

Creation of a Basque Mobbing Watch: Opportunity and Need

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In the last several years, the term *mobbing* as come into frequent use as a description for moral harassment in the workplace. The term describes a social and occupational problem of enormous personal, organizational, corporate, and

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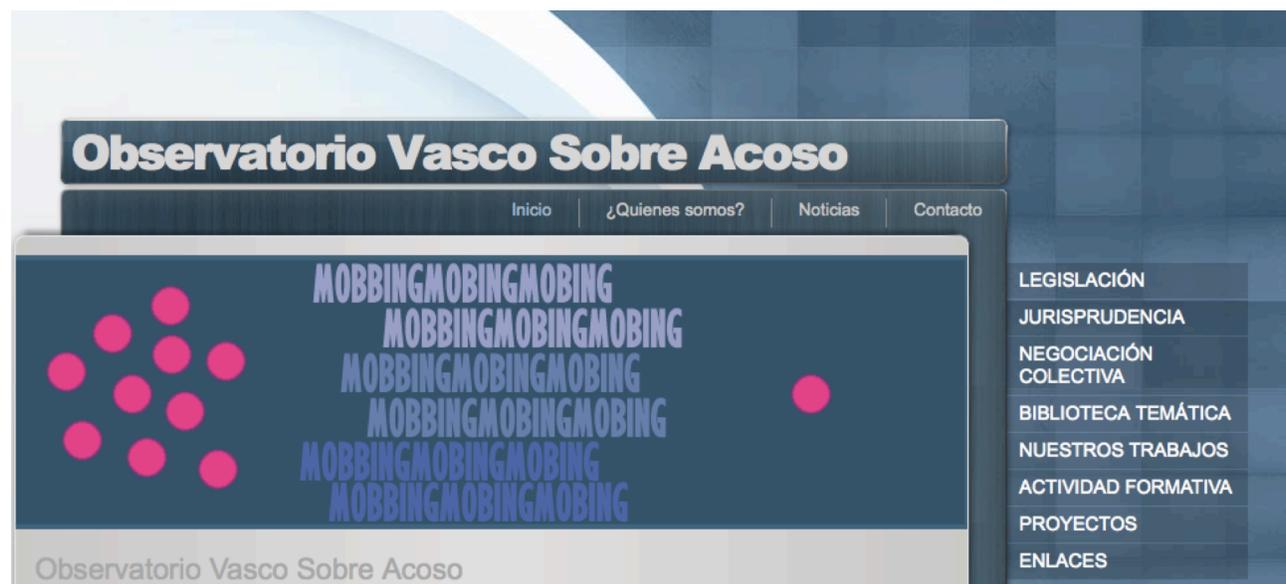
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even cultural importance. There are now numerous reports documenting the seriousness of mobbing from international organizations including the International Labour Organization, the European Agency for Health and Safety at Work, and the European Parliament.

While mobbing lies within the scope of occupational health, it has implications for many other fields; it affects private enterprise and, above all, public services. As has happened in the

past, we have seen people already exploiting the increased awareness and knowledge of the problem by creating excessive alarm about the exponential growth of workplace harassment in the past few months. But the facts would suggest that mobbing affects between 700,000 to 1 million workers in Spain; this includes employees of the government. These figures coincide with evidence from other comparable countries such as Sweden, France, United Kingdom, Germany, and Italy.



The Spanish judiciary has not offered a specific response to mobbing, although we have seen a wide range of legislative responses. The Spanish penal code now includes the crime of psychological or workplace harassment, a development seen elsewhere in Europe and in the Americas. Unfortunately the impact of these initiatives has been minimal, perhaps non-existent. Nonetheless, this does not mean that current legal remedies are not adequate to face this 21st century “social epidemic.” We see increasing awareness and action by workplace inspectors, attorneys, and the judiciary in a setting of increasing organizational violence in public services, private corporations, and family-related organizations.

We are in a period of consciousness raising and of implementing strategies to individualize legal responses to the issue. But this is also a time of significant confusion. This is not just a problem of how to classify or categorize the prohibited behaviors. That task until now has been relegated to the clinical practice of psychologists and psychiatrists. But clinical definitions cannot characterize the issue in a way appropriate for legal processes. These definitional problems create frustration in victims whose concern is how to obtain legal redress. Low reporting rates by victims have been an issue (although reports of workplace abuse have increased

rapidly recently). Nonetheless, the most important impediment is the low success rate for these types of cases in the legal system.

Neither judges nor lawyers have adequate training to properly handle these cases. The problem is not the lack of legal tools or techniques, but rather a lack of training, given the novelty of the phenomenon as a legal concept. Yet, if we examine the matter carefully, this problem is actually well understood, and its history can be traced back to the origins of modern society.

Over the past nine years we have had the opportunity meet and assist over 150 persons affected by workplace abuse. This accumulated experience has allowed us to uncover some of the key areas of uncertainty and failure in the legal system's response to the issue.

Regardless of legal responses at the level of the state—or even the European Union (which has opted for the creation of a specific crime of workplace or psychological harassment)—it is time that every public servant, every professional, and every concerned institution take make sure they are educated about this topic. For us, the problem is more one of training and education than of legislation. If new legislation comes, we welcome it. But we know from the experience of other countries that legislation is not synonymous with greater

regulatory effectiveness or improved rights.

Currently there are few legal studies on the issue; this contrasts with the status of sociological and psychological research. This uneven development poses a serious problem as the techniques and principles of each discipline are quite different. An excessive reliance on psychological perspectives can be dangerous in proper legal proceedings. Unfortunately, in recent legal decisions, we can observe this worrisome trend in action.

To respond to the lack of legal resources we created *Mobbing Watch* as a forum to closely analyze all legal decisions, as well as other pertinent regulatory documents [*Instituto Nacional de la Seguridad Social* (National Institute for Social Security) resolutions, labor regulations, decisions of workplace inspectors] whether they were favorable and unfavorable to the issue of addressing workplace harassment.

The forum serves to publicize, analyze, evaluate, and debate the various aspects that have led to the success of some legal cases and the failure of others. We understand that only with collective, careful analysis of real situations that we can offer reliable and serious ideas and data which allow us to separate the false from the true. This permits the development of action/response plans for all

those involved in managing these modern psychosocial risks. We have also published a series of books on the subject. These include a manual which discusses our experiences (*Psychological Harassment/ Mobbing in the Workplace: How to Intervene*), three thematic books (*Judicial Protection from Workplace, School and Family Harassment: Moving from Silence to the Penal Code; How to Prevent and Sanction Mobbing in Public Services; Case studies in Workplace Mobbing and Violence*), and a guide for professionals: *Psychological Harassment in the Workplace: a Guide for Preventing and Responding to Mobbing*. We are currently working on a guide entitled *The Mental Health of Workers*.

Membership and Operation of Mobbing Watch

The credibility and competence of the Observatory lies in its interdisciplinary and autonomous nature. It is independent of any organizational loyalties that its individual members may hold. Its strength is in the experience of the people who form it and of the organizations they are a part of. We did not seek to form a bureaucratic structure or organization, but rather a dynamic, flexible group of professionals. For this reason, the group was structured as a forum for professional debate. It offers sufficient flexibility and organizational informality to be adaptable as social, institutional,

and legislative circumstances and demands evolve.

Mobbing Watch has not been a stagnant group. We have had painful losses, such as our friend Eduardo Escribano (who we will always carry in our hearts). New members have enriched our group with their contributions. What has remained constant, however, is the interdisciplinary composition of a group in which participants discuss and make decisions about real cases in which they are involved in their work roles. Members include important representatives of the Judiciary (social, civil, administrative, penal); the public prosecutors office; various government offices (e.g., Basque Labor Authority, Labor Inspector and Social Security Institute/Basque Institute of Occupational Health and Safety, National Institute of Social Security (*Osakidetza*), local Occupational Prevention Services); the *Consejo de Relaciones Laborales* (Labor Relations Council); lawyers; psychologists; physicians; professional organizations (*Ilustres Colegios de Abogados* (Honorable Associations of Lawyers), *Consejo Vasco de la Abogacía* (Basque Legal Council)); and academics.

Purposes and Activities of Mobbing Watch

The main purpose of the group is the *study* and analysis of *key legal decisions* related to workplace harassment. However, it also plays an

advisory role in the areas of education and training. When appropriate we have proposed legislative reforms.

More concretely, the objectives of the group are:

- To study and analyze through discussion and debate the legal decisions on questions of workplace or psychological harassment with the purpose of identifying the most “normalized” behaviors and the main problems in the application of the current regulations.
- To propose, based on the accumulated experience of the debate forum, protocols and procedures that are considered to be appropriate, with the purpose of facilitating and enabling the full exercise of their roles within the legal system by individuals such as inspectors, attorneys, judges, and lawyers.
- To propose and execute training and education plans for those involved in the legal systems in order to improve its capacity to respond to harassment cases.
- Publish the work of the group that would be of general interest, with the goal of disseminating studies and analysis in the broadest, most accessible, and complete way possible.
- Organize seminars, gatherings and conferences to disseminate the results of its work to Basque society,

to the different territories of the Spain and to the various countries where it is active, so that knowledge can be integrated and used by individuals and organizations engaged in this subject, including experts from other European and American countries.

- To propose, in the medium term, based on its experience, research and knowledge of European and other legislation, a program and projects of legislative reform that the groups considers appropriate to improve the capacity of our legal system to face the issue of workplace harassment.

Members of Basque Mobbing Watch

D. Juan Carlos Benito-Butrón Ochoa, Specialist Magistrate on Social Issues at the Tribunal Superior de Justicia del País Vasco.

D. Jesús Manuel Villegas Fernández, Magistrate-Judge of the Juzgado de Instrucción no 3 de Guadalajara.

D. Luis Garrido Bengoechea, President of the Sala Contencioso-Administrativa del Tribunal Superior de Justicia del País Vasco.

D. Luis Lafont Nicuesa, Assistant Attorney of the Sala Coordinador de Extranjería.

Dña. Itziar Fernández Mendizábal, responsible for labor relations at the Ministry of Labor and Social Security of the Basque Government.

D. Manuel Velázquez Fernández, Chief of Social Security and Labor Inspection of Bizkaia.

D. Antonio Grinda Alcantarilla, Inspector of Social Security and Labor Inspection in Gipuzkoa.

Dña. Elena García Romero, Provincial Attorney of Bizkaia.

D. Iñaki Olaizola Nogales, Responsible for the occupational health unit of the Instituto Basque Institute of Occupational Health and Social Security of Bizkaia.

D. Xabier San Sebastián Mendizabal, Doctor of Psychology and Professor of the UPV.

Dña Begoña González Pérez, practicing lawyer.

D. Tomás Arrieta Heras, President of the Labor Relations Council.

D. Jesús Orbea López, practicing lawyer.

Dña Ana García Ortuño, Judge in Bilbao.

D. Juan Ignacio Marcos González, practicing lawyer. Coordinator of the Basque Workplace Harassment Observatory

D. Domingo Arizmendi Barnes, Dean of the Ilustre

Colegio de Abogados de Gipuzkoa and practicing lawyer.

D. Cristóbal Molina Navarrete, lecturer on social security and labor law at the Universidad de Jaén.

D. Guillermo Portero Lazkano, medical forensics specialist at the Clínica Médico Forense de Bilbao.

D. Ikerne Meso Llamosas, Academic of the National Institute of Social Security (Instituto Nacional de la Seguridad Social).

D. Juan Ignacio Goiría Ormazábal, Sub-director of the Prevention Service of Bilbao.

Dña. Ana Pérez Machío, professor of criminal law at UPV.

Dña. Esther Pomares Cintas, professor of criminal law at Universidad de Jaén.

Dña. Rocío Barreira Méndez, Director of Human Resources of Comarca Araba de Osakidetza.

Contacting the Basque Mobbing Watch

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