

## 2.1: Introduction

In this section will be discussed the EU's positions on discrimination in the labour market. Then reference will be made to European directives on equal treatment of men and women and discrimination in general. Afterward, will be briefly presented the judgments of national courts on cases of discrimination, as well as the contribution of the European Court of Justice and the European Court of Human Rights to the fight against discrimination. Finally, the international (institutional) framework for combating discrimination in labour markets will be presented in brief.

## 2.2: EU and discrimination in the labour market

The fight against discrimination and the promotion of the principle of equal treatment are at the heart of European employment and industrial relations policy and are promoted through primary law (e.g. founding treaties), secondary law (e.g. instructions) and through European policies. Indirect references to these issues are found in the very first founding Treaties of the European Economic Community (EEC). The Treaty of Rome (1957), in the context of achieving the objective of a common market and ensuring fair competition between employers in different Member States, provided for the right to move freely to the EEC. This right was closely linked to economic activities, namely: paid employment, the liberal professions and provision of services. The same Treaty established the principle of equal pay for men and women.

During the first period, equal treatment was more about making conditions for the smooth functioning of the common market and mainly concerned with equal pay for men and women. In this context, since 1975 there has been continuous production of European directives on equal treatment of men and women in matters of employment, social security and access to goods and services. Emphasis on equal treatment and discrimination issues beyond narrow gender and ethnicity has been made since the 1990s principally, since the Treaty of Amsterdam in 1997, in which Article 13 provides that the Council may take the necessary measures to combat discrimination based on gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation. It is considered that the two most important Directives in the field of anti-discrimination were adopted on the basis of Article 13 of the Treaty of Amsterdam: Directive 2000/43 / EC of 2000 on the implementation of the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78 / EC of 2000 on equal treatment in employment and occupation.

However, it is the Treaty of Lisbon (2007) where the non-discrimination and equal treatment become part of European Community law for two reasons:

1. The Treaty of Lisbon modifies the two basic treaties of the EU (Treaty on European Union, Treaty establishing the European Community); the new treaty resulting (Treaty on the Functioning of the European Union) puts these issues at the heart of it. Already mentioned in the first article:

*"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society characterized by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men."*

2. The Treaty of Lisbon recognizes the rights, freedoms and principles enshrined in the Charter of Fundamental Rights of the European Union adopted in 2000 (and revised in 2007), which has since has the same legal status as the treaties. This Charter contains a chapter dealing on equality issues, where reference is made to equality of all people before the law (Article 20), the prohibition of discrimination (Article 21), cultural, religious and linguistic diversity (Article 22), the equality between men and women (Article 23) and the integration of disabled people (Article 26).

### **2.3: European directives and discrimination in the labour market - The Directives on equal treatment of men and women**

In terms of secondary law, the first directives adopted on discrimination were centered on equal treatment for men and women and by about 2000 they constituted the main body of European anti-discrimination legislation.

The first Directive passed in 1975 and concerned equal pay for men and women. By the end of the 1970s, two more directives on equal treatment of men and women were adopted with regard to employment, vocational training and promotion, working conditions and social security. In the middle of the 1980s (1986), the European institutional framework for gender equality was incorporated with two further directives on equal treatment of self-employed men and women with regard to social security and the protection of self-employed women during pregnancy and maternity. In 1992, another directive introduces measures to improve the health and safety at work for pregnant workers, workers who have recently given birth or/and are breastfeeding. Since 2002, Gender Equality Directives have been adopted that either amend earlier directives or concentrate them on wider (in terms of content) guidelines.

## 2.4: European Directives and Discrimination – Guidelines that refer to the discriminations

As mentioned in section 2.2., it is after 2000 that the EU intervention in the field of anti-discrimination extends to other fields other than gender and nationality. The aim is to establish a legislative framework for discrimination in all EU Member States, as well as to create institutions at national level that promote equal treatment.

Two very important directives were voted in 2000: 2000/43 / EC on the application of the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78 / EC of 2000 on equal treatment in employment and occupation.

Directive 2000/43 / EC of 2000 (also known as "Directive on racial equality") implementing the principle of equal treatment between persons irrespective of racial or ethnic origin focuses on discrimination based on racial or ethnic origin and extends beyond the shape of employment. Directive 2000/78/EC of 2000 focuses exclusively on the field of employment addressing discrimination more broadly, including also discrimination on the grounds of religion or other beliefs, disability, age and, sexual orientation. As regards employment and occupation, both out: a) in the conditions of access to employment, self-employment and occupation (including selection criteria and recruitment terms, irrespective of the branch of activity and at all levels of the professional hierarchy, including promotions); b) access to all types and to all levels of vocational guidance, vocational training, retraining and vocational reorientation, including the acquisition of practical work experience; c) in the working conditions, including dismissals and pay; d) in the membership and/or participation in an organization of workers or employers, or any organization whose members carry on a particular profession, including the benefits granted by such organizations.

Both directives define the content of discrimination (direct/ indirect discrimination/ harassment) and transfer the burden of proof from the plaintiff to the defendant, who will have to prove to the court that there has been no breach of the principle of equal treatment. This is important because, before the adoption of these Directives, the victim had to prove that they had been the victim of discrimination. Member States are also encouraged to introduce into their national legislation measures required to protect workers from unfair treatment in case they denounce any discrimination ("victimization").

Finally, in 2008, a proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation was tabled on the basis of the following statement, which is found in the explanatory memorandum: *"This*

*proposal is based on Directives 2000/43 / EC, 2000/78 / EC and 2004/113 / EC prohibiting discrimination based on gender, racial or ethnic origin, age, disability, sexual orientation, religion or belief. Discrimination on the grounds of racial or ethnic origin is prohibited in employment, work and vocational training, as well as in non-employment related areas such as social protection, health care, education and access to goods and services, including housing, provided to the public. Discrimination on the grounds of gender is forbidden in the same sectors, with the exception of education, the media and the advertising. However, discrimination on grounds of age, religion or belief, sexual orientation and disability is prohibited only in the areas of employment, work and vocational training ". Therefore, this Directive (if passed) will attempt to fill the gaps in the existing directives by extending the prohibition of discrimination on grounds of age, religion or belief, sexual orientation and disability on areas beyond employment, such as social protection, benefits, education and access to goods and services.*

Finally, it is worth mentioning that in December 2013, the 28 Member States of the European Union committed themselves to implement a series of recommendations, proposed by the European Commission, to accelerate the economic and social integration of Roma communities. This is the first legal instrument adopted at EU level for Roma social inclusion and concerns access to education, employment, the health care and housing.

### **JUDGEMENTS ON DISCRIMINATION IN THE EUROPEAN UNION**

Under the two directives on anti-discrimination, a large number of court judgments have been taken by national courts. For the period 2004-2010, 250 important litigation cases were reported. In most cases, the decisions concern discrimination based on racial or ethnic origin (127), followed by discrimination on grounds of age (51), religion (46), disability (28) and sexual orientation (15). This differentiation in relation to the judgments of the European Court of Justice (which will be discussed in the next sub-section), where the age discrimination cases outnumber, is due to the fact that in national courts most cases are dealt with under the Racial Equality Directive broader content and not only in the field of employment, but also in terms of social protection, social privileges, education, access to goods and services, housing, and so on. Nonetheless, cases of discrimination in the field of employment (32) outweigh other cases of discrimination, which more specifically concern access to goods and services (21), education (17), social protection and social welfare (4) housing (15), incitement to racist crimes, or speech (26) or wider discrimination on number of issues (12). Most cases of discrimination on grounds of racial or ethnic origin were related to recruitment procedures and complaints by candidate workers, as well as to discrimination in terms of pay, employment status and promotion (Uyen Do , 2011).

## 2.6: The contribution of the European Court of Justice and the European Court of Human Rights to the fight against discrimination

The rulings of the European Court of Justice (or the Court of Justice of the European Union), based on the constitutional Treaties of the European Union, the European Charter of Human Rights and the European directives, form a parallel but equally important institutional framework for combating discrimination in the European area.

It is even the opinion that on the basis of the experience of the Court's judgments on equal treatment of men and women throughout the 1990s which was distinguished by an extended interpretation of the relevant Articles of the constitutional Treaties and the Directives, both the 2000 anti-discrimination directive were drafted. However, despite the many decisions on gender equality, the judgments of the European Court of Justice based on these two Directives during the period 2003 (final year of transposition of the Directives into Member States' legislation) until 2013 were only a few: Thirteen (13) decisions arising from the directive on equality in employment, while only one (1) of the directive on racial equality. For the most part concerned age discrimination (9 of them). The judgment "Mangold" 2005 (which provided for the exclusion of workers over 52 years from the protective legislative framework for fixed-term contracts) was the first to be taken by the European Court of Justice in relation to the employment equality directive and is considered that it marked a chance in the European legal order. In their majority, decisions on age discrimination related to retirement age. There were two more (2) judgments of the ECJ on disability discrimination, one (1) discrimination on grounds of sexual orientation and, finally, one (1) discrimination based on grounds of ethnic or racial origin (Uyen Do, 2011).

The role of the European Court of Human Rights (ECHR), which is a body of the Council of Europe and supervises the implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms, it is equally important because its jurisprudence fills the gaps that are not fall within the scope of the Directives and on the other hand why a dialogue had been developed with the Court of Justice of the European Union on the complementary protection of rights. Of course it should be noted that the field of intervention of the European Court of Human Rights is wider because it also concerns non-EU members who have ratified the ECHR. Currently a total of 47 countries are members of the Council of Europe (which was first established in 1949) and being members means to accept the ECHR, even though some of the member countries have not accepted some of the new articles,

of the ECHR have emerged from its 2000 revision (European Union Agency for Fundamental Rights & Council of Europe, 2011).

The case “Eweida against British Airways (2010)” is indicative. In 2006, British Airways asked their employee, Nadia Eweida not time clearly to cover the cross she was wearing. Eweida was placed on unpaid leave after refusing to cover either the cross or be placed in another location where it would be required to cover. The company's argument was that the clerk wearing a cross over the letter of infringing the company's policy on dress uniform of its employees. On the part of the officer decided to terminate the company considering that it carried a similar policy in the case of officials who were Sikh or Muslim, given that in this case it was practically impossible to cover those symbols suggesting their religion (p. x. turban in the case of the Sikhs, the face shield in case of Muslim religion women). The company, for its part, contended that while some religions impose a certain dress code, in the case of Christians, the cross is not mandatory. The company refused to compensate Eweida for the period of unpaid leave, although in 2007 it changed its policy on this issue because of the reactions it had met, announcing that in the future it would allow its employees to carry symbols of their religion. Once turned, without success before competent courts in 2012 appealed to the European Court of Human Rights not only the company but also in the United Kingdom failed to ensure the rights of the applicant. In 2013, the Court decision on Eweida case (and acknowledged right to financial compensation), having found a violation of ECHR Articles. The rationale of the switch a Justice was that British Airways was unable to reach a fair balance between the religious beliefs of Eweida and its policy of uniform clothing.

Just because the Council of Europe's field of intervention not only to EU Member States, the ECHR is often considered part of the international institutional framework, which will examine the following section.

## **2.7. International (institutional) framework on combating discrimination in the labour market**

The international institutional framework consists of mainly the conventions of the United Nations (UN). These conventions are binding for the states that have ratified them and carry legal consequences. The UN conventions on discrimination (and which have accepted all the member with the EU States) are the following: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of Discrimination against Women (CEDAW), the Convention against Torture, the Charm Convention on

the Rights of the Child (CRC) and finally, the Convention on the Rights of Persons with Disabilities (UNCRPD). The UNCRPD is the first Convention on UN Human Rights, which is open to intergovernmental organizations laying regional character. Finally, the international context of the international institutional framework for combating discrimination in the labour market is complemented by the International Convention on Equal Remuneration (1951) and the International Convention on Discrimination in Employment (1958), which are binding for the states that have ratified it.

# Migrants

## TOPIC NO 3: NATIONAL INSTITUTIONAL FRAMEWORK AND INITIATIVES OF NATIONAL ACTORS IN RELATION FOR ANTI-DISCRIMINATION AND RESPECT FOR DIVERSITY

### PURPOSE

The purpose of this module is to familiarize trainees with the institutional framework for combating discrimination as well as the action of the bodies responsible for the application of the principle of equal treatment at work. This will enable trainees to use the tools available to them to combat discrimination at the workplace.

### 3.1: Policies and initiatives on discrimination in the labour market at national level

#### 3.1.1. Cyprus

Despite the ratification of almost all international instruments, most notably the International Convention on the Elimination of all Forms of Racial Discrimination, it was only in January 2004, prior to its accession to the European Union, that Cyprus enacted specific legislation<sup>3</sup> on antidiscrimination and racism in order to transpose the

EU antidiscrimination Directives and the Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law. In addition, in 2011, a new law<sup>4</sup> was enacted in order to transpose Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

<sup>3</sup> This legislation comprises the following four laws: Law on Equal Treatment in Employment and Occupation of 2004 (Law 58(I)/2004); Law on Equal Treatment (Racial or Ethnic Origin) (Law 59(I)/2004); Law on Combating of Racial and Some Other Forms of Discrimination (Ombudsperson) (Law 42(I)/2004); and Law (Amendment) Concerning Persons with Disabilities (Law 57(I)/2004)

<sup>4</sup> Law on Combating Certain forms and expressions of Racism and xenophobia by means of the criminal law of 2011 (Law 134(I)/2011)

### EXPECTED RESULTS

Upon completion of the study of the third section, participants will:

- ✓ become familiar with Greece's general policy on anti-discrimination and the current legislative framework.
- ✓ compare or assess the role of the bodies entrusted with the implementation and the supervision of the principle of equal treatment.
- ✓ reflect on the data from these bodies' reports on discrimination in the Greek labour market.