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## **Legal nature of the obligation to counteract mobbing in the workplace.**

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It is the right of every employee to provide him with a workplace free from mobbing. The implementation of this right in practice requires the fulfilment of a number of obligations, which together boil down to the achievement of a certain state, i.e. the creation of a working environment in which this phenomenon, often equated with psychological terror, will not occur. At the same time, as will be demonstrated in the work, there is no single practice or one model of anti-mobbing prevention.

Therefore, in order to avoid misinterpretations of the term mobbing, this dissertation defines that concept in detail from both psychological and legal perspectives. Features of mobbing and its effects are presented. Then the formal definition of mobbing is discussed and a comparison is made with other acceptable or undesirable phenomena occurring in the workplace.

Mobbing as a phenomenon of a multifaceted and interdisciplinary nature, can be analysed from perspectives such as social pathology, management, medical problem, psychological violence or violation of labour law. The main purpose of the presented dissertation is to analyse the legal nature of the employer's obligation to counteract mobbing which can be the basis for practical actions taken by persons and institutions dealing with the prevention of undesirable behaviour in the work environment. It is preceded by a consideration of the relationship of mobbing to other negative phenomena occurring in the employer-employee system.

The 2003 amendments to the Labour Code imposed an obligation on the employer to counteract mobbing. At the same time, the legislator did not specify the legal nature of this obligation and, although it follows directly from a provision of the law, it is not clear whether it is a fundamental duty of the employer, whether it is a duty imposed by the state, or whether it arises from the employment contract concluded between the parties, and finally whether it is a duty of result or of diligence. Until now, it was also unclear whether and what liability the employer who fails to fulfil this obligation is subject to. There was no explanation as to whether the failure to counteract mobbing would incur tort or contractual liability.

Providing answers to these doubts has become the main focus of this dissertation, so that it can serve as a source of knowledge for employers interested in ensuring in the organizations they manage a good work atmosphere for the efficiency of task performance and the safety of employees.

Thus, in the end, it was shown that the obligation to prevent mobbing is a normative obligation (arising from the law), absolute (applicable regardless of the circumstances and required of everyone), personal (which means that the employer cannot perform it in a substitutive manner), diligent action (as opposed to so-called obligations of result). The novelty of this approach lies in the fact that no comprehensive analysis of the employer's obligation to counteract mobbing has been undertaken so far. What has been missing from the doctrine and court decisions is a determination of whether paragraph 1 of Labour Code Article 94<sup>3</sup> can be an

independent basis for an employee's claim. This would be the case if the employer does not fulfil his obligation, even though it falls within the catalogue of his basic duties.

The obligation to counteract mobbing includes three interrelated elements: respect for personal rights and dignity of the employee, respect for the equal rights of employees by virtue of their equal performance of the same duties, the prohibition of mobbing by the employer himself and, directed to the employer, the order to eliminate practices of this nature undertaken by third parties against the employee.

Therefore, the arguments raised in this doctoral dissertation are illustrated with research based on court decisions and the dissertation author's own experience of working for the Barbara Grabowska Anti-Mobbing Association.

This dissertation is divided into five chapters. The first chapter discusses the origin and explains the concept of mobbing, analysing the terminology of this phenomenon, its causes, types and mechanism of action, as well as the effects it causes. Attention was paid to the multifaceted nature of the concept of mobbing as a multidisciplinary problem – from psychology through medicine to law. The history of the phenomenon of mobbing was analysed and its causes. At the same time it should be noted that the causes of mobbing are not clear. Most often, they are due to the globalization and, consequently, the tremendous pressure exerted on employees by profit-focused organizations, and, on the other hand, the declining mental resilience of employees and their reduced ability to cope with problems. This chapter analyses the available definitions of mobbing, criticizing them as insufficient to explain the phenomenon.

From these considerations came the conclusion that the behaviour of the mobber must be considered reprehensible, not justified by moral norms or principles of social coexistence. Of such a nature may also be conduct which is not unlawful in the sense of other regulations, involving the exercise of authority with respect to subordinates or co-workers, such as the application of punishment or issuing orders. The mere feeling of an employee that the actions and behaviours taken towards him have the character of mobbing is not a sufficient reason to conclude that mobbing actually occurs. The assessment of whether harassment and intimidation of an employee has occurred or whether the actions were aimed at and could or did lead to a lowering of the employee's professional suitability, to humiliation, ridicule, isolation or elimination of the employee from the team of co-workers, must be based on objective criteria. These criteria derive from a reasonable perception of reality, leading to a proper assessment of the other person's intentions in certain social relationships. Thus, if an employee perceives certain conduct as mobbing, the acceptance of his position depends on an objective assessment of these manifestations of behaviour in the context of the revealed facts.

The second chapter is devoted to the legal definition of mobbing. The individual elements of the definition included in the Labor Code were characterized, since their understanding poses many problems. The components of the definition were analysed based on available judicial decisions and the rich literature on the subject. This chapter draws attention to the duality of legal norms that make up the provision on mobbing. This refers to the nature of the employer's legal obligation to counteract mobbing, as well as the employer's liability arising from failure to comply with that obligation.

The third chapter examines the relationship between mobbing and other undesirable phenomena in the workplace. The differences and similarities between mobbing and stress, conflict, violation of rules of social intercourse, violation of the employee's personal rights, violation of occupational health and safety rules, up to phenomena that constitute crimes against the employee's rights were emphasised. The graphical study prepared for this purpose shows that mobbing consists of many undesirable phenomena occurring in the workplace. Mobbing is their nucleus, which proves how many elements the employer must have neglected in order for this phenomenon to occur.

In addition, this chapter defines the legal nature of the employer's obligation to counteract mobbing. According to the conducted analyses, in order to counteract mobbing, many other undesirable phenomena in the workplace must be prevented. The employer is obliged to counteract mobbing, so if the employer commits acts that constitute mobbing or tolerates inappropriate behaviour on the part of other employees, he commits a serious breach of his obligations towards the employee, which is grounds for termination of the employment contract without notice through the fault of the employer. There is also improper performance of an obligation in the legal relationship between the employer and the employee. This, in turn, speaks to the nature of the employer's liability in connection with the failure to prevent both undesirable phenomena in the workplace and mobbing.

The fourth chapter is devoted to the employer's obligations to counteract undesirable phenomena in the workplace. It indicates the sources of law that speak of the employer's obligations in this respect, which include both national provisions of generally applicable law and international standards. Article 94 of the Labour Code contains an exemplary catalogue of the employer's basic duties. They are incumbent on him regardless of the basis on which the employment relationship with the employee was established and regardless of the type of work performed by the employee. This regulation also applies to the obligation to counteract mobbing, although it is not included in the catalogue listed in the Article 94 of the Labour Code. The source of the employer's obligations may also be an individual act that is the basis for the establishment of the employment relationship. The obligations of the employing entity listed in Article 94 of the Code of Civil Procedure may be in the nature of obligations towards individual employees and obligations towards the entire crew. The first group should include those obligations of the employer that result directly from the employment relationship. The correlate of these duties on the part of the employee is a specific entitlement. The second group includes obligations not arising directly from the employment relationship, but related to the performance of work. They do not form the basis for individual claims. However, entities representing employees, in particular trade unions, have an impact on the manner in which these obligations are performed. Liability for breach of duty lies directly with the employer.

The diverse nature of the obligations listed in Article 94 of the Labour Code is accompanied by a variety of sanctions occurring in the event of their violation. To secure the fulfilment of the employer's obligations listed in Article 94 of the Labour Code, sanctions of a criminal and judicial nature (Articles 218-221 of the Penal Code) and penal-administrative sanctions (Article 281 et seq. of the Labour Code) are used. As a sanction of a grave violation of the employer's basic obligations to the employee (and thus the obligations listed in Article 94 of the Labour Code) can also be considered the possibility of termination of the employment relationship by the employee under Article 55 § 1<sup>1</sup> of the Labour Code. The issues of the employer's obligations thus developed are the foundation for developing a way to prevent, but also eliminate undesirable phenomena in the workplace. It is Chapter Four that talks about them. An important element of this chapter is the way it demonstrates how to perform these duties, using both legal and non-legal means. As is well known, the norms of labour law derive not only from the law, but also from custom and extra-legal elements, such as principles of social coexistence and ethics.

The fifth chapter directly deals with the employer's duty to prevent mobbing in the workplace. It shows the sources of this duty as derived from the protection of the employee's personal rights, but also from the principles of occupational health and safety. Undoubtedly, this obligation is a normative duty, but also a fundamental one. The obligation to counteract mobbing was also analysed as a duty of result, of diligent action, examining the nature of the employer's liability and its various types. An attempt was also made to determine whether the liability in question has a tort or contractual profile. The employer's liability for a serious breach of duty towards an employee was not omitted either, where it was concluded that the failure to

prevent mobbing, as well as its occurrence, can qualify as a grave breach of duty to the employee. The employer should take all possible measures to make the workplace a place free from mobbing, because this is the essence of the employer's obligations imposed on him in accordance with Article 94<sup>3</sup> § 1 of the Labour Code. Therefore, the fifth chapter also indicates various practical ways of fulfilling this obligation in workplaces. Importantly, these methods were developed by the author of the dissertation herself and confirm that this duty should be implemented as a comprehensive anti-mobbing strategy, and not as an internal anti-mobbing policy set aside on the desk of the employer's representative.

The culmination of the substantive part of the dissertation are *de lege ferenda* conclusions, which undertake to answer the question of whether the hitherto functioning system of labor law in the area of the problem of mobbing has fulfilled its role and is it sufficient. Weaknesses and challenges waiting to be implemented in the future are pointed out. What needs to be changed is both the definition of mobbing itself, its international normalization (along the lines of ILO Convention No. 190) and the resulting adjudication of mobbing cases. Undoubtedly, an analysis of the nature of the employer's duty to prevent undesirable phenomena in the workplace and mobbing made it possible to draw the presented conclusions.