Mobbing (Workplace Harassment) under Turkish Labour Law

Legal Framework

Protection of the employees against mobbing is ensured under various legislation in Turkey.

Pursuant to the obligation to protect the personality of the employee under Article 417 of the Turkish Code of Obligations ("TCO"), the employers have to take necessary precautions to avoid psychological harassment at the workplace and employees from suffering any damage/loss related to harassment. TCO also holds employer liable for compensating employee’s loss in case of breach of this obligation.

Turkish Labour Code ("TLC") grants employees the right to immediately terminate employment contracts based on just cause and request severance compensation in case of mobbing while the Code of Occupational Health and Safety and the Circular numbered 2011/2 (issued by the Prime Minister related to prevent mobbing in the workplace) regulate the obligations for employers to protect the physical and psychological health of the employees.

If the actions subject to the mobbing bear discriminatory feature in terms of gender, ethnicity, religious belief, language or political view, the employees are also protected under the Code of Human Rights and Equality Institution of Turkey ("CHREIT") and Article 5 of TLC providing for equal treatment at the workplace.

Repeated actions indicating maltreatment, threat, violence or humiliation, which are made against the employees by the employers or other employees, are considered as mobbing. Mobbing can be performed through different ways including shouting at employee or criticizing him/her regularly, making inappropriate jokes in relation to the appearance and the way of dressing, despising or giving extremely difficult or very easy tasks that do not meet the qualifications of the employee.

According to the Supreme Court precedents for an act to be deemed as mobbing, it should be performed systematically and with the purpose to violate personal rights of the employee, aim a particular employee or group of employees and spread over a certain period.

Evidencing Mobbing

As a general rule, the employee carries the burden of proof and s/he can prove his/her claims with all sorts of evidence including witness testimony, health report and camera recording.

Previously, the Supreme Court was seeking strong evidence to prove mobbing; however, in recent years, the Supreme Court has loosen its acceptability criteria in favour of employees. The Supreme Court has stated in its recent decisions that conclusive evidence should not be sought; presenting consistent and strong indications regarding mobbing is sufficient.

Besides, if the acts are of discriminatory nature according to CHREIT and/or TLC, the burden of proof can be reversed in favour of the employee, which means that in case the employee presents strong indications relating to mobbing, the burden of proof before courts to prove that discrimination has not occurred is vested with the employer.

Potential Consequences

The employees have the right to terminate employee contracts with immediate effect by asking for their severance compensations as well as other entitlements, which s/he has been deprived of as a result of mobbing such as salary increase, in case of mobbing.

In case the actions or omissions indicate discriminatory feature, the employer may be required to pay a discrimination compensation to the employee, which is equivalent to four months’ salary of the employee. The employees can also apply to the Human Rights and Equality Institution of Turkey in case of mobbing and following the investigation, an administrative fine can be imposed on the employers.
Preventive Measures

The employers should consider taking necessary precautions at the workplace to avoid the mobbing related lawsuits.

Training managing employees regarding the situations causing mobbing, developing a grievance mechanism that would allow employees to inform the employers of mobbing cases, conducting surveys to understand if there is a possibility of mobbing at the workplace may be examples of preventive measures to be taken by the employers.

Additionally, conducting a proper investigation process upon a complaint is crucial for the employers in order to be successful in possible lawsuits. Collecting witness statements is one of the most significant parts of the investigation. Depending on the results of the investigation, the employers should consider requesting defence letter from the abuser and give him/her a warning letter, if necessary, or terminating the employment contract of the abuser with immediate effect.