

# ROMANIAN REGULATIONS ON DISCRIMINATION: A CRITICAL OVERVIEW

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## Abstract

*Discriminatory behaviour is often considered normality in the Romanian society and its consequences are easily accepted or ignored. Compared to other Member States of the European Union that have a tradition in respecting the principle of human dignity and the principle of equality of treatment, Romania still faces difficulties with regard to assimilating the importance of these principles and integrating their non-discrimination dimension. Despite the fact that Romanian law has implemented European norms in the matter of non-discrimination, the existence of a legal framework didn't come with achieving the purpose for which they have been introduced. In the absence of an effective enforcement mechanism and of a social context in this respect, the law hasn't brought the necessary changes regarding equality and dignity rights and, implicitly, to the personal and social life's dynamic. The article aims to present some critical analysis of the extent to which Romanian law contains sufficient, articulated and coherent legal rules in the field, applicable to both those protected and those having obligation to protect, to identify the aspects with regard to which the domestic legislative framework requires to be modified and to propose the *lege ferenda* amendments, so that its provisions would be a consistent support for the purpose of non-discrimination in Romania.*

**Keywords:** *discrimination, dignity right, equal opportunities expert /technician, law, education.*

## 1. Introduction

In the context of Romania's accession to the European Union, the Council Directive 2000/43/EC of June 29<sup>th</sup>, 2000 implementing the principle of equal treatment between people irrespective of racial or ethnic origin<sup>1</sup> and the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation were transposed in the national legislation.<sup>2</sup>

The Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discriminations<sup>3</sup> and the Law no. 202/2002 on equal opportunities and treatment for women and men<sup>4</sup> are the main national normative acts adopted in order to prevent violation of the equality and dignity rights through discrimination.<sup>5</sup>

The Romanian society was not really prepared for such novelties in the year 2000 and now, after twenty years, even the national legislation provides for a certain level of protection of each human being's dignity, the respecting of the principle of equality of treatment, the mentality didn't evolve in a significant manner.

School, family, work, society in general are places where vulnerable persons' rights are ignored and

infringed. In a lifetime, from bullying in schools to discrimination on various criteria in different social domains, including moral harassment at the workplace, to the inadequate treatment of seniors, infringements of the dignity are common. The discriminatory behaviour is accepted by the society, paradoxically often by those whose dignity has been violated.

The Government Ordinance no. 137/2000 and the Law no. 202/2002 have been modified, motivated by the legislator's will to improve the discrimination concept, to regulate special measures for promotion and protecting human being's rights, to stress the role of public institutions having competence in the domain and to impose more severe sanctions for the contraventions committed by the natural and legal persons who violate the legal rules that prohibit the discrimination. The last amendments were recently adopted through Law no. 167/2020, entered into force on 10 August 2020<sup>6</sup>, which is the first Romanian regulation on discrimination in its form of moral harassment at the workplace, reshaping the relationships between employees, between employers

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<sup>1</sup> Published in The Official Journal of European Communities (OJEC) L series, no. 180 from June 19th, 2000.

<sup>2</sup> Published in The Official Journal of European Communities (OJEC) L series, no. 300 from December 2nd, 2000. The Treaty establishing the European Economic Community (1957 -1958) was the first community act which regulated the principle of equal pay for men and women for equal work or work of equivalent value: Article 119 of the Treaty. It is worth noting that the gender equality regulation has begun with this Article 119 and has evolved over the years on the legal base granted by this only one principle applicable at work. Moreover, starting with the gender equality in the labour domain, the non-discrimination as a general issue in various fields and on different criteria has becoming of particular concern for the European legislative bodies.

<sup>3</sup> Republished in The Official Gazette, Part I, no. 166 from March 7th, 2014.

<sup>4</sup> Republished in The Official Gazette, Part I, no. 326 from June 5th, 2013.

<sup>5</sup> In the labour field, where the discriminatory behaviour is regularly manifested, the European law has been implemented and a numerous number of normative acts, including legal rules on the discrimination prohibition, have been adopted.

<sup>6</sup> Published in the Official Gazette no. 713/7 of August 2020.

and employees at work, based on the respect of the dignity right<sup>7</sup>.

The aim of our study is to analyse the extent to which the above mentioned normative acts guarantee their goals' achievement and to find out parts of the legislation that may be modified in order to safeguard the protected rights.<sup>8</sup> Beyond a general analysis of the legal framework, the article aims to emphasise the long way from the rules of law to the real life and to design some possible solutions to connect theory with practice.

## 2. Aspects of Romanian legislation on discrimination: equal opportunities experts/technicians

### 2.1. The current legal framework

In our day by day life, we are witnesses or even subjects to discrimination on gender, meaning that a man or a woman are treated less favourable or in a disadvantageous way with the violation of their dignity.

Contrary to the collective perception, it is important to underline that subject to discrimination may be a woman, as well as a man. The Law no. 202/200 is addressed equally to them being intended to regulate the equality of opportunities and treatment between women and men.

In the meantime, discrimination against women is one of the most frequent and visible types of discrimination. The discrimination of women is a phenomenon, despite of the existence of European and national regulations having as purpose to protect their rights.

In the juridical literature, the role of legislation in changing the women's lives was very suggestively expressed. At the end of a very consistent research of a numerous European and domestic regulations regarding women's rights and equal treatment in the labour domain<sup>9</sup>, two of the author's<sup>10</sup> legitimate questions are: "what role ought the law fulfil: to make women's "double work norm" easier, to create better conditions for doing the same family activity which is unpaid and peripheral to the labour market, to emphasize and perpetuate the stereotypes regarding the

predilection of women for domestic life? Or instead to completely change this state of affairs, enshrining not false equal opportunities, which the majority of women cannot exploit as long as taking care of their family is considered their "natural obligation", but a real equality, based on real opportunities? "

The author considers that "the difficulty of finding an answer comes from the maintaining of the unbalanced distribution of domestic and household tasks within the family, from the type of education women receive from a young age, from the cultural pattern they are exposed to and from the expectations of society, which still differ by a wide margin regarding women and men. The role of legislation seems only secondary in relation with other parts of social life, especially education."

As what we are concerned, we totally agree with the points of view above.

In our opinion, the legal framework in the domain, even if it could be substantially improved, grants to a certain extent legal tools against discrimination. Education, family, balance, roles are key words in order to go forward in real life with the existing legal framework. In other words, the respecting of the right to dignity and of the right to equal treatment is not necessary weakened by a law level of regulation, but by a law level of awareness, respecting and application of the legislation in force. Holders of rights and obligations from the juridical point of view, each of us must acknowledge that every human being has the right to dignity and the right to equal treatment, what these rights consist of, why it is demanding to observe the other's rights, why to expect our own rights be recognized and how to defend ourselves in case these rights are infringed.

Taking into consideration the particularities of the rights protected through non-discrimination regulations, their efficiency is dependent on the legal measures and actions promoting and applying equal opportunities and equal treatment.

*De lege lata*, a solution was granted by the Romanian legislator through the *Law no. 178/2018<sup>11</sup> that amended the Law 202/2002*.

*The Law no. 178/2018 has introduced in the field of equality of chances and treatment between women*

<sup>7</sup> See Bejan, Felicia The First Romanian Regulations on Moral Harassment, *Agora International Journal of Juridical Sciences*, vol. 14 No 2/2020, p. 32 and the following.

<sup>8</sup> Regarding some particular aspects of discrimination, see Anghelescu, Carla Alexandra, Boroi, Gabriel, The prohibition of discrimination of art. 14 of the European Convention of human rights in matters of inheritance and affiliation regarding the provisions of the New Civil Code Challenges of the Knowledge Society, CKS-eBook, Nicolae Titulescu University Editorial House, Bucharest, 2013, p. 153 and the following and Bejan, Felicia, Equal Treatment of Young People and Seniors: "Pleading" for a Special Law on Age Discrimination, Challenges of the Knowledge Society, CKS-eBook, Nicolae Titulescu University Editorial House, Bucharest, 2018, p. 197 and the following.

<sup>9</sup> The Labour Code regulates under the paragraph 2 of the Article 5 a general prohibition of discrimination: „any direct or indirect discrimination towards an employee, discrimination by association, harassment and victimization, based on race, national origin, ethnic origin, colour of the skin, language, religion, social origin, genetic characteristics, sex, sexual orientation, age, political options, disability, non contagious chronic disease, HIV infection, political options, family conditions or responsibilities, union membership or activity, belonging to a disfavoured category criteria shall be prohibited.” The paragraph 5 of the same article specifies that discrimination is defined as being „any type of behaviour based on one of the criteria stipulated in the paragraph 2, aiming to or resulting in the violation of dignity, creating an intimidating, hostile, degrading, humiliating or offensive environment.”

<sup>10</sup> Dimitriu, Raluca, The presence of women in the labour market, *Universul Juridic*, 19 of December 2017, p. 2, <https://www.universuljuridic.ro/>, accessed on March 2021.

<sup>11</sup> Published in the Official Gazette no. 627/ 19 of July 2018. Law no. 178/2018 introduces also a new concept in the field, respectively gender violence – act of violence directed against a woman or, as the case may be, a male, based on gender.

and men, *two aspects that may generate changes in mentalities and practices:*

a) *there were created two special occupations in the field: expert in equality of chances and technician in equality of chances;*<sup>12</sup>

b) the law provides that public authorities and institutions, as well as private companies having more than 50 employees have the possibility to hire an *expert in equality of chances* or a *technician in equality of chances* or may assign to an existing employee certain related attributions, in order to promote and ensure the applicability of the non-discrimination and equality legislation at the work place.<sup>13</sup>

According to Article 2 paragraph 5 of the Law no. 202/2002, as it was modified by the Law no. 178/2018, the main attributions corresponding to *expert/technician in equality of chances* occupation are:

a) shall analyze the context within which the gender discrimination phenomenon occurs and evolves, as well as non-compliance with the principle of equal opportunities between women and men and recommends solutions that lead to the compliance with this principle, in accordance with the law;

b) shall make recommendations/ observations/ proposals with the purpose of preventing/ managing/ remedying the context of risk which might lead to the non-compliance of the equal opportunity and treatment principle between women and men, while respecting the principle of confidentiality;

c) shall propose measures ensuring equal opportunities and treatment between women and men, evaluates their impact on women and men;

d) shall elaborate action plans regarding the implementation of the equal opportunity principle for women and men which will include at the very least active measures to promote equal opportunities and treatment between women and men and the elimination of both direct and indirect discrimination by the gender criterion, measures to prevent and fight work place harassment, measures regarding the equality of treatment in the case of remuneration policy, promotion and filling decision-level roles within a company;

e) shall elaborate, evaluate and implement programs and projects in the domain of equal opportunities and treatment between women and men.

Moreover, Methodological Norms for application of the Law 202/2002, as it was modified by the Law 178/2018,<sup>14</sup> were approved by Romanian Government in 2019.

The implementing norms lay down active prevention measures and action plans<sup>15</sup> which the employers have the obligation to develop.

## 2.2. A more effective legal regime: *de lege ferenda* proposals

*The Romanian legislator's will to create occupations as experts and technicians in equality of chances has the potential to play a key role in changing the perspective regarding "protection" of women.*

As it was shown in the doctrine<sup>16</sup> "women have been the constant subject of "protection". They are often offered social assistance, helped through charities, living through an experience of being treated as helpless beings [...], experience whose nature increases and reproduces their disadvantageous position, instead of contributing towards a real partnership in developing values and society along men. "Protective" politics, which emphasize the women's position as a victim, and not as a partner, end up in perpetuating the stereotype that envisions women as belonging to the social group who needs assistance, who consume resources without producing anything, who are rather inclined to request help from their community rather than offer it."<sup>17</sup>

What the Law 178/2018 brings new is "*the possibility*" to have concrete measures to prevent, combat and eliminate all forms of gender discrimination in some spheres of public life in Romania.

In our opinion, the impact of the provisions of the Law no. 178/2018 in terms of results could be significantly increased if some amendments will be adopted.

Thus, *de lege ferenda* the Article 2 paragraph 4 should be modified as follows:

*"the central and local public authorities and institutions, civil and military, as well as private companies having more than 50 employees have the obligation to identify an existing employee and to assign certain attributions in the domain of the equal opportunity and treatment principle between women and men through the job description, on the basis of their knowledge and training in the field.*

Within the existent budget, the employer *may choose to fulfil this obligation* by hiring an *expert* or a *technician in equality of chances*.

The employers *having less than 50 employees may have the possibility* to assign certain related

<sup>12</sup> Regarding the occupation of expert in equal opportunities, it is considered that is necessary to implement rigorous regulations on professional standards which those experts ought to fulfil such that their expertise be real.

<sup>13</sup> Article 2 paragraph 3 and paragraph 4 of the Law no. 202/2002.

<sup>14</sup> Published in the Official Gazette no. 333/ 2 of May 2019.

<sup>15</sup> According to the Article 3 paragraph 1 of the Methodological Norms the action plans "will be developed by the designated person empowered in the field of equal opportunities and treatment between women and men or, where appropriate by the expert/technician in equal opportunities, in consultation with the human resources department. Finally, they will get approval from the trade unions in case that they are formed at the level of the entity, and later on will be forwarded to management for approval." The Methodological Norms also provides that, in case of designating of an existing employee to carry out these duties "the employer shall consider the need to identify training opportunities, within the limit of the existing and approved budget for expenditure on this destination."

<sup>16</sup> Dimitriu, Raluca, *ibidem*, p. 2.

<sup>17</sup> Dimitriu, Raluca, *ibidem*, p. 2.

attributions to an existing employee or may hire an *expert or technician in equality of chances* in order to promote and ensure the applicability of the non-discrimination and equality legislation at the work place, on the basis of their knowledge *and* training in the field”.

*Our legislative proposals are based on the following reasons:*

*- although more than two years have passed from the coming into force of the legal rules stipulating the possibility of having an employee or an expert/technician in the field, few companies and institutions choose to integrate this into their organization; we consider this reaction time could be shortened through stipulating an imperative obligation for employers in this regard, within a special period of time;*

*- the most decision-making positions in institutions and companies are occupied by men, especially in the public institutions; the women's under-representation can justify poor application of the legal provisions, as their interests are not represented<sup>18</sup> until an inclusive and diverse leadership will be achieved, an imperative character of the analyzed legal rules is required;*

*- the proposal does not necessarily exceed the annual budget, taking into consideration that the law shall allow the employers to assign these competences to an existing employee, after completing a specialization training in the domain; on the other hand, the amount of money invested for this purpose by the employers is worth its value: will improve the work conditions and the working relations, will have important social and economic consequences, reflected in the results of the activity, whether financial or otherwise;*

*- it is compulsory for the expert/technician /existing employee, as the case may be, to fulfil high professional standards, based on specialized studies/experience in the field;*

*- the proposals stipulate a different legal regime on the base of the number of employees, the expert/technician or similar being compulsory for employers having more than 50 employees and voluntary for employers having less than 50 employees.*

Apart from the advantage of safeguarding the rights of women and men without discrimination, another benefit of a new legislative framework in this respect is the educational side. Implicitly, the mentality

of the employers and of the employees will evolve, taking a serious equality path. Otherwise, our society will lose the opportunity to make real changes, remaining in the half-measurement area.

*Studying the application of the analyzed legal provisions between 2018-2021 and relating this study to the objective of the legislator, those to mitigate and eliminate the discrimination between women and men, the adoption of imperative legal rules in domain is the most realistic legislative answer in order to guarantee the law's goals fulfilment.*

Furthermore, in order to achieve a society “*free of discrimination*”, the model of experts can be extended from labour to education, health, culture and information, policy, participation in decision making, supply and access to goods and services and other social fields regulated by special laws<sup>18</sup> and to all criteria provided for by the national legislation in force.<sup>19</sup>

### 3. Conclusions

Women represent more than half of the World's population, reduced most often to the family role and responsibilities, irrespective of their capacities, studies, skills, efforts, merits, creativity, needs or aspirations.

Against this background, their professional life, independence, social relationships, family relationships, life quality are severely affected. The discrimination issue is about dignity and equal opportunity, and about economic life, social life, own development, choices and decisions, as well.

In the Commission Communication *A Union of Equality: Gender Equality Strategy 2020-2025* it is pointed out that “44% of Europeans consider that the most important role of a women is to take care of her home and family” and that “women in the EU spend 22 hours per week on care and house hold work, while men spend only 9 hours”<sup>20</sup> Also, women's incomes in Europe are lower on average by 16% compared to men and they have difficulties in accessing and maintaining jobs.

Despite of the slow progress, The European Union's representatives have an optimistic look toward the future of equality, being decided to integrate it in all of its activities.<sup>21</sup>

As far as our country is concerned, although Romania has implemented European Directives,

<sup>18</sup> According to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions -Union of Equality: Gender Equality Strategy 2020-2025, “women are 7.5% of board of chairs and 7.7% of CEO's in the EU's larger listed companies, p. 14.

<sup>18</sup> The Law no. 202/2002 on equal opportunities and treatment between women and men, republished, as it was amended, provides for the measures to promote equal opportunities and treatment between women and men in all spheres of public life in Romania, the labour market, participation in decision making, education being areas which general legal regime is laid down in special chapters.

<sup>19</sup> The discrimination criteria are stipulated by the Article 2 of paragraph 1 of the Ordinance no 137/2000: „discrimination is understood as any distinction, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social status, belief, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV infection, membership of a disadvantaged group and any other criteria which has the purpose or the effect of restriction, elimination of recognition, use or exercise of fundamental human rights and freedoms or of rights recognized by the law in the political, economic, social or cultural field or in any other field of public life.”

<sup>20</sup> The Commission Communication- Union of Equality: Gender Equality Strategy 2020-2025, *ibidem*, pp. 6-12.

<sup>21</sup> In accordance with the Article 8 of the Treaty on the Functioning of European Union.

women's discrimination persists and there is still a long way to go. To prevent and eliminate it in social, political, economic, cultural fields, focused measures and actions are needed, aimed at changing attitudes, opinions, mentalities.

A new behaviour comes with education. To have trained experts in equality and non-discrimination or similar is, in our opinion, the *sine qua non* condition in succeeding the practice of equality.

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