

SUMMARY REPORT

The course was characterised by having allowed an interesting comparative experience, with comparisons between the experiences of judges and public prosecutors, something especially useful in the light of the lack of specific regulations on mobbing, as is the case in Italy, Spain, Romania, Germany and the Czech Republic. At the end of the course, a common document was drawn up by all the participants, the most important points of which are listed below:

- 1) mobbing is rather diffused in the work environment in the substantial total of the countries whose public prosecutors took part in the course, even though most reports come from the public work sector compared to the private one;
- 2) penal law exists on the matter of mobbing in France, Sweden and Norway only;
- 3) In the other countries – including Italy – if conduct occurs that may become situations of mobbing, civil law protection is mostly resorted to, and in extreme cases only (if such conduct deteriorates into autonomous hypotheses of crimes foreseen by the penal code) an official report is made to the police, followed by the penal suit route;
- 4) statistically speaking, mobbing seems to concern the civil service public employment more than the private sphere, and affect middle level workers (clerks).
- 5) it appears to be preferable to adopt civil law regulation for mobbing rather than the autonomous foreseeing of a penal crime

In particolare: a) né in Spagna, né in Germania, né in Romania, né nella Repubblica Ceca vi è una legge apposita sul mobbing; b) in Germania ed in Spagna le questioni attinenti al mobbing vengono risolte nell'ambito del diritto e del processo del lavoro mentre nella Repubblica Ceca non vi è un processo speciale e, per l'effetto, le questioni attinenti al mobbing vengono risolte secondo l'ordinario diritto civile; c) in Germania ed in Spagna sovente i casi di mobbing (molestie sul luogo di lavoro o condotte discriminatorie) vengono risolti in sede stragiudiziale, ferma restando la possibilità che tutti gli ordinamenti riconoscono di adire la sede giudiziaria; d) la nozione di mobbing in Germania è di creazione giurisprudenziale e sotto tale profilo è assai simile a quella coniata dalla giurisprudenza italiana ed oggetto di proposte normative pendenti in sede parlamentare. e) in Francia vi è un sostanziale parallelismo tra lo svolgimento del processo penale e quello civile in tema di mobbing con una altrettanto sostanziale "condivisione della prova". Si è anche evidenziato come nel sistema francese esiste la seria possibilità per il lavoratore di percorrere strade alternative a quella giudiziaria ad esempio attraverso la ricerca di forme di conciliazione che sovente anticipano e non rendono necessario l'imbocco della strada della ricorso alla sede giudiziaria. È inoltre espressamente prevista in Francia l'istituzione di un "comitato aziendale" che all'interno di ogni struttura imprenditoriale prende cognizione e cerca di porre rimedio attraverso contatti immediati diretti con i responsabili alle condotte discriminatorie reiterate poste in essere nei confronti dei lavoratori.

Starting from the elements as described above, the main problem we faced is that of whether or not there is a need to resort to the creation of an autonomous penal law on the matter of "mobbing".

A single joint solution was not agreed on for this point and the difference in stance between judges who work in the civil law field and those who instead work in the criminal law field seemed to be somewhat clear.

The civil judges of the various countries seems to agree on the fact of considering civil law protection to be extremely effective and more than adequate for fighting this phenomenon, without there being a need for a parallel expansion of the criminal justice's work load through the setting up of a specific case in point of crime committed.

On the other hand, the judges from the criminal law sector supported the need to create an autonomous case in point of crime, commenting that:

- a) the institution of the crime of "mobbing" would allows protection to be provided in that "grey area" in which there is a series of repeated conduct against workers which, taken singly, would not

allow autonomous hypotheses of crime to be formed, but which, considering their global nature, would however determine a serious situation of physical and psychological difficulty for the worker that would become measurable; b) the very institution of a penal crime of mobbing, if prosecution were foreseeable, would end up imposing public intervention in situations that would not otherwise be reported to the authorities, in such a way as to guarantee the weaker and most affected categories of workers who, working in disastrous situations, would not be capable of reacting and reporting the crimes. An intermediate position was taken by a German judge who pointed out the possibility of taking a route that is not that of creating an autonomous figure of the crime of mobbing but to the contrary, that of leaving the decision-making of whether the existence and elimination of “mobbing” behaviour can be established in the hands of the labour judge and only if there is a hypothesis of fulfilling the measures given by the afore-stated judge should there be considerable penal sanctions in order to reinforce the labour judge’s true intervention power. The labour judge is in fact the most suitable for intervening in this field.

From the trial point of view, the investigatory problems linked to the “mobbed” worker’s actions have been highlighted, who may find it impossible to find persons who are willing to testify about the prejudice suffered or who may be exposed to retaliation of another kind by his employer. Attention was also paid to the absence of concurrence between the system that collects evidence for civil trials (labour suits) and that of the penal trials: in fact, while in the civil trial the worker can substantially limit himself to highlighting the existence of conduct that would result in him being unfairly sacked or demotion, obliging his superior and/or employer to prove the legitimacy of the actions that took place, penal law there would be a substantial inversion of the burden of proof as all the burden of accusation would be first on the plaintiff and on the public prosecutor while the defendant could even stay inert or limit himself to laying down his own defence at the moment when the accusation theory rises to a serious level of tangibility. It can be well understood how, in this case, for the “victim” the civil law route would be easier to take. Again with regards to the investigatory aspects of the matter, during the debate it was pointed out how the possible creation of an autonomous penal case in point of “mobbing” would make it necessary in any case to achieve investigatory harmonisation between the penal trial and the civil trial, especially for matters concerning the possible passing of evidence and the usability system of evidence from one type of trial to the other.

In Europe, European Union regulations are still somewhat limited on the matter, and the resolution of the European Parliament made in the month of September 2001, in which the member states were invited to strengthen strategies to contrast the phenomenon, still appears to be central, for which however, precise statistical data still appears to be lacking. Also, judicial cooperation is generally made difficult by the lack of shared mobbing action among the various countries of the European Union, which may also overcome the differences in terminology that can be recorded among the countries when defining the phenomenon.

With specific reference to European Union approaches, it has underlined how modern trends of judicial cooperation are generally directed towards two clear trends: harmonisation of the case in point; the mutual acknowledgement of judicial decisions, based on the reciprocal trust of the orders among the member states.