

WORKPLACE HARASSMENT. MOBBING PHENOMENON

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Abstract

Moral harassment at the workplace has become in the last period a very often met phenomenon that severely affects the work relations and represents a significant health and safety danger. This problem has become in the last period an important issue for the European Union which has initiated a series of studie for analyzing the consequences of this pehenomenon on the normal process of the work relations, that has lead, in its turn to an awareness of this new dimenion of harassment between the employees at the internal level.

Key words: *harassment, working relations, mobbing, liability*

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At the international level, there is no universally embraced definition of moral harassment in the workplace. ***Moral harassment at the workplace*** may be defined as an irrational repeated behaviour towards an employee or group of employees, which represents a health and security risk³. Within this definition, „irrational behaviour” is to be intended as a behaviour that a rational person, taking into account all the circumstances, considers that it victimizes, humiliates, disaccredits or threatens; the term „behaviour” comprises both individual or group actions. A work system may be used as a mean of victimization, humiliation, disaccreditation or threat; the phrase „health and security risk” refers to the risk of affecting the physical or mental health of an employee. Moral harassment in the workplace may imply bad performance of duties or abuse of office, against which the persons in question may encounter difficulties in defending themselves.

Moral harassment may imply both verbal and physical aggressions, as well as more subtle actions, such as the disaccreditation of a work colleague’s activity or his/her social isolation. *Any person* in any enterprise may be the victim of moral harassment. According to the results of an inquiry at the European Union level⁴, of the employees within the EU, respectively 12 million of people, have declared that they have been subject to moral harassment in the workplace, for a period of 12 months, during the year 2000. There are, though, some big differences among the EU member states, regarding the incidence of this phenomenon. It is possible that these differences may not be exclusively due to the incidence, but also to the cultural differences among the states regarding the attention paid to this phenomenon, as well as to its registration and communication. The cases of moral harassment are more frequent in the fields of activity with high demands and a low level of activity self-control, which lead to high levels of anxiety.

There are two types of moral harassment:

- 1) harassment as a consequence of an interpersonal conflict that has aggravated;
- 2) the case in which the victim has not been involved in the conflict, but accidentally finds himself in a situation in which he becomes the object of aggression performed by the author of the harassment. A person’s turning into a „scapegoat” is an example of this type of moral harassment.

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³ European Agency for Safety and Health at Work, Sheet no. 23, published on the site http://stres.protectiamuncii.ro/pdfs/fisa_23.pdf

⁴ The third European inquiry into work conditions 2000, European Foundation for the Improvement of Living and Working Conditions, Luxembourg 2001. <http://www.eurofound.ie/publications/EFO121.htm>

Among the factors that increase the probability of moral harassment, there are:

- The organizational culture that tolerates the moral harassment behaviour or doesn't consider it problematic;
- Rapid organizational changes;
- Unsafety of the workplace;
- Deficient relationships between staff and management, as well as the staff dissatisfaction towards the management style;
- Deficient relationships among work colleagues;
- Excessive levels of work demands;
- Staff policy deficiencies and the insufficiency of common values;
- High levels of stress related to the professional activity;
- Contradictory demands (role conflict) or uncertainties in the job description (role ambiguity).

Moral harassment may be aggravated due to some individual and situational factors, such as discrimination, intolerance, personal problems and alcohol and drug abuse. Moral harassment generally develops in more stages:

- victim targeting (generally it is not a group, but a certain person);
- victim conditioning (the victim must become receptive);
- victim destabilization (the victim doesn't understand what happens; the aggressor's behaviour is illogic and however his/her explanations are irrational);
- victim's culpabilization (the harassed individual starts to imagine that he has a part of the fault for his/her suffering);
- victim destructuration (the harasser accomplished his/her goal: the victim resigned or becomes severely ill)."

Harassment is one of the harshest aggressive manifestations that may appear at the workplace. This type of aggression may appear irrespective of the field of activity, but especially within public fields, such as national education, health. Moral harassment in the workplace is based on an irrational repeated behaviour towards an employee or group of employees, which represents a health and security risk at the workplace. Moral harassment in the workplace may imply a bad performance of duties or abuse of office, against which the persons in question may encounter difficulties in defending themselves. For the victims of moral harassment, consequences may be significant especially from the medical point of view.

Internally, at the moment, there is no express regulation regarding the harassment in the workplace. However, there is a general framework, based on the legal provisions of the Labour Code regarding the principle of good faith in working relations. Art. 8, paragraph 1 in the Labour Code provides that working relations are based on the principle of good faith, which means that all the employer's actions must aim at the good functioning of the unit. The managers' actions must on no account target the employee's personality or his/her moral and professional integrity.

According also to art. 39, paragraph (1), of the Labour Code, the employee has the right of labour security and health. Logically, this right comprises both physical and mental health and security.

Pursuant to this legislative text, the employer is obliged to take all possible measures for the limitation of the employees' mental affectation by the working environment. The employees' mental health protection is reflected through increments meant to compensate the employees who work in stressful environments: e.g. the increment for neuropsychic overstress granted to teachers, magistrates etc.

This right of the employee demands for the correspondent obligation of the employer to refrain from any action/gesture that could harm the employee's dignity and honour. It also implies that the employee's workplace must be organized so as not to injure the employee's dignity.

In this context, there should also be considered the employee's mental protection against employers' abuses by a series of apparently neutral measures, but which, considering their continuous dimension, actually follow a single purpose: the inconvenient employee's elimination.

In psychology, this type of action of the employer has been identified as and called moral harassment (*mobbing*).

The terms „mobbing”, „bullying”, „moral harassment”, „psychological harassment”, „psycho-terror”, „psycho-terrorism”, *ijime* (in Japanese) generally depict the same reality, especially when it comes to working relations, but it must be mentioned that these behaviours may also be encountered in the case of other social relations, such as those formed in schools (especially *ijime*), kindergartens, hospitals etc.⁵

The following definition of the mobbing phenomenon⁶ has been proposed in the specialty literature by Marie-France Hirigoyen, a psychotherapist, in her book *Malaise dans le travail* (2001): Moral harassment at work is defined as any abusive conduct by acts, words or attitude that repeatedly or systematically prejudices a person's physical or mental dignity or integrity, jeopardising her work or degrading the working climate.”

Partially assuming a classification⁴, previously proposed by Marie-France Hirigoyen, we hereby underline some aspects implied by the moral harassment concept:

- The intentional deterioration of the working conditions, by the functional or physical change of the workplace into an inferior one, the repeated and unjustified contestation of the work performed, the hierarchical abuse of power, the incitement of some of the employees against others, the assignment of exorbitant tasks in relation to the time given, to the professional training and means at the employee's disposal, the damage of the victim's working autonomy, his/her drive to making mistakes etc.
- Isolation and refusal to communicate, whenever the management repeatedly refuses the requested meetings or doesn't answer to greetings or answers offensively/pejoratively (e.g.: „Good afternoon, you gosling!”), ignorance of the victim's physical or verbal presence and address exclusively to the others, ignorance of the necessity to explain precisely the uncertainties that a new employee justly advances etc.
- Harming of dignity, by despising gestures, disaccreditations, rumours, criticism against the employee's private life, insults, calumnies, obscene words, threats („I don't care you've graduated from college, you haven't learnt a thing, I'll kick you out!”).

Moral harassment stands for a really wide range of conducts, such as: disaccreditation, isolation, humiliation, gossip, intimidation, threatening of a person, deterioration of working conditions, of self-respect and respect for life, which inclusively lead to the real fact that one of five suicides in Europe is due to this phenomenon.⁵

In Japan, this phenomenon (called „ijime”), has led to suicides among children or youngsters, subject to such practices by elder schoolmates or people of the same age as the victims. This form of harassment may include beatings, small repeated thefts, robberies and

⁵ Ion NEFLIU, Moral harassment, an insidious form of violence (Hărtuirea morală, o formă insidioasă de violentă), published on the site <http://www.penale.ro/hartuirea-morala-o-forma-insidioasa-de-violenta.html>

⁶ The Perverse Violence of Everyday Life (Le harcèlement moral: la violence perverse au quotidien), 1998, Éditions La Découverte & Syros, page 72

generally any aggressive attitudes repeatedly adopted with the purpose of isolating the victim within a community and mentally torturing him/her.

In the working relations framework, the dignity of the morally harassed individual, as well as his/her mental freedom, are trampled by pure careerism or in the pursuit of profit, according to the concept that the man is an animal which has to work in any given conditions. It has been said (Marie-France Hirigoyen, *op. cit.*), that the wide use of the inappropriate notion of „human resources” is also criticisable, since it sees people as mere objects; we can speak of *oil resources*, *water resources*, but not of *human resources*, because every individual is unique and has his own personality, dignity and intimacy, even at the workplace.

In a jurisprudential interpretation⁷, the Superior Court of Justice of Santa Cruz in Tenerife (Spain) has considered that mobbing, from the legal point of view, represents an attack on human dignity and a degrading treatment. Other Spanish courts have decided that certain mobbing conducts infringe some fundamental rights guaranteed by the Constitution or by CEDO, such as the right not to be subjected to degrading treatments, and that the victims of mobbing are entitled to claim civil damages, according to the law.

In such cases of moral harassment, the entire society has a lot to lose, since the weakening of the individual’s moral force in the workplace and the harm against his/her dignity and honour create a feeling of impunity for these practices, which shall translate to the family-level.

Moral harassment, being characterised by behaviours of an infinite variety given by the imagination practically unlimited of the human being, also develops various effects. Migraine, depressions, emotional reaction shocks determining hospitalisations, psychosomatic disorders, damaged or disturbed metabolism, arterial hypertension, pre-heart failure, paralysis, divorces, medical leaves or simply absenteeism from work, fluctuations of the workforce, excessive use of tobacco, alcohol, drugs, use of antidepressants, reaching, as mentioned, irreparable gestures, materialised in suicide attempts, are consequences of moral harassment. But, as recently emphasised by the author Camelia Bogdan⁹, we can refer not only to victims directly exposed moral harassment: “intimidation and harassment can have a detrimental impact on employees not directly subject to inappropriate behaviour but who witness or become aware of it.”

Moral harassment must not be confused with stress, as stress is impersonal, or with extreme working conditions or with a direct conflict or with misunderstandings at work. Difficult working conditions must be objectively heavy, accepted by the employee as such and must be translated into an adequate income, and conflicts or misunderstandings can go out and reappear, but not on a continuing basis and with an intent of injury.

It was noted of course (Marie-France Hirigoyen, quoted paper) that moral harassment procedures at work aim at the employees who do not fit the system or the requirements of the head or of the collective. Moral harassment can thus become the instrument of group logic imposition on the individual and formatting or typification imposed on a person actually means his/her control, even at the cost of serious harms to its legitimate rights. This is what the Japanese capture perfectly, with metaphorical accents: “The nail that gets out of line meets the hammer”. Thus, for instance, we say, if in a collective, some employees commit criminal illegal actions and a newcomer does not adhere to them or even opposes them, the latter will be marginalised and watched, mocked, derided or threatened by actions or inaction included in the patterns of moral harassment.

It was also emphasised that the moral harassment serves the interests of companies in case of merger, reorganization or when it is implemented by cost-killers, individuals specializing in

⁷ *Patricia B. Barbado-El acoso psicologico...y su tratamiento en la jurisprudencia española*, published on the site <http://www.acosomoral.org/juric22d.htm>

“cutting costs” and in ensuring the disposal of “undesirable” employees that are impelled to resign, in order not to benefit from the compensatory amounts required by law in case of dismissal⁸.

The moral harassment actions have a repeated character and are committed during a longer period of time (from several months to several years).

In terms of evidence, it is not easy to prove all constitutive elements of the moral harassment crime, the actions of the material element, the intentional element, the cause relation, the immediate consequences etc. Difficulties issue from the fact that the exterior reality is not the same with the psychic one, and those committing moral harassment actions do not recognise their actions afterwards and may try previously or simultaneously to hide their real intentions, alternating for instance harassment with encouraging gestures, nice words or rewards. Witnesses obviously have a fear in cooperating, fearing that, just as the victims of moral harassment, they will suffer reprisals and even that they might lose their job. But the proving the difficulties is not equal to the impunity of perpetrators.

We must also notice that victims have a non-revengeful attitude, even moderated, they do not claim material prejudice, but would especially want a moral repair, for instance apologies or to be spoken nicely or at least in a normal way, to be ensured an adequate climate at work and obviously not to suffer repercussions following the fact that they complained for moral harassment. That is why integrally putting the victims in a situation contrary to moral harassment, at their request, is preferred to a criminal conviction, but most of the time the victims of moral harassment receive money as a form of civil repair, not also apologise. (Marie-France Hirigoyen, quoted paper).

The matter of moral harassment at work did not remain out of the regulatory scope of the European legislator. Resolution No. 2001/2339 of the European Parliament drew some principle rules in this area, as Member States has to force companies, public powers and social partners to adopt the effective as regards moral harassment some efficient prevention policies, to establish a system of exchange experience, to inform and train employees, managers and company doctors both in the private and in the public sector.

The European Commission has introduced measures which should ensure employees' safety and health at work. The framework directive in terms of health and safety at work (89/391) stipulates fundamental regulations in the field of safety and health at work, as well as the employers' responsibility to prevent harms, including those resulting from the moral harassment. All Member States have implemented this Directive in their legislations, some of them also elaborating guide for the prevention of moral harassment at work. According to approaches in the framework Directive, in order to eliminate or reduce moral harassment, by consulting the employees and their representatives, the employers must:

- Have as objective the prevention of moral harassment;
- Evaluate moral harassment risks;
- Adopt adequate measures for the prevention of negative effects.

The information sheet no. 22 of the European Agency for Safety and Health at Work presents a method of the stress risk evaluation and prevention related to the professional activity, which can also be applied in case of the moral harassment.

Thus, it can be noticed the fact that the actions of exclusion from exercising attributions within the legal working relation, respectively of marginalisation at the work place, in the countries of the European Union the employer's liability was constantly drawn, either based on

⁸ Ion NEFLIU, Moral harassment, an insidious form of violence (Hărtuirea morală, o formă insidioasă de violență), published on the site <http://www.penale.ro/hartuirea-morala-o-forma-insidioasa-de-violenta.html>

some legislations with criminal character, either based on legal regulations fie with general character regarding the employee's rights and the employers' legal liability (labour law). At the level of the bodies of the European Union, it was underlined that the employer has the obligation and the responsibility to adopt the measures that should prevent the exclusion actions at the work place, which is a responsibility also underlined *expressis verbis* in the specific legislation adopted in 2002 in France and Belgium⁹.

In the spirit of this responsibility, right before the adoption of a specific legislation in 1994, starting with the '80s, the Supreme Court of Norway ensured the protection of victims of the mobbing phenomenon (exclusion, marginalisation of the employee or its harassment) by judicial orders emphasising employers' responsibility for the prevention of the phenomenon of exclusion at the workplace by actions undertaken by other employees. Subsequently, in 1994, Norway adopted a legislation that extensively defined the mobbing phenomenon, stating that the employees must not be the object of some behaviours unwanted at the workplace. In Sweden, in 1993, at the regulation level, it was established that this behaviour consists of negative, successive and reprehensible actions which are directed against some employees in an offensive manner and can result in placing these employees outside the working community which functions at the level of the employer.

Within the study entitled "*Raising Awareness on Mobbing: An EU Perspective*", among the exclusion, isolation and discrimination actions at the workplace present in practice and whose preventing is necessary, were included, among others, "*information and resource withholding, refuse of giving work assignments, arbitrary takeover of responsibilities*" and "*isolation or non-cooperation and exclusion from social activities*".

The component of the psychological violence in the area of the isolation, harassment phenomenon, respectively of the exclusion at the workplace was underlined by the Committee on Safety, Hygiene and Health Protection at Work of the European Commission, in the document from 2001 entitled "*Overview on violence at work*" as difficult to identify, and the effect of the phenomenon and the wanted purpose were underlined by the Commission as being the employee's alienation from the workplace.

As a conclusion to the above mentioned aspects, it can be noticed that mobbing can be defined as the negative form of behaviour that can take place either between colleagues, or between hierarchical superiors and subordinates whose purpose is the complete or partial alienation of the affected person from normal exercising of his/her duties. What is essential in this context is the employer's responsibility to take all measures necessary to prevent this type of action at work from colleagues or superiors, to protect the employee and to provide him/her the working conditions envisaged when the individual employment agreement was concluded.

Under the circumstances, compared to the existing regulations at the internal level, it is necessary to amend the legislation in this field, Law no. 319/2006, in the sense of the regulation *expressis verbis* of this form of harassment that can present serious consequences in the plan of working relations. It would be necessary that, in addition to the exact definition of this form of harassment, it should also be implemented a coherent system of sanctions which may consist of both a general patrimonial liability of the employer who is guilty for not taking the measures to fight against this phenomenon, and of administrative or even criminal nature against employees who are guilty of such behaviour in the unit.

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⁹ According to the study realised by the European Commission by Daphne Programme in April 2004, author Elena Ferrari, study which is entitled "*Raising Awareness on Mobbing: An EU Perspective*"

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