

SECTION 1. ASSESSMENTS OF JUDICIAL CAPACITY

THE IMPACT OF MORAL (PSYCHOLOGICAL) HARASSMENT AT WORK ON ROMANIAN WORKERS' RIGHT TO DIGNITY AND INTEGRITY

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ABSTRACT

The paper aims to outline the severe implications of moral (psychological) harassment at work on Romanian workers and the extent to which such behaviour impacts human dignity, as the basis of human rights law. The study has as starting point the EU guidelines with respect to health and safety at work and further details on the Romanian legislation regulating psychological harassment at work, with a focus on the lack of sufficient regulation addressing this issue. The paper also includes a brief analysis on the legal means available to workers under the Romanian law to fight against moral harassment at work, with a view to outline the quantitative and qualitative aspects deriving from such. As a conclusion to the study undertaken, the authors outline the main steps to be further taken, both in terms of legislation and good practices, to ensure a better approach of this issue and a proper reflection of the impact of moral (psychological) harassment at work on Romanian workers' right to dignity and integrity.

***Keywords:** moral harassment at work, psychological harassment at work, dignity, integrity, health and safety at work*

JEL classification K31; K32; K49

I. Introduction

The paper aims to outline the severe implications of moral (psychological) harassment at work on Romanian workers and the extent to which such behaviour impacts human dignity, as the basis of human rights law. The study has as starting point the EU guidelines with respect to health and safety at work and further

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details on the Romanian legislation regulating psychological harassment at work, with a focus on the lack of sufficient regulation addressing this issue. The paper includes a brief overview on the historical background of the legislation adopted at EU and national level, as well as the recent developments on this matter. The authors will briefly analyse whether the efforts conducted at EU level are also reflected in the legislative.

The paper also includes a brief analysis on the legal means available to workers under the Romanian law to fight against moral harassment at work, with a view to outline the quantitative and qualitative aspects deriving from such. The research considers publicly available data and information, but it is worth mentioning that the reality may be very different from the numbers and figures that had been collected this far. Lack of legal knowledge, lack of acknowledgement of the rights prescribed by the law, the un-affordability of legal assistance, as well as the anxiety and fear created by the potential repercussions of any legal means available under the law against the employer, all these impede the employees to fight against moral harassment at work and to take further action to prevent similar incidents at the workplace. Thus, the authors are of view that the incidence of moral harassment at work in Romania is wider than it may result from the data and information collected.

A recent “stand-out” moral harassment case study will be detailed and analysed, with the purpose to outline the level to which moral harassment is perpetuated in the corporate environment in Romania. As a conclusion to the study undertaken, the authors outline the main steps to be further taken, both in terms of legislation and good practices, to ensure a better approach of this issue and a proper reflection of the impact of moral (psychological) harassment at work on Romanian workers’ right to dignity and integrity.

II. EU Guidelines with Respect to Health and Safety at Work

1. Brief overview on historical background

Health and safety at work have been one of the main concerns of the European Union ever since its foundation. As a historical background, occupational safety and health was initially considered as an annex to market harmonisation and the economic policies of the European Economic Community due to a lack of an explicit legislative competence in the EEC Treaty¹ in the field of safety and health at work until the mid-1980s². However, Member States were required even from the beginning to cooperate with respect to various issues in the field of social

¹ Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter EEC Treaty]. Retrieved from http://ec.europa.eu/archives/emu_history/documents/treaties/rometreaty2.pdf [28 December 2016].

² OSHA, *Historical background on health and safety legislation*. Retrieved from <https://osha.europa.eu/en/safety-and-health-legislation/european-directives> [10 January 2017].

protection, including in matters related to the prevention of work accidents and work-related diseases³.

First EU directives addressing the issue of health and safety at work were adopted in the 1970s⁴ and marked the starting point of an extensive regulation of this aspect both at international and European level. The Treaty of Amsterdam⁵, which entered into force in 1999, redefines the EU objective with regard to health and safety at work as representing the improvement in particular of the working environment to protect workers' health and safety. Having as background the principles set forth within the aforementioned Treaties, various Directives were adopted in the field of health and safety at work. The most important legal act adopted at the level of the European Union is the European Framework Directive 89/391/CE⁶, that outlines general principles for managing safety and health, such as rights/duties of workers, responsibility of the employer, use of risk assessments to continuously improve company processes and workplace health and safety

³ Art. 118 of the EEC Treaty provided as follows: *"Without prejudice to the other provisions of this Treaty and in conformity with its general objectives, the Commission shall have the task of promoting close co-operation between Member States in the social field, particularly in matters relating to:*

- employment;
- labour law and working conditions;
- basic and advanced vocational training;
- social security;
- prevention of occupational accident, and diseases; l - occupational hygiene;
- the right of association, and collective bargaining between employers and workers.

To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations. Before delivering the opinions provided for in this Article, the commission shall consult the Economic and Social Committee."

⁴ One relevant example is Council Directive 77/576/EEC of 25 July 1977 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the provision of safety signs at places of work, OJ L 229, 07/09/1977, which – according to its preamble, was adopted as response to the affirmed need to improve safety and protection of health in places of work, as part of the improvement of living and working conditions. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31977L0576> [10 January 2017]. Another relevant example is Council Directive 78/610/EEC of 29 June 1978 on the approximation of the laws, regulations and administrative provisions of the Member States on the protection of the health of workers exposed to vinyl chloride monomer, OJ L 197, 22/07/1978, with the declared purpose to protect the health of workers in this important sector of the chemical industry. Retrieved from <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:31978L0610> [10 January 2017].

⁵ Art. 118 of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, O.J. C 340/1 1997 [hereinafter Treaty of Amsterdam]. Retrieved from <http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf> [30 December 2016].

⁶ Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29/06/1989 [hereinafter the European Framework Directive 89/391/CE]. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31989L0391> [10 January 2017].

representation. All subsequent Directives within the meaning of Article 16 (1) of the European Framework Directive 89/391/CE follow these common principles⁷.

The International Labour Organisation had also considered the issue of health and safety at work within its recommendations and conventions, regulating protection general principles and specific norms addressed to various activity fields. At first, the International Labour Organisation focused on the elimination, to the extent possible, of any risks resulting from air pollution, noise and vibrations at the workplace⁸. Further on, the International Labour Organisation put focus on the necessity of a coherent national policy on occupational safety, occupational health and the working environment⁹. Starting 1985, the International Labour Organisation had also emphasized the need to protect the mental health of employees, asking the states to formulate, implement and periodically review a coherent national policy on occupational health services¹⁰.

2. Recent developments

Health and safety at work is a broad concept, covering both physical and mental health. Starting with 2000, special attention was attributed to it, as the issues that employees were confronting with became more complex and sophisticated. Stress at work or due to work, resulting from bullying actions exerted either vertically (from superiors or from inferiors) or horizontally (from same-ranked colleagues) turned out to be widespread and creating insecurity – both in terms of personal life and work-related life – and, thus, an unstable work-life balance.

In 2001, the European Parliament adopted a resolution on moral harassment or bullying¹¹. The EP Resolution on harassment at the workplace qualifies bullying as a serious problem at work and highlights the fact that researches conducted up to

⁷ Brück, C., *General principles of EU OSH legislation*, Kooperationsstelle Hamburg IFE GmbH, Germany. Retrieved from https://oshwiki.eu/wiki/General_principles_of_EU_OSH_legislation [10 January 2017].

⁸ International Labour Organisation Convention no. 148/1977 concerning the Protection of Workers against Occupational Hazards in the Working Environment Due to Air Pollution, Noise and Vibration (Entry into force: 11 Jul 1979). Retrieved from http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C148 [10 January 2017].

⁹ International Labour Organisation Convention no. 155/1981 concerning Occupational Safety and Health and the Working Environment (Entry into force: 11 Aug 1983). Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no::p12100_instrument_id:312300 [10 January 2017].

¹⁰ International Labour Organisation Convention no. 161/1985 concerning Occupational Health Services (Entry into force: 17 Feb 1988). Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312306 [10 January 2017].

¹¹ European Parliament resolution on harassment at the workplace (2001/2339(INI)), adopted on 20 September 2001 [hereinafter EP Resolution on harassment at the workplace]. Retrieved from <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-2001-0478+0+DOC+XML+V0//EN> [18 January 2017].

that moment in time had shown that women are more frequently the victims of bullying than men, from superiors, inferiors and same-status colleagues¹². Also, the European Parliament points out the devastating effects of harassment on the physical and mental health of its victims and thus also their families, often necessitating medical and psychotherapeutic treatment and usually leading them to take sick-leave or resign from their jobs¹³. Not at last, it emphasised that the problems associated with bullying at work were still probably underestimated in many quarters within the Union (*n.a.*: that also being the case of Romania) and that there were a series of arguments in favour of joint action at Union level, for example, the difficulties in devising effective instruments for counteracting and preventing bullying, the fact that guidelines on measures against bullying at work may had the effect of setting standards and influencing attitudes and the fact that reasons of fairness also justified such common guidelines¹⁴.

Assessing the increasing importance of moral harassment at work, the European Parliament concluded that the following became necessary: (i) a clarification or extension of the scope of the European Framework Directive 89/391/CE on health and safety at work, or, alternatively, (ii) drafting of a new framework directive on violence and harassment at the workplace¹⁵.

In 2004, the European Trade Union Confederation, the Union of Industrial and Employers' Confederations of Europe, the European Association of Craft Small and Medium-sized Enterprises, as well as the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest, signed the Framework agreement on work-related stress. The actors aim is to increase the awareness and the understanding of work-related stress. Furthermore, employers and workers are provided with a framework to identify and prevent problems of work-related stress¹⁶. In 2008, the report drawn-up with respect to the implementation of the Framework agreement on work-related stress revealed that in Romania there seemed to be a problem, in the first instance, to increase awareness of the need to tackle work-related stress amongst both trade union officials and business leaders¹⁷.

Further on, in 2007, the European Trade Union Confederation (ETUC/CES), the Confederation of European Business (BUSINESSEUROPE), the European Association of Craft Small and Medium-sized Enterprises (UEAPME), as well as

¹² Item 4 of the EP Resolution on harassment at the workplace.

¹³ Item 3 of the EP Resolution on harassment at the workplace.

¹⁴ Item 7 of the EP Resolution on harassment at the workplace.

¹⁵ Item 13 of the EP Resolution on harassment at the workplace.

¹⁶ <https://osha.europa.eu/en/legislation/guidelines/framework-agreement-on-work-related-stress> [18 January 2017].

¹⁷ Report of the European Social Partners on the implementation of the Framework agreement on work-related stress, adopted by the Social Dialogue Committee on 18 June 2008. Retrieved from <https://osha.europa.eu/en/legislation/guidelines/implementation-of-the-european-autonomous-framework-agreement-on-work-related-stress> [18 January 2017].

the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP), signed the Framework agreement on harassment and violence at work¹⁸. The document assesses that harassment (and violence) “*may be carried out by one or more managers or workers, with the purpose or effect of violating a managers’ or workers’ dignity, affecting his/her health and/or creating a hostile work environment*”¹⁹. It represents the first acknowledgement at EU level of the severe impact that moral harassment at work may have on workers’ dignity.

Note is to be made that - unlike the concepts of “health”²⁰ or “mental health”²¹, which have been defined at international level - the concepts of “moral (psychological) harassment at work” or “bullying” do not benefit from a single common definition at the European level. The lack of such definition was outlined within a Resolution issued by the European Parliament on the mid-term review of the European strategy 2007-2012 on health and safety at work²². The European Parliament called on the Commission and the Member States to develop effective national strategies for combating violence at work which are based on a definition of moral harassment common to all member states, in the context where it reached the following conclusions:

- psycho-social risks are risks related to stress, symbolic violence and harassment at work; stress is linked to job insecurity, ethical conflicts, poor work organisation (for example, deadline pressure or excessive workload), conflict with clients, a lack of support at work, unstable labour relations or an inappropriate work-life balance;

- moral harassment at work is acknowledged as a growing concern in the field of health and safety at work at the European level;

- national-featured deeply rooted attitudes require specific national legislation;

- member states are encouraged to develop effective national strategies for combating violence at work, based on a common definition of moral harassment.

To strengthen its position, the European Parliament recalls the incidence of suicide at work and the real impact that job insecurity has on the stress factor.

¹⁸ Framework agreement on harassment and violence at work, adopted on 26 April 2007 [hereinafter the Framework agreement on harassment and violence at work]. Retrieved from <https://www.etuc.org/framework-agreement-harassment-and-violence-work> [18 January 2017].

¹⁹ Chapter 3 (*Description*) of the Framework agreement on harassment and violence at work, final thesis.

²⁰ According to the Constitution of the World Health Organisation (dating from 1946), health is defined as representing “*a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity*”

²¹ WHO (2001) Mental Health: Strengthening Mental Health Promotion. Factsheet No. 220. Retrieved from <http://www.who.int/mediacentre/factsheets/fs220/en/> [18 January 2017]. Mental health is understood as “*a state of well-being in which an individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and is able to make a contribution to his or her community*”.

²² Resolution of the European Parliament on harassment at the workplace (2001/2339 (INI)), OJ C/77E 28/03/2002.

A study conducted in 2010²³ revealed that, at the level of the year 2007, Romania (among other countries, *i.e.*, Turkey, Portugal and Bulgaria) showed the highest level of concern for violence or threat of violence at work. Similarly, EU-OSHA's ESENER showed that the highest levels of concern regarding bullying or harassment were observed in Romania, Turkey, Portugal, Romania, and Norway.

In 2012, the European Commission started a comprehensive evaluation of the European Framework Directive 89/391/CE and 23 (twenty-three) related Directives, which represented the fundamentals in terms of regulation of health and safety at work. The purpose of the evaluation was to make the European legislation more coherent, simple and effective.

In 2014, the European Commission issued an interpretative document on the implementation of Council Directive 89/391/EEC in relation to Mental Health in the Workplace²⁴. According to its provisions, in the absence of any "mental health in the workplace" specific legal instrument, the provisions of European Framework Directive 89/391/EEC apply, and thus is all the more important as workplace related mental health problems are currently one of the most serious workplace related health concerns, as reflected by an abundance of data (*e.g.*, on absenteeism, long-term sick leave, work-related suicides) due to, *inter alia*, stress at work (itself the consequence of, *e.g.*, new forms of work organisation, harassment and violence in the workplace, insecurity of tenure, exposure to a poor physical work environment) and depression²⁵.

The efforts in regulating moral (psychological) harassment at work did not stop, the European Union constantly taking action in this regards. On 10 January 2017, the European Commission launched new initiative to improve health and safety of workers²⁶. The action plan aims to help businesses to comply with health and safety rules and it includes advice on how to deal with rapidly increasing Occupational Safety and Health risks such as psychosocial, ergonomic or ageing related-risks. Furthermore, the European Commission will work with Member States and social partners to remove or update outdated rules within the next two

²³ European Agency for Safety and Health at Work (EU-OSHA), *Workplace violence and harassment: a European picture*, Luxembourg: Publications Office of the European Union, 2010. Retrieved from <http://www.maybo-by-mandt.com/file/25/violence-harassment-eu-report.pdf> [18 January 2017].

²⁴ European Commission, *Interpretative Document of the Implementation of Council Directive 89/391/EEC in relation to Mental Health in the Workplace*, November 2014. Retrieved from <https://osha.europa.eu/en/legislation/guidelines/interpretative-document-implementation-council-directive-89391eec-relation> [18 January 2017].

²⁵ Chapter I (*Introduction*) of the Interpretative Document of the Implementation of Council Directive 89/391/EEC in relation to Mental Health in the Workplace.

²⁶ European Commission press release, 10 January 2017. Retrieved from http://europa.eu/rapid/press-release_IP-17-2_en.htm [18 January 2017].

years, having as target to simplify and reduce administrative burden, while maintaining workers' protection. This modernisation is envisaged to ensure better enforcement on the ground.

Thus, in the first days of the year 2017, the European Commission raises its concern with respect to health and safety at work to a new level: it declares that keeping workers safe and healthy in the workplace by safeguarding and updating the high European standards is a top priority.

III. Romanian Legal Framework Regarding Moral (psychological) Harassment at Work

Psychological harassment at work was defined and expressly regulated by the Romanian legislation in 2015. Up to that moment, there was no specific regulation of the concept of “moral (psychological) harassment at work”, but only general legal provisions aimed to prevent and sanction discrimination deed.

At present, the relevant Romanian legislative framework regarding moral (psychological) harassment at work consists of the following normative acts:

i. *Labour Code of Romania*²⁷;

As per the provisions of Labour Code of Romania²⁸, within the framework of work relations, the principle of the equality of treatment for all employees and employers shall apply and any direct or indirect discrimination against an employee, based on criteria such as sex, sexual orientation, genetic characteristics, age, national origin, race, colour of the skin, ethnic origin, religion, political options, social origin, disability, family conditions or responsibilities, union membership or activity, shall be prohibited.

The Romanian legislation defines “direct discrimination” as any actions and facts of exclusion, differentiation, restriction, or preference, based on one or several of the criteria mentioned above, the purpose or effect of which is the failure to grant, the restriction or rejection of the recognition, use, or exercise of the rights stipulated in the labour legislation²⁹. Furthermore, “indirect discrimination” is defines as any actions and facts apparently based on other criteria than those mentioned above, but which cause the effects of a direct discrimination to take place³⁰.

²⁷ Law no. 53/2003 on the Labour Code, Official Gazette of Romania Part I, no. 345 dated 18/05/2011 (republished), as further amended and completed [hereinafter Labour Code of Romania].

²⁸ Art. 5 para. (1) of the Labour Code of Romania.

²⁹ Art. 5 para. (3) of the Labour Code of Romania.

³⁰ Art. 5 para. (4) of the Labour Code of Romania.

ii. G.O. no. 137/2000 regarding the prevention and the sanctioning of all discrimination forms³¹;

Discrimination and harassment were first regulated in Romania in 2000, through G.O. no. 137/2000. According to the provisions of the G.O. no. 137/2000, any harassment deed is deemed a contravention to be sanctioned with an administrative fine, ranging from RON 1,000 (*i.e.*, approximately EUR 250) to RON 30,000 (*i.e.*, approximately EUR 7,500), in case the harassment deed is committed by a natural person, respectively in an administrative fine ranging from RON 2,000 (*i.e.*, approximately EUR 500) to RON 100,000 (*i.e.*, approximately EUR 25,000), in case the harassment deed is committed to a group of persons or to a certain community³².

In addition to the above, as per the provisions of the Romanian Government Ordinance no. 137/2000, the Romanian National Council for Combating Discrimination³³ or the relevant court of law, as the case may be, may oblige the party who committed the harassment deed to disseminate, using mass media channels, a synopsis of the sanctioning decision issued by the Romanian National Council for Combating Discrimination or by the relevant court of law, as the case may be³⁴.

The Romanian courts of law³⁵ have extensively interpreted the aforementioned provisions of the G.O. no. 137/2000 and concluded that 4 (four) conditions have to be cumulatively met in order to qualify a discriminating deed as representing "harassment" within the meaning of the law, as follows:

³¹ Government Ordinance no. 137/2000 regarding the prevention and the sanctioning of all discrimination forms, Official Gazette of Romania Part I, no. 166 dated 07/03/2014 [hereinafter G.O. no. 137/2000].

³² Art. 2 para. 5 of the G.O. no. 137/2000 defines harassment as representing "any behaviour on grounds of race, nationality, ethnicity, language, religion, social class, creed, gender, sexual orientation, membership in a disadvantaged group, age, disability, refugee or asylum status or any other criterion leading to the developing of an intimidating, hostile, degrading or offensive setting".

³³ The Romanian National Council for Combating Discrimination was founded by G.D. no. 1194/2001 approving the organisation and functioning of the Romanian National Council for Combating Discrimination, Official Gazette of Romania Part I no. 792 dated 12/12/2001. The Romanian National Council for Combating Discrimination is an independent body created to implement the principles of equality and non-discrimination in Romania, with the purpose to promote the principle of equality between all citizens. In the exercise of its functions, the Council carries out its activities independently, without any restriction or influence from other public institutions or authorities. The Romanian National Council for Combating Discrimination receives and reviews the petitions and complaints regarding violations of the legal provisions concerning the principle of equality and non-discrimination from individuals and groups of persons, NGOs active in human rights protection, other legal entities, and public institutions. For all discrimination cases, the victims are entitled to claim damages, proportional to the deed committed, as well as the restoration of the situation prior to discrimination or to the cessation of the situation created by discrimination, in accordance with the common law.

³⁴ Art. 26 para. (2) of the G.O. no. 137/2000.

³⁵ Bucharest Court of Appeal, decision no. 4920/R dated 12 November 2010, Department VII - civil and social security and labour conflicts court cases. Retrieved from <http://jurisprudenta.org/> [18 January 2017].

- a. the existence of a differentiated treatment that results in the exclusion, restriction or preference of persons which may be found in similar situations;
- b. the existence of a discrimination criteria (*i.e.*, race, nationality, ethnicity, language, religion, social class, creed, gender, sexual orientation, membership in a disadvantaged group, age, disability, refugee or asylum status or any other criterion leading to the developing of an intimidating, hostile, degrading or offensive setting);
- c. the differentiated treatment to not be justified by a legitimate scope, and the methods used for achieving such scope to not be adequate and necessary; and
- d. the differentiated treatment applied to not have as scope or effect the restriction, the preclusion of recognition, use or exercise in equal conditions of a right granted by law.

iii. *Law no. 202/2002 on equal opportunities between women and men*³⁶;

Law no. 202/2002 provides the measures to promote the principle of equal chances and treatment between women and men with the purpose to eliminate all the forms of discrimination based on sex from the public relationship and especially from employment relationship.

Law no. 202/2002 was extensively amended and completed in 2015, by means of the Law no. 229/2015³⁷, “psychological harassment” being for the very first time expressly regulated as such under the Romanian law³⁸. This is a benchmark regulation, as the dignity and/or integrity of a person is considered for the first time by the legislator as necessary to be protected against harassment deeds³⁹. The definition provided by the law is arguable and too vague, making no distinction between the types of behaviours that may be deemed as moral (psychological) harassment, and too confusing, in the sense that it does not cover the situation where a single act of psychological harassment is committed (and not a repetitive one).

iv. *Criminal Code of Romania*⁴⁰.

As per the provisions of the Criminal Code of Romania, “harassment” is regulated strictly as physical harassment, no mentioned being made thereof with

³⁶ Law no. 202/2002 on equal opportunities between women and men, Official Gazette of Romania Part I, no. 05/06/2013, as further amended and completed [hereinafter Law no. 202/2002].

³⁷ Law no. 229/2015 for the amendment and completion of Law no. 202/2002 on equal opportunities between women and men, Official Gazette of Romania Part I, no. 749 dated 07/10/2015 [hereinafter Law no. 229/2015].

³⁸ According to art. 1 item 3 of Law no. 229/2015, “psychological harassment” is defined as “*any inappropriate behaviour that takes place in a certain period of time, repetitively and systematically, and which implies a physical, oral or written behaviour, gestures or other international acts and which may affect the personality, the dignity or the physical integrity of a person*”.

³⁹ The Labour Code of Romania promotes the principle of equal treatment and non-discrimination towards all employees and employers in order to eliminate all the forms of discrimination in terms of employment, regulates the right to dignity at work and protects the physical integrity of the employers, but does not provide that such kind of protection is granted against moral (psychological) harassment deeds.

⁴⁰ Law no. 286/2009 on the Criminal Code, Official Gazette of Romania Part I, no. 510 dated 24/07/2009, as further amended and completed [hereinafter Criminal Code of Romania].

respect to moral (psychological) harassment⁴¹. This is major gap in the Romanian legislation, considering the fact that perpetrators cannot be criminally charged for their moral (psychological) harassment deeds. Although recently adopted (the Criminal Code of Romania entered into force in 2014), this normative act does not consider psychological harassment as a criminal deed.

IV. Legal Means Available to Workers under the Romanian Law to Fight against Moral Harassment at Work

Considering the aforementioned legal framework, Romanian workers may fight against psychological (moral) harassment at work by addressing to the following authorities:

- [1] Romanian National Council for Combating Discrimination;
- [2] Labour Inspection;
- [3] Romanian National Agency for the Equality between Women and Men;
- [4] Labour courts of law.

A recent survey carried out by the Romanian National Institute of Statistics in 2013⁴² in the field of health and safety at work revealed the following:

- more than 4.4 million employees from Romania (close to half of all those in employment) reported that they had been exposed at work to at least one factor that may affect their mental or physical health;
- exposure to factors affecting only physical health (such as chemical substances, dusts, smoke, steam, gas, noise, vibrations, uncomfortable workstations, work requiring excessive motion, handling of weights, work requiring acute visual concentration, 'accident-prone' activities) were reported by 69.4% of the surveyed group;
- 5.8% of the respondents (*i.e.*, 255,000 employees) reported exposure to factors affecting only mental health, such as harassment or emotional violence, physical violence or threats of physical violence, pressure to deliver work at short notice, being overloaded with multiple or simultaneous tasks;
- 24.8% of the respondents reported exposure to factors affecting both physical and mental health;
- that factors affecting mental health were reported by only 4% of workers in the private sector, but by 17.1% of workers in the public sector.

⁴¹ Art. 208 para. (1) of the Criminal Code of Romania defines „harassment” as representing “the act of an individual who repeatedly, with or without a right or legitimate interest, pursues an individual or supervises their domicile, working place or other places attended by the latter, thus causing to them a state of fear”.

⁴² Romanian National Institute of Statistics, *Accidents at work and work-related health problems survey*, second quarter 2013, INS, Bucharest, published on 12 December 2013.

In 2013, the Romanian National Council for Combating Discrimination registered a record number of petitions (a total number of 858). Out of these, over 60 petitions had as object moral harassment – breach of the right to dignity⁴³.

A survey conducted by the Romanian National Council for Combating Discrimination in August 2015⁴⁴ reveals that, as opposed other domains that were subject to survey (*i.e.*, discrimination based on gender, discrimination based on handicap etc.), the domain of personal dignity proved to be more difficult for the Romanian national Council for Combating Discrimination to evaluate, because the Romanian public “*does not have a clear definition of the components of this domain – what is the content and what are the limits of the freedom of expression and the definition of the victims of human dignity breach*”.

Starting with 2011, the Romanian labour courts of law confronted themselves with an avalanche of cases grounded on moral (psychological) harassment. Although no specific survey has been conducted so far to determine the approximate number of such cases brought to court, we estimate that these are over 100,000 (ongoing).

In the light of the above, in order to ensure a better protection of the fundamental rights of employees (including right to dignity at work), the Romanian legislator should incriminate the moral (psychological) harassment and amend existing legislation to ensure that it covers both public and private sectors of activity.

V. “The Human Shredder” – Case Study

The activity of the Romanian National Council for Combating Discrimination is extremely varied with respect to moral harassment at work. Besides the petitions that are filed directly to this authority by employees who claim that they were subject to psychological harassment, the Romanian National Council for Combating Discrimination is also involved in any litigation grounded on the same. Specifically, according to the provisions of the G.O. no. 137/2000⁴⁵, any litigation grounded on discrimination (thus, including on moral harassment) has to be solved by the courts of law with the mandatory citation of the Romanian National Council for Combating Discrimination, which will formulate a point of view with respect to the case at hand. From the entire activity of the Romanian National

⁴³ The Romanian National Council for Combating Discrimination, 2013 Activity report. Retrieved from <http://cncd.org.ro/2014-05-28-raportul-de-activitate-al-cncd-pe-anul-2013> [18 January 2017]. The activity reports for 2014 and/or 2015 are not available.

⁴⁴ The Romanian National Council for Combating Discrimination, *Perceptions and attitudes of the Romanian population towards the National Strategy for Preventing and Combating Discrimination*, 2015. Retrieved from http://api.components.ro/uploads/1d3a0bf8b95391b825aa56853282d5da/2016/10/Sondaj_TNS_CNCD_2015.pdf [18 January 2017].

⁴⁵ Art. 27 para. (3) of the G.O. no. 137/2000.

Council for Combating Discrimination, one case stands-out: “the human shredder” (2013). The factual situation of the case could be summarised as follows:

The claimant employee was laid-off from its position as secretary in 2012. Further to challenging the dismissal decision in court, she was re-integrated into its former position (the court of law concluded that the dismissal had been illegal). Thus, on 24 July 2013 she returned to work. From that moment on and until 30 August 2013 (when she entered medical leave), the said employee was subject to a degrading, unfair and humiliating treatment, being obliged by the employer to manually shred the papers that her colleagues did not use anymore, in pieces less than 1 centimetre. This was the only job attribution of the said employee, which she had to perform 8 hours a day, 5 days a week. This kind of work she performed was supervised. She was told, tendentiously, that she must manufacture confetti for the Rio de Janeiro Carnival. She had also been referred to her colleagues as a negative example, the employer thus outlining what could happen to anyone in the firm in case they decided to challenge in court the decisions of the company. Note is to be made that an automatic (electric) shredder had been available in the company since 2012. Moreover, the employee was required to perform her work in an office space placed to a significant distance from the other secretaries in the firm. She did not receive any access card to the building and, consequently, had no access to the cafeteria where all her co-workers had lunch. Unlike any other employee, she had the obligation to hand-over every day, at the end of her working schedule, the phone from work, the USB sticks, the CDs assigned to her. No similar practice was used against other colleagues from the company, and the secretary that had been employed to substitute her (after her dismissal) was subject to a completely different treatment.

In front of the Romanian National Council for Combating Discrimination, the employer defended itself by outlining that the manual shredding of documents was the evident duty of the secretary, aiming to prevent the disclosure of confidential information.

The Romanian National Council for Combating Discrimination unanimously decided on 4 December 2013 that *„obliging an employee to manually destroy documents under the pretext that these are secret, as an effect of a previous litigation ruled in favour of the respective employee, represents a discrimination deed, psychological harassment and a breach of the right to dignity”*⁴⁶. The employer was obliged to pay an administrative fine in amount of RON 20,000 (*i.e.*, approximately EUR 5,000), and to disseminate, using mass media channels, a synopsis of the sanctioning decision issued by the Romanian National Council for Combating Discrimination.

⁴⁶ Decision of the Romanian National Council for Combating Discrimination no. 709 dated 04/12/2013. Retrieved from www.cncd.ro [18 January 2017].

The employer further challenged in court the decision ruled by the Romanian National Council for Combating Discrimination. The Bucharest Tribunal overruled the claim⁴⁷.

The employee went further and asked the court of law to oblige the employer to pay moral damages. The Bucharest Tribunal decided in 2015 that the employer must pay to the employee, as moral damages, the amount of RON 20,000 (*i.e.*, approximately EUR 5,000)⁴⁸. The decision of the Bucharest Tribunal was confirmed by the Bucharest Court of Appeal (during the appeal phase of the litigation) and became final.

The company did not observe the decision of the court mentioned above. As a consequence, the employee filed a criminal claim⁴⁹ against the former employer, which is currently in front of the court of law. Next hearing term is on 21 February 2017⁵⁰.

The case is striking and it reveals the extent to which human dignity could be affected in working relationships. The major issue identified is that many similar situations may exist on the market, yet employees either are afraid to defend their rights, either have less or no knowledge about the protection they benefit from under the Romanian law. Essentially, lack of legal knowledge, lack of acknowledgement of the rights prescribed by the law, the un-affordability of legal assistance, as well as the anxiety and fear created by the potential repercussions of

⁴⁷ Romania. Decision of the Bucharest Tribunal no. 2514 dated 26/09/2014, court file no. 50/2/2014. File status may be reviewed at http://portal.just.ro/2/SitePages/Dosar.aspx?id_dosar=200000000310812&id_inst=2 [18 January 2017].

⁴⁸ Romania. Decision of the Bucharest Tribunal no. 813 dated 19/06/2015, court file no. 4921/3/2015. File status may be reviewed at http://portal.just.ro/3/SitePages/Dosar.aspx?id_dosar=300000000627054&id_inst=3 [18 January 2017]. The decision of the Bucharest Tribunal was confirmed by the Bucharest Court of Appeal (during the appeal phase of the litigation).

⁴⁹ Under Romanian law, the failure to enforce court orders, committed:

- a) by resisting the enforcement of a court decision, by resisting the actions of the authority in charge of said enforcement;
- b) by the refusal of the authority in charge of the enforcement to enforce a court order, by means of which it must carry out a certain act;
- c) by the refusal to support the authority in charge of the enforcement in implementing the court order, by individuals who are under this obligation by law;
- d) by failure to enforce a court order reinstating an employee;
- e) by failure to enforce the court order regarding the payment of wages within 15 days of the date when the enforcement request was submitted by the interested party to the employer;
- f) by failure to enforce court orders on establishing, paying, indexing and recalculating pensions;
- g) preventing an individual from using, in whole or in part, a house or part of a house or building held based on a court order, committed by the person against whom the court order was returned, shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by fine (art. 287 of the Criminal Code of Romania).

⁵⁰ Romania, Bucharest, First Court District 6, court file no. 15079/303/2016. File status may be reviewed at http://portal.just.ro/303/SitePages/Dosar.aspx?id_dosar=30300000000276246&id_inst=303 [18 January 2017].

any legal means available under the law against the employer, all these impede the employees to fight against moral harassment at work and to take further action to prevent similar incidents at the workplace.

VI. Steps to Be Considered

In the light of the above, the immediate conclusion that may be reached is that the combatting moral harassment at work should be construed on the efforts of both employees and employers. "Weighting" their forces, it may appear that employees have more power to stop such toxic behaviour at work and, contra intuitively, the victim-employees hold such power. A prerequisite to it is that employees acknowledge, understand and defend their rights and the protection granted under the applicable law.

Certainly, the employer has his share of duty in ensuring the elimination of moral harassment from the workplace. At first, it should communicate the behavioural expectations it has from its own employees, both management and execution positions. Secondly, it should ensure awareness trainings for its personnel to outline the rights attributed to employees under the applicable law and the sanctions provided under the law. Thirdly, it should emphasize that no such behaviour will be tolerated within the company, setting strict sanctions for each breach of the rule. Certainly, this would imply the drawing-up and approval of complex and sophisticated company policies.