

# THE JURIDICAL PROTECTION ON GLOBAL DISCRIMINATION

CRISTINA OTOVESCU FRĂSIE\*

## Abstract

*In this study I wished to evidence the main juridical documents referring to discrimination, adopted world wide by the United Nations Organization. Thus, can be identified several types of definitions concerning the discrimination against women, the race discrimination, the torture etc. within the analyzed documents. The democratic countries have laws that punish the discrimination, but, unfortunately, there are discrimination phenomena for example regarding the ethnicity, the gender, the language, the convictions, the age, at the working place, inside the family etc.*

**Keywords:** *discrimination, law, Pact, human rights, Declaration.*

## Introduction

In this study I have intended to research a very important and vast field for the contemporary world, such is the observing of the human rights at global level. Because during the last period of time discrimination is a very often met phenomenon, I have evidenced and commented the most important international juridical documents that refer to this aspect.

The study I have made is important because I have presented the main documents that were adopted under the auspices of The United Nations Organization, having as goal their popularization.

The objectives that I took upon myself in this study were the exhibiting of the international documents that refer to discrimination. During this article I have evidenced only a part of them, such are: The Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights, The International Covenant on Economic, Social and Cultural Rights.

At international level, there are juridical documents concerning discrimination that have been evidenced in this article and, moreover, I have presented the events that took place abroad and regarded discrimination, to which Romania attended. The Representatives of the National Council for Fight against Discrimination (NCFD), in order to make connections with other similar institutions from Europe, attended several events on the human rights from world-wide.

In the same time, for making clear the situation of discrimination in Romania, I have used a poll, *The phenomenon of discrimination in Romania*, made in November 2010, by TOTEM and NCFD, the target population being the Romanian citizens (men and women), resident in the urban and rural area from Romania, over 18 years old, and the volume of the sample was of 1400 persons.

## 2. The main international juridical documents regarding discrimination

“Discrimination represents the distinct treatment applied to a person because of his/her belonging, real or presumed, to a certain social group. Discrimination is an individual action, but if the members of the same group are treated systematically in a similar way, this constitutes a social pattern of aggregate behaviour. In the social sciences, the term generally leads to a prejudiced treatment, with negative effects on the person in case. The researches identified the existence of several types of discrimination. Generally, it is operated the distinction between the direct and the indirect discrimination. The first type appears when the differentiate treatment is generated

---

\* Associate Professor Ph. D., Faculty of Law and Administrative Sciences, University of Craiova; (email: otocris@yahoo.com)

deliberately, while the second type appears when this treatment is based on an inequitable decision taken previously. Kirshna Mallick (2005) proposes two more typologies, based on the distinction made between the deliberate and the conscious discrimination and the unintentional one and also between the discrimination practiced by the individuals and groups and by institutions”<sup>1</sup>.

Under the patronage of the United Nations Organization were adopted several documents regarding discrimination: The Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights, The International Covenant on Economic, Social and Cultural Rights, The Convention on the Elimination of all forms of Discrimination against Women, The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, The Convention on the Elimination of all Forms of Racial Discrimination.

In this article I will render evident only a part of them: The Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights, The International Covenant on Economic, Social and Cultural Rights.

*The Universal Declaration of Human Rights*, adopted on the 10<sup>th</sup> of December 1948, stipulates in its Preamble that “the foundation of freedom, justice and peace around the world” is constituted by “the recognition of dignity inherent to all the members of the human family and their equal and inalienable rights”. The states members of the Declaration committed themselves “to promote, together with the United Nations Organization, the universal and effective respect of all the human rights and fundamental freedoms and also their universal and effective observing”<sup>2</sup>.

In art. 1 it is stipulated that, from the moment of birth, all the human beings are free and equal in dignity and rights. Also, they are endowed with reason and conscience and they should behave towards one another in the spirit of brotherhood.

Any person can avail oneself of all the rights and freedoms proclaimed in this Declaration, without making difference regarding the race, colour, sex, language, religion, political or any other kind of opinion, national or social origin, wealth, birth or other circumstances. Thus, we must not draw a distinction regarding “the political, juridical or international statute of the country or territory to which a person belongs, either this country or territory are independent, under guardianship, non-autonomous or subjected to any limitation of the sovereignty”<sup>3</sup>.

The law must equally protect all the people against discrimination. In art. 7 from the Declaration it is stipulated that “All the people are equal before the law and are entitled, without any discrimination, to equal protection. All have the right to equal protection against any discrimination that would violate this Declaration and against any incitation to such discrimination”.

As concerning the job, according to art. 23, all the persons, without discrimination, must benefit by the right to have an equal salary for equal work<sup>4</sup>.

*The International Covenant on Civil and Political Rights* was adopted and opened for signing by the General Assembly of the United Nations on the 16<sup>th</sup> of December 1966 and came into force on the 23<sup>rd</sup> of March 1967. Romania ratified The Pact on the 31<sup>st</sup> of October 1974 through the Decree no. 212, published on the “Official Gazette of Romania”, first part, no. 146 from the 20<sup>th</sup> of November 1974.

In the dispositions of this Pact, the states parties commit themselves to observe and to guarantee to all the people who live on their territories and are within their competence, the right recognized in this pact, without any difference, especially as regarding the race, the colour, the sex,

<sup>1</sup> Luana Miruna Pop, *Dicționar de politici sociale*, (București, Expert, 2002), p. 276-277

<sup>2</sup> Preamble, *The Universal Declaration of Human Rights*.

<sup>3</sup> Art. 2, *The Universal Declaration of Human Rights*

<sup>4</sup> About the European regulations regarding the equality of chances on the working market, see Maria Cristina-Frâsie, Gabriela Motoi, *Gender equality on the labor market. Case study: Romania*, April 2011, available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1817563](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1817563)

the language, the religion, the public or any other opinion, national or social origin, wealth, the birth or any other circumstances<sup>5</sup>.

The law forbids “any provocation to national, racial or religious hate that constitutes a incitement to discrimination, hostility or violence”<sup>6</sup>.

In art. 26 it is stipulated that “All the persons are equal before the law and they have, without discrimination, the right to equal protection. Therefore, the law must forbid any discrimination and guarantee to all the persons an equal and efficient protection against any discrimination, especially of race, colour, sex, language, religion, political or any other, national and social origin, wealth, birth or of any other circumstance”.

The moment when The International Covenant on the Civil and Political right was adopted so was its optional Protocol (the same day). Romania ratified The Protocol through the Law no. 7/1991, published in The Official Gazette of Romania, Part I, no. 18 from the 26<sup>th</sup> of January 1991.

*The International Covenant on Economic, Social and Cultural Rights* was adopted and opened for signing by the General Assembly of the United Nations on the 16<sup>th</sup> of September 1966 and came into force on the 3<sup>rd</sup> of January 1967.

The states parties of this Pact, commit themselves to take action, both on their own or assisted and with international cooperation, especially in the economic and technical field, though using at the maximum level the available resources, in order that the exercising of the rights stipulated in this Pact to be progressively provided though all the adequate means, including though the adopting of the legislative measures. The states parties to this Pact commit themselves to guarantee all the rights specified in the stipulations of the articles from it, being exercised without discrimination based on race, colour, sex, language, religion, political or any other opinion, national or social origin, wealth, birth or any other circumstances<sup>7</sup>.

The most important category that need education and access to cultural and artistic activities are the children<sup>8</sup>. In the provisions of art. 10 it is stipulated that “Special measures of protection and assistance must be taken for all the children and teenagers, without discrimination based on parentage or other reasons. The children and teenagers should be protected against the economic and social exploitation. Using them for activities that would harm their morality or health, that would endanger their lives or affect their normal development, must be punished by law. The states should also establish age limitations under which the use of the children for paid work would be forbidden and sanctioned by law”.

As referring to The International Covenant on Economic, Social and Cultural Rights, this doesn't include provisions referring to a system of individual or inter-states complaints, but it requires to the states parties to present reports that would include the measures they had adopted and also the progress registered as regarding the observing of the rights acknowledged in the Pact. The reports would be addressed to the General Secretary of the United Nations Organization, who would transmit them in order to be examined by the Economic and Social Council (ECOSOC)<sup>9</sup>.

„The EU has some of the most advanced anti-discrimination laws in the world. European legislation in this field is based on Article 19 of the *Treaty of Lisbon* (formerly Article 13 of the *Treaty of Amsterdam*) which gives the EU powers to combat discrimination on the grounds of racial or ethnic origin, religion or belief, disability, age,sex or sexual orientation. Current legislation comprises 2 Directives:

---

<sup>5</sup> Art. 2, Section 1 and 2, *The International Covenant on the Civil Rights*

<sup>6</sup> Art. 20, Section 2, *Ibidem*

<sup>7</sup> Art. 2, Section 1 and 2, *The International Covenant on Economic, Social and Cultural Rights*

<sup>8</sup> For further details regarding children's rights see Pescaru, Maria, *Asistența și protecția drepturilor copilului*, (Pitești: Editura Universității, 2010), p.17-23

<sup>9</sup> Bianca Seleşan Guţan, *Protecția Europeană a Drepturilor Omului*, 2<sup>nd</sup> Edition, (Bucharest: C.H.Beck, 2006), p.12

- *The Employment Equality Directive* (2000/78) protects everyone in the EU from discrimination based on age, disability, sexual orientation and religion or belief in the workplace.

- *The Racial Equality Directive* (2000/43) prohibits discrimination on the grounds of racial or ethnic origin in the workplace as well as in other areas of life such as education, social security, healthcare and access to goods and services.

The Directives were agreed by all EU Member States in 2000. Each Member State was then obliged to incorporate these new laws into their national system<sup>10</sup>.

### 3. The representations of Romania to different events from abroad on discrimination<sup>11</sup>

The National Council for Fight against Discrimination, in Romania, is the autonomous state authority, under parliamentary control that carries on its activity regarding discrimination.

Through discrimination it is understood any differentiation, exclusion, restriction or preference based on the criteria stipulated by the in force legislation. The criteria established by the Romanian legislation are: race, nationality, ethnicity, language, religion, social category, beliefs, sex, sexual orientation, age, handicap, non-contagious disease, HIV infection, belonging to a disadvantaged category and any other criterion that leads to the restraint, the removal of the recognition, the use or the exercising of the rights recognized by the law, in the political, economic, social and cultural field or in any other field of the public life<sup>12</sup>.

In 2010, in order to consolidate the visibility regarding the activities from the non-discrimination field and the perpetuation of the relations and the collaboration of The National Council for Fight against Discrimination (NCFD) with other similar institutions from Europe, the representatives of NCFD attended numerous international events related to the human rights, such are:

- In August, the head of the Romanian delegation, mister president Csaba Asztalos, attended the seconding of the periodic report of Romania at *The UNO Convention on the elimination of all forms of racial discrimination*. In the Romanian delegation were also included persons who represented the national minorities. In the report drawn up by Romania was accentuated the situation of the Roma people, the education in the Hungarian language, the use of the minority languages in administration, justice.

- February – The Seminar for the practitioners from the juridical field *The anti-discrimination directives 43/2000 and 78/2000 in practice* that took place at Trier, in Germany, being discussed: the European Union legislation regarding the anti-discrimination, the role of the equality institutions, the role of the evidence in case of discrimination and the situation of the Roma people from the European Union.

- The Campaign *For Diversity. Against Discrimination*

- The Reunion of the Committee of Specialists on the Roma people and Travellers (MG-S-ROM)

- The Seminar Good practices exchange on Public policies combating discrimination based on racial and ethnic origin in accessing and progressing in employment; it took place at Berlin, in Germany.

- The Reunion of the Committee of Governmental Specialists on non-discrimination from the European Commission

- The Seminar *The community legislation as regards the equality between men and women put into good practice*.

<sup>10</sup> [http://ec.europa.eu/justice/fdad/cms/stopdiscrimination/fighting\\_discrimination/Rights\\_and\\_Responsibilities/index.html?langid=en](http://ec.europa.eu/justice/fdad/cms/stopdiscrimination/fighting_discrimination/Rights_and_Responsibilities/index.html?langid=en)

<sup>11</sup> *Annual report 2010*, The National Council for Fight against Discrimination, p.14-17, [http://www.cncd.org.ro/files/file/RAPORT%202010\\_web1.pdf](http://www.cncd.org.ro/files/file/RAPORT%202010_web1.pdf)

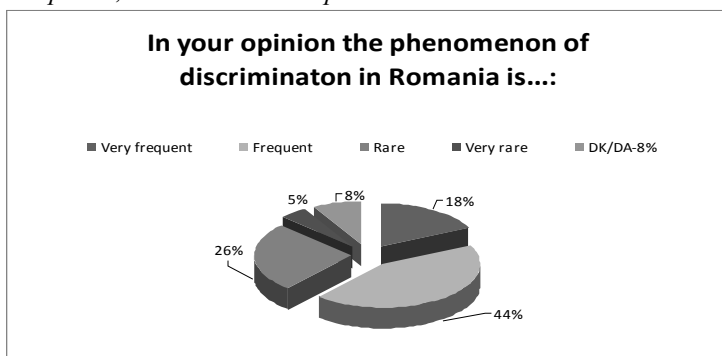
<sup>12</sup> Further information is available at <http://www.cncd.org.ro/>

- *Annual forum for Human Security*
- The Seminar *Juridical progresses and concepts on the equality of chances and non-discrimination in Europe*
- The training Seminar *Tools of evidence in discrimination cases* was organized by the Slovakian National Center for human rights and The Equinet Council Secretariat, at Bratislava, in October.
- The Annual General Equinet Assembly took place in November, at Brussels.
- The Summit of Equality was organized by the Belgian presidency of the European Union and the European Commission.
- The Conference *The fundamental rights of the people with intellectual disabilities and the people with mental health problems* took place in November, at Vienna and it was organized by the Agency for Fundamental Rights of the European Union.
- The Seminar *The anti-discrimination directives 2000/43 and 2000/78 in practice* was organized by the European Academy of Law.

It must be appreciated that Romania was set as an example of good practice in introducing the anti-discrimination law for preventing the multiple discrimination, along with other countries such Bulgaria and Denmark.

#### 4. Case study: The phenomenon of discrimination in Romania<sup>13</sup>

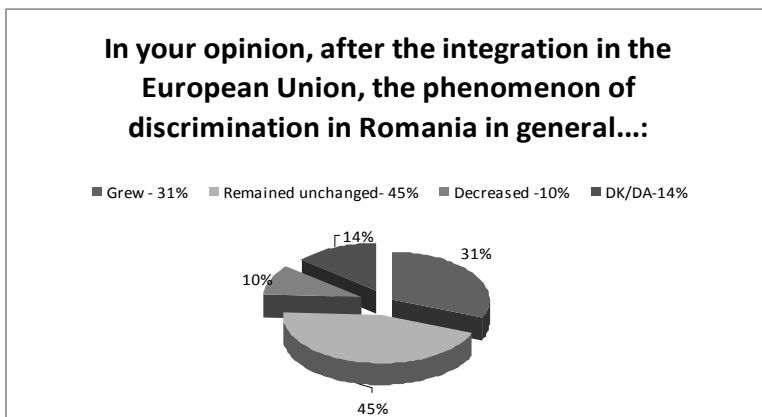
- *In your opinion, the discrimination phenomenon in Romania is...:*



As it can be seen, the respondents said that the phenomenon of discrimination in Romania is very frequent in 18% of the cases, frequent – 44%, rare – 26% and very rare or not at all met – 5%.

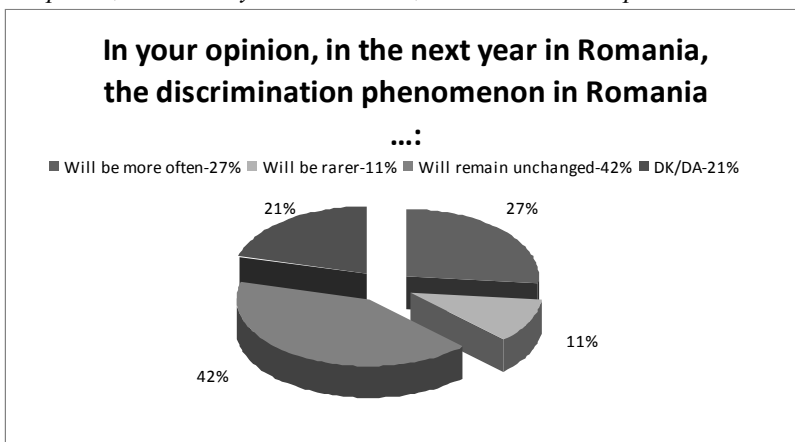
*In your opinion, after the integration in the European Union, the phenomenon of discrimination in Romania in general...:*

<sup>13</sup> *The phenomenon of discrimination in Romania*, Poll, Nov. 2010, TOTEM and CNCD, p. 9, 10, 11 and 13; The target population: Romanian citizens (men and women) resident in the urban and rural areas from Romania, over 18 years old. The volume of the sample: 1400 persons



In order to find out about the discrimination phenomenon in Romania, generally, after the integration in the European Union, was noticed that the respondents said that this phenomenon grew in 31% of the cases, remained unchanged – 45% and decreased – 10%.

*In your opinion, in the next year in Romania, the discrimination phenomenon in Romania ...:*



During the next year, the people appreciated that the discrimination phenomenon in Romania will be frequent – 27%, rarer – 11% or will remain unchanged in 42% of the situations.

*In your opinion, do the next situation represent cases of discrimination?*

	YES	NO	DK/DA
A person is dismissed because his/her Roma ethnicity	88%	7%	5%
Teachers don't allow a HIV-infected child to attend school	86%	9%	6%
A persons is dismissed because he/she is homosexual	85%	9%	6%
Forbidden access in a public place of a group of Roma persons	84%	10%	5%
The refuse of a dentist to treat a HIV-infected person	81%	12%	7%
A Roma person that is hospitalized in a separate ward...	80%	14%	6%
A person is refused for employing because is old-	78%	18%	3%

aged			
The setting up in schools of separate classrooms for the Roma children	78%	16%	6%
A person who leaves the table because one of the table companions is ...	72%	18%	9%
The forbidding of gay people's street manifestations	69%	21%	10%
A person is dismissed because she is pregnant	69%	25%	6%
A person who doesn't give up the seat in a bus to a pregnant women	37%	57%	5%
A person is dismissed because he/she is repeatedly late for work	22%	72%	6%

### 5. Conclusions

“A major problem with which the society deals is discrimination that represents the discernment of quality and the recognition of the differences between concepts. Discrimination is impossible to eliminate, because we don't live in an ideal society. Not all the people adapt themselves in a perfect manner to the circumstances and to the people around them because they take into account certain unjust criteria. For some, this thing would mean to renounce their own identity. But we shouldn't confuse it with the prejudice that translates as negative attitude towards each individual, member of a group, being motivated only by their belonging to the group. The difference between people is the most spread form of discrimination, because of the prejudices due to some characteristic treatments to certain groups of persons. The racial or religion discrimination is illegal in most of the occidental democracies, while the merit discrimination is most of the times tolerated by the legislative systems, being explained as a form of differencing between the performances of several people. The National Council for Fight against Discrimination (NCFD) carries on its activity according to the normative documents on the prevention and sanction of all forms of discrimination, concerning the organization and the functioning of the National Council for Fight against Discrimination.

The discrimination can undermine the reaching of a high level as concerning the employment and the social protection, the increasing of the living standard and life quality, cohesion and economic and social solidarity.

A hard disease of the humankind that should be eradicated is intolerance. As dwellers of the Earth, we must fight for a society of understanding and tolerance. In order to become wiser, to gain friendship, agreement and happiness, we need tolerance. We must reject the concepts of racial discrimination, anti-Semitism and xenophobia. With wisdom one can build an empire, a society.<sup>14</sup>”

### References

- Selean Guțan Bianca, *Protecția Europeană a Drepturilor Omului*, 2<sup>nd</sup> Edition, (Bucharest, C.H.Beck, 2006),
- Pop Luana Miruna, *Dicționar de politici sociale*, (București, Expert, 2002),
- Pescaru Maria, *Asistența și protecția drepturilor copilului*, (Pitești, Editura Universității, 2010),
- Frăsie Maria Cristina, Motoi Gabriela, *Gender equality on the labor market. Case study: Romania*, April 2011, available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1817563](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1817563)
- *The phenomenon of discrimination in Romania*, Poll, Nov. 2010, TOTEM and CNCD
- *Annual report 2010*, The National Council for Fight against Discrimination, [http://www.cncd.org.ro/files/file/RAPORT%202010\\_web1.pdf](http://www.cncd.org.ro/files/file/RAPORT%202010_web1.pdf)
- <http://www.cncd.org.ro/>

<sup>14</sup> <http://www.agenda.ro/news/news/20211/discriminare-stop.html>

- <http://www.agenda.ro/news/news/20211/discriminare-stop.html>
- [http://ec.europa.eu/justice/fdad/cms/stopdiscrimination/fighting\\_discrimination/Rights\\_and\\_Responsibilities/index.html?langid=en](http://ec.europa.eu/justice/fdad/cms/stopdiscrimination/fighting_discrimination/Rights_and_Responsibilities/index.html?langid=en)
- The Universal Declaration of Human Rights,
- The International Covenant on Civil and Political Rights,
- The International Covenant on Economic, Social and Cultural Rights,
- The Convention on the Elimination of all forms of Discrimination against Women,
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,
- The Convention on the Elimination of all Forms of Racial Discrimination.