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## **Bullying in the Workplace in the Context of Slovak Labour Law<sup>1</sup>**

### **Abstract**

*Bullying in the workplace has recently become a frequently discussed topic. Not only does this phenomenon have a negative impact on the working environment, it also touches upon several scientific disciplines. These are the reasons because of which this paper deals with the basic characteristics of this phenomenon in the context of labour law. Because of the fact that the national law on bullying in the workplace is insufficient, enforcement of rights and obligations in conformity with good morals and prohibiting abuse of personal rights may be considered to also apply to the protection of a bullied employee.*

**Keywords:** *bullying, discrimination, mobbing, bossing, good morals, abuse of rights.*

## **Znęcanie się w miejscu pracy w świetle słowackiego prawa pracy**

### **Streszczenie**

*W ostatnim czasie problem znęcania się w miejscu pracy stał się tematem częstych dyskusji. Zjawisko to nie tylko wywiera negatywny wpływ na środowisko pracy, ale także dotyka kilka dyscyplin naukowych. To jest właściwy powód, dla którego scharakteryzowanie tego zjawiska w kontekście prawa pracy stało się celem niniejszego opracowania. Z uwagi na to, że poziom regulacji w prawie krajowym dotyczącym kwestii znęcania się jest niedostateczny, warto zastanowić się nad tym, aby w celu ochrony pracownika doświadczającego procederu znęcania się, wprowadzić takie prawa i obowiązki, które byłyby zgodne z zasadami moralności oraz zakazywały łamania praw osobistych.*

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**Słowa kluczowe:** znęcanie się, dyskryminacja, mobbing, szykanowanie pracownika przez przełożonego, zasady moralności, łamanie praw.

Bullying of an employee by an employee's superior or by his/her co-workers, or by a colleague may take various forms. There are cases in which an employee considers that he or she has been bullied even in situations when they are justifiably subject to criticism due to unsatisfactory work performance or concerns related to working discipline<sup>2</sup>. Therefore, it is necessary to have a sensitive approach to the issue of bullying.

We spend most of a day's time at work (hence much of our lives). So, it is important for the advancement of the employer, as well as of the employees, to help create an optimal working environment.

There is no uniform term for negative behaviour in the workplace which is often described as "victimisation" and/or "bullying" or "mobbing" (in Anglo-Saxon countries) or as "employee abuse" (a term used in the US) and these terms do not always have identical meaning<sup>3</sup>. The term "tyranny in the workplace" has also been used and can be described as a "systematic plotting and scheming and ignorance applied by the majority towards a minority or an individual"<sup>4</sup>. In general, the most frequent term is "mobbing" when negative behaviour occurs as part of relations between employees/colleagues, while bossing occurs between a supervisory employee (person with authority) or an employer and a subordinate employee. In this paper, we intend to use the terms "mobbing/bossing" and "victimisation"<sup>5</sup>.

There is no special provision covering mobbing in the Slovak legal framework. Therefore, it is necessary to consider general provisions of Act No. 311/2001 Coll., the Labour Code, as amended, (the "Labour Code" hereinafter), anti-discrimination legislation and provisions covering safety and health at work. The theme of mobbing/bossing could be also looked at from the viewpoint of criminal law (if a criminal offence also took place), of constitutional law or civil law (protection of one's personality could also be considered). However, we intend to explore the theme in terms of labour law.

According to Article 1 of the Fundamental Principles of the Labour Code, natural persons have the right (*inter alia*) to fair and satisfactory working conditions in accordance with the principle of equal treatment established for labour-law relations and regulated by a

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<sup>2</sup> M. F. Hirigoyenová, *Psychické týranie (Psychological tyranny)*, pp. 4-6. Accessible at: <http://www.integra.fost.sk/clanky/tyranie.pdf> [cit. 12.11.2014].

<sup>3</sup> H. Barancová, *Mobbing and Chicanery of the Employee as a Form of Abuse of Right*, "Societas et iurisprudentia" 2014, Nr. 2, pp. 35-41.

<sup>4</sup> *Ibidem*, p. 42.

<sup>5</sup> L. Mura, *Performance of Human Resource Management in an Internationally Operating Company*, "Serbian Journal of Management" 2012, No.1, pp. 115-129.

special Act on Equal Treatment in Certain Areas and Protection against Discrimination, and on amending and supplementing certain other laws, as amended (the Antidiscrimination Act)<sup>6</sup>.

Another principle related to this framework and embedded in Article 2 of the Fundamental Principles of the Labour Code is a principle according to which the enforcement of rights and duties related to labour-law relations shall be in conformity with good morals; no one shall abuse these rights and duties to the detriment of the other party in labour-law relations or to the detriment of other co-workers. The above-specified principles are enshrined in the normative text of Section 13 of the Labour Code. According to Section 13, paragraph 1, employers shall, as part of labour-law relations, treat employees in accordance with the principle of equal treatment, which in terms of labour-law relations is regulated by the special Act on Equal Treatment in Certain Areas and Protection against Discrimination, and on amending and supplementing certain other laws, as amended (Act No. 365/2004 Coll., as amended; the “Anti-Discrimination Act” hereinafter). Prohibition of discrimination is laid down in paragraph 2 of the following provision, stating the basis for finding discrimination. Section 13, paragraph 3 of the Labour Code may be viewed as the general basis for legal regulation of mobbing/bossing according to which enforcement of rights and obligations arising from labour-law relations must be in compliance with good morals. Nobody may abuse such rights and obligations to the damage of the other party in a labour-law relation or to the damage of co-workers. Situations may occur which are formally in compliance with the law, however, a society which is sensitive to values such as human dignity and good morals regards them as improper and seeks a way to correct them. In this regard, good morals may be viewed as extra-legal rules which help humanize the enforcement of rights<sup>7</sup>. The abuse of subjective rights and prohibition of such abuse have a specific legal meaning when the conduct of an authorised subject is within the limits of the content of a subjective right, however, as part of an option to apply such content the authorised subject uses specific methods which are beyond the limits of the enforcement of such content, even though these methods do not exceed the limits of the content of a subjective right<sup>8</sup>.

If the principles specified above are violated, an employee has the right to file a complaint with the employer; the employer must respond to the employee’s complaint

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<sup>6</sup> H. Barancová, *Zákonník práce (The Labour Code). Komentár (Comments)*, Praha: C. H. Beck 2010, p. 2 and the following pages.

<sup>7</sup> J. Lazar, *Základy občianskeho hmotného práva (Fundamentals of the Civil Substantive Law)*, Bratislava: Iura Edition 2004, pp. 18-20.

<sup>8</sup> H. Barancová, *Zneužitie práva v právnej teórii a praxi v oblasti pracovnoprávných vzťahov (Abuse of Rights in Labour-Law Relations - legal theory and practice)*, in *Zákaz zneužitia práva (Prohibition of the Abuse of Rights – VI. Lubyho právnické dni)*, Bratislava: IURA EDITION 2013, p. 220.

without undue delay, remedy the situation, refrain from such behaviour and eliminate any consequences (Section 13, paragraph 5 of the Labour Code).

In general, protection by court procedure is established in Article 9, Fundamental Principles of the Labour Code. According to this provision, employees and employers who sustain damage due to a breach of obligations arising from labour-law relations may exercise their rights in court. Employers may neither disadvantage nor damage employees on the grounds of exercising their rights related to labour-law relations. Subsequently, Section 14 of the Labour Code (Settlement of Disputes) provides that disputes between employees and employers over claims deriving from labour-law relations shall be heard and decided by courts. Slovak law does not recognise special court proceedings applicable to labour-law relations; hence the general provisions of civil procedure law apply.

Employees who believe their rights or interests protected by law have been violated by the infringement of the above-stated principles may turn to the courts and claim legal protection provided for by the Antidiscrimination Act (Section 13, paragraph 6 of the Labour Code). The above-stated arguments lead to a conclusion that procedures related to discrimination issues as well as those related to the assessment of enforcement of rights and obligations in conformity with good morals and abuse of law shall be regulated by the procedural provisions set out in the Anti-Discrimination Act.

The terms “mobbing” and “bossing” are often related to harassment. According to the anti-discrimination provisions, harassment means conduct that creates or may create an intimidating, hostile, shameful, humiliating, degrading, disrespectful or offensive environment, in which the intention or consequence leads or may lead to violation of freedom of an individual or human dignity. Harassment may be understood as unwanted behaviour linked to one or more of the prohibited grounds for finding discrimination (e.g. race, ethnicity, sexual orientation, religion), the intention or consequence of which is or may be infringement of one’s freedom or human dignity, and the creating of an intimidating, hostile, humiliating, degrading or offensive environment. For an individual towards whom such conduct has been directed, such behaviour is unwanted and violates his/her personal integrity. Bullying and mobbing can be regarded as more systematic manifestations of harassment<sup>9</sup>.

Here, it is necessary to state that pursuant to the antidiscrimination law certain conduct shall be regarded as harassment only if grounds for discrimination are present. However, if the grounds for discrimination are not defined, they do not exist; then in case of harassment

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<sup>9</sup> J. Debrecéniová, *Antidiskriminačný zákon (Anti-Discrimination Law). Comments*, Bratislava: ODZ 2008, p. 50 and the following pages.

on other than discriminatory grounds (i.e. an employee has been subject to bullying on other than the grounds of age, gender, race, colour of skin, etc.) the case is not covered by the anti-discrimination law.

Under certain circumstances, mobbing may be regarded as a form of harassment pursuant to the antidiscrimination law – when grounds for discrimination have been established. Harassment may have various forms. It can be manifested as various verbal comments (mocking, ironic comments), gestures (e.g. constant looks) or other forms of behaviour (for example, in the form of suspicious silence every time a certain employee enters the room). In some cases, if harassment is of higher frequency or intensity, it may grow into bullying or mobbing, which can also be regarded as a form of harassment. One of the principal features of harassment is that from the viewpoint of the target, it is unwanted behaviour. This is why it is critical how such conduct is perceived by the concerned person, not whether it is considered significant by the person who engages in such conduct. Therefore, it is crucial that the concerned person early and straightforwardly expresses that such behaviour is unwanted by him/her<sup>10</sup>.

Based on case law we can conclude that labour-law disputes most often deal with termination of employment and issues regarding responsibilities. In proceedings with claims that termination of an employment contract was improper (which, as a rule, is a unilateral termination by the employer on grounds of infringement of work discipline) employees sometimes state that they had been subject to mobbing during their employment. Since bullying has not been the issue of actions before a court (but the invalidity of employment termination has), courts have not been dealing specifically with the issue of bullying or mobbing in past trials. Employees had not even demonstrated whether or how such conduct was engaged in, they only stated that they had been mobbed.

After having analysed court decisions from publicly accessible databases we can conclude that bullying cases have not yet been a regular issue on court agendas. Hence, we would like to focus on a decision issued by the Regional Court in Banská Bystrica which tried a bullying case. In its decision the court differentiated between bullying and discrimination and declared that the Labour Code did not define bullying *expressis verbis*. By analogy, it may be concluded that bullying can be regarded as a specific type of abuse of rights”<sup>11</sup>.

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<sup>10</sup> J. Debrečéniová, *Čo (ne)vieme o diskriminácii (What do We (Not) Know about Discrimination)*, 2008. Accessible at: <http://odz.sk/wp-content/uploads/304.pdf> [cit. 12.11.2014].

<sup>11</sup> Rozsudok krajského súdu v Branskej Bystrici (Judgment of the Regional Court in Banská Bystrica), case 16CoPr/11/2012. Accessible at: <http://otvorenesudy.sk/decrees/721071?q=mobbing#document/1/page/9> [cit. 12.11.2014].

The above-mentioned court decision dealt with a case of bullying by an employer (bossing). The facts of the case may be summed up as follows: An employee was holding a position which the employer redefined by internal regulation in the course of the employee's employment contract as a position which could be filled only by appointment by the employer (Section 42, paragraph 2 of the Labour Code). The employer dismissed the employee from the post and in the following period the employee was also made redundant on grounds of not fulfilling the requirement for work pursuant to Section 63, paragraph 1, letter d), item 2 of the Labour Code. The court also examined the issue of discrimination; however, we wish to explore the issue of bullying.

The court stated that “we shall differentiate between bullying and discrimination”. [...] The term “discrimination” according to labour law generally means making a distinction, excluding, or favouring on discriminatory grounds, the aim of which is to threaten or entirely rule out equal opportunities for employees or equal treatment in labour-law relations. It is necessary to underline that discrimination primarily lies in the fact that a discriminated employee carries a certain characteristic. If an employee is victimised for a different reason, it is not discrimination; however, it may be bullying.

The Labour Code does not define bullying *expressis verbis*. By analogy, bullying may be regarded as a specific form of abuse of rights. The prohibition of the abuse of rights is laid down in Article 2 of the Fundamental Principles of the Labour Code. [...] This provision provides for prohibition and order by law, which represent a threshold for the enforcement of justice, rights and obligations. The prohibition of the abuse of rights enshrined in Article 2 of the Fundamental Principles of the Labour Code represents a legal norm which, when breached by a covered subject, constitutes an unlawful act. The specificity of such unlawful act is that it does not arise out of the breach of a legal obligation but when an action is exercised in a manner which is prohibited by law. [...] Therefore, bullying may also be regarded as being in conflict with good morals. [...]

Neither bullying nor legal protection in bullying cases are explicitly embedded in the Labour Code. Section 13, Paragraph 3 of the Labour Code provides for the principle of the abuse of rights which provides that the performance of rights and obligations arising from labour-law relations shall be in line with good morals. No one shall abuse these rights and obligations to the detriment of the other party to a labour-law relation, or to co-employees. Section 13, paragraph 6 of the Labour Code provides that an employee who believes that his/her rights or interests protected by law have been aggrieved due to failure to observe the

principle of equal treatment or the principle prohibiting the abuse of rights may turn to the courts and seek legal protection. [...]

As bullying is a specific form of the abuse of rights, the provisions of the Anti-Discrimination Act on legal protection, and the procedure related to breach of the principle of equal treatment will be applied in such cases.

According to the Anti-Discrimination Act, the applicant may seek:

- refrainment from the unlawful conduct,
- a remedy,
- adequate redress,
- financial compensation for non-material damage.

According to the Anti-Discrimination Act, protection is based on the responsibility principle which does include liability as a subjective prerequisite. However, liability and its scale may adopt a legal meaning, for example in the process of granting financial compensation for non-material damage. It follows from the application of Section 11, paragraph 2, of the Anti-Discrimination Act to bullying cases that a defendant must prove that no bullying had taken place when an applicant presents such facts to the court which lead to a justifiable conclusion that bullying (the breach of prohibition of the abuse of rights) has occurred, which means that a reversed burden of proof is to be applied. [...]

It must be kept in mind that not every manifestation of malice in the workplace can be marked as bullying, in particular, when these manifestations do not take place for a long period of time, continuously and repeatedly, i.e. at least during the period of 6 months and at least once a week. [...] Bullying means psychological victimisation and/or plotting which is systematic and manifests itself in the forms of verbal and psychological attacks. Bullying often involves a misuse or abuse of power, in which the targets can experience difficulties in defending themselves. [...]

In cases of bullying, employees may claim financial compensation for non-material damage, and in cases of a non-rebutted bullying of employees they are even entitled to an adequate amount of such compensation [...]<sup>12</sup>.

An employer or someone in a position of authority has the right and obligation to manage subordinate employees, give instructions, request work performance in line with the terms and conditions agreed upon, and with applicable work conditions laid down in provisions of labour law. A simplified understanding of this relationship leads to the

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<sup>12</sup> Rozsudok Krajský súd Banská Bystrica, (Judgment of the Regional Court in Banská Bystrica), case 16CoPr/11/2012. Accessible at: <http://otvorenesudy.sk/decrees/721071?q=mobbing#document/1/page/9> [cit. 12.11.2014].

conclusion that an employer or someone in a position of authority can enforce certain rights and demand certain obligations from subordinate employees and as part of this relationship the abuse of rights may occur.

What is questionable, however, is how co-workers (colleagues) would evaluate a bullying situation, if a typical case of mobbing occurred. Co-workers have equal positions among each other although the principle of social hierarchy might be applied. Generally, this hierarchy is informal, for example it takes into account the principle of seniority but nevertheless the employees remain equal. Since there is no mutual enforcement of rights and obligations, in a case of mobbing no abuse of rights should take place either. It is questionable if this situation could be regarded as the breach of an obligation to create safe and healthy working conditions by an employer or a person in authority.

### **Conclusions**

The issue of mobbing and bossing is quite vast. It deals with relations of harmed employees, their colleagues, employers and also their associates, and covers several branches of law as well as scientific fields (psychology, medicine). Everyone might find themselves in any of the roles, be it a victim, offender, colleague, witness, someone who listens to the victim and provides counselling, and/or an employee of the Labour Inspectorate, or a judge. Given, how broad this issue is, we will only focus on certain aspects of proposals *de lege ferenda* (particularly from the viewpoint of labour law)<sup>13</sup>.

Some countries have legislation regulating bullying; in some this issue is covered by general laws on safety and health at work or by anti-discrimination laws (harassment). In some countries, the bullying issue is dealt within non-legislative ways such as framework agreements, collective agreements, and codes of good practice<sup>14</sup>.

Because of the fact that there is no uniform definition in the EU legislation for mobbing/bossing/bullying in the workplace and Slovak laws also do not specifically cover this issue, it is first and foremost necessary to reflect upon an appropriate definition of the terms.

The term “bullying” is generally used for manifestations of negative behaviour at school or in the army. In Slovakia, the terms “mobbing” or “bossing” are often linked to the term “harassment” – a term which is viewed to be part of the anti-discrimination laws. Since

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<sup>13</sup> A. Zaušková, A. Madleňák, *Communication for Open Innovation. Towards Technology Transfer and Knowledge Diffusion*, Ksiezy Mlyn: Dom Wydawniczy Michal Kolinski 2014, p. 13.

<sup>14</sup> P. E. Cobb, *Workplace Bullying: A Global Health and Safety Issue*, 2012, pp. 17, 19. Accessible at: <http://ilera2012.wharton.upenn.edu/refereedpapers/cobbellen.pdf> [cit. 12.11.2014].



harassment, in general, means humiliating, defamatory behaviour, and this is how employees also perceive it, this could be the term used for mobbing/bossing as well, however, only under the condition that the terms of psychological, moral, or workplace harassment and sexual harassment would be clearly differentiated. Thus, we could think of an appropriate modifier for the term “harassment”. Considering that certain aspects of the issue of mobbing or bossing are similar to that of the principle of equal treatment, abuse of rights and protection of privacy of an employee, and that these issues are covered in Section 13 of the Labour Code, mobbing and bossing could be defined precisely in this section of the Labour Code.

Hence, the following definition of the term “harassment in the workplace” could be considered: “Harassment in the workplace occurs when an employer or an employee repeatedly and for a period of time treats another employee in such a manner that it creates or may create an intimidating, hostile, degrading and/or insulting environment, or affects or may affect the physical or mental health of an employee. Harassment in the workplace may also occur sporadically or as one event when a serious assault on an employee takes place. Harassment in the workplace usually leads to the breaching of the rights of an employee, violation of his/her human dignity, changes in working conditions, threats to his/her employment contract with an employer, or to creating a harmful workplace environment. Harassment in the workplace is prohibited.

When comparing other countries’ laws covering the issues of mobbing and bossing, this could be covered *de lege ferenda* by provisions related to safety and health at work. In terms of protection in cases of harassment in the workplace, the same procedure could be considered as in the cases of breaching the principle of equal treatment, abuse of rights or violation of privacy of an employee; it means that there should be a possibility to file a complaint with the employer and/or initiate court proceedings as laid down in the principles of the Anti-Discrimination Act (there would be the same option for a defendant to claim a remedy, or the reversed burden of proof could apply.)

Therefore, it would be beneficial to complement current legal provisions (in addition to complementing the definition itself) of Section 13, paragraphs 5 and 6 of the Labour Code so that they would contain a reference to a specific provision defining the term “harassment” in the workplace.

Bullying must be viewed as a factor which has an adverse impact on the working atmosphere and health of the bullied person, as well as any persons who are part of the bullying and, at the same time, poses a threat to the safety of working conditions and procedures. In terms of the bullying issue, it also appears to be essential to lay down the

fundamental obligations of an employer in a generally binding legal provision regulating safety and health at work and, as a consequence, each employer should, after having taken into account their specific conditions and circumstances, adopt internal regulations that would define bullying and prevention procedures.