

WORKPLACE HARASSMENT AND ITS RECENT APPARITION AS EMERGING RISK

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ABSTRACT

Psychological violence at work is considered to have existed ever since people began to work for other people, although it has been defined as a typical social phenomenon only in the last decades of the XX century. Mobbing is an issue as old as labour and human relationships. Mobbing health related effects on workers and therefore its high costs for employers are now a main issue.

When it comes to the analysis of mobbing we must consider a definition for harassment at workplace, the perspective addressed in its analysis by experts from various countries and the legislative initiatives taken in this respect.

Keywords: Harassment, mobbing, psycho-social risks, health, psychic damages.

1.- MOBING AND ITS HISTORICAL DIMENSION

Psychological violence at work (mobbing or harassment) is considered to have existed ever since individuals started to work for other individuals, though it has not been defined as a typical social phenomenon till the last decades of the XX century. Martin Valverde quotes the popular latin sentence which claims that *when man wants to be a wolf for man, but can't do it because society won't allow it, resorts to a less radical way of extermination by harassing the victim towards cancelling and social exclusion*¹. This phenomenon is as old as work relationship, as old as human relationships, and now is arising as a result of the devastating effects on the health of workers and the high costs the company has to assume.

Harassment at work is an issue which, same as abuse or ill treatment, dates back as far as human person existence². In these cases we can talk about professional jealousy, from the boss or workmate whose skill or abilities are beaten by the victim they aim to eliminate as competitor.

Despite studies about working organisation and working conditions that can be harmful to human health have been carried out since 1930s, assessment and preventive intervention in this field were not immediately taken. The excuse given was that psychosocial risk factors are unknown or far too complex and, anyhow, conditioned by the victim or the mobber's personality.

Anni Townend reveals that a lack of awareness of self and others, and a fear of difference, is the underlying cause of bullying. She argues that people change their behaviour when given support and encouragement to understand the impact of their behaviour on others, and that they can be helped to appreciate their differences and thus build bigger relationships in which more and greater business opportunities are realized³.

Psychological harassment is, therefore, an old issue present in many workplaces resulting from interpersonal relationships deterioration, as well as dysfunctions in work organization. The term was coined by ethologist Konrad Lorenz to describe how some animals isolate one of their members to cast it out. This behaviour is related to multiple factors such as gender, religious, ethnical, age, nationality, disability, sexual orientation and background discrimination, as well as socioeconomic reasons⁴. It is, somehow, an imported concept and, in the absence of specific regulation, its integration in the national legal order implies it must be subsumed under other categories or regulations corresponding to other types of legal regulations in extenso⁵.

Our first picture of harassment is about the abusive attitude of the employer. Molina Navarrete states that the resurgence and multiplication of this issue affords a return to the absolutist management model where full obedience is an essential matter⁶.

On the other side, as to the individuals that make up the various kinds of harassment at workplace, it must be noted a concurrence of the collective element in any of its manifestations. Even in the cases where bullying comes from just one person, often the superior (bossing), the passive attitude of colleagues/staff turn this mobbing into a collective action, becoming thus accomplices of mobbing⁷.

Orós Muruzábal states that the effects of harassment at workplace are difficult to quantify, because of unreliable data, although he says some studies show between 5 and 11% of victims among western working population. Figures close to 10% relate completed suicides to harassment at workplace, as the result of the final response of the worker to the high psychological distress, and the loss of closer family and social environment support⁸.

According to Orós Muruzábal, when identifying harassment diagnosis, three requirements shall be set: aggressor, aggressive behaviour and victim. As to the first, the aggressor is an individual or an organized group (staff) within the company. The aggressor often shows antisocial, narcissistic or paranoid traits, even "*antisocial personality disorder*". Often, behind these behaviours, clearly distinguished from mental illnesses, we find cold, ambitious, calculating individuals, driven by ambition of "*power or performance and social recognition*", etc, lacking scruples when using other persons to achieve their aims. As to the second requirement, aggressive behaviour, translates in the adoption of various actions so as to isolate the victim and prevent their social, labour or even family integration. They may be organized strategies aimed to destabilize the victim by assigning them senseless, below their level of skills or difficult to accomplish tasks, launching an avalanche on their mistakes or wrongs with a view to damaging and professionally discrediting them. The victim is often isolated, prevented from contacting the other colleagues, wicked talk about the person mobbed is circulated behind their backs and their private life is often ridiculed. Damage is achieved after a strategy to a slow, gradual stigmatization of the victim, as far as described above when the victim opts for suicide as the

only way out. Finally, the victims have the syndrome through a complex system over time where anxiety is more prevalent. Also phobias can occur alongside causing obsessive compulsive disorders mostly related to work and working environment⁹.

About the processes that may contribute to the development of harassment we must note that it may result from inefficient coping with frustration (such coping mechanisms are likely to active for perpetrators and passive for victims). Secondly, it may be the consequence of escalated conflicts and, lastly, it may result from destructive team and organizational cultures or habits.

Clinical diagnosis involves telling real cases from fake cases or those coming from persons with paranoid traits. Once real cases are stated, the worker should be treated as in a common illness. On this basis, medical discharge and eventual persistence of permanent effects should be assessed, focusing and assessing diagnosis after temporary disability. If temporary disability is clearly related to harassment it might be defined as professional contingency.

Evidence gained from a review of literature suggests that a number of different types of conflicts are labelled as harassment by employees, but may not meet recognized definitions of workplace harassment. Mediation within a restorative justice framework may be appropriate in some cases following an investigation into a complaint of harassment. This approach advocates pre mediation processes such as conflict coaching for both parties, and the joining of the parties in identifying the antecedents that contributed to the complaint or the emergence of the initial conflict. Incorporating follow-up and post mediation conflict coaching for individuals concerned, as well as interventions at the team or workgroup level are also important elements in this model to ensure sustainable outcomes following mediation.

2.- A MULTIDIMENSIONAL AND PRACTICAL PERSPECTIVE OF MOBBING

Psychological harassment occurs at workplace, anywhere around the world, though it is a culture related practice, for that reason the way harassment is performed and perceived in the various places may differ in variants and particularities. Harassment is deemed to exist when intentional aggressive activities directed towards a victim are planned and performed by an individual or members with a view to damaging and professionally discrediting a person¹⁰.

Generalization of new work organizations, subject to constant and increasingly complex interpersonal relationships, where competition and promotion ambition are far spread, have led to the existence of this phenomenon¹¹.

A growing rise in the service sector and proliferation of new work organizations result in growing complex interpersonal relationships. In this context pathological behaviours emerge, according to Doctor Leymann¹², pioneer and an expert on this field, consisting of *“hostile and unethical communication directed in a systematic way -at least once a week- and over a long period - at least for six months- by one or a number of persons mainly toward one individual, in order of isolating the victim, sabotaging labour performance, humiliating and eventual expulsion”*. The elements that define harassment at work and allow the differentiation of this kind of harassment from other types of conflicts (regular friction, strain, disputes...) are basically three: duration, recurrence and asymmetrical relationship between the disputing parties.

The previous concept, defining typical vertical harassment (of a subordinate by a superior), does not prevent considering horizontal harassment (of a workmate, not management)¹³. Horizontal harassment means the mobber undertakes getting rid of potential competitors that may risk their career advancement or keeping their position within the company.

To the question Why do mobbing processes develop in first place? Leymann answers that widely spread prejudices maintain that the problem arises once an employee with character difficulties enters the work force. Research so far has never been able in any way to validate this hypothesis, either with respect to mobbed employees at the workplace, or mobbed children at school. Thus, personality theories are not very valid for analyzing the reasons behind mobbing¹⁴.

Research show as its probable causes the work organization (extremely poorly organized production and/or working methods and helpless or uninterested management) and a poor conflict management.

Regarding the personality of the subjected person, Leymann argues that a workplace is always regulated by behavioural rules, one of them calls for effective co-operation, controlled by the supervisor. Conflicts can always arise, but according to those rules, they must be settled in order to promote efficient productivity. By neglecting this obligation, a supervisor then -instead- promotes the escalation of the conflict into a mobbing process. In its early stages, mobbing is most often a sign that a conflict concerning the organization of work has taken on a private touch. When a conflict is “privatized”, or if the motive behind its further development begins to develop into a deeper dislike between two individuals, then the conflict concerning work tasks has created a situation that an employer has the obligation to stop. Once a conflict has reached this stage, it is meaningless to blame someone’s “personality” for it. The responsibility lies primarily with management, either because conflict management has not been brought to bear on the situation, or because there is a lack of organizational policies with respect to handling conflict situations.

Another argument against regarding an individual’s personality as a cause of mobbing process is that when a post-traumatic stress syndrome develops, the individual can undergo major personality changes that are indicative of a major mental disorder brought on by the mobbing process. As the symptoms of this changed personality are quite typical and distinct, it is understandable that even psychiatrists who lack knowledge about PTSD as typical victim disorder, misinterpret these symptoms as being something that the individual brought into the company in the first place.

The concept of mobbing provided later by the European Agency for Safety and Health at Work - broader than Leymann’s definition- is: “*Harassment at the workplace is an irrational recurrent behaviour, towards a worker or group of workers, endangering their health and safety*”¹⁵. By irrational behaviour, it is meant a person’s behaviour, who, considering every circumstance, is aware of being discriminating, threatening, humiliating or weakening another individual.

French psychologist Marie France Hirigoyen, proposes a definition of harassment as “*any abusive conduct (whether by words, looks, gestures, or in writing) that through repetition or systematization infringes upon the personality, the dignity or the physical or psychical integrity of a person, which endangers the climate of the workplace*”¹⁶. This means continuous intentional harm which can reach, without making it obvious, destructive effects on the individual.

From another perspective, the German sociologist Ulrick Beck¹⁷ remarks the precariousness of the labour market, with regressive conditions for workers aggravated by world overpopulation and the emergence of “*real legions of poor*”. Thus appears a new kind of man, whose values are based in competition, egotism and lack of aims, only interested in the means to achieve his goals, which is conducive to a breeding ground for spreading the pathological behaviour mentioned.

3. Legal dimension of harassment in Spanish legislation

As graphically describes Molina Navarrete, harassment means a depth charge against the fundamentals of our justice system, whose socio-occupational order is based, as constitutional imperative, on the respect for an individual's dignity and their inherent rights (art. 10.1 CE)¹⁸.

Once harassment has become a deviation in behaviour, the company lacks its dimension as a “social system” that demands cooperation, to turn into an “organization of domination” which incarnates a stark and dehumanized relationship of power.

The phenomenon is described as a hostile or discriminating behaviour performed on the worker by a superior (bossing), or by co-workers to whom the victim is, in fact, subordinated¹⁹. The most usual aggressions include social isolation, social and work discrediting, preventing their expressing themselves and mental destabilization²⁰.

Regarding where harassment is more easily found, Martin Valverde focuses on the workplace, being asymmetrical relationships the main feature of these behaviours, where mobbers have enough power to perform these actions. In this context, mobbers carry out a planned strategy where constant coexistence typical of work groups will serve as a breeding ground to increase the chances for harassment²¹.

As to the consequences of harassment, we must note that, unlike physical violence or sexual harassment, it seems a more silent, subtle process, aimed at decreasing the victim's self confidence²². Thus health and family life deteriorate, leading to sick leave or illness.

Effects are felt mainly on the business due to decrease of productivity, a loss of quality and image for the company, loss of clients, and increase of absenteeism percentage²³... to which social costs from financial benefits linked to pathologies related to harassment must be added.

The wide range of facets psychological harassment affects has a multi offensive profile, as it may have an impact on the exercise various rights of constitutional order, namely against the dignity of the individual (art. 10.1 CE, Spanish Constitution)²⁴, moral integrity (art. 18.1 CE) and the right to freedom of information (art. 20.1 CE). In this regard, the dignity of the person and the unhindered development of human personality, are values inspiring the legislative system and social peace, which will benefit from better legal protection as they are fundamental rights²⁵.

4. Conclusions

We may conclude that any case of psychological harassment entails a serious violation of the dignity of the individuals and is, besides, a direct attack against the right to moral integrity, as stated by Constitutional Court decision 120/1990, 27th June, quoting case law of the European Court of the Human Rights in interpretation on European Convention on Human Rights when states that “*the degrading, humiliating and demeaning treatment of the person affects their moral integrity*”²⁶.

It is, therefore, a work-based phenomenon that is contrary to the principle of equal treatment, as defined in articles 3, 4 and 5 of Council's Community Directive 76/207/CEE, 9 of February 1976, implementing the principle of equal treatment for men and women, according to which the right to moral integrity and ban of inhuman or degrading treatment, as enshrined in art. 15 CE, are violated. Likewise, it fails to recognize the right for workers set out in article 4.2 e)

Status of Workers Rights, whereby workers' dignity and personal intimacy should be respected. Breach of these rights by employers can only be deemed as a serious breach of their contractual obligations²⁷.

In this context, technological developments and process automation have led to a productive system where human activity is less essential²⁸. The specific characteristics of this new productive system lead to a society based on competitiveness, selfishness, lack of solidarity and imposition of material values. These views may justify any behaviour, which, inevitably, translates into more aggressiveness in human relationships.

The social relevance of this phenomenon involved that international organizations such as The International Labour Organisation, the United Nations and the European Union have made efforts aiming at knowing the web of socioeconomic, psychosocial and cultural factors showing behaviours that entail harassment at work²⁹, also focusing on an integrated approach of prevention of behaviours and protection of victims.

In this regard, the European Parliament Resolution on harassment at workplace 2001/2339 (INI), adopted on 20 September 2001, considers the devastating effects of harassment both on workers and their families, often needing medical and psychological assistance. The resolution proposes the Commission to draw up a green paper on corporate social responsibility including mental, psycho-social, and social factors related to the working environment and the organization of work. It is taken into account that the rapid increase of fixed-terms contracts and job insecurity constitute a framework which enables different ways of harassment.

Despite international level initiatives, a phenomenon of social type and lack of regulation has prolonged, as our labour laws fail to make express reference to this phenomenon. This persistent lack of regulation did not prevent, anyhow, its legal definition as long as a regulation framework is provided for dealing with this issue both from preventive and protective sides. The first initiative, in this regard, was taken as a result of harassment regulation with the transposition of the Directive 2000/78/CE, 27 of November 2000, providing an overall framework for equal treatment in employment. The Directive is enacted by Law 62/2003, first paragraph of article 28, stating that harassment is defined as: *“any unwanted conduct related to racial or ethnic origin, religion or beliefs, disability, age or sexual orientation of a person which takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, degrading or offensive environment”*.

This lack of regulation has recently been rectified, though surprisingly through criminal law, which meant an important step for prevention of moral harassment at workplace with an obvious preventive effect. The legislators, through the Organic Law 5/2010, 22 of June, have criminalized (under article 173.1 of the Spanish Criminal Code) the action of any person taking advantage, within the scope of the employment relationship, of their superior position to inflict repeatedly humiliating or hostile treatment, albeit not constituting degrading treatment, and the penalty is from 2 years to 6 months imprisonment, according to the seriousness of the coercion or the means used.

From another point of view, Jerry Carbo regards that a “Reasonable Anti-workplace bullying policy” means a policy reasonably calculated to prevent, detect and remedy all acts of workplace bullying and abusive conduct in the employer's workplace. Such a policy shall at a minimum contain an adequate notice to employees of their rights to a healthy workplace, a definition of abusive conduct and workplace bullying, an adequate reporting system, a requirement that all supervisory employees and all agents of the employer immediately report

all acts of bullying and remedies that assure the end to the abusive conduct, deter future such conduct, protection against retaliation for the reporting and participation in an investigation³⁰.

When it comes to combining legal and psychological perspectives to handling bullying and harassment at the workplace, psychology and law meets in its basic interests in fairness, where procedural fairness may be used to restore interactional injustices. The Norwegian work environment law requires the employer to establish and follow basic procedures that meet the statutory requirements, including fair treatment of both parties and proper documentation of the case. Following the management prerogative, employers have the power to investigate complaints and instruct parties how to behave. In this they aim to inspire other countries how to employ their own regulatory developments and to use existing legislation and existing “procedural” principles of law as a framework for their intervention methods in bullying cases.

However, no definite solutions are to be achieved. Research in Denmark has proved that accessing Employee Assistance Programmes failed to significantly improve outcomes for targets, questioning the indiscriminate and widespread use of programmes like mediation and counselling and substantiating the concerns of conflict management theorists and practitioners that such interventions are inappropriate in bullying scenarios.

[1] Martin Valverde A. 2009, *El acoso en el trabajo*, In: Sempere Navarro, A.V., Pérez De Los Cobos Orihuel F. Aguilera Izquierdo A. *Enciclopedia Laboral Básica*, Civitas, Madrid: 121-123.

[2] Luelmo Millán M.A. 2003, *Acoso moral o mobbing. Nuevas perspectivas sobre el tratamiento jurídico de un tema intemporal de actualidad*, *Revista Española de Derecho del Trabajo* (115): 5-34.

[3] Townend A. 2008, Identifying and managing bullying in the workplace, In: *Human Resource Management International Digest*, Vol. 16: 3-5.

[4] Lorenz K. 2004, *Sensibilizando sobre el acoso psicológico en el trabajo*, OMS, Ginebra: 11.

[5] Rivas Vallejo P. 2006, *Los riesgos psicosociales: estrés laboral, burn-out*, In: *Tratado Médico-Legal sobre incapacidades laborales*, Aranzadi, Pamplona: 367.

[6] Molina Navarrete C. 2001, *La tutela frente a la violencia moral en los lugares de trabajo: entre la prevención y la indemnización*, *Aranzadi Social* (18): 45-90.

[7] Collado L. 2005, Concepto, calificación jurídica y tipología del acoso moral en el trabajo (-mobbing-). Diferencias con otras figuras afines, In: CGPJ, *Riesgos psicosociales y su incidencia en las relaciones laborales y seguridad social*: 49-76.

[8] Orós Muruzábal M. 2006, Los riesgos psicosociales, In: Rivas Vallejo, P. *Tratado Médico-Legal sobre incapacidades laborales*, Aranzadi, Pamplona: 638 a 676.

[9] Ibidem: 638-676.

[10] Conesa Ballesteros J., Sanahuja Vidal, M., 2002, El acoso moral en el trabajo: tratamiento jurídico (mobbing), *Actualidad laboral* (30): 639-658.

[11] De Vicente Pachés A. 2005, La configuración del acoso moral en el trabajo y la soluciones jurídico-preventivas para erradicarlo. Últimas tendencias doctrinales y jurisprudenciales, *Tribuna Social* (180): 49-67.

[12] Leymann H., 1996, *European Journal of work and organizational psychology*, University of Umed (Sweden), (2): 165-184.

[13] Galan Vela M^a. J. 2006, Acoso moral: “mobbing horizontal”, *Aranzadi Social* (17): 1-7.

[14] Leymann H. 2000, 1996, Bullying; Whistleblowing Why Does Mobbing Take Place? In: *The Mobbing Encyclopaedia*, URL: <http://www.leymann.se/English/12310E.HTM> : file 12310e.

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- [15] VV.AA. 2004, Sensibilizando sobre el acoso psicológico en el trabajo, Organización Mundial de la Salud, Ginebra: 1-38.
- [16] Cavas Martínez F. 2002, El acoso moral en el trabajo mobbing: delimitación y herramientas jurídicas para combatirlo, *Actualidad jurídica Aranzadi* (555): 1-12.
- [17] Escudero Moratalla J. F., Poyatos Matas, G., 2003, *Acoso laboral: diversas posibilidades procesales para ejercitar la acción*, Aranzadi SA (22): 1-13.
- [18] Molina Navarrete C. 2001, La tutela frente a la violencia moral en los lugares de trabajo: entre la prevención e indemnización, *Aranzadi Social* (18): 45-90.
- [19] Ces García E.M. 2002, El mobbing, un nuevo riesgo laboral a prevenir en la Unión Europea. La Sentencia del Tribunal Europeo de Justicia de 23 de Enero de 2002, *Revista Ministerio de Trabajo y Asuntos Sociales* (37): 205-218.
- [20] Molina B. 2002, Mobbing o acoso laboral en el lugar de trabajo, *Relaciones Laborales* (3): 1-7.
- [21] Martín Valverde A. 2009, *El acoso en el trabajo*, In: Sempere Navarro A.V. Pérez De Los Cobos Orihuel F., Aguilera Izquierdo A., *Enciclopedia Laboral Básica*, Civitas, Madrid: 121-123.
- [22] Sáez Navarro M^a. C. 2001, Algunas cuestiones sobre mobbing en el trabajo, *Aranzadi Social* Vol (2): 3051-3057.
- [23] Escudero Moratalla J. F. Poyatos Matas G. 2003, *Acoso laboral: diversas posibilidades procesales para ejercitar la acción*, Aranzadi SA (22): 1-13.
- [24] Luelmo Millán A. 2006, Realidades e hipérboles del acoso moral. Los términos actuales de la cuestión, *Revista del Trabajo y de la Seguridad Social* (274): 43-64.
- [25] Aramendi Sánchez P. 2002, Acoso moral: su tipificación jurídica y su tutela judicial, *Aranzadi Social* (2): 49-86.
- [26] Velázquez Dacosta R. 2005, *Riesgos psicosociales: prevención, reparación y tutela reparadora*, Aranzadi, 161 p.
- [27] Molina Navarrete C. 2012, Los riesgos psicosociales. Su particularidad en la legislación positiva, In: Rivas Vallejo P. Monereo Pérez J.L. *Tratado de Salud Laboral, Tomo I, Aspectos Jurídicos de la Prevención de Riesgos Laborales*, Aranzadi, Pamplona: 1095-1118.
- [28] Cavas Martínez F. 2002, El acoso moral en el trabajo mobbing: delimitación y herramientas jurídicas para combatirlo, *Actualidad jurídica Aranzadi* (555): 1-12.
- [29] Molina Navarrete C. 2001, La tutela frente a la violencia moral en los lugares de trabajo: entre la prevención e indemnización, *Aranzadi Social* (18): 45-90.
- [30] Carbo J. 2009, Strengthening The Healthy Workplace Act—Lessons From Title Vii And lied Litigation And Stories Of Targets' Experiences, *J. Workplace Rights*, Vol. 14(1): 97-120.