



Legal Dilemma Regarding Mobbing In Public Law: Is It Administration Or Discrimination?

Begüm İSBİR^{1*}

^{1*}Associate Professor at Turkish National Police Academy, Department of Administrative Law, Orcid No: 0000-0002-1487-3879. Turkish National Police Academy Department of Administrative Law, begumisbir@hotmail.com

Abstract

Wherever people are together, the need for order arises. The need for order is also the basis of administrative activities. Especially in terms of the execution of public services; it is difficult for a public official who is exposed to mobbing the workplace to provide services without interruption. At first glance, it can be thought that the act of mobbing in the workplace negatively affects the public official who is exposed to this act. However, it is clear that in general, all administrative activities will be adversely effected by the act of mobbing in the workplace. The basic assumption of the study is to investigate the effects of mobbing in the workplace on the public official's personality, whether fulfill its administrative activities properly. Whether the act of intimidation in the workplace will cause service defect in the long run is one of the issues that should be briefly examined. In order to determine the criteria of mobbing in the workplace regarding the administrative law, many institutions related to judicial decisions and human rights can be examined. However, it is preferred to investigate the act of mobbing in the workplace only from the perspective of public law.

Keywords: mobbing in the workplace, public order, right to work, public service, discrimination, administrative law.

INTRODUCTION

Articles 48 to 50 of The Constitution of Turkish Republic (1982) contain regulations regarding "work as a fundamental right and freedom". Although work is generally regulated as both a right and a duty; some obligations have been given to the state. The main regulation regarding the working conditions that the state will provide to all employees in the public and private sectors is contained in the 2nd paragraph of Article 49 of Turkish Constitution 1982. According to this; "The state takes the necessary measures to raise the standard of living of employees, to protect employees and the unemployed in order to improve working life, to support work, to create an economic environment conducive to preventing unemployment and to ensure labor peace." The state's obligations to "protect employees, support work, and take necessary measures to ensure labor peace" included in this provision in the Constitution also include the protection of employees against each other in the working environment.

On the other hand, stemming from the regulation "Everyone has the right to live, protect and develop their material and spiritual existence" in the 1st paragraph of Article 17 of the Constitution, "people have the right to protect themselves from all kinds of acts and behaviors that will harm their material and spiritual assets in the workplace". It follows that it has. Because there is a direct connection between Article 17 of the Constitution and the international texts regulating this field (Göztepe Çelebi, 2015, 328).

Achieving labor peace is possible by regulating interpersonal relations. However, in some cases, working peace and performing duties in a peaceful environment lead to people not being able to adequately transfer their existing talents to the working environment, and service efficiency and quality to decrease. This act, which is today expressed as mobbing in the workplace; it is no longer just a psychological concept. What needs to be examined in a legal sense; it has become a concept that must be defined, especially from the perspective of human rights and public law. One of the reasons for writing this article is the concept in question; it is to focus on the common or divergent points between the decisions of Human Rights and Equality Institution of Türkiye (HREIT) and judicial decisions. Because "Mobbing in the Workplace", which is also included in subparagraph (g) of the 1st paragraph of Article 2 of Human Rights and Equality Institution of Türkiye (HREIT) Law No. 6701, is a "Type of Discrimination" in subparagraph (e) of the 1st paragraph of Article 4 of this Code. According to Article of Law No: 6701, mobbing in the workplace; it includes "deliberate actions taken to alienate, exclude or bore a person from his/her job, based on the grounds of discrimination listed in this Law".

In this paper; the legal definition of the concept of mobbing in the workplace, the criteria used by HREIT in its determination of acts of mobbing in the workplace, the decisions made, and the similarities or differences in the perspective of the Constitutional Court, the Council of State on the concept in matters submitted to the judiciary will be examined.

In this paper; the legal definition of the concept of mobbing in the workplace, the criteria used by public law in its determination of acts of mobbing in the workplace, the decisions made, and the similarities or differences in the perspective of the Constitutional Court, the Council of State on the concept in matters submitted to the judiciary will be examined.



I. DEVELOPMENT OF THE CONCEPT OF MOBBING IN THE WORKPLACE

Social developments enable the emergence of new concepts. Mobbing in the workplace, which could not be named in the past but today directly affects productivity and personal development in working life, is also explained in the legal extent. Literally, mobbing in the workplace means “*indecisive crowd*” (Yiğit, 2018, 34).

When considered realistically, it can be said that mobbing exists in the workplace in every period where interpersonal relations exist. One of the main reasons for its conceptual emergence is the increasing awareness of people about this act. The direct relationship between workplace mobbing and personal, psychological reactions and work efficiency contributes to the formation of the mentioned awareness. In fact, if we go one step further, the connection of mobbing in the workplace can be considered in terms of the efficiency of public services.

The main reason why people want to commit mobbing in the workplace is that they want to ensure that the person (victim) who is exposed to this act is an employee who is not respected and ignored. In other words, the victim of mobbing in the workplace has a high rate of professional experience, good manners, knowledge and commitment to ethical values, which can come to the fore in the workplace (Öztürk et al., 2015, 28). Applying the act of mobbing to a person with this characteristic in the workplace causes the victim to have serious lack of self-confidence and stress.

A. Conceptual Analysis of the Action of Mobbing in the Workplace

It is essential to review communication-related competencies in order to make human relations effective and efficient in communities. Interpersonal relationships; when evaluated from a legal perspective; it differs between public law and private law.

When it comes to interpersonal relations¹ in the field of private law; it is possible to encounter results that may vary due to the influence of psychological factors. For example; when establishing a debt relationship, if the declaration of will of person (A) and the declaration of will of person (B) do not match; a valid legal relationship is not possible. In this case, attention should be paid to psychological factors affecting will declarations. On the other hand, the situation is slightly different in legal relations in the field of public law. As a matter of fact, in public law relations; one of the parties is definitely the state representing the “public power”².

When one of the parties uses public power; the person representing the other party (natural or legal person) is deprived of the authority to exercise public power. In this case, the person is in a position where superior and privileged powers are exercised over the administration. Therefore, the legal situation of individuals vis-à-vis the administration must be balanced. At this point, the element of balance is the principle of the rule of law. By incorporating the rule of law principle; negativities arising from public power and pushing the limits of people’s fundamental rights and freedoms can be prevented. At this point; the issue of mobbing in the workplace by administrations should be examined. Because, there are serious differences in terms of provisions and consequences between the act of mobbing in the workplace when it is committed in the field of private law and when it is committed by an administration in the field of public law.

In a narrow sense, workplace mobbing refers to emotional attack. Understanding what the act of mobbing in the workplace means in general terms depends on determining the criteria of this act. Mobbing in the workplace, which concerns law, psychology, sociology and many other disciplines, will be subject to a legal explanation in terms of this study. Workplace mobbing, which is literally considered a crime against humanity is a word of Latin origin and is called “*mobile vulgus*”. In this context, in addition to definitions such as “*mob attack, continuous attack in a crowd, psychological terror*”; it is also expressed as “*harassment*” in the Turkish Language Association Dictionary (<https://sozluk.gov.tr>).

“*In workplaces, schools, etc. the concept expressed as “intimidation, exclusion, discrediting by targeting a specific person within the communities, systematically preventing their work and causing them to become uneasy*” (<https://sozluk.gov.tr>); it also means psychological intimidation and exposing a person to continuous and systematic psychological violence. According to one view, one of the main reasons why workplace mobbing has become widespread in recent years is the intensity of unemployment (Tetik, 2010, 2). It is not possible to accept the same assumption in terms of public administration. As a matter of fact, the main reasons for mobbing in the workplace among public officials are; failure to observe public ethics, weaknesses in business ethics, personal and political motives.

Another meaning of mobbing in the workplace is “*emotional terror*” (Çobanoğlu, 2005, 20-21). Frequently seen acts related to the emotional terror to which the person is subjected; this includes preventing communication with others, removing oneself from the social environment, interfering with one’s life, and hindering one’s professional development. In terms of public administration, the forms of applied acts and behaviors may vary.

¹ The concept of person is used in the legal sense for real and legal persons.

² The concept of state refers to the administrations and public legal entities included in the state legal entity. The concept of “administration” in a broad sense can also be used in this regard.



For example; a public servant is systematically subjected by his superior to practices contrary to the principle of equality regarding his personal rights (unfair and unjustified cancellation of annual leave, constant praising of other public servants but ignoring the person subjected to intimidation in the workplace, constant criticism of the work done, increasing the workload, condescending.) Examples include talking and behaving, and constantly calling outside working hours.

Mobbing in the workplace does not concern a single area of law. Although it is a subject of examination in the fields of labor law and civil law; it needs to be investigated in terms of criminal law, constitutional law and administrative law. In this respect, the concept concerns public and private law simultaneously. Before examining this concept from a legal perspective, the emergence of the concept and the development process of the concept today will be included.

B. Development of the Concept in Historical Perspective

"*Mobbing*", which was first used in the world by Heinz Leymann (Leymann, 1996, 167-168), was generally defined with "*Leymann's expression*" in Continental Europe. The first attempts to define the act of mobbing in the workplace were accepted in the 1960s, when Austrian researcher Konrad Lorenz described the behavior of animals against each other (Tetik, 2010, 81; Dalgaldere, 2019, 5).

Workplace mobbing, which has been used to explain interpersonal behavior over time; it is seen that in Anglo-Saxon countries it is called "*bullying*" and expressed as "*bullying*" (Limoncuoğlu, 2013, 53; Tetik, 2010, 82). In this respect, it can be interpreted that Anglo-Saxon Countries attribute more severe consequences to the act of mobbing in terms of the psychological scars it leaves on the person. However, the basis of all acts of mobbing in the world is targeting a person in order to drive him to despair, especially in his working life, and to render him unable to work.

The first country in the world to legally recognize the act of mobbing in the workplace is Sweden. The act of mobbing in the workplace was accepted in terms of terminology in Türkiye after the 2000s. In the doctrine, the act of mobbing in the workplace and suggested the use of the word "*deter and carry off*" to express "mobbing" (Tınaz, 2011, 27). It can be said that the acceptance of workplace mobbing in the literature in Turkish Law is primarily in the field of public law. As a matter of fact, the Prime Ministry Circular named "*Prevention of Psychological Harassment in Workplaces*" was put into effect in 2011 in Türkiye³. This circular, issued within the framework of the administration's regulatory authority, is also a precursor to the Turkish Code of Obligations numbered 6098 that will come into force in 2012.

In the 1st paragraph of Article 417 titled "*Protection of the Personality of the Worker*" of the Code of Obligations, which came into force in 2012; the following statement is included: "*The employer is obliged to protect and respect the personality of the worker in the service relationship, to ensure an order in accordance with the principles of honesty in the workplace, and to take the necessary precautions, especially to prevent workers from being subjected to psychological and sexual harassment and to prevent further harm to those who have been subjected to such harassment.*" The legislator also accepted the concept of "*psychological harassment*" in Turkish Law, mentioning the obligation of employers to protect employees from psychological harassment. On the other hand, the "*Psychological Harassment (Mobbing) Information Guide in the Workplace*" issued by Turkish Ministry of Labor and Social Security in 2013 also states that the issue is taken into consideration by the state legal entity.

Today, workplace mobbing is defined in doctrine as follows; it occurs by committing any one or more of various acts that may cause psychological harassment. In other words; instructions given by the supervisor about giving work that is not within the scope of their duties in the workplace, being underestimated in terms of attire, not being invited to social events at the workplace, being scolded, not being able to use leave rights (not giving permission directly or canceling it later despite taking leave), and bad behavior of other colleagues can be given as examples. In this respect, the development of the concept varies according to the actions that emerge. The change in the concept of workplace with the advancement of technology and the emphasis on working from home methods after the pandemic will cause the act of mobbing in the workplace to be defined more broadly.

In other words, the act that constitutes intimidation or psychological harassment is not committed directly in the workplace, but it is inevitable for a person to encounter mobbing even in methods such as working from home or working online. In this respect, institutions/organizations or judicial authorities examining mobbing should not overlook that the concept may change from day to day. On the other hand, the health and education sectors are among the areas where mobbing occurs most in the workplace (Tetik, 2010, 82).

³ Circular on the Prevention of Psychological Harassment (Mobbing) in the Workplace, *Official Gazette*. 19.03.2011, Issue: 27879.



C. Legal Definitions and Basis for Mobbing in the Workplace

Mobbing in the workplace, which has a long history, points to an area where judicial authorities and doctrine cannot share a common opinion regarding the use of the concept. As a matter of fact, it is seen that judicial authorities refer to it as psychological harassment in some cases, and the terms intimidation or mobbing in the workplace are frequently used in the doctrine.

In the context of legal basis; it is seen that the expression "*mobbing in the workplace*" was accepted at the legislative level for the first time in Turkish Law with the "*Prime Ministry Circular on the Prevention of Psychological Harassment (Mobbing) in Workplaces*" published in 2011. Thus, it can be said that Turkish legal system has adopted a similar terminology in Continental European Countries in terms of this act. In other words, a substantial norm that forms the basis of international law for acts of mobbing in the workplace that may occur in the field of private law is; the "International Occupational Safety and Health Code" of the United Nations International Labor Organization (ILO). However, in the context of subject integrity, this study will examine the rules regarding public administration and public law.

According to one view, workplace mobbing refers to a type of communication in the form of conflict between employers and employees (Hancı, 2011, 2). Any kind of psychoviolence committed against a person is a set of actions aimed at disregarding the person. In the long term, people who are exposed to the act in question experience difficulty with the workplace structure and culture and a decrease in their commitment to the workplace and job. Mobbing in the workplace has not only psychological but also legal consequences. In this sense, there are various interpretations and definitions of the act in legal doctrine.

II. COMPONENTS OF MOBBING IN THE WORKPLACE

A. Timely Application

In order for mobbing to be accepted, there must be a serious complaint or application to the administration regarding mobbing. The first step to take to end mobbing in the workplace is to properly analyze the symptoms of the act (Öztürk et al., 2015, 31). In other words, it is also important that the act of mobbing is noticed by other personnel or managers in the work environment, apart from those who are exposed to this act.

B. Proof of Violation of Personal Rights with Sufficient Evidence

In order for the claim for non-pecuniary damage to be taken into consideration, a criterion for violation of personal rights has been developed. In this sense, establishing an action regarding mobbing in public administration depends on the person exposed to this issue proving the situation in question with sufficient evidence. The criterion for proof is "*violation of personal rights*". In most decisions of the Court of Cassation, it is seen that the criterion for proving mobbing is "*violation of personal rights*"⁴.

C. Existence of an Act Contrary to the Ordinary Flow of Life

According to one view, insults in the workplace are not considered mobbing (Şenocak, p. 5). We take the opposite view. Because insult is an unfair act that directly affects personal rights and also has criminal consequences. The act of insult, which the law defines as severe enough to subject it to criminal consequences, will primarily be considered mobbing.

D. Continuity of the Action

It may not always be possible for the act to be considered unlawful. Therefore, the continuity of the act must also be supported by systematicity. However, in determining the continuity criterion, it is seen that the mobbing action lasts for an average of 15 months (Öztürk et al., 2015, 28).

Regarding the continuity requirement of the act of mobbing, the duration should be accepted as a "*reasonable period*" depending on the severity of the concrete incident. For example; If the behavior that constitutes the act of mobbing in the workplace is in the form of severe and unfair criticism of the work done by the person on whom the mobbing act is carried out; Setting a definite period for this act to last 15 months makes it difficult to accept the act as mobbing and increases the damage to the victim. Instead of; Interpreting the severity of the act criterion together with the continuity criterion will produce equitable results.

E. Systematicity of the Verb

Systematicity causes the act to turn into mobbing and the act to be against the law (Özden, 2018, 25). The act that causes mobbing is not performed once. The continuity of the verb, its continuation at various times, is in question.

⁴ Decision of the 9th Chamber of the Law General Assembly of the Court of Cassation, E. 2015/8730, K. 2017/1000, T. 31.01.2017; Decision of the 22th Chamber of the Law General Assembly of the Court of Cassation E. 2016/24622, K. 2019/23339, T. 12.12.2019.



It is a systematic spiritual attack (Gün et. al., 2019, 97). The type of verb does not have to be the same. A quantitative rather than a qualitative criterion should be taken into account. The repetition of the verb more than once is decisive in terms of systematicity. A connection can be established between the continuity and systematicity of the act in terms of the occurrence of mobbing. Because even if the act that constitutes mobbing is continuous, if it is consciously systematized; mobbing can negatively affect the person who is subjected to it psychologically. On the other hand, if there is no continuity in the verb; it is difficult to say that an action performed once is systematic. However, if the verb type changes and the verbs show continuity even though they are of different types, the systematicity feature can be mentioned.

F. Intent

One of the important elements of mobbing in the workplace is that the perpetrator of this act knowingly and willingly engages in this attitude and behavior and can foresee the consequences.

In general, this person engages in pioneering behavior aimed at revealing his own shortcomings. For example; in academic circles, the intentional element of workplace mobbing by an academician against another academician is generally based on the fact that the academician sees himself as insufficient in terms of academic knowledge and resorts to emotional violence to prevent his inadequacy from being revealed. In terms of public administration, the general tendency is to obstruct administrative activity, ignore the risks of poor performance of the activity, and apply emotional violence to other public officials by prioritizing personal ego and ambitions.

III. CLASSIFICATION OF MOBBING ACTIVITIES IN THE WORKPLACE

Apart from horizontal and vertical mobbing; There is a classification according to the types of verbs. Many of these problems prevent people from developing themselves spiritually, expressing themselves, acting with self-confidence, relationships with their social environment, and focusing on work. In other words, people who are exposed to mobbing at work face material or moral problems; he/she has constant and intense thoughts such as not being able to focus on work, decreasing productivity, feeling of intense worthlessness, and worrying about his/her duties.

A. Acts of Devaluation in the Work Environment

One's opportunity to express himself is restricted by his superior. The person is constantly interrupted. One's opportunity to express himself is restricted by colleagues. The person is scolded and shouted loudly at the person. The person is constantly criticized for his work. Work is given that will lower the person's reputation. The person is charged for the damages incurred.

B. Acts to Consciously Isolate a Person in the Work Environment

People around the person stop talking to the person. The person is not allowed to talk to anyone and is deprived of the right to meet. The person is isolated from other employees and works in a separate place. The person is prohibited from talking to colleagues. The person is treated as if he/she does not exist and his/her rights and personality are not respected.

C. Acts Concerning Matters Strictly Related to Individual Rights

Bad things are spoken behind a person's back. Unfounded rumors are spread about the person. The person is ridiculed and ridiculed. The person is treated as if he were mentally ill. The person is forced to undergo a psychological examination. Any apology from the person is ridiculed. The person's walk and voice are mocked by imitating them.

The person's political views or religious beliefs are mocked. A person's private life is mocked. A person's nationality is mocked. The person is forced to do a job that will affect his self-confidence. One's effort and success are evaluated unfairly. A person's decisions are constantly questioned. The person is called derogatory names. Sexual insinuations are made towards the person. A person's private life is constantly criticized. The person is disturbed by the phone. The person is threatened verbally. A written threatening letter is sent to the person. Relationship with looks and gestures is rejected. Personal relationship is denied through insinuation.

D. Acts to Prevent a Person from Performing His Duty

The person begins to not be given important tasks. The tasks assigned to the person are taken back and the person's duties are restricted. The person is made to do meaningless tasks. The person is given tasks that are lower than his abilities. A person's job is constantly changed. Tasks are given that affect the person's self-confidence. The person is forced to perform a physically difficult task.



E. Acts Aimed at Negatively Affecting a Person's Financial Wealth Damage

This act caused to the person's workplace or home. Threats of physical violence are made against the person. The person is frightened by mild violence. The person is physically harmed. The person is sexually harassed.

IV. LEGAL DIMENSIONS OF MOBBING

Mobbing is addressed within both national and international legal frameworks. Under the national law, Article 17 of the Turkish Constitution guarantees personal integrity and mental well-being. Mobbing constitutes a violation of these rights.

Articles 24 and 25 of the Turkish Labor Law address "*breaches of morality and goodwill*" in employer-employee relations, granting employees the right to terminate their contracts due to mobbing. Provisions on personality rights in the Turkish Civil Code allow victims to claim compensation for non-material damages caused by mobbing.

Under the International Law, European Convention on Human Rights (ECHR) is substantial for defining the concept of mobbing. Provisions on the prohibition of torture and respect for private life offer avenues for international recourse in mobbing cases. The International Labour Organization (ILO) has established principles to protect workers from psychological harassment.

Both the national law and international law support the sanctions and compensations for mobbing. Victims can file lawsuits for material and non-material damages. Victims may unilaterally terminate their employment contracts due to mobbing. Employers may initiate internal disciplinary actions against employees perpetrating mobbing. Severe cases of mobbing may constitute offenses such as "insult," "threat," or "violation of personality rights" under criminal law.

1. Public Law and Private Law's Approach to Mobbing

It is also seen that people who practice mobbing in the workplace vary according to their behavior types⁵ (Tezcan et al., 2009, 21). It is obvious that the action in question will cause different consequences in the field of law where it occurs. In other words, in the field of public law, not only the relevant public official is harmed as a result of the act of mobbing in the workplace.

Since this act negatively affects the functioning of administrative activities, it is inevitable that activities will be disrupted and public damage will occur. In the long term, public services and other administrative activities may not be carried out properly. In addition to negatively affecting the public interest, acts of intimidation in the workplace that occur during the conduct of law enforcement activities; It results in law enforcement personnel not being able to properly maintain public order. Therefore, in the field of public law, the act of mobbing in the workplace does not only affect the public official who is exposed to this act, but also affects the administrations as a whole.

In the field of Turkish private law, the effects of mobbing in the workplace should also be emphasized. In Article 417 of the Code of Obligations No. 6098⁶, the act of mobbing in the workplace is defined as "*psychological harassment*" and its elements are included. However, the difference between the Labor Law and the Code of Obligations in this regard is that it does not include a specific phrase such as "intimidation or psychological harassment in the workplace". This situation causes difficulties in determining these acts in the field of private law. On the other hand, the detailed regulation of the "*International Occupational Safety and Health Code*" of the United Nations ILO in domestic law should be carried out through the Labor Law. Although it is observed that there are legal gaps in the field of public law, it can be said that some steps have been taken in this field with the "Prime Ministry Circular on the Prevention of Psychological Harassment (Mobbing) in Workplaces" published in 2011. However, it is essential that issues of mobbing or psychological harassment in the workplace, which directly concern fundamental rights and freedoms, are regulated by law. Therefore, the existence of a legal gap on the subject is felt in terms of public law.

If an employee employed by a legal entity operating in the field of private law is subjected to mobbing by the employer in the workplace, it will primarily negatively affect the employee. Over time, workplace peace will encounter negativities. However, it can be argued that this act, which is implemented in the field of private law, is unlikely to affect the entire society. Because a company operating in the field of private law does not have the function of establishing public interest or public order. It may be thought that the personal benefits of the

⁵ The types of mobbing people are expressed as follows; malicious mobbing, lurking mobbing, angry mobbing, megalomaniac mobbing, sadistic mobbing, critical mobbing, sycophantic mobbing, bully mobbing, cowardly mobbing (<https://www.memurlar.net/haber/131912/15-ayri-mobbingci-tipi-var.html> access: 26.07.2022)

⁶ Article 417/1 of the Code of Obligations No. 6098: "The employer shall protect and respect the personality of the employee in the service relationship and ensure an order in accordance with the principles of honesty in the workplace, and take the necessary precautions, especially to prevent workers from being subjected to psychological and sexual harassment and to prevent further damage to those who have been subjected to such harassment." is obliged".



company will be negatively affected by the act of mobbing in the workplace. In this case, the company management's intimidation of workers in the workplace will increase the administrative and financial losses of the company in the long run. On the other hand, it should not be overlooked that if an act of mobbing in a workplace is not caused by the company management and a worker inflicts this act on another worker, the company will still suffer losses. In this case, the legal obligation of the company management is to ensure labor peace, to take signs of psychological violence among employees seriously and to take warnings and measures accordingly. In cases where the company management deliberately turns a blind eye to one worker intimidating another, it must be held responsible together with the employee. On the other hand, although Articles 5, 24 and 25 of the Labor Law No. 4857 are similar to the regulations of the Code of Obligations⁷, they also embody the consequences of mobbing in the workplace.

Although the legal sources that include the act of mobbing in the workplace in the field of public law are limited to the aforementioned Circular, the obligation of the hierarchical superior to treat civil servants equally is regulated in Article 10/2-3 of the Civil Servants Law No. 657 in the Public Sector. For this reason, while performing public service, the requirements of the service and the public interest should be taken into consideration, and decisions regarding transfer appointment, temporary assignment, disciplinary punishment or relocation should not be made as indirect punishment. In the administrative judiciary, it is decided that such actions for the purpose of punishment constitute psychological harassment (mobbing) and non-pecuniary damages are ordered to be paid (Kasapoğlu Turhan, 2013, 99).

2. Legal Dilemma in Administrative Law

In Turkish administrative law, mobbing, also known as psychological harassment, is not explicitly regulated as a legal concept. However, acts that may constitute mobbing are indirectly addressed under disciplinary penalties outlined in the Civil Servants Law No. 657. Specifically, behaviors such as systematically hindering an employee's working conditions, engaging in humiliating conduct, or abusing authority to exert psychological pressure may be considered disciplinary offenses.

Some examples about mobbing in administrative law are;

- Assigning unequal workloads to a public officer compared to their peers.
- Imposing tasks outside the public officer's job description.
 - Violating the academic rights for academics.
- Transferring the public officer to a different workplace without justification or valid reasons.
- Initiating baseless disciplinary investigations against the public officer.
- Issuing unwarranted written warnings to the public officer.
- Pressuring the public officer to request a transfer.
- Documenting minor mistakes by the public officer as formal complaints.
- Unreasonably denying requests for annual leave or personal leave.
- Hindering academic staff from conducting research.
- Forcing academics to remain physically present at the university, restricting time for academic work.
- Denying or limiting permission for graduate or doctoral students to travel to other universities for required courses.
- Deliberately prolonging or unjustifiably rejecting graduate or doctoral theses.
- Using loud, humiliating language toward employees in the presence of others.
- Continuously returning work or documents prepared by the employee with unjustified claims of errors.
- Restricting officers' use of leave entitlements.
- Treating public officer unequally compared to their colleagues.
- Assigning non-job-related tasks repeatedly.
- Preventing public officers from communicating with colleagues or other personnel.
- Humiliating employees based on their physical appearance, ethnicity, beliefs, gender, or personality traits.
- Assigning overly difficult tasks or tasks outside the job description, extending working hours, or denying rights to holidays and overtime pay.
- Forcing public officer into constant overtime, disproportionately more than their peers.
- Threatening public officers with termination.
- Making public officers feel untrusted.
- Assigning intentionally unrealistic deadlines for tasks.
- Withholding critical information from the public officer.
- Ignoring the public officer or excluding them from the working group.

⁷ Articles of the Labor Law No. 4857, which are indirect measures regarding mobbing in the workplace; "The obligation of equal treatment is related to the termination of the employment contract by the employee or employer for justified reasons in order to protect against behavior that does not comply with the rules of morality and good faith.



- Reducing the public officer's authority or responsibilities.

A common conclusion regarding the occurrence of mobbing in the workplace in the fields of private law and public law; it is the disruption of organizational teamwork in both fields of activity (Öztürk et al., 2015, 30), the disruption of activities and the emergence of legal liability due to condoned acts. In this context, in terms of public administration, the most negative consequence of the act of mobbing in the workplace is the formation of a "service defect" in the long term, which negatively affects not only the public official exposed to this act, but also all citizens who benefit from the service.

3. The Approach of High Courts to Workplace Mobbing in Turkish Law

Turkish Constitutional Court does not clearly define the act of mobbing in the workplace. However, by defining the act as *"psychological harassment"* and mentioning its elements and possible consequences, it concretizes the act of mobbing in the workplace from a legal perspective⁸.

The Constitutional Court does not use a uniform terminology regarding the act of mobbing in the workplace, but explains the act with different qualifications. The court generally prefers the expression *"psychological harassment"*⁹. The Constitutional Court lists the conditions for psychological harassment to occur as follows: *"In order for an action to be considered psychological harassment, it must be committed by targeting a worker, spread over a certain period of time, and this situation must become systematic. Whether the specified conditions are met or not must be evaluated separately in each concrete case. Although the reasons for psychological harassment vary, the aim is often to make the worker leave the workplace"*¹⁰.

The Constitutional Court defined the act of mobbing in the workplace as *"psychological harassment"*; He embodies actions that are compatible with this quality in his different decisions. According to the court; Being forced to resign, being forced to do work that is not included in the job description, committing humiliating acts in the presence of subordinates, obtaining information about private life, unfair disciplinary investigations, acts that reduce work performance, not implementing the decision to return to duty pursuant to a court decision, permanent change of place of duty, communication with colleagues¹¹. Harassment, acts of dissemination of rumors about a person, and psychological harassment have been accepted in individual applications to the Constitutional Court alleging rights violations. However, the Court did not necessarily rule on a violation of rights in every application in which it embodied the concept of psychological harassment. In other words, although the Constitutional Court accepted the existence of psychological harassment, it preferred to primarily take into account the results of the criminal proceedings. Therefore, as a result of the criminal trial of the people who committed these acts, the Constitutional Court decides that there is no violation of rights due to the decisions of non-prosecution or acquittal regarding the people, even if they committed the act of intimidation in the workplace. In this sense, whether people who commit intimidation in the workplace should be subject to criminal sanctions is the primary criterion of the Constitutional Court in examining individual applications.

According to the decision of the General Assembly of the Supreme Court of Appeals dated 2018, mobbing; *"It is a type of psychological terrorism applied in the form of repeated attacks by other employees and employers in the workplace"*¹². In our opinion, this attitude of the Court seriously increases the risk of repeating acts of rights violation for those who commit acts of intimidation in the workplace and cause victimization to other people. What is expected from the court is that, by "defining the act of intimidation in the workplace from a constitutional perspective", it will not take impunity as a basis among the criteria for causing rights violations.

⁸ The Constitutional Court generally includes the phrases *"psychological harassment, violence and intimidation"* in its individual application decisions alleging rights violations due to intimidation in the workplace.

⁹ *"Application; It relates to the claim that "the right to protect and develop the material and spiritual existence of the person has been violated due to the failure to eliminate the damages resulting from psychological harassment"*, See; Constitutional Court, E. 2015/19500, K. 2019/, T. 18.04.2019 Constitutional Court Decisions were taken from bilgibankasi.anayasa.gov.tr on 05.06.2022; Constitutional Court, E. 2014/7998, K. 2018, T. 19.07.2018, OG. 26.09.2018, Issue: 30547; Constitutional Court, E. 2015/7108, K. 2020/, T. 08.09.2020, OG. 23.10.2020, Issue: 31283.

¹⁰ Constitutional Court, E. 2015/19500, K. 2019/, T. 18.04.2019 Constitutional Court Decisions were taken from bilgibankasi.anayasa.gov.tr on 05.06.2022; Constitutional Court, E. 2014/7998, K. 2018, T. 19.07.2018, OG. 26.09.2018, Issue: 30547; Constitutional Court, E. 2015/7108, K. 2020/, T. 08.09.2020, OG. 23.10.2020, Issue: 31283.

¹¹ For relevant Constitutional Court Decisions, see. Constitutional Court, E. 2013/8175, T. 15.04.2014; Constitutional Court, E. 2013/3512, T. 17.07.2014; Constitutional Court, E. 2013/5680, T. 15.04.2014; Constitutional Court, E. 2013/2284, T. 15.04.2014; Constitutional Court, E. 2013/6229, T. 15.04.2014; Constitutional Court, E. 2012/1213, T. 17.07.2014; Constitutional Court, E. 2014/12984, T. 26.02.2015. Constitutional Court, E. 2013/8175, T. 15.04.2014; Constitutional Court, E. 2013/5680, T. 15.04.2014.

¹² Decision of the Law General Assembly of the Court of Cassation, E. 2017/3017, K. 2018/99.



Because, although not every tort constitutes a crime in the sense of criminal law, an act; it may cause violations as a tort.

4. Workplace Mobbing In Turkish Council of State and HREIT Decisions

Turkish Council of State, due to the increasing number of cases related to mobbing and the unclear understanding of its content in practice, deemed it necessary to provide detailed explanations in cases related to mobbing. In its decision dated October 25, 2017, with the case number 2015/6046 E, 2017/6537 K, the Second Chamber of the Council of State stated:

"Article 17 of the Constitution, first paragraph, states that 'Everyone has the right to life, and the right to protect and develop their material and spiritual existence.' The third paragraph of this article prohibits torture and ill-treatment, stating that 'No one shall be subjected to torture or ill-treatment, nor be subjected to any punishment or treatment incompatible with human dignity.' Article 3 of the European Convention on Human Rights, titled 'Prohibition of Torture,' similarly states that 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.' Article 17 of the Constitution provides that everyone has the right to protect and develop their material and spiritual existence, which encompasses the right to physical and mental integrity, as well as the right to self-determination and decision-making.

Furthermore, the third paragraph of Article 17 prohibits torture, ill-treatment, and treatment incompatible with human dignity. This provision aligns with the legal interests protected under Article 3 of the European Convention on Human Rights. However, for an action to fall under the scope of Article 17, third paragraph, it must reach a minimum level of severity. Whether this minimum threshold has been exceeded should be determined based on the specific circumstances of each case. Factors such as the duration of the treatment, its physical and psychological effects, and the victim's age, gender, and health condition are crucial in this evaluation. The protection of an individual's physical and mental integrity is encompassed under the 'material and spiritual existence' mentioned in Article 17 of the Constitution. The state is obligated not to arbitrarily interfere with this integrity and to prevent attacks by third parties. Article 125 of the Constitution states that legal remedies are available against the actions and transactions of the administration. In the final paragraph of this article, it is stated that the administration is obliged to compensate for damages caused by its actions and decisions.

Mobbing is defined as a series of hostile, intentional, and negative behaviors aimed at an individual or group of individuals in the workplace by one or more persons. It includes systematic, prolonged actions intended to intimidate, neutralize, or push the individual out of the workplace, thereby harming their personality, professional situation, social relationships, or health. The impact of mobbing may be so severe that the victim is unable to perform their job."

The most blatant examples of psychological harassment (mobbing) include behaviors such as blocking an individual's ability to express themselves, interrupting them, yelling at or humiliating them, constant criticism, treating them as if they don't exist, communication being cut off, disregarding their ideas, spreading false rumors, making unpleasant insinuations, not giving them meaningful tasks, giving them meaningless tasks and constantly changing their assignments, assigning them heavy tasks, or engaging in any form of mistreatment or threats.

In the case under review, the plaintiff, a teacher, claimed that their teaching schedule was spread out over the entire week and made more difficult, that they were scheduled to visit several schools on the same day, and were assigned to teach in four different, distant schools. The plaintiff argued that they were given overlapping tasks and, as a result of mobbing actions, their mental and psychological health deteriorated, their motivation was damaged, and they suffered moral harm. Due to the severe emotional pain and suffering caused by these actions, the plaintiff sought both material and moral compensation from the defendant.

Considering the physical and psychological effects, duration, and intensity of the plaintiff's claims, it is possible that actions such as spreading the teaching schedule over the entire week, making the schedule more difficult, assigning duties in multiple distant schools, and giving conflicting tasks violated the plaintiff's personal rights, and had physical and psychological effects on them.

Depending on the type of discrimination act, HREIT accepts the international Treaties and Conventions to which Türkiye is a party as a legal basis and gives priority in procedural review. In the said review; It is thought that the last paragraph of Article 90 of the 1982 Constitution is effective. Because according to the article; "International agreements duly put into effect have the force of law. An application cannot be made to the Constitutional Court regarding these with the allegation of unconstitutionality. (Additional sentence: 7/5/2004-5170/7 art.) In case of disputes that may arise due to the fact that international agreements and laws regarding fundamental rights and freedoms duly put into effect contain different provisions on the same subject, the provisions of international agreements shall be taken as basis." In this context, it is a lawful approach for HREIT to give priority to international legislation as a basis for procedural provisions in the examination of non-discrimination violations. At the same time, it is in accordance with the procedure determined by the constitution.



A qualified HREIT Board Decision confirms our determination¹³; An investigation was carried out in terms of the Convention on the Rights of Persons with Disabilities in the application of a disabled public official for discrimination and workplace intimidation for not being given a power of attorney in the institution where he worked for years. Afterwards, the compliance with national legislation was examined.

HREIT generally bases its investigations on the provisions of the HREIT Law and the Regulation on the Procedures and Principles for the Implementation of the HREIT Law. In this context, the method taken into consideration includes "preliminary examination"¹⁴. As a result of the preliminary examination, the following decisions may be made by the Board in accordance with Article 49 of the Regulation on the Procedures and Principles for the Implementation of the HREIT Law:

"If the application does not meet any of the conditions set out in Article 48, a decision of non-reviewability is given. This decision is notified to the applicant and the period for filing a lawsuit, which was suspended with the notification, begins to run again from where it left off. In the preliminary examination of the applications, even if some of the issues in the file are not reviewable, the Board may decide on partial non-reviewability when it concludes that it is necessary to proceed to the main review in terms of some other application issues. (2) A decision is made to send the application to the relevant party regarding the application made without requesting the correction of the application that is claimed to be contrary to the law. The decision to send is also notified to the applicant. The application date to the institution is considered as the date of sending the application to the relevant party. The relevant institution responds within 15 days. Upon sending the application to the relevant party by the Institution; a) Re-application can be made to the Institution as of the date of notification of the response to be given by the relevant party to the applicant, b) If the relevant party does not respond within thirty days, the date of expiry of this period. (3) If the relevant party is shown incorrectly, the Institution determines the correct party ex officio and proceeds to the examination phase. (4) In line with the decision of non-reviewability, an application can be made to the Institution again, provided that the deficiencies are corrected. (5) If the application meets the conditions stated in Article 48, the examination and research phase begins. (6) If it is later understood that the preliminary examination conditions are not met, a decision of non-examination, reasoned inadmissibility or referral is made."

According to subparagraph (a) of paragraph 1 of Article 48 of the aforementioned Regulation, it is stated that *"Applications made to the Institution are subject to preliminary examination before proceeding with the examination and research, and as a result, a) It is examined whether it falls within the scope of duty of the Institution (...)"*. In the 2nd paragraph of Article 67 of the Regulation, titled *"Reasoned Decision of Inadmissibility"*, it is stated that *"If it is understood that the applications that are found to be reviewable at the preliminary examination stage or whose reviewability is decided to be examined and investigated together with*

¹³ HREIT Board Decision, Application No: 2019/399, Meeting Date: 12.11.2019/103, Decision No: 2019/62 *"İ. C. In summary, in the application petition recorded on 21/01/2019 and numbered 399, submitted to our Institution by the applicant, he claims that he is a disabled personnel, that he has not been given any power of attorney at the N. University Personnel Department, where he works, for the last eight years, and that he has been subjected to intimidation at work.Article 5 of the Convention on the Rights of Persons with Disabilities, titled "Non-Discrimination and Equality", is as follows:*

1. States Parties recognize that all persons are equal before and before the law and have the right to equal protection of and benefit from the law without discrimination.

2. States Parties shall prohibit all forms of discrimination based on disability and shall ensure that persons with disabilities receive equal and effective protection against discrimination on any basis.

(...)"

10. Article 27 of the Convention on the Rights of Persons with Disabilities, titled "Labour and Employment", is as follows:

"1- (a) It prohibits discrimination based on disability in all matters related to employment, including recruitment and employment conditions, continuity of employment, career development and healthy and safe working conditions."

¹⁴ Article 48 of the Regulation on the Procedures and Principles for the Implementation of the HREIT Law: *"Conducting a preliminary examination (1) Applications made to the Institution are subject to a preliminary examination before proceeding with the examination and research, and as a result; a) Whether it falls within the scope of duty of the Institution, b) Whether the reasons, subject and parties are the same as an application being examined and investigated in the Institution, c) Whether the reasons, subject and parties are the same as an application previously concluded by the Institution, d) Whether it is being heard in judicial bodies. It is examined in terms of whether it relates to disputes that have been resolved or decided by judicial bodies, d) Whether the relevant party has requested the correction of the practice claimed to be contrary to the Law before applying to the Institution, e) Whether it contains a certain subject, f) Whether it contains the information required to be included in the application. (2) In applications with more than one applicant, reviewability conditions are handled separately for each applicant.*



the merits, do not meet the necessary conditions specified in Article 48, a reasoned decision regarding these applications will be made." A decision of inadmissibility is made". In this sense, the Board must give its reviews in a "reasoned" manner in terms of procedure. In inadmissibility decisions, the obligation to make a reasoned decision is essential.

In the HREIT Board Decision mentioned above, as a result of the review of the file; by making a procedural rejection decision¹⁵; *"I. As a result of the examination carried out on the file within the framework of the written opinions received in line with Ç.'s allegations; "No concrete information or findings have been found indicating that the applicant was exposed to mobbing in the workplace due to being a disabled individual." On the other hand, the Board also examined the application in terms of Article 48 of the Regulation on Procedures and Principles for the Implementation of the Law on the Turkish Human Rights and Equality Institution. According to this; "...in the second paragraph of Article 67 of the same Regulation; It has been stipulated that if it is understood that the applications that are found to be reviewable at the preliminary examination stage or whose reviewability is decided to be examined and investigated together with the merits, do not meet the necessary conditions specified in Article 48, a reasoned decision of inadmissibility will be given regarding these applications. Within the framework of these regulations, when the allegations of discrimination expressed in the application petition and subsequent correspondence are examined, although the application in question includes the allegation of intimidation in the workplace, gender, race, color, language, religion, belief, sect, philosophical and political opinion, ethnic It cannot be based on or associated with any of the bases of origin, wealth, birth, marital status, health status, disability or age. In this context, it is considered that the application subject does not fall within the scope of duty of our Institution."*

According to paragraph (d) of the 2nd Article titled "Definitions" of the Turkish Human Rights and Equality Institution Law No. 6701 dated 20.4.2016; *"Direct discrimination: Any differential treatment that prevents or makes it difficult for a natural or legal person to benefit equally from legally recognized rights and freedoms compared to those in comparable situations, based on the grounds of discrimination listed in this Law".* According to paragraph (g) of the same article, *"Intimidation in the workplace: It refers to intentional actions carried out with the aim of alienating, excluding and annoying the person from his job, based on the grounds of discrimination listed in this Law."*

CONCLUSION

Mobbing in Turkish Public Law, especially in Turkish Administrative Law, is a legal dilemma for all public officers. Also it is a serious issue with its implications on individual rights violations and the detriment it causes to public services. Expanding the legal framework, raising awareness, and implementing effective preventive measures are crucial to addressing this problem. Public institutions must provide a work environment based on respect and justice for their employees, which will benefit both individuals and society as a whole.

In Turkish Administrative Law, mobbing, also known as psychological harassment, is not explicitly regulated as a legal concept. However, acts that may constitute mobbing are indirectly addressed under disciplinary penalties outlined in the Civil Servants Law No. 657. Specifically, behaviors such as systematically hindering an employee's working conditions, engaging in humiliating conduct, or abusing authority to exert psychological pressure may be considered disciplinary offenses.

Mobbing is a critical issue at both individual and institutional levels. Establishing effective mechanisms to protect employees' rights and providing preventive training are essential. Effective implementation of legal regulations and practices plays a vital role in reducing mobbing.

Policies that educate both employees and employers about mobbing should be developed, fostering healthier and more productive work environments.

Mobbing is a pervasive issue with far-reaching effects on individuals and organizations. By addressing its root causes and implementing preventative measures, workplaces can cultivate environments where employees feel respected, valued, and safe. Future research should explore the effectiveness of specific interventions and the long-term impacts of mobbing on organizational culture. Mobbing represents a significant challenge to the principles of fairness and efficiency in public administration. By addressing mobbing within the framework of administrative law, Türkiye can better protect the rights of public employees and improve the overall quality of public services. Ensuring a workplace free from harassment not only upholds individual dignity but also strengthens institutional integrity and public trust.

REFERENCES

1. Circular on the Prevention of Psychological Harassment (Mobbing) in the Workplace, *Official Gazette*. 19.03.2011, Issue: 27879.
2. Çobanoğlu, Ş. (2005). *Mobbing*. Timaş Yayınları, İstanbul.

¹⁵ HREIT Board Decision, Application No: 2019/399, Meeting Date: 12.11.2019/103, Decision No: 2019/62.



3. Dalgaldere, A. (2019). Mobbing at Workplace In the Light of Supreme Court Decisions In Turkish Law. (Master Thesis), Kırklareli University Social Sciences Institute. Doi: <http://dx.doi.org/10.7827/TurkishStudies.5076>
4. Decision of the 22th Chamber of the Law General Assembly of the Court of Cassation E. 2016/24622, K. 2019/23339, T. 12.12.2019
5. Decision of the 9th Chamber of the Law General Assembly of the Court of Cassation, E. 2015/8730, K. 2017/1000, T. 31.01.2017.
6. Decision of the Law General Assembly of the Court of Cassation, E. 2017/3017, K. 2018/99.
7. Göztepe Çelebi, E. (2015), Evaluation of the Constitutional Court's Decisions on "Mobbing" Applications, *Anayasa Yargısı*, Vol. 32, 323-342.
8. Gül G. & Evin, B.G., (2019), "Mobbingin Türk Hukuku Açısından Değerlendirilmesi," *International Journal Entrepreneurship and Management Inquiries (Journal EMI) Journal*, . 3 (4), 94-107.
9. Hancı H. & Özcan E.G. (2011). *Mobbing ile Milli Mücadelede Bilim*. Seçkin Yayıncılık, Ankara.
10. HREIT Board Decision, Application No: 2019/399, Meeting Date: 12.11.2019/103, Decision No: 2019/62.
11. HREIT Board Decision, Application No: 2019/399, Meeting Date: 12.11.2019/103, Decision No: 2019/62.
12. <https://mobbing.org.tr/author/huseyingun/> (access date: 11.02.2024) <https://sozluk.gov.tr> (access date: 10.1.2024)
13. Kasapoğlu Turhan, M. (2013). Mobbing and the Paths of Legal Protection In Terms of Civil Servants, *TBB Dergisi*, 105, 89-128.
14. Leymann H. (1996) The Content and Development of Mobbing at Work. *European Journal of Work and Organizational Psychology*, (5), 165-184.
15. https://www.researchgate.net/publication/315480030_Bullying_no_trabalho_Percecao_e_impacto_na_saude_mental_e_vida_pessoal_dos_enfermeiros/fulltext/58d3a1cc458515e6d901d536/Bullying-no-trabalho-Percecao-e-impacto-na-saude-mental-e-vida-pessoal-dos-enfermeiros.pdf (access date: 14.05.2024).
16. Limoncuoğlu, A. (2013). İşçinin İş Sözleşmesini Psikolojik Tacize Dayalı Olarak Haklı Nedenle Feshinde Hak Düşürücü Sürenin Başlangıcı (Karar İncelemesi)". *Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi* 15, Temmuz (Temmuz 2013): 547-72.
17. Özden, B. (2018). Türk İş Hukuku Kapsamında Psikolojik Taciz (Mobbing). *Avrasya Sosyal Ve Ekonomi Araştırmaları Dergisi*, 5(8), 22-49.
18. Öztürk, M & Şahbudak, E. (2015). Mobbing, Effects on Organizations and Solutions, *Sağlık Akademisyenleri Dergisi* 2015; 2(1):27-33 <https://doi.org/10.18490/sosars.345512>
19. Tetik, S. (2010). Mobbing Concept and Its Importance in Terms of Individuals and Organizations. *KMÜ Sosyal ve Ekonomik Araştırmalar Dergisi*, 12 (18), 81-89.
20. Tınaz, P. (2006). Mobbing: İşyerinde Psikolojik Taciz. *Çalışma ve Toplum*. (3), 11-22.
21. Turkish Constitutional Court, E. 2012/1213, T. 17.07.2014.
22. Turkish Constitutional Court, E. 2013/2284, T. 15.04.2014.
23. Turkish Constitutional Court, E. 2013/3512, T. 17.07.2014.
24. Turkish Constitutional Court, E. 2013/5680, T. 15.04.2014.
25. Turkish Constitutional Court, E. 2013/6229, T. 15.04.2014.
26. Turkish Constitutional Court, E. 2013/8175, T. 15.04.2014.
27. Turkish Constitutional Court, E. 2014/12984, T. 26.02.2015.
28. Turkish Constitutional Court, E. 2014/7998, K. 2018, T. 19.07.2018, OG. 26.09.2018, Issue: 30547.
29. Turkish Constitutional Court, E. 2015/19500, K. 2019, T. 18.04.2019.
30. Turkish Constitutional Court, E. 2015/7108, K. 2020/, T. 08.09.2020, OG. 23.10.2020, Issue: 31283.
31. Turkish Council of State, the Second Chamber, E. 2015/6046 E, K. 2017/6537 www.sinerji.com.tr (Access date: 12.8.2024).
32. Uysal, T. & Yavuz, K. (2009). Örgütlerde Mobbingin Görünmeyen Yüzü: Ters Mobbing, *Turkish Studies, Ankara Science University*, 8 (8), 2167-2183.
33. Yiğit, B. (2018). A Content Analysis On Doctorate Thesis In Türkiye About Mobbing. *Balkan and Near Eastern Journal of Social Sciences*, 4 (2), 26-31.