

## PSYCHOLOGICAL HARASSMENT IN THE WORKPLACE. AN OVERVIEW AT EU LEVEL

**Lecturer Dana VOLOSEVICI, PhD.**

Petroleum-Gas University Ploiesti  
*dana.volosevici@vplaw.ro*

### **Abstract**

*Psychological harassment in the workplace is a phenomenon that involves victims and perpetrators of all ages, educational and cultural backgrounds, incomes and social statuses, as well as different type of employers. The paper aims to present an overview of the main aspects related to the psychological harassment, such as they are reglemented by the European and national law.*

**Keywords:** *Psychological harassment, mobbing, workplace*

Interest in workplace mobbing started in Sweden in the 1980s, where Heinz Leymann intensely explored the phenomenon, stating that „psychological terror or mobbing in working life involves hostile and unethical communication, which is directed in a systematic way by one or a few individuals mainly towards one individual who, due to mobbing is pushed into a helpless and defenceless position, being held there by means of continuing mobbing activities. These actions occur on a very frequent basis (at least once a week) and over a long period of time (at least six months)” [1]. In France, the psychiatrist Marie-France Hirigoyen defined moral harassment in the workplace as “any abusive conduct, in particular behaviour, words, actions, gestures, and writing capable of violating the personality, dignity, or physical or psychological integrity of a person, jeopardising their employment, or deteriorating the workplace climate” [2].

Currently, although there is not an official definition of mobbing at European level, the main elements of the concept rely on persistent and prolonged exposure to negative and aggressive behaviours of a primarily psychological nature. The Framework Agreement on Harassment and Violence at Work signed by BUSINESSEUROPE, UEAPME, CEEP and ETUC pointed out that „Harassment occurs when one or more

workers or managers are repeatedly and deliberately abused, threatened and/or humiliated in circumstances relating to work” [3].

Main organisational risk factors and working conditions associated with violence and harassment are related to job demands, such as work intensity, time pressure, high workload, physically and mentally demanding, fear and mental strain, high quantitative demands, work pressure, emotionally demanding tasks, job mentally demanding, working with tight deadlines, volume of tasks; unsocial hours, job insecurity and uncertainty. Hostile environment, internal conflicts, poor social relationships, poor personal relationships, internal competition, poor/lack of communication, lack of social support, rivalry among colleagues and personal resentment, poor level of cooperation, informal groups and cliques, strong identity groups, managerial authoritarian styles, limited managerial support, nonparticipative leadership, autocratic style, abusive management, inadequate staff policy were also identified as key factors in harassment environment [4].

At EU level, the employers’ duty to protect workers against harassment and violence in the workplace is established by a number of directives related to equal treatment and safety and health of workers, such as Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Directive 2002/73/EC of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions and Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work.

The number of employees subjected to harassment during the course of work over the last 12 months varies in the European countries, from 12,2% in France to 0,9% in Portugal [5]. It is important to point out that even if psychological harassment is prohibited in employment at EU level, including in relation to access to employment, vocational training and promotion, and come under health and safety considerations,

the awareness of the causes and consequences of violence and harassment may differ from country to country.

In France, for example, where the France Telecom case was highly debated, the extent of discussions and initiatives by social partners and governments were more important than in some other countries. The former chief executive of French telecommunications provider France Telecom, now known as Orange, six other executives and the company face trial, charged with engaging in or assisting with psychological harassment amid a massive restructuring plan between 2008 and 2010. France Telecom, a former state-owned company, partly privatized in 1997, embarked on a huge restructuring plan between 2006 and 2008 that aimed to cut head count by 22,000 workers while shifting 10,000 people into new jobs. 35 employees had taken their own life in the process. A 52-year-old technician who killed himself in July 2009 described the situation as “management by terror” in his suicide note.

The workplace bullying, known as ‘moral harassment’, is regulated under both the French Labour Law (2008, amended 2016) and the Criminal Code (2009). The Labour Law applies to both private and public employees, and addresses moral harassment, discrimination, and professional equality between men and women. The Criminal Code imposes a criminal sanction for moral harassment, in the Article 222-33-2, stating that “Harassing another person by repeated conduct which is designed to or which leads to a deterioration of his conditions of work liable to harm his rights and his dignity, to damage his physical or mental health or compromise his career prospects is punished by two years’ imprisonment and a fine of € 30,000”.

The French caselaw on moral harassment’ started in 1993, when La Cour de Cassation, Social Chamber passes a ruling that categorised an employer behaviour towards an employee as “insidious harassment” [6]. The courts judged as harassment actions like repeatedly requiring a worker to carry out heavy labour, against the instructions of the company doctor and in spite of the fact that it led to numerous work stoppages; requiring an employee to work seven days a week for more than two years; installing an employee in the office of a superior they did not get on with and then depriving them of the means for carrying out their work [7].

Since 2015, in Romania the mobbing is regulated by the Law 202/2002 regarding the equality of chances and treatment between women and men. According to article 4 letter d1 of the law, psychological harassment means any inappropriate behaviour that occurs at a time, is repetitive or systematic and involves physical behaviour, oral or written language, gestures or other intentional acts and which may affect personality, dignity or physical or psychological integrity to a person. The law prohibits any harassment, sexual harassment or psychological harassment, both in public and in private. Any harassment is punished by a fine from 3,000 to 10,000 RON, if the deed was not committed in such conditions that, according to the criminal law, it is considered a criminal offense.

A relevant caselaw is in process of being established. In a case, the court considered that the conditions of the employer's liability were met, in particular with regard to the illicit deed of the defendant's representatives to psychologically harass the applicant during his working hours and in connection with the service, the damage caused to him, consisting of the psychological suffering suffered, the indispensable causal link between the illicit deed and the damage caused.

In order to establish the amount of damages equivalent to the moral prejudice caused to the applicant, the court took into account the negative consequences suffered by the applicant on the psychological level, creating a state of permanent anxiety, the importance of the injured moral values, respectively the dignity and the moral integrity, the extent to which his family and work situation was affected [8].

Some other countries, like Finland and Norway, address mobbing via occupational safety and health legislation. The Finnish Occupational Health and Safety Act of 2003 obliges the employer to take action after becoming aware of the matter. The Act also states *expressis verbis* that employees themselves have a duty to refrain from harassment.

At regards the victims, at European level, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (the Victims' Rights Directive) defines victim as "a natural person who has suffered harm, including physical, mental or emotional harm or

economic loss which was directly caused by a criminal offence". Therefore, it is important to determine if under national law the mobbing is considered or not a criminal offence.

A study on relevant case law in Italy identified five categories of victims: captive - the victim is able to recognize the harassment but it not able to prevent it from happening); passive - the victim is affable, incapable of saying "no"; ambitious - the victim works to keep high levels of effectiveness and efficiency; hypochondriac - the victim tends to feel depressed; and scapegoat - the victim is weak, accepts to be bear responsibility for other's fault. The study revealed that since the phenomenon is within the organization, it is mandatory to implement prevention at organization level, in order to ensure the well-being of workers, to perform conflict management, and to preserve the organization's reputation and public image [9].

Therefore, the protection assured by the mean of European and national legislation should be completed by organisational and employer-level measures aiming to inform, educate and change attitudes towards harassment and to develop an organisational culture harassment-free. Anti-mobbing policies and procedures are to be put in place, ensuring that justice prevails by investigating complaints and protecting the victims.

The Framework Agreement on Harassment and Violence at Work pointed out that raising awareness and appropriate training of managers and workers could reduce the harassment at work, therefore the enterprises were encouraged to have a clear statement outlining that harassment and violence would not be tolerated. The social partners recommended the establishment of suitable and efficient procedures based on the following rules:

- Discretion to protect the dignity and privacy of all parties
- Complaints investigated and dealt with without undue delay
- Impartial hearing and fair treatment
- Complaints backed up by detailed information
- False accusations should not be tolerated and may result in disciplinary action
- External assistance when needed

- Appropriate measures will be taken in relation to the perpetrator(s), including disciplinary action up to and including dismissal.
- Support for the victims and, if necessary, help with reintegration.

Moreover, a harassment-free organization is imperative for a socially responsible enterprise. Companies which value corporate social responsibility, while addressing issues of well-being of employees as a stakeholder, ethics and human rights, must enhance their responsibilities to prevent the safety of employees from psychosocial stress caused by mobbing and bullying. It is to be pointed out that a statistical research performed on 1512 employees representing 34 organizations revealed that the problems of mobbing/bullying as a social stressor were more effectively solved by the organizations that have not declared corporate social responsibility rather than by socially responsible organizations or by the ones that strive for this status [10].

Therefore, as CSR covers human rights, labour and employment practices (such as diversity, gender equality and employee health and well-being) it is mandatory that the companies implement detailed procedures addressing the mobbing issues. As an example, Médecins Sans Frontières (MSF) put in place procedures, including grievance and whistle-blowing mechanisms, to encourage prevention, detection, reporting, and management of all types of misbehaviour, harassment and abuse. Moreover, MSF published on the official website information about grievance complaints or alerts registered at headquarters, the variety of these alerts (such as abuse of power, discrimination, harassment, and other forms of inappropriate behaviour), as well as the number of cases of abuse and/or harassment at the field level that were identified after internal investigations and documented at MSF headquarters [11].

## **Conclusion**

Psychological harassment represents a serious problem in a variety of social settings including the workplace; and an important percentage of the European workforce is subject to bullying at the workplace. Psychological harassment should be recognised as severe psychosocial stressor with impact on victims' health, organisational functioning and career.

Prevention of such acts should be a priority for the EU, Member States but also for organisations. The action-oriented Framework Agreement on Harassment and Violence between the European Social partners with its request for organisational policies and procedures should be implemented at European level. However, organisational policies and procedures may not be able to solve the issue in all cases, especially for the non-unionized workplaces. It may be therefore appropriate that the Commission submit a proposal for a directive to tackle all forms of harassment, including an updated and comprehensive definition of harassment, and common legal standards on criminalising such harassment.

**REFERENCES:**

- [1] Leymann, Heinz, Mobbing and psychological terror at workplaces. *Violence and victims*, 5, 119-126, 1990.
- [2] Hirigoyen, Marie-France, *Le harcèlement moral, la violence perverse au quotidien*, Editions La Découverte et Syros, Coll. Pocket, 1998, p. 252.
- [3] Framework Agreement on Harassment and Violence at Work, signed by BUSINESSEUROPE, UEAPME, CEEP and ETUC (and the liaison committee EUROCADRES/CEC), 26 April 2007.
- [4] Eurofound (2015), *Violence and harassment in European workplaces: Causes, impacts and policies*, Dublin, 28.
- [5] Hoel, Helge, Vartia, Maarit, *Bullying and sexual harassment at the workplace, in public spaces, and in political life in the EU*, Study for European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the Committee on Women's Rights and Gender Equality, 2018.
- [6] Cour de Cassation, Chambre Sociale, 16 December 1993, Decision no. 1.476/1993, Baudelocque/Malnar.
- [7] Bourgeois, Clémentine, Marc Ohana, et Sarah Renault. « Les facteurs organisationnels du harcèlement moral : l'employeur est-il responsable ? », *Recherches en Sciences de Gestion*, vol. no. 112, no. 1, 2016, pp. 103-120.
- [8] Bucuresti Court, Section VIII, Labour Conflicts and Social security, Case 67/3/2016, decision 6858/30 June 2016
- [9] Maran, Daniela Acquadro; Bernardelli, Silvia; Varetto Antonella, *Mobbing (bullying at work) in Italy: characteristics of successful court cases*, *Injury and Violence*, 2018 Jan; 10(1): 17–24.
- [10] Vveinhardt, Jolita, Andriukaitiene, Regina, *Results of the Research on Prevention of Mobbing/Bullying as a Psycho-Social Stressor when Implementing Corporate Social Responsibility*, *Business and Management Research* Vol. 5, No. 2; 2016, p. 53
- [11] <https://www.msf.org/fighting-abuse-exploitation-and-harassment-our-work-environment>