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# THE EUROPEAN LEGISLATIVE FRAMEWORK AGAINST DISCRIMINATION<sup>1</sup>. AN OVERVIEW

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**Abstract:** *Discrimination is a phenomenon encountered in the majority of societies, and it reflects on various groups based by: race, nationality, religion, ethnicity, gender, sexual orientation, persuasions, belonging to a disfavoured group, age, handicap, non-transmissible chronic disease, HIV infection. Any individual may be exposed to discriminatory acts at a given time for one or the other reasons, in certain situations and contexts. Irrespective of the discrimination type to which an individual or a group is/are subject, it is important to act for combating and diminishing all forms of discrimination because any such form affects under one or the other aspect to a large extent significant groups of individuals. The present paper intends to analyse the European legal framework regarding discrimination, respectively mobbing on the labour market with emphasis on the situation of women. A series of normative acts at European level are presented and detailed which are intended to contribute in counteracting the discrimination and mobbing phenomena, as well as models from some countries of the European Union (Spain, Italy, France, Poland and Slovakia).*

**Keywords:** *legislative framework, discrimination, labour market, woman, equality of chances.*

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The principle of non-discrimination is set at the core of general principles of the European Union legislation, and is mentioned in numerous provisions of the treaties and directives. The European directives are normative acts with enforcing the EU legal power over the Member-States, and they become part of the national law systems of Member-States by their incorporation in national normative acts or laws.<sup>3</sup>

The European Union legislation provides support to individuals who potentially might be discriminated, providing assistance and protection to all members of society against

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<sup>3</sup> The Guide for equality of chances, available at: [http://www.mdrl.ro/\\_documente/publicatii/2006/Ghidul\\_Egalitatii.pdf](http://www.mdrl.ro/_documente/publicatii/2006/Ghidul_Egalitatii.pdf), retrieved on 4.10.2011

discrimination on grounds of race, ethnicity, age, handicap, religion, beliefs, or sexual orientation being prohibited.

The European legislation in the field of discrimination is based on article 19 of the Lisbon Treaty (previously article 13 from the Amsterdam Treaty) which provides to the European Union competences toward combating or diminishing discrimination on grounds of race, ethnicity, religion, beliefs, handicap, age, gender or sexual orientation.

There are numerous European legislative documents addressing the issue of combating or diminishing discrimination, especially the provisions contained in treaties and directives, regarding access to work, equal payment, and treatment of employees on the job, maternity, and child-nurturing leave protection, social security and professional regimes of social security.

The European Union implemented strategy to combat discrimination and for applying the principle of gender equality, which is based on of the following directives:

- The Treaty of the European Union (The Treaty of Maastricht), 1992, art. 2 and art. 3;
- The Treaty of Amsterdam, 1997, art. 2, art. 3, art. 14, art. 137, art. 141;
- The European Union Charter of Fundamental Rights, 2000, art. 21, art. 23;
- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;
- Council Directive 2000/78/EC of 27 November 2000, *establishing a general framework for equal treatment in employment and occupation*;
- Directive 2002/73/EC of 23 September 2002, amending the Council Directive 76/207/EEC on the *implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions*;
- Council Directive 2004/113/EC of 13 December 2004, *on implementing the principle of equal treatment between men and women in the access to and supply of goods and services*
- Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the *implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation*;
- Directive 97/80/EEC of 15 December 1997, archived and amended, regarding the *burden of proof in cases of discrimination based on sex*
- Directive 2010/41/EU of July 2010 *on the application of the principle of equal treatment between men and women engaged in an activity, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood*
- Directive 79/7/EEC of 19 December 1978 *on the progressive implementation of the principle of equal treatment for men and women in matters of social security*.

The Maastricht Treaty contains some anti-discrimination clauses such as: the principle of gender equality (art. 2, and 3), which is applicable to all policies and activities of the European Union; equality between women and men regarding employment and occupation (art. 141) and combating sexual discrimination on and outside job (art. 13). Further, article 13 stipulates: *“without disregarding the provisions of the other dispositions of the Treaty and within the limits of the powers conferred by it to the European Community, the Council acting unanimously at the proposal of the Commission and after consulting the European Parliament may take decisions necessary to combating discrimination based on sex, racial or ethnic origin, religion or faith, disability, age or sexual orientation”*. On the basis of this article, the European Union gains the competence to *“take the corresponding measures for combating discrimination”*.<sup>1</sup>

The Treaty of Amsterdam includes an article dedicated to the general principle of non-discrimination (equality). The European Union might take measures for combating any form of discrimination (on grounds of sex, race, ethnicity, disability, age, sexual orientation). The actions are undertaken by the Council of Ministers by unanimously approved decisions based on the proposal of the Commission and after the consultation with the European Parliament. Another important aspect highlighted by the Treaty of Amsterdam is related to the principle of equality between men and women on the job place. The principle of positive discrimination is included as well, based on which member-states may take action for favouring women in view of balancing the situation in the fields of professional activity.<sup>2</sup>

The European Union Charter of Fundamental Rights stipulates in article 21, paragraph (1) a series of provisions regarding the prohibition of any kind of discrimination, based on reasons such as gender, race, colour, ethnic or social origin, language, religion, political opinion, ethnic minority, handicap, age or sexual orientation. At the same time, any discrimination on nationality/ citizenship grounds is banned (article 21, paragraph (2)). Religious, cultural and linguistic diversity is underpinned in article 22 of the charter. According to the article 23, equality between men and women must be ensured in all fields, including with respect to workplace and remuneration process. The principle of equality considers maintaining or adopting measures that would provide specific advantages to the under-represented gender.<sup>3</sup>

The principle of equal payment for men and women was introduced in the Treaty of Rome in 1957. In 1975 was adopted the Directive regarding equal pay which extends the provisions of the Treaty and defines the principle of equal remuneration as *“means for same work, or for work paid at the same value, by eliminating all discrimination based on sex, in all aspects and conditions of payment”* In December 1976, by means of the Directive of Equal Treatment, all aspects regarding employment were included. This directive

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<sup>1</sup> The Maastricht Treaty available at: <http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=uriserv%3Axy0026>, consulted on 4.10.2011

<sup>2</sup> European Issues: Treaty of Amsterdam, available at [http://ec.europa.eu/romania/documents/eu\\_romania/tema\\_24.pdf](http://ec.europa.eu/romania/documents/eu_romania/tema_24.pdf), consultat la 4.10.2011

<sup>3</sup> The European Charter of Fundamental Rights (2007/C 303/01), available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0001:0016:RO:PDF>, retrieved on 4.10.2011

stipulates that “no discrimination on reasons of sex, either directly or indirectly by reference to a certain civil or family status.”<sup>1</sup>

In 2000 were adopted the Directive regarding the equality of races, and the Directive of equality in employment. The directives stipulated that discrimination, harassment, and victimization in employment or vocational training are prohibited. In 2002, a modification is made regarding the directive for equal treatment by including the definitions for sexual harassment, direct or indirect discrimination.

The Council Directive 2000/43/EC from 29 June 2000 *for implementing the principle of equal treatment of persons irrespective of racial or ethnic origin*, has as fundamental attributions: *implementing the principle of treatment equality for all individuals irrespective of racial or ethnic origin; ensuring protection against discrimination on employment, in training, education, social security, health and access to goods and services.* The directive contains the definitions of direct and indirect discrimination, harassment and victimization. Another positive aspect stipulated in the directive is that it provides for the victims of discrimination the right to take legal action by administrative or judicial procedure, with respect to those acting discriminatory and provides sanctions for them. Limited exceptions are allowed for in enforcing the principle of equality of treatment, for instance in cases when the difference of treatment on racial or ethnic grounds means an actual occupational requirement. The burden of proof is divided between claimant and defendant, so that if an alleged victim determines facts from which it might be concluded that discrimination exists, the defendant is the one to provide evidence to the contrary and no infringement of the principle of equality of treatment exists. Based on this directive is established for each of the EU member-states the setting-up of a body for promoting equality of treatment and to provide assistance to the victims of racial discrimination.<sup>2</sup>

The Council Directive 2000/78/EC from 27 November 2000, regarding the *creation of a general framework in favour of equal treatment on employment and working conditions* implements the principle regarding the equality of treatment in the field of employment and training, irrespective of religion or belief, sexual orientation, age or disability. This directive includes identical provisions as the Directive regarding racial equality, and the definitions of discrimination and harassment; also the right to recourse is provided for, and for sharing the burden of proof. Employers are requested to create reasonable working conditions for persons with disabilities who have the skills for the respective jobs. In some instances, the Directive allows for exceptions from the principle regarding equality of treatment, for instance, for maintaining the special character of

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<sup>1</sup> EUR-Lex: Access to European Union law, *Council Directive of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions* (76/207/EEC), available at: [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=31976L0207&model=guichett](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=31976L0207&model=guichett), retrieved on 5.10.2011

<sup>2</sup> Council Directive 2000/43/EC from 29 June 2000 *for implementing the equal treatment of individuals irrespective of racial or ethnic origin*, available at: <http://www.cncl.org.ro/legislatie/Legislatie-internationala/Directiva-Consiliului-2000-43-CE-6/>, retrieved on 4.10.2011

some religious organisations, or for ensuring special measures regarding labour market integration of the very young or very old<sup>1</sup>.

Article 3, of the Directive regarding working relations (2000/78/EC) and the Directive on Race (2000/43/EC), have as purpose to prevent discrimination in the following common fields:

- Access on employment, occupation and profession;
- Working relations and conditions, including layoff and wage;
- Access to guidance and vocational training;
- Membership in trade unions or employers' associations.

The race directive (2000/43/EC) brings amendments that refer to education, social protection, including health services or social security, social advantages, access to public goods and services (access to housing).

The Directive 2000/73/EC from 23 September 2002 by which is modified the Council Directive 76/207/EEC regarding the *implementation of the equal treatment principle for men and women regarding access to employment, vocational training, promotion and working conditions* brings some amendments by which are introduced and replaced articles and paragraphs from the Directive 76/207/EEC. The concepts of "direct discrimination", "indirect discrimination", "harassment" and "sexual harassment" are introduced and defined. The member-states stimulated employers and individuals responsible about access to vocational training to take prevention measures against all forms of discrimination based on sex, against harassment and sexual harassment on the job (Article 2, paragraph 5).

Article 3 of the Directive 76/207/EEC is replaced by provisions regarding the enforcement of the principle of equality of treatment. The implications of this treatment mean the inexistence of direct and indirect discrimination, based on sex criteria regarding access to employment, or occupation, and access to all types and levels of vocational guidance and training, improvement and re-skilling, employment conditions, firing, remuneration, affiliation to and involvement in a trade union, or employers' association (Article 3, paragraph 1).<sup>2</sup>

The Council Directive 2004/43/EC from 13 December 2004 regarding the *implementation of the principle of equality of treatment between men and women regarding access to the supply of goods and services* has as objective to shape the framework for combating

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<sup>1</sup> Council Directive 2000/78/CE from 27 November 2000, for *creating a general framework in favour of equal treatment regarding employment, and working conditions*, available at: [http://www.anr.gov.ro/docs/legislatie/internationala/Directiva\\_Consiliului\\_2000\\_78\\_CE\\_RO.pdf](http://www.anr.gov.ro/docs/legislatie/internationala/Directiva_Consiliului_2000_78_CE_RO.pdf), retrieved on 4.10.2011

<sup>2</sup> Directive 2002/73/EC from 23 September 2002, altering the Council Directive 76/207/EEC regarding the *implementation of the principle of equal treatment for men and women regarding access to employment, occupation, vocational training, promotion and working conditions* available at: <http://www.mmuncii.ro/pub/imagemanager/images/file/Legislatie/DIRECTIVE/Dir2002-73.pdf>, retrieved on 5.10.2011

discrimination on criteria of sex regarding access to goods and services and the supply thereof, in view of enforcing within the member-states the principle of equality of treatment between men and women.

This directive is applicable to both direct and indirect discrimination. We refer to direct discrimination when based on sex criteria a person is treated less favourably than another person in the same circumstances (Art. 12). The indirect discrimination becomes noticeable when an apparently neutral fact, criterion, or practice might disadvantage especially persons of a certain sex as compared with persons of the opposite sex.

Persons supplying goods and services at the disposal of the general public and provided outside the field of private and family life are prohibited to discriminate (Art. 13).

Different treatment is acceptable only when justified by a legitimate objective, such as protection of victims against violence of sexual nature, reasons that are related to respecting private life and decency, promoting gender equality or of the interests of either men or women (Art. 16).

*“The principle of the equality of treatment regarding access to goods and services does not require for supplied services to be always divided between men and women, on the condition that this type of supply does not favour one of the sexes”* (Art. 17).

The inadequate treatment against men on criteria of pregnancy or motherhood is considered as a form of direct discrimination based on sex, and as result it is prohibited within insurance services and related financial services (Art. 20)<sup>1</sup>.

Directive 2006/54/EC of the European Parliament and of the Council from 5 July 2006 regarding the *enforcement of the principle of the equality of chances and of the treatment equality between men and women regarding employment and occupation* contains provisions aimed at enforcing the principle regarding equality of treatment about: access to work (promotion, vocational training), working conditions (remuneration), social security systems (Art. 1).

In article 2 of the Directive are defined the following concepts: “direct discrimination”, “indirect discrimination”, “harassment”, “sexual harassment”, “remuneration”, “professional systems of social security”.

In title II, chapter 1, art. 4, is imposed the ban on any discrimination of the same type of work or equal work, direct or indirect discrimination being excluded from the all the elements and ways of remuneration.. When a system of professional classification is used for establishing remuneration, this system is realised based on common criteria for workers of both sexes, being established so as to combat discrimination based on the gender criterion.

The treatment equality within professional systems of social security is dealt with in chapter 2: the ban on any type of discrimination, the field of application depending on

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<sup>1</sup> Council Directive 2004/43/EC from 13 December 2004, regarding the *implementation of the principle of equality of treatment between men and women regarding access to the supply of goods and services* available at: <http://www.egalitatedesansa.ro/documente.aspx?articleId=29>, retrieved on 5.10.2011

persons (it is applied for the active population and to those developing self-employed activities, workers whose activity is disrupted by disease, maternity, accident or involuntary unemployment, but also to persons seeking a job, to retired workers, to disabled persons and persons in the care of these workers<sup>1</sup>.

The Directive 97/80/EEC from 15 December 1997 regarding the *burden of proof in cases of discrimination based on sex* is founded on the principle of the equality of treatment, which presupposes the inexistence of any (direct or indirect) discrimination based on sex.

The Directive has as objective to guarantee more efficiently the measures adopted by the member-states for the enforcement of the principle of the equality of treatment in order to “*enable all persons who consider themselves wronged because the principle of equal treatment has not been applied to them to have their rights asserted by judicial process after possible recourse to other competent bodies*” (Art.1).

Article 4, paragraph (1) contains stipulations about the burden of proof. In this case, the member-states must undertake the necessary measures, so that in cases where the individuals regard themselves as wronged, this persons must be able for provided in front of the court facts evidencing the existence of direct or indirect discrimination. In case if the defendant is found guilty, this one must to prove, according to his/her obligations that there has been no breach of the principle of equal treatment.<sup>2</sup>

Directive 2010/41/EU of July 2010, refers to *the principle of equal treatment for self-employed men and women, and the protection of women who develop self-employed activities in the period of pregnancy and maternity*. Article 2 (A and B point) of the directive stipulates the types of persons who are aimed by it: independent workers, all individuals developing self-employed activities, under the conditions provided by law, their spouses, who are not employed or associates when these are involved in the activities of the independent worker and fulfil the same tasks or complementary tasks.

The member-states examine under which conditions women who develop an independent activity and the spouses of self-employed may during the interruption of the occupational activity because of pregnancy or maternity, have access to existing social services without the right to monetary benefits in the framework of a social security regime or based on any other public system of social protection (Art. 8)<sup>3</sup>.

Directive 79/7/EC from 1978, for *the progressive implementation of the principle of equal treatment between men and women in matters of social security* has as purpose to enforce

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<sup>1</sup> Directive 2006/54/EC of the European Parliament and of the European Council from 5 July 2006, regarding *the enforcement of the principle of the equality of chances and of the one of the equality of treatment between men and women regarding employment* available at: <http://www.mmuncii.ro/pub/imagemanager/images/file/Legislatie/DIRECTIVE/Dir2006-54.pdf>, retrieved on: 5.10.2011

<sup>2</sup> Directive 97/80/EEC from 15 December 1997 regarding *the burden of proof in cases of discrimination based on sex*, retrievable at: <http://www.egalitadedesansa.ro/documente.aspx?articleId=23>, consulted on 5.10.2011

<sup>3</sup> Directive 2010/41/EU from July 2010 regarding *the application of the principle of equal treatment between men and women engaged in an activity, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood*, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010L0041>, -consulted on 5.10.2011

progressively the principle of equal treatment between men and women in the field of social security. The directive is applied to the active population, to persons developing independent activities, persons seeking jobs and retired or disabled workers developing self-employed activities (Article 1, paragraph 2).

Article 4 of the Directive provides an explanation about the meaning of the principle of equal treatment, respectively that there should exist any (direct or indirect) discrimination based on gender, in particular regarding marital or family status, referring to: application domain of regimes and access conditions to the aforementioned, the obligation of contributing and calculating the respective contributions, the calculation of services, including benefits owed to the other spouse of the persons in maintenance, as well as the conditions regulating the duration and maintenance of the right to benefits.

The member-states specify, within their national legal systems, the necessary measures for allowing individuals who consider themselves wronged by failure to enforce the principle of equal treatment to pursue the assurance of their rights by legal means, after resorting beforehand to other competent bodies<sup>1</sup>.

All the above-mentioned directives are applicable to all persons residing on the territory of a member-state, against any discrimination act based on one of the provided for criteria (race, ethnicity, disability, religion, sexual orientation, etc.) irrespective of the nationality of the respective person. The directives exclude discrimination on the criterion of citizenship. Save for the anti-discrimination directives, there are provisions of the Treaty of the European Union which stipulate freedom of movement for individuals within the European Union.

In some member-states of the European Union (Denmark, Estonia, Greece, Italy, France, Cyprus, Poland, and Malta) the legislation against discrimination contains only the fields mentioned in the Directive regarding equal treatment on employment. Estonia, France, Greece, and Poland debate an extension of the legislation for combating discrimination phenomena. In the Czech R., Ireland, Latvia, Lithuania, Luxemburg, Hungary, the Netherlands, Finland, Sweden and the United Kingdom, the legislation against discrimination was partially extended to cover also other fields with the exception of employment. In Belgium, Bulgaria, Germany, Spain, Austria, Slovenia, Slovakia, and Romania, specific legislation is provided for employment, including here the legislation against discrimination on grounds of sexual orientation (on hiring, or for promotion), but also in the additional fields specified by the directive regarding race equality<sup>2</sup>.

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<sup>1</sup> *Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security* available at: [http://eurlex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=31979L0007&model=guichett](http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=31979L0007&model=guichett), retrieved on 5.10.2011

<sup>2</sup> European Union Agency for Fundamental Rights, available at: [http://fra.europa.eu/fraWebsite/attachments/Factsheet-homophobia-protection-law\\_RO.pdf](http://fra.europa.eu/fraWebsite/attachments/Factsheet-homophobia-protection-law_RO.pdf), retrieved on 6.10.2011

## The European legislation regarding the fight against mobbing phenomena

In the European Union member-states there are legislative provisions aiming to fight against discrimination and mobbing phenomenon. The member-states have the obligation to comply with the objectives stipulated by the European directives but they have a certain freedom when transposing the directives into the national legislation, depending on the specific national circumstances. The European legislation for combating discrimination and psychological harassment on the job brings benefits to workers within the European Union because it provides extended protection for all types of discrimination and harassment. The equality of treatment on the job and regarding working conditions are key-elements in guaranteeing equal chances for all individuals. These key-elements contribute to full participation of individuals to the economic, cultural and social life, and to the development of their professional and social potential.

The concept of *mobbing* is not fully known and included yet in the legislation of several member countries of the European Union. The approach is biased more towards legal provisions making reference to this fact, than from the viewpoint of psychological (moral) harassment on the job; however, there are countries that have included already in their national legislation this concept.

The victims of mobbing are often subjected to stress on the job which might be associated with psychological injury. To this end, the European Commission has implemented measures for ensuring the safety and health of workers on the job.

Directive 89/391/CEE from 12 June 1989 regarding safety and health of workers on the job represented a significant instrument for improving safety and health at the workplace. This directive guarantees the minimum requirements regarding safety and health on the job in the entire Europe (all states), while the member-states have the possibility of maintaining or establishing even stricter measures. The directive makes accountable the employers regarding the prevention of any type of injury, including injuries resulting from moral harassment<sup>1</sup>.

The member-states have implemented this directive in their own legislation, and some member-states have even realised prevention guidelines for psychological harassment on the job. According to the approaches from the Directive 89/391/CEE for attenuating psychological harassment, the employers based on consultations with the employees should have as organisational objective the prevention of moral harassment, and to evaluate the risks of being morally harassed and adopt adequate measures for preventing the negative consequences.

At the level of the European Union, there are two Directives, respectively Directive 2000/43/EC, regarding the implementation of the equality of chances for individuals

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<sup>1</sup> European Agency for Safety and Health at Work: *Framework-directive regarding safety and health at work* available at: <http://osha.europa.eu/ro/legislation/directives/the-osh-framework-directive/the-osh-framework-directive-introduction>, consulted on 6.10.2011

irrespective of ethnicity or race, and Directive 2000/78/EC on establishing the guideline measures regarding equality of treatment on employment and in occupation. According to the provisions of Directive 2000/78/EC, “*member-states shall, in accordance with their national traditions and practice take adequate measures to promote dialogue between the social partners with a view of fostering equal treatment, including through monitoring of workplace practices, collective agreement, codes of conduct and through research or exchange of experiences and good practice*” (Article 13, paragraph (1))<sup>1</sup>.

Directive 2000/43/EC contains provisions mentioning that the Member-States have the obligation of implementing in the framework in their national legal systems the required measures for the protection of persons against any treatment that disfavours them, or against any consequence by which they are affected. (Art.9).

By article 11, paragraph (1), the Directive refers to the same type of provision as Directive 2000/78/EC respectively that member-states must ensure the existence of some measures for promoting social dialogue between the two representative parties, in order to promote gender equality, this promotion taking place also by monitoring practices at the workplace, collective agreements, conduit codes, the exchanges of experience and good practices<sup>2</sup>.

By directives the objectives and main regulations are established, Member-States having the freedom of choosing the manner in which these directives are implemented.

The directives of the European Union do not involve “*the exercise on behalf of the Community bodies of any constraint of the states for the adoption of one set or other of legislative measures, but only are intended a guidelines towards a certain finality*” (2007)<sup>3</sup>.

Article 31 of the Fundamental Charter of the European Union refers to equitable and just working conditions, stipulating that “*each employee has the right to working conditions complying with his/ her health, safety and dignity*”<sup>4</sup>.

Moral harassment is mentioned also in the Guide of European Commission regarding stress related to professional activity, which can be enforced also in the case of psychological harassment<sup>5</sup>. The European Parliament adopted a motion for a resolution

<sup>1</sup> Directive 2000/78/EC of the Council from 27 November for the creation of a general framework in favour of equal treatment in employment and occupation, available at: <http://www.egalitate-desansa.ro/documente.aspx?articleId=27>, consulted on 7.10.2011

<sup>2</sup> Council Directive 2000/43/EC of June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>, retrieved on 7.10.2011

<sup>3</sup> Article: “*What do you know about mobbing?*”, published in June 2007, available at: [http://www.121.ro/content/article\\_print.php3?article\\_id=4587&page\\_nr=1](http://www.121.ro/content/article_print.php3?article_id=4587&page_nr=1), retrieved on 7.10.2011

<sup>4</sup> Fundamental Charter of the European Union, available at: <http://eurlex.europa.eu/ro/treaties/dat/32007X1214/htm/C2007303RO.01000101.htm>, retrieved on 8.10.2011

<sup>5</sup> Guide regarding stress on the job “*The salt and pepper of life – or kiss of death?*” [ Ghid privind stresul la locul de muncă “*Sarea si piperul vietii – sau sarutul mortii?*”], European Commission 1999,

regarding moral harassment on the job. The Parliament of the European Union “invites Member-States to examine and if necessary to amend, reanalyse, and standardise the definition of moral harassment in view of counteracting moral harassment and sexual harassment on the job”.

Currently, few member countries of the European Union have passed special legislation regarding moral harassment on the job. In some countries, the legislation is still in the stage of draft, while in other states actions of regulating this aspect have been initiated by adopting statutes, guides, or resolutions. In the majority of member-states that provide for regulations in order to combat the mobbing phenomenon, these adopted documents don't have any terms that include the term of “mobbing”, but are rather known as measures intended to prevent moral harassment on the job. However, there are countries that included this concept in their legislative acts.

Regarding the implications and legal measures about the mobbing phenomenon, Sweden was the first country of the European Union that stipulated in its legislation the term of “psychological harassment” on the job. In this way, by the Ordinance on Victimization at Work passed in 1993, even if not concrete action was undertaken by using some remedies for individuals victimised at work, the importance of this document was related to acknowledging the concept and encouraging discussions about mobbing<sup>1</sup>.

In France, already in 1960, the courts acknowledged moral harassment even before being introduced in the legislation in the field. The fact that an acknowledgement by the French judicial courts occurred, and that this concept was widespread at the level of the population, had as consequence the public demand of outlining legislation in this respect. In January 2002, the Law regarding the social modernisation of France (*Loi de modernisation sociale*)<sup>2</sup> was compliant with the requirements of amending the Labour Code and the Criminal Code with articles incriminating psychological harassment.

The French Labour Code stipulates that no employee should be victim of moral harassment which has as effect a deterioration of working conditions by harming rights and dignity of the respective employee with implications on the physical and mental health of the respective worker, because this fact implies risks for the professional future of the respective person. The Labour Code from France also provides information pertaining to the burden of proof which needs to be managed by the parties making the object of such a case. The employee is the one who needs to produce the proof that the constitutive elements of psychological harassment are given, and thereafter the employer must prove objectively that the kind of adopted attitude, that is the object of the complaint of the employee, is not mobbing<sup>3</sup>. Article 230-2 from

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available at: [http://europe.eu.int/comm/employment\\_social/h&s/publicat/pubintro\\_en.htm](http://europe.eu.int/comm/employment_social/h&s/publicat/pubintro_en.htm), retrieved on 7.10.2011

<sup>1</sup> Ordinance AFS 1993:17 – *Victimization at work*, available at: <http://www.av.se/dokument/inenglish/legislations/eng9317.pdf>, retrieved on 7.10.2011

<sup>2</sup> *Loi nr 2002-73 du janvier 2002 de modernisation sociale*, available at: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000408905&dateTexte>, retrieved on 7.10.2011

<sup>3</sup> Code du Travail, 2001-2002, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_191113.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_191113.pdf), retrieved on 7.10.2011

the French Labour Code provides that *“it is the obligation of the head of the enterprise to undertake all necessary measures to prevent the acts referred to in article L122-49 and to protect the physical and moral health of the employees.”*

In Italy, the mobbing phenomenon is combated by article 594 of the Italian Criminal Code as it incriminates the act of insulting by which the dignity of a person is prejudiced, as sanctions are increased, if the deed takes place in front of several persons (Art. 596-599). In article 595 of the Italian Criminal Code is stipulated that whenever the unfavourable behaviour brings prejudices to the dignity of the worker in his/her presence, and then this act is considered as defamation. Another article highlights the sanctions for mobbing, by incriminating the act of violence in article 582 of the Italian Criminal Code, by which sanction measures are imposed for persons attempting to harm the physical or psychical integrity of other individuals<sup>1</sup>.

The Criminal Code of Spain contains in Title VII also provisions dealing with intimidation, pressure and other acts harming the moral integrity of a person. In article 173 of the Code is stipulated that whenever a person (either superior or colleague at the workplace) enact degrading treatments that harm the moral integrity of a person, by repeatedly acting hostile or humiliating towards the respective person, the persons displaying such behaviours shall be sanctioned with imprisonment from six months to two years. Article 174, stipulates that employers abusing by their superior position against employees, and resort to intimidation or pressure methods, or discriminate in any way their employees, are subjected to infringement procedures and shall be sanctioned for these deeds. Employers should not adopt attitudes by which the intellectual capacity or the knowledge competences of the employees are prejudiced or underestimated because in this way the moral integrity of the employees is endangered<sup>2</sup>.

In Hungary, the provisions of the Hungarian Criminal Code contain several sections applicable to various forms of violence or harassment at the workplace and which are regulated specifically by measures taken in Court for the abuse of the employers against the employees. Paragraph (1) of section 358 underpins that whenever an employer insults visible one engaged, who is in a subordinate position, bringing harm to his/her human dignity and, if at the perpetration of this deed others are witness, then the employer commits a contravention and this is sanctioned with imprisonment from up to one year. In accordance with paragraph (3) if, the pressure of the employer against the employee brings with it considerable disadvantages on the job for the respective employee, the employer shall be sanctioned with imprisonment from one to five years. Section 359 describes the way in which an employer might abuse its superior power: by imposing a disciplinary sanction against some employees; by limiting their employees' rights to complaint regarding this fact; diminishing the remuneration of the employees and imposing them several tasks; by summoning them for private reasons; by adopting

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<sup>1</sup> Bogdan Camelia, *Regulation of mobbing in Romanian Criminal Justice* [in Romanian], available at: [http://www.revdpenal.ro/Reglementarea\\_mobbingului\\_in\\_legislatia\\_penala\\_romana.pdf](http://www.revdpenal.ro/Reglementarea_mobbingului_in_legislatia_penala_romana.pdf), retrieved on 7.10.2011

<sup>2</sup> *Organic Law 10/1995*, 23 November, din Spanish Criminal Code, Chapter 3, Title VII, available at: [http://noticias.juridicas.com/base\\_datos/Penal/lo10-1995.html](http://noticias.juridicas.com/base_datos/Penal/lo10-1995.html), retrieved on 8.10.2011

a less favourable or disadvantageous treatment against some of the employees compared to other employees<sup>1</sup>.

In Poland, the Polish Labour Code is associated at legislative level with the Parliamentary Council for Labour Protection, and the Constitution of the Republic of Poland, and the Act of 6 March 1981 regarding the National Labour Inspectorate and other documents, reports analysing the situations of mobbing and the psychological-social relationships at the workplace, these being prepared to be delivered to the Parliamentary Council for Labour Protection. The regulations stipulated in these legislative documents refer to preventing psychological harassment at the workplace, the type of sanctions to be applied to persons exercising undue behaviour against behaviour and to the way in which these employees might identify an attitude which implies mobbing<sup>2</sup>.

In the legislation of Malta, the occupational health and safety, as well as labour force employment, the relationships at the workplace are stipulated by the national legislation in the Authority Act, chapter 424 and 452. These acts establish the main provisions that regulate labour force employment and prohibit discriminatory treatment in employment, and any type of harassment (Art. 29).<sup>3</sup> The equality of treatment is promoted by the occupation and labour force employment (Legal Advice 461 from 2004).<sup>4</sup>

In Slovakia legislative measures are provided for the issue of moral harassment and for violence at the workplace. These measures are found in the provisions of the Civil Code (no. 150/2004); the Labour Code (no. 311/2001); Law 379/1997 ZZ, which approaches the safety services at the workplace; Law 365/2004 Zz (the Anti-discrimination Law); Law 311/2001 Zz regarding adequate working conditions; the Constitution of the Slovak Republic, and the Criminal Code 301/2005.<sup>5</sup>

Other member-states of the European Union with legislative regulations for preventing the situations of psychological harassment at the workplace, but which are not all in their quasi-totality considered as *mobbing* are: Cyprus, the Czech Republic, Estonia, Latvia, Lithuania, and Slovenia.

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<sup>1</sup> *Hungarian Criminal Code*, Act IV from 1978, available at : [http://www.era.int/domains/corpus-juris/public\\_pdf/hungary\\_criminal\\_code.pdf](http://www.era.int/domains/corpus-juris/public_pdf/hungary_criminal_code.pdf), retrieved on 8.10.2011

<sup>2</sup> European Agency for Safety and Health at Work: *Prevention of violence and harassment at work*, Poland, available at: [http://osha.europa.eu/en/campaigns/hwi/topic\\_prevention\\_violence/poland/index\\_html/key\\_official\\_documents\\_html](http://osha.europa.eu/en/campaigns/hwi/topic_prevention_violence/poland/index_html/key_official_documents_html), retrieved at 8.10.2011

<sup>3</sup> European Agency for Safety and Health at Work: *Prevention of violence and harassment at work*, Malta, available at: [http://osha.europa.eu/en/campaigns/hwi/topic\\_prevention\\_violence/malta/index\\_html/key\\_official\\_documents\\_html](http://osha.europa.eu/en/campaigns/hwi/topic_prevention_violence/malta/index_html/key_official_documents_html), retrieved at 8.10.2011

<sup>4</sup> *Aviz Legal (Malta) 461 din 2004*, available at: <http://docs.justice.gov.mt/lom/legislation/english/subleg/452/95.pdf>, retrieved at 8.10.2011

<sup>5</sup> European Agency for Safety and Health at Work: *Prevention of violence and harassment at work*, Slovakia, available at: [http://osha.europa.eu/en/campaigns/hwi/topic\\_prevention\\_violence/slovakia/index\\_html/key\\_official\\_documents\\_html](http://osha.europa.eu/en/campaigns/hwi/topic_prevention_violence/slovakia/index_html/key_official_documents_html), retrieved at 8.10.2011

## Conclusions

At European level, the legislation against discrimination sums up a coherent assembly of rights and obligations applicable in all member-states of the European Union. From the legal viewpoint, procedures are provided for that have the role of supporting victims subjected to some situations of discriminations and by which is guaranteed their protection against several types of discrimination: direct and indirect discrimination, psychological harassment, mobbing, in particular in the cases of discrimination based on gender and access to equal chances in all spheres of life.

The European provisions about discrimination and mobbing instances, as instituted based on directives and measures, support human rights and fundamental freedoms, and prohibit discrimination in a wide array of context and for a significant range of criteria. These norms and stipulations of the European Union intended to combat any kind of discrimination were transposed by the member-states in the national legislation of each country.

A series of directives at European level take into consideration and approach the vulnerable groups subjected often to various forms of discrimination, harassment, or mobbing instances. A particular concern is represented by the multiple discriminations of women. They are included among the vulnerable groups from the social viewpoint, fact which implies also vulnerability from the economic viewpoint, implicitly a higher risk of poverty.

The laws promoting equality of chances between women and men covers a wide range of fields (Tomescu & Cace, 2010), especially equal treatment in occupation and maintaining employment, equal treatment at the workplace, the protection of pregnant women and breast-feeding mothers, as well as the right to maternal or paternity leaves.

The field comprising the most complex stipulations regarding combating, preventing and sanctioning the discrimination situations, especially based on gender criteria, is the one of employment. This fact is due to the way in which the international legislation laid emphasis on the regulation of labour relationships by various normative documents of the International Labour Office, an agency of the United Nations.

In the context of building-up the European Community, negotiations were held for some Community regulations regarding the economic relationships and the Community employment, and the labour market field was the triggering factor imposing mentions related to the prevention, sanctioning and combating of the discrimination and mobbing situations. The discriminating practices encountered in the field of labour were the first to benefit of special attention from the European Court of Justice, the European Commission and the European Council.

With the purpose of attaining the objectives regarding equal participation to and non-discriminating treatment in the economic life, it is necessary to promote a non-discriminating attitude about the role of women in all spheres of life, such as: education, career, labour force employment. Increasing the productivity degree of labour and improving occupation must be correlated so as to result a compatibility with their private life, respectively with the social model and the living standard of the

European lifestyle. A defining element for ensuring progress in achieving the objective of equality of chances is represented by the promotion of good practices in the field at European level.

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