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Workplace Bullying: Prohibitions and Protections

Bullying is an issue that exists in the Czech labour world and is documented by various governmental and non-governmental reports. However, legislative protection provided by the state is weak and protection guaranteed by courts problematic. One clear exception is the ban on discrimination, mainly because the Czech legislators had to implement respective EU-law directives.

Since June 1994, the first Labour Code has protected employees against bullying by regulating a prohibition of abuse of law. Abuse of law constitutes one of the categories of defective or prohibited conduct, which is any conduct that contravenes the instructions or prohibitions stipulated by law or in a legal action. As the doctrine aptly pointed out, an act done with direct intention to cause harm is indisputably abuse of law, and moreover the most severe one.

For almost a decade, the statute stated that the exercise of rights and duties ensuing from labour relations may not infringe, without a legal cause, the rights and legitimate interests of others and may not be performed in a breach of public policy. In March 2004, the law was changed. The government reasoned that the law was too abstract and difficult to implement for state agencies and judges. The prohibition of abuse of law was replaced by a ban on acting against good morals. Afterwards, said rule was set forth in Section 14 of the second Labour Code of 2006. However, it was abrogated in 2011, because there was a similar competing rule in the Civil Code.

Since January 2014, the (new) Civil Code's prohibition of abuse of law is fully applicable in labour law relationships. According to applicable law, an evident abuse of law does not enjoy legal protection, but the actual consequences are not specified and depend mostly on the nature of the abuse of law itself as the consequences shall be aimed at remedying the party which violated the law and harmed by abusing the law.

Despite more than 25 years of prohibition, many experts lack sufficient proof that the law is obeyed in day-to-day life. Some of them claim that even the Supreme Court of the Czech Republic neglects the respective laws in its case law. The court intermingles the prohibition of abuse of law with the prohibition of acts against good morals. As a result, the Supreme Court classifies as abuse of law only behaviour that is not aimed at reaching the purpose of the legal provision, but which is in contradiction with good morals and guided by a direct intention to cause harm to another party (Judgment of the Supreme Court of 28 June 2000, docket file No. 21 Cdo 992/99). Courts always look for bad intentions by the employer. Because a claimant has to prove that there was a direct intention to cause harm to the other party, courts have not – for example - provided protection to a pregnant employee who was made redundant, because she willingly stepped down from a managerial position.

The Supreme Court later confirmed its position in a few cases: employees were protected by courts against unilateral changes in the distribution of working hours (judgment of the Supreme Court on 15 April 2010, docket file No. 21 Cdo 1288/2009), and redundancy made by the employer after the employee criticized the work of executive directors (decision of the Supreme Court on 8 April 2010, docket file No. 21 Cdo 1781/2009).

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