

Psychological and legal aspects of protection against violence in the world of work. Is the special protection of certain groups of employees necessary?

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SUMMARY

Authors try to analyze the problem of special protections against mobbing for some groups of employees, from legal and psychological perspectives. From psychological point of view, equal protection of all employees regardless of personality, minority status or socio-demographic characteristics seems to be the best solution, because there is no empirical evidence that mobbing poses a threat or danger to any particular group of employees. Research rather suggest it is the organisation and its climate, rather than any predispositions of potential victims that are responsible for the appearance of mobbing in the workplace. At the same time, it seems that legal systems should aim to formulate anti-mobbing regulations in the most universal way so that every victim can find a way to proceed with their claim. Making the definition of violence at work more detailed is not warranted by the process of pursuing claims or prevention of intimidation and harassment, as the catalogue of reasons for violence in the workplace is still open. Besides, a better definition of what it takes to be a victim of mobbing will hardly affect the compensation.

Key words: mobbing, Labour Code

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For the protection of employees against mobbing to be effective, it should relate directly to the essence of the phenomenon itself. Researchers investigating this particular pathology indicate its following features as most representative: repeatability of attacks; imbalance of power between the perpetrator and the victim, rendering the latter helpless; silent group consent; negative effects for the victim in terms of both mental and physical health; and, in the long run, the possible elimination of the victim from a team or work setting or, in the worst case scenario, their suicide. Authors who examine mobbing wish to draw our attention to the varied nature of attacks and the lack of rationally justifiable reasons for them. Mobbing may consist in overloading an employee with work or failing to assign tasks; it may entail aggressive communication or the exclusion of a person from communication. Attacks may be triggered by an employee's incompetence or outstanding achievements, dysfunctions or disabilities as much as above-average talents and achievements, idleness or workaholism.

The image of workplace violence would not be complete without profiling the two protagonists, the victim and the perpetrator. In the attempt to give an answer to the titular question, but also in view of the fact that mobbers are for various reasons rarely a subject of research, let us focus here only on the people who become the targets of mobbing attacks. Speaking of the victims of mobbing, we should consider the extent to which they constitute a coherent group. Is there anything particular about them in terms of their behaviour, approach to work, achievements? Are they in any way differentiated by gender, age or education? Research and the daily practice of victim support groups hardly lead us to any unequivocal conclusions. Although there is evidence to suggest some relationship between mobbing and the victim's age or gender, as well as their position in the organization, attitude to work or membership of a minority group, the results hardly justify the conclusion that mobbing poses a threat or danger to any particular group of employees. People fall victim to mobbing regardless of their education or professional achievement; they are women and men, younger and older, those who always make special effort and those who are less hardworking, representatives of minorities but also others.

Another question which is asked equally often is whether, independently of the demographic variables, mobbers attack people with a specific personality profile, whose mental characteristics somehow stand out, who are in some sense weaker and more vulnerable than others or, to the contrary, stronger, in this way triggering rivalry and aggression. In the attempt to answer this question some researchers have tried to build a psychological profile of the victim, focusing on various characteristics that might make people more susceptible to the experience of mobbing. The effects of these investigations suggest that people who can be thought of as being mentally predisposed to becoming an object of mobbing are certainly not

one type of personality but are more likely to share a number of personal characteristics or dispositions¹. In this context, it is not simple correlations that we have to consider but the complex interactions of many variables, as illustrated by studies which reveal that the victim's character may be of relevance only in conditions of bad management but bears no relation to mobbing in well-managed organizations². This means that if the management style and the climate prevalent in the organization are right, employees' characterological traits in no way predispose them to be mobbed, meaning that people with strong, healthy personalities are as likely to be victims as those who are depressive or suffer from any other dysfunction.

The following features of the victim are also mentioned in the context of mobbing: scrupulousness, naivety, exceptional sense of duty, but also emotional immaturity and negative emotionality characterized by irritability, high-level anxiety, and bad temper as well as the tendency to lowered mood. These characteristics may on the one hand provoke attacks (for example people who are excessively conscientious may become an object of aggressive rivalry and envy), while on the other hand may simply make people more vulnerable. Irritability and bad temper can in some circumstances contribute to the initiation of conflicts, some of which might consequently be transformed into mobbing. Another set of characteristics known to increase the likelihood of mobbing is linked to the so-called "strong character" of people who are domineering, unlikely to be influenced by others, ambitious, single-mindedly achieving their own goals or breaking unwritten group rules. Such a set of characteristics and the resulting style of behaviour may unleash the negative attitudes of others.

The inconclusiveness of the results is not the only weak point of research into the personality of the victim of mobbing. All such studies are correlative, steering away from the causal relationships that might be involved in the process, so it is hard to conclude whether the victim's profile they propose is the cause or result of a mobbing attack. In fact the lack of evidence-based empirical knowledge about the behaviour, emotionality, cognitive and motivational dispositions or personality of a victim of mobbing puts into question the legitimacy of creating any systems of special protection against mobbing for specific employees. In reality, it is very difficult to distinguish a group of employees for whom a system of special protection would make sense. It seems that, unlike discrimination, mobbing is a pathology

¹ Por. M. Warszewska-Makuch, *Osobowościowe i sytuacyjne predyktory mobbingu w miejscu pracy oraz jego związek z samopoczuciem psychicznym i zadowoleniem z pracy*, 2013, niepublikowana rozprawa doktorska.

² Por. M. Duffy, L. Sperry, *Workplace mobbing: individual and family health consequences*, 2007, *The Family Journal: Counselling & Therapy for Couples and Families*, Vol 15(4), 398-404.

that does not differentiate between individuals, being as it is potentially equally threatening to every employee. Another reason for undifferentiated protection against mobbing is the variety of negative behaviours identified as mobbing-related and also the fact that no uniform pattern of motivations by which mobbers may be guided has been identified. Some are provoked by the eccentricity of victims, others by their mediocrity; some are annoyed by weakness others by strength; some attack employees for being active, others for their passivity.

In this sense the idea of creating, for example, special protections for representatives of minorities, including sexual minorities, seems to be problematic. Although, particularly in conservative societies, belonging to a minority group itself may create a situation of higher exposure to negative experience, it is difficult to identify any scientific evidence that would suggest that people from minority groups are more vulnerable to being victims of violence or harassment, are particularly sensitive, show negative emotionality or are very low or excessively high on the scale of conciliatory behaviour. Taking into account the idea of special protection for LGBTIQ employees, the essential argument could be based on their neuroticism as the dimension of personality highly related to vulnerability and irritability or low conciliatory nature leading to confrontational behaviours. Yet the meta-analysis of research into Western European culture, conducted by Lippa in 2005³ and 2008⁴, along with other studies conducted in the particularly conservative China⁵, identifies no differences in neuroticism between hetero and non-hetero persons apart from those resulting from masculinization/feminization, so it is difficult to discuss higher vulnerability or irritability linked to neuroticism as resulting from sexual orientation. In this group, it is also difficult to distinguish a personality-related proneness to aggressive response towards people of other sexual preferences which leads to conflict. On the contrary, research demonstrates that people who belong to sexual minorities are more open and so they may be expected to be more tolerant, curious or accepting of others.

In this perspective equal protection of all employees regardless of personality, minority status or socio-demographic characteristics seems to be the best solution, because it forces organizations to adopt a universal anti-mobbing policy and build the strong ethical infrastructure of a total ban on all mobbing behaviours. Such an approach also makes it clear that it is the organization and its climate rather than

³ Por. R. Lippa, Sexual orientation and personality, 2005, *Annual Review of Sex Research*, 16, 119–153.

⁴ Por. R. Lippa, Sex differences and sexual orientation differences in personality: Findings from BBC internet survey, 2008, *Archives of Sexual Behavior*, 37, 173–187.

⁵ Por. L. Zheng, R. Lippa, Y. Zheng, Sex and Sexual Orientation Differences in Personality in China, 2011, *Arch Sex Behav.*, 40: 533–541.

any predispositions of potential victims that are responsible for the appearance of mobbing in a workplace.

It would also appear that the legal regulations which are already in place in some European countries provide adequate protection for all employees. Our analysis of the Polish law indicates that the existing regulations are adequate, comprehensively protecting employees as they do against violence, harassment, mobbing or discrimination at work. Employees are protected on the basis of Labour Code regulations (Art. 11¹ – 11³, 18^{3a} – 19^{3e}, 94³), Criminal Law (e.g. art. 212 – 220) and, to a limited extent, by the Civil Code (art. 415 *et seq.*). Anti-mobbing regulation was introduced to the Labour Code by the Act of 14 November 2003, which amended the Labour Code along with several other acts⁶. The amended code now includes art. 94³, which defines mobbing, places a demand on employers to introduce counteractive measures and specifies the potential claims that employees might have in this respect.

Interestingly, mobbing as a part of the Labour Code is not included in the European legal regulations and there is no EU directive pertaining to this area, although the term itself is well established in the legal systems of some European countries, i.e. Germany, Austria.

The Austrian legal system does not include a definition of mobbing which has been, nonetheless, formulated in the judgement of the Austrian Supreme Court (*Der Oberste Gerichtshof*) dated 4 August 2009⁷, as methodical, stigmatizing, escalating events which are, in the long term, expressed by the lack of acceptance, isolation, concealment of information, distortion of opinions, etc. towards the other person. In a judgement of 17 October 2002, the Austrian Supreme Court emphasized that mobbing could also take place between employees, as the regularly occurring failure to exchange documents, providing false information, giving wrong instructions with the purpose of undermining the position of another employee in the workplace, and consequently causing another person's removal from a position occupied within the organization. In a judgement of 2 April 2009 the same court ruled that mobbing between employees did not have to take place along superior-subordinate lines and that an employee who experienced mobbing from another employee could also claim compensation. All claims by employees are regulated by the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) and the Employee's Act (*Angstelltegesetz*), which guarantee the protection of life and health of all employees and secure the provision of an appropriate work environment.

⁶ Dz. U. Nr 213, poz. 2081.

⁷ http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20090804_OGH0002_009OBA00086_08Z0000_000

Employees can take legal action to protect their good name and personality rights but those who have already left their job giving mobbing as the reason are not entitled to compensation.

In the Polish legal system, mobbing is defined in art. 94³ §2 of the Labour Code as an action or behaviour with regards to an employee or directed against him or her, which consists of persistent long-term harassment or intimidation resulting in a decrease in the victim's self-evaluation of their professional abilities, or which is aimed at, or results in, the humiliation or ridicule, isolation or elimination of the employee from a group of co-workers. Importantly, mobbing is a persistent, long-term activity of this kind, which may or may not be illegal in view of other regulations. Any activity seen as mobbing must be interpreted at least in some sense as reprehensible, which cannot be justified by the existing social norms or principles of social interactions. So the mobber's behaviour which is persistently harassing or threatening may but does not have to directly affect the employee's legal interest. This means that the conditions for mobbing as defined in art. 94³ of the Labour Code are also met in the case of employer's actions which are well within the limits of their statutory rights⁸. It should be emphasized however that this doctrine only accepts that a case of threatening behaviour or harassment is considered to be mobbing if an employee is subjected to it over a period of time.

For any such activity to be interpreted as mobbing it has to be *long-term*, and in this way distinguished from a short-term or single incident which involves being ill-disposed towards an employee. Still the phrase *long-term* itself has not been strictly defined and attempts to specify the timeframe has been proven insufficient with reference to particular situations⁹. In view of art. 94³ the long-term nature of harassment or threatening behaviour must be recognized individually and the circumstances of the specific case must be considered¹⁰. In fact, in order to evaluate whether the situation persists over long-term it is necessary to recognize the moment when the effects of intimidation began to occur and also the degree of the persistent intensity of the unwanted behaviour. It is important to recognize whether the period was long enough for an employee to suffer from the effects of a decreased self-evaluation of his or her own professional abilities. Shorter but high-intensity persistent harassment or threatening may be considered to be long-term, whereas this might not be the case if the severity of the actions against

⁸ por. W. Cieślak, J. Stelina, Definicja mobbingu oraz obowiązek pracodawcy przeciwdziałania temu zjawisku (art. 943 k.p.), PiP 2004/12/64.

⁹ por. M.T.Romer, M.Najda, Mobbing w ujęciu psychologiczno – prawnym, Lexis – Nexis Warszawa 2010.

¹⁰ Wyrok SN z dnia 17 stycznia 2007r. I PK 176/06; OSNP 2008, nr 5 – 6, poz 58.

an employee is lower and his or her mental resistance is higher. The effects of mobbing in the latter case will be noticeable only after a longer period of exposure. What is the most essential in regarding mobbing activities as long-term is the individual's mental resistance. It is the intensity of mobbing activities and the employee's personal resistance that dictate the appropriate interpretation of what constitutes *long-term* rather than a pre-defined period of time. In jurisprudence the long-term nature of mobbing seen through the prism of an individual's personal resistance and evaluated separately in each case – rather than interpreted in terms of a specific timeframe – is nowadays a commonly accepted and well established practice. The assessment of the longevity of the mobbing is referred to the specific state of affairs¹¹.

The German legal system does not provide a legal definition of mobbing either. In its judgement of January 15, 1997 the Federal Labour Court (*Bundesarbeitsgericht*) outlined mobbing as a steadily hostile attitude, harassment or discrimination against an employee by another employee or employer. However, the German law provides for a definition of harassment in §3 paragraph 3 of the Act of Equal Rights (*Allgemeines Gleichbehandlungsgesetz*) of August 14, 2006, which specifies that harassment is unwanted conduct that causes the violation of human dignity through intimidation, hostility, humiliation, degradation or insult. According to the jurisdiction of the Federal Labour Court, any behaviour consistent with the definition of harassment provided for in § 3 paragraph 3 of the Act of Equal Rights is treated as mobbing. According to §13 of the Act, an employee may demand of an employer that they put an end to any action that he or she sees as mobbing. The demand must be submitted to the employer, and needs to be substantiated. It is not required that the submission is made within any specific time frame or in any specific form. In a situation in which an employee is directly mobbed by an employer, a submission can be also made to the works council, based on §85 of the Works Constitution Act (*Betriebsverfassungsgesetz*) dated 15 January 1972. If there is a difference of opinion in relation to the employee's claim, the works council summons a conciliation committee, which passes a judgement and settles the dispute between the council and the employee, unless the latter brings a civil action.

According to the judgement of the German Federal Labour Court of 25 October 2007, employers also bear responsibility for mobbing by their employees' supervisors. In a judgement of 16 May 2007 the Court stated that an employee who has been the victim of mobbing has six months, from the moment of the last mobbing incident, to initiate action and demand compensation.

¹¹ por. M.T.Romer, M.Najda, Mobbing [...]

The program of the 107th session of the International Labour Conference includes a section on counteracting violence and harassment of men and women in the world of work.

It should be pointed out that more attention needs to be paid to the negative effects of violence in the world of work, which affects not only the health and life of the victims but also their relations at work and job productivity, and has other tangible financial consequences for state insurance systems. At the same time, it seems that legal systems should aim to formulate anti-mobbing regulations in the most universal way so that every victim can find a way to proceed with their claim. Making the definition of violence at work more detailed is not warranted by the process of pursuing claims or prevention of intimidation and harassment, as the catalogue of reasons for violence in the workplace is still open. Besides, a better definition of what it takes to be a victim of mobbing will hardly affect the compensation. After all, each case of mobbing and each compensation need to be considered individually, independently of the definition of the victim.

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Psychologiczne i prawne aspekty ochrony przed przemocą w świecie pracy. Czy konieczna jest specjalna ochrona określonych grup pracowników?

STRESZCZENIE

Autorzy starają się przeanalizować problem specjalnych zabezpieczeń przed mobbingiem dla niektórych grup pracowników, z perspektywy prawnej i psychologicznej. Z psychologicznego punktu widzenia najlepszym rozwiązaniem wydaje się być jednakowa ochrona wszystkich pracowników, bez względu na ich osobowość, status mniejszości czy cechy społeczno-demograficzne, ponieważ nie ma empirycznych dowodów na to, że mobbing stanowi zagrożenie lub zagrożenie dla konkretnej grupy pracowników i że to organizacja i jej klimat, a nie predyspozycje potencjalnych ofiar są odpowiedzialne za pojawienie się mobbingu w miejscu pracy. Jednocześnie wydaje się, że systemy prawne powinny dążyć do jak najbardziej uniwersalnego formułowania przepisów anty-mobbingowych, tak aby każda ofiara mogła znaleźć sposób postępowania z roszczeniem. Uszczegółowienie definicji przemocy w pracy nie jest uzasadnione procesem dochodzenia roszczeń ani zapobieganiem zastraszaniu i nękanii, ponieważ katalog przyczyn przemocy w miejscu pracy jest nadal otwarty. Ponadto lepsza definicja tego, co trzeba zrobić, aby stać się ofiarą mobbingu, w niewielkim stopniu wpłynie na wysokość odszkodowania.

Słowa kluczowe: mobbing, Kodeks pracy

