



PSYCHOLOGICAL HARASSMENT (MOBBING) IN TURKISH LAW

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In this study, we analyze the conceptual dimensions of psychological harassment. We also examine the legal remedies in Turkish Law.

Keywords: Psychological harassment (Mobbing), Occupational health and safety, Psychosocial health, Discrimination.

Introduction

Psychological abuse (mobbing) means psychological violence, enclosure, abuse, disturbance and persecution in the workplace. According to a more detailed description psychological abuse is a repetitive form of psychological terror applied to an employee in a workplace by an employer or other employees in the same workplace, is expressed in hostile, derogatory and unnerving behavior such as ill treatment, threats, violence and humiliation. As it can be observed such a form of abuse can be exercised both by the employer and by other employees working in a workplace. To sum up, psychological abuse (mobbing) can be defined as an exercise of power over an employee with systematic behavior targeting the employees right to personhood and right to “dignity and respect” preserved within the previously mentioned right.

Psychological abuse is an unjust action which attacks the employees’ right to personhood and which is in no way compatible with human dignity. Psychological abuse has been described by the ILO as a set of behaviors targeting harming an individual or a group of individuals by means of cruel, malevolent and humiliating initiatives.

Characteristic Behaviors of Psychological Abuse in the Workplace

It has to be expressed that psychological abuse (mobbing) can be seen in all cultures and workplaces throughout the world. Also psychological abuse can be seen in all workplaces regardless of whether they are publically or privately owned, as well as all other places where people are engaged in an activity together for a specific reason, such as educational institutions, courses and health centers.

The risk of being subjected psychological abuse exists for almost everyone. There are no distinctive qualities of mobbing victims. All employees can be subjected to psychological abuse. Personal characteristics, communication problems and performance issues of the victims have been examined yet no meaningful results were reported on them. On the other hand there are plenty of explanations and comments showing employees can be persecuted due to over performance. Nevertheless it isn’t possible to claim that the said criterion is a determining reason for employees being subjected to psychological

abuse. For a person doesn't have to be a "powerful rival" or a "highly qualified individual" in regards to the other employees to be subjected to mobbing. Certain personal qualities such as, for example, having a different gender, belonging to a different racial or ethnic group, having a different faith, dressing in a different way, being from a different generation or even having "remarkable physical characteristics" have been observed as probable causes of certain individuals being subjected to psychological abuse.

The most obvious examples of acts characterized as psychological abuse are preventing one from self-assertion; interrupting while the person is speaking, loud scolding, constant criticism, constantly finding faults in the person, pretending the person doesn't exist, cutting communication, ignoring the person's opinions, spreading rumors about the person, mocking the person's religious and political views, making inappropriate implications about the person, not giving the person quality work, constantly dislocating the person by giving him or her meaningless work, giving the person heavy tasks and the threat of physical violence etc.

It is necessary to underline that the difference between conflicts, sudden bursts of anger and tensions from psychological abuse is that the latter is conducted in a systematic and planned manner. Thus for a series of behaviors to be accepted as psychological abuse, they have to take place targeting an employee and the mentioned behaviors need to be spread out to a period of time and be conducted systematically.

The Legal Ways an Employee Subjected to Mobbing can take According to Turkish Law

Although Turkish law remains lacking a clear and direct regulation regarding psychological abuse, certain decisions were made in legal practice on this question. In the past, since there wasn't a direct regulation about psychological abuse in the past, our jurisdiction generally reached a conclusion based on the employers' requirement to look out for the employee, the rule of good intent and equal treatment. For the physical and mental health of the employee is to be protected. According to Point 77 of the Turkish Labor Code, every precaution needs to be taken to protect the employees. Similarly, there is no doubt that an employer discriminating between the employees, isolating an employee or engaging in offensive behavior is violating the equal treatment. For due to the obligation of equal treatment an employee can't be treated in a different way from another unless there is a just and reasonable cause.

Point 417 of the new Turkish Code of Obligations accepted on January 11, 2011 does envisage a direct regulation on the question. According to this point: "The employer is obliged to necessary precautions to protect and respect the personhood of the employee engaged in a relationship of service, to maintain an order in the workplace in accordance to the principles of honesty, specifically to prevent the employees from being subjected to psychological and sexual abuse and to prevent those who were subjected to such abuse from being harmed further...".

As it can be seen, with the new Code of Obligations, the employer has not only been prevented from engaging in psychological abuse but has the obligation to protect an employee from all sorts of psychological abuse or mobbing coming from other employees. It can be seen that the point in question aims for the creation of a comfortable and peaceful working environment in the workplace. In other terms, the employer has been obliged to sustain an order in accordance to the principles of honesty and morality.

As we've expressed above, an employer who psychologically abuses an employee violates his or her obligation to protect the employee as well as the obligation to treat every employee equally. Even if the employer doesn't engage in psychological abuse directly, he or she needs to take precautions against the acts of other employees working in the same workplace which amount to psychological abuse as well. Thus it can be said that an employee subjected to psychological abuse can take the following legal action;

- The physical and mental health of the employee subjected to psychological abuse is at risk. Thus the employee can use his or her "right to avoid work", envisage on Point 13 of the Work Health and Safety Code. For according to the first clause of Point 13 of the mentioned code; "employees facing serious and close danger can apply to the Board or the employer if the Board isn't present in the workplace, demanding the confirmation of the situation and a decision for the necessary

precautions being taken. The Board makes its decision by immediately convening and the employer does so at once, confirming the situation with an official report. The decision is transmitted to the employee and the employee representative in written form.” If the Board of Work Health and Safety, or the employer in the absence of the Board decides in favor of the employee, he or she can avoid work until the necessary precautions are taken. The salary and all other rights of the employee will be preserved while he or she is avoiding work.

- An employee subjected to psychological harassment by his or her employer should be able to terminate his or her contract at once with just cause. In fact according to clauses (b) and (c) of Point 24/II of the Labor Code, when the envisaged incidents have taken place, the employee is able to terminate his or her contract with just cause. According to clause (b): “If the employer uses expressions or acts in a way that is offensive to the employee’s or his or her family’s dignity and honor, or sexually abuses the employee”, and according to clause (c): “If the employer taunts or threatens the employee or his or her family, or encourages, provokes or pushes the employee or any family member of the employee to engage in a criminal activity, commits a crime requiring a prison sentence against the employee or any family member of the employee or makes baseless dishonoring imputations or accusations about the employee” the employee can terminate his or her contract with just cause.
- The employer engaging in any form of psychological abuse towards an employee or a group of employees is a violation of the employer’s obligation to treat his or her employees equally. For even if the employee subjected to such behavior hasn’t been treated differently on questions of salary, social help and so on, psychological abuse amounts to a direct attack on the right to personhood as well as dignity and respect. There is no doubt that an employer who targets an employee separating him or her from the rest of the workforce and subjecting that person to hostile attacks is violating the obligation of equal treatment. In this sense the employee subjected to psychological abuse should also be able to demand “discrimination compensation” in accordance to Point 5 of Labor Law.
- Subjecting employees to psychological abuse amounts to attacking their values of personhood. In this sense the employees can file several law suits according to general laws such as a lawsuit for material and mental compensation (Turkish Civil Code, Point 24/III), a lawsuit to end the attack, a lawsuit to prevent the threat of an attack and a lawsuit to confirm the lawlessness of an attack (Turkish Civil Code, Point 25/I). When behaviors amounting psychological abuse are in question, whether they stem directly from the employer or another employee or a group of employees, the targeted employee can direct the lawsuits he or she will file towards the employer. For the employer is in a condition which can prevent or end such an attack.

Conclusions

Psychological abuse is a repetitive form of psychological terror applied to an employee in a workplace by an employer or other employees in the same workplace, is expressed in hostile, derogatory and unnerving behavior such as ill treatment, threats, violence and humiliation.

The most obvious examples of acts characterized as psychological abuse are preventing one from self-assertion; interrupting while the person is speaking, loud scolding, constant criticism, constantly finding faults in the person, pretending the person doesn’t exist, cutting communication, ignoring the person’s opinions, spreading rumors about the person, mocking the person’s religious and political views, making inappropriate implications about the person, not giving the person quality work, constantly dislocating the person by giving him or her meaningless work, giving the person heavy tasks and the threat of physical violence. On the other hand for a series of behaviors to be accepted as psychological abuse, they have to take place targeting an employee and the mentioned behaviors need to be spread out to a period of time and be conducted systematically.

The employee can avoid work with the approval of the Work Health and Safety Board in the workplace if his or her health is considered to be under serious and heavy threat due to psychological abuse. The employer has to continue paying the employee's salary as the latter is avoiding work. The employee who is subjected his or her employer's psychological abuse can file a lawsuit for a material or mental compensation as well as demand a "discrimination compensation" envisaged in Point 5 of the Labor Code.

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