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PROTECTION FROM NEGATIVE PSYCHOLOGICAL EFFECTS IN THE WORK ENVIRONMENT: AN OCCUPATIONAL HEALTH PERSPECTIVE

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ABSTRACT

This article relies upon international and foreign legal provisions to assess legal links between the prevention of negative psychological effects in the working environment and the protection of employees' health. It presents the results of qualitative interviews, illustrating situations described by victims in which they have suffered damage to their health as a result of psychological effects at work, citing this damage as the main reason for terminating the employment relationship at their own request. The article also aims to assess how research findings in the fields of medicine, psychology, sociology and public health, which suggest that prolonged psychological exposure in the work environment can influence the development of relevant diseases, are reflected in legal systems and practice. The author engages with interdisciplinary research among Lithuanian law and other scholars and practitioners on the development of the legal protection of victims in Lithuania.

KEYWORDS

Negative psychological effects, violence and aggression at work, moral harassment, mental health, occupational health and safety, safe and healthy working environment, occupational disease.

INTRODUCTION

Adverse psychological effects in work environment can be lawful or unlawful and can take many forms, such as psychological pressure through the organisation of work. However, it is the impact of such actual effects on the health of the victims that is increasingly becoming one of the most important criteria in legal practice for qualifying the lawfulness of the act and legal liability.

The author of this article conducted 16 qualitative (in-depth) interviews with people who believe that they have experienced psychological violence at work (hereinafter – “the interviews”). Regardless of age, gender, education or professional experience, when answering one of the six open-ended questions – “What experiences and other consequences have you faced?” – without exception all respondents highlighted the consequences for their health as a problem. These results led to the need for a more in-depth assessment of how the protection of employees from psychological effects in the legal framework and in case-law relates to their right to healthy working conditions. The article raises the question of whether the aim of the protection of employees against negative psychological effects at work in the Lithuanian legal system is respect for their honour and dignity solely, as the title of Article 30 of the Labour Code of the Republic of Lithuania (hereinafter – “the LC”) states *expressis verbis*. The article discusses how the aim of protecting the physical and psychological integrity of employees (Article 30(1) of the LC) is linked to the protection of their health (Article 158 of the LC).

The author reviews the results of medical, psychological and sociological research on the impact of negative psychological effects at work (bullying, mobbing, psychological and moral harassment) on the health of victims. At the same time, based on the interviews and the analysis of international, foreign and Lithuanian law, the article seeks to answer the question of how the scientifically based view that these effects have an impact on victims the health influences the dynamics of the protective function of labour law and the concept of a safe workplace.

1. RESEARCH-BASED EVIDENCE ON THE LINKS BETWEEN NEGATIVE PSYCHOLOGICAL EFFECTS AT WORK AND EMPLOYEE’S HEALTH

The interviews¹ show that nine out of 16 respondents who had been subjected to prolonged violence and systematic psychological pressure had terminated their employment contract at their own request. Among the remaining seven, one changed her

¹ For more details on the in-depth interviews, see Ramunė Guobaitė-Kirslienė, Inga Blažienė, “Psichologinio smurto darbo aplinkoje sampratos teisiniai aspektai Lietuvoje. Darbo teisės iššūkiai besikeičiančiame pasaulyje: liber Amicorum et Collegarum profesorei Genovaitei Dambrauskienei” [Legal aspects of the concept of psychological violence in the workplace in Lithuania. Challenges of Labour Law in a Changing World: liber Amicorum et Collegarum to Professor Genovaite Dambrauskienei], (2020): 113–136. ISBN 9786094880070.

The interviews were conducted on behalf of the Lithuanian Centre for Social Research in May–June 2020 to assess how the protection of employees against psychological violence in the work environment functions in practice following the entry into force of the LC on 1 July 2017, and what legal protection problems are faced by employees who believe that they have suffered from such violence.

workplace within the same employer, two went to the labour disputes institutions (one for the use of pressure via disciplinary measures, the other for the lawfulness of the dismissal), and three did not change anything; they adapted, but stated they had felt pressured, even in an "open text" expressing the expectation that they would "quit the job peacefully" themselves. One remaining interviewee did not request termination of employment relationship on her own initiative because she had been subjected to one-off bullying during a "job assessment" when she received a verbal public criticism in a humiliating way, which was never recorded in writing. The interview went to the cardiology department immediately after the assessment as she had developed high blood pressure and heart palpitations, had tremors for a long time after the event, and was prescribed sedatives. The respondent did not discuss with the doctor the reasons for her condition, because it was "a small town where everyone knows each other."

It is no coincidence that the Lithuanian Health Programme 2014-2025² emphasises that stress at work has an impact on the dynamics of chronic non-infectious diseases, injuries, and even suicide. The most common age of suicide in our country is among people of working age: 45–59 years. This is why the need to pay more attention to a safe and healthy psychosocial working environment is recognised³.

Sociology, medicine (mainly psychiatry and neuroscience), psychology, including organisational psychology, and public health science in Scandinavia, Germany, the Benelux, the Anglo-Saxon countries, France, Canada, and elsewhere, have been developing the links between the phenomenon of negative psychological effects at work and occupational health since the end of the 20th century. Unfortunately, developments in these sciences do not always have an effect on the defence of rights. Raffaello Santagata de Castro argues there is the problem that medical sciences and legal practices still do not always communicate in the same language⁴.

The modern legal concept of health encompasses not only medical (absence of disease and infirmity) but also holistic (quality of life, protection and promotion of good health) models.⁵ In a preamble of the Constitution of the World Health Organization (WHO) (1946), in defining the concept of health, alongside the absence of disease or infirmity, physical and mental well-being, a complementary third health component is identified: social,⁶ usually understood as the ability to establish and maintain relationships with other people. This focus on psychological, not just the commonly accepted biological concept of health, has been described as a "turning point,"⁷ with practical implications for the development not only of personal health care services, but also of the concept of a safe workplace.

² Approved by Resolution No XII-964 of the Seimas of the Republic of Lithuania of 26 June 2014, TAR (2014-07-01, Nr. 9403) // <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/35834810004f11e4b0ef967b-19d90c08?jfwid=-fxdp770g>

³ Ibid.

⁴ Raffaello Santagata de Castro, "Workplace Bullying in Italy. Malicious Intent and Role of EU Anti-discrimination Law," Università della Campania "Luigi Vanvitelli," WP C.S.D.L.E. "Massimo D'Antona," IT 399 (2019): 2 // <http://aei.pitt.edu/102770/1/399.pdf>

⁵ Maria Bosak-Sojka, "Prevention of employee's mental health and employment law" [z Zakresu Prawa Pracy i Polityki Społecznej. Studies on Labour Law and Social Policy 28, No. 2 (2021): 158–159, DOI: 10.4467/25444654SPP.21.013.13403, University of Rzeszow, www.ejournals.eu/sppips // <https://orcid.org/0000-0001-9169-8966>, www.ejournals.eu/sppips.

⁶ "Health is a state of complete, mental and social well-being and not merely the absence of disease or infirmity," Constitution of the World Health Organization (22 July 1946) // <https://www.who.int/about/governance/constitution>

⁷ Kinga Bobińska, Gałeccki Piotr, Krzysztof Eichstaedt, Ustawa o ochronie zdrowia psychicznego. Komentarz [Commentary on mental health protection], Wydawca: Wolters Kluwer Polska, (2016): 159, ISBN 978-83-8092-248-8.

Even if the activity in question does not affect the physical health of the victim in a particular case or in a direct mode, the sheer impact on mental health limits the abilities of an individual to realise his or her own abilities to cope with the normal stresses of life, to work productively and to be able to make a contribution to his or her community.⁸ M. F. Hirigoyen stated as early as 1998 that moral harassment (mere words, glances and hints) at work can destroy a person.⁹ A progressive holistic approach to the legal protection of victims is also possible with the widespread recognition in legal practice that this act, which appears to have nothing to do with physical effects on a person, can damage not only mental but also biological health.

In 1996, H. Leymann argued that victims of prolonged psychological exposure at work (mobbing) have more acute symptoms of post-traumatic stress disorder than victims of accidents or short-term traumatic events.¹⁰ The impact of mobbing on post-traumatic stress disorder has also been noted by Morten Birkeland Nielsen,¹¹ Eva Gemzøe Mikkelsen,¹² and other Norwegian and Danish researchers. In 2006, Polish psychologists K. Durniat and A. Kulczycka, in describing the phenomenon of mobbing, emphasised that it affects the victim by destabilising his/her psyche due to the sense of injustice and confusion he/she feels, while experiencing strong psychological stress.¹³

Workplace bullying very often leads to mental health problems such as panic attacks, feelings of helplessness and paranoia, and severe hopelessness.¹⁴ Victims of bullying experience frustration, which can lead to aggression, anxiety or chronic fatigue.¹⁵ Dutch researchers have confirmed that it is unexpected situations at work that can contribute to higher cortisol levels.¹⁶ Victims of such acts are more likely than others to have suicidal ideations; hence there is debate about the importance of assessing such risks when helping victims.¹⁷ Conclusions are drawn that psychologists should assess feelings of defeat and entrapment when working with employees exposed to workplace bullying as a preventive measure to limit its possible influence on suicidal ideation.¹⁸

⁸ Richard Wynne et al., "Promoting mental health in the workplace: Guidance to implementing a comprehensive approach," Employment, Social Affairs & Inclusion, European Commission (November 2014): 4 // <https://ec.europa.eu/social/BlobServlet?docId=13879&langId=en>

⁹ Marie-France Hirigoyen, *Le harcèlement moral, la violence perverse au quotidien* (Éditions La Découverte et Syros, Coll. Pocket), (1998, le 2e editions 2003): 252, 249.

¹⁰ Heinz Leymann, Annelie Gustafsson, "Mobbing at work and the development of post-traumatic stress disorder," *European Journal of Work and Organizational Psychology* 5(2) (1996): 251-275.

¹¹ Morten Birkeland Nielsen, Tone Tangenc, Thormod Idsoe, Stig Berge Matthiesen, Nils Magerøy, "Post-traumatic stress disorder as a consequence of bullying at work and at school. A literature review and meta-analysis," *Aggression and Violent Behavior*, Vol. 21 (2015): 17-24.

¹² Eva Gemzøe Mikkelsen, Stale Einarsen, "Basic assumptions and symptoms of post-traumatic stress among victims of bullying at work," *European Journal of Work and Organizational Psychology* (September 2010): 87-111.

¹³ Katarzyna Durniat, & A. Kulczycka, "Operacjonalizacja mobbingu w kontekście badań międzykulturowych [Operationalisation of mobbing in the context of cross-cultural research]," *Prace Naukowe Akademii Ekonomicznej* 1132 (2006): 463, 458-467.

¹⁴ Silvia Punzi, Giovanna Castellini, Giovanni Costa, "Health outcomes and personality: differences between workplace bullying and other occupational stressors," Maureen Duffy, the 8th International Conference on Workplace Bullying and Harassment – Future Challenges (12-15 June 2012): 75.

¹⁵ Katarzyna D. Durniat, Methodological, ethical and legal problems of measuring and counteracting workplace mobbing. *EWOP in Practice* 15(1) (2021): 39.

¹⁶ Eamonn K. S. Hanson et al., "Cortisol secretion throughout the day, perceptions of the work environment, and negative affect," *Annals of Behavioral Medicine* 22(4) (December 2000): 316-324 (Published 30 July 2013) // <https://doi.org/10.1007/BF02895668>

¹⁷ Angelo Soares, "Workplace Bullying and Suicidal Ideation," A. Høgh, C. Jørgensen, A. S. Fedders (eds.), *Book of Proceedings of the 8th International Conference on Workplace Bullying and Harassment – Future Challenges* (2012). ISBN 978-87-87417-97-6. IAWBH and University of Copenhagen: 67.

¹⁸ Ernesto Rosario-Hernández, Lillian V. Rovira Millán, Stephanie Vega Vélez, Rosael Zeno-Santi, Pamela Fari-nacci García, Lorraine Centeno Quintana, Jessica Navedo Santos, Bianca P. Feliciano Toro, Raquel De Jesús Caraballo, James Morell Fausto, Suilarim Cepeda Faj, Mónica Cintrón Lugo, Lourdes Colón Burgos, Norma Sánchez Ortiz, Ivelize Sánchez Collazo, Liliana Díaz Pla, Miguel A. Toledo Medina, Alondra S. Flores Quirós and Orlando M. Pagán Torres, "Exposure to workplace bullying and suicidal ideation: and exploratory study," *Journal of Applied Structural Equation Modeling* 3(1) (Jan 2019): 55-75, eISSN: 2590-4221.

At the same time, it has been shown that victims are more likely to experience physical health problems such as disturbed sleep, palpitations, increased blood pressure, decreased appetite, stomach disorders, irritable bowel syndrome, chest pains, and headaches.¹⁹ Lithuanian researchers V. Malinauskienė, V. Obelenis, D. Šopagienė (2005) and other have found the impact of mobbing on teachers' cardiovascular diseases.^{20 21} Polish researchers, confirming the impact of mobbing on sleep disorders and headaches, additionally identified a wide range of other negative psychosomatic and physiological symptoms, such as backaches, problems with concentration and others.²²

The results show that even some myeloproliferative blood diseases are potentially caused by severe psychological stress due to prolonged bullying and harassment at work. Such research substantially advances the understanding of the health effects of bullying, even in relation to various cancers and serious blood diseases, while also providing new opportunities for psychosomatic treatment of victims.²³

Studies have identified the link of mobbing, premature death and suicide.²⁴ Addressing the lack of expertise among therapists and other health professionals, authors like M. Duffy argue that effective support and treatment requires an understanding of the victim's unique stress response, the impact on family relationships, and the nature of the relationships within the mobbing organisation.²⁵ Treatment planning that does not take these dynamics into account runs the risk of iatrogenic injury.^{26 27} Workplace bullying and mobbing not only damage the emotional health of the victim, but also that of the bystanders²⁸ and family members who become indirect victims. Therefore, victim's support and recovery is a complex process that goes hand in hand with the recovery of family members.²⁹

Consequently, in practice, health problems caused by long-term psychological negative effects in work environment usually go far beyond the loss of confidence and damage to the victim's honour (self-respect) and dignity. While in every case it is necessary to prove a causal link between negative psychological effects and harm to the victim, including to his/her health, knowledge of medical and psychological sciences may be relevant in practice when dealing with the issue of non-pecuniary damage. Importantly, scientific developments have shown that stress at work is not limited to its effects on person's mental and psychological health, but also has an impact on physical

¹⁹ Mona O'Moore, "Bullying in the workplace: is it a problem," Health and Safety Authority Newsletter 106 (1998): 2-4.

²⁰ Kazuo Sugeno, "Workplace Bullying and Harassment," The Japan Institute for Labour Policy and Training, Japan (2013): 29 // <https://www.jil.go.jp/english/reports/documents/jilpt-reports/no.12.pdf#page=45>

²¹ Vilija Malinauskienė, Vytautas Obelenis, Diana Šopagienė, "Psychological terror at work and cardiovascular diseases among teachers," Acta Medica Lituanica 12(2) (2005): 20-25.

²² Supra note 14, 39.

²³ Dmitri Gramotnev, Galina Gramotnev, "Chronic Stress Caused by Workplace Bullying and Myeloproliferative Blood Neoplasms," Book of Proceedings of the 8th International Conference on Workplace Bullying and Harassment – Future Challenges. IAWBH and University of Copenhagen (2012): 72-73.

²⁴ Maureen Duffy, Len Sperry, "Workplace Mobbing: Individual and Family Health Consequences," The Family Journal (October 2007): 398-404, DOI: 10.1177/1066480707305069 // <https://www.researchgate.net/publication/258193133>

²⁵ Maureen Duffy, Len Sperry, "Effects of Mobbing on Health and Family Relationships: How Therapists Can Help or Hurt," Book of Proceedings of the 8th International Conference on Workplace Bullying and Harassment – Future Challenges (12-15 June 2012): 51-53, ISBN: 978-87-87417-97-6.

²⁶ An iatrogenic injury (or iatrogenic illness) is "a temporary or permanent impairment of a physical, emotional, psychological condition or structure of the body, or the occurrence of pain as a result of a medical intervention (NCC MERP, 1998)." Committee of Experts on Management of Safety and Quality in Health Care (SP-SQS). Expert Group on Safe Medication Practices. Glossary of terms related to patient and medication safety // https://vaspvt.gov.lt/files/files/Zodynas_LT.pdf

²⁷ Maureen Duffy, supra note 24, 52

²⁸ Supra note 23.

²⁹ Maureen Duffy, supra note 24, 51-52.

health, such as the development of certain illnesses or suicide. If family members are recognised as indirect victims, the issue of compensation for them becomes legally relevant. The scientific knowledge discussed above provides a solid basis for broadening the understanding of the phenomenon of negative psychological effects at work as having a real impact on employees' health and transferring such a holistic approach to legal regulation and practice.

2. INTERNATIONAL LEGAL PRECONDITIONS FOR RECOGNISING THE VICTIM'S RIGHT TO HEALTHY WORKING ENVIRONMENT

A study published 23 years ago for the European Parliament found that bullying at work severely affects the physical and psychological health of the bullied person and may lead to problems of substance abuse and even suicide.³⁰ There is a framework directive³¹ establishing a culture of prevention³² of risks to employees' health as early as possible. But in terms of occupational risk prevention, only the spirit (not the wording)³³ of the directive covers mental health issues at work. Only soft law instruments, such as the Exploratory Opinion (2023) requested by the Spanish Presidency,³⁴ explain that precarious work (indicating directly that it may also involve harassment) can contribute to the development of diseases.

As regards the general legal standards defining the impact of negative psychological effects at work on employees' health in European Union (EU) law, it is the role of European social partners that is key. In their Framework Agreement on Work-Related Stress (2004), harassment and violence at the workplace were recognised as a potential work-related stressor.³⁵ The Framework Agreement on Harassment and Violence at Work (2007) confirmed that the objectives of protecting employees are not limited to their dignity only, but also to their health.³⁶

In EU law, the Staff Regulations of officials of the European Communities ³⁷ define "psychological harassment" as any improper repetitive or systematic conduct that may

³⁰ European Parliament, Directorate General for research, "Working paper Bullying at work," Social Affairs Series, SOCI 108 EN 8 (2001): 13 // https://www.europarl.europa.eu/workingpapers/soci/pdf/108_en.pdf

³¹ Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work // <https://eur-lex.europa.eu/eli/dir/1989/391/oj>

³² Loïc Lerouge, "Workplace Bullying and Harassment in France and Few Comparisons with Belgium: a Legal Perspective," University of Bordeaux. JILPT Seminar on Workplace Bullying and Harassment, JILPT REPORT 12 (2013): 39 // <https://www.jil.go.jp/english/reports/documents/jilpt-reports/no.12.pdf#page=45>

³³ Or "with the understanding", as A. Leščinskaitė is stating, that psychological violence is one of the occupational risk factors (a psychosocial risk factor), the said directive lays down the measures for improving the health and safety of workers in the workplace, including their psychological comfort. See also Aistė Leščinskaitė, "Psychological workplace violence against older people in Lithuania," *Baltic Journal of Law & Politics* 16:1 (2023): 42–59, DOI: 10.2478/bjlp-2023-0003 // <https://content.sciendo.com/view/journals/bjlp/bjlp-overview.xml>

³⁴ José Antonio Moreno Díaz, "Opinion of the European Economic and Social Committee on Precarious work and mental health (2023/C 228/05)," *Official Journal of the European Union* (29 June 2023) // <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52023AE0331>

³⁵ Framework agreement on work-related stress (2004) // <https://resourcecentre.etuc.org/agreement/framework-agreement-work-related-stress>

³⁶ Framework Agreement on Harassment and Violence at Work, signed by the European Trade Union Confederation (ETUC/CES), the Confederation of European Business (BUSINESSEUROPE), the European Association of Craft, Small and Medium-Sized Enterprises (UEAPME) and the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest, 26 April 2007 (CEEP) // https://www.etui.org/sites/default/files/ez_import/Framework%20agreement%20on%20harassment%20and%20violence.pdf

³⁷ "Council Regulation (EC, EURATOM) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of others servants of the European Communities," *Official Journal of the European Union* L124/1 (27 April 2004) // <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004R0723>

undermine the personality, dignity or physical or psychological integrity of any person.³⁸ While the European Social Charter (Revised)³⁹ tends to relate the concept of harassment to the right to dignity at work (Article 26) only, not to the right to healthy and safe working conditions, the International Labour Organization (ILO) clearly acknowledges, as of 2019, that violence and harassment in the world of work affect person's dignity, psychological, physical <...> health, and even the "family and social environment."⁴⁰ Each Member, in consultation with representative employers' and workers' organisations, shall seek to ensure that violence and harassment in the world of work is addressed in relevant national policies, such as those concerning occupational safety and health,⁴¹ extend or adapt existing occupational safety and health measures, develop specific measures where necessary to include violence and harassment.⁴²

ILO Convention No 190 requires Member States to establish extended employers' occupational health and safety obligations,⁴³ including adoption and implementation of a workplace policy on violence and harassment; taking into account violence and harassment and associated psychosocial risks in the management of occupational safety and health; identifying hazards and assessing the risks of violence and harassment and taking measures to prevent and control them. The majority of those measures should be adopted and implemented in consultation with and participation of employees and their representatives. Moreover, each Member State shall take appropriate measures to ensure that workers have the right to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to life, health or safety due to violence and harassment, without suffering retaliation or other undue consequences, and the duty to inform management.⁴⁴

In addition, the Convention at issue obligates Member States to ensure that labour inspectorates and other relevant authorities are empowered to deal with violence and harassment, including by issuing orders requiring measures with immediate executory force and orders to stop work in cases of an imminent danger to life, health or safety.⁴⁵ Together with Recommendation No 206⁴⁶, ILO legislation leaves no doubts that prevention and protection from violence and harassment in work environment should be considered as a field of occupational health and safety.

The 2021 proposal for a Council Decision⁴⁷ notes that "the Convention's substance does not cause concern in the light of the existing EU *acquis*." +Consequently, ILO and EU *acqui*, in order to protect employees from moral harassment, have created legal obligations to take preventive measures to safeguard employees' health and to ensure the protection of their rights. Importantly, the prevention, protection and remedies in question are progressive and effective when guaranteed by the State from an occupational health and safety perspective.

³⁸ Supra note 36, Article 12a(3).

³⁹ European Social Charter (Revised), Council of Europe // https://www.coe.int/en/web/conventions/full-list?module=treaty_detail&treatyid=035

⁴⁰ *Violence and Harassment Convention* No. 190, Article 9(b), Article 12 (2019), International Labour Organization // https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190

⁴¹ Supra note 40, Article 11(a).

⁴² Supra note 40, Article 12.

⁴³ Supra note 40, Article 9(a)-(d).

⁴⁴ Supra note 40, Article 10(g).

⁴⁵ Supra note 40, Article 10(h).

⁴⁶ R206 – Violence and Harassment Recommendation No. 206 (2019) // https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R206

⁴⁷ Proposal for a Council Decision authorising Member States to ratify, in the interest of the European Union, the Violence and Harassment Convention, 2019 (No. 190) of the International Labour Organization, Brussels, 22.1.2020 COM (2020) 24 final 2020/0011 (NLE).

3. THE IMPACT OF ADVERSE EFFECTS OF PSYCHOLOGICAL BEHAVIOURS ON THE EMPLOYEE'S HEALTH: RECOGNITION IN NATIONAL LEGAL SYSTEMS

Although in the last decades negative psychological behaviours at work have received considerable attention in science, the social phenomenon itself is not new. For example, Philipp S. Fischinger mentions the year 1921, when the Supreme Court of the German Reich (Reichsgericht) had to decide about a claim of an employee that suffered from a bilious colic as a result of a dispute with his employer.⁴⁸

From an occupational health and safety perspective, the protection against such exposure has implications for the content of victims' remedies and employers' liability. As previously mentioned, international law unanimously recognizes that it is the employer's obligation to provide the protection in question on a preventive basis. However, national legal systems vary in the content of this obligation, depending primarily on the consensus on what values are protected, whether the protection is proactive, preventive or reactive, and what guarantees are provided when it is established that a person has suffered from adverse psychological effects in the work environment. We will look at these aspects in the legal systems of Germany, Belgium, France, Italy, Portugal, Poland, Estonia, and Sweden.

3.1. Values protected by law

In Germany, the Labour Management Act (1996) protects employees against mobbing, ensuring the right to develop their personality at work.⁴⁹ The General Treatment Act (2006) ensures protection against harassment defining it as discrimination and defends the right to dignity of a person,⁵⁰ while the right of personality, dignity or health of the victim is defended based on the judgement of the Thuringian Higher Labour Court (2001).⁵¹ Belgian law protects worker's physical or mental health, or future career.⁵² In the new version of the Estonian Occupational Health and Safety Act (2019) bullying and harassment at work are recognised as psychosocial risks and work-related stress that affect the mental or physical health of employees.⁵³ Similarly, Article L. 1152-1 of the French Labour Code (and, by analogy, Article 222-33-2 of the Criminal Code) states that moral harassment deteriorates employees' rights and dignity, impairs their physical or mental health, or jeopardise their professional future⁵⁴ which is embedded in both social and institutional contexts.⁵⁵ The Polish Labour Code defined mobbing in 2018 as acts or conduct relating to or directed against an employee, resulting in a violation of his/her mental and emotional fitness.⁵⁶ According to Italian law, harassment is considered an employer's failure to comply with its contractual obligation to ensure the

⁴⁸ Philipp S. Fischinger, "Mobbing: The German law of bullying," *Comp. Lab. L. & Pol'y J.* 32 (2010): 153.

⁴⁹ Gabrielle S. Friedman, James Q. Whitman, "The European Transformation of Harassment Law: Discrimination Versus Dignity," 9 *COLUM. J. EUR. L.* 241, 249 (2003): 258-259.

⁵⁰ *Supra* note 47, 155. Bundesarbeitsgericht [BAG] [Supreme Labour Court], 15 January 1997, *Neue Zeitschrift für Arbeitsrecht* [NZA-RR] 781, 1997; Bundesarbeitsgericht [BAG] [Supreme Labour Court], 16 April 2007, *Neue Zeitschrift für Arbeitsrecht* [NZA] 1154 (2007).

⁵¹ *Supra* note 47, 155. Landesarbeitsgerichte [LAG] [Labour Court of Appeals], 15 February 2001, 133; *Neue Zeitschrift für Arbeitsrecht-Rechtsprechungsreport* [NZA-RR] 577 (579), 2001 (Ger.); Philipp S. Fischinger uses the terms "mobbing," "workplace bullying" and "harassment" as synonyms.

⁵² Loïc Lerouge, *supra* note 31, 53.

⁵³ Krystyna Bakhtina, "Addressing psychosocial risks in Estonian SMEs," *Italian Labour Law e-Journal* 15(2) (2022), ISSN 1561-8048 // <https://doi.org/10.6092/issn.1561-8048/15065>

⁵⁴ Loïc Lerouge, *supra* note 31, 53.

⁵⁵ Marc Loriol, Liliana Dassisti, Ignazio Grattagliano, "Harassment at work in France and Italy first hypothesis for an international comparison," *Aggression and Violent Behavior*, Vol. 53 (July-August 2020): 101427.

⁵⁶ *Supra* note 4.

physical and moral integrity of employees (Article 2087 of the Civil Code).⁵⁷ In 2017, the Italian Court of Cassation concluded,⁵⁸ probably mirroring at least EU, Belgium, and French law as well as German case-law, that mobbing has systematic and ongoing negative effects on the personality, dignity and/or physical or mental health of the victim, jeopardising his/her future career.⁵⁹

Thus, foreign law allows victims to assert their rights to developing personality at work or personality, dignity, professional future or future career, physical and moral integrity, mental and emotional fitness, and health (physical or mental) and provides for different instruments of a proactive, preventive and/or reactive character.

3.2. Proactive and preventive aspects ensuring mental health at work

Belgian law is distinguished as having a proactive system for preventing psychosocial risks, including harassment or violence, as the Well-being Code underlines the obligation of employers to assess and evaluate the psychosocial risks, including stress, burn out, violence, psychological or sexual harassment. Employers are also obliged by law to identify and adopt procedures to avoid deterioration in interpersonal relations and situations that foster those unacceptable behaviours.⁶⁰ Abuse and harassment at work are identified as potential stress factors by the Occupational Health and Safety Act (legislative decree No. 81/2008) in Italy.⁶¹ In Estonian law, the concept of psychosocial risks was defined in 2019 as work that involves a risk of an accident or violence, unequal treatment, work not corresponding to the abilities of an employee, working alone for an extended period of time, monotonous work and other factors related to management, organisation of work and working environments that may affect the mental or physical health of an employee, including bullying and harassment at work, as well as work-related stress.⁶² In Portugal, for example, mobbing has been considered a source of occupational diseases since 2017.⁶³ Moreover, burnout syndrome may be acknowledged as an occupational disease in Denmark, Estonia, France, Hungary, Latvia, Netherlands, Portugal, Slovakia, and Sweden⁶⁴.

The recognition of negative psychological effects at work as a psychosocial risk factor makes the continuity and regularity of the prevention process essential. At the same time, the specific knowledge, skills and legal responsibility of the management line, as well as specific leadership to mental health, as foreseen, for example, in regulations on systematic work environment management in the Work Environment Act in Sweden, are of major importance. This Act asks the employer to perform continuous

⁵⁷ Court of Civil Cassation, Labour Section, 6 March 2006 No. 4774-Mobbing [Corte di Cassazione Civile, Sezione Lavoro, 6 marzo 2006 n. 4774-Mobbing] // https://olympus.uniurb.it/index.php?option=com_content&view=article&id=329:cassazione-civile-sez-lavoro-6-marzo-2006-n-4774&catid=16&Itemid=138

⁵⁸ Supra note 3.

⁵⁹ Ibid.

⁶⁰ Aude Cefaliello, Psychosocial risks in Europe. National examples as inspiration for a future directive, ETUI Policy Brief, (2021): 4.

⁶¹ Supra note 54. Corte di Cassazione Civile, Sezione Lavoro, 6 marzo 2006 n. 4774- Mobbing // https://olympus.uniurb.it/index.php?option=com_content&view=article&id=329:cassazione-civile-sez-lavoro-6-marzo-2006-n-4774&catid=16&Itemid=138

⁶² Supra note 52.

⁶³ With amendments to the Labour Code, Law 73/2017 of 16 August 2017, that added paragraph 8 to Article 283. Alisson Renato Medeiros de Araújo, Iva Alberta Teixeira Faria, Rosana Muinz de Medeiros, "Mobbing: A critical look at legal protection in Brazil and Portugal," Social Responsibility at the Polytechnic Institute of Portalegre: from the experience gained to the new challenges. Conference Paper (September 2019): 768, ISSN 2048-0806.

⁶⁴ Andrea Lastovkova et al., "Burnout syndrome as an occupational disease in the European Union: an exploratory study," Industrial Health 56 (2018), ISSN 1880-8026.

risk inventories and risk assessments, including risks to mental health. Managers are supposed to be trained about harmful physical, psychological, and social conditions, methods how to prevent and take necessary actions against psychosocial risks and how to create a good work environment.⁶⁵ Further, involvement of employees and collaboration with social partners are crucial for effective prevention.⁶⁶ Health and safety representatives in Germany and Belgium appear to be the most involved in tackling bullying and harassment in the workplace.⁶⁷

4. RECOGNITION OF PSYCHOLOGICAL EFFECTS AT WORK AS AN ACT DETRIMENTAL TO AN EMPLOYEE'S HEALTH, AS FOUND IN LITHUANIAN LEGISLATION

Lithuanian legal doctrine agrees that stress at work, as a psychological experience, is harmful *inter alia* to physical health, regardless of its cause and source, and is one of the most serious health and safety problems.⁶⁸ One of the tasks of modernising labour law is to create a safe working environment, also in the sense of eliminating factors contributing to psychological risks, including mobbing, harassment, social harassment.⁶⁹ We will discuss how the protection of employees from adverse psychological effects at work is ensured in Lithuanian legislation, assessing whether the objectives of the legal regulation are directed towards the employee's health, how the employer's obligations, as set out in Article 30 of the LC, relate specifically to the duty to ensure the assessment of the psychosocial risks.

4.1. Legally protected values

In Lithuania, employees have a fundamental, uncompromising right⁷⁰ to be protected from adverse psychological effects in the work environment. With the entry into force of the LC on 1 July 2017,⁷¹ employers are obliged to create such environment in which employees are not subject to hostile, unethical, demeaning, aggressive, insulting, or offensive actions which encroach on the honour and dignity of an individual employee or a group thereof, or the physical or psychological integrity of a person, or which are aimed at intimidating, belittling, or pushing an employee or a group thereof into an unarmed or powerless situation (Article 30(1)). The amendments to Article 30 of the Code, which entered into force on 1 November 2022, define violence and harassment (including psychological violence, gender-based violence and harassment) as unacceptable conduct which meets 4 characteristics. Firstly, it is related to a relevant effect which may be physical, psychological, sexual or economic. It is not necessary that such an effect should have been sought (or aimed at). Secondly, the conduct in question

⁶⁵ Maria Steinberg, "Strength and Weakness of the Swedish Legislation Regarding to Psychosocial Risks," *Psychosocial Risks in Labour and Social Security Law* (2017): 67.

⁶⁶ Aude Cefaliello, *supra* note 59, 3–4.

⁶⁷ *Supra* note 19, 8. EU-OSHA. European Agency for Safety and Health at Work (2010b). *European Survey of Enterprises on New and Emerging Risks (ESENER). Managing safety and health at work. European Risk Observatory Report*. Luxembourg; Publication Office of the European Union. Available: Eurofound (2012).

⁶⁸ Tomas Bagdanskis, Vilius Mačiulaitis, Mantas Mikalopas, *Commentary to the Labour Code of the Republic of Lithuania. Individual labour relations [Lietuvos Respublikos darbo kodekso komentaras. Individualieji darbo santykiai]*, Vilnius (2018): 43.

⁶⁹ Tomas Davulis, "Lietuvos darbo teisės modernizavimo perspektyvos [Prospects for modernising Lithuanian labour law]," *Jurisprudencija. Mokslo darbai* 8(110) (2008): 27–33, ISSN 1392-6195.

⁷⁰ *Supra* note 4.

⁷¹ The new Labour Code of the Republic of Lithuania was approved by Law No XII-2603 of 14 September 2016, TAR (2016-09-19, No. 2016-23709).

offends the dignity of a victim. Thirdly, it creates an environment which is intimidating, hostile, demeaning or offensive. Finally, the conduct results in, or is likely to result in, physical, pecuniary and/or non-pecuniary damage.

The title of Article 30 of the LC refers to the protection of honour and dignity, the creation of a work environment safe from violence and harassment, rather than to the protection of employees' health. Thus the Article itself does not explicitly mention that the negative, unacceptable impact in question may also cause damage to the employee's health. On the other hand, the legal provisions in question refer to legal concepts such as "physical or psychological effects" (Article 30(2)), "physical or psychological integrity", and the employer's obligations to create an appropriate "working environment" (Article 30(1)). Those legal concepts are most closely linked to the guarantee of occupational health. However, the integrity of employees or individuals in Lithuanian law and practice in the case of harassment is not always linked to health. For example, the Constitutional Court relates the integrity of a person in the case of harassment to dignity, to impairment of the mental and spiritual state, rather than to health.⁷²

This practice may be formed partly due to the fact that, as V. Benkuskas argues, the Lithuanian legislator inaccurately translates the phrase "mental well-being," used in the WHO Constitution, as "spiritual well-being [Lith.: *dvasinė gerovė*],"⁷³ when instead of the latter term, it should be used the category of good mental state.⁷⁴ Yet, the term "spiritual well-being" as a term describing health is not only quite unusual from the point of view of medical science, international and Western foreign law, but also, in the author's opinion, even potentially misleading in judicial practice.

The concept of "mental health," as set out in the Law on Mental Health Care of the Republic of Lithuania, does not have any direct links with so-called spiritual well-being and is understood as person's well-being, when he/she is able to exercise his/her abilities, to cope with normal difficulties in life, to work and to take part in the life of society.⁷⁵ Nonetheless, the spiritual and social aspects of health are of practical importance in Lithuanian legal system for the purpose of seeking compensation for non-pecuniary damage. In deciding on non-pecuniary damage, the Civil Code of the Republic of Lithuania enables Lithuanian courts to assess in monetary terms, inter alia, the categories similar to "spiritual health", such as "spiritual experiences", "spiritual shock", if these have been suffered by the person seeking non-pecuniary damage.⁷⁶ The courts are also entitled to assess the categories similar to "social health", such as "loss of opportunities for social interaction", "emotional distress", "inconveniences", "humiliation", and "deterioration of reputation."⁷⁷

It is stated in the State Labour Inspectorate's (hereinafter - "the SLI") monitoring report (2021) that "most often, people experiencing psychological violence at work terminate their employment contract after suffering psychological pressure for a long

⁷² Opinion No KT20-II/2017 of the Constitutional Court of the Republic of Lithuania of 19 December 2017 "On the actions of the member of the Seimas of the Republic of Lithuania Kęstutis Pūkas," § 61 // <https://lrkt.lt/lt/teisimo-aktai/paieska/135/ta1771/content>

⁷³ Preamble and Article 2(11) of the Law on the Health System of the Republic of Lithuania, Official Gazette (No. 63-1231, 1994; No 112-3099, 1998).

⁷⁴ Valdas Benkuskas, "Psichikos sveikatos priežiūros terminų vartojimo teisiniame reglamentavimo probleminiai aspektai [Problematic aspects of the use of mental health care terms in the legal framework]," *Mokslo darbai. Sveikatos politika ir valdymas* 1(4) (2012): 163–184.

⁷⁵ Article 2(9) of the new version of Law No I-924 on Mental Health Care of the Republic of Lithuania, TAR (2019, No 2019-00838).

⁷⁶ Article 6.250 of the Civil Code of the Republic of Lithuania, Book Six "Law on Obligations", Official Gazette (No. 74-2262, 2000).

⁷⁷ Ibid.

period of time, and then file a complaint with the SLI on grounds of unlawful dismissal, unjustified suspension, etc., without mentioning the psychological violence they have experienced”⁷⁸. In the interviews, employees who have been forced to leave their jobs as a result of what they consider to be psychological violence identified health problems as a key reason for their decision to quit⁷⁹:

Case 1:

“<...> of course the most important thing is health, the second thing <...> I have some self-esteem anyway <...>,” “it cost me a lot of health really,” “I didn’t think my body would react like that, <...> people, especially people who come with a great enthusiasm, a great willingness to work hard, and they do it, they rush to work. And they usually end up with this burnout syndrome where they are constantly being unappreciated, <...> I thought that I was powerless to change things and that feeling of powerlessness also contributed to it, <...> that nothing would really change <...>,” “I’m walking towards the workplace, I’m approaching the workplace before eight in the morning, and I start to get nauseated. I think, <...> I didn’t eat something bad here, nor something <...> this is the absolute resistance of the body. And in that job <...> for those three months I’ve been sitting there and I just couldn’t concentrate <...>.”

Case 2:

“<...> I left when I was already feeling <...> the consequences, which could have been completely damaging to my health, <...> my health was deteriorating, in fact, <...> physically, I couldn’t stand it anymore: sitting, being ignored, <...> being threatened, not being said hello to <...>, when I went to the clinic, they took my temperature, and they said: “<...> you’ve got fever,” they did a blood test <...> there’s nothing there, it’s because the blood doesn’t show inflammation from the stress, <...> it’s very bad from the stress, my eyes have started to go blurry, <...> it’s all in a blur. <...> the ophthalmologist <...> said that everything was fine with the eyes, so I had to go to a neurologist <...>. The most interesting thing is that <...> if I went to the doctor urgently instead of waiting for an appointment, they cannot record any stress-related problems <...> or any neurological problems <...>, because you can only see a doctor urgently for an acute condition. <...> if I want to defend myself, I would like to have proof that the temperature has risen to such a level, that I am in poor health, I can’t see, I go to the clinic, they cannot write that it is a stress condition, they write that it is an inflammation of the throat, when there is no such inflammation <...>.”

⁷⁸ SLI Monitoring report on the assessment of psychosocial occupational risk factors and measures to prevent them, and the implementation of measures to prevent psychological violence in enterprises (26th of May, 2021) extension // efaidnbmnnnibpcajpcglclefindmkaj/https://www.vdi.lt/PdfUploads/Psichstebesena.pdf

⁷⁹ Excerpts from interviews are presented with four female respondents with at least a university degree. All of them terminated their employment contracts at their own request because of long-term psychological violence at work. Fragments of the answers to the question “What kind of experiences and consequences did you suffer?” are presented. This question was formulated without prompting the respondent to talk about health consequences. The excerpts of the answers are presented in a depersonalised way, i.e. without disclosing personal data (such as names, information on jobs, length of service, marital status, etc.) which could allow for their identification. Unedited language.

Case 3:

"<...> I still shudder when I think about my work there. <...> I even started to think that maybe I can't be [indicates profession] anymore, because my self-esteem was so lowered... I was always told that I don't know how to do it <...>. They never said anything good about me. Sunday was the worst day for me, because when I got up in the morning I knew I had one more night to sleep and I had to go back to work. I used to be angry all day, I didn't want to do anything, I didn't leave the house, and I just stayed in bed all day and didn't even get out of it. My colleagues and I <...> even agreed <...> to meet in the morning <...> before work and we would all just sit down for a coffee or tea, but there were a lot of mornings when we would just all have a good cry <...> and then go to work. Another thing, I have always been in pretty good health and physical shape, but last year I was on sick leave four or five times <...> I had a constant fever that wouldn't go down, I was emotionally very exhausted, and there was even one case where <...> I was off sick for a month and a half and I couldn't get better and I had intercostal neuritis. <...> I was under pressure during the sick leaves. I was asked to call, to tell them what medication I was taking, my doctor's phone number was asked for, because they were suspicious about why I had been off sick for so long <...>. It wasn't antibiotics, and <...> they told me that I needed to take antibiotics to get better faster. Even though my doctor did tests and everything else, I didn't need the antibiotics. I was under pressure and I was still working even during my sick leave [talks about working remotely from home during the sick leave]. <...> in the end, my doctor <...> concluded that my neuroinflammation was from a very bad psychological state. Then she advised me, at least for another week, not to work, not to answer calls and just not to be afraid to go out in the fresh air, <...> but I was afraid <...> that I might just meet someone [meaning from work] close to home, because I knew that again it would be commented on that I was not observing the sick leave and all that. That's the week when I didn't answer calls, <...> didn't go on Facebook and all that stuff. It took me a week and a half to recover and go back to work. But within a couple of weeks, I got sick again. I had fevers again and that emotional exhaustion <...>."

Case 4:

"<...> I started waking up at four or five in the morning with a very pounding heart, and it felt like there were hammers in my head. On weekdays, I couldn't eat during my lunch break, I was just nauseous – I couldn't take food in my mouth. When this went on for a month, I realised that I couldn't delay any longer <...>. <...> To the question "Did you leave at your own request?", (s)he replied: "Yes. I couldn't do it anymore, when my health started to deteriorate and it didn't change for a month, it just got worse, I didn't wait any longer <...>."

The role of health care institutions is important in order for the victim to provide evidences that his/her health has been affected by the situation at their work environment, and to establish whether this situation contributed to the impairment of employee's health. When establishing the causal link between employer's unlawful actions,

stress and the victim's health problems, the Kaunas Regional Court (2022)⁸⁰ relied *inter alia* on the certificate submitted in the case, which confirmed the deterioration of the employee's health, i.e., that after the events relevant for the case, the employee visited doctors and was consulted for specific health disorders, was provided with medication and regular counselling. The Court concluded that the certificate also confirmed the applicant's allegations that her transfer to another department, the employer's conduct (mobbing, i.e. hostile actions aimed at belittling the applicant and based on subjective prejudice) had led to the health problems, and that the employer, although aware of possible irregularities, had failed to take action to identify and remedy the consequences, and awarded the employee 2,000 EUR in non-pecuniary damages.⁸¹ However, in another case the Vilnius Regional Court (2023) stated that the descriptions of outpatient visits and extracts of medical documents, which simply list chronic diseases diagnosed to the employee, without data and evidence on the time of occurrence of these diseases, their causes, the course of treatment, do not confirm per se the connection of these chronic diseases with the performance of the work functions or employer's behaviour towards the employee.⁸²

Although in practice, victims who have been subject to the unwanted conduct in question and its adverse effects, including on their health, are entitled to compensation, the lack of literal clarity that this conduct may also affect the health of employees may act in practice as a factor that complicates the defence of rights in the event of impairment of health. Therefore, dual role and even dual responsibility of health care institutions is important for the victim in receiving appropriate services and in providing indirectly with evidences suitable to labour dispute resolution bodies.

4.2. Proactive and preventive aspects ensuring mental health at work

There are many factors that can have an adverse effect on employees' health, including the creation of a hostile or other working environment that meets the criteria of Article 30 through work overload, unreasonable work pace or control, perceived unfairness, and poor relations between employees.⁸³ Article 30 of the LC obliges the employer to eliminate the risk of such adverse effects in the working environment proactively and entitles the employee to assistance organised by the employer.⁸⁴ Employers employing more than 50 workers have even more obligations under the LC, namely, after having carried out information and consultation procedures, they are obliged to adopt and implement a policy on the prevention of violence and harassment, and to ensure that it is publicised by the usual means in the workplace.⁸⁵ Article 30(5) of the LC obligates employers to update this policy in the light of reports received, cases of violence and harassment detected, changes in their potential risks or the emergence of new ones, or at the request of the labour inspector.

The relationship between these relatively modern obligations of the employer and the obligation to assess and manage psychosocial risks, which has been established

⁸⁰ Ruling of the Kaunas Regional Court of 24 March 2022 in civil case No. e2A-349-587/2022.

⁸¹ Ibid.

⁸² § 32 of the Ruling of the Vilnius Regional Court of 10 August 2023 rendered in civil case No. e2A-1666-855/2023, judicial proceedings No. 2-68-3-23380-2022-1.

⁸³ Tomas Bagdanskis, *supra* note 67, 44.

⁸⁴ Labour Code, *supra* note 70, Article 30, par 3 and 5.

⁸⁵ Labour Code, *supra* note 70, Article 30, par. 3–5.

in Lithuanian law since 2005⁸⁶, needs further assessment. Employer obligations with regard to ensuring psychosocial risks' management, as a part of occupational health of employees, are regulated in detail in the Law on Health and Safety of Employees of the Republic of Lithuania (hereinafter - "the LHSE"). One of the obligations is the compulsory management of psychosocial risks. Lithuanian law recognises that psychosocial factors such as working conditions, requirements, organisation, content, and relationships between employees and with the employer can cause mental stress to an employee.⁸⁷ Thus, employees have a legitimate expectation to work in a safe working environment, including psychosocial safety.

Those two employer obligations (under Article 30 of the LC and the LHSE) are very similar. However, without clear legal statement that negative psychological effects, named in Article 30 of the LC, have consequences on the victim's health, at least the following practical issues arise:

- a) the role of employee health and safety representatives in preventing mobbing, bullying and harassment at work is blurred;
- b) it is unclear whether the victims are entitled to use certain legal self-protection mechanisms;
- c) it is unclear whether the victims' protection(s) step into a field of social security law.

4.2.1. The role of employee health and safety representatives

Employers are obliged to organise an assessment of occupational risks to the safety and health of employees, to discuss the results of the assessment of psychosocial factors with employees and their representatives, that is to say, to ensure a working environment is free from dangerous and harmful factors, including psychosocial factors, that pose a risk of harm to health, and, if such risks exist, to take measures to reduce and eliminate them.⁸⁸ In order to be effective, the risk assessment must be updated without delay if conditions in the organisation change to the extent that a new risk to the health of employees is likely to arise or increase.⁸⁹ The results of the SLI inspections show that employers find it most difficult to carry it out regularly, possibly for reasons such as not seeing the need to revise the established preventive measures or to update the psychosocial risk assessment, due to a lack of time and/or lack of human resources⁹⁰. Therefore, the role of employee representatives in carrying out together with employers a regular monitoring of negative psychological effects in work environment and updating of preventive measures is crucial.

As per legislation, employers are obliged to discuss the results of the psychosocial factors' examination with employees and their representatives, including health and safety representatives. Nevertheless, in Lithuania, similarly to Estonia, as compared with other EU member states, health and safety representatives are asked to tackle

⁸⁶ Methodological Instructions on the Examination of Psychosocial Risk Factors approved by Order No V-699/A1-241 of the Minister for Health of the Republic of Lithuania and the Minister for Social Security and Labour of the Republic of Lithuania of 24 August 2005, Official Gazette (No. 105-3897, 2005).

⁸⁷ Ibid., point 3.9.

⁸⁸ Articles 19(2), 39(3) and 40(1) of the Law on Health and Safety of Employees and Article 158 of the Labour Code.

⁸⁹ General Regulations on Occupational Risk Assessment, approved by Order No A1-457/V-961 of the Minister for Social Security and Labour of the Republic of Lithuania and the Minister for Health of the Republic of Lithuania of 25 October 2012, current version, § 18.

⁹⁰ Supra note 77.

bullying and harassment in the workplace most seldom.⁹¹ In 2020 it was found that only 54.6% of all inspected organizations⁹² had updated or revised the preventive measures foreseen. Also, the analysis of the data from the inspections carried out suggests that it is problematic for the employer's appointees who carry out the assessment of psychosocial occupational risk factors to design and implement effective preventive measures to eliminate and/or reduce these risk factors. <...>⁹³.

According to a survey of the presidents of Lithuanian trade unions (N=25) carried out in 2023,⁹⁴ the role of employees' health and safety representatives in the prevention of negative psychological effects at work and in the investigation of complaints at workplaces is low. Respectively the processes of psychosocial risks assessment through employees' health and safety representatives, as well as the management of the acts referred to in Article 30 of the LC, are still seen as separate by employees' representatives themselves.

4.2.2. Can victims of unlawful negative psychological affects in the work environment use all existing self-protection mechanisms?

An employee has a right at his/her initiative to suspend temporally employment contract or terminate it if the employer for two or more consecutive months fails to fulfil its obligations emerging by occupational health and safety (Article 50, par. 1, Article 56, par. 1 point 2 of the LC). Labor inspectors, in accordance with the SLI regulations, deal with disputes between employees and their employers over the refusal of a employee to work on the grounds that safety and health are not guaranteed.⁹⁵ It should be assessed to what extent the application of the appropriate measure would be adequate (proportionate) in the specific case⁹⁶. However, as Article 30 of the LC is directly related to protection of dignity and honour, not health, there is no certainty if an employee in case of negative psychological affects (harassment, bullying, etc.) and /or in cases where employer does not take appropriate measures provided in Article 30 of the LC, has the right and even legal power to claim that employer fails to fulfil its obligations emerging by occupational health and safety.

⁹¹ Kazuo Sugeno, supra note 19, 8. EU-OSHA. European Agency for Safety and Health at Work (2010b). European Survey of Enterprises on New and Emerging Risks (ESENER). Managing safety and health at work. European Risk Observatory Report. Luxembourg; Publication Office of the European Union. Available: Eurofound (2012).

⁹² SLI by it's Order of the Chief State Labour Inspector of the Republic of Lithuania No EV-173 dated by the 26th of July, 2021 "On the Declaration of Compliance with Legal Requirements for Psychosocial Risk Assessment and Prevention of Mobbing at Work and Submission of a Thematic Report to the State Labour Inspectorate of the Republic of Lithuania under the Ministry of Social Security and Labour" [Lietuvos Respublikos vyriausiojo valstybinio darbo inspektoriatas 2021 m. liepos 26 d. įsakymas Nr. EV-173 „Dėl psichosocialinės rizikos vertinimo bei mobingo darbe prevencijos atitikties teisės aktų reikalavimams deklaravimo ir Teminės ataskaitos pateikimo Lietuvos Respublikos valstybinei darbo inspekcijai prie Socialinės apsaugos ir darbo ministerijos“], TAR (2021-07-26, Nr. 2021-16466) obliged 1878 companies and organisations to assess compliance with the legal requirements for psychosocial risk assessment and prevention of workplace mobbing, in accordance with the Thematic Report, and to submit such information electronically to the SLI by 15 September 2021. Undertakings that have done so have not been subject to scheduled inspections in 2021, with visits by SLI inspectors presential.

⁹³ Ibid.

⁹⁴ Survey of the presidents of the primary trade unions of Lithuanian Trade Union Solidarumas carried out in September 2023 regarding the monitoring of the application of the provisions of the National Collective Agreement of 10 October 2022 relating to ensuring the psycho-emotional health of employees.

⁹⁵ Order of the Minister of Social Security and Labour of the Republic of Lithuania No. A1-316 of 12 May 2009 "On the Approval of the Provisions of the State Labour Inspectorate of the Republic of Lithuania under the Ministry of Social Security and Labour," Official Gazette of the Republic of Lithuania (2009, No. 58-2262, point 23) [Lietuvos Respublikos socialinės apsaugos ir darbo ministro 2009 m. gegužės 12 d. įsakymas Nr. A1-316 „Dėl Lietuvos Respublikos valstybinės darbo inspekcijos prie Socialinės apsaugos ir darbo ministerijos nuostatų patvirtinimo“, Žin. (2009, Nr. 58-2262, 23 punktas)].

⁹⁶ Tomas Bagdanskis, supra note 67, 111.

The SLI is responsible for the prevention of occupational health and safety infringements and the monitoring of compliance with the relevant legislation.⁹⁷ Among other things, the SLI investigates administrative offences and draws up reports on infringements of the labour laws and occupational health and safety legislation as provided for in Article 96 of the Code of Administrative Offences of the Republic of Lithuania (hereinafter - "the CAO").⁹⁸ If the inspectors of the SLI find violations of the regulatory legal acts governing occupational health and safety and labour relations, they are obliged to issue an order to the employer.⁹⁹ However, there is no clarity if the SLI has a powers to intervene in cases of refusal of an employee to work in case they experiencing negative psychological effects (Articles 30 and 50 of the LC) or only in case when certain documentation such as the assessment of psychosocial risk factors, or the policy on the prevention of violence and harassment is not in place or not updated when necessary. The CAO does not provide for any specific responsibility of employers in case employees experience negative psychological effects in work environment as employers do not take necessary measures provided for in Article 30 of the LC. However legal dispute practices demonstrate that importance is assigned to occupational health and safety requirement in those cases. A dispute in connection with an SLI's order regarding psychosocial risk factors in the form of inappropriate treatment of employees by management was brought before the Klaipėda Regional Court. The SLI found that the manager violated the obligation to assess occupational risks by failing to organise and delegate to an authorised person to organise the assessment of psychosocial risk factors. The order specified that the manager failed to identify the subject of the risk assessment, to carry out an investigation, to determine the likelihood of occurrence of the risk factors and the magnitude of the risk, to envisage and implement sufficient preventive measures to eliminate/mitigate the risk.¹⁰⁰ In assessing the confidentiality standards applicable to the investigations of the SLI, the court held that failure to disclose the precise reason (how and when the factors manifested themselves) for the manager's obligation to carry out an occupational risk assessment to occur does not render the order itself unclear and vague and does not relieve the manager of his obligations under the law. The court also held that the mere communication to the SLI of the planned stages of such assessment, including the intention to select a service provider, could not amount to proper and timely compliance with the order.¹⁰¹

The powers of the SLI in question are important as they illustrate legal recognition that those inappropriate relations at work, which correspond to the elements of the offences provided for in Article 30 of the LC (in the above case, inappropriate conduct towards employees by the employer's administrative managers), pose a risk to the health of workers.

⁹⁷ Article 4 of the Law on the State Labour Inspectorate of the Republic of Lithuania, Official Gazette (No. 102-4585, 2003).

⁹⁸ Article 589(58) of the Code of Administrative Offences of the Republic of Lithuania, TAR (10 July 2015, No. 2015-11216).

⁹⁹ Supra note 96, Article 9(2)(1). Judgement of the Vilnius Regional Administrative Court of 23 February 2021 in administrative case No. eI2-639-281/2021.

¹⁰⁰ Ruling of the Klaipėda Regional Court of 10 June 2022 rendered in administrative proceedings No. AN2-131-360/2022.

¹⁰¹ Ibid.

4.2.3. Negative psychological effects and inability to work under social security laws

The interviews show that the continuous and repetitive psychological effects in a longer period interfere with the victims' lives and have consequences on their social relationships, dignity, health and therefore it can bring a labor disability and unemployment. The employee will incur costs of physiotherapy and other medical treatment, as well as other costs, which could be avoided if he/she would not have faced this neglect in work environment. As per Article 155 of the LC, in cases where the employer is obliged to compensate the employee for damage caused by the employee's injury to health or death, or by the employee's occupational disease, such employer's obligation applies only to extent that the damage is not covered by state social insurance benefits (par. 2).

Creating preconditions to treat situations of moral harassment or other negative psychological effects in the work environment as an insured events in legal terms is a complex process requiring specialized knowledge, actors and customized mechanisms that are only partially in place in Lithuania.

Lithuanian laws^{102, 103} provide a uniform definition of an occupational disease, i.e. an acute or chronic impairment of a worker's health caused by one or more harmful and/or dangerous factors in the working environment, and recognised as such disease. The legal concept of occupational disease, under the law does not preclude the legal framework from recognising it as such in cases where employee's medical condition is caused by an undue psychosocial impact at work. However, the sub-legislation specifies that occupational diseases can only be caused by chemicals, infectious and parasitic diseases, physical and ergonomic factors¹⁰⁴. Sub-legislation presently seems to be narrowing the scope of law.

The employee has a right at his/her own initiative to temporarily suspend their employment contract or terminate it if the employer for two or more consecutive months fails to fulfil its obligations emerging by occupational health and safety. However, there is no legal clarity if employee is entitled to such rights in case of bullying or harassment at work. Social security laws do not single out specific guarantees for such victims in the event of unemployment, temporary incapacity for work or occupational disease.

Blurred recognition that negative psychological effects in the work environment can cause damages to employees' health, and is one of the reasons that the state social insurance system is not adapted to specific legal status of the victim. There is not even a public dialogue on whether negative psychological effects at work should be recognized as insured events in Lithuanian legislation.

In summary: the problem of bullying and harassment is not sufficiently perceived as an occupational health and safety issue in Lithuanian legal system. This incomplete understanding of the relationship between negative psychological effects at work as a psychosocial factor and occupational health is surely one of the reasons why there are no clear legal preconditions to protect victims' social security rights.

¹⁰² Law on Health and Safety of Employees of the Republic of Lithuania (Darbuotojų saugos ir sveikatos įstatymas), Žin. (2003, Nr. 70-3170, Article 2, par. 29).

¹⁰³ Law on social insurance for accidents at work and occupational diseases (Lietuvos Respublikos nelaimingų atsitikimų darbe ir profesinių ligų socialinio draudimo įstatymas), Žin. (1999, Nr. 110-3207; 2003, Nr. 114-5114, Article 3, par. 13), TAR (2016-07-05, Nr. 2016-18827).

¹⁰⁴ Resolution of the Government of the Republic of Lithuania of 30 November 1994 No. 1198 "On the Approval of the List of Occupational Diseases and the Provisions of the State Register of Occupational Diseases of the Republic of Lithuania" ("Dėl Profesinių ligų sąrašo ir Lietuvos Respublikos profesinių ligų valstybės registro nuostatų patvirtinimo"), Official Gazette of the Republic of Lithuania (1994, No. 94-1845) (new wording as of 19.11.2019 Official Gazette of the Republic of Lithuania, 2019, No. 2019-18426).

CONCLUSIONS

There is a consensus in legal doctrine that negative psychological impact in the work environment causes occupational stress. Various scientific studies have shown that the consequences of such impact, although of a non-physical nature, damage the victims' mental and physical health, leading to the development of specific illnesses and even to suicide in the long run.

It is precisely this recognition in foreign legal systems that allows the development of a specific, multidimensional practice for the defence of victims' violated rights, *inter alia*, by protecting their right to health, mental and emotional fitness, physical and moral integrity, and, at the same time, the right to develop personality at work, dignity, and future career.

Employers in Lithuania have the legal duty to manage psychosocial risks since 2005. The LC of 2017 created additional duties of employers to protect the honour and dignity of employees and to compensate victims for damage suffered as a result of negative psychological effects at work. However, the links between those employer's rather modern duties and corresponding employee's rights are ambiguous. On the one hand, the visual separation of honour-dignity protection from health protection creates a greater variety of rights and obligations for the parties of the employment relationship. On the other hand, it leads to a vague recognition that psychological effects may be harmful to the employees' health. Victims face prejudices, inert and non-progressive attitudes that acts in question are unrelated to their health damages. Those attitudes, together with legal unclarity, discourage the defence of the right to healthy working conditions. There is no uniform standard as to the content of certificates from a health care institution that must be recognised as appropriate evidence for the purpose of seeking compensation for damage to health. Similarly, employees' health and safety representatives do not recognize their role in tackling specifically bullying and harassment.

Victims are subject to psychological pressure to leave their jobs, excessive tasks and requirements, transfer to another place of work, harassment, bullying, neglect, which results in usually long-term stress, and consequent health problems. Despite that, there is no legal recognition that those health problems might be recognized as an occupational disease. Currently, there is no legal clarity if employees who feel victims of such illegal acts have a right to exercise self-protection measures, such as temporal suspension of employment contract. Instead, a significant number of victims terminate their employment contracts at their own request.

A clearer legal recognition that negative psychological effects harm employees' health would substantially broaden the concepts of safe workplace and decent work. Eventually, this legal recognition or clarity would have a practical impact at least in several aspects. First, the scope of victims' rights protection would be expanded into social security field. Second, the powers of employees' health and safety representatives in helping the employer to ensure the prevention of psychological harassment in the working environment and manage it would be escalated. Third, victims would be empowered to use self-protection mechanisms, such as suspension of employment contract. Additionally, a greater importance to the qualifications of human resources managers would be given.

In legal practice, with a view to developing the protection of victims' rights, it is essential to take advantage of the achievements of other scientific disciplines, such as

sociology, medicine, psychology. Consequently, joint multidisciplinary dialogue on how to strengthen occupational health perspective in protection from negative psychological effects in work environment and corresponding research is crucial.

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