

MOBBING IN THE EMPLOYMENT RELATIONSHIP

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Abstract

Mobbing, which is an increasing problem in the workplace, constitutes a significant concern threatening the health, safety, and rights of employees. The aim of this study is to examine how mobbing is addressed in Turkish law and to propose amendments by making comparisons with foreign countries. Initially, the concept of mobbing and its defining elements are identified in the study. Subsequently, the existing legal regulations concerning mobbing in Turkish law are evaluated. Then, mobbing regulations in foreign countries such as Belgium, France, and the USA are examined. It has been determined in the study that mobbing is not defined at statutory level in Turkish law and that this situation constitutes a significant threat to employees. The concept of mobbing, which significantly threatens the health, safety, and personal rights of workers, encompasses behaviour's systematically and repeatedly applied by one or more individuals over a certain period, leading to the victim's humiliation, exclusion, or forced resignation from the workplace. Regarding the burden of proof, it can be said that Turkish jurisprudence, like French legislation, has a similar burden of proof mechanism, as can be seen from the established practice of the Supreme Court. In conclusion, it can be stated that although the transfer of this burden of proof exists in court practice, its regulation by law and its corresponding application would be more suitable for the protection of the personal rights of employees.

Key words: mobbing, workplace, Turkish law, psychological harassment, employees, behaviour.

Introduction

Relevance of the topic. Mobbing is one of the important problems of our age and constitutes a significant source of societal concern (Tunçer, 2019). At times referred to as psychological harassment or workplace bullying, the negative consequences of these actions create undeniable damage on the victims. Long-term, sometimes permanent, psychological and occupational damages are among the possible consequences of mobbing (Lutgen-Sandvik, et. al., 2007). In this context, mobbing emerges as a destructive problem that can harm individuals' self-esteem, physical health, cognitive functioning, and emotional well-being. Mobbing is a serious issue that affects workers of every age, race, and gender (Ertürk, 2014). Statistics indicate that 35% of workers experience bullying in the workplace (Civil Meditation Council..., 2024). According to a study conducted by the Workplace Bullying Institute (WBI) in the United States, approximately 2 million workers become victims of mobbing each year. According to

the 2021 report by the Workplace Bullying Institute (WBI), 30% of American workers have been subjected to mobbing, 19% have witnessed mobbing, 49% have been affected by mobbing, and 66% have witnessed mobbing in the workplace (Workplace Bullying Institute, 2021). It is also a reality that mobbing, which has significant effects on workers' performance, will create problems regarding productivity in the workplace (International Labour Office, 2013). In this regard, countries resort to significant reforms in their labour laws to protect the health and safety of workers against mobbing, which is a significant problem. It is necessary to emphasize that increasing awareness about mobbing, informing both workers and employers, defining it at the legal level, establishing monitoring mechanisms, and publishing guidelines for establishing a healthy work environment are among the concerns of modern countries.

A problematic question. How can Turkish law be improved to effectively protect employees from mobbing in the workplace?

The purpose of the article. The aim of this study is to examine various definitions of mobbing, evaluate mobbing in Turkish law, and provide recommendations for necessary updates to our legislation through a comparative analysis of mobbing regulations in foreign legal systems.

Research objectives. 1) analyse the current legal framework in Turkish law regarding mob-

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bing in the workplace. 2) compare how mobbing is addressed in Turkish law with legal frameworks in foreign countries like Belgium, France, and the USA. 3) propose legislative amendments to Turkish law for a more robust legal framework that effectively addresses and protects employees from mobbing.

Methodology of investigation. The study would likely begin with a review of relevant academic literature and legal resources to define mobbing and its key characteristics. The investigation would involve a thorough analysis of existing legal regulations in Turkish law that might pertain to mobbing. The study would then delve into an analysis of mobbing regulations in foreign countries like Belgium, France, and the USA. This will involve examining specific legal statutes, government policies, and relevant case law related to mobbing in these countries.

1. Definition of mobbing

The term ‘mobbing’ was first used by the animal behaviourist Konrad Lorenz to describe group behaviours among animals (Leymann, 1996). Lorenz coined the term ‘mobbing’ to describe attacks where a group of smaller animals threatens a single larger animal. Later, Swedish doctor Paul Heinemann, who coincidentally became interested in what children could do to each other during breaks, borrowed this terminology from Lorenz. Heinemann used the term ‘mobbing’ to describe the destructive behaviour of small groups of children towards a single child, thus facilitating the first use of the concept of mobbing in the context of human relationships. Following this tradition, Heinz Leymann, in the early 1980s, used the term ‘mobbing’ for the first time in the workplace to describe psychological terror behaviour.

According to Leymann, workplace psychological violence or mobbing typically involves hostile and unethical communication systematically directed towards a single person by one or more individuals (Leymann, 1996). Mobbing pushes the targeted individual into a helpless and vulnerable position, ensuring their continued presence through ongoing harassment. These actions occur very frequently and over a long period, typically lasting at least six months, with incidents happening at least once a week. Due to the high frequency and prolonged duration of hostile behaviours, this mistreatment leads to significant psychological, psychosomatic, and social stress.

The Swedish National Board of Occupational Safety and Health defines workplace mobbing (using the term "victimization") as a situation where repeated, reprehensible, or explicitly negative

behaviours are aggressively directed towards individual employees, which may result in their exclusion from the workplace community (Section 1 of the Ordinance of the Swedish National Board of Occupational Safety and Health..., 1993).

The International Labour Organization (ILO) defines workplace mobbing as aggressive behaviour through vindictive, cruel, malicious, or humiliating attempts aimed at weakening an individual or groups of workers (Chappell and Martino, 2006). According to the ILO, mobbing encompasses behaviours such as continuously making negative comments or criticisms, isolating the individual from their social environment, and spreading rumours or misinformation (Chappell and Martino, 2006).

Mobbing was first defined in Turkey by 8th Labor Court of Ankara (Özden, 2018). In the relevant decision, mobbing is described as “any kind of mistreatment, threat, violence, humiliation, etc., systematically applied to individuals in the workplace by their superiors, peers, or subordinates (Ankara 8. İş mahkemesi 20.12.2006)”.

In the Prime Ministry Circular No. 2011/2 on Preventing Psychological Harassment in the Workplace, the concept of mobbing is defined as ‘psychological harassment manifested by deliberate and systematic humiliation, belittlement, exclusion, damage to personality and dignity, mistreatment, intimidation, and similar forms of mistreatment over a certain period.

Considering these definitions, it should be noted that mobbing refers to repeated, ongoing behaviours of a non-physical nature that are demeaning to the exposed individual over a certain period. However, it would not be accurate to classify every negative behaviour as mobbing. Therefore, identifying the defining elements of mobbing would be beneficial for our study.

2. Defining elements of mobbing

First and foremost, for a behaviour to be considered within the framework of mobbing, it must occur in the workplace (Tınaz et. al, 2008). In this context, it can be said that the first immutable element of mobbing is its occurrence in the workplace (Demir, 2009). In the Turkish Labor Law No. 4857, the workplace is defined as ‘the unit where the employer and employee are organized together with material and immaterial elements to produce goods or services.

Mobbing is more than just a one-time occurrence; it is a systematic and recurring situation. In this regard, mobbing includes behaviours such as constantly being reprimanded by the employer, facing

insults and pressures, being ignored or disregarded (İncirlioğlu, 2013). 22nd Civil Chamber of Turkish Court of Cassation stated in a decision (Turkish Court of Cassation, 12.04.2016 – 2015/2103) that, "In the concrete dispute, the court's acceptance that the plaintiff employee terminated the employment contract with just cause, according to the contents of the file, is accurate. However, the action of the plaintiff being kept waiting in the workplace's tearoom for a period of two or three during the inspection conducted by the employer officials, although it may be considered demeaning, cannot be evaluated as mobbing." The Court of Cassation tends to hold the view that actions occurring within a period of two or three months do not constitute mobbing. For continuous behaviours to constitute mobbing, there must be a connection between these behaviours, and they must occur systematically (Demircioğlu, 2007). Indeed, the 9th Civil Chamber of the Court of Cassation stated in a decision (Turkish Court of Cassation, 2014) that "The employee, who had worked for a short period of time, was not subjected to coercion for dismissal, and psychological pressure and weariness did not become systematic over time. Therefore, it is not appropriate to conclude the case with an evaluation of mobbing (psychological harassment) in the determination of moral compensation." This emphasizes the element of mobbing becoming systematic over time. Therefore, it should be noted that another determining factor of mobbing is that it is done continuously and systematically.

For an action to be considered as a mobbing, the behaviours classified as psychological harassment must be intentionally performed by the perpetrator (Özkul and Çarıkçı, 2010). In the Prime Ministry Circular No. 2011/2 on Preventing Psychological Harassment in the Workplace, the concept of mobbing is defined with an element of intent (The Ministry of Labor and Social Security, Directorate General of Labor, 2013). Additionally, in the Guide on Psychological Harassment (Mobbing) in the Workplace published by the Ministry of Labor and Social Security, it is mentioned that the negative behaviours exhibited must be intentional for them to be perceived as mobbing.

Another determining factor of the concept of mobbing is that the behaviours constituting mobbing aim to intimidate, neutralize, and isolate the individual from their workplace (Özden, 2018). Therefore, behaviours aimed at improving workers' performance or for other purposes should not be classified under the concept of mobbing, if they are outside

the intentions. For example, an employer pointing out an employee's mistakes with the aim of improving performance should not be classified as mobbing.

Mobbing in Turkish Labour Law

The employer's duty of care towards the employee and mobbing

In Turkish Labor Law legislation, there is no explicit regulation specifically addressing mobbing (Büyükkılıç, 2012). According to Article 5 of the Turkish Civil Code, the general provisions of the Turkish Code of Obligations and the Turkish Civil Code are applied to all private law relationships to the extent appropriate. In this context, Article 417 of the Turkish Code of Obligations (TBK) explains the employer's duty of care. Accordingly: "The employer is obliged to protect and respect the personality of the employee in the employment relationship and to ensure an order in line with the principles of honesty, especially to take necessary measures to prevent employees from being subjected to psychological and sexual harassment in the workplace and to prevent further harm to those who have been subjected to such harassment. The employer is obliged to take all necessary measures to ensure occupational health and safety in the workplace, to provide all necessary tools and equipment without deficiency; and the employees are obliged to comply with all measures taken regarding occupational health and safety. The employer's liability for damages arising from the violation of the employee's personality rights due to the employer's behaviour contrary to the law and the contract, including the death of the employee, the impairment of bodily integrity, or the violation of personality rights, is subject to the liability provisions arising from the breach of contract." In the rationale for the amendment of the Justice Commission regarding the relevant article, it is stated: "With the amendment covering the entire Article 416 of the draft, the obligation to protect all personality values of the employee, including honour and respect, has been regulated, and besides sexual harassment, other psychological harassments (mobbing), which violate personality values, are also listed in the category of reasons... This article has been accepted as Article 417 due to continuity." Therefore, it should be stated that the term "psychological harassment" used in the relevant article implies mobbing. Therefore, it is possible to say that the employer will be liable for compensating for damages arising from mobbing activities

explained using the term "psychological harassment" in this article, which violate the employee's personality rights (Limoncuoğlu, 2013).

According to Article 417 of the TBK, the employer has a two-step responsibility to prevent mobbing in the workplace. In this regard, the employer is firstly responsible for providing a suitable environment in the workplace and taking necessary measures to prevent their employees from being exposed to mobbing, and not tolerating such behaviours. Ensuring clear communication in the workplace, establishing an effective complaint mechanism, demonstrating the employer's sensitivity to this issue, and making relevant arrangements in the internal regulations of the workplace are among the measures that should be taken (Ertürk, 2014). However, if despite these measures, employees are exposed to mobbing, the employer will need to take further steps to prevent further harm. Among these measures are warning the employees who engage in mobbing, relocating the victimized employees, and if these measures prove insufficient, justifiably terminating the employment contract of the harassing employee (Kaplan, 2011).

Another important regulation that needs to be mentioned in determining the scope of the employer's duty of care is found in the Occupational Health and Safety Law (İSGK) (Jarota, 2023). Although Article 4 of the relevant law does not explicitly include psychological harassment or mobbing within the scope of the employer's duty of care, it can be inferred from other provisions of the İSGK that the employer's duty of care encompasses situations that may cause mental harm, such as mobbing or psychological harassment. For instance, in the definitions section of the İSGK, an occupational accident is defined as an event that causes death or renders a person mentally or physically disabled due to the work or workplace conditions. This indicates that the legislator considers bodily integrity as encompassing both mental and physical well-being, thus implying that the psychological health of employees falls within the employer's duty of care.

The employer's duty of equal treatment and mobbing

According to Article 5 of the Labor Law No. 4857, "In employment relations, discrimination based on language, race, colour, sex, disability, political opinion, philosophical belief, religion, and sect, or similar reasons cannot be made." In this context, if an employee is subjected to mobbing behaviour by the employer or if an employee is subjected to

mobbing by other employees and the employer, who is aware of this situation, fails to protect them, the employer will violate the duty of equal treatment by violating the duty of care. When fulfilling the duty of care, the employer is obliged to treat all employees equally. Indeed, in the established precedents of the Supreme Court of Appeals, it is accepted that mobbing behaviours constitute a violation of the employer's duty of care and duty of equal treatment (Turkish Court of Cassation, 09.02.2021 – 2016/1427 E., 2021/53 K.).

Additionally, it should be noted that according to the provisions of the Labor Law, it is the responsibility of the employee to prove that discrimination has occurred. However, when the employee presents evidence strongly indicating the possibility of a violation, the burden of proof will shift. In this regard, the established precedents of the Supreme Court of Appeals regarding mobbing also entail a similar understanding of the burden of proof. In our opinion, given that proving mobbing can be quite challenging for the employee, it is appropriate for the burden of proof to shift to the employer after the employee presents evidence demonstrating the existence of mobbing to the court, and it is now the employer's responsibility to prove that mobbing did not occur.

The abuse of management rights and mobbing

In employment contracts, while the main outlines of the work obligation are generally determined, the details often remain an area to be regulated. To fill this gap, the employer may invoke a power known as the management right. Within the framework of collective bargaining agreements and in compliance with the law, the employer can exercise this authority to issue instructions regarding the conduct of work and the behaviour of employees, if it does not contradict the employment contract (Jaskulska, 2024). When exercising the management right, the employer is obliged to act in accordance with the law. An important criterion to mention here is the principle of good faith. According to Article 2 of the Turkish Civil Code: 'Everyone is obliged to comply with the rules of good faith when exercising their rights and fulfilling their obligations.' In this context, both the employee and the employer are obligated to act fairly, honestly, and reasonably in accordance with the principle of good faith when exercising their rights arising from the employment contract and fulfilling their duties (Güzel, 2014).

The management right can sometimes be abused by employers to the extent that it constitutes mob-

bing. Mobbing behaviours, disguised behind the employer's management right, pose a significant potential risk in the workplace. In practice, the employer's behaviours resembling psychological harassment often occur through the abuse of the management right (Tınaz et. al., 2008). Whether or not the employer is abusing their right will be assessed within the framework of its specific circumstances, but identifying certain elements indicating the abuse of the right would be crucial. One of these elements is the absence of a legally recognized benefit in the exercise of the right (Taşkın, 2016). Therefore, if the employer uses a right solely to intimidate or demean the employee, it should be considered as an abuse of that right. The excessive imbalance between the benefit the exercise of the right would bring to the employer and the harm it would cause to the employee is also one of the factors indicating the abuse of the right (Taşkın, 2016).

Prime Ministry Circular on Prevention of Psychological Harassment (Mobbing) in Workplaces

In Turkey, another important document to consider regarding mobbing is the Prime Ministry Circular dated March 19, 2011, titled 'Prevention of Psychological Harassment (Mobbing) in Workplaces.' According to the provisions of this circular, various measures have been envisaged. Among these measures, it is emphasized that combating psychological harassment in the workplace is primarily the responsibility of the employer, and employers are required to take all necessary measures to prevent employees from being subjected to harassment. The provisions of the circular aim to keep all employees away from any actions and behaviours that could be considered psychological harassment. It is also highlighted that care should be taken to include preventive provisions in collective bargaining agreements to prevent psychological harassment incidents in the workplace. In addition, to strengthen the fight against psychological harassment, the infrastructure has been provided, in line with the circular, through the Ministry of Labor and Social Security Communication Centre, ALO 170, to help and support to employees through psychologists. In terms of monitoring mobbing, the circular also mandates the establishment of a 'Combatting Psychological Harassment Committee' within the Ministry of Labor and Social Security, consisting of the State Personnel Presidency, civil society organizations, and relevant stakeholders, to monitor and evaluate psychological harassment incidents and produce preventive policies.

In this context, it is expected that inspection authorities will carefully examine psychological harassment complaints and conclude them as soon as possible. Another measure included in the circular is to ensure the maximum protection of individuals' privacy in the conduct of proceedings related to psychological harassment allegations. Accordingly, the Ministry of Labor and Social Security, the State Personnel Presidency, and social partners aim to organize training and informational meetings and seminars to raise awareness of psychological harassment in workplaces.

The said circular aimed to create awareness regarding mobbing and defined mobbing using the terminology of 'psychological harassment.' However, it is important to note that there were no sanctions envisaged within the scope of this circular. In this context, it is necessary to point out significant deficiencies in the enforceability of this circular. As explained above, there is no clear definition and sanction at the legal level in Turkish law to protect workers against mobbing behaviors. Protection of workers against mobbing in Turkish law is only possible through general legal principles. Therefore, it emerges as an important necessity for the concept of mobbing to be clearly defined at the legal level and subject to specific sanctions to ensure the protection of workers' health and safety. At this stage of our study, mobbing regulations in foreign countries will be examined, and discussions will be held on what kind of updates are needed in Turkish law in this context.

3. Mobbing legislations around the world

Sweden

Sweden was the first country in Europe to use the term 'mobbing' in legal regulations and take measures against it (Çukur, 2016). The Ordinance on Victimization at Work, which entered into force on March 31, 1994, explicitly defines mobbing and the employer's obligations in this context. Using the terminology of 'victimization,' the legislator defines victimization as repeated reprehensible or clearly negative actions towards individual employees and actions that lead to the exclusion of employees from the workplace community. According to the relevant ordinance, the employer must organize work to prevent victimization as much as possible and clearly state that victimization is unacceptable. In addition, the employer is obliged to implement routines for the early detection and correction of signs of dissatisfaction in working conditions, organizational problems, or lack of cooperation, which may

lead to victimization. In this context, the employer must take immediate countermeasures and monitor victimization when signs of victimization appear. Victims of victimization should be provided with quick assistance or support. It should also be noted that if the employer fails to fulfil its obligations, it may be punished with a fine or imprisonment of up to one year under the Swedish Work Environment Act (Tinaz et. al, 2008).

Helge Hoel and Stale Einarsen evaluated the impact of the Decree on Victimization at Work based on interviews with participants including employers, employees, unions, academia, and support organizations (Hoel and Einarsen, 2010). Researchers identified deficiencies in the regulation regarding issues such as the uncertainty of legal provisions, enforcement problems, ensuring employer control, and employer attitudes. Therefore, it can be said that the lack of necessary infrastructure for the implementation of the decree has led to significant practical problems. Hence, it is crucial for Turkish law to make a legal definition of mobbing, clearly foresee sanctions for mobbing behaviours, collaborate with unions to provide training on this issue for both employees and employers, provide informative guides on mobbing, and establish monitoring mechanisms to protect the personal rights of workers.

Belgium

The European Foundation for the Improvement of Living and Working Conditions conducted a study on mobbing, indicating that 11% of workers in Belgium experienced mobbing, while the European Union average was 9% (Xperthr, 2024). It's possible to say that significant measures have been taken in Belgian law in a legislative capacity regarding mobbing, which is a major cause for concern.

In Belgium, the 10th article of the royal decree dated May 13, 1999 (arrêté royal du 13 mai 1999) foresees the right of respect and courtesy treatment for public servants from their superiors, colleagues, and assistants. Additionally, the decree imposes an obligation on public servants to refrain from any verbal or non-verbal actions that could violate the personal rights of others. As for applicable provisions concerning mobbing in Belgium, the sole common provision appears in the Belgian Penal Code (Code penal), specifically in its Article 442 (Goossens, et. al., 2023). However, this provision merely considers harassment as a crime in general, and in legal doctrine, it is believed to not provide sufficient protection against mobbing (European Parliament, 2024). Therefore, legal steps have been taken to provide bet-

ter protection against mobbing. The Law on the Well-being of Workers in the Performance of their Work (loi relative au bien-être des travailleurs lors de l'exécution de leur travail) imposes an obligation on employers to prevent mobbing in the workplace.

Another important law related to mobbing in Belgium is the Law on Worker Welfare dated August 4, 1996. This law prohibits violence, mobbing, and sexual harassment in the workplace and requires employers to conduct risk analysis and take necessary measures to prevent such risks (CMS, Sexual Harassment in the Workplace in Belgium, 2024). Failure to take preventive measures can result in criminal penalties. Employers are also required to ensure that victims of violence receive appropriate psychological support and have a health and safety advisor for the provision of a psycho-social environment in the workplace. In 2014, significant changes were made to the Worker Welfare Law to enhance protections against violence, mobbing, and sexual harassment in the workplace (Lerouge, 2013). In this context, criminal sanctions are envisaged in cases of violence, mobbing, or sexual harassment in the workplace. Psychological harassment in the said law is defined as a series of unjust actions over a certain period resulting in the impairment of the employee's personality, dignity, or physical or psychological integrity while performing their work.

It should be noted that significant reforms have been made in various anti-discrimination laws and welfare laws as part of the law amendment approved by the Belgian Parliament on February 16, 2023 (Chris Van Olmen, 2023). The amendment approved on February 16, 2023, has expanded the scope of protection for employees against adverse actions taken by the employer. According to this amendment, the employer cannot engage in any negative behaviour towards the employee due to reasons related to preparing a report, submitting a complaint petition, filing a discrimination lawsuit, submitting an official psycho-social intervention request due to mobbing in the workplace, or the content of such reports, complaints, lawsuits, or requests. Another significant change ensures the protection of employees and individuals actively contributing to them from future adverse actions by the employer due to mobbing or discrimination. In this context, individuals who file complaints or legal actions, act as witnesses, provide counselling, assistance, or support related to the alleged violation of the discrimination prohibition, are safeguarded against potential future adverse actions by the employer. Given the power

imbalance between employees and employers, it is appropriate to take measures in this regard considering that the employer may engage in future negative behaviours towards employees who report mobbing and resort to legal measures. Indeed, updating our Labor Law to include provisions that foresee necessary measures for protecting the health and safety of employees against mobbing would be appropriate. Additionally, protecting individuals who assist employees in providing evidence and actively contribute to remedying the situation within the challenging context of proving mobbing is essential. It emerges as a necessary requirement to ensure the health and safety of employees are not compromised by legal regulations.

France

The social modernization law, which came into effect on January 17, 2002, in France, represents a significant step towards establishing a legal framework for combating mobbing in the workplace (Lerouge et al., 2023). The Law on Social Modernization has enabled the introduction of a legal definition for psychological harassment into the French Labor Code and the French Penal Code, thus facilitating the establishment of specific provisions aimed at preventing psychological harassment (Lerouge et al., 2023).

According to Article L. 1152-1 of the French Labor Code (Code du travail, 2024), 'Employees should not be subjected to repeated actions that intentionally or unintentionally deteriorate working conditions, violate their rights and dignity, harm their physical or mental health, or jeopardize their professional future.' Upon examination of this provision, it is evident that for a situation to be classified as workplace mobbing, it must meet a series of conditions. Firstly, the actions causing the dispute must be 'repeated.' Secondly, these practices must aim to violate the victim's 'rights' and 'dignity.' Lastly, the third condition necessary to meet the definition of mobbing is divided into three separate parts: the deterioration of the worker's physical health, mental health, or jeopardizing the worker's professional future. The occurrence of one of the last three conditions, along with the first two, is sufficient under French law to speak of mobbing. The French Labor Code prohibits psychological harassment and clearly provides for its sanctions. Furthermore, the French Labor Code attributes to employers a general obligation to ensure the safety and health of employees. It is possible to say that this obligation goes beyond the minimum health and safety conditions provided by the European Union's Directive 89/391/EEC

of 12 June 1989 (Council Directive 89/391/EEC of 12 June 1989).

In Article 222-33-2 of the French Penal Code (Code pénal, 2024), a similar definition regarding psychological harassment is provided. However, the broadness of this definition, i.e., its appearance as a general provision regarding psychological harassment, not only in the workplace but in general, has led to various confusions in practice. To prevent the overly broad application of this definition, French courts have ruled that the relevant provision should be limited to the workplace. Additionally, in French jurisprudence, the application of the provision is avoided concerning behaviours that could be interpreted as the lawful exercise of the employer's managerial prerogatives. It should be noted in this context that it is appropriate for situations where the employer exercises their managerial prerogatives lawfully not to be perceived as mobbing. However, since the definition of mobbing in French legislation does not require the element of 'intent,' employers may still face mobbing allegations even when exercising their managerial prerogatives lawfully. Although this situation encountered in practice has been addressed through interpretation in French jurisprudence, we believe that updating our Labor Code to include the element of 'intent' in defining mobbing would be appropriate to prevent such issues in the future.

In terms of the burden of proof, under Article 1154-1 of the French Labor Code, the employee is responsible for proving the facts supporting the existence of psychological harassment. Subsequently, the defendant must prove that the actions causing the dispute do not constitute harassment. In this regard, it is possible to say that a similar understanding of the burden of proof exists in Turkish jurisprudence regarding mobbing, as evidenced by the settled case law of the Supreme Court. However, it would be more appropriate for the shift of this burden of proof to be regulated by laws and applied accordingly to better protect the personal rights of employees. Therefore, it should be noted that explicitly defining mobbing and providing clear regulations regarding the burden of proof for mobbing behaviours in our Labor Code are necessary

USA

The federal Occupational Safety and Health Act (OSHA), enacted in 1970, aims to ensure safe and healthy working conditions for every worker at the national level. Whether the obligations attributed to the employer in terms of working conditions

under OSHA serve as barriers to mobbing is a subject open to criticism. According to OSHA provisions each employer shall furnish to each of his employees' employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm. An important issue here is whether the hazards causing or likely to cause 'death or serious physical harm' encompass all types of mobbing behaviours. Even if certain types of workplace bullying could be presumed to fall within the scope of the obligations outlined in OSHA, this law does not provide adequate legal protection against mobbing. Firstly, proving that mobbing is serious enough to cause death or serious physical harm will be a significant obstacle in many cases. Additionally, it should be noted that limited sanctions are provided for employers who fail to comply with their obligations under OSHA. Therefore, it is our opinion that it would not be possible to say that OSHA provides sufficient legal regulation for the prevention of mobbing.

The Healthy Workplace Bill (Healthy Workplaces, 2024) provides a special right to sue for damages suffered by an employee subjected to mobbing. The Healthy Workplace Bill has undergone several revisions over the years, but its fundamental components have largely remained the same. We believe that examining this bill would be appropriate to identify the necessary updates in Turkish law. The relevant bill defines an 'abusive work environment' as an environment where an employer or one or more employees, acting with intent, subjects another employee to physical harm, psychological harm, or both, through the misuse of authority. Furthermore, the bill states that no employee shall be subjected to an abusive work environment. This provision holds both employees and employers accountable for mobbing behaviours, even in situations not covered by OSHA. Additionally, the bill outlines under what circumstances an employer can be relieved of liability, stating that an employer shall be liable for any violation of this law. However, an employer may be relieved of liability if the employer exercised reasonable care and provided preventive measures, and if the aggrieved employee chose not to take advantage of the corrective opportunities provided by the employer. The bill also clearly outlines the sanctions for mobbing activities, stating that when a defendant is found liable for a violation of this act, the court may order such relief as is deemed appropriate for such defendant, including but not limited to, reinstatement, termination of the offending employee,

medical expenses, compensation for psychological harm, compensation for emotional distress, punitive damages, and the assessment of attorney's fees against the defendant. In conclusion, an assessment would suggest that the Healthy Workplace Bill clearly defines mobbing, outlines the responsibilities of both employees and employers regarding mobbing activities, and specifies the relevant sanctions. It is important to note that the Healthy Workplace Bill represents a significant step towards protecting the health, safety, and personal rights of workers. Defining mobbing at the legislative level, clearly establishing the obligations of employers and employees, and outlining the consequences for non-compliance are crucial steps that need to be taken promptly in our labour law legislation to safeguard the rights of workers.

Conclusion

The concept of mobbing, which significantly threatens the health, safety, and personal rights of workers, encompasses behaviour's systematically and repeatedly applied by one or more individuals over a certain period, leading to the victim's humiliation, exclusion, or forced resignation from the workplace. Although the concept of mobbing is not defined at the legislative level in our law, the Prime Ministry Circular No. 2011/2 on Prevention of Psychological Harassment in the Workplace represents a significant step in this regard. While it may be possible to hold individuals responsible for mobbing behaviours within the framework of general Labor Law principles, the lack of legal sanctions and clear provisions regarding proof poses a significant threat to workers in terms of protection against mobbing. In this context, our study examined the regulations on mobbing in foreign countries and highlighted some aspects that should be considered when making specific updates regarding mobbing in Turkish law.

In Sweden, the first country in Europe to specifically regulate mobbing, detailed mobbing regulations exist. However, issues encountered in practice have been addressed. In this context, it has been concluded that collaboration with unions to provide training on mobbing for both workers and employers, offering informative guides on mobbing, and establishing monitoring mechanisms are of great importance in safeguarding the personal rights of workers through raising awareness and providing support.

In examining the special mobbing regulations in Belgian law, it has been suggested that it would be appropriate to include provisions at the legislative level that prescribe necessary measures to protect workers against mobbing. In this context, it is

essential to provide protection to individuals who assist the worker in proving the case and actively contribute to remedying the situation, as well as ensuring through legal regulations that the worker's health and safety are not compromised, which is indispensable.

In terms of burden of proof, it is possible to say that Turkish jurisprudence, like the French regulations, exhibits a similar burden of proof mechanism, as evident in the settled case law of the Supreme Court. However, it has been concluded that while the shifting of this burden of proof exists in jurisprudence, its regulation by laws and its application accordingly would be more appropriate for the protection of workers' personal rights. Therefore, it is reiterated that it would be appropriate to clearly define mobbing in our Labor Law and provide clear regulations regarding the burden

of proof for mobbing behaviours. Additionally, criticism has been raised against the absence of the intent element in the definition of mobbing in French law. If such a regulation were to be adopted in our legal system, it is believed that it would excessively limit the employer's managerial prerogatives and could lead to significant practical problems.

Finally, considering the United States' proposed legislation on mobbing, it is essential to emphasize that clearly defining the obligations of employers and employees, as well as outlining the specific sanctions for non-compliance with these obligations through a dedicated law, is crucial for protecting the health, safety, and personal rights of workers. In this context, it becomes imperative for necessary updates to be made promptly in our labour law legislation to ensure the protection of worker rights.

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МОБІНГ У ТРУДОВИХ ВІДНОСИНАХ

Анотація

Мобінг, який є зростаючою проблемою на робочому місці, становить серйозне занепокоєння, загрожуючи здоров'ю, безпеці та правам працівників. Метою цього дослідження є вивчення того, як мобінг вирішується в турецькому законодавстві, та внесення змін шляхом порівняння з іноземними країнами. Спочатку в дослідженні виокремлюється поняття мобінгу та його визначальні елементи. Згодом проводиться оцінка існуючих правових норм щодо мобінгу в турецькому законодавстві. Потім вивчаються правила мобінгу в зарубіжних країнах, таких як Бельгія, Франція та США. У дослідженні було встановлено, що мобінг не визначений на законодавчому рівні в турецькому законодавстві і що така ситуація становить значну загрозу для працівників. Поняття мобінгу, яке суттєво загрожує здоров'ю, безпеці та особистим правам працівників, охоплює систематичне та багаторазове застосування однією або кількома особами протягом певного періоду, що призводить до приниження, виключення або вимушеного звільнення жертви з робочого місця. Щодо тягаря доказування можна сказати, що турецька юриспруденція, як і французьке законодавство, має аналогічний механізм тягаря доказування, що видно з усталеної практики Верховного Суду. На закінчення можна констатувати, що хоча передача цього тягаря доказування існує і в судовій практиці, його регулювання законом і відповідне застосування було б більш підходящим для захисту особистих прав працівників.

Ключові слова: мобінг, робоче місце, турецьке законодавство, психологічне переслідування, працівники, поведінка

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