

Abstrakt

Characteristics of the problematics

Violence on workplace is a very severe social problem, which includes a very wide complex of various illegal conduct, interfering personal rights of an employee and decreasing his dignity. In my habilitation thesis, I included the chapter about monitoring of employees, whose privacy rights and dignity might be violated by the unacceptable monitoring.

The next chapter is about equal treatment and protection against discrimination, that roots from the legislation of the EU. In the Czech labor law exists a principle of equality and protection against discrimination, that is included in the Antidiscrimination Law and in the Labor Code.

In cases of objected discrimination, the institute of shared proof of burden is applied, which facilitates the proces to the victims. In legal literature, the principle of equal handling and protection against discrimination is very well elaborated. The thesis analyses even the resources for protection against discrimination and their reflection in jurisdiction of courts. In next chapter, I am dealing with the problem of protected reporting of harmful conduct, that may hinder the sanctions against employees, especially before the termination of employment relation. In the field of another violence on workplace, that cannot be subordinated to any other reasons in Anti- Discrimination Law, the legislation is missing. The violence on workplace in form of bullying, mobbing and bossing is a severe problem, that is not elaborated in legislation. No law defines bullying, mobbing or bossing and there is no particular factual nature of this conduct in the Labor Code or Criminal Code. The Labor Code does not even restrict nor punishes mobbing on the workplace, however it can be considered as severe violation of duties at the workplace and that is the reason for an employer to immediately terminate the employment relationship with the mobber for severe or gross violation of duties at the workplace.

The employer is liable to any damage, caused to the victim of mobbing by the principle of general obligation to pay damages. Mostly, the liability will be applied in relation with the harmful conduct of employees, that have acted harmfully during the performance of their duties and in direct connection with the name of an employer. The employer is also liable to work injuries, that were caused to the victim of mobbing and were caused during performance of duties or in direct connection with them. We consider a lack of legislation, that in the list of

occupational diseases, there are no psychical illnesses included, such as posttraumatic stress disorder.

Apart from the current protection provided by the Criminal Code and Labor Code, the employee may aswell defend himself with the action, claiming protection of personality. For the punishment of violence on workplace, the jurisdiction of Czech courts plays a great role.

There is indeed a question, whether the legal protection of the employee from mobbing is sufficial and whether the prohibition of mobbing should be implemented into the labor code or perhaps to the Criminal Code. The thesis is aswell enriched by two foreign legislations, specifically by the French legislation, that apart from mobbing, contains aswell a prohibition of discrimination and sexual harassment, aswell as moral harassment (mobbing). The second country is Spain, where the mobbing is regulated only for the branch of public administration and that is aswell very inspirational for the variety of jurisdiction.

The thesis does not include however other forms of violence at the workplace, for example straining and other intervention to the rights of an employee, such as disconnection from the employer. The thesis does not aswell include the interpretation of possibilities of out-of-court dispute resolutions, such as through mediation, because of low number of such cases aswell as its inconvenient traceability.

One of the main principles of the labor law is the principle of prohibition of violation of law, that is now elaborated in § 1a let. a) Labor Code as a principle of special statutory protection of the employee. From this principle, we may deduce positive and negative limits of subjective laws and duties, limited on the one hand by good manners and on the other by the prohibition of violation of law.

No conduct can be considered in accordance with the law and against the law simultaneously. So states the motto of thesis: „nobody is allowed to misuse his rights, employer towards employees and employees towards the employer, aswell and employees between themselves.“

Objectives of the thesis

The main research question solved in each chapters of the habilitation thesis is to find out, whether the employees in the Czech Republic are sufficiently protected from various forms of violence at the workplace and whether it might be useful to get the inspiration de lege ferenda in the described foreign legislations. For answering such question, it is crucial to describe the situation especially in the labor code, aswell as in the Personal Data Protection Act, the Anti-Discrimination law, the Labor Inspection Act, (marginally) in the Civil and Criminal Code. I have drawn the information from enlisted legislation, legal and sub-legal, from Czech and

foreign literature and jurisdiction. The thesis is based on the international context of human rights regulation, the ILO conventions, the European Convention for the Protection of Human Rights and Fundamental Freedoms and, last but not least, European Union law.

The first chapter seeks to determine whether the employee is legally provided with a reasonable level of privacy in the workplace, what capabilities and limits the employer has in monitoring employees, especially when using telecommunication devices on their part. It is not possible to deny employers controlling their employees while using IT equipment, but it is necessary to determine the intensity and under what conditions. Each form of violence in the workplace can take the form of employee control by the employer, which we must demand as a legitimate procedure, while retaining the dignity of the employee. The chapters dealing with the principle of equality and non-discrimination in labor relations is the answer being sought whether the legislation provides employees with sufficient protection against discriminatory behavior by the employer and whether Section 10 of the Anti-Discrimination Act provides real and effective legal protection in court proceedings.

The chapter on the legal regulation of protected disclosure of harmful conduct aims to determine whether the legal order protects employees against termination of employment relation at this conduct when such legislation is missing in the Czech Republic and the protection of the notifier is contained only in Government Decree No. 145/2015 Coll., which introduces measures in case of notification of suspected offenses in the service office.

The key issues of the chapters on labor law and other aspects of bullying at the workplace are whether the employee is adequately protected from mobbing at the workplace, whether the Labor Code and other legislation provides with effective punishment of mobbers, and whether, if necessary to what extent, the employer shall be obliged to compensate damages caused by the employee. Chapters on French and Spanish legislation seek to answer the question of how the law can protect employees against violence at work, which legal instruments are the most effective and most appropriate.

Methods of work

The basic scientific method that permeates the whole work is the method of analyzing the legal regulation of all mentioned forms of violence at the workplace. The legislation is subjected to a systematic and teleological interpretation and general starting points are deduced. The work is accompanied by court decisions, which in many cases complements the gaps in the legislation. An important scientific method of examining the chosen topic is the comparison with the French and Spanish legal regulations, from which it is possible to infer

the possibilities, in which direction Czech legislation should be pointed, especially in the area of legal regulation of mobbing at the workplace. In order to achieve the stated goals, the methods of deduction, legal logic and, where appropriate, historical interpretation were used. The aim of the thesis is to refer to the different forms of violence at the workplace, to critically analyze the valid legal regulation with regard to whether it provides sufficient protection to the employees, and in comparison with the foreign legislation to propose a possible *de lege ferenda* solution. Due to the fact that my thesis has a large extent, containing most significant forms of violence at the workplace, it will not deal with exceptions in individual chapters with historical developments.

Achieved results

The employer has an understandable interest in controlling his employees with regard to the protection of his property, which may consist in carrying out checks of objects that the employees bring or take away, the control of technological and other work approaches, as well as health and safety at work control of employees and the control of their performance. It is clear that the employer has the right to monitor the employees, but the employee should be aware of the nature of the monitoring and the employee must be notified of it in advance.

Monitoring of employees must be proportionate, the employer must demonstrate the legitimate reasons for the monitoring of employees, which consists of determining the number of employees monitored and how many employees have access to monitoring results.

Employers should consider what is necessary to monitor and, if necessary, infer less severe consequences for a breach, other than termination of employment relation. Employers should always consider whether the monitoring has been used for the intended purpose and whether personal data of the employee have not been misused. Proportionality of employee monitoring, which should be reviewed in every litigation, points to a very thin line between acceptable and unacceptable monitoring.

The more thorough the monitoring of employee shall be, the more paradoxical worsening of working conditions in the workplace and the decrease in employee's performance can develop, which may be due to increased work-related stress and tension at the workplace. Employee monitoring can also be considered as a form of violence against employees if they were subject to inadmissible monitoring that violated the privacy and dignity by the employer or employees acting on his behalf.

It follows from the principle of equal treatment and prohibition of discrimination that an employer must treat workers in the same way and that none of them may be favored or

disadvantaged on behalf of discriminatory signs.

Any discrimination is prohibited in labor relations. Discriminatory reasons and concepts of direct discrimination, indirect discrimination, harassment, sexual harassment, etc. are elaborated by the Anti-Discrimination Act. The essence of discrimination is the difference in treatment due to race, ethnicity, nationality, gender, sexual orientation, age, disability, religion, belief or worldview. The legal means of protection against discrimination are regulated by §10 of the Anti-Discrimination Act, which defines the abolition of discrimination, the elimination of the consequences of discriminatory intervention and the possibility of requiring adequate satisfaction.

This is also the compensation for non-pecuniary damage to money, in particular because the good reputation or dignity of a person or his seriousness in society has been greatly reduced as a result of discrimination. There is also the monetary compensation for non-pecuniary damage, in particular because the good reputation or dignity of a person or his seriousness in society has been greatly reduced as a result of discrimination. The diction of antidiscrimination law causes, that discriminatory disputes before the Czech courts do not remove the consequences of discrimination and that real and effective legal protection is not ensured, as required by EU law. Due to the problematic enforceability of the law in cases of violation of equal treatment and in cases of discrimination, the Civil Procedure Code introduced a provision of §133a, which is a transposition of EU directives on the burden of proof in cases of discrimination. Yet, in most cases, actions are dismissed.

Protected notification of malicious behavior is currently not regulated in the Czech Republic by any complex legal regulation. Although there have been several attempts to legislate, none has been accepted yet. The protection of the notifier is awarded only to civil servants under Government Decree No. 145/2015 Coll., Which introduces measures in the case of notification of suspected offenses in a service office. However, this regulation does not provide protection for the notifier before termination of employment relation. A key part of the proposed law should be the protection of the employee from sanctions, disadvantages imposed by the employer, discrimination or mobbing and, in particular, before terminating the employment relationship. The status of a protected notifier should be obtained by an employee as soon as he notifies the harmful conduct in the public interest, whether it is a minor offense or a criminal offense. The law should also contain the requirement in case of notification by an employee in a good faith.

A significant lack of legal regulation is the lack of protection of the victims of mobbing, especially if it occurs with the tacit consent of the employer. De lege ferenda, the legislator

should focus on greater protection of employees affected by mobbing. One option is to insert into the Labor Code a special factual nature of the "immediate termination of the employment due to mobbing" whereby the employees would have been entitled to a severance allowance eg. six times the average monthly earnings. Employers should also focus more on preventing such behavior, for example in cooperation with the trade union. We believe that the Act on Labor Inspection should include the factual nature of the administrative offense of "not preventing the occurrence of mobbing at the workplace" for which the employer would be affected. Given that mobbing is generally difficult to prove, it would be appropriate to extend the shared burden of proof even to cases of mobbing in the workplace, when it is not motivated by any of the prohibited discriminatory reasons listed in the Anti-Discrimination Act. Also, in the Criminal Code, in addition to the already modified stalking, the factual basis of the general ban on mobbing could be included, which would not only cover the area of labor relations.

For Czech legislation, it can be seen as an inspirational source of legal regulation in France. In addition to prohibiting of discrimination, it generally includes a ban on labor union discrimination and a ban on sexual harassment, and also prohibits mobbing in the workplace, which it described as moral harassment. It protects victims and witnesses of mobbing by the Labor Code and the Criminal Code.

In labor cases, the burden of proof is shared in all cases, which allows a better defense of the victim. Spanish law does not regulate explicit protection of employees against mobbing in any (general) law except of in the area of public administration. Violence at the workplace violates fundamental rights and freedoms enlisted in the Constitution, in particular the right to equal treatment and the right to human dignity. The area of public administration is governed by the Act on the Basic Statute of a Public Administration Employee, which has determined that moral harassment (mobbing) is a disciplinary offense.

The process of dealing with harassment in public administration is governed by a decree stating specific negotiations and procedures to prevent harassment at the workplace in the field of public administration, as well as procedures and sanctions for cases where it occurs. I believe that the thesis provides a thorough analysis of all these forms of violence at the workplace, especially from the point of view of labor law, in comparison with the above mentioned foreign legislature. Legal protection should include protection of employees in reporting harmful conduct and, in particular, protection against mobbing at the workplace, which should include protection of employees by the court.

The thesis is processed to the legal status valid on 1 October 2017.