
ТРУДОВЕ ПРАВО І ПРАВО СОЦІАЛЬНОГО ЗАБЕЗПЕЧЕННЯ



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Trends in the formation of anti-mobbing legislation in Ukraine and the EU countries

Every human being, as a social being, has an inherent desire for self-realization as a necessary part of active participation in society. Successful self-realization can allow the development of the inner potential of the individual, engaging the multifaceted spectrum of human personality in producing creative work. Historical experience proves that one of the main areas of socialization and self-realization of a person is his or her professional activity. All these socio-psychological factors that underlie the organization of a particular type of work are important factors, that affect the harmonization of interests of participants in labor relations and directly affect labor productivity. At the same time, the socio-economic crisis, unemployment, and economic struggle for the most favorable conditions encourage potential employers to use harsh, pressuring, and discriminatory means of organizing labor activities. And all these not only do not contribute to constructive development but, on the contrary, deepen and spread destructive processes in the labor market. In these circumstances, competition between employees intensifies, which often occurs in conditions of disregard for fair cooperation, humanity, and justice. Such situations give rise to mobbing situations in labor relations when harassment and pressure become the "norm" of coexistence at work. The experience of the world's leading countries proves that an effective way to eradicate the problem of mobbing is to create an effective legal mechanism of liability for harassment at work. Nowadays there is an urgent need for further active development of a legal

mechanism to protect employees from mobbing situations because the concept of "mobbing" has only recently been introduced into Ukrainian legislation, and the prohibition of such acts at work has been defined and there is no court practice of applying the relevant rules. This problem is especially relevant in the context of the martial law regime when the protection of labor rights is complicated by the current circumstances.

The analysis of research by experts in law, psychology, psychiatry, sociology, labor economics, etc. indicates a broad public interest in the specifics of legal regulation of the protection of employees from moral harassment at work in Ukraine and European countries. In particular, the current trends in the formation and development of anti-mobbing legislation were considered in the works of such well-known Ukrainian scholars as V. Andriyiv, V. Volynets, N. Volchenko, S. Vyshnovetska, N. Hetmantseva, Y. Hryshyna, T. Dziuba, M. Dyban, I. Lagutina, N. Klevtsova, D. Chekhun, O. Yaroshenko, and others. However, the process of improving the national legislation of Ukraine, introducing new provisions on the essence of mobbing (harassment) at work and liability for mobbing acts, encourages further active work to find ways to improve the effectiveness of the legal mechanism for implementing protection against harassment at work.

The aim of the article is to reveal the peculiarities of anti-mobbing legislation in certain European countries and also to analyze the trends in the legal regulation of the prohibition of mobbing (harassment) at work and liability for it in Ukraine.

Discussion. After the end of the Second World War, in the late 1940s, the issue of protecting human rights and freedoms became more relevant at the international level. It is necessary to mention the initial provision, which was laid down in the Preamble to the Universal Declaration of Human Rights, adopted and proclaimed by UN General Assembly resolution 217 A (III) of 10 December 1948, recognizing the inherent dignity and equal and inalienable rights of all members of the human family as the basis of freedom, justice, and universal peace [1]. In such a way, the general program principles of civilized coexistence in all spheres of life were enshrined at the global level. In fact, it was about the principles of the functioning of the welfare state, the mechanism of which should be aimed primarily at protecting the rights and freedoms of man and citizen. During this period, there was another surge in the attention of the scientific community to the socio-psychological and legal issues of the employee's position in the labor market in the context of researching the possibilities of achieving a balance of interests of employees and employers as participants in labor relations. This process was accompanied by the dominance of liberal ideas that formed the basis for the development of a free labor market, which, due to the deregulation of labor relations, has led to a gradual minimization of the state's influence on the labor sphere. It should be noted that the active development of contractual relations, in addition to democratic and virtuous civilizational principles, is often accompanied by arbitrary and unlawful actions, which are initiated by employers or representatives of the employees. An illustrative example of this state of affairs in practice is the well-known study by Swedish psychologist Heinz Leymann. This study was about the specifics of group interaction between employees in offices in the context of the spread of

psychological and emotional violence in such a group environment. The scientist called this phenomenon mobbing, which has gained universal textbook recognition, and which, according to H. Leymann, could be manifested in the harassment or emotional violence of an individual by a group of people in order to force him or her to take certain actions [2]. Heinz Leymann, while studying the manifestations of psychological violence, gave the following definition of a mobbing situation as: "negative actions of several people or one person directed against another person (one or many), which can last for a sufficiently long period and characterize a special relationship between the victim and the perpetrator" [3, p. 119-126]. This shows that even in the civilized societies of the world's leading countries, there are significant problems with the effective implementation of measures necessary to maintain respect for human dignity, especially, in the socio-economic area, which covers the sphere of labor activity. The mentioned situation has led to the enshrining of relevant social and protective provisions in international legal acts, which should have contributed to the creation of an effective legal mechanism for protecting individuals from mobbing. It should be noted that the European Social Charter (revised) as of 03.05.1996 (hereinafter – the Charter) played an important role in the process of forming anti-mobbing legislation in European countries. In particular, Article 26 of the Charter proclaims the right to be treated with dignity at work, which means ensuring the effective exercise of the right of all workers to protection of their dignity at work in terms of raising awareness, dissemination of information about sexual harassment in the workplace or in connection with the performance of work; systematic unfair or clearly negative and offensive actions against individual employees in the workplace or in connection with the performance of work and to help prevent

such acts and take all appropriate measures to protect employees from such behavior [4]. The preamble to the ILO Convention No. 190 on the Elimination of Violence and Harassment at Work, 2019, enshrines the right of everyone to a world of work free from violence and harassment [5]. According to Article 1 of the Convention, the term "violence and harassment" in the world of work should be understood as a range of unacceptable acts and practices, or threats of such acts and practices, whether committed once or systematically, aiming, resulting or likely to result in physical, psychological, sexual or economic harm, including gender-based violence and harassment. The Convention establishes the possibility at the level of national legislation and practice to use a single concept of "violence and harassment", or to distinguish between their essence, applying them separately. According to Article 4 of Convention No. 190, ILO members are obliged, inter alia, to define and prohibit violence and harassment in the world of work at the level of regulations, establish and strengthen mechanisms for compliance and monitoring of the relevant policy, provide for appropriate sanctions, as well as provide effective means of verifying and investigating cases of violence and harassment in the workplace, including through labor inspectorates or other competent authorities.

The provisions of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation are important for the proper regulation of liability for harassment and bullying at work. In particular, it is noted that the fundamental principles of the European Union are freedom, democracy, respect for human rights and fundamental freedoms, and the rule of law – principles common to all member states. The European Union respects the fundamental rights guaranteed by the European Convention for the Protection of Human Rights and

Fundamental Freedoms, which derive from constitutional traditions common to the Member States as general principles of Community law [6]. All of this had a significant impact on the development of anti-mobbing legislation in European countries. For example, in 1991, France adopted legislation aimed at implementing equal treatment in employment and professional activities. However, there were no provisions prohibiting bullying in the workplace. It was only after the publication in 1998 of Marie-France Hirigoyen's book «Le harcèlement moral, la violence perverse au quotidien» that society began to form an opinion on the need to introduce legal regulation of the prohibition of moral harassment at work. As a result, on 17 January 2002, in France, the Law on Social Modernisation, which provides for both civil and criminal liability for "moral harassment" (bullying or mobbing) in labor relations was adopted. The Labor Code prohibits "moral harassment", which is defined as "actions that are repeated and lead to a deterioration in working conditions and can harm the dignity, physical or psychological health of the victim or his or her professional career". There are sanctions for such misconduct, such as a fine in the Labor Code. In the French Criminal Code, there is a sanction that a person found guilty by a court may be sentenced to imprisonment for up to two years and a fine of EUR 30,000 (Article 222-33-2 of the French Criminal Code) [7].

It is necessary to mention that criminal liability for disrespectful attitudes at work is also established in Germany. While at work, employees must comply with the law, which makes personal disrespect a crime (Article 185 of the German Criminal Code). Besides, the employer's primary duty is to take care of its employees. This means that the director must treat employees not only in accordance with the requirements of the law but also should pay attention to their legitimate interests and protect the health and safety

of employees in the workplace. This also applies to mental stress that may arise, for example, as a result of persecution. If a leader bullies his or her employees, the employer is responsible for this and must ensure that such behavior will be stopped as soon as possible. The employer's duty is to take care of employees under German labor law (*Betriebsverfassungsgesetz*). It is the responsibility of the employer, as well as the board of directors, to ensure fair treatment of all employees. If the employer fails to comply with these requirements, the employee may file a complaint with the labor collective council. This issue was also regulated by law. Paragraph 84 of the Law on the Organization of Enterprises it is stated that every employee has the right to complain to the competent authorities of the company if he or she feels discriminated against, treated unfairly, or otherwise harmed by the employer or employees of the company. And depending on the severity of the harassment, insult, or neglect, as well as its consequences, the aggrieved employee may protect himself or herself by reporting the crime. The employee can even claim compensation and reimbursement of losses. However, there must be evidence of actual damage, whether financial or moral, that has happened. Therefore, it is advisable for the victim to first seek advice from a lawyer or, in the case of trade union members, the secretary of the trade union's legal department. It is very important that an employee can refute the arguments of his or her manager in court. The legal meaning of "mobbing" is not clearly defined in German labor law, which makes it somewhat difficult for victims of harassment at work to protect their rights. Nevertheless, as noted, they can defend themselves with the support of lawyers or trade unions. In addition, Germany has a team of volunteers working at anti-mobbing contact points (*Mobbing kontakt stelle*) (MKS). And they provide competent support to those who have suffered from

mobbing and investigate conflict situations that have arisen in the workplace. The aim of their activity is to provide those seeking advice with the services of an appropriate specialist consultant, and thus to guide them in a difficult situation [8].

In Poland, there is also progressive anti-mobbing legislation, which is focused on protecting employees' labor rights. In Polish law, mobbing is defined as actions or behavior relating to or directed against an employee and consisting of constant and prolonged harassment or intimidation of that person. Mobbing occurs when these actions or behaviors cause an employee to underestimate their professional suitability and expose them to humiliation or ridicule, as well as to be isolated or excluded from a team of colleagues or intend to do so. Employers are obliged to prevent mobbing, namely: to respond to behavior that can be classified as mobbing in their companies; to take measures to prevent the occurrence of mobbing. Employers should prevent mobbing in a number of ways. They can adapt solutions to prevent mobbing to the needs of their companies and the features of their activity. The most commonly chosen solutions to prevent mobbing by companies include anti-mobbing procedures; establishing anti-mobbing committees; anti-mobbing representatives; and anti-mobbing training for employees and management. Labor law stipulates that only the employer is responsible for mobbing at the enterprise. This applies to both situations in which the employer can be the person who makes mobbing and situations in which another person makes mobbing [9].

Considering the anti-mobbing provisions of European legislation, it is worth noting that the process of updating the legislation governing the prohibition of mobbing at work is constantly underway, taking into account the latest trends in the development of labor relations. The management of companies

with more than 50 employees should develop, approve and implement the relevant rules, as well as familiarize all their employees with them. Employers are obliged to develop a procedure for handling employee complaints of violence and harassment at work and to familiarize employees with it. The Lithuanian Labor Code prohibits psychological violence at work, as well as harassment and physical violence. The State Labor Inspectorate has prepared recommendations for preventing violence and harassment. And the importance of preventing deviant behavior that harms the emotional state of employees is also emphasized. Intrusive questions about personal life and intimate relationships, unsolicited comments about colleagues' appearance, clothing, or figure, gossip and slander, and offensive gestures will be considered unacceptable. Unwanted physical contact at work, such as hugging, is considered violence. It is unacceptable to collect information that is not related to the employee's job functions and to ask them to do something unrelated to their work [10]. It is noteworthy that today's European legislation is clarifying the content and expanding the list of actions covered by the concepts of "psychological violence at work", "mobbing", and "mobbing actions". The outlined trends aimed at introducing an effective guarantee of prevention of harassment and violence at work are a significant sign of the democratic development of the state.

As for Ukraine, the first important step towards the development of anti-mobbing legislation was the ratification of the Charter by Ukraine on 14 September 2006 [11]. This demonstrated the readiness of our state to begin the process of implementing provisions to prevent harassment at work in the national legislation of Ukraine. However, for a long time, the concept of mobbing was absent in national legislation. The Law of Ukraine "On Principles of Preventing and Combating Discrimination

in Ukraine" of 06.09.2012 No. 5207-VI introduced the concept of "harassment" as undesirable behavior for a person and/or a group of persons, the aim or consequence of which is to humiliate their human dignity on certain grounds or to create a tense, hostile, offensive or disrespectful atmosphere in relation to such a person or group of persons [12]. It is worth agreeing with the experts who monitored the case law in Ukraine on mobbing cases that the content of the latter is quite close to the statutory definition of harassment, because it also involves the creation of a certain hostile, offensive atmosphere, but in the workplace towards the employee. Accordingly, situations of psychological violence against a group or an individual employee, carried out by a manager or other team members, can be characterized by this concept [13]. Representatives of the HR League (a community of HR and human resources professionals) point out that the most common example of mobbing in the workplace is forced dismissal; unreasonable reduction or deprivation of bonuses; creation of inconvenient working hours; collective humiliation of human dignity, by creating the most hostile atmosphere possible; rude, unfair and unreasonable treatment by the company's management, which may be manifested in verbal abuse, moral pressure, etc. [14]. The introduction of the concept of "coercion" into Ukrainian legislation has allowed for the establishment of case law on liability for creating a tense, hostile, offensive, or disrespectful work environment. One such example was case No. 2114/1923/12. Under the circumstances of the case, the plaintiff, who was the head of a veterinary and sanitary examination laboratory at the market, was dismissed from this position under Article 40(3) of the Labor Code of Ukraine in connection with systematic failure to fulfill the duties assigned to her by the employment contract or internal labor regulations without valid reasons. On 16 January 2012, the decision of the

Suvorov District Court of Kherson declared the above order of the head of the Kherson City State Veterinary Hospital unlawful and canceled it. By the same decision, she was reinstated to her previous job. But in fact, she was not allowed to perform her official duties as the head of the state laboratory of veterinary sanitary examination No. 1 of the Central market. However, for a long time, from 17.01.2012 to 13.02.2012, the plaintiff had been asking her manager every day to comply with the court's decision and to allow her to fully take up her duties. However, the manager did not take any action to resolve this issue, on the contrary, he personally artificially created this situation in order to obstruct the execution of the court decision and prevent the plaintiff from working. The defendant's officials began harassing the employee to prevent her from working. Such actions affected the plaintiff's moral state and led to a deterioration in her health. All the time, she and her family were under stress, without any means of living. The plaintiff was humiliated in front of her team, employees and customers of the market, relatives, and friends, which, in turn, also undermined her business reputation. Therefore, she believes that the defendant should compensate her for non-pecuniary damage in the amount of UAH 10,000. At the court hearing, the plaintiff filed a motion to dismiss the claim in part of the cancellation of order No. 05-k of 13.02.2012 on her dismissal and reinstatement as head of the State Laboratory of Veterinary and Sanitary Expertise No. 1 [15]. As we can see, the unlawful practice of employers violating employees' labor rights and ignoring the requirements for immediate execution of a court decision causes a person to suffer harassment at work, and distrust of the possibility of protecting their rights in practice. All these encourage employees to withdraw their claims for reinstatement in courts, knowing that the unlawful treatment will remain and will not be eliminated. The paradoxical situation is

that even though the court ruled in favor of the employee, the mobbing will continue, so the employee does not only not want to be reinstated, but even more, he is frightened by this situation. The position of the researcher T. Dziuba is well-founded in the article. The researcher stated that, in a simplified sense, mobbing is a phenomenon when a person is directly or indirectly subjected to emotional violence, she/he could be constantly humiliated and often faced unfair accusations. This always results in psychological trauma and the dismissal of the employee. Thus, in a situation of mobbing, the professional environment not only aggressively affects the employee, but it also has a destructive impact on the individual meanings of the person's professional being, causing occupational health risks for the employee [16]. As rightly noted by A. Yushko and D. Chekhun, when analyzing mobbing in labor relations, a comfortable psychological atmosphere prevailing in the workplace and in the working environment of employees is a key factor, that often plays an equally significant role in employee job satisfaction. This, in turn, contributes to the efficiency and productivity of the work process. The success of any team depends on the work of each employee. Psychological pressure is one of the destabilizing factors of the work process and, as a result, it creates a tense atmosphere in the team, reducing employee efficiency and increasing the likelihood of making the wrong decision [17, p. 111]. Therefore, ways to develop a safe psychological climate in the workplace, including measures to counter mobbing, should be included in the occupational health and safety management system [18, p. 44]. This approach would be consistent, in particular, with the provisions of Article 9 of ILO Convention No. 190, which defines the need to take into account violence and harassment in the workplace and related psychosocial risks when managing occupational safety and health.

It is necessary to mention the opinion of N. Volchenko and N. Klevtsova, who, considering the theoretical and legal foundations for the formation of a system of countering mobbing, emphasize that quite often the rights of a person who is an employee are violated on purpose, to prevent him from achieving a certain position in the company or organization. A critical situation may be one in which pressure is exerted on a person to bring him or her to a state in which he or she cannot perform his or her direct job duties, up to and including dismissal. The most socially dangerous consequence may even be the suicide of a person subjected to such harassment [19]. According to German researchers L. Waniorek and A. Waniorek, mobbing situations in labor relations consist of regular and purposeful harm to subordinates and colleagues. This can result in significant mental and even physical trauma [20, p. 58]. Exploring the types, causes, consequences, and prevention of mobbing, social teacher N. Perkova points out that there are many types of mobbing, but the most common are the following: horizontal mobbing (harassment by colleagues), and vertical mobbing (bossing) when the mobbing is initiated by the leader. There are also open mobbing (open mockery and ridicule, insults, damage to property, etc.), and latent mobbing (psychological pressure is carried out in a hidden form, any initiative is ignored, career progression is blocked, etc.) [21]. O. Strelnyk, while studying the problem of bossing, distinguishes among its forms: verbal aggression: manifested openly in the presence of other members of the team. The leader asks provocative questions; makes constant claims, and doubts about the professionalism and competence of the subordinate; unfounded accusations; the supervisor rudely and arrogantly interrupts the subordinate; deprives one of the right to express one's own point of view; expresses constant disagreement; the manager assigns work that is beyond

the competence of the subordinate or sets unrealistic deadlines; social isolation of a person, which is manifested in ignoring a subordinate; non-recognition of the results of his/her work; declaring a boycott; refusal to communicate, etc. Psychologist L. Milinevska, while studying the signs of mobbing, identifies the following: insults and painful "jabs"; slander; gossip; incitement of other employees against a particular person; collecting dirt on a person and manipulating this data; sexual comments about a person; isolation and ignoring; demonstrative exclusion from a group; boycotts, etc. An analysis of the research conducted by scholars in law, psychologists, sociologists, and representatives of other fields of science leads to the conclusion that a distinctive feature of moral harassment at work is the suppression of a person's capabilities, against whom mobbing acts are committed, to feel like a full member of the staff team in terms of objective assessment of professional knowledge and skills and blocking further rapid and successful promotion. The spread of the negative consequences of moral harassment at work in labor relations has led to the need for proper legal safeguards to protect employees from mobbing.

One of the attempts to legislatively regulate this issue was the development of the Draft Law of Ukraine "On Ensuring Protection from Moral Harassment in the Workplace" No. 4997 dated 03.06.2014 (hereinafter – the Draft Law No. 4997). Although this draft law did not define the legal content of the concepts of "mobbing" and "harassment at work", the following were identified as forms of moral harassment in the workplace such as professional harassment (undesirable behavior on the part of the employer for an employee (group of employees), the purpose or effect of which is to humiliate the labor honor and dignity of the employee (group of employees) and which is characterized by assigning an unreasonable excessive number of tasks,

deliberate assignment of tasks beyond their qualifications); psychological harassment (undesirable behavior by the employer and/or the employee (group of employees) the purpose or effect of which is to humiliate the labor honor and dignity of an employee (group of employees) and which is characterized by systematic negative statements, verbal abuse, dissemination of deliberately false information about an employee, unjustified criticism or deliberate underestimation of performance); social isolation within the organisation (undesirable behaviour on the part of the employer and/or the employee (group of employees), the purpose or effect of which is to humiliate the labor honor and dignity of the employee (group of employees)) and which can be characterized by deliberate neglect of an employee (group of employees), prohibiting communication or unreasonably moving the workplace to a remote location); incitement to moral harassment in the workplace (instructions, or calls from the employer and/or an employee (group of employees) to moral harassment of an employee (group of employees) [24]. The provisions of this draft law did not find proper support, since the proposal to implement the relevant rules on moral harassment in the workplace in a separate regulatory act did not contribute to the effective systematization of Ukrainian labor legislation, but on the contrary, it led to even greater dispersion. As reasonably noted in the opinion of the Main Scientific and Expert Department on Draft Law No. 4997, the protection of citizens' rights in the course of their employment (both directly at the workplace and in other circumstances related to the performance of labor functions) is subject to labor law, in particular, the Labor Code of Ukraine. Therefore, in order to ensure the consistent and systematic provision of adequate working conditions, it would be more prudent to enshrine this aspect of relations in a special legislative act for this area [25]. This

issue was not addressed in the Draft Law on Amendments to Certain Legislative Acts of Ukraine on Combating Mobbing No. 10118 of 01.03.2019 (hereinafter – Draft Law No. 10118), which, although it was proposed to consolidate the definition of "mobbing" as (harassment). That means that actions of participants in labor relations that consist of psychological, physical, and economic violence, including with the use of electronic communications, committed against an employee of an enterprise, institution, or organization regardless of their form of ownership, type of activity and industry, as well as persons working under an employment contract with individuals or by such a person in relation to other participants in labor relations for the purpose of humiliating their human dignity on certain grounds, creating a tense, hostile, offensive atmosphere towards them and forcing a participant in labor relations to change their place of work, but not in the Labor Code of Ukraine. According to the developers of this draft law, the necessary changes should have been made to the Code of Administrative Offences by adding a new Article 173-5 and supplementing Article 1, paragraph 8, of the Law of Ukraine "On Principles of Preventing and Combating Discrimination in Ukraine" with a definition of "mobbing" [26]. Despite the fact that this draft law did not provide for amendments to the Labor Code, a significant result of this legislative activity was the conclusion that the definition of mobbing proposed in draft law No. 10118 was made. It was proposed that the main feature, in fact, synonymous with mobbing, is harassment at work. It should be noted that subsequent draft laws No. 10118-1 dated 18.03.2019 and No. 10118-2 dated 19.03.2019 have changed this situation. The developers proposed to introduce the category of mobbing and the corresponding definition to the Labor Code of Ukraine, enshrining them in Article 2-1. If we compare these draft laws in terms

of the most optimal wording of the definition of mobbing, we believe that the definition in draft law No. 10118-1 is the best. We mean that mobbing is psychological and/or economic pressure, harassment, the creation of unbearable conditions in order to force an employee to resign, or other unfavorable consequences for the employee [27]. Draft Law No. 10118-2 sets out these provisions in the form of a peremptory prohibition on mobbing: any biased attitude in the field of labor is prohibited. In particular, we are talking about unequal pay for work of equal value, uneven distribution of workload and tasks among employees performing the same work, inequality of opportunities for career growth, unjustified non-admission of an employee to the workplace, the humiliation of the employee's dignity, creation of a hostile, offensive atmosphere and other manifestations of harassment (mobbing) of employees [28]. The work on the above projects paved the way for amendments to the legislative acts of Ukraine on preventing and combating mobbing (harassment), which was recently enshrined in the Law of Ukraine No. 2759-IX dated 16.11.2022.

The extraordinary significance of this law lies in the fact that for the first time in Ukraine, the concept of mobbing (harassment) was enshrined in Articles 2-2 of the Labor Code of Ukraine. By this, the legislator means systematic (repeated) long-term intentional actions or inaction of the employer, individual employees, or a group of employees. These actions are aimed at humiliating an employee's honor and dignity and business reputation, including for the purpose of acquiring, changing, or terminating their labor rights and obligations, which are manifested in the form of psychological and/or economic pressure, including the use of electronic communications. Also, these actions include the creation of a tense, hostile, offensive atmosphere towards an employee,

including one that makes him/her underestimate his/her professional suitability), the forms of psychological pressure, and responsibility for the actions committed were defined. According to Art. 2-2 of the Labor Code, forms of psychological pressure include creating a tense, hostile, offensive atmosphere towards an employee (threats, ridicule, slander, disparaging remarks, threatening, intimidating, humiliating behavior, and other ways of putting an employee out of psychological balance); unreasonable negative singling out of an employee from the team or isolation (non-invitation to meetings and conferences in which the employee is required to participate in accordance with local regulations and organizational and administrative acts), obstructing the employee's performance of their job function, preventing them from entering the workplace, transfer of the workplace to a place unsuitable for this type of work); unequal opportunities for education and career development; unequal pay for work of equal value performed by employees of equal qualifications; unjustified deprivation of an employee of part of payments (bonuses, bonuses, and other incentives); unjustified uneven distribution of workload and tasks by the employer among employees with the same qualifications and labor productivity performing equivalent work. Besides, Part 3 of Article 38 of the Labor Code establishes the right of an employee to terminate an employment contract at his own will within a specified period of time if the employer has engaged in mobbing (harassment) against the employee or has not taken measures to stop it, which is confirmed by a court decision that has entered into force. In addition, the labor legislation of Ukraine has defined new grounds for the termination of an employment contract, in such cases as: in case of mobbing (harassment) by an employee, established by a court decision that has entered into force (Article 40(12) of the Labor Code); committing mobbing

(harassment) by the head of an enterprise, institution or organization, regardless of the form of manifestation and/or failure to take measures to stop it, established by a court decision that has entered into force (Article 41(1-2) of the Labor Code) [29]. Administrative liability for mobbing has also been established. The Code of Ukraine on Administrative Offences was supplemented by Article 173-5. In particular, the following sanctions have been established for mobbing (harassment) of an employee as: imposing a fine on citizens from fifty to one hundred tax-free minimum incomes or community service for a period of twenty to thirty hours and imposing a fine on individual entrepreneurs who use hired labor, and for officials – from one hundred to two hundred tax-free minimum incomes or community service for a period of thirty to forty hours. For mobbing by a group of people or a person who has been subjected to an administrative penalty for the same offense during the year – there is a fine for citizens from one hundred to two hundred tax-free minimum incomes or community service for a period of thirty to fifty hours and a there is a fine for individual entrepreneurs who use hired labor, officials – from two hundred to four hundred tax-free minimum incomes or community service for a period of forty to sixty hours [30].

In general, while we support the implementation of the relevant initiatives in the current legislation, we consider it appropriate to draw attention to the content of the comments on the provisions of this law made by the experts of the Scientific and Expert Department of the Verkhovna Rada of Ukraine in the context of the discussion.

As it was stated in the conclusion to the draft Law of Ukraine "On Amendments to the Code of Ukraine on Administrative Offences on Combating Mobbing" No. 4306 of 02.11.2020, it seems doubtful that the introduction of administrative liability for such acts in a

separate article of the Code of Administrative Offences will solve the problem of harassment in the workplace. First, one of the basic principles of administrative liability is the presumption of innocence. Secondly, administrative liability for mobbers does not correspond to liability for people who may abuse groundless, knowingly false reports of mobbing. Thirdly, the presence of a large number of special rules does not increase but rather reduces the effectiveness of bringing perpetrators to justice [31]. We share the view that it is necessary to establish legal liability for false reports of harassment at work. Although, as the co-author of the Ukrainian anti-mobbing laws under consideration, Professor Yulia Hryshyna, gives a negative answer to the question of whether unscrupulous employees will be able to abuse this legislation, the fact of mobbing will need to be proved. Audio or video evidence, testimony from colleagues, and documentary evidence of economic or any other kind of pressure will be suitable for these. For example, if everyone else was given a bonus, but you were not, you can find evidence of this in the company's documentation [32]. The position of the members of the Ukrainian National Bar Association's Committees on Family Law, Labour Law, Administrative Law and Procedure, who carried out a legal analysis of the draft law "On Amendments to the Code of Ukraine on Administrative Offences on Combating Mobbing" (Reg. No. 4306 of 02.11.2020), is also well-founded. In their opinion, it would be advisable to include anti-mobbing legal constructs in the Laws of Ukraine "On Protection of Public Morality" and "On Social Services", as well as to enshrine court fee exemptions in the Law of Ukraine "On Court Fees" (Article 5). Besides it can be useful to exempt plaintiffs in all categories of labor disputes related to mobbing (harassment), including claims for compensation for moral and material damage caused to an employee's health as a result of mobbing, from

paying court fees during the proceedings in all courts [33]. In our opinion, taking into account the consequences of harassment at work, it would be advisable to use the experience of France and Germany and to establish criminal liability for mobbing (harassment) at work that has led to significant deterioration in the health status (e.g. disability) of employees whose rights have been violated by mobbing. We believe that this approach will contribute to the modernization and Europeanisation of Ukraine's national legislation in terms of protecting employees from harassment and moral turpitude at work.

Conclusions. The study of the peculiarities of anti-mobbing legislation in certain European countries and trends in the legal regulation of the prohibition of mobbing (harassment) in Ukraine allows us to draw the following conclusions:

1. The focus of the entire civilized world after the Second World War on the protection of human and civil rights and freedoms, in particular in the field of labor, is due to the urgent need to address the functional, organizational, and legal problems of the labor market in terms of overcoming the crisis socio-economic processes accompanied by unfair competition and widespread violations of labor rights of employees.

2. In the context of liberalization of legal regulation of labor relations, studying the specifics of the socio-psychological climate that develops in the process of forming a team of employees who should be united by common interests and goals to achieve comfort and productivity, leading representatives of the scientific community point to the existence of the destructive phenomenon of mobbing – moral harassment (bullying) at work, arising in teams where there is a lack of proper labor organization and where the universal rules of honesty and integrity are violated. This has led to the need to formulate anti-mobbing legislation – a set of regulations that disclose

the content of mobbing (harassment) at work and establish a legal procedure for preventing mobbing, as well as define the peculiarities of legal liability for violation of labor rights of employees in the form of mobbing acts.

3. The experience of the active development of anti-mobbing legislation in the European Union indicates the severity of the problem of the significant negative impact of mobbing on labor relations and the need for legal regulation in the fight against this phenomenon. The practice of legal regulation of these relations in such countries as Germany, France, Poland, and Lithuania seems to be constructive and effective. A common feature of mobbing prevention regulation in these countries is the establishment of fairly strict liability for proven cases of mobbing behavior, up to and including criminal prosecution and significant fines. Employers are obliged to create all conditions to prevent mobbing and are responsible for moral pressure at work.

4. In Ukraine, the formation of anti-mobbing legislation dates back to 2006, when the provisions of the European Social Charter were ratified. Article 26 of this document refers to the right to decent treatment at work, which, in turn, contributed to the consolidation and disclosure in the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" of the legal content of the concept of "harassment" in the sense of a dismissive, hostile atmosphere, etc. Such changes have led to the gradual development of court practices aimed at combating harassment in labor relations.

5. In the legislative activity in Ukraine, the definition of mobbing was proposed in draft laws No. 10118-1 and No. 10118-2. These rulemaking initiatives did not find proper support in expert circles, as they needed to be improved. At the same time, the approaches set out in draft laws

No. 10118-1 and No. 10118-2 became the basis for further legislative activity to regulate this range of social relations. As a result, Laws of Ukraine No. 2759-IX dated 16.11.2022 and No. 2806-IX dated 01.12.2022 enshrined in the legislation of Ukraine (Labour Code, Code of Administrative Offences) the rules on defining the content of mobbing, prohibition, and liability for such acts. The definition of the legal content of the concept of mobbing in the sense of identifying this phenomenon with harassment at work and establishing a mandatory prohibition of the relevant act deserves support, introducing new grounds for termination of an employment contract at the initiative of the employer, if the facts of mobbing are established by a court decision, that has entered into

force, determining administrative liability for such acts.

6. While emphasizing the positive importance of the development of anti-mobbing legislation in Ukraine, we believe that it is necessary to introduce criminal liability for mobbing if the relevant actions entailed particularly serious consequences for the affected employee (significant deterioration in health, disability of the employee, etc.). The proposed approach will create a more effective mechanism for preventing mobbing in labor relations. The experience of Germany also shows that the practice of creating information and legal centers for the prevention of mobbing, where victims of such acts can receive legal and psychological assistance can be promising and helpful.

Literature

1. Загальна декларація прав людини: Прийнята і проголошена резолюцією 217 А (III) Генеральної Асамблеї ООН від 10 грудня 1948 року. URL: https://zakon.rada.gov.ua/laws/show/995_015#Text
2. Мобінг. Словник іншомовних слів. URL: <https://www.jnsm.com.ua/cgi-bin/u/book/sis.pl?Article=12337&action=show>.
3. Leymann H. Mobbing and psychological terror at workplaces. *Violence and victims*. 1990. № 5 (2). P. 119–126. URL: <http://www.mobbingportal.com/LeymannV&V1990>.
4. Європейська соціальна хартія (переглянута), в редакції від 03.05.1996 р. URL: https://zakon.rada.gov.ua/laws/show/994_062#Text.
5. Violence and Harassment Convention, 2019 (No. 190). URL: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190.
6. Директива Ради 2000/78/ЄС від 27 листопада 2000 року про встановлення загальних рамок для однакового ставлення у сфері зайнятості та професійної діяльності. URL: http://ecmi-erp.org/wp-content/uploads/2015/03/Council2000_78_EC_UK.pdf.
7. French law prohibiting bullying in the workplace. URL: <https://www.thehrdirector.com/business-news/diversity-and-equality-inclusion/french-law-prohibiting-bullying-in-the-workplace/>
8. 8. Wie wir Ihnen helfen. URL: <https://www.mobbing-frankfurt.de/hilfe/>
9. Mobbing in the workplace. URL: <https://www.biznes.gov.pl/en/firma/doing-business-in-poland/employment-of-workers/mobbing-in-the-workplace>
10. Lietuvos darbo kodeksas. URL: <https://www.vdi.lt/Forms/TemaZiniasklaidai.aspx>.
11. Проратифікацію Європейської соціальної хартії (переглянутої): Закон України від 13.09.2006 р. № 137-V. URL: <https://zakon.rada.gov.ua/laws/show/137-16#Text>.
12. Про засади запобігання та протидії дискримінації в Україні: Закон України від 06.09.2012 р. № 5207-VI. URL: <https://zakon.rada.gov.ua/laws/show/5207-17#Text>
13. Звіт за результатами моніторингу судової практики у справах мобінгу. URL: https://jurfem.com.ua/wp-content/uploads/2021/04/Звіт_Мобінг-_ЮРФЕМ_link.pdf

14. Мобінг на робочому місці: що потрібно знати. URL. <https://hrliga.com/index.php?module=news&op=view&id=23432>
15. Ухвала від 06.08.2012. Справа № 2114/1923/12. Комсомольський районний суд міста Херсона. URL. <https://reyestr.court.gov.ua/Review/26804443>
16. Дзюба Т.М. Мобінг як чинник руйнації професійного здоров'я вчителя. *III Всеукраїнська науково-практична конференція «Психолого-педагогічні та політичні проблеми у трансформаційних процесах українського суспільства»*: Матеріали конф. Кременчук: КрНУ, 2016. С.111-114..
17. Юшко А. М., Чехун Д. Р.Мобінг у трудових відносинах. *Право та інновації*. 2020. №4(32). С. 13-19.
18. Сахарук І.С. Тенденції правового регулювання захисту від психосоціальних ризиків на роботі. *Вісник Київського національного університету імені Тараса Шевченка. Юридичні науки*. 2020. №3(114). С.43-48.
19. Волченко Н.В., Клевцова Н.В. Теоретико-правові основи формування системи протидії мобінгу. *Порівняльно-аналітичне право*. 2019. № 1. С. 142-144. URL. <https://dspace.uzhnu.edu.ua/jspui/bitstream/lib/36060/1/ТЕОРЕТИКО-ПРАВОВИ%20ОСНОВИ.pdf>.
20. Waniorek L., Waniorek A. *Mobbing: Wenn der Arbeitsplatz zur Holle wird*. Muenchen: Mvg-Verlag, 1994. 166 s.
21. Перкова Н.В. Мобінг: поняття, види, причини, наслідки, профілактика, як боротися. URL. https://pageofsocialteachers.blogspot.com/2017/09/blog-post_37.html
22. Стрельник О. На роботу як на каторгу: що таке мобінг на робочому місці? URL. <https://zmist.pl.ua/publications/na-robotu-yak-na-katorgu-shcho-take-mobing-na-robochomu-misci>.
23. Міліневська Л.. Мобінг у шкільному колективі: Як діяти та скільки агресор заплатить за свавілля? URL. <https://osvitoria.media/experience/mobing-u-shkilynomy-kolektyvi-yak-diyaty-ta-skilky-agresor-zaplatyt-za-svavillya/>.
24. Про забезпечення захисту від морального переслідування на робочому місці: Проект Закону України від 03.06.2014 № 4997. URL. <https://ips.ligazakon.net/document/JG3UT00A?an=3>.
25. Висновок на проект Закону України «Про забезпечення захисту від морального переслідування на робочому місці» (№ 4997 від 03.06.2014 р.). URL. <https://ips.ligazakon.net/document/XG3UT00A>.
26. Проект Закону про внесення змін до деяких законодавчих актів України щодо протидії мобінгу №10118 від 01.03.2019 р. URL. https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65602.
27. Проект Закону про внесення змін до деяких законодавчих актів України щодо попередження та протидії мобінгу №10118-1 від 18.03.2019 URL. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65695.
28. Проект Закону про внесення змін до деяких законодавчих актів України щодо протидії цькуванню (мобінгу) та іншим проявам упередженого ставлення в сфері праці №10118-2 від 19.03.2019 р. URL. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65699.
29. Про внесення змін до деяких законодавчих актів України щодо запобігання та протидії мобінгу (цькуванню): Закон України №2759-IX від 16.11.2022 р. URL. <https://zakon.rada.gov.ua/laws/show/2759-20#Text>.
30. Висновок на Проект Закону про внесення змін до Кодексу України про адміністративні правопорушення щодо протидії мобінгу № 4306 від 02.11.2020 г. URL. https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70300.
31. Про внесення змін до Кодексу України про адміністративні правопорушення щодо запобігання та протидії мобінгу (цькуванню): Закон України № 2806-IX від 01.12.2022 р. URL. <https://zakon.rada.gov.ua/laws/show/2806-20#Text>.
32. Юлія Гришина про мобінг – знущання на роботі. URL. <https://sluga-narodu.com/yuliia-hryshyna-pro-mobinh-znushchannia-na-roboti/>

33. НААУ висловила пропозиції та зауваження до законопроекту «Про внесення змін до Кодексу України про адміністративні правопорушення щодо протидії мобінгу» URL. <https://unba.org.ua/news/print/6214-naau-vislovila-propozicii-ta-zauvazhennya-do-zakonoproektu-pro-vnesennya-zmin-do-kodeksu-ukraini-pro-administrativni-pravoporushennya-shodo-protidii-mobingu.html>

Tyshchenko O., Chernous S., Sirokha D., Sakharuk I. Trends in the formation of anti-mobbing legislation in Ukraine and the EU countries

The trends in the formation of anti-mobbing legislation in Ukraine and the European Union are revealed in the article. The authors emphasize the importance of international acts and directives in the process of establishing legal regulation of prohibition and prevention of mobbing (harassment) at work.

The authors examine the peculiarities of anti-mobbing legislation in France, Germany, Poland, Lithuania, and other countries. It is noted that in most European countries, not only mobbing is prohibited with the labor law, but also acts are recognized as a crime for which criminal liability is provided. In the article, it is emphasized that the legislation of European countries provides for the employer's obligation to prevent mobbing and create favorable psychological conditions for employees for productive and comfortable work.

The process of lawmaking in Ukraine in terms of forming legislation regulating the prohibition of employee mobbing (harassment) and liability for it is examined in the article. The authors critically analyze the provisions of draft laws No. 4997 of 03.06.2014, No. 10118 of 01.03.2019, No. 10118-1 of 18.03.2019, No. 10118-2 of 19.03.2019, which contain proposals to amend certain legislative acts of Ukraine on combating harassment (mobbing) and other manifestations of biased attitudes in the field of labor.

The authors examine the process of formation of anti-mobbing legislation in Ukraine, in particular, analyze the amendments and additions made to the legislation of Ukraine on legal regulation of the prohibition of mobbing (harassment) of employees and the established liability for the relevant acts. Based on the positive experience of the European Union, the authors argue for the need to establish criminal liability for mobbing in Ukraine. The authors suggest the need to establish information and legal anti-mobbing centers in Ukraine to provide legal and psychological assistance to victims of mobbing (harassment) at work.

The article provides the author's definition of the concept of "anti-mobbing legislation".

Key words: mobbing, harassment at work, moral harassment at work, mobbing acts, court practice, anti-mobbing legislation.

Тищенко О. В., Черноус С. М., Сіроха Д. І., Сахарук І. С. Тенденції формування антимобінгового законодавства в Україні та країнах Європейського Союзу

У статті розкриваються тенденції формування антимобінгового законодавства в Україні та країнах Європейського Союзу. Наголошується на значенні міжнародних актів та директив у процесі становлення правового регулювання заборони та попередження мобінгу (цькування) на роботі.

Вивчаються особливості антимобінгового законодавства Франції, Німеччини, Польщі, Литви та інших країн. Зазначається, що у більшості держав Європи не лише у трудовому законодавстві встановлено заборону мобінгу, а й визнано такі діяння злочином, за який передбачено кримінальну відповідальність. Підкреслюється, що у законодавстві європейських країн передбачено обов'язок роботодавця запобігати мобінгу і створювати працівникам сприятливі психологічні умови для продуктивної і комфортної праці.

Досліджується процес законотворчої діяльності в Україні у частині формування законодавства, яке регламентує заборону мобінгу (цькування) працівників та відповідальність за нього. Піддано критичному аналізу положення законопроектів № 4997 від 03.06.2014 р., № 10118 від 01.03.2019 р., № 10118-1 від 18.03.2019 р., № 10118-2 від 19.03.2019 р., в яких містяться пропозиції про внесення змін до деяких законодавчих

актів України щодо протидії цькуванню (мобінгу) та іншим проявам упередженого ставлення у сфері праці.

Розглядається процес формування антимобінгового законодавства України, зокрема аналізуються зміни та доповнення, внесені у законодавство України щодо правового регулювання заборони мобінгу (цькування) працівників та встановленої відповідальності за відповідні діяння. Спираючись на позитивний досвід країн Європейського Союзу, доводиться необхідність встановлення кримінальної відповідальності за мобінг в Україні. Висловлюється ідея про необхідність створення в Україні інформаційно-правових антимобінгових центрів для надання правової та психологічної допомоги особам, що постраждали від мобінгу (цькування) на роботі.

У статті наводиться авторське визначення поняття «антимобінгове законодавство».

Ключові слова: мобінг, цькування на роботі, моральне переслідування на роботі, мобінгові діяння, судова практика, антимобінгове законодавство.