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MOBBING IN WORKPLACE HUNGARIAN EXPERIENCE

1. THE MEANING OF WORKPLACE MOBBING

Mobbing² in the context of human beings means bullying of an individual by a group or by another individual in any context. Identified as emotional abuse in the workplace, such as “ganging up” by co-workers, subordinates or superiors, to force someone out of the workplace through rumor, innuendo, intimidation, humiliation, discrediting, and isolation, it is also referred to as malicious, nonsexual, nonracial, general harassment. Mobbing can take place in any group environment, such as a workplace.

Mobbing in the workplace is very well spread, but officially hardly recognised. As for the origin of the word, UK anti-bully pioneers Andrea Adams and Tim Field used the expression workplace bullying instead of what Leymann called “mobbing” in a workplace context.³ In the book *Mobbing: Emotional Abuse in the American Workplace*, the authors identify mobbing as a particular type of bullying that is not as apparent as most, defining it as “...an emotional assault. It begins when an individual becomes the target of disrespectful and harmful behavior. Through innuendo, rumors, and public discrediting, a hostile environment is created in which one individual gathers others to willingly, or unwillingly, participate in continuous malevolent actions to force a person out of the workplace.” (Noa Zanolli Davenport, Ruth Distler Schwartz, and Gail Pursell Elliot, 2005: 12). The authors say that mobbing is typically found in work environments that have

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² Though the English word mob denotes a crowd, often in a destructive or hostile mood, German, Spanish, Polish, Italian and several other European languages have adopted *mobbing* as a loan-word to describe all forms of bullying including that by single persons.

³ In the 1980s, professor and practising psychologist, Heinz Leymann applied the term to ganging up in the workplace. Leymann noted that one of the possible side-effects of mobbing is post-traumatic stress disorder and is frequently misdiagnosed.

poorly organized production and/or working methods and incapable or inattentive management and that mobbing victims are usually “exceptional individuals who demonstrated intelligence, competence, creativity, integrity, accomplishment and dedication”. (Noa Zanolli Davenport, Ruth Distler Schwartz, and Gail Pursell Elliot, 2005: 35)

According to the authors of *Workplace Mobbing: Expulsion, Exclusion, and Transformation*, workplace (Shallcross L, Ramsay S & Barker M”, 2008) mobbing” is not generally a familiar term – it is not well-understood in some English speaking countries. Some researchers claim that mobbing is simply another name for bullying. Workplace mobbing can be considered as a “virus” or a “cancer” that spreads throughout the workplace via gossip, rumour and unfounded accusations. It is a deliberate attempt to force a person out of their workplace by humiliation, general harassment, emotional abuse and/or terror. Mobbing can be described as being “ganged up on”. Mobbing is executed by a leader (who can be a manager, a co-worker, or a subordinate). The leader then rallies others into a systematic and frequent “mob-like” behaviour toward the victim. (Shallcross, L, Ramsay, S, & Barker M, 2008: 2-3)

Graphic 1. The following graphic shows the most significant elements of mobbing.



Source: <http://www.mobbing-usa.com/>

Parallel to these developments in the U.S., pro-action keeps growing around the world. For example, a major international conference was held in early 2002 in Australia. In January 2002, France enacted an anti-mobbing law. In Canada, the province of Quebec has adopted anti-harassment/mobbing legislation. In Columbia, anti-harassment legislation has been enacted in February 2006. Most

importantly, in Germany, workplace mobbing has been acknowledged in the medical establishment as an ill-making condition and is recognized in the European Union as an occupational safety and health risk.

Mobbing is an unknown category in Hungary even nowadays, although there is evidence that the phenomenon exists. Only a very few experts are familiar with the concept: a couple of researchers, some HR managers, human policy counsellors and providers of psychological services at selected enterprises, and one or two government officials. So far one book has been published on this issue (M. Csepelyi, 2000) and about two or three articles in professional journals and institutional newsletters (P. Simon 1996, L. Virág 2000) accessible for a closed circle of people. Besides these publications, mobbing has been discussed at conferences, and the concept was introduced in the selected companies and institutions where the management has recognized its importance.

Nobody can provide quantitative information in Hungary as there is no statistics about mobbing victims, caused harms, or requested services.

2. LEGISLATION ON MOBBING

The current Hungarian legislation does not regulate cases of mobbing specifically. At the same time, there are several articles in the new Labour Code (Act I of 2012) prohibiting discrimination and prescribing the norms of establishing work relations as well as the appropriate conditions at work. The Act on Equal Treatment and the Promotion of Equal Opportunities (Act CXXV of 2003) may be even more helpful since it includes the regulation of harassment, which is found to be applicable for cases of mobbing. This piece of legislation also includes the definition of the concepts of equal treatment, direct and indirect discrimination, and groups of vulnerable individuals.

The Labour Code specifies the right of individuals to have recourse to legal redress, and an important amendment, urged by Hungary's obligation to implement the directives set by the European Commission, reverses the burden of proof. This instrument is reinforced by the Act on Equal Treatment and the Promotion of Equal Opportunities, which enhances individual litigation by the introduction of some other crucial legal institutions like *actio popularis*. The establishment of an independent authority with the powers of investigation and sanctioning in February

2005, prescribed by the same Act, may indicate a new era in jurisdiction. The possibilities and forums of legal redress are the following: In the case of labour law, the so-called labour courts may administer justice, while a specialized authority has been appointed to secure the enforcement of the equal treatment legislation.

In addition, the Commissioner for Fundamental Rights (or ombudsman) and the National Office of Work Inspection may be mentioned here as instrumental in investigating cases and suggesting new legislation. Among service providers, civil organizations defending human and employment rights and certain trade union organizations are active in the field, mainly as legal counsellors.

While most of the available sources are positive about the possibility to cite already existing law (especially the articles on harassment and the rights of the employer for a healthy work environment) to combat mobbing, it does not follow that victims enjoy sufficient legal protection. In spite of the theoretic possibility of legal remedy, harassment and discrimination cases hardly ever reach the courts. This is due to several factors:

First, lawyers (attorneys, prosecutors, judges) are uninformed about new opportunities and withdraw from applying new legislation.

Second, potential plaintiffs are not encouraged to – or are explicitly discouraged from – submitting their case to court. Complainants are ignorant about their rights and they, too, lack information about possibilities of legal redress and relevant legislation. Furthermore, they refrain from court proceedings and even from reporting their problem. This can be explained by a general indifference and negligence interiorized during socialization as well as fear from consequences and the absence of adequate legal guarantees and protections.

Unfortunately, employees reporting on or suing their superiors run the risk of dismissal from the workplace. Even those who decide to stand up for their rights and submit their case to court face the dilemma of whether striving for financial compensation (made available by the labour law), or the punishment of the wrongdoer (possible in discrimination cases).

If lawsuits concerning discrimination and harassment are extremely scarce, so far there have been absolutely no cases of mobbing that reached the courts, or were investigated either by the Equal Treatment Authority, the Ombudsman, or the central office of work inspection.

The main reason is that current legislation is insufficient to tackle related conflicts: in the absence of legal measures, institutions of enforcement are impotent as regards mobbing. The other reason is, again, ignorance surrounding this problem: neither lawyers, nor victims are aware of it, and thus they are not making efforts to try and make use of existing legislation and apply them for cases of mobbing.

The head of the Equal Treatment Authority, for instance, claims that they are unable to investigate such cases even though they feel the need to do so: the new anti-discrimination legislation is impotent concerning insults where it is impossible to prove that the harm can be linked to some essential characteristic of the plaintiff – which is obviously very difficult if not impossible in mobbing situations. Nevertheless, some experts suggested that since the 20 personal traits enumerated in the act cover almost everybody, it would be possible to submit cases of mobbing for investigation with reference to other articles. However, they also think that such cases should rather constitute the subject matter of civil court procedures concerning personal rights.

The ombudsman of human rights, responsible for issues related to employment, also claims to be incompetent in any issues concerning discrimination and harassment at the workplace, and says that they forward such cases to the ministry responsible for equal opportunities, the Equal Treatment Authority, or the Supreme Court. However, given that ministries have no powers of investigation, the Equal Opportunities Authority in question has no registered cases regarding discrimination, harassment, or sexual harassment against women, and the Supreme Court (since 2012 its new name is: The Curia of Hungary) has never dealt with mobbing, the situation is obviously unresolved.

3. ADVICE AND SERVICE PROVIDERS

In Hungary, there are no specialized institutions dealing with victims of mobbing. The only civil organization active in protecting women against violence (NANE) has only started to deal with the phenomenon. A couple of other civil organizations provide self-assertive training and individual counselling, however, they are mostly helpless when facing an actual mobbing situation: given the lack of means of legal redress and guarantees of fair procedures, they are at a loss as to what to recommend to their clients. Thus victims, at best, turn to a general

psychologist. They virtually never decide to report their case or go to court for fear of the consequences or because they think it is useless. There are no fora outside the workplace to discuss the problem, either, while group discussions within the workplace are supposed to be impossible, given the general distrust and lack of solidarity among employees. In some cases, victims may talk to the trade union representative or the HR manager, however, research (Kaucsek-Simon 1996, Virág 2000) has shown that such instances are relatively rare.

Neither trade union representatives, nor HR managers would be willing to risk their position by speaking up for an employee who has, most of the time, hostile relations with her/his superior. Victims usually shy away from sharing their problem. It has been tried to gather information from the so-called “Houses of Opportunities”, a network established by the state as prescribed in the Act on Equal Treatment and the Promotion of Equal Opportunities to provide assistance for victims of discrimination. However, nobody has responded to their query, and they have also learned from other sources that the personnel of these offices are rather inept and uninformed. So far they have barely forwarded any cases to the Equal Treatment Authority for investigation.

Harms caused by mobbing are suppressed, as a rule, poisoning the life of the individual and her/his surroundings. Among the specialists/experts whose work relates to mobbing in one way or another, only a few would actually name this issue. Others who are familiar with mobbing build the concept into their activities without referring to it specifically. Still others deal with victims of mobbing without being aware of the specificity of the problem. Since remedies are not requested or established institutionally, the intervention of specialists often occurs in an informal manner.

So far it seems that the few institutions/ enterprises that have ever – and occasionally regularly – sought such assistance are of 3 types: 1. multinational companies, 2. public institutions and large state-run companies and 3. small-size enterprises. The motivations appear to be as follows:

1. Multinational companies are more informed about this phenomenon and its potential harms to the company, especially from the point of view of productivity. At the same time, it is also commonly held that the East European branches of such companies “loosen up” in terms of their responsibility for the employees and they no longer adhere to the same norms as in West Europe.

2. The extensive survey on mobbing in 1995, as well as a minor one in 2000, was conducted in some of the public institutions and large state-run companies, which suggests that their management was interested in this issue, or at least was not opposed to such inquiry. The researchers involved in the projects support the view that it was due to the modernization of the leadership that such investigation could take place. However, they interpret this as an accidental development that was revoked later. Furthermore, no similar interest was shown up by state institutions and companies which should be dealing with mobbing.

3. Small-size enterprises are said to be more sensitive due to the owner's closeness to the workplace. This involves her/his familiarity with whatever is going on there as well as a more acute sense of the connection between healthy work environment and profitability. In terms of a breakthrough as regards the involvement of employers in the fight against mobbing, it looks that the most trust would be in these kinds of motivations.

SHORT SUMMARY

The author believes that it would be in everyone's interest to prevent these incidents. Mobbing and more wider sense workplace related harassment can also have negative economic consequences in terms of staff turnover, higher work absence rates and reduced productivity. Our task is clear: make proper legislation, educate social partners and create a non-hostile working environment to work.

ÖSSZEFOGLALÁS

A MUNKAHELYI MOBBING (MUNKAHELYI PSZICHOTERROR) SZABÁLYOZÁSA MAGYARORSZÁGON

A 'mobbing' avagy munkahelyi pszichoterror kifejezéssel nemigen találkozhatunk Magyarországon, noha maga a jelenség kétségtelenül létezik. Egy maroknyi szakértőn – néhány kutatón, humánerőforrás-igazgatón, személyzeti tanácsadón, egy-két vállalati pszichológuson és pár kormánytisztviselőn – kívül senki sincsen tisztában a fogalommal. A mobbing gyakran ismétlődő pszichológiai terror, – legalább egyszer egy héten és legalább fél éven keresztül – cselekedetek sorozata egy egyén vagy egy közösség részéről, amelyek egy vagy több egyén ellen irányulva

azoknál mentális vagy fizikális kórtani jelenségekhez vezetnek. Az ellenségeskedésnek leggyakrabban nincs racionális oka. Sokkal inkább érzelmi jellegű; irigység, féltékenység, ellenszenv következményeként alakul ki.

Munkánkban a mobbing visszafogott magyar jogi szabályozását tekintettük át röviden. Fontos kiemelni, hogy nagyon sok teendő van még a jogi szabályozás tekintetében is, de még több a jelenség felismerésével és kezelésével kapcsolatban. A munkajog és a munkaügyi kapcsolatok szereplőinek összehangolt munkája szükséges a mobbinggal szembeni fellépéshez.