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WORKING PAPER

BULLYING AT WORK

Social Affairs Series

SOCI 108 EN

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PART I: INTRODUCTION

1. Aim and contents of the study

This document is intended as a contribution to the debate of taking legislative actions in the field of workplace bullying. It is beyond the scope of this paper to make recommendations on the political decision as to whether such action is appropriate. It mainly focuses on the effects of workplace bullying, on the presently existing legal protection and on the general possibility of community measures against it. Therefore, it is not essential to represent completely the entire interrelated scientific discussion but to give just a general outline of the problem of workplace bullying.

While the phenomenon itself has been in existence since workplaces were first established¹, initial research about it had only taken place in Sweden, beginning in 1972². In other countries, workplace bullying has been isolated from similar workplace conflicts like sexual harassment, for example, and identified as having its own effects on both the individuals concerned and on society, especially within the last ten years³.

First of all, it is vital to comprehend what kind of behaviour constitutes workplace bullying and how it can be distinguished from ordinary conflicts and different forms of harassment.

Additionally, to be able to evaluate the necessity of legislative measures it is necessary to know not only about the impact workplace bullying can have on the people concerned and on society as a whole but also about its economic consequences.

Furthermore, the current existing legal situation with regard to workplace bullying both on a domestic and on a European level will be examined.

A compilation of proposals for better protection against workplace bullying leads to the final question as to how legal action by the EU could possibly be exerted.

2. Definition of workplace bullying

First of all, one has to be aware that an internationally-accepted expression for the phenomenon of "workplace bullying", as referred to in this paper, does not exist. Consequently, there is no general applicable definition, either. It is even stated that "there is no true or right definition..." of this problem⁴.

¹ Ishmael, A., with Alemoru, B., *Harassment, bullying and violence at work*, London 1999, p. 60.

² See overview of the research in Neuberger, O., *Mobbing, Übel mitspielen in Organisationen*, München 1999, pp. 3 ff.

³ See Hadikan, R./O'Driscoll, M., *The Bullying culture*, Oxford 2000, pp. 8 ff.

⁴ Neuberger, O., op. cit., p. 11.

2.1. Terminology

Even within the English-speaking literature there is no unitary term. In the U.S., the experience of workplace bullying is often referred to as "employee abuse", or "workplace terrorism". American experts are also familiar with the expression of "mobbing", which is used in Germany, Italy and Sweden, for example. In the U.K., the phenomenon is called both "workplace bullying" and simply "bullying". The latter term, however, is predominantly used in the context of bullying in schools, which implies more physical aggression and threats than bullying at the workplace⁵.

The more psychological nature of workplace bullying is indicated by the French expression "*harcèlement moral*".

In this paper, the terms mobbing and workplace bullying are used as synonyms.

2.2. Existing definitions

There are numerous definitions, sometimes focusing on quite different features⁶. However, some aspects appear more frequently than others do. Thus, the following choice of definitions concentrates on the common interpretations of the problem:

- The Swedish National Board of Occupational Safety and Health defines workplace bullying (using the term of "victimisation") "as recurrent reprehensible or distinctly negative actions which are directed against individual employees in an offensive manner and can result in those employees being placed outside the workplace community"⁷.
- For the International Labour Organization (ILO), workplace bullying is constituted by "offensive behaviour through vindictive, cruel, malicious or humiliating attempts to undermine an individual or groups of employees [...]. It involves ganging up on or "mobbing" a targeted employee and subjecting that person to psychological harassment. Mobbing includes constant negative remarks or criticisms, isolating a person from social contacts, and gossiping or spreading false information"⁸.
- For one of the leading scientists in the field of workplace bullying, Leymann (who introduced the word "mobbing" into the scientific vocabulary), "psychological terror or mobbing in working life involves hostile and unethical communication which is directed in a systematic manner by one or more individuals, mainly toward one individual, who, due to mobbing, is pushed into a helpless and defenceless position and held there by means of continuing mobbing activities. These actions occur on a very frequent basis [...at least once a week] and over a long period of time [...at least six months' duration].

⁵ Zapf, D., "Mobbing in Organisationen – Überblick zum Stand der Forschung", *Zeitschrift für Arbeits- und Organisationspsychologie*, 1999, p. 12.

⁶ See compilation in Neuberger, O., op. cit., pp. 13 ff.

⁷ See Section 1 of the *Ordinance of the Swedish National Board of Occupational Safety and Health containing Provisions on measures against Victimization at Work*, Ordinance AFS 1993:17.

⁸ International Labour Organization (ILO), *When working becomes hazardous*, 1998, p. 2, (<http://www.ilo.org/public/english/bureau/inf/magazine/26/violence.htm>).

Because of the high frequency and long duration of hostile behaviour, this maltreatment results in considerable mental, psychosomatic and social misery"⁹.

- Workplace bullying is also described as the process of the insidious destruction of an individual by repeatedly attacking his dignity over a long period of time¹⁰.
- The German verb "mobben" is finally defined as the "persistent torment of colleagues (with the intention to dispel them from their posts)"¹¹. Its origin is the English word "to mob" which means to molest somebody.

The conclusion that can be drawn from these definitions is, that in order to amount to workplace bullying, behaviour must be exercised

- repeatedly,
- over a significant period of time,
- non-physical,
- with a humiliating effect on the bullied person.

It is very important to note that "workplace bullying" is not a single action, but a series of one or several different actions over a period of time¹².

2.3. Reasons/Motivation for workplace bullying

Such conduct can have the objective of expelling or excluding the person but will not necessarily do so. Its intention can also be to punish him or her¹³. But the reasons for workplace bullying must also be seen in the light of the actual situation on the labour market. Particularly, if several colleagues or even the whole department conduct workplace bullying against a single person, this method is an old technique to achieve an internal satisfaction by creating an outside enemy to fight against. In cases of bullying among colleagues the person concerned is often used as a scapegoat for superiors, the real target, or as relief valve for aggression. The reason for the aggression is in this case inadequacy or unfairness in working conditions (e.g. of the department, outdated configuration of the workstations, etc.), personnel decisions (e.g. external applicants are frequently preferred to internal, experienced applicants within the department) or remuneration (e.g. no salary increase for years)¹⁴.

3. Workplace bullying activities

Various behaviour can be identified as workplace bullying¹⁵. The most typical actions are, for example, giving the bullied worker no possibility to communicate; not talking to him any more; making fun of the way he moves or talks; gossiping about him or giving no or only meaningless

⁹ Leymann, H., *The Mobbing Encyclopaedia*, <http://www.leymann.se/English/12100E.HTM>.

¹⁰ Hirigoyen, M.-F., *Le harcèlement moral. La violence perverse au quotidien*, Paris 1998, p. 7.

¹¹ Duden, *Die deutsche Rechtschreibung*, Mannheim/Leipzig/Wien/Zürich 1996, p. 498.

¹² Compare footnote 18.

¹³ Leymann, H., op. cit., <http://www.leymann.se/English/12220E.htm>.

¹⁴ Industriegewerkschaft Metall, *Mobbing - wo andere leiden, hört der Spaß auf*, Frankfurt a.M. 1997, p. 18 (<http://www.igmetall.de/buecher/onlinebroschueren/mobbing/mobbing.html>).

¹⁵ Leymann identified 45 different mobbing activities, see Leymann, H., op. cit., <http://www.leymann.se/English/12210E.htm> and the following main text.

work assignments. The mobbing-expert Prof. Heinz Leymann speaks of "mobbing" when one or several of the following 45 exactly described actions occur over half a year or longer and at least once per week:

3.1. Attacks on the possibility of expressing oneself

- Being limited in the possibility of expressing him/herself.
- Being constantly interrupted.
- The possibility of expressing itself is limited by colleagues.
- Being shouted at or told off.
- Constant criticism of one's work.
- Constant criticism of one's private life.
- Telephone terror.
- Verbal threats.
- Written threats.
- Refusal of contact through devaluing views or gestures.
- Refusal of contact by suggestions, without expressing anything directly.

3.2. Attacks on social relations

- The person concerned is ignored.
- The person concerned is not allowed to express him/herself.
- Transfer into a room far away from colleagues.
- Work colleagues are not allowed to talk to the person concerned.
- Being ignored by colleagues.

3.3. Effects on social reputation

- Bad-mouthing the person concerned.
- Rumours are spread about him or her.
- The bullied person is made to seem ridiculous.
- Expressing suspicion that someone is psychologically ill.
- Seeking to force someone to undergo psychiatric investigation.
- Scoffing at a handicap.
- Gait, voice or gestures are imitated in order to make someone look ridiculous.
- Attacks on the person's political or religious views.
- Making fun of the person's private life.
- Making fun of their nationality.
- The person concerned is forced to carry out work which offends his/her self-confidence.
- The work input is judged in a false or insulting way.
- Decisions are questioned.
- Making the person concerned the subject of obscene invectives or other degrading expressions.
- Making the person concerned the subject of sexual approaches or offers.

3.4. Attacks on the quality of occupation and life

- No work is assigned.
- He/she is deprived of assignments so that the person concerned is not able to find a task.
- Useless work functions are given.
- He/she is assigned work which do not respond to his/her qualification.
- The person concerned is constantly assigned new functions.
- The person concerned is given offensive work functions.
- He/she is given work functions which exceed his/her qualification in order to compromise their reputation.

3.5. Physical attacks with an impact on the health of individuals

- Obligation to carry out unhealthy works.
- Menace of physical force.
- Application of light pressure in order to teach someone a lesson.
- Physical maltreatment.
- Costs are caused in order to harm the person concerned.
- Material damage is caused at home or on the workstation.
- Sexual touching.

Finally, it is important to keep in mind that this behaviour can be exerted either by one person or by more than one person¹⁶.

4. Distinction between "workplace bullying", "conflict" and "harassment"

A conflict is described as a "controversy, disagreement or opposition"¹⁷. Workplace bullying always starts with such a conflict. Therefore, workplace bullying should be viewed as an "exaggerated conflict", which evolves after a certain time from a conflict, sometimes very quickly, sometimes after weeks or months¹⁸. Thus, where there is workplace bullying there is always simultaneously a conflict, whereas an existing conflict does not necessarily have to amount to workplace bullying.

The relationship between workplace bullying and "harassment" is similar. The verb "to harass" is defined as "to disturb or irritate persistently", "wear out, exhaust" or "to enervate (an enemy) by repeated attacks or raids"¹⁹. Hence, behaviour that can be labelled as workplace bullying almost always constitutes a particular form of harassment as well. Therefore, in the US one can find the definition of "mobbing" as "malicious, non-sexual, non-racial harassment"²⁰.

On the other hand, if the conduct of a colleague can be qualified as harassment, it does not automatically mean that this is also a case of workplace bullying. Sexual harassment, for example, is defined by the European Commission as "conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work [...] if:

¹⁶ Zapf, D. op. cit., pp. 1 ff.

¹⁷ *The Heritage illustrated Dictionary of the English language*, New York 1973, p. 279.

¹⁸ Leymann, H., (using the Swedish term "mobbing"), op. cit., <http://www.leymann.se/English/11320E.htm>.

¹⁹ *The Heritage illustrated Dictionary of the English language*, op. cit., p. 600.

²⁰ See <http://mobbing-usa.com/Main.htm>.

- such conduct is unwanted, unreasonable and offensive to the recipient;
- a person's rejection of, or submission to, such conduct on the part of employers or workers (including superiors or colleagues) is used explicitly or implicitly as a basis for a decision which affects that person's access to vocational training, access to employment, continued employment, promotion or salary or any other employment decisions; and/or
- such conduct creates an intimidating, hostile or humiliating work environment for the recipient²¹.

Any behaviour meeting these criteria does not necessarily have to be exercised repeatedly and over a long period of time. However, only if these additional criteria are met shall sexual harassment simultaneously constitute workplace bullying.

²¹ Article 1 of the Commission Recommendation on the protection of the dignity of women and men at work (91/131/EEC).

PART II: CONSEQUENCES EMERGING FROM WORKPLACE BULLYING

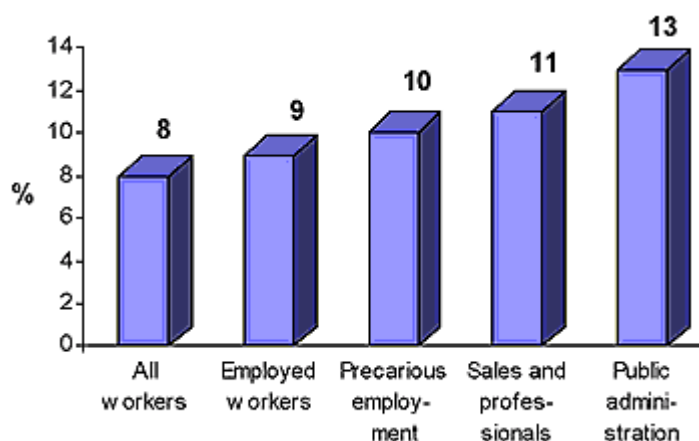
1. Social impact

The Second European Survey on Working Conditions (ESWC, 1996) by the European Foundation for the Improvement of Living and Working Conditions²² indicates that 8 % (12 million) of all workers in the EU²³ are subjected to intimidation and bullying with the highest exposure rates in services (13 % in public administration, and 10 % in banking and other services). Service and sales workers, and professionals (11 %) are the most affected occupations.

Employed workers (9 %) are more affected, and among them employees in precarious employment are most affected (10 % of workers on fixed term contracts and temporary agency contracts).

Female workers (9 %) are more concerned than male workers (7 %).

Table 1: Exposure rates of workers to workplace bullying



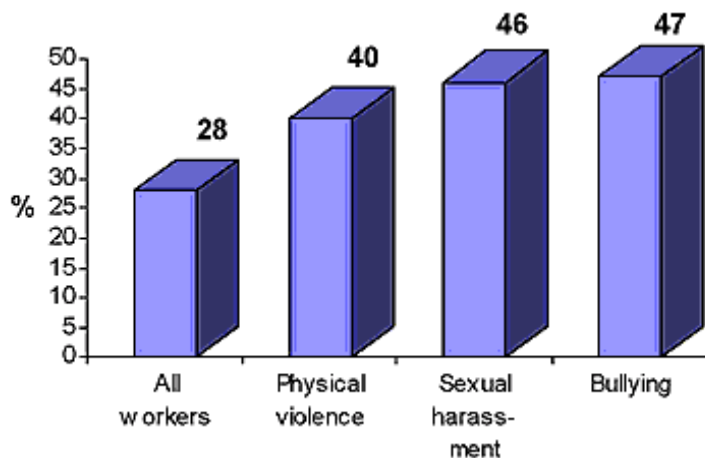
Source: 2nd European Survey on Working Conditions, European Foundation, 1996, Dublin

²² The survey is based on 16.000 face to face interviews with workers throughout the EU.

²³ The European Agency for Safety and Health at Work, Bilbao, refers in its pilot study "The State of Occupational Safety and Health in the European Union", published in September 2000, to the ESWC-data (p. 205). There, it is mentioned that two Member States (Netherlands and Luxembourg) reported differences between their national data and the ESWC-data and a further two (Greece and Sweden) reported that there were no differences. Eleven countries could not report a comparison between the data sources either because of difficulties in comparability of data or because of the lack of national data. Thus, the figures represent only a rough approximation of the real situation. A representative European study of this problem does not exist at present.

The research furthermore revealed that 47% of workers exposed to bullying experience stress.

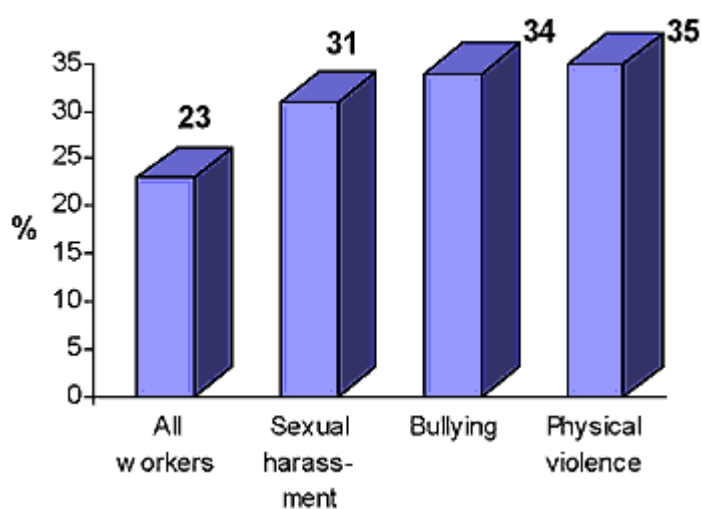
Table 2: Exposure to stress



Source: 2nd European Survey on Working Conditions, European Foundation, 1996, Dublin

An effect on absenteeism was reported with 34 % of workers exposed to bullying having been absent from work over the last 12 months.

Table 3: Absenteeism in % over the last 12 months



Source: 2nd European Survey on Working Conditions, European Foundation, 1996, Dublin

2. Individual effects

The Irish Health and Safety Authority reports about the stress and ill-health that can be found to become part of the daily life of individuals who are bullied²⁴. It states that workplace bullying very often causes psychological health problems such as anxiety, panic attacks, feelings of helplessness and "paranoia", reduced confidence and self-esteem and depression. Also physical health problems usually occur, for instance disturbed sleep, palpitations, increased blood pressure, irritable bowel syndrome, stomach disorders, chest pains and headaches.

Furthermore, not only do these health problems adversely affect the victim's performance at work but they also reduce the victim's desire and ability to interact with others. Workplace bullying concerns not only individual employees, but also their families. Families break up under intolerable strains and so social contacts may suffer or vanish completely. Colleagues and friends turn away from the person concerned. In particular, the loss of the ability to solve conflicts in an open, fair and constructive way has consequences for other areas of social life²⁵.

The Irish Health and Safety Authority concludes that the traumatised state which victims so frequently come to experience puts them at a considerable disadvantage when they attempt to negotiate or assert their position with the tormentor or with management. Due to their increased vulnerability, which they demonstrate in these situations, they are even at risk of being disciplined. For these reasons, the report says, victims often feel they are in a "no win" situation and leave their jobs even at considerable financial cost.

Another survey states that in the aftermath of the aforementioned consequences, bullied people often lose their friends and families, leading to loneliness, increasing substance abuse problems (especially alcohol and pills) as well as an onset of suicidal thoughts²⁶. In Sweden it is estimated that between one sixth and one fifteenth of officially-recorded suicides are caused by workplace bullying²⁷.

Finally, the Swedish National Board of Occupational Safety and Health observed consequences of workplace bullying not only for the bullied employee himself but also for the entire working group²⁸. These are, for example, reduced efficiency and productivity, erosion of existing rules or freezing of rules, lack of confidence, a general sense of insecurity, withdrawals from the group or from duties, high sickness absenteeism and a rapid personnel turnover.

3. Economic impact

Up to now there are no exact calculations of the cost of workplace bullying and estimates of the economic effects differ considerably²⁹. One reason for this is the actual difficulty in calculating certain costs, for example those resulting from the already-mentioned lack of confidence, the

²⁴ Health and Safety Authority, *Bullying in the workplace: Is it a Problem?*, Health and Safety Authority Newsletter January February 1998, pp. 4 ff.; <http://www.has.ie/osh/news1106.htm>.

²⁵ Wolmerath, M., *Mobbing im Betrieb*, p. 295.

²⁶ *Industriegewerkschaft Metall*, op. cit., pp. 25f.

²⁷ Leymann, H., op. cit., <http://www.leymann.se/English/13100E.htm>.

²⁸ See *General Recommendations of the Swedish National Board of Occupational Safety and Health on the Implementation of the Provisions on measures against Victimization at Work*. AFS 1993:17.

²⁹ See compilation in Neuberger, O., op. cit., pp. 94 ff.

general sense of insecurity within a working group or the lack of individual efforts. Another reason is that there are multiple factors that can be taken into account:

Reduced efficiency and productivity, withdrawals from duties, high sickness absenteeism and a rapid personnel turnover have already been mentioned as possible individual effects. Furthermore, the loss in product quality, loss of company image and a reduction in the number of clients has to be considered³⁰.

Apart from the costs for the employer (which are finally paid by the customers), the entire society has to bear the consequences of workplace bullying resulting from expenses for medical and psychological treatment, early retirement and employees' benefits.

Some evaluations of the specific costs are as follows³¹:

In the U.K. it has been estimated that 40 million working days a year have been lost to stress-related illness and that one-third to one-half of all this illness may be caused by workplace bullying³².

The sum an employer has to pay for one employee being absent for one day is calculated as between 100 and 400 €³³. In one year, one bullied employee may cost his employer approximately between 17 500 and 50 000 €³⁴.

The costs of the personnel flow are estimated at between 7 500 and 400 000 € for one single job, depending on the necessary qualifications³⁵.

The ILO guesses that the total costs of "psychological violence" in an enterprise of 1 000 workers in Germany is of the order of 150 000 € per year³⁶.

The over-all damage of workplace bullying for the German economy is rated at between 15 and 50 billion € per year³⁷.

³⁰ ILO, op. cit., p. 3.

³¹ For practical reasons all the amounts referred to are converted into Euros.

³² Health and Safety Authority, op. cit., p. 4.

³³ Deutscher Gewerkschaftsbund (DGB), http://www.dgb.de/themen/mobbing_05.htm.

³⁴ German magazine *Stern*, <http://www.stern.de/magazin/titel/2000/04/mobbing-2.html>.

³⁵ DGB, op. cit.

³⁶ ILO, op. cit., p. 3.

³⁷ Neuberger, O., op. cit., p. 95

PART III: LEGAL SITUATION

With regard to the legal situation it is especially important to keep in mind that workplace bullying cannot be constituted by just a single act. As we have seen, only a process of repeated actions, exercised over a significant period of time, amounts to workplace bullying³⁸.

1. Legal situation in the Member States

In most Member States, however, legal remedies for bullied employees exist only insofar as certain isolated acts of the bullying process can be identified as general offences, such as insult, libel, or (sexual) harassment. The most typical actions of workplace bullying, however, are much more subtle³⁹, thus undermining the legal protection available for the person concerned.

As the general legal protection of employees at workplace is more or less similar in all the Member States, the following illustration concentrates on specific provisions closely related to workplace bullying. It does not comprise cases of workplace bullying which simultaneously infringe other rules, but concentrates only on the aspect of workplace bullying itself.

1.1. Belgium

Article 10 of the "arrêté royal du 13 mai 1999" [*royal decree of May 13, 1999*] confers the right upon Belgian civil servants to be treated with dignity and courtesy by their superiors, colleagues and assistants. It also obliges them to restrain from any verbal or non-verbal actions that could infringe that dignity.

The only common applicable provision in Belgium is article 442bis of the "Code pénal" [*Penal Code*]. However, it only criminalises harassment in general and its protection against workplace bullying is therefore considered insufficient. In particular, the lack of personal responsibility of the employer – notwithstanding his accountability for committing the harassment himself - has been identified as the main weakness of article 442bis "Code pénal"⁴⁰.

Thus, legislative action for better protection against workplace bullying has been initiated. The proposed modifications to the "loi relative au bien-être des travailleurs lors de l'exécution de leur travail" [*Law on the Well-being of Workers at the Workplace*] imposes an obligation on the employer to prevent workplace bullying in his company⁴¹. If he fails to fulfil his obligations, legal action against him can be brought to the "tribunal du travail" [*labour court*].

³⁸ See Part I chapter 2.2.

³⁹ See Part I chapter 3.

⁴⁰ Sénat de Belgique, Proposition de loi relative au harcèlement moral par la dégradation délibérée des conditions de travail, 2-419/1 – 1999/2000, p. 4.

⁴¹ Sénat de Belgique, op. cit., pp. 6 f.

1.2. Denmark

§ 7 of the Danish "Bekendtgørelse om arbejdets udførelse" [*Proclamation on the execution of work*], based on the "lov om arbejdsmiljø" [*Working Environment Act*], instructs the employer that work on all levels has to be executed in a way which does not affect the psychological health of the employee or of the workforce as a whole.

§ 4 of the Proclamation on the execution of work imposes a more general obligation upon the employer. Hereafter, the work itself and its effects on the working environment have to be planned so as not to harm the employee's health.

Non-compliance with these provisions is penalised with fines or imprisonment of up to two years (§§ 34 f. Proclamation on the execution of work with §§ 84 f. Working Environment Act).

1.3. Germany

Under § 75 "Betriebsverfassungsgesetz" [*a law regulating certain internal organisational aspects of enterprises*], the employer and the staff association (if existent) have to ensure that the workers are treated decently. § 84 of this law confers a right to complain to the responsible people within the company upon every employee who feels they are being treated unjustly by either the employer himself or by their colleagues. It also stipulates that exercising this right must not lead to any disadvantages for the plaintiff. However, those people holding leading positions in their companies are not considered as being "employees" within the legal meaning of the "Betriebsverfassungsgesetz". Consequently, the protection of the aforementioned provisions does not apply to them⁴².

§ 3 of the "Arbeitsschutzgesetz" [*Act on the Protection of Working Conditions*] obliges the employer to ensure all measures necessary for his employees' security and health. For this, § 4 No. 4 gives exemplary measures according to the organisation of work, social relations or to "miscellaneous" conditions of work. If the employer fails to fulfil his obligations, the employee has the right to complain and, if the employer does not react adequately, to address the responsible authorities (§ 17). Again, exercising this right must not lead to any disadvantages for the appellant.

The "Beschäftigungsschutzgesetz" [*Act on the Protection of Employees*] only applies in cases of sexual harassment.

Finally, there are agreements at company level, which expressly cover workplace bullying. Volkswagen AG, for example, and its employees made an agreement on the "Partnerschaftliches Verhalten am Arbeitsplatz"⁴³ [*collegial behaviour at work*]. It imposes an obligation upon every single employee to restrain from any form of sexual harassment, discrimination or workplace bullying. It also ensures a right to complain and obliges the enterprise to react with appropriate measures, including – as a final step - the dismissal of the bully.

⁴² Kreuzer, C., "Mobbing, Bullying und Bossing aus juristischer Perspektive", *Personalführung*, 3/2000, p. 62.

⁴³ See <http://staff-www.uni-marburg.de/~naesaer/vw-mobb.htm>

1.4. Greece

First of all, there are no provisions in Greek law especially applicable to cases of workplace bullying. According to general law in Greek, consistent aggression coming from employers and generally from persons exercising the right of administration in the workplace must in principle be distinguished from cases of aggression among employees of the same grade.

In the first case, although no special regulations were found, exercise of "the right of administration" by the employer or his delegates is subject to the general clause of article 281 of the Greek Civil Code in regard to the abuse of this right. According to the article mentioned, "the exercise of a right shall be prohibited if such exercise obviously exceeds the limits imposed by good faith or morality or by the social or economic purpose of the right". Exercising a right in such a manner may offer grounds for declaring an act void, or for requesting restitution or compensation.

However, irrespective of its provenance (employer or colleague), workplace bullying may constitute an offence to "personality". Pursuant to article 57 of the Civil Code on the right attaching to one's own personality, "A person who has suffered an unlawful offence on his/her personality has the right to claim the cessation of such offence as also the non-recurrence thereof in the future. ... Shall not exclude a further claim for damages based on the provision governing unlawful acts".

Article 59 of the Greek Civil Code also specifies means for reparation of moral prejudice. "In cases referred to in the two preceding sections the Court may at the request of the person offended and having regard to the nature of the offence order the person responsible to furnish reparation of the moral prejudice suffered by the person offended. Such reparation may consist of the payment of a sum of money, of a publication or of any other appropriate measure in the circumstances".

Finally, general principles for reparation of prejudice are also applicable. Consequently, the legal grounds for request of compensation are afforded by article 914: "A person who through his fault has caused in a manner contrary to law prejudice to another shall be liable for compensation" as well as article 932 of the Civil Code on reparation of moral prejudice "Independently of the compensation for pecuniary prejudice, the Court may upon the occurrence of an unlawful act allot a reasonable amount of money to be determined by the Court's appreciation as reparation for moral prejudice. This provision shall apply especially in regard to a person who suffered harm in his health, honour or purity or who has been deprived of his liberty."

Greek courts have not been hesitant to apply these rules in a variety of cases, including non-promotion of a qualified employee, unjustified dismissal or even harassment. However no concrete case of workplace bullying can be traced in the jurisprudence so far, except for a first case of sexual harassment in the year 1997 (Athens Court of First Instance, 3623/1997).

Finally, the above-mentioned provisions do not exclude *internal* administrative sanctions (namely in the public sector, although in the private sector the law of the firm may also provide for such sanctions) or even penal sanctions against employers, supervisors or colleagues for actions falling within the scope of the law.

1.5. Spain

Article 4 of the Spanish "Estatuto de los Trabajadores" [*Act on Employees*] confers upon the employee, among other things, the right to have his privacy and dignity respected. If the employer fails to comply with this provision, he can be fined with a penalty between 3 000 and 90 000 €⁴⁴.

1.6. France

The French "Code du travail" [*Code on Working Conditions*] states in article L230-2 that the employer has to take all measures necessary to ensure security and to protect his employees' health. Several court decisions have been based on this article and on the more general article L120-2.

Meanwhile, legislative action to improve protection against workplace bullying through a system of prevention and sanctions has been initiated⁴⁵. This is to be achieved through a number of specific regulations laid down both in the "Code pénal" [*Penal Code*] and "Code de travail"⁴⁶. The "intentional worsening" [*dégradation délibérée*] of working conditions by the employer will be punished. Furthermore, the employer himself could be held directly responsible for any case of workplace bullying in his enterprise. Workers' representatives will receive a "right to alert" [*droit d'alerte*] the employer that workplace bullying is happening in the company. Any termination of work resulting from workplace bullying could be annulled. If the employee cannot be expected to return to work, financial compensation will be possible.

Additionally, under the proposed new law, an employee testifying or reporting a case of workplace bullying must not be dismissed or disadvantaged in any way as a result thereof.

The bill proposes that the bully be sentenced to up to two years imprisonment and/or a fine of up to FFR 500 000 (about 76 000 €). Already, some punishment is possible on the basis of the existing rules of the Penal Code.

1.7. Ireland

There are no provisions in Irish law specifically applicable to cases of workplace bullying. But workplace bullying is also known in the Republic of Ireland. To respond to this problem on 21 of September 1999, the Minister of State at the Department of Enterprise, Trade and Employment, Mr. Tom Kitt, formally launched a Task Force to combat workplace bullying. He expects that it will produce workable and realistic strategies to tackle workplace bullying and a streamlined approach to implementing these. The task force is examining workplace bullying in detail and is focusing on identifying the size of the problem and the employment sectors most at risk as well as developing proposals for practical programmes and strategies, both to prevent

⁴⁴ See article 37 of the applicable Ley 8/1988 sobre infracciones y sanciones en el Orden Social.

⁴⁵ Proposition de loi relative au harcèlement morale au travail, No 2053 Assemblée Nationale du 22 décembre 1999.

⁴⁶ Assemblée nationale (11th legislature): First reading: 2415 rect. 2809 and T.A. 608; Second reading: 3052, 3073 and T.A. 686: 185, 258, 275 and T.A. 89 (2000-2001).

workplace bullying, and to provide a more appropriate co-ordinated response from the relevant State agencies⁴⁷.

Represented on the Task Force are the following bodies and organisations: the Department of Justice, Equality and Law Reform; the Employment Appeals Tribunal; the Labour Court; the Labour Relations Commission/Rights Commissioner Service; the Employment Equality Agency; the Irish congress of Trade Unions and the Irish Business and Employers' Confederation⁴⁸.

The Task Force is chaired by Dr. Eileen Doyle and is operating under the auspices of the Health and Safety Authority. While it was originally envisaged that the task force would report in March 2000, the Minister of State was advised by the chairman of the task force that it would not complete its deliberations until June 2000. Unfortunately the report had not been published by the time of completion of this paper.

Apart from this there already exist measures to discourage workplace bullying in the economic sector. For example the "Employment Law Guidelines for Small Businesses" on Harassment and Bullying in the Workplace and on Dealing with Stress in the Workplace, produced by the Small Firms Association and Bank of Ireland Business Banking⁴⁹.

1.8. Italy

There are at present two legislative proposals pending that would improve protection against workplace bullying:

The "disposizioni a tutela dei lavoratori dalla violenza e della persecuzione psicologica"⁵⁰ [*bill on the protection of workers against violence and psychological harassment*] states in article 1 the objective of the law to protect workers against acts of violence and psychological harassment performed by the employer himself or by co-employees in a higher or in the same hierarchical position. Article 2 confers upon the victim the right to ask for cessation of all acts that constitute violence or psychological harassment.

Under article 3 of the proposed law, a general obligation to adopt all necessary measures to prevent violence and psychological harassment is imposed on both the employer and trade unions representatives. They also have to issue information about how the employees must treat each other and ensure that all employees have access to that information. If a case of violence or workplace bullying has been reported, the employer is obliged to verify the incident and, if so, to take all necessary measures to stop it.

The accountability of the bully himself is underlined in article 4. As a result, the employer is entitled to take disciplinary measures against him.

⁴⁷ Dail Debates Official Report, Parliament of Ireland, 29.06.2000, <http://www.irlgov.ie/debates-00/12oct/sect5.htm>.

⁴⁸ Irish Safety Report, autumn 1999, <http://www.siptu.ie/report/autumn99/safety2.html>.

⁴⁹ The Department of Enterprise, Trade & Employment, <http://www.entemp.ie/press99/011199a.htm>

⁵⁰ Camera dei Deputati, N. 6410, 30. September 1999.

Article 5 confers the right to initiate legal action not only upon the bullied employee himself but also on trade union representatives. Furthermore, this article empowers the courts to oblige the offender to compensate the victim for any psychological damage caused.

Finally, article 6 enables the courts to decide whether, in case of workplace bullying, their judgements should be published in the workplace concerned in such a way as to ensure that all the employees can see it. The name of the victim has to be deleted in this kind of publication.

The "disposizioni per la tutela della persona da violenze morali e persecuzioni psicologiche" [*bill on the protection of persons against moral violence and psychological harassment*] not only applies to workers but to everybody. Depending on how severe both the personal and the economic effects of psychological violence on the victim are, the bully can be punished with imprisonment from one to five years, ineligibility for public office from between three years to life or with a fine between 5 to 200 million lira (2 500 to 100 000 €).

1.9. Luxembourg

No special legislation exists in Luxembourg. But the phenomenon is also known in the Grand Duchy. In a session of the Chamber of Deputies in December 2000, where the inclusion of sexual harassment in the penal code was discussed, the draftsman of the preparatory committee report remarked, that it would be more important to give a legislative protection against workplace bullying than to discuss an additional protection against sexual harassment. The Minister in charge (*Mme la Ministre de la Promotion féminine*) answered, that she also estimates workplace bullying as a serious problem but that it would be more necessary to give a legislation in the field of sexual harassment than to think about the other abuses, such as workplace bullying, which cannot be easily identified⁵¹.

1.10. Netherlands

According to the so-called "Arbowet" [*Law on Labour Conditions*], the employee has to be protected as much as possible against aggression and violence.

However, as this protection has been thought to be weak, the alteration of article 657 of the "Burgerlijk Wetboek" [*Civil Code*] has been proposed⁵². Under this proposal, the employee would have the right of a written complaint to the employer insofar as the complaint concerns his personal labour situation.

1.11. Austria

Legal provisions especially related to workplace bullying in Austria can only be found in the so-called "Frauenförderungspläne" [*plans for female promotion*] of Austrian ministries. These plans are based on the "Bundesgleichbehandlungsgesetz" [*federal law on equal treatment*]

⁵¹ Dossier thématique Harcèlement sexuel, Chambre des Députés du Grand-Duché de Luxembourg, 22 mars 2000, p. 26, <http://195.10.65.19/docs/pdf/Harcfull.pdf>

⁵² Tweede Kamer der Staten-Generaal, Voorstel van wet van de leden Bussemaker, Schimmel en Van Gent tot wijziging van het Burgerlijk Wetboek in verband met de invoering van een klachtrecht voor de individuele werknemer, 1999-2000, 27 274.

which only applies to the public service. Under its terms, all acts and pronouncements that compromise the dignity of women and men, especially offensive statements, "Mobbing" and sexual harassment, are prohibited⁵³. One of these plans⁵⁴ states that the employees are to be informed about their legal remedies and other possible action they are entitled to if their "dignity" is disregarded.

For the majority of employees, however, no special protection against workplace bullying exists. Only the "Allgemeine Fürsorgepflicht des Arbeitgebers, § 1157 ABGB" [*the employer's general duty of proper care*] can be applicable⁵⁵.

1.12. Portugal

There is no particular legislation on the subject of workplace bullying in Portugal at the moment. But a group of six members of the Portuguese Parliament, all of them members of the Socialist Party, drew up a legal framework concerning workplace bullying and presented it to Parliament on 27 June 2000⁵⁶.

The first article contains a definition of workplace bullying⁵⁷. Mobbing is defined as intentional damage to the physical and/or psychological condition of workers in the working place and in the field of labour in general. Workplace bullying is understood as the behaviour of employers that is tolerated by worker representatives and also by colleagues with "de-facto-power" in the place of work. This behaviour is characterised as acts:

- in a context of harassment,
- with intention to prosecute,
- of isolating effect,
- of comments, insinuations, oral warnings, etc.

that are meant to destabilise the person concerned and whose aim it is to get the workers fired or to make them quit the job on their own. Subsequently, the various kinds of behaviour of mobbing are specified.

In the second article the bullied employee would obtain the possibility of claiming a correction of the defamation by the employer or the colleague concerned.

Article three of the framework defines a system of sanction. Those responsible for bullying actions can be condemned to a penalty of three years' jail or a fine of five million Scudos (about 2 500 €). In cases of infringements of the worker's dignity the penalty is two years' jail minimum or a fine of twenty millions Scudos (about 10 000 €).

The employer or the supervisor can also be sanctioned if he connived in the behaviour of another person or encouraged such behaviour.

⁵³ See § 7 of the Frauenförderungsplan für das Bundeskanzleramt, or § 3 of the Frauenförderungsplan des BMAGS, or § 3 of the Frauenförderungsplan des BMUJF für 2000 und 2001; <http://www.ris.bka.gv.at/bundesrecht/> ("Mobbing").

⁵⁴ § 7 of the Frauenförderungsplan für das Bundeskanzleramt, op. cit.

⁵⁵ Binder, M., *Mobbing aus arbeitsrechtlicher Sicht*, Wien 1999, pp. 72 ff.

⁵⁶ Assembleia da República, Projecto de Lei No 252/VIII.

⁵⁷ http://www.parlamento.pt/legis/inic_legis/20000627.08.1.0252.1.08.

1.13. Finland

There are no provisions in Finnish law specifically applicable to cases of workplace bullying. Recently there has been a discussion caused by some sensational cases of bullying at work - and especially at school. Some Members of the Finnish Parliament have proposed an Act but there is no official bill from the government.

Nevertheless, in cases in which bullying actions achieve a certain intensity (traceable mental or physical infractions) general regulations are applicable. For example chapters 24, 27 and 35 of the "Penal Code" for disturbance of domestic peace, defamation and invasion of privacy or criminal damage, the "Safety at Work Act", the "Equality Act" and other general laws.

In addition to this the Industrial Safety Act obliges employers and those in charge to promote the mental well-being of employees. The labour protection plan must include a programme for maintaining the employee's working capacity. A summary of the Finnish legislation on the subject of harassment at work concludes that in practice, this obliges the employer to include the maintenance of working capacity in workplace-specific action plans, and thus intervene in harassment at work⁵⁸. It also notes that, under the Finnish Criminal Act, gross harassment gives grounds for the termination of employment and lists criminal sanctions for discrimination at work. As far as this is concerned, work-related activities constitute a separate area of discrimination.

Outside the legal framework, "The Finnish Confederation of Salaried Employees, STTK", has started a campaign with the objective, among others, of preventing and reducing mental harassment at work⁵⁹. It focuses on

- supporting work communities to foster a harmonious work climate so that harassment situations can be prevented as effectively as possible and detected early,
- recognising harassment and discrimination and its consequences, particularly burnout, in work communities,
- finding the appropriate contact persons (workplace safety representative, shop steward, occupational health care personnel, etc.) and other helpers,
- developing awareness of what action is needed to take care of a problem, and
- providing information on existing systems and help organisations.

1.14. Sweden

Sweden was the first country in the EU to take specific legislative measures against workplace bullying (or, in the official translation, against "Victimization at Work"⁶⁰). As a result, the employer is obliged to plan and organise work so as to prevent "victimization" as far as possible

⁵⁸ Akanyildiz, K., "Harassment at work – a serious health problem", *Nordic Labour Journal*, 1/1999, pp. 6 f.

⁵⁹ STTK, *The Without Violence campaign*, <http://www.sttk.fi/kiusa/engl.html>.

⁶⁰ *Ordinance of the Swedish National Board of Occupational Safety and Health containing Provisions on measures against Victimization at Work*, Ordinance AFS 1993:17; see also footnote no. 7.

and to make clear that it cannot be accepted in the workplace. Section 4 of the legally binding *Ordinance on measures against Victimization at Work* states that "in the activities there shall be routines for the early detection of signs of, and the rectification of such unsatisfactory working conditions, problems of work organisation or deficiencies of co-operation as can provide a basis for victimization." Section 5 declares as follows: "If signs of victimization become apparent, counter-measures shall without delay be taken and followed up. In doing so, a special investigation shall be made to ascertain whether the causes of shortcomings of co-operation are to be found in the way in which work is organised." Finally, section 6 ensures that "employees who are subjected to victimization shall quickly be given help or support. The employer shall have special routines for this." Non-compliance with these provisions can lead to a fine and/or imprisonment for not more than one year⁶¹.

1.15. United Kingdom

The *Health and Safety at Work etc Act 1974* places a duty on all employers to ensure the health, safety and welfare of their employees. If they do not do this they are breaching an individual's contract of employment.

The *Employment Relations Act* contains a provision giving workers the right to be accompanied at disciplinary and grievance hearings by a fellow worker or trade union official of their choice, and workers who choose to exercise their right are protected against victimisation by their employer, as are those who accompany or seek to accompany a worker.

At common law, since *Walker v Northumberland County Council*⁶² an employee can be awarded damages for psychiatric injury suffered as a result of work-related stress.

Besides this, the U.K. has adopted a non-legal approach to fight workplace bullying. The Government's "Partnership Fund" rewards organisations that, among other things, develop solutions to bullying in the workplace⁶³. Each winner can receive up to a maximum of £ 50 000 (around 78 000 €).

2. Legal situation in the EU

No European-wide applicable provision, so far, has expressly mentioned the problem of workplace bullying. However, there are provisions that could be construed as covering this phenomenon:

Article 5 of *Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work* imposes an obligation upon the employer "to ensure the safety and health of workers in every aspect related to the work". Additionally, the workers' own obligations in the field of safety and health at work shall not affect the principle of the responsibility of the employer.

⁶¹ See Chapter 8, Section 1 of the applicable Work Environment Act.

⁶² *Walker v Northumberland County Council*, [1995] 1 All ER 737.

⁶³ See Department of Trade and Industry, *press release P/2000/736*, 7.11.2000.

The directive states furthermore in Article 6 that "the employer shall take the measures necessary for the safety and health protection of workers, including prevention of occupational risks and provision of information and training, as well as provision of the necessary organisation and means. The employer shall be alert to the need to adjust these measures to take account of changing circumstances and aim to improve existing situations".

In addition to this, in the year 2000 two new directives were adopted by the Council: *Council Directive 2000/43/EC* implements "the principle of equal treatment between persons irrespective of racial or ethnic origin", *Council Directive 2000/78/EC* establishes "a general framework for equal treatment in employment and occupation". Both of them deal with a subject that may also be in some cases a bullying action (especially discrimination against persons because of their racial or ethnic origin or discrimination against women in employment and occupation). Yet it has to be clear that these directives intend a protection against an unequal treatment because of an attribute of a person. But, in contrast to this, bullying activities misuse someone's different attributes to bully him/her, but are in most cases not the real motivation for the bullying.

Nevertheless, the Economic and Social Committee has asked the Commission to take action in the field of prevention of violence at work, including bullying⁶⁴. Hence, the Advisory Committee on Safety, Hygiene and health protection at Work is currently investigating the phenomenon of workplace bullying⁶⁵.

The European Communities themselves, in their Staff Regulations, promise to "assist any official, in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances, or any attack to person or property to which he or a member of his family is subjected by reason of his position or duties" (Article 24). Under certain circumstances, this provision further provides for the European Communities to compensate the official for damage suffered in such cases, where the official cannot obtain compensation from the person who did cause it.

Finally, the Secretary General of the European Parliament has set up an Advisory Committee on "harcèlement moral" [*mobbing*] within the parliament's own administration⁶⁶.

⁶⁴ Opinion of the Economic and Social Committee on the General framework for action by the Commission of the European Communities in the field of safety, hygiene and health protection at work, Official Journal C 195, 18/07/1994, p. 88 and Opinion of the Economic and Social Committee on: the communication from the Commission on a Community programme concerning safety, hygiene and health at work (1996-2000), and the proposal for a Council decision adopting a programme of non-legislative measures to improve health and safety at work, OJ C 39, 12.2.1996, p. 26.

⁶⁵ See Written Answer (2000/C 330 E/207), 27.4.2000.

⁶⁶ Decision of 27.11.2000.

PART IV: POSSIBLE MEASURES AGAINST WORKPLACE BULLYING

This part summarises proposals which have been made to fight workplace bullying and investigates how far the EU could possibly carry those measures into effect.

1. Proposals for better protection against workplace bullying

Multiple suggestions⁶⁷ have been made for better protection of employees against workplace bullying. Essentially, the measures proposed can be divided into two categories: preventive measures and intervention.

1.1. Preventive measures

Various steps can be taken to prevent workplace bullying from occurring at all:

1.1.1. General educational advertising

General educational advertising is the most proven method of prevention. This may be achieved through

- issuing of leaflets and posters about workplace bullying informing employees both about their rights and obligations as well as about the danger of workplace bullying, especially about financial detriments for the company,
- publishing articles in the company's internal newspaper/magazine/intranet,
 - presentation of a video-tape about workplace bullying,
 - lecturing and discussions about workplace bullying,
 - mentioning the problem of workplace bullying at gatherings of the entire company.

1.1.2. Systematic collection of data about workplace bullying in the enterprise

This kind of collection of data is said to be necessary effectively to combat bullying at the workplace. To achieve this aim, general surveys inside the company, for example about the working atmosphere, must be conducted. Special questionnaires should be distributed and personal interviews ought to be held on the problem of workplace bullying. Regular dialogues with employees should be analysed, as well as any complaints and the reasons given for absenteeism. Employees with a high rate of sickness or absenteeism should be consulted.

⁶⁷ See Binder, M., op. cit., pp.202 ff.; Neuberger, O., op. cit., pp. 102 ff., Health and Safety Authority, op. cit., p. 6.

1.1.3. Educating and informing management

Through this process the management will be enabled to recognise cases of bullying earlier.

1.1.4. Installation of a company-infrastructure against bullying at work

The company's determination actively to oppose any kind of bullying behaviour can be indicated by:

- appointment of a "representative for workplace bullying",
- facilitation of procedures for reporting and noting incidents,
- development of procedures both for investigating incidents of bullying behaviour and for disciplinary or rehabilitative measures for those who engage in bullying,
- factory agreements on workplace bullying,
- compulsory discussions of the entire working group about bullying.

1.1.5. Reorganisation of work and responsibilities

An inappropriate organisation of work within the company can lead to overlapping of responsibilities, resulting in quarrels and competitive behaviour. This can easily be the beginning of workplace bullying⁶⁸.

1.2. Intervention

Two main objectives are proposed for pursuit in a case of workplace bullying. Firstly, the bullying has to be stopped and secondly, the victim has to be supported.

1.2.1. Stopping the bully

To stop the perpetrator from bullying is considered to be one of the major tasks of legislation. However, existing literature predominantly focuses on the legal opportunities under the existing laws but does not come forward with any sophisticated proposals for legislative action.

Mediation talks are another suggested method of terminating the bullying process.

1.2.2. Support of the victim

"Psychosocial rehabilitation"⁶⁹ of the victim is proposed through professional rehabilitation, psychotherapy, self-help groups and medical therapies. The employer's obligation ought to be not only to provide for adequate information and contacts, but also to regularly investigate the working group where the bullying had occurred, especially when offender(s) and victim(s) still have to work together.

⁶⁸ Zuschlag, B., op. cit., p. 147.

⁶⁹ Binder, M., op. cit., p. 208; Neuberger, O., op. cit., p. 103.

2. Admissibility of legal action taken by the EU

This paper only examines the general admissibility of future legislative actions, notwithstanding the necessity of additional interrogations like procedural questions or the principle of proportionality, which can only be carried out when an in-depth proposal has been made.

2.1. Competence

Paragraph 1 of Article 136 (ex-Article 117) EC provides *inter alia* for the improvement of working conditions. To this end, paragraph 2 obliges both the Member States and the Community to implement measures. With a view to achieving these objectives, Article 137 (ex-Article 118) EC requires that the Community shall support and complement the activities of the Member States in certain fields, such as "improvement in particular of the working environment to protect workers' health and safety" and "working conditions". Finally, Article 140 (ex-Article 118c) EC clarifies that matters relating to "prevention of occupational ... diseases" and to "occupational hygiene" are part of social policy fields under the relevant chapter 1 of Title XI (ex Title VIII) EC.

2.2. Directive 89/391/EEC

Article 16 of the already mentioned *Framework Directive 89/391/EEC*⁷⁰ entitles the Community to adopt individual directives, *inter alia*, in the areas listed in the Annex. Here is to be found the term "work places". Based on this term is *Council Directive 89/654/EEC concerning the minimum safety and health requirements for the workplace*. However, this Directive concentrates exclusively on provisions protecting the physical health of employees.

2.3. Directives 2000/43/EC and 2000/78/EC

In addition to this *Directives 2000/43/EC* and *2000/78/EC* may be used as a basis for a legal framework. Both are introduced in the following way:

"In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States, and should respect fundamental rights as guaranteed by the European Convention for the protection of Human rights and Fundamental Freedoms and as they result form the constitutional traditions common to the Member States, as general principles of Community Law."

In accordance with this statement, the protection of all persons against discrimination constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Conventions on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories. Convention No 111 of the International Labour

⁷⁰ See Part III chapter 2.

Organisation (ILO) also prohibits discrimination in the field of employment and occupation⁷¹. Thus, measures against workplace bullying could be implemented by modifying these directives or by creating a new one.

2.4. Principle of subsidiarity

In essence, the principle of subsidiarity, article 5 of the EU-Treaty, states that the European Union should only be active where there is significant added value in doing so⁷². The uneven level of activity within the Member States and the illustrated gravity of the problem of workplace bullying lead to the assumption that uniform applicable provisions all over the EU would indeed significantly improve protection against workplace bullying. Therefore, the principle of subsidiarity does not seem to constitute an obstacle for legislative action.

2.5. Conclusion

There are no obvious detectable reasons why the problem of *workplace* bullying should not be covered by the Annex of the aforementioned Framework Directive 89/391/EEC.

Consequently, a new individual directive within the meaning of Article 16 (1) of *Directive 89/391/EEC*, with special regard to the protection of workers against workplace bullying could be adopted.

On the other hand, *Council Directive 89/654/EEC concerning the minimum safety and health requirements for the workplace* could be amended so as to protect not only the physical but also the psychological health of workers.

In all cases it should be noted that a law dealing with workplace bullying finds its limits when it creates or may create new "injustice". This could take place in the case of a burden-of-proof-reversal which could look as if the person concerned has to prove an action of bullying and the damage developed from it and the "bullying person" has to prove the lack of his blame⁷³. The misalignment of the burden of proof transferring responsibility from the bullied person to the "Mobber" could have the result that sometimes it provides a favourable position for taking the lead in accusing another person of workplace bullying. Thus, accusing others as "Mobbers" could become a constituent part of a workplace bullying strategy.

⁷¹ Compare Official Journal of the European Communities, L 303/16.

⁷² Craig, P., and de Búrca, G., *EC LAW*, Oxford 1995, pp. 112 ff.

⁷³ Wolmerath, M., *op. cit.*, p. 296.

PART V: SUMMARY

Workplace bullying, mobbing, workplace terrorism, employee abuse, "*harcèlement moral*" – different names for the same phenomenon: behaviour at work that is exercised repeatedly, not just a single action, over a significant period of time, non-physical and with a humiliating effect on the bullied person.

This kind of behaviour can simultaneously constitute a general offence or a special kind of harassment, but it does not necessarily do so.

The phenomenon of workplace bullying is not rare but is to be found rather frequently throughout the European Union. It severely affects the physical and the psychological health of the bullied person and may lead to problems of substance abuse and even suicide. Consequently, it is very costly for both the company concerned and for society.

The legal protection against workplace bullying is inconsistent among Member States. It differs from no specific protection at all to rather sophisticated approaches. Current European-wide provisions do not provide effective protection. Recently, plans for information campaigns or even legislation in the field of workplace bullying have been under discussion in several Member States.

A large number of possible measures at the EU level could endorse protection from bullying at the workplace. These measures could legally be based upon *Framework Directive 89/391/EEC*. They could also be implemented through modifications to *Directive 2000/78/EC*. In the case of regulations giving protection against workplace bullying, one should also be aware of a possible abuse of such laws by individuals pretending to be bullied by others. This could be especially a problem of the burden of proof! So, preventive measures might be more efficient and useful than ex post rules that could be implemented only with difficulty.

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