

Abnormalities of anti-mobbing prophylaxis

Abstract

One of the many goals of social prophylaxis is the prevention of social pathologies by, among other things, finding effective ways to prevent them and, if they occur, to minimize and eliminate them. It is precisely these objectives that are attributed to anti-mobbing prophylaxis. However, for the effectiveness of anti-mobbing prevention to be as effective as possible, interdisciplinary cooperation of experts in the field of law, sociology, psychology etc. is required. Given that mobbing entails costs and consequences for the employee, the organization and its environment, it is the interest of all these groups to combat the phenomenon of mobbing. A number of possibilities for countering this phenomenon have been developed, but it is necessary to take a close look at the shortcomings in their implementation, irregularities in the regulations, as well as ambiguities that may give rise to pathological practices in the area of anti-mobbing activities.

Key words

Mobbing, employee, social prevention, training, pathology.

1. Introduction

The regulation devoted to mobbing found its application in Poland with the entry into force of the Act of 14 November 2003 amending the Labor Code². Of course, this does not mean that the phenomenon of mobbing did not exist before that date, but according to the Supreme Court, before the date of entry into force of the regulations, it is impossible to effectively pursue claims on the basis of subjecting an employee to mobbing³. Article 94³ of the Labor Code, in the chapter entitled “Obligations of the employer”, includes provisions on mobbing, according to which the employer is obliged to prevent mobbing (Article 94³ § 1) and to compensate for the situation (Article 94³ § 3 and 94³ § 4). In addition, the legislator defines the phenomenon of mobbing, defining it as

¹ Dr Iwona Szczęsna, assistant professor of Masovian Academy in Plock, Faculty of Humanities and Computer Science, ORCID: 0000-0002-0068-7768.

² The amendment law entry into force on January 2, 2004.

³ Judgment of the Court of Appeals in Katowice of 24 November 2006 (III APa 165/05, LEX, no. 307205).

“(…) actions or behavior concerning or against an employee, consisting of persistent and prolonged harassment or intimidation of an employee, causing an employee to have a low opinions of his or her professional usefulness, causing or intended to cause humiliation or ridicule of an employee, isolating or eliminating him or her from the team of colleagues”⁴.

The legislator’s use of general terms, such as durability or persistence, is questionable. In order to clarify these terms, it seems reasonable to refer to the case law of the courts, which emphasize the need to assess the existence of mobbing by means of objective and not only subjective evidence⁵. The case law of the Supreme Court has taken the position that it is not possible to define rigidly the minimum period necessary for the occurrence of mobbing⁶. Furthermore, it is noted that the duration of harassment or intimidation must be considered on a case-by-case basis and take into account the circumstances of the individual case⁷. Even more difficult to interpret is the term persistence, which refers not only to the behavior of the perpetrator, but also to his or her mental attitude. This premise contains an objective element, although its meaning is primarily filled by a subjective element, which focuses on the experiences of the mobber, characterized by the perpetrator’s relentless and negative attitude⁸. However, the questions arises whether the necessity of malice will determines the necessity of attributing intentional guilt to him or her. According to Piotr Prusinowski and Monika Kotowska, it is possible to adopt persistence in behavior even after the occurrence of unintentional culpability⁹. Clarifying the terms persistence and long-termness is not only of theoretical significance, but also makes it possible to distinguish mobbing form other behaviors that should be classified as molestation or discrimination¹⁰. According to the Supreme Court, there is a problem with the definition of the grounds of mobbing, and in particular with “(…) vague terms, which abstract definition is essentially impossible, and their clarification is achieved by reference to the totality of the specific factual circumstances”¹¹.

Equally unclear and imprecise are the provisions of Article 94³ § 1 of the Labor Code, which imposes on the employer the obligation to prevent mobbing. However, it is in vain to look for a provision in the Labor Code that

⁴ Act of 26 June 1974, Labor Code (Journal of Laws of, item 1465), Art. 94³ § 2.

⁵ Judgment of the Supreme Court of 8 December, I PK 103/2005, OSNP 2006, no. 21–22, item. 321.

⁶ Judgment of the Supreme Court of 17 January 2007, I PK 176/06, OSNP 2008, no. 5–6, item 58.

⁷ Judgment of the Supreme Court of 17 January 2007, I PK 176/06, OSNAPIUS 2008, no. 5–6, item 58.

⁸ S. Kowalski, *Odpowiedzialność karna za naruszenie praw pracowniczych*, Służba Pracownicza 2007, no. 2, p. 35.

⁹ P. Prusinowski, M. Kotowska, *Prawna ochrona pracowników przed sytuacjami patologicznymi w środowisku pracy – wybrane problemy*, *Studia Prawnoustrojowe* 2013, no. 20, p. 103–117.

¹⁰ B. Bury, *Uporczywość i długotrwałość zachowania jako elementy składowe prawnej definicji mobbingu*, *Monitor Prawa Pracy* 2007, no. 2, p. 70-81.

¹¹ Judgment of the Supreme Court of 20 January 2020, file no. III PK 194/18.

would specify what exactly the employer's actions should be understood by such a defined obligation¹². Some authors even state that the provisions of this article are ineffective due to the lack of definition of specific actions along with the frequency that should be performed by the employer in order to be able to prevent mobbing in the workplace¹³.

2. Elements of anti-mobbing policy and prevention

According to labor law, the employer is obligated to respect the dignity and other personal rights of the worker¹⁴ and to protect the life and health of workers by providing them with safe and hygienic working environments¹⁵. These are regulations that directly correspond to the obligation of counter mobbing and were used before the anti-mobbing regulations appeared in Labor Code¹⁶. Anti-mobbing prevention, i.e. set of measures taken by the employer to prevent the occurrence of this type of pathological behavior against employees, plays a key role in combating the phenomenon of mobbing at the workplace.

The doctrine emphasizes that, from the point of view of prevention, an anti-mobbing policy is one of the most effective methods of combating this phenomenon in the workplace¹⁷. Anti-mobbing procedures may be incorporated into the collective bargaining agreement or work regulations¹⁸. It is also possible to include them in the articles of association of the employer¹⁹. A real opportunity to counter both already existing mobbing problems and problems that may arise in the future is provided by a properly constructed internal anti-mobbing policy based on two pillars: the complaint procedure and the preventive measures. The internal anti-mobbing policy should contain basic information: clarify the concept of mobbing; define the procedure for filing a complaint with the employer; indicate the formal requirements for a complaint, define the rules for the appointment and operation of an anti-mobbing committee; indicate sanctions and the rules for their application to perpetrators of mobbing; ensure that victims of mobbing can be transferred to another organizational unit with their consent or at their request²⁰. It is ex-

¹² I. Szczęsna, Profilaktyka antymobbingowa – faktyczne działania pracodawców czy fikcja?, *Studia Edukacyjne* 2022, no. 66, p. 76.

¹³ K. Kwaśniewska, Aspekty prawne ochrony pracowników przed zjawiskiem mobbingu, *Roczniki Administracji i Prawa* 2023, XXIII, p. 1, p. 219.

¹⁴ Article 11¹ of the Labor Code.

¹⁵ Article 207 §2 of the Labor Code.

¹⁶ Article 94³ § 1 of the Labor Code. The employer is obliged to prevent mobbing.

¹⁷ H. Szewczyk, *Mobbing w stosunkach pracy*, Scholar Publishing House, Warsaw 2012, p. 311.

¹⁸ M. Chakowski, „Wewnętrzna polityka antymobbingowa” drogą do rozwiązania problemu mobbingu na poziomie zakładu pracy, *Monitor Prawo Pracy* 2010, no. 12, p. 637.

¹⁹ Ł. Prasolek, Commentary on Article 94³ of the Labour Code, (in:) K. Walczak (ed.), *The Labour Code. Commentary*, C.H. Beck Publishing House, Warsaw 2010, p. 5.

²⁰ H. Szewczyk, *Mobbing w stosunkach pracy*, Scholar Publishing House, Warsaw 2012, p. 319.

tremely important that an internal anti-mobbing policy is disseminated and applied to all employees of an organization, including those working under civil law contracts. The provisions of the anti-mobbing policy should include a commitment on the part of the employer and the employees to comply with these arrangements. In addition, every employee should submit a declaration of familiarity with the content of the anti-mobbing policy.

It is the employer's primary responsibility to refrain from behavior that bears the sign of mobbing²¹. It is also obliged to take preventive measures aimed at eliminating possible mobbing practices. Preventive action should cover three dimensions: primary, secondary and tertiary prevention. The first should focus on systematic educational activities aimed at raising awareness of mobbing and developing an appropriate organizational climate conducive to compliance at the workplace. Secondary prevention, these are actions aimed at improving the competence of workers in difficult situations, especially when negative behavior has already occurred. They are aimed at mitigating the effects of undesirable behaviors. In addition, this type of prevention includes the establishment of a procedure for monitoring and documenting mobbing behavior and a procedure of reporting and handling complaints about mobbing. Tertiary prevention, on the other hand, is actions aimed primarily at people who have experienced mobbing – these are all forms of help: medical, psychological and legal.

Preventive training on mobbing play an extremely important role in anti-mobbing prevention. In this regard, the employer should train employees in the scope of: identification of the sources of mobbing, understanding the legal conditions in the context of labor law, understanding methods of counteracting mobbing. In addition, training should be provided to manager. Such training should include conflict management aside of anti-mobbing subject. These trainings should contribute to: raising awareness of the importance of prevention in counteracting mobbing practices in the organization, acquiring the ability to identify the phenomenon of mobbing and react to it if it occurs. The anti-mobbing commission should, on the other hand, receive training in mediation and recognition of mobbing situations and how to deal with mobbing situations.

3. Anti-mobbing prevention in the workplace – analysis of own research results

The presented studies are part of a broader study on anti-mobbing prevention in the workplace. The research was carried out in the period from September 2023 to December 2023 in the Masovian Voivodeship. The study

²¹ M. Kuba, Środki przeciwdziałania mobbingowi w świetle prawa pracy, (in:) T. Wyka, Cz. Szmidt (ed.), *Wieloaspektowość mobbingu w stosunkach pracy*, Poltext Publishing House, Warsaw 2012, p. 157.

used the method of non-categorized interview, the research sample was selected deliberately. Taking into account anti-mobbing prevention in the workplace, it was reasonable to pose the following research problems:

What is the state of implementation of internal anti-mobbing policies by employers?

What preventive measures regarding mobbing and counteracting negative effects and other psychosocial risks are taken at the workplace?

What is the importance of anti-mobbing policy for employees?

A total of 64 people took part in the study to obtain the most complete information. When selecting the survey sample, the place of employment of the respondents was taken into account due to the form of ownership (private and public sector). In addition, for the private sector, the size of the enterprise employing the respondents was taken into account (micro, small, medium-sized and large enterprise). Thus, among the respondents there were 41 persons employed in the public sector and 23 persons employed in the private sector. The place of employment of respondents working in the private sector was: micro-enterprises – 8 persons, small enterprises – 8 persons, medium-sized enterprises – 4 persons and large enterprises – 3 persons. The study involved 50 women and 14 men. In terms of age, the largest group was in the age range 41–50 (35 people) and 51–60 (21 people). The group of people aged 61–70 was 5 people, and the group aged 26–40 was the least numerous (3 people). The respondents were mostly people with higher education – 37 people and secondary – 25 people. Only 2 people declared having a vocational education. In the current workplace, the seniority of the respondents was respectively: from 16 to 20 years – 32 persons, from 11 to 15 years – 24 persons, from 5 to 10 years – 7 persons and under 5 years – 1 person.

The first issue addressed in the study was to learn about the state of implementation of internal anti-mobbing policies by employers. Only 5 people declared that their workplace had an internal anti-mobbing policy, but all respondents pointed to irregularities in its records. Among those expressing this opinion were 4 public sector employees and 1 private sector employee employed by a large company. Allegations investigated against the provisions of the internal anti-mobbing policy are primarily: unclear complaint procedure and incorrect provisions concerning the members of the anti-mobbing committee. The lack of clear provisions concerning the members of the anti-mobbing commission raises fears that the commission will not include impartial persons who will be able to assess a given behavior with the greatest objectivity in terms of mobbing behavior. According to the respondents, these provisions also do not give certainty whether a person friendly with the mobber will sit on the committee, or even in the worst-case scenario the mobber himself: "It is absurd that the committee consists of persons appointed by the employer (...) In the case of our WPA, the committee also

includes persons from the management staff who themselves present behavior bearing signs of mobbing in their work". In the private sector, only one workplace has an internal anti-mobbing policy in place. In other cases, such documents do not apply: "My company does not have an internal anti-mobbing policy and I sincerely doubt that small companies have one". Respondents also claim that employers do not feel the need to create an internal anti-mobbing policy, citing the provisions of the Labor Code in this regard: "(...) we gave up fighting for an anti-mobbing policy, because every time we bounced off the wall (...) The argument was one, the employer is not obliged to create an internal anti-mobbing policy, and as such there is a Labor Code". It is alarming that among the 20 respondents there are people who do not know whether their workplace has an internal anti-mobbing policy. Although it seems to them that they signed declarations of acquaintance with such a document, they either did not see it or did not read it: "(...) when I was employed I got several documents to sign. It seems to me that there was such a statement about getting acquainted with the anti-mobbing policy (...) but physically I did not see such a document".

Another issue addressed in the study was the issue of preventive training on mobbing conducted by employers. As many as 32 respondents stated that the employer does not organize training in the field of mobbing. Most of them were employed in the private sector: "In all my professional career, I have never been to a training course on mobbing or discrimination. Interestingly, most people working in the public sector admitted that preventive training on mobbing is not organized, but the list of participation in the training is signed by the respondents: "It's silly to admit, but I sign the lists of participation in the training, even though I don't attend them (...) In fact, I don't even know if these trainings take place (...) Everyone signs, I sign them without saying anything". Respondents also pointed out that this situation does not only apply to training on pathology issues at the workplace, but to most "fictitious training". The fact that they participated in preventive training on mobbing was confirmed by 10 people, but they pointed out that they did not meet their expectations: "I went to such training once, but it was conducted by a staff member who could not or did not want to answer questions from the room about claiming compensation for mobbing". Only two respondents confirmed participation in training courses covering the subject of mobbing, the scope of which, in terms of content, organization and instructors, met the requirements of organizing such training. In the first case, the training was organized by trade unions and in the second case, the respondent individually used the services of a commercial training company. The statements of the respondents clearly indicate that there are no other measures on the part of the employers in the field of anti-mobbing policy, and the intervention measures taken by them may raise many doubts: "When one of the employees threatened that he would complain to the

State Labor Inspectorate about the head of the team and took medical leave, the company became alarmed (...) Then we had these team meetings and the director talked to us that you should wash the dirt in your own group. He said to come to him in such situations”.

The opinion of the respondents on the implementation of anti-mobbing policies in the workplace was extremely important for this study. Only 13 people see the point of introducing an anti-mobbing policy, but point out that Anti-mobbing Teams should include people from outside the workplace: “Anti-mobbing policy makes sense, but it should be developed taking into account the opinions of employees. This would help to avoid unclear and incomprehensible provisions and, above all, prevent the smuggling of provisions beneficial only to the employer”. However, most respondents stated that the anti-mobbing policy is a fiction and that mobbing activities take place in the workplace: “There is no action on the part of the employer in terms of anti-mobbing policy. On the other hand, it is the order of the day to intimidate with dismissal from work if someone does not like it. Mobbing is on its way, and the employee has nothing to say”.

4. Conclusions

According to the data of the Ministry of Justice, in 2020 there were 443 cases of mobbing to be heard in the district courts (Article 94³ § 3 of the Labor Code)²². Unfortunately, experts warn that only a fraction of cases concerning harassment in the workplace go to the courts. Most cases never leave the walls of the workplace. The provision of Article 94³ §1 of the Labor Code, which regulates the obligations of the employer with regard to the phenomenon of mobbing in the workplace, is relatively general and is limited to indicating that the employer has an obligation to prevent mobbing.

It is in vain to look for a provision in the Labor Code that would specify what exactly the employer’s actions should be understood by such a specific obligation. Therefore, the surveyed persons believe that anti-mobbing policy is a fiction, and that mobbing activities take place in the workplace.

Conclusions of the presented part of the study on anti-mobbing prevention in the workplace:

Clarification of the regulation of anti-mobbing policy activities. As long as the provisions of the Labor Code do not regulate this issue, it will be an area of abuse and discretionary interpretation on the part of employers.

Introduction to the Anti-mobbing Commission of a third party, designated by the employer and employees, who should have adequate training in the

²² Ministerstwo Sprawiedliwości, Ewidencja spraw w sądach pierwszej instancji o odszkodowanie i zadośćuczynienie w związku z wybranymi formami dyskryminacji w 2020 roku, <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/> (access: 03.03.2024).

field of work psychology and conflict resolution. Introducing persons appointed by employers (often from the management staff of the workplace) to the Anti-mobbing Commissions in the workplace will cause fear on the part of the workers who have been bullied to file a complaint. This will lead to the situation that such committees will be a dead body set up solely for the needs of the employer.

Obligation of employers to mandatory preventive training in the field of bullying (for example, mandatory training in the field of occupational health and safety).

Bibliography

1. Bury B., Uporczywość i długotrwałość zachowania jako elementy składowe prawnej definicji mobbingu, *Monitor Prawa Pracy* 2007, no. 2.
2. Chakowski M., „Wewnętrzna polityka antymobbingowa” drogą do rozwiązania problemu mobbingu na poziomie zakładu pracy, *Monitor Prawo Pracy* 2010, no. 12.
3. Kowalski S., Odpowiedzialność karna za naruszenie praw pracowniczych, *Służba Pracownicza* 2007, no. 2.
4. Kuba M., Środki przeciwdziałania mobbingowi w świetle prawa pracy, [in:] T. Wyka, Cz. Szmidt (ed.), *Wieloaspektowość mobbingu w stosunkach pracy*, Poltext Publishing House, Warsaw 2012.
5. Kwaśniewska K., Aspekty prawne ochrony pracowników przed zjawiskiem mobbingu, *Roczniki Administracji i Prawa* 2023, XXIII, p. 1.
6. Ministerstwo Sprawiedliwości, Ewidencja spraw w sądach pierwszej instancji o odszkodowanie i zadośćuczynienie w związku z wybranymi formami dyskryminacji w 2020 roku, <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/> (access: 03.03.2024).
7. Prasolek Ł., Commentary to Article 94³ of the Labor Code, (in:) K. Walczak (ed.), *The Labor Code. Commentary*, C.H. Beck Publishing House, Warsaw 2010.
8. Prusinowski P., Kotowska M., Prawna ochrona pracowników przed sytuacjami patologicznymi w środowisku pracy – wybrane problemy, *Studia Prawnoustrojowe* 2013, no. 20.
9. Szczęśna I., Profilaktyka antymobbingowa – faktyczne działania pracodawców czy fikcja?, *Studia Edukacyjne* 2022, no. 66.
10. Szewczyk H., *Mobbing w stosunkach pracy*, Scholar Publishing House, Warsaw 2012.

Legal acts

1. Act of 26 June 1974, Labor Code, (Journal of Laws of 2023, item 1465).

Jurisprudence

1. Judgment of the Supreme Court of 8 December 2005, I PK 103/2005, OSNP 2006, no. 21–22 item 321.
2. Judgment of the Court of Appeal in Katowice of 24 November 2006 (III APa 165/05, LEX, no. 307205).
3. Judgment of the Supreme Court of 17 January 2007, I PK 176/06, OSNP 2008, no. 5–6, item. 58.
4. Judgment of the Supreme Court of 20 January 2020, file no. III PK 194/18.

Nieprawidłowości profilaktyki antymobbingowej

Streszczenie

Jednym z wielu celów profilaktyki społecznej jest zapobieganie patologiom społecznym m.in. poprzez szukanie skutecznych sposobów, by do nich nie dopuszczać, a jeśli wystąpią, to by je minimalizować i eliminować. Dokładnie takie cele przypisywane są profilaktyce antymobbingowej. Żeby jednak skuteczność profilaktyki antymobbingowej była jak największa wymagana jest współpraca interdyscyplinarna ekspertów z zakresu prawa, socjologii, psychologii, itd. Zważywszy na fakt, iż mobbing powoduje koszty i konsekwencje dla pracownika, organizacji i jej otoczenia, to w interesie wszystkich tych grup jest zwalczanie zjawiska mobbingu. Wypracowanych zostało wiele możliwości przeciwdziałania temu zjawisku, trzeba jednak wnikliwie przyjrzeć się niedostatkom w ich realizacji, nieprawidłowościom zapisów, a także niedookreśleniom, które mogą rodzić patologiczne praktyki w obszarze działań antymobbingowych.

Słowa kluczowe

Mobbing, pracownik, profilaktyka społeczna, szkolenia, patologia.