the German psychologist Heinz Leymann, determining its characteristics, the consequences of health and he set up a clinic to help the victims. Leymann borrowed the word mobbing from the ethology of Konrad Lorenz, who used this term to refer to some animals which unite against a member, attacking and chasing him from the community, sometimes pushing him to death. The similar behavior of people in the work environment Leyman called mobbing. (Davenport, 2006).

medical, sociological, legal and psychological standing point. The aim of the mobbing actually is to force the employee to leave the workplace and to be even more degraded in economic sense².

There are different activities that are recognized as mobbing and depend on a person and on the position that he/she has at the workplace. The actors in the mobbing situation are: the mobber, the victim of mobbing and the observers – neutral, but with their passive behavior, they are actually support group. Therefore, the analysts differ different types of mobbing: horizontal mobbing – takes place between works with equal hierarchical position, i.e., when one or a group of workers because of personal problems, envy and jealousy, choose one worker – a victim, on whom they want to prove that they are strong and capable; vertical mobbing – when it is done by hierarchy: the supervisor harasses one worker or a group of workers, or when a group of workers harasses one supervisor; strategic mobbing – when there are structural changes in the company or institution (for example rationalization and promulgation redundancy), the supervisors together mob certain people that are undesirable, so they will give notice without seeking severance pay, compensation, etc.; and effective or emotional mobbing – is reflected through fear, dependence and envy of the person who does the mobbing (because of personal reasons) or sexual disorders. (Federation of Trade Unions of Macedonia and Foundation "Friedrich Ebert" p. 55).

The insufficiently transparent atmosphere, strong hierarchy, the deficiencies in internal information, inappropriate behavior of management, insufficiently marked authority and division of tasks, deficiencies in management with employees and suppression of conflicts contribute to creation of the mobbing in the workplace. Very significant reason for mobbing in some working environments certainly is the very bad working condition in which there is envy, jealousy, hostility and pressure. The unfulfilled ambitions of only one employee can be a reason for mobbing, or humiliation and degradation of the others, as a cover for their "abilities".

2 The mobbing means stigmatization. These are activities that can contain numerous behaviors that do not necessarily have to indicate aggression or any other attempts of exclusion or degradation of someone. However, to be subject to such behaviors on daily bases, during a very long period in which those behaviors are used to express hostility, that means to change their context and are used to designate, i.e., to stigmatize someone in the group. In fact, these behaviors, regardless of their meaning in normal everyday communication, have a common objective, to separate a person and to punish him/her. (Federation of Trade Unions of Macedonia and Foundation "Friedrich Ebert" p. 55).

It is considered that the most frequent victims of mobbing are: honest employees, who notice and report irregularities in the workplace or irregularities in the fulfillment of duties, new employees, usually young workers and those about to retire, quiet and reserved employees, employees who are quiet and tolerate, those who want more independence in work and better working conditions and the employees with lower qualifications. What is worrying is that these employees instead of victims, the environment characterize them as incompetent or paranoiac people.

In the countries of European Union, mobbing is ranked on the fourth place according to the risks in the workplace, and it is estimated that for a very short period it will take the first place (Lehto, p.4). According to the European Foundation for the Improvement of Living and Working Conditions of 25.000 million employees in the member states of the European Union, three million employees were victims of physical violence from people at workplace, six million were victims of physical violence outside the workplace, three million employees were victims of sexual violence and thirteen million were victims of mobbing (Lehto, pp. 4-11). The survey results indicate significant differences in the number of victims of mobbing among member states of the European Union. In Finland 15% of the employees were exposed to moral harassment in the workplace, in Great Britain and the Netherlands 14%, Sweden 12%, Belgium 11%, France and Ireland 10%, Denmark 8%, Germany and Luxemburg 7%, Austria and Greece 5% and Italy and Portugal 4%. The differences in the percentage of victims of mobbing in different countries of the European Union, among others are result of cultural differences, differences in the threshold of tolerance of psychological harassment, but probably also to the (un)awareness of employees. For example, in Sweden the everyday behavior of the superior who gives duties to employees in a loud tone of voice and in authoritative manner, is considered as unacceptable and often is classified as mobbing. The situation in Mediterranean countries is different where the described behavior remains unnoticed i.e. it is tolerated.

According to research of the Federation of Trade Unions of Republic of Macedonia, of 510 surveyed people, 41% identified themselves as victims of mobbing and therefore have health problems, 30% said that they are under political pressure, 14% said that they are under pressure because of origin and 5% of the respondents were sexually and physically harassed in the workplace (Federation of Trade Unions of Macedonia and Foundation" Friedrich Ebert" p. 55).

Legal protection from mobbing

The study of mobbing began 10 years ago. There are many studies of this phenomenon, its characteristics and forms so that it is easier to recognize, so you can more effectively work on its prevention, primarily through improving the quality of interpersonal relations.

On the other hand, the economic crisis, globalization, high market competition, structural changes (privatization, acquisition, reorganization, introduction of modern technology, especially informatics), insecurity of workplace, illegal employment, that is in the domain of irregular economy and the expectation of flexibility from the worker brought to bigger presence of mobbing. The employers are forced to analyze every problem that has negative consequences on productivity and the production costs. Some studies conducted in Germany showed that one of the main reasons in the increasing costs is the mobbing³. The consequences are not only of psychological nature and do not only refer to health of individuals. The presence of mobbing reduces the productivity of the worker and the credibility of the company. It also causes direct costs for the company from lost lawsuits for mobbing on employees.

The moral harassment is already legally punishable in many European countries. Sweden, Norway, France and Switzerland have the most appropriate legislation on mobbing. The mobber (the one who harasses) is responsible for criminal act, and the victim can ask redress of grievance of "biological damage". Within the European Parliament there is discussion about mobbing conducted by the Committee for Employment and Social Affairs, which analyzes the legislation in separate countries and emphasizes the need for education in European countries and the need for unified legislation that would provide quality prevention of mobbing (Василевік, p. 27).

As a result, in the European Union there is a separate law adopted in 1976, which was amended in 2002. In USA it was adopted in 1964, and amended after five years while Canada adopted a law in 1984. From the countries in the region only Serbia adopted a Law on Prevention of Violence at Work in 2010 (Василевік, p. 59).

3 In Germany one worker who was victim of mobbing costs the company between 25 and 75 thousand Euros a year because of absence from work due to sick leave, reduced work performance and because of error during work. The statistics indicate that 50% of the workers exposed to mobbing go on sick leave 6 weeks a year, 31% from 1.5 months to 3 months, and 11% stay home on sick leave more than 3 months a year (Sroka, 2011).

In our country, this issue is treated under the Law on Equal Opportunities between Women and Men, the Law on Occupational Safety and Law on Working Relations, but it is not enough. The Law on Occupational Safety adopted in 2007 envisages the establishment of a National Security and Health Council - body which is not established yet. The amendments to the Law on Working Relations of 2009 regarding the mobbing, made for implementing the directives of the European Union in our national legislation (Directive 89/391/EEC), prohibit any kind of psychological harassment in the workplace. The psychological harassment according to the amendments is defined as discrimination or negative behavior of an individual or a group that is often repeated, i.e., at least once a week for a period of six months and represents a violation of the dignity, reputation and honor of the employees and causes fear or creates a hostile, degrading or offensive behavior (Law on amendments to the Law on Working Relations, Article 1.3). In case of dispute, as stated in the amendments, the burden of proof falls on the individual or the group against whom there is a lawsuit for performing mental disturbance unless they prove different treatment because of the exceptions set out in Article 8 of the Law on Working Relations⁴.

The amendments to the Law on Working Relations in the section of mobbing are incomplete and do not reflect the real needs of workers for protection against psychological pressure in the workplace. The mentioned law does not list the consequences and proposes mechanisms that ensure transparent execution of the provisions of the Law. The amendment of only two articles in the Law on Working Relations will not contribute to the protection of workers from mobbing

The thing that can be noted in the existing Law on Working Relations is the lack of adequate provisions for enabling measures and mechanisms for detection, identification and prevention of psychological harassment as a

4 “(1) It is not considered discrimination making distinction, exclusion or preference in relation to certain work, when its nature is such or the work is performed in such conditions that the characteristics associated with some of the cases in Article 6 of Law on Working Relations are genuine and determining requirement for performing the work, provided that the goal it wants to achieve is justified and the condition is balanced.

(2) All the measures provided by Law on Working Relations or other laws and the provisions of the Law on Working Relations or other laws, the collective agreements and contracts for work which refer to special protection and help to certain category of workers, and especially those for protection of the disabled, elder workers, pregnant women and women who use any of the rights of protection of motherhood, as well as provisions related to the special rights of parents, step parents and protégés are not considered discrimination nor can be ground for discrimination”. – Law on Working Relations, Official Gazette of R. Macedonia, No. 62/05 and 106/08, Article 8.

form of harassment in the workplace. The law uses a very extensive definition of mobbing, which brings into question the applicability of these regulations in special situations where due to the general scope of the legislation, it is difficult to locate the responsibility of the performer of psychological harassment. Situation that we can imagine is that when an employee is subject to the pressure of a sexual nature. In such a situation, is the responsibility in the area of discrimination, mobbing or sexual abuse? Also it is appropriate to focus the attention on strategic mobbing as a form of psychological harassment in the workplace which is not regulated by the amendments in the Law on Working Relations. The only form of legal protection provided by the law is judicial protection, but there is a lack of provisions that could precisely define the legal basis for acceptance of judicial proceedings in the case of psychological harassment. Also, the law does not cover punishment provisions and does not regulate the role of trade unions and chambers of commerce in the process of protection of employees in procedures related to mobbing

The inexact defining of the term “psychological harassment” disables the objective recognition of behaviors and actions that actually lead to discrimination. Also, the consequences that need to occur to be considered that on an individual is performed psychological harassment or discrimination are not mentioned. The question is what are the reasons for such a significant and harmful phenomenon is placed in only two articles of the law.

The European legislation sets out all the elements for identifying and documenting the mobbing, for defining of the disorder of health, the loss of working ability and the like. The consequences are objectively determined by competent, professional institutions, whose opinion is the basis for litigation.

The true protection from mobbing can only be done by a special law for protection from the pressures at the workplace, that should create an atmosphere for preventive action from mobbing, informing and educating employees, to state clearly that any occurrence that refers to psychological harassment is not mobbing, to adopt a code of ethics in business and to determine the types of mobbing. Some European countries have enacted specific legislation; others will soon do the same. Republic of Macedonia should follow the same path.

Abstract

Threats, intimidations and insults in the relationships between an employee and employer and among coworkers are not something new, but the novelty is their normative regulation in different countries.

Psychological pressure, humiliation and abuses, mistreatment of workers, causing serious disturbances on mental and physical health of workers, characterize the so-called mobbing, which has long been known in the working environment in many countries. Republic of Macedonia is no exception to the global phenomenon of massive mistreatment of employees.

Indisputable is the fact that the mobbing has adverse effect on the employee, as well as on the duties on his/her work place, sometimes questioning his/her health.

Резиме

Заканите, омаловажувањата и навредите во односите меѓу работник и работодавач и меѓу работници колеги не се новина, но новина е нивното нормативно уредување во одделни земји.

Психичките притисоци, понижувањата и злоставувањата, малтретирањето на работниците, кои предизвикуваат сериозните нарушувања на психичкото и физичкото здравје на работниците, го карактеризираат таканаречениот мобинг кој е одамна познат во работните средини во многу земји. И Република Македонија не е исклучок од светската појава на се помасовното малтретирање на вработените.

Неспорен е фактот дека мобингот негативно влијае како на работникот така и на работните задачи што тој ги извршува на неговото работно место, понекогаш доведувајќи ја во прашање и неговата здравствена состојба.

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