

## **Workplace Violence and Mobbing**

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03 April 2013

**Definition of Mobbing and its Place under Turkish Law.** Mobbing at workplace as a popular term usually means bad behaviors at a workplace towards other staff that cause fear, depression, physical illnesses, anxiety or other kinds of emotional distress. Climate of fear and losing work motivation are two of the most common signs of mobbing.

Although mobbing is not expressly defined within the context of the Turkish Labor Law, an Ankara Administrative Court made specific reference to the term in 2008. The Court of Appeals as well as the Council of State (the higher court for administrative cases) developed a comprehensive series of precedents on the matter in the following years. The rulings of the higher courts are generally in line with the principles set out by the ILO, confirming that mobbing is increasingly becoming of the major problematic areas in labor relationships.

Mobbing shows itself in different workplace relationships such as;

- By colleague against colleague,
- By senior colleague against junior colleague,
- By junior colleague against senior colleague,
- By employer against employee,
- Group of employees to an individual (other employee),

The risk of being victimized is related to various factors such as excessive workload, night shifts, physical conditions, gender, economical reasons, competitive climate, educational background (being well educated), cultural background, being talented.

The Court of Appeals repeatedly applied the criteria of being systematic and continuous as well as the targeting of the victims' honor and dignity as the constructive elements of a mobbing case. In its early rulings, the Court referred to the European Council Directive No.2002/73 and the *acquis communautaire* in its decisions (i) dated 30 August 2008 (9<sup>th</sup> Civil Chamber, 2007/9154 - 2008/13307) and, (ii) dated 4 November 2010 (9<sup>th</sup> Civil Chamber, 2008/37500 - 2010/31544); by inconspicuously using the word "mobbing" in addition to "sexual harassment" or "psychological violence".

Turkey is also a signatory state to the Revised European Social Charter that protects the "right to dignity at work" to a large extent.

**The situation under the General Tort Provisions.** Mistreatment, emotional abuse, horizontal violence, verbal abuse, bullying at workplace, sexual harassment, physical assault are some of the most common mobbing cases that may also result in claims for damages under the tort provisions of the Turkish Law.

According to the Turkish Law of Obligations art. 417; the employer is obliged to take necessary measures to prevent and/or stop ongoing sexual or emotional/psychological harassment at workplace. If the employee's personal rights are breached due to the employer's failure to comply with the foregoing, or the breach of law or contract, the employer will be liable under the general provisions related to the damages under the Law of Obligations.

Another protective measure designed to prevent an ongoing assault on personal rights is provided under the Civil Law art. 24 that sets forth the injunctive relief as an effective protection against the perpetrators of the faulty acts.

**Criminal Law Aspects.** Mobbing may have consequences in the fields of civil and criminal law, separately. Not every mobbing action qualifies as a criminally sanctionable situation, and it does not necessarily mean that mobbing will not give rise to claims for damages under the civil law if it does not have criminal implications.

Some of the "mobbing" or "psychological violence" cases would lead to criminal charges against their perpetrators, covered by different sections of the Turkish Penal Code; including the Personal Rights and Freedoms; Public Order and Security; State of Justice; Destruction, Cancelling or Changing of evidences. There is not a separate provision referring to the term "mobbing" in the Turkish Penal Code but violations of the above-mentioned rights may qualify as "mobbing" if committed within the context of a labor relationship. For illustrative purposes, we can say that a simple defamation or intervention with privacy that is covered by the Penal Code could be considered "mobbing" by a labor court, if found to exist in an employment environment.

**Specific regulations under the Labor Law.** The Turkish Labor Law and labor regulations provide for strict protections on employees' rights such as; equality, right to dignity at work, non-discrimination, health and security measures. Mobbing constitutes just cause for termination of the contract by the employee. Such termination would also give the employee the right to request payment of severance pay (if the employee worked more than a year), payment for termination without notice, overtime pay, damage for suffering and pain, bad faith damages and the compensation based on discrimination (as per the art.5 of the Turkish Labor Law) .

**Conclusion.** The ILO reported in 2006 that violence at work, ranging from bullying and mobbing, to threats by psychologically unstable co-workers, sexual

harassment and homicide, is increasing worldwide and has reached epidemic levels in some countries. The situation did not evolve to better. Newer statistics show that mobbing cases are increasing each and every day all over the world.

Turkish government launched a program that is aimed at fighting the workplace violence under the supervision of the Ministry of Labor and Social Security. It is promising to see that some 2600 victims used the emergency line to ask for help in 2012 in the entire country although the number is far below the actual number of cases that require urgent attention, considering that mobbing causes substantial economic loss and harms peace in labor relation.

For companies and governmental institutions an effective method certainly is the regular-update of company policies in accordance with new regulations. In-house legal departments also play a key role in the prevention of mobbing and dealing with its consequences.