

CONSIDERATIONS ON THE PROTECTION OF WOMEN'S RIGHTS IN THE LIGHT OF THE EQUAL OPPORTUNITIES PRINCIPLE BETWEEN MEN AND WOMEN

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Abstract

Development cannot be achieved if fifty percent of the population is excluded from the opportunities it brings! Gender equality and women's empowerment are human rights that lie at the heart of development and the achievement of the Millennium Development Goals. Women's rights around the world is an important indicator to understand global well-being. A major global women's rights treaty was ratified by the majority of the world's nations a few decades ago. Yet, despite many successes in empowering women, numerous issues still exist in all areas of life, ranging from the cultural, political to the economic. Equality between women and men is also a fundamental right, a common value of the European Union and a necessary condition for achieving the objectives of economic growth, employment and social cohesion.

Keywords: sex discrimination, sexual harassment, equality of chances, dignity, rights

Introduction

European society is changing, influenced by different factors such as technological progress, the globalisation of trade and an ageing population. European employment, social affairs and equal opportunities policies contribute to improving people's living conditions with a view to sustainable growth and greater social cohesion. The European Union (EU) plays the role of a trigger in social change. It has introduced a protective legal framework for European citizens. It fosters the cooperation of Member States, the coordination and harmonisation of national policies, and the participation of local authorities, unions, employers' organisations and other stakeholders involved.

The priority aims of this policy are to increase employment and worker mobility, to improve the quality of jobs and working conditions, to inform and consult workers, to combat poverty and social exclusion, to promote equality between men and women, and to modernise social protection systems.

Equality between women and men is one of the fundamental principles of Community law. The European Union's objectives on gender equality are to ensure equal opportunities and equal treatment for men and women and to combat any form of discrimination on the grounds of gender. The EU has adopted a two-pronged approach to this issue, combining specific measures with gender mainstreaming. The issue also has a strong international dimension with regard to the fight against poverty, access to education and health services, taking part in the economy and in the decision-making process, women's rights and human rights¹.

Starting with 2007 - "International Year of Equal Opportunities for All" - women's rights issues, particularly with regard to equality between men and women, has acquired new meanings in general and the rights of defense and fundamental rights.

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¹"Equality between men and women", accessed February 15, 2010, http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/index_en.htm.

The Protection of woman's rights in international documents

The differences that had happened based on the person's gender have imposed the statutory principle of equality between men and women in terms of international regulations. The issue of women's rights, proclaiming and subscribing their inclusion in official statements and laws (including constitutions), and the existence of a system to guarantee those rights both internationally and locally, implicitly requires the existence of policy instruments and legal defense². The concerning of the international community to eliminate all forms of discrimination against women has led the United Nations to act in this direction by enrolling in this action to promote the principle of equality between men and women.

The first intergovernmental organization to adopt concrete measures against gender discrimination was the Organization of American Republics. Thus, at the 5th Inter-American Conference, held between March 25th and May 3rd, 1923, in Santiago de Chile, decided to enroll in the program of the future Conference to study the means like the abolition of constitutional and legal incapacity of women for it can enjoy all civil and political rights. This has led to the creation of the Inter-American Commission of Women.

The general instruments enshrining the principle of general equality between women and men are:

a) The preamble of the United Nations Charter which proclaims the people's faith "in the equal rights of men and women";

b) The first article of the UN Charter states one of the UN goals, namely to encourage "the respect for human rights and fundamental freedoms for everyone, without the question of race, gender ...", and the 8th article guarantees "the access for men and women, on equal terms, in all functions, the principal and subsidiary institutions";

c) The Universal Declaration of Human Rights which stipulates in art. 2 that "everyone is entitled to all rights and all freedoms set forth in the Declaration, without distinction of any kind such as race, color, gender;

d) International Covenants on Human Rights, which also prohibit discrimination based on gender.

Among the specific tools to eliminate discrimination against women, the most common include³:

- Declaration on the Elimination of Discrimination against Women, reaffirms, on the one hand, the principles of the UN Charter, the Universal Declaration of Human Rights and two international pacts and, on the other hand, new principles are proclaimed, establishing itself as a necessity because the equal rights of women continue to be the subject of extensive discrimination.

- Convention on the Political Rights of Women, which entered the express provision that women have, on equal terms with men, the right to vote in any elections without any discrimination that may be, under conditions of full equality with men, elected in political organizations/institutions, established under the national law.

- Convention on the Elimination of All Forms of Discrimination against Women, defines "discrimination against women" which, in terms of article 1, "refers to any distinction, exclusion or restriction based on gender, which has the effect or purpose of impairing or nullifying the recognition, enjoyment and exercise by women regardless of their marital status, based on equality between man and woman, human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

² Roxana Radu, *Elements of social security law* (Craiova: Aius PrintEd, 2009), 184.

³ Cezar Avram and Roxana Radu, "Considerations on sex discrimination and sexual harassment in the light of the equal treatment principle", *Euro-Dreptul* 1(2006):26-35.

- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, "Belem do Para Convention"⁴, provides in art.3 that "every woman has the right to be free from violence in both the public and private spheres". The article 4 affirms the fact that "every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments and mentions other categories of rights: the right to have her life respected; the right to have her physical, mental and moral integrity respected; the right to personal liberty and security; the right not to be subjected to torture; the rights to have the inherent dignity of her person respected and her family protected; the right to equal protection before the law and of the law; the right to simple and prompt recourse to a competent court for protection against acts that violate her rights; the right to associate freely; the right of freedom to profess her religion and beliefs within the law; and the right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making".

The principle of equality (of treatment) among men and women in international labor law

Millions of women and men around the world are denied access to jobs and training, receive low wages, or are restricted to certain occupations simply on the basis of their sex, skin colour, ethnicity or beliefs, without regard to their capabilities and skills. In a number of developed countries, for example, women workers earn up to 25% less than male colleagues performing equal work. Freedom from discrimination is a fundamental human right and is essential for both workers to choose their employment freely, to develop their potential to the full and to reap economic rewards on the basis of merit. Bringing equality to the workplace has significant economic benefits, too. Employers who practise equality have access to a larger and more diverse workforce. Workers who enjoy equality have greater access to training, often receive higher wages, and improve the overall quality of the workforce. The profits of a globalized economy are more fairly distributed in a society with equality, leading to greater social stability and broader public support for further economic development. ILO standards on equality provide tools to eliminate discrimination in all aspects of the workplace and in society as a whole. They also provide the basis upon which gender mainstreaming strategies can be applied in the field of labour⁵.

The field in which women are the most flagrant discriminated is the employing management. International Labour Organization has developed two special agreements on this issue. It's Convention no. 111 from June 4, 1958 concerning the discrimination in respect of employment and occupation and the Convention no. 100 from 1951 on equal remuneration for men and women's labor, for work of equal value. This fundamental convention requires ratifying countries to ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value. The term "remuneration" is broadly defined to include the ordinary, basic or minimum wage or salary and any additional emoluments payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment.

The principle of equal treatment or discrimination in matters of employment is a creation of the International Labour Organisation. Enshrines the principle of equal treatment, the Convention no. 111 defines discrimination as " any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. It requires

⁴ Adopted in Belém do Pará, Brasil, on June 9, 1994, at the twenty fourth regular session of the General Assembly

⁵"Equality of opportunity and treatment", accessed February 15, 2010, <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/equality-of-opportunity-and-treatment/lang--en/index.htm>

ratifying states to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in these fields. This includes discrimination in relation to access to vocational training, access to employment and to particular occupations, and terms and conditions of employment. "

The discriminations based on the gender have imposed the statutory principle of equal treatment between men and women in the field of labor relations in terms of international regulations, but they were equally the source of numerous controversies about the unacceptable discriminations and distinctions based on gender. The rules that ensure the protection of women who do a paid work are considered by some authors as a violation of the principle of equality between the gender⁶. It was stated in the literature, that it must be generally accepted that "neither men nor women should not be subject to safeguards based on gender, except in strictly biological reasons. The existence of traditional stereotypes regarding gender division of labor is not considered a valid reason to grant special protection to women⁷. Therefore, differences in treatment are admitted to the strictly biological grounds requiring special protection to women especially during pregnancy and post-partum".

The changes appeared in Europe in terms of gender roles within the family and society led to the adoption of Directive no. 76/207/EEC⁸ that governs the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

The principle of equal treatment means that there should be no discrimination whatsoever on the grounds of sex, either directly or indirectly, by reference in particular to marital or family status. Member States may, however, exclude from the Directive's scope occupational activities for which, by reason of their nature, or the context in which they are carried out, the sex of the worker constitutes a determining factor.

The Directive is without prejudice to provisions concerning the protection of women (pregnancy, maternity), or to measures to remove existing inequalities which affect women's opportunities in the areas covered by the Directive.

Application of the principle means that there should be no discrimination on grounds of sex in the conditions, including selection criteria, for access to all jobs or posts at all levels of the hierarchy.

The principle applies to access to all types and all levels of vocational guidance, basic and advanced vocational training and retraining. Application of the principle to working conditions, including conditions governing dismissal, means that men and women must be guaranteed the same conditions.

Member States must take the measures necessary to ensure that any laws, regulations and administrative provisions contrary to the principle of equality are abolished or amended if they were originally based on a concern for protection which is no longer well-founded; inappropriate provisions included in collective agreements, individual contracts of employment, the internal rules of undertakings or rules governing independent professions can be declared null and void or amended.

⁶ Jean-Michel Servais, *Droits en synergie sur le travail. Elements de droits international et compare du travail* (Bruxelles: Bruylant, 1997), 126-131

⁷ Ruth Nielsen, "La legislation protectrice des femmes et les pays nordique", *Revue internationale du Travail*, vol.119, 1(1980):51, cited by Jean-Michel Servais – cited work:127, cited by Avram Cezar and Roxana Radu, "The European year of the Equality of Chances for all. The protection of woman rights in 2007", *Revue de Sciences Politiques*, 13(2007), 22-35

⁸For full document please http://www.equalitytribunal.ie/uploadedfiles/AboutUs/council_directive_76207eec.pdf

Labour and management must be requested to undertake the revision of such provisions in collective agreements. Persons wronged by failure to apply the principle must have the right to pursue their claims by judicial process.

Employees must be protected against dismissal by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

The provisions adopted pursuant to this Directive and the relevant provisions already in force must be brought to the attention of employees by all appropriate means.

Member States must periodically assess the occupational activities excluded from the field of application of the Directive in order to decide, in the light of social developments, whether there is justification for maintaining the exclusions concerned. They must forward all necessary information to the Commission by the stipulated deadline, to enable it to draw up a report on the application of the Directive.

Article 119 of the EEC Treaty establishes the principle of equal pay for equal work between men and women. The principle of equal pay entails, for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration. Where a job classification system is used for determining pay, it must be based on the same criteria for both men and women. Employees wronged by failure to apply this principle must have the right of recourse to judicial process to pursue their claims.

Member States shall abolish all discrimination between men and women arising from laws, regulations or administrative provisions which do not comply with the principle. They shall take the necessary measures to ensure that provisions appearing in collective agreements, wage scales, wage agreements or individual contracts of employment which are contrary to the equal pay principle may be declared null and void. They shall ensure that the equal pay principle is applied and that effective means are available to take care that it is observed.

Employees shall be protected against dismissal by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the equal pay principle.

The aim of the Directive is to reinforce the basic laws with standards aimed at facilitating the practical application of the principle of equality to enable all employees in the Community to be protected, as there are still disparities between Member States despite efforts to date.

There is a clear need for a Convention to prevent and combat domestic violence and other forms of violence against women and to protect and support the victims. The Council of Europe is the first European organisation to tackle this problem head on by setting up the Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) which began its work in April 2009. At its meeting in December 2010, the CAHVIO approved the Draft Council of Europe Convention on preventing and combating violence against women and domestic violence for transmission to the Committee of Ministers. The CAHVIO concluded its work in January 2011 with the approval of the draft Explanatory Memorandum.

The member states of the Council of Europe and the other signatories hereto⁹:

- Condemning all forms of violence against women and domestic violence;
- Recognise that the realisation of de jure and de facto equality between women and men is a key element in the prevention of violence against women;
- Recognise that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women;

⁹ For more informations see the *Preamble* of the Council of Europe Convention on preventing and combating violence against women and domestic violence

- Recognise the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men;

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- Recognise, with grave concern, that women and girls are often exposed to serious forms of violence such as domestic violence, sexual harassment, rape, forced marriage, crimes committed in the name of so-called "honour" and genital mutilation, which constitute a serious violation of the human rights of women and girls and a major obstacle to the achievement of equality between women and men;

- Recognise the ongoing human rights violations during armed conflicts that affect the civilian population, especially women in the form of widespread or systematic rape and sexual violence and the potential for increased gender-based violence both during and after conflicts;

The purposes of this Convention are to:

a) protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence;

b) contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women;

c) design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence;

d) promote international co-operation with a view to eliminating violence against

e) women and domestic violence;

f) provide support and assistance to organisations and law-enforcement agencies effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence.

The protection of women's rights and the principle of equality between men and women in Romania

According to art. 20 para. (1) of the Romanian Constitution, constitutional human rights provisions are interpreted and applied not only under international treaties to which Romania is party, but also to the Universal Declaration of Human Rights.

The law reviewing the Constitution amended art. 16, adding that Romania shall guarantee equal opportunities between women and men to fill public office or dignity, civil or military.

The framework law on protection against discrimination against women is Law *no. 202/2002 on equal opportunities between women and men*. Thus, article 1 of the law regulates the measures to promote equal opportunities between women and men, in order to eliminate direct and indirect discrimination based on gender criteria in all spheres of public life in Romania.

Measures to promote equal opportunities between women and men and to eliminate direct and indirect discrimination on the criteria of gender is in labor, education, health, culture and information, participation in the decision, and in other areas governed by special laws¹⁰.

In labor, equal opportunities between men and women means non-discriminatory access to:

a) choice or the free exercise of a profession or activity,

b) employment in any position or job vacancies at all levels of professional hierarchy;

c) equal pay for work of equal value;

¹⁰ Nicolae Voiculescu, "Some considerations on the Law nr. 202/2002 concerning the equality of chances of men and women and its harmonization with the community directives", *The Romanian Review of Labor Law*, 2(2003): 17

- d) information and counseling, initiate programs qualification, training, specialization and retraining
- e) promote any hierarchical and vocational level
- f) working conditions that comply with health and safety at work, according to the legislation in force,
- g) benefits, other than such wage and social protection measures and insurance.

The equality of opportunity and treatment between women and men in labor relations is enjoyed by all workers, including those self-employed and agricultural workers.

It is prohibited the discrimination by employers using practices which disadvantages people of a particular gender in relation to industrial relations, on:

- a) announcing, organizing competitions or examinations and selection of candidates to fill vacancies in public or private sector,
- b) termination, suspension, modification and/or termination of employment or legal service,
- c) establishment or modification of job duties;
- d) determining the remuneration
- e) benefits, other than salary and social protection measures and insurance;
- f) information and counseling, program initiation, qualification, training, specialization and retraining;
- g) assessment of individual professional performance;
- h) promotion
- i) disciplinary measures;
- j) the right to join unions and access to its facilities ;
- k) any other conditions of work performance, according to the laws in force.

Exceptions are the jobs that, given the nature or conditions of performing the work prescribed by law, are essential features of gender.

Regarding the access to education, health, culture and information is prohibited any form of gender based discrimination in terms of access of women and men at all levels of education and training, further training and generally to lifelong learning. Education institutions both public and private, social factors are involved in processes of educational and all other training providers and training, authorized by law are required to include in curricula, and analytical programs other curricula measures respect the principle of equal treatment and opportunities between women and men. These institutions will implement measures to promote equality of opportunity and treatment between women and men in their current activities¹¹.

Extending equal opportunities between men and women in employment of any functions, both public and private sectors and to all rights stipulated by labor legislation (wages, working conditions, promotion, etc.) derives from art. 5 of the new Labour Code (Law no. 53/2003).

The principle of equal treatment between men and women in the field of labor relations is a consequence of the principle of equal treatment of all employees and employers, according to art. 5(2) of the Labor Code, which prohibits, any direct or indirect discrimination against an employee based on gender.

It is direct discrimination "acts and deeds of exclusion, distinction, restriction or preference based on one or more of the criteria set out in para. 2 (gender, sexual orientation, age, national affiliation, race, color, ethnicity, religion, political option social origin, disability, family situation or responsibility, trade union membership or activity), which have the purpose or effect of granting, restriction or removal of recognition, use or exercise rights under labor law. "

It is indirect discrimination "acts and deeds apparently based on criteria other than those provided in par. 2, but having direct effects of discrimination."

¹¹ Avram Cezar and Roxana Radu, "The European year of the Equality of Chances for all. The protection of woman rights in 2007", *Revue de Sciences Politiques*, 13(2007): 22-35

According to Article 2 paragraph 1 of Law no. 217/2003 on preventing and combating domestic violence, domestic violence is any physical or verbal action deliberately perpetrated by one family member against another member of the same family that causes physical pain, psychological, sexual or material damage. In para. 2 of the same article states: "It is also preventing women from domestic violence to exercise their rights and fundamental freedoms." This provision of the law proves the concern of the legislature to defend against any infringement of women's rights in general, and against domestic violence in particular. The law seeks to protect the rights of women against any breach came from a family member, a family member taking into account the spouse and close relative as defined in Art. 149 of the Criminal Code. The effects of this law and persons who have established relationships similar to those between spouses or between parents and children, established on the basis of social inquiry, that people living in concubinage, adopters and adopted or persons actually dependent on others.

For the provisions of Law no. 217/2003 on preventing and combating domestic violence in February 2004 was established the National Agency for Family Protection, as a specialized body with legal personality, subordinated to the Ministry of Health and Family. The agency's objectives are:

- a) promoting family values, understanding and mutual assistance in family violence prevention and control in relationships between members,
- b) to assist family members in distress as a result of acts of domestic violence,
- c) to assist victims through the recovery of health and social reintegration,
- d) assisting the perpetrators of alcoholism treatment, rehabilitation, psychological and psychiatric
- e) protecting victims, particularly minors, confidentiality measures to preserve their identity and psychological measures for their protection during handling of the case;
- f) initiating and coordinating social partnerships in preventing and defending from the domestic violence.

To achieve the objectives in the care and protection of victims of domestic violence, the agency shall:

- a) prepare, justify and implement strategies and programs to care and protect the victims of domestic violence,
- b) control the application of regulations in their own field and the business units operating under its authority,
- c) fund or, where appropriate, co-specific defense programs and strengthen the family and the care and protection of victims of domestic violence;
- d) establish shelters and telephonic hotlines for victims of domestic violence,
- e) education, professional licensing and coordinating the activities of family assistants,
- f) organizing courses on knowledge of forms of domestic violence;
- g) studies and research, strategies, forecasts, production and publication of scientific and specific promotional materials;
- h) manage the database of domestic violence situations;
- i) involve and support initiatives for social partners in tackling domestic violence,
- j) establish rehabilitation centers for victims of domestic violence,
- k) establish call centers for abusers.

Conclusions

Promoting equal opportunities for women and men and ensuring full enjoyment of all human rights is a priority in Romania. Romania's non-discrimination legislation has been constantly modernized to incorporate the most advanced international norms and standards.

Although Romania has made important steps forward in the field of gender equality and it is moving in the right direction, the pace is not fast enough. Speaking about gender issues, one can easily notice that further efforts are still necessary to improve the situation. Some measures could include:

- a) To increase awareness on gender issues;
- b) To better inform and raise the awareness of people on the protection of their rights;
- c) To enhance the transparency (reports and statistics available);
- d) To raise the financial support at the level of local authorities and local public administration;
- e) To deliver an extended and diverse educational offer within the non-formal educational system;
- f) To improve the collaboration among specialized organisations and bodies at all levels;
- g) To make the agencies and other specialised bodies more visible and active.

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