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Mobbing as a ground for compensation for moral damage to the employee

El mobbing como motivo de indemnización por daño moral al trabajador

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Abstract

The phenomenon of mobbing, i.e. psychological pressure of employees at the workplace by administration, organizations (groups) of colleagues, is a fairly common problem – according to statistical data, about 30% of employees face mobbing. However, this concept appeared very recently in the labor law of Ukraine – only in 2022, while Sweden was the first EU country to adopt anti-mobbing legislation (in 1993). Till now, there are no scientific works devoted to mobbing as a basis for compensation for moral damage in the labor law of Ukraine, which determines the relevance of our research. Mobbing is one of the forms of human rights discrimination and is related to labor relations. It manifests itself through psychological, economic and other violence, harassment of the employee by colleagues, subordinates or management, negative statements about him/her, spreading false information, etc. In the course of the research, the characteristics, forms, causes of this phenomenon were identified. The rights of the employee who has encountered mobbing were determined. The ways to prove the fact of harassment at the workplace and, consequently, the infliction of moral damage, were proposed; the relevant judicial practice was considered. It was stated that the difficulty of proving a causal relationship in such a category of cases means that the substantiation of a claim requires proper preparation on the part of the victim. The algorithm of the employee's actions in case of mobbing was formulated.

Keywords

mobbing*;* harassment*;* moral damage*;* employee*;* compensation

Resumen

El fenómeno del mobbing, es decir, la presión psicológica de los empleados en el lugar de trabajo por parte de la administración, organizaciones (grupos) de colegas, es un problema bastante común: según datos estadísticos, alrededor del 30% de los empleados se enfrentan al mobbing. Sin embargo, este concepto apareció hace muy poco en la legislación laboral de Ucrania: recién en 2022, mientras que Suecia fue el primer país de la UE en adoptar una legislación contra el mobbing (en 1993). Hasta ahora no existen en la legislación laboral de Ucrania trabajos científicos dedicados al mobbing como base para la compensación por daño moral, lo que determina la relevancia de nuestra investigación. El mobbing es una de las formas de discriminación de los derechos humanos y está relacionado con las relaciones laborales. Se manifiesta a través de violencia psicológica, económica y de otro tipo, acoso al empleado por parte de compañeros, subordinados o directivos, declaraciones negativas sobre él, difusión de información falsa, etc. En el curso de la investigación se conocerán las características, formas y causas de este fenómeno fueron identificados. Se determinaron los derechos del empleado que ha sufrido acoso laboral. Se propusieron las formas de acreditar el hecho del acoso laboral y, en consecuencia, la imposición de daño moral; Se consideró la práctica judicial pertinente. Se afirmó que la dificultad de probar una relación causal en esa categoría de casos significa que la fundamentación de una reclamación requiere una preparación adecuada por parte de la víctima. Se formuló el algoritmo de actuación del empleado en caso de mobbing.

Palabras clave

mobbing*;* acoso*;* daño moral*;* empleado*;* indemnización

INTRODUCTION

Protecting the rights and legitimate interests of an individual and a citizen is the primary task of a legal democratic State. This issue has acquired special significance within the European integration course of our country, as well as after the full-scale invasion of the Russian Federation into the territory of Ukraine. The protection of rights and freedoms necessitates the regulation of relations arising from the harm caused to a person in order to guarantee objective compensation of the latter.

Compensation is considered a means of restoring the violated right. It may be a monetary or equivalent compensation for the harm or loss of profit as a result of the illegal act. Its purpose is to compensate for the damage caused and return of the victim to the situation that existed before the harmful act was committed. The injured party is entitled to reimbursement of all losses that he/she suffered as a result of the illegal acts of the guilty party, that is, both material and moral.

Compensation for moral damage is one of the rights guaranteed by the Basic Law of Ukraine. Thus, according to Art. 56 of this act, everyone has the right to compensation, at the expense of the State or bodies of local self-government, for material and moral damages inflicted by unlawful decisions, actions or omission of bodies of state power, bodies of local self-government, their officials and officers during the exercise of their authority (Law of Ukraine No. 254K/96-VR, 1996).

Award for this type of damage is one of the ways to protect labor rights, as the legislation provides for the compensation for moral damage to the employee in the case of violation his/her legal rights, including as a result of discrimination, mobbing (harassment), the fact of which is confirmed by a court decision, which has become legally valid, led to moral suffering, loss of normal life ties and require additional efforts from him to organize his/her life (Article 237-1 of the Labor Code of Ukraine) (Law of Ukraine No. 322-08, 1971).

The phenomenon of mobbing, i.e. psychological pressure of employees at the workplace by administration, organizations (groups) of colleagues, is a fairly common problem. However, very often the victims do not realize that they are being subjected to violence and do not have enough information to get out of this situation.

Thus, according to statistical data, about 30% of employees face mobbing; 50% of those who encounter this phenomenon, quit; 76% of respondents claim a significant level of stress in connection with mobbing, and 50% of victims have panic attacks; 45% have health problems related to the impact of a stressful situation. Note that in 61% of cases, the perpetrator is the boss, and 71% of managers do not react to the reports of harassment, do not believe or deny their existence; 80% of mobbing victims are women, and 70% of mobbers are men. At the same time, 29% of the respondents prefer not to disclose information that they have become victims of bullying (Lindner, 2024).

However, this concept appeared very recently in the labor law of Ukraine – only in 2022 with the adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Prevention and Counteraction of Mobbing (Harassment)" (Law of Ukraine No. 2759-IX, 2022).

Therefore, it is necessary to find out what should be understood by the concept of mobbing, to establish its forms and to develop the algorithm of actions for countering this phenomenon for employees, which is the purpose of our article.

1. LITERATURE REVIEW

The phenomenon of mobbing was described in the context of sociobiology by zoologist and ethologist Konrad Lorentz in his book "On Aggression" (1974). Observing the behavior of insects living in collectives (wasps, bees, termites, ants), the scientist characterized the cases of attacks by a group of insects on an individual one and called this phenomenon harassment.

The term was borrowed in 1984 by the German psychiatrist Heinz Leymann (1990), who used it to describe psychological violence directed at certain individuals in the workforce. According to his definition, which is considered classic, mobbing is a systematic hostile, unethical communication of one person or a group of persons with a certain individual. These acts occur frequently (almost daily) and over a long period (at least six months) and, because of this frequency and duration, lead to significant mental, psychosomatic and social suffering. The synonyms used by Leymann to describe this negative phenomenon in the workplace are harassment, unbecoming behavior that is harmful to the individual's personality and psychological integrity.

Maran, Bernardelli & Varetto (2017) considered the types, motives and consequences of mobbing based on the relevant court decisions. Scientists found out that women under the age of 45 are mostly victims of mobbing. The specifics of mobbing in each individual case depend on the psychological types of the victim and mobber. Since the feature of this phenomenon is that it occurs only in the workforce, the prevention of mobbing in the workplace, ensuring the well-being of employees, managing conflicts and preserving the reputation and public image of the organization becomes important.

Ege (2010) described the method of establishing the fact of mobbing. It consists of seven parameters that must be determined in order for a conflict to be considered mobbing. First, this situation can only occur in the workplace and should happen daily, several times a week or several times a month for at least 6 months. Mobbing is characterized by actions directed against freedom of speech and/or systematic isolation of the victim, negative impact on his reputation, violence or threats of its use. Besides, the victim cannot adequately defend himself/herself because there is an asymmetry of power, which can be horizontal (the victim and the abuser occupy the same organizational position/role, but the victim considers himself weaker than the abuser), vertical (the abuser occupies a higher position), or strategic (in this case, the perpetrator is the manager who uses mobbing to force the victim to resign). Thus, the parties to mobbing are: victim, offender (mobber) and witness (witnesses).

Safina and Podgornaya (2014) conducted their own research, which proved that abusers can pursue different goals when harassing their colleagues in the workplace:

— humiliate the victim and thereby feel his power over him/her;

— provoke stress and other negative feelings;

— to gain authority, higher status, respect (the offender has a distorted view of himself/herself, as he/she considers himself/herself superior to others and believes that he/she can act in this way);

— for the sake of asserting oneself and getting satisfaction from another person's suffering;

— to force the employee to resign (the mober does not like this person; the latter annoys him/her, so he/she wants to get rid of him/her);

— to move up the career ladder (for which he/she needs to expel a competitor).

Erdemir, Engin, Yıldırım & Kondakci (2020) examined mobbing from the perspective of academic leadership. The authors believe that in companies with the correct approach to work organization, the cases of such behavior occur much less frequently. Bullying can be the result of constant leadership turnover, lack of resources, and corporate culture. In order to eradicate this phenomenon, it is necessary to limit bureaucracy and minimize the use of a vertical approach to solving problems, as they prevent effective decision-making and negatively affect the working atmosphere. Other prevention mechanisms may include raising employee awareness of this phenomenon, implementing an anti-mobbing policy, creating "assessment teams" consisting of union representatives, administration and legal counsel, promoting diversity and recognizing the dignity of all members of the workforce. It may also be necessary to fire the offender or transfer him/her to another job.

Prevost & Hunt (2018) analyzed mobbing in the universities' professional team and came to the conclusion that cases of academic mobbing often lead to numerous negative physical and psychological consequences for the victims, as well as their work in institutions of higher education.

Ukrainian researchers consider mobbing as a factor in the destruction of not only mental health. For example, T. Dziuba (2016) believes that the result of mobbing is signs of various violations of occupational health and, most importantly, the destruction of the individual meanings of the professional life of the employee, directly and indirectly determining value filling of the subjective picture of life path from the perspective of its division on "before and after' destructive influence.

Therefore, mobbing is one of the syndromes of destructive professionogenesis, that is, psychosomatosocial disorders caused by the negative impact of relationships in the work team, the components of which are social stress and post-traumatic disorders, depressive and anxiety-phobic, neurotic and dependent disorders, personality disorders (mental component), somatomorphic disorders and psychosomatic diseases (somatic component) and socialization disorders and social dysfunctions, maladaptation and degradation (social component) (Sydorov & Novikova, 2012).

Note that there are no scientific works devoted to mobbing as a basis for compensation for moral damage in the labor law of Ukraine, which determines the relevance of our research.

2. METHODOLOGY

General and special methods of scientific knowledge were used hen preparing this article. In particular, dialectical method is used to consider the phenomenon of mobbing in the unity and interrelationship of its forms, causes and elements.

Using the monographic method, the works by foreign and Ukrainian scientists who studied the issues of harassment at the workplace were analyzed.

The system-structural method was applied to systematize the characteristics and forms of mobbing, which manifests itself in psychological and economic pressure.

The logical method contributed to the formulation of the concepts "mobbing" and "harassment" and "discrimination".

The normative and dogmatic method made it possible to analyze the current legislation regulating the subject matter of our research, as well as international legal instruments prohibiting discrimination in the field of work and professions.

The method of legal modeling was used to formulate the algorithm of the employee's actions in case of mobbing on the part of his/her managers or colleges.

3. RESULTS AND DISCUSSION

The right of all people to equality and protection against discrimination is common, recognized by the Universal Declaration of Human Rights, the UN Convention on the Elimination of All Forms of Discrimination against Women, the UN Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and the European Convention on Human Rights and fundamental freedoms, to which all Member States are signatories. Convention No. 111 of the International Labor Organization (ILO, 1958) prohibits discrimination in the field of work and professions.

The Directive of the European Union No. 2000/78/EC (The Council of the European Union, 2000) establishes equal treatment in the field of labor and employment, defining behavior with the aim of creating a hostile, degrading or offensive environment as harassment of an employee, which equates to discrimination of labor rights.

According to Art. 26 of the European Social Charter (Council of Europe, 1996), in order to ensure the effective implementation of the right of all employees to protect their dignity in the workplace, the signatories of the Charter with the assistance of employers' and employees' organizations are obliged:

1) to promote awareness, information and prevention of sexual harassment in the workplace or in connection with work and take all appropriate measures to protect employees from such conduct;

2) to promote awareness, information and prevention of repeated condemnatory or explicitly negative and offensive actions directed against individual employees in the workplace or in connection with work, and take all appropriate measures to protect employees from such conduct.

Discrimination in the field of labor is a violation of the principle of equality of rights and opportunities, direct or indirect restriction of the rights of employees depending on race, skin color, political, religious and other beliefs, gender, ethnic, social and foreign origin, age, state of health, disability, gender identity, sexual orientation, suspicion or presence of HIV/AIDS, family and property status, family responsibilities, place of residence, membership in a trade union or other public association, participation in a strike, applications or intentions to apply to the court or other authorities for protection of their rights or providing support to other employees in the protection of their rights, reporting on possible facts of corruption or corruption-related offenses, as well as assisting a person in making such a report, on the ground language or other characteristics unrelated to the nature of the work or the conditions under which it is carried out (Article 2-1 of the Labor Code of Ukraine) (Law of Ukraine No. 322-08, 1971).

Mobbing is one of the forms of human rights discrimination and is related to labor relations. It manifests itself through psychological, economic and other violence, harassment of the employee

by colleagues, subordinates or management, negative statements about him/her, spreading false information, etc.

This term is reflected in the labor legislation of leading European countries: harcelement moral (France), mobbing (Germany, Italy), victimization (Sweden), workplace bullying (United States and the United Kingdom), psychological terror or harassment (a form of harassment on workplace, recognized by the legislation of several countries of the European Union (Guerrero, 2004).

Sweden became the first EU country to adopt anti-mobbing legislation in 1993, namely the Workplace Victimization Ordinance (Swedish National Board of Occupational Safety and Health, 1993), which applies to all activities in which workers may be victims of victimization. Victimization refers to repeated reprehensible or clearly negative actions directed against individual employees in an offensive manner, which may lead to the exclusion of these employees from the workforce.

The French Social Modernization Law, passed in 2002, provides for both civil and criminal liability for harassment. The term harcèlement in France is used in two meanings – harcèlement moral and harcèlement sexuel (applied in the context of sexual harassment in the workplace). The term harcèlement moral means the expression of moral aggression (persecution) between people in the organization, i.e. it is any offensive behavior that is interpreted as inappropriate (gestures, texts, speech, attitude), that violates the person's honor or dignity, his/her mental or physical integrity thereby putting the employee at risk or worsening working conditions (Budnik, 2020).

Harassment in the workplace is illegal behavior under the UK Equity Act 2010 (Parliament of the United Kingdom, 2010). According to its provisions, examples of such behavior can be: spreading false rumors; unfair treatment; harassment or systematic humiliation; denial of training or promotion. Harassment is implemented in the following ways: verbally, by phone, letters, e-mail.

To bring the legislation of Ukraine into compliance with the rules of the European Union, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Prevention and Counteraction of Mobbing (Harassment)" (Law 2759-IX, 2022) was adopted.

This Law amended the Labor Code of Ukraine, supplementing it with Article 22, according to which mobbing (harassment) is systematic (repeated) long-term intentional acts or omission by the employer, individual employees or a group of employees of the labor team, which are aimed at humiliating the honor and dignity of the employee, his/her business reputation, inter alia for the purpose of acquiring, changing or terminating his/her labor rights and obligations, manifested in the form of psychological and/or economic pressure, in particular with the use of electronic communications, creating a tense, hostile, offensive atmosphere for the employee, including making him underestimate his professional suitability (Law of Ukraine No. 322-08, 1971).

Mobbing, like any other phenomenon, has certain characteristics, which are the following:

1) constant repetition (systematic) of the action. Mobbing (harassment) is not a one-time action; these are repeated, systematic, long-term active acts or omission aimed at degrading the honor and dignity of the employee, his/her business reputation;

2) the purpose of such actions is termination of labor relations (dismissal of the employee), change of working conditions or transfer to another position, reduction of payment, etc.;

3) actions must be intentional or in the form of omission (the latter applies to managers who do not take any measures to stop harassment);

4) clearly defined parties – victim, abuser and witness (if available). Thus, the injured employee acts as a victim in such a situation. The abuser can be directly a manager, a representative of the administration of an enterprise, institution or organization, another employee of the labor team or their group (association);

5) acts or omission by the abuser lead to humiliation, infliction of moral damage, fear, anxiety or even social isolation of the victim at work, forcing him/her to change the place of work, etc.

6) can be carried out verbally (threats, slander, intimidation, ridicule, insulting or offensive words, reporting to the management), using electronic means of communication (messages on the phone, in messengers or social networks, sending e-mails, etc.), or by causing material damage (damaging or destroying the employee's personal property), i.e. in the form of psychological and/or economic pressure.

The causes of mobbing can be divided into:

— external (at the level of society in general and the group in particular) are reasons related to the life cycle of the collective, the laws of existence of groups, culture, morality, that is, they do not depend on the personality of the individual. The following external causes of mobbing are distinguished: distribution of statuses in the team, primitive reactions in communication, inherited herd instinct; age-related features of development; low general culture and morality; lack of an effective legal mechanism.

— internal (at the level of the individual) are reasons that are determined by the peculiarities of the psyche, life experience, worldview, and beliefs of the individual. However, internal reasons play the main role in mobbing; and external ones only contribute to the process (Trepachova, 2024).

The following forms of workplace mobbing are distinguished:

— authoritarian mobbing – carried out by a head who uses a destructive management style;

— displaced mobbing – aggression is directed at a third person, because its manifestation in relation to the present source is too dangerous, and the level of frustration with the situation exceeded the permissible limits and scope of the fight against the problem; it may be a reaction to authoritarian bullying;

— mobbing of "initiation" – we deal with it in the situation when new members in the workforce are being tested by the senior members;

— discriminatory mobbing – its victims are persons who differ from the general collective in terms of values important for its members or persons who do not approve of the norms established in the collective;

— de-signaling mobbing – a type of discriminatory mobbing, applied to the person who has discovered negative facts about his/her colleagues, informed the managers about them, for which in the form of mobbing receives «punishment» from employees;

— sexual mobbing – sexual harassment is a special form of this phenomenon, and in the case of a group it can be a type of discriminatory mobbing, where the expression of interest in the opposite sex or the same, depending on the preference, is not welcomed;

— selective mobbing – its goal is to remove this person from the collective; the actions become more and more brutal until the goal is achieved. It should be noted that the three forms mentioned above ("initiation", discriminatory and selective) are related to the stages of the employee's transition through the organization: entry-transfer-exit, and the main the purpose of each is to impose rules of conduct on the worker in the group and enforcement of existing internal norms.

The Labor Code defines that the forms of mobbing are psychological and economic pressure, which manifests itself in:

— creation of a tense, hostile, offensive atmosphere for the employee (threats, ridicule, slander, disparaging remarks, threatening, intimidating, humiliating behavior and other ways of removing the worker from psychological balance);

— unjustified negative separation of the employee from the collective or his/her isolation (not being invited to meetings and meetings in which the employee must participate in accordance with local regulations and organizational and administrative acts; preventing him from performing his/her work function; worker's exclusion from the workplace, relocation of the workplace to places unsuitable for this type of work);

— unequal opportunities for education and career growth;

— unequal pay for work of equal value performed by workers of the same qualification;

— unjustified deprivation of the employee's part of the payments (prizes, bonuses and other rewards);

— unjustified uneven distribution of workload and tasks by the employer between employees with the same qualifications and labor productivity who perform work of equal value (Law of Ukraine No. 322-08, 1971).

Therefore, an employee can claim that he has encountered mobbing if there is a process of ignoring the employee, his/her isolation; false rumors are spread about him/her or the work he/she does; he is threatened or intimidated; there is excessive meticulousness on the part of the management regarding the behavior or actions of the victim, the process or results of the tasks assigned to him; there is mocking, insulting the employee, using sharp words against him/her, slandering of him/her; the employee is unjustifiably deprived of prizes and bonuses, faces an uneven distribution of workload or unequal pay, is deprived of prospects for career growth, is singled out from the collective in a negative sense; material damage is caused to the employee's property; unwanted behavior with sexual content occurs (such behavior includes obscene gestures and suggestions, comments of a sexual nature, public humiliation, unwanted touching, harassment, etc.).

The employer's demands regarding the proper performance of labor duties by the employee, changing the workplace, the employee's position or the amount of remuneration in accordance with the procedure established by legislation, collective agreement or employment contract are not mobbing. According to Articles 21 and 31 of the Labor Code of Ukraine, the employee undertakes to perform the work specified in the employment contract, and the employer does not have the right to demand from the employee the performance of work not specified in it (Law of Ukraine No. 322-08, 1971). Requests regarding the performance of the stipulated work by the employee are also fixed in collective, labor contracts, job instructions, rules of internal labor regulations, which are mandatory.

Note that the employer must implement measures to prevent and counter mobbing (harassment), pay attention to the needs and requests of employees, and improve their working and living conditions. Such measures can be actions aimed at ensuring the safety and protection of the physical and mental health of employees, prevention of risks and tension at the workplace, conducting informational, educational and organizational measures to prevent and counter mobbing (harassment) (Law of Ukraine No. 322-08, 1971).

The State guarantees legal protection against mobbing (harassment), discrimination, prejudice in the field of work, protection of the honor and dignity of the employee, as well as providing persons who have experienced mobbing the right to appeal to the central authority of the executive body implementing the State policy in the field of supervision and control of compliance with labor legislation, and to the court regarding the recognition of such facts and their elimination (without termination of the employee's work during the period of consideration of the complaint, proceedings in the case), as well as compensation for the damage caused as a result of such acts and/or omission, on the basis of a court decision that has become legally binding (Law of Ukraine No. 322-08, 1971).

Accordingly, an employee who has encountered mobbing at the workplace has the right to:

1) file a complaint with the central executive authority implementing State policy in the field of supervision and control over compliance with labor legislation in person, by phone or via e-mail;

2) apply to the court for recognition of the facts of harassment and their elimination (without suspension of employment for the period of consideration of the complaint and proceedings in the case);

3) terminate the employment contract at his/her own will within the term determined by the employee, if the employer does not comply with the labor legislation, the terms of the collective or labor agreement, has mobbed (harassed) the employee or has not taken measures to terminate it, which is confirmed by a court decision that has become legally binding (Article 38 of the Law 322-08, 1971).

   When the employment contract is terminated for the reasons specified in the specified article (that is, in the case of mobbing of the employee or failure to take measures to terminate it), severance pay in the amount provided for by the collective agreement, but at least three months' average earnings, is paid to the victim;

4) for compensation for damage caused as a result of such acts and/or omission, on the basis of a court decision that has become legally binding. Thus, in case of damage to an employee's health, the cause of which was mobbing (harassment), the fact of which was

confirmed by a court decision, the damage caused is compensated in the amount of the treatment costs incurred (Article 173 of the Labor Code);

5) for compensation for moral damage, if the violation of the legal rights of the employee, including as a result of mobbing (harassment), the fact of which was confirmed by a court decision that has become legally binding, led to moral suffering, loss of normal life ties and require additional efforts for organizing his/her life.

Besides, the Labor Code provides for the dismissal of an employee for committing mobbing (harassment), the fact of which is confirmed by a court decision that has become legally binding, as well as the dismissal of the head of an enterprise, institution, or organization in the event of mobbing (harassment) by him, regardless of the form of manifestation and/or failure to take action to end it.

Responsibility for mobbing is also established by Article 173-5 of the Code of Ukraine on Administrative Offenses, according to which the bodies of the Department of the State Labor Service draw up protocols on offenses, transfer them to district courts, which consider them in the manner specified by this Code (Law of Ukraine No. 80731-X, 1984).

The person responsible for mobbing may be imposed from 50 to 100 non-taxable minimum incomes of citizens or applied public works for a period of 20 to 30 hours; entrepreneurs who use paid labor and officials may be imposed from 100 to 200 non-taxable minimum incomes of citizens or applied public works for a period of 30 to 40 hours.

Therefore, as we have already clarified above, the employee against whom mobbing was committed, has the right, among other things, to compensation for moral damage, if such a violation of his rights led to moral suffering, loss of normal life relationships and requires to pay additional efforts to organize his/her life. But how can the injured person prove the fact of harassment resulting in moral damage in connection with this?

In accordance with Part 2, Art. 81 of the Civil Procedure Code of Ukraine, in cases of discrimination, the plaintiff is obliged to provide factual data confirming that this phenomenon took place. In the case of providing such data, the defendant is responsible for proving their absence (Law of Ukraine No. 1618-IV, 2004).

According to Art. 76 of this Code (Law of Ukraine No. 1618-IV, 2004), evidence is any data on the basis of which the court establishes the presence or absence of circumstances (facts) justifying the claims and objections of the parties to the case, and other circumstances important for its resolution. These data are established by the following means: 1) written, physical and electronic evidence; 2) conclusions of experts; 3) testimony of witnesses.

Written evidence is documents (except for electronic documents) containing data on the circumstances important for the appropriate dispute resolution (Part 1, Article 95 of the Code of Civil Procedure of Ukraine) (Law of Ukraine No. 1618-IV, 2004). In cases of compensation for moral damage caused by mobbing, they can be: copies of administrative documents of the employer (for example, orders on bonus payments, on determining the order and grounds of additional charges); copies of the employee's or his/her colleagues' documents (memoranda, statements, letters, demands or claims, etc.); copies of the employee's statements or complaints regarding violation of his/her rights, humiliation of honor and dignity (to the employer, the administration, the Department of the State Labor Service, the police, etc.).

To confirm the fact of physical suffering due to mobbing, the following documents can be provided: medical certificates, medical examination report, extracts from the victim's medical record, notes that he/she was getting a medical emergency, the list of medications prescribed by a doctor, receipts confirming them acquisition, etc.

Physical evidence is the objects of the material world, which, by their existence, qualities, properties, location, and other features enable to establish circumstances important for the case. Damaged or destroyed personal belongings of the employee can be used as evidence in cases of compensation for moral damage caused by mobbing.

Electronic evidence is information in electronic (digital) form containing data on circumstances relevant to the case, in particular, electronic documents (including text documents, graphic images, plans, photographs, video and sound recordings, etc.), websites (pages), text, multimedia and voice messages, metadata, databases and other data in electronic form. Such data can be stored, in particular, on portable devices (memory cards, mobile phones, etc.), servers, backup systems, other places of data storage in electronic form (including on the Internet) (Law of Ukraine No. 1618-IV, 2004).

Such evidence in the matter of interest may include: video or audio recordings of conversations, meetings, containing evidence of illegal behavior or statements by management or other employees, voice messages with threats, intimidation, slander, insults, recordings from video cameras located in the workplace, photos of workplace changes, recorded e-mail correspondence (screenshots, photos), correspondence through messengers (Telegram, Viber, What's Up, Signal), messages, comments, publications from social networks (Facebook, Instagram, etc.).

At the same time, if a copy of electronic evidence is submitted, the court may demand the original electronic evidence at the request of a party to the case or on its own initiative. If the original of the electronic evidence is not submitted, and the party to the case or the court questions the conformity of the submitted copy (paper copy) of the original, such evidence is not taken into account by the court.

The testimony of a witness is a statement on circumstances known to him/her that are relevant to the case. It is worth noting that the testimony of witnesses is most often used as proof of the presence of moral damage, since it is extremely problematic to prove the depth and strength of moral suffering with the help of written and physical evidence (Law of Ukraine No. 1618-IV, 2004).

Relatives, friends, work colleagues can act as witnesses, that is, people who communicate with the victim every day and are able to compare his/her behavior before and after the impact of a psycho-traumatic situation. Besides, they can give evidence on how strongly the plaintiff is experiencing what happened, in what exactly are these experiences expressed, their nature, on the changes in the emotional-volitional state and the extent of their influence on the lifestyle of the person.

It is also advisable to invite the victim's doctor as a witness, who will provide information on the degree of his/her physical and moral suffering during treatment, individual physiological and psychological characteristics.

The expert's opinion is a detailed description of the research carried out by the expert, the conclusions drawn as a result of them and substantiated answers to the questions posed to the expert, drawn up in the order determined by the legislation. The subject matter of the expert's opinion may be the investigation of circumstances that are part of the subject of proof and the establishment of which requires the expert's special knowledge (Law of Ukraine No. 1618-IV, 2004).

In our opinion, psychological examination should be ordered in each civil case related to moral damage to determine how exactly the victim was affected by wrongful action, since each person reacts differently to negative psychological factors. After all, one person can feel fear, shame, depression, anger, despair, apprehension and worry about his/her future, personal or business reputation, reduced work capacity, while another one falls into prolonged depression, suffers from insomnia, loss of appetite, non-ability to lead his/her usual lifestyle and is forced to take sedatives, painkillers or sleeping pills all the time. He/she may develop apathy, inferiority complex, or tendency to overconsumption of alcohol, psychotropic, or even narcotic substances (Panchenko, 2019).

How intensively negative consequences of the offense committed against the victim will be manifested depends on his/her individual characteristics, which must be taken into account by the court when considering the case. Individual characteristics of the victim are a circumstance that must be proven, and which the court must establish in the ways prescribed by procedural legislation and take into account in order to assess the actual depth (degree) of physical or moral suffering and determine the appropriate amount of compensation.

Each person has his/her own personal "threshold of sensitivity", individual characteristics of the psyche, and therefore the victim of illegal actions must prove that due to these characteristics, he/she is unable to painlessly react to the lawlessness committed against him/her, and these actions have negatively affected his/her physical and moral condition (Panchenko, 2019).

Since during the resolution of cases related to the compensation of moral damage, the court considers a number of issues that are purely psychological in nature, the conclusions of the forensic psychological examination help in solving them promptly and most efficiently. In particular, they enable to determine the depth and duration of mental suffering, deviations in the psychophysiological state of the victim (violation of mental processes or physiological parameters), the irreversibility of these deviations, etc. (Panchenko et al., 2023).

Yatsyna (2022) also emphasizes that the use of a psychological examination is fully justified in cases of mobbing, the procedure of which allows establishing psycho-traumatic factors resulting in changes in the emotional, cognitive, motivational state, and self-esteem of the individual subject to the examination. Therefore, it can be stated that the experiences caused by harassment are resulted in negative changes in the individual's mental and psychological health.

Note that proving the fact of moral damage caused by mobbing and the presence of corresponding cause-and-effect relationship is not a simple task, because this process is quite specific, and therefore it is not easy for the victim to gather evidence to confirm the existence of moral damage and the relevant relationship between illegal actions on the part of management or employees and negative consequences for him/her in the form of moral damage.

Currently, the courts have already formed a certain practice of considering disputes regarding mobbing at work, although this category of cases is not too widespread. For the employer, the complexity of such cases lies in the fact that the employee only needs to state the facts of harassment, whereas the duty to refute them is incumbent on the defendant. The refutation of the facts of mobbing must be based on established evidence and not be unfounded.

It should be noted that such cases are always stressful for both parties, because the forms of mobbing are evaluative in nature, and the court decision largely depends on the subjective assessment of the circumstances demonstrated by the court. When resolving them, the courts mostly take the

side of the employer, referring to the general lack of proof of mobbing facts or their refutation by the defendant (Shahirmanov, 2024).

In support of this thesis, we cite several court decisions. According to the case No. 344/4844/23 (2023), the plaintiff appealed to the court with a claim against the defendant for recognition of the fact of mobbing by officials of the State Regulatory Service of Ukraine and compensation for moral damage. In substantiating the claims, the plaintiff indicates that since the moment of employment he has conscientiously and faithfully performed his duties; however, one day the head of personnel management called the plaintiff and directly offered to write a statement of resignation, informing him that this the proposal was made by the head of the State Regulatory Service of Ukraine. These circumstances affected the state of health of the plaintiff not only psychologically, but also physically, which became one of the reasons for the deterioration of his health, due to which the victim was sent for inpatient treatment and later hospitalized.

Having analyzed all the facts stated by the plaintiff, which he associates with mobbing (harassment), the court came to the conclusion that they are based precisely on his disagreement with the actions and decisions of the employer, but do not indicate limitation of his rights and freedoms. According to the court, there is no causal link between the deterioration of the employees' health and the actions of the employer as well.

According to the materials of another case No. 646/5128/23 (2024), the victim stated that he was subjected to systematic mobbing (harassment) at the workplace, which was manifested in the fact that certain officials of the company spoke to him offensively, humiliating his honor; he is not equipped with personal protective means. The company created a tense, hostile, offensive atmosphere (threats, ridicule, slander, disparaging remarks, behavior of a threatening, intimidating, humiliating nature), unjustified deprivation of part of the employee's wages; actions of individual employees and groups of employees of the labor collective are aimed at humiliating his honor and dignity, his business reputation, including for the purpose of acquiring, changing or terminating his labor rights.

Having analyzed the evidence and checked the circumstances of the case, the court came to the conclusion that there are no signs of mobbing (harassment) by the employer. The court did not reveal withholding of the employee's payment; the audio recordings of the conversations between the parties to the case are not threatening, intimidating or humiliating in their nature, so they cannot be considered as psychological or economic pressure on the victim, and as a result, do not contain signs of mobbing. Since the plaintiff has not provided proper and admissible evidence to confirm harassment, the court did not find any grounds to satisfy the claim and to recover moral damages.

In solving the problem of combating mobbing, one cannot fully rely on the State Labor Service as well. In practice, after receiving a request on such issues, this institution may not initiate a corresponding inspection, but may contact the employer with a letter demanding the termination of the violation of labor legislation and the need to pay attention to the situation described by the employee.

4. CONCLUSIONS

The changes to the labor legislation introduced in 2022, which provided for the prohibition of mobbing in the workplace and the compensation of moral damage in the case of proving its existence, are very relevant under modern conditions. However, there are real problems of their actual implementation due to the imperfection of normative consolidation and peculiarities of the mentality of our employees, who are not used to defending their rights, and especially appealing to

court for their protection. The analysis of court practice indicates the difficulty of establishing the fact of harassment, and because of this, - grounds for compensation for the employee's moral suffering.

However, isolated case law and the lack of adequate response from the State Labor Service bodies do not mean that the employee who suffers from harassment should put up with such a situation; the difficulty of proving a causal relationship in such a category of cases only means that the substantiation of a claim requires proper preparation: careful recording of cases of illegal behavior, collection of evidence (written, electronic, search for witnesses), development of a clear and well-argued legal position, etc. If the case of mobbing is obvious, and the violation of the employee's labor rights is irrefutable, it will be difficult for the employer to emerge as a winner.

Therefore, the algorithm of actions for an employee in case of mobbing includes:

1) Collection of evidence confirming the fact of mobbing;

2) Filing a complaint to the State Labor Service bodies;

3) Simultaneous filing a statement to the court establishing the fact of mobbing and compensation for moral damage. The term of appeal to the court is 3 months;

4) Obtaining a court decision establishing the fact of mobbing, which has become legally binding;

5) Voluntary dismissal on the basis of Part 3, Art. 38 of the Labor Code (optional) (Polishchuk et al., 2024).

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