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EUROPEAN SOCIAL CHARTER

17th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF ROMANIA

- Article 2, 4, 5, 6, 21, 28 and 29 for the period 01/01/2013 - 31/12/2016

- Complementary information on Article 1§3, 1§4, and 15§1 (Conclusions 2016)

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CYCLE 2018

THE SEVENTEENTH NATIONAL REPORT

REGARDING THE APPLICATION

OF THE REVISED EUROPEAN SOCIAL CHARTER

PRESENTED BY
THE ROMANIAN GOVERNMENT

with reference to Group 3 of articles in the Revised European Social Charter,
„Labor Rights": 2 (paragraphs 1, 2, 4-7), 4, 5, 6, 21, 28 and 29

for the period 1 January 2013 – 31 December 2016

Article 2 – The right to just conditions of work

Paragraph 1

Pursuant to the provisions of art.111 in the Law no.53/2003 – the Labor Code, republished, as subsequently amended and supplemented, working time is any period in which the employee performs work, is at the disposal of the employer and fulfills their tasks and duties, according to the provisions of the individual employment agreement, the applicable collective labor agreement and/or of the legislation in force.

Considering the facts aforementioned, we consider that, according to the national legislation, the period in which the employee is at the disposal of the employer is working time, whether the employee actually works or not.

Further, we should mention that par. (1) in art. 137 was amended by the sole art. in the Law no. 97 of 7 May 2015, printed in the Official Gazette no. 316 of 8 May 2015. A clarification in favor of the employees was made to this regulation ("weekly rest is *two consecutive days*, as a rule, on Saturday and Sunday"), namely "*weekly rest is 48 consecutive hours, as a rule, on Saturday and Sunday*".

Paragraph 2

The Labor Code mentions in art. 139 - 142 which days are legal holidays during which one does not work, the fact that the regulation regarding legal holidays is not applicable to jobs in which activity cannot be interrupted, as well as the methods of compensation of employees that have to work on legal holidays (corresponding free time on the following 30 days or, if free days cannot be granted, an increase in the base salary, which cannot be lower than 100% of the base salary, corresponding to the work performed during the normal working hours).

Pursuant to the provisions of art. 139 par. (1)[1] in the Law no. 53/2003 – The Labor Code, the legal holidays on which one does not work are: 1 and 2 January; 24 January – the Day of Unification of Romanian Principalities; the first and second day of Easter; 1 May; 1 June; the first and second day of Pentecost; the Assumption; 30 November – Saint Andrew the Apostle, the First-Called, Protector of Romania; 1 December; the first and second day of Christmas; two days for each of the 3 annual religious holidays, declared as such by the legal religious cults, other than the Christian ones, for the persons belonging to them.

We should mention that legal holidays are paid by the employer, even if employees do not work.

Further, we should mention that the aforementioned methods of compensation of employees that work on legal holidays are applicable exclusively to the employees that carry out their activity in the jobs set forth in art.140 and art.141 (jobs in which activity cannot be interrupted due to the production character or the characteristics of activity, sanitary entities and public food service entities).

During the reported period, the results of the control actions regarding the failure by employers to comply with the provisions of art. 139 and art. 142 in the Labor Code are as follows:

No.	INDICATORS	2013	2014	2015	2016
1.	No. of fines	59	48	36	33
2.	Aggregate amount of fines imposed (lei)	340,000	252,000	170,500	171,000

Paragraph 4

No legislative amendments were made in the reference period.

[1] Par. (1) in art. 139 was amended by th Law no. 176 of 7 October 2016, printed in the Official Gazette no. 808 of 13 October 2016

In 2016, Labor Inspection identified 75,115 workers that took an additional work leave of at least 3 days, of whom:

- 62,009 workers that worked in hard, dangerous or harming conditions,
- 520 blind workers,
- 7,384 handicapped workers,
- 5,202 young workers below 18 years old.

Paragraph 5

In the reference period (1 January 2013 – 31 December 2016), at the level of territorial labor inspectorates, were registered 319 requests filed by employers in view of obtaining the authorization to grant weekly rest days after a period of continuous activity, which may not exceed 14 calendar days, pursuant to art. 137 par. 4 in the Labor Code, as follows:

- 2013 - 136 requests/authorizations,
- 2014 - 119 requests/authorizations,
- 2015 - 36 requests/authorizations,
- 2016 - 28 requests/authorizations.

The fields of activity for which one requested the authorization to grant the cumulated weekly rest are the following: oil platforms, energy, ferrous metallurgy, metallurgy, river transport.

Pursuant to art. 260 par. 1 letter j in the Labor Code, the failure to comply with legal provisions on granting weekly rest is contravention, and is punished by a fine between lei 1,500 and lei 3,000.

In the reported period, the results of the control actions regarding weekly rest are as follows:

No.	INDICATORS	2013	2014	2015	2016
1.	No. of fines	1,158	1,294	983	1,074
2.	Aggregate amount of fines imposed (lei)	1,797,000	2,003,400	1,533,800	1,671,000

Paragraph 6

The standard individual employment agreement sample approved by the Order of the Minister of Labor and Social Solidarity no. 64/2003, with the amendments approved by the Order no. 76/2003 and by the Order no. 1616/2011, is mandatory for all the employees that carry out their activity under an individual employment agreement. The individual employment agreement should contain the elements set forth in art. 17 par. 3 in the Law no. 53/2003 – The Labor Code, republished, as amended and supplemented, and, further, the ones set forth in art. 105 for part-time employment agreements, the ones in art. 18, if the employee is to carry out their activity abroad, or the ones in art. 109 for home-based employment agreements.

Pursuant to art. 17 par. 1 in the Labor Code, prior to the conclusion or amendment to individual employment agreement, the employer has the obligation to inform the person selected in view of employment or, as the case may be, the employee, as regards the essential clauses they intend to include in the agreement or amend. Par. 2 sets forth that the obligation to inform the person selected in view of employment or the employee is considered as being fulfilled by the employer at the time of signing the individual employment agreement or the addendum to it, as the case may be.

Pursuant to the provisions of art. 17 par. 3 in the Labor Code, the person selected in view of employment or the employee, as the case may be, shall be informed as regards at least the following elements:
a) the parties' identity;
b) the workplace or, in the absence of a fixed workplace, the possibility that the employee work in various places;
c) the employer's office or, as the case may be, domicile;

d) the position/occupation as per the specification in the Classification of Occupations in Romania or other laws, as well as the job description, mentioning the job related duties;
e) the criteria of evaluation of the employee's professional activity applicable at the employer's level;
f) the job related risks;
g) the effective date of the agreement;
h) as regards an employment agreement for a limited period of time, or a temporary employment agreement, their duration;
i) the duration of the work leave the employee is entitled to;
j) the conditions under which the agreement parties grant a prior notice and its duration;
k) the base salary, other constitutive elements of salary incomes, as well as the periodicity of the salary payment the employee is entitled to;
l) the normal duration of work, stated in hours/day and hours/week;
m) mentioning the collective labor agreement that governs the employee's working conditions;
n) duration of the probation period.
In fact, the employer draws up notices/advices that they submit to the future employee, to sign in acknowledgement.

Paragraph 7

As regards the procedures in view of consultation of workers and/or their representatives, these are set forth both in art. 16 – 19 in the Law no. 319/2006 regarding labor health and safety, as subsequently amended and supplemented, and in art. 178 in the Labor Code[2], as follows:

- *The Law no. 319/2006*

Art. 16

(1) Taking into account the size of the enterprise and/or the entity, the employer should take corresponding measures, so that the workers and/or their representatives receive, according to the legal provisions, any information required regarding:

a) the risks to labor health and safety, as well as the prevention and protection measures and activities at both the level of enterprise and/or entity, in general, and at the level of each job and/or position;

b) the measures taken pursuant to the provisions of art. 10 par. (2) and (3).

(2) The employer should take appropriate measures so that the employers of workers in any external enterprise and/or entity, who carry out activities in their enterprise and/or entity, receive adequate information regarding the issues mentioned in par. (1), which concern such workers.

Art. 17

The employer should take appropriate measures so that the designated workers or the workers' representatives, with specific responsibilities regarding workers' health and safety, in view of fulfilling their duties and according to the provisions of this law, have access to:

a) risk assessment and protection measures, as set forth in art. 12 par. (1) letter a) and b);

b) the records and reports set forth in art. 12 par. (1) letter c) and d);

c) information about the measures in matters of labor health and safety, as well as information coming from the control institutions and the relevant authorities in such matters.

Art. 18

(1) The employers consult the workers and/or their representatives and allow their participation in discussing any issues regarding labor health and safety.

(2) The application of provisions of par. (1) involves:

[2] In art 2 par. 7 in the Conclusions 2014 of the European Committee of Social Rights are mentioned art. 29 in the Law no. 319/2006 and art. 179 in the Labor Code.

a) consultation of workers;

b) the right of workers and/or their representatives to make proposals;

c) balanced participation.

(3) The workers and/or the workers' representatives as defined in art. 5 letter d) take part in a balanced manner in, or are previously and timely consulted by the employer as regards:

a) any measure that could significantly affect labor health and safety;

b) designation of the workers as mentioned in art. 8 par. (1) and art. 10 par. (2), as well as regarding the activities mentioned in art. 8 par. (1);

c) the information mentioned in art. 12 par. (1), art. 16 and 17;

d) requesting, as the case may be, external services, pursuant to art. 8 par. (4);

e) conducting and planning the training set forth in art. 20 and 21.

(4) The workers' representatives with specific responsibilities in workers' health and safety matters are entitled to request the employer to take appropriate measures and to present proposals in this respect, for the purpose of reducing the risks to workers and/or of eliminating danger sources.

(5) The workers' representatives with specific responsibilities in workers' health and safety matters or the workers themselves cannot be injured due to the activities mentioned in par. (1)–(3).

(6) The employer should grant the workers' representatives with specific responsibilities in workers' health and safety matters adequate time, without reducing salary entitlements, and should provide them the means required for being able to exercise their rights and duties arising from this law.

(7) The workers' representatives with specific responsibilities in workers' health and safety matters and/or the workers themselves are entitled to address relevant authorities, if considering that the measures taken and the means used by the employer are not sufficient for ensuring labor health and safety.

(8) The workers' representatives with specific responsibilities in workers' health and safety matters should be given the possibility to present their observations to the labor inspectors and sanitary inspectors, during the control visits.

Art. 19

In view of application of the provisions of art. 16, 17 and of art. 18 par. (1), at the employer's level, labor health and safety committees are created and operated.

- *The Labor Code*

Art. 178

(1) The employer is liable for the organization of the activity ensuring labor health and safety.

(2) The internal regulations should contain rules regarding labor health and safety.

(3) Upon the development of labor health and safety measures, the employer shall consult the union or, as the case may be, the employees' representatives, as well as the labor health and safety committee.

In the reported period, the results of the control actions regarding night work are as follows:

No.	INDICATORS	2013	2014	2015	2016
1.	No. of fines	178	164	168	168
2.	Aggregate amount of fines imposed (lei)	277,500	251,900	261,100	254,300

Article 4 – The right to a fair remuneration

Paragraph 1

Year	Period in the relevant year	Government Decision (H.G.)	Gross minimum guaranteed base salary at national level (lei)	Nominal average salary earnings at the economy level (gross) – lei (annual average)	*Weight of* gross minimum guaranteed base salary at national level, in nominal average salary earnings (gross) (col. 3/col. 4)
0	1	2	3	4	5
2013	January	HG no. 1225/2011	700	2163 *)	32.4 %
	Starting from 1 February	HG no. 23/2013	750		34.7 %
	Starting from 1 July	HG no. 23/2013	800		37.0 %
2014	Starting from 1 January	HG no. 871/2013	850	2328 *)	36.5 %
	Starting from 1 July	HG no. 871/2013	900		38.7 %
2015	Starting from 1 January	HG no. 1091/2014	975	2555 *)	38.2 %
	Starting from 1 July	HG no. 1091/2014	1050		41.1 %
2016	Starting from 1 May	HG no. 1017/2015	1250	2887 **)	43.3 %

Source: The National Institute of Statistics
*) annual average, final data; **) provisional data

According to the data above, *the weight* of the gross minimum guaranteed base salary at national level, in the nominal average salary earnings at the economy level (gross) *was as follows*:

- in December 2013: 37.0%
- in December 2014: 38.7%
- in December 2015: 41.1%
- in December 2016: 43.3%.

Year	Period in the relevant year	Minimum base salary at the national level (lei) – NET *(dependents – zero)*	Nominal average salary earnings at the economy level (lei) - NET (annual average)	*Weight of* net minimum base salary at the national level *(dependents – zero)* in nominal average salary earnings at the economy level NET (annual average) (col. 3/col. 4)
0	1	3	4	5
2013	January	538	1579 *)	34.1 %
	Starting from 1 February	574		36.4 %
	Starting from 1 July	609		38.6 %
2014	Starting from 1 January	644	1697 *)	37.9 %
	Starting from 1 July	678		40.0 %
2015	Starting from 1 January	732	1859 *)	39.4 %
	Starting from 1 July	785		42.2 %
2016	Starting from 1 May	925	2088 **)	44.3 %

Source: The National Institute of Statistics
*) annual average, final data; **) provisional data

According to the data above, *the weight* of the net minimum base salary at national level in the nominal average salary earnings at the economy level (net) *was as follows*:

- in December 2013: 38.6%
- in December 2014: 40.0%
- in December 2015: 42.2%
- in December 2016: 44.3%.

In the Governance Program 2017 - 2020, one of the objectives mentioned in the Chapter "*Public Policies in Labor and Social Justice Matters*" was the following:

- the gradual increase of the gross minimum salary at the economy level, so that its weight in the average salary earning be at least 45 - 50% by 2020, shall contribute to the prevention of salary poverty, to reducing inequalities, to increasing the purchase power, respectively, the increase in consumption and the economic convergence with the other member states.

As regards social transfers, or transfers of welfare benefits granted to workers that are entitled to the minimum salary at the economy level and to their families, in the period January 2013 – December 2016:

According to the Law no. 292/2011, welfare benefits, depending on their purpose, are classified as follows:
a) welfare benefits for the prevention and combating poverty and the risk of social exclusion;
b) welfare benefits for supporting the child and the family;
c) welfare benefits for supporting persons with special needs;
d) welfare benefits for special situations.

We should mention that the following programs regard inclusively the employees with the minimum income at the economy level, therefore, any persons without incomes or with low incomes may request entitlement to such welfare benefits:

A. *The welfare benefits for preventing and combating poverty and the risk of social exclusion*:

In Romania, the fight against poverty and social exclusion continues to be a national priority. Thus, the programs currently implemented by the Ministry of Labor and Social Justice for preventing and combating poverty and the risk of social exclusion are as follows:

1. *Income support (VMG)*. It is granted under the Law no.416/2001 regarding the minimum guaranteed income (VMG), as subsequently amended and supplemented, to any families and single persons with low incomes or without incomes, who face hardships, in order to help them to overcome them. The income support is calculated as the difference between the monthly net income of the family or single person and the monthly level of the minimum guaranteed income, as set forth by law. Thus, the monthly level of the minimum guaranteed income has increased starting from July 2013 and then from January 2014:

Monthly level of the minimum guaranteed income, in the period 2013-2016:

Family type	2013 (lei)	2014 (lei)	2015 (lei)	2016 (lei)
Single person	136	142	142	142
2 person family	244	255	255	255
3 person family	342	357	357	357
4 person family	423	442	442	442
5 person family	505	527	527	527
For every other person beyond 5	35	37	37	37

The entitlement to income support is established taking into account the incomes of the family, considering also the movables and immovables owned.

The families and single persons with monthly net incomes up to the level of the minimum guaranteed income receive an increase by 15% of the income support per family, if at least one family member proves that works under an individual employment agreement, is a civil servant, or carries out an activity, earning incomes of a salary nature.
The income support is conditioned upon the active search for a job, and the recipient is obliged to work for community a number of hours, equivalent with the amount of income support, against the minimum salary at the economy level. Thus, for the amounts granted as income support, one of the persons of age, able to work, from the recipient family has the obligation to perform monthly, at the mayor's request, actions or works of local interest, not exceeding, however, the normal work schedule, and in compliance with the labor health and safety regulations. An exception are the families for which the income support resulted from calculation is of up to lei 50/month, for them the working hours being established quarterly and worked in the first payable month.

The persons able to work, who do not earn incomes from salaries or from other activities, are considered when establishing the number of the family members for determining the income level per family, only if proving that are in the records of the territorial employment agency, for employment purposes, and did not refuse a job or to participate in services for fostering employment and professional training provided by such agencies.

Are exempt from the obligations aforementioned the persons able to work, who are in one of the following situations:
a) ensure the raising and care of one or several children aged up to 7 years old and up to 18 years old, in case of children with severe or accentuated handicap;
b) ensure the care of one or several persons with severe or accentuated handicap, or dependent elderly persons that do not have a personal assistant or caretaker at home;
c) participate in a professional training program;
d) are employed.
Further, families and single persons with monthly net incomes up to the level of the minimum guaranteed income receive an increase by 15% of the amount of the income support per family, if at least one family member proves that works under an individual employment agreement, is a civil servant or carries out an activity, earning incomes of salary nature.

2. Family support, pursuant to the provisions of the Law no.277/2010, republished, as subsequently amended and supplemented.

Family support is a form of support for families with low incomes, raising or taking care of children up to 18 years old. Such support is granted for the purpose of completing the incomes of families, for ensuring improved conditions for raising, caring for and educating children, as well as for stimulating the attendance by school age children, in care of families with low incomes, of some education courses. This support is received by a family formed of husband, wife and the dependent children, who live together, but also the family formed of a single person and the dependent children, who live together with that person.
The entitlement to family support is established taking into account all the incomes of the family, as well as its property, but also depending on the number of children in the family.
The family support stimulates the increase in the education level of children, by conditioning the granting of the such support on the attendance of education courses by school age children from the recipient families; the amount of support may be reduced, in proportion to the absences from school (based on the statements sent by the territorial school inspectorates).

Following the approval of the Emergency Government Ordinance no. 42/2013 amending and supplementing the Law no. 416/2001 regarding the minimum guaranteed income, as well as amending the Law no. 277/2010 regarding family support, starting with the entitlements for July 2013, family support has been granted to families with children, whose monthly average net income per family member was of up to lei 530, inclusively.

By approving the Emergency Government Ordinance no. 65/2014 amending and supplementing some laws, family support was increased as follows:

	Family type, income level and number of children	2013 (lei)	2014 (lei)	2015 (lei)	2016 (lei)
Family support	Family support for biparental family with incomes ≤ lei 200				
	Family with 1 child	40	82	82	82
	Family with 2 children	80	164	164	164
	Family with 3 children	120	246	246	246
	Family with 4 children and more	160	328	328	328
	Family support for biparental family with incomes between lei 201 and lei 370 and incomes between lei 201 and lei 530 (starting from July 2013)				
	Family with 1 child	33	75	75	75
	Family with 2 children	66	150	150	150
	Family with 3 children	99	225	225	225
	Family with 4 children and more	132	300	300	300
	Family support for monoparental family with incomes lei ≤ 200				
	Family with 1 child	65	107	107	107
	Family with 2 children	130	214	214	214
	Family with 3 children	195	321	321	321
	Family with 4 children and more	260	428	428	428
	Family support for monoparental family with incomes between lei 201 and lei 370 and between lei 201 – lei 530 (starting from July 2013)				
	Family with 1 child	60	102	102	102
	Family with 2 children	120	204	204	204
	Family with 3 children	180	306	306	306
	Family with 4 children and more	240	408	408	408

3. *Winter fuel allowances*: these allowances are granted under the Emergency Government Ordinance no. 70/2011 regarding social protection measures in the cold season, as subsequently amended and supplemented, in order to cover a part of the expenses related to house heating in the cold season. Such social protection measures are granted to single persons or families whose monthly net average incomes per family member are below a certain threshold set forth by law. The entitlement to the winter fuel allowances is established taking into account the incomes of the family and considering also the movables and immovables owned. The levels of incomes and the amounts of allowances are as follows:

HEAT ENERGY				NATURAL GASES			WOOD, COAL, OIL FUELS			ELECTRICITY		
INCOME LIMITS		PER CENT COMPENSATION		INCOME LIMITS		AMOUNT	INCOME LIMITS		AMOUNT	INCOME LIMITS		AMOUNT
VMG + single person		100%	0%	< 155		262	GMI		58	< 155		240
< 155		90%	0 - 7%				< 155		54			
155.1	210	80%	0 - 14%	155.1	210	190	155.1	210	48	155.1	210	216
210.1	260	70%	0 - 20%	210.1	260	150	210.1	260	44	210.1	260	192
260.1	310	60%	0 - 27%	260.1	310	120	260.1	310	39	260.1	310	168
310.1	355	50%	0 - 33%	310.1	355	90	310.1	355	34	310.1	355	144
355.1	425	40%	0 - 40%	355.1	425	70	355.1	425	30	355.1	425	120
425.1	480	30%	0 - 46%	425.1	480	45	425.1	480	26	425.1	480	96
480.1	540	20%	0 - 53%	480.1	540	35	480.1	540	20	480.1	540	72

540.1	615	10%	0 - 59%	540.1	615	20	540.1	615	16	540.1	615	48
615.1	786	5%	0 - 61%									
786.1	1082	0%	0 - 63%									

These allowances are granted to families and persons (vulnerable consumers) who use for house heating as the case may be: heat energy provided within a centralized system, natural gases, electricity or wood, coal and oil fuels.
The vulnerable consumers that use for house heating the heat energy provided within a centralized system receive a monthly winter fuel allowance from the state budget, if the monthly average net income per family member is of up to lei 786 for families and lei 1,082 for a single person. The heat energy allowances are granted through the percentage compensation applied to the value of the heat energy consumed monthly by the vulnerable consumer, within the limit of monthly average consumption. For the families and single persons - recipient of income support, the percentage compensation is granted in proportion of 100%.
Depending on the net average income per family member, the families and single persons that use for house heating heat energy provided within the centralized system may receive an additional percentage compensation of the invoice, as an allowance granted from the local budget.

Vulnerable consumers that use for house heating natural gases receive a monthly winter fuel allowance in amount of 20 lei, if the monthly average net income per family member, respectively of the single person is between 540.1 lei and 615 lei, or a monthly allowance of lei 262, if the monthly average net income per family member, respectively of the single person is up to 155 lei.

Vulnerable consumers that use for house heating electricity receive a monthly winter fuel allowance in amount of 48 lei, if the monthly average net income per family member, respectively of the single person is between 540.1 lei and 615 lei, or a monthly allowance of 240 lei, if the monthly average net income per family member, respectively of the single person is up to 155 lei.

The families and single persons with low incomes, who use for house heating wood, coal or oil fuels, receive a monthly winter fuel allowance in amount of 16 lei, if the monthly average net income per family member, respectively of the single person is between 540.1 lei and 615 lei, or a monthly allowance of 58 lei, if the monthly average net income per family member, respectively of the single person is up to 155 lei.

4. *Educational incentive*: it is another program addressed to children from disadvantaged families, which was established under the Law no. 248/2015 regarding fostering attendance of pre-school education by children coming from disadvantaged families. Under this law, an educational incentive in the form of service vouchers was established, for the purpose of fostering attendance of pre-school education by children from disadvantaged families and of increasing their access to education. The funding for granting educational incentive comes from the state budget, by means of amounts broken down from the value added tax, allocated to the local budget for this very purpose.
These educational incentives are granted to children from disadvantaged families, provided that the following criteria are cumulatively fulfilled:

- the child is enrolled in a pre-school education entity, according to the Law regarding national education no. 1/2011;
- the monthly income per family member is maximum twice the minimum guaranteed income for a single person, as set forth by the Law no. 416/2001 regarding the minimum guaranteed income, namely 284 lei.

The minimum monthly nominal value of the educational incentive is 50 lei, for each child enrolled in kindergarten, a recipient of the educational incentive.

It is estimated that approximately 70,000 pre-school children benefit from the provisions of this law. For the implementation of this program in 2016, were distributed amounts from the state budget to the local budgets in value of 55.5 million lei, pursuant to the provisions of the Government Decision no. 36/2016 regarding the distribution per counties and Bucharest municipality of the amounts broken down from the value added tax, for funding the entitlements established by the Law no. 248/2015 regarding fostering attendance of pre-school education by children coming from disadvantaged families, for 2016.

Monthly average number of recipients and amounts granted from the state budget in the period 2013-2016:

Provisions based on income testing	2013		2014		2015		2016	
	Monthly average number of recipients	Amounts paid -lei-	Monthly average number of recipients	Amounts paid -lei-	Monthly average number of recipients	Amounts paid -lei-	Monthly average number of recipients	Amounts paid -lei-
Minimum guaranteed income	217,109	533,372,724	240,617	662,894,250	245,545	673,411,053	244,814	811,680,726
Contributions to social health insurance related to the income support for ensuring the minimum guaranteed income	221,331	31,201,084	240,617	36,361,834	255,220	37,112,869	244,761	44,614,672
Contributions for ensuring the mandatory house insurance for the recipients of income support	45,541	2,639,461	11,974	650,123	52,700	3,075,005	52,434	3,055,137
Family support	260,416	215,061,950	247,620	260,682,745	277,624	535,518,000	273,337	525,919,920
Winter fuel allowances, of which:	1,044,746	368,459,714	1,027,950	226,603,345	692,000	197,784,075	569,581	148,565,951
Heat energy	206,205	84,721,327	267,757	50,383,876	118,697	42,904,969	87,193	26,538,635
Natural gases	239,397	103,716,908	265,091	80,588,652	157,971	72,019,403	115,475	50,994,126
Electricity	290	28,896	12,599	4,465,526	8,838	4,559,277	8,370	3,835,468
Wood, coal and oil fuels	598,854	179,992,583	482,503	91,165,291	406,494	78,300,426	358,543	67,197,722

Further, the Ministry of Labor and Social Justice supports persons and families facing hardships, by future programs such as *The Minimum Inclusion Income (VMI)*, which harmonizes the measures combating poverty and consolidates the 3 welfare benefits, regulated at present, namely the minimum guaranteed income (Law no. 416/2001), the family support (Law no. 277/2010) and the winter fuel allowance (OUG no. 70/2011). VMI shall be the main form of support for preventing and combating poverty and the risk of social exclusion in Romania, inclusively among poor families with children. VMI was adopted under the Law no. no.196/2016 regarding the minimum inclusion income, to be implemented as of April 2018.

VMI shall be granted from the state budget, as a difference between the levels set forth by special law and the net income of the family or single person, earned or obtained in a certain period of time, for the purpose of guaranteeing a minimum income for every person from Romania.VMI is conceived to ensure the minimum living conditions, defined by law as the limit

denominated in lei, which ensures meeting basic needs such as: food, clothing, personal hygiene and house maintenance and sanitation.

B. Welfare benefits for supporting the child and family:

1. *Child benefit* is a universal entitlement, granted by the state to all the children under the age of 18, without discrimination. The youth that reached 18 and who attend high school or a vocational school are entitled to receive the child benefit until graduation. The child benefit is granted in different amounts, as follows:

- 84 lei for children aged 2 – 18 years old, as well for the youth that reached 18, but attend a high school or a vocational school, until graduation;
- 200 lei for children aged up to 2 years or up to 18 years, in case of children with disabilities.

Provision type	Children age	2013 (lei)	2014 (lei)	2015 (lei)	2016 (lei)
Child benefit (amounts have increased since July 2015)	children > 2 years old	42	42	42/ 84 (June 2015)	84
	Child with disability > 3 years old	84	84	84/200 (June 2015)	200
	children < 2 years old	200	200	200	200

2. *Child raising leave and allowance* (Government Emergency Ordinance no. 111/2010) is a program of the category type, which was amended under the Law no. 66/2016, which established new eligibility criteria for granting parental leave and child raising allowance or, as the case may be, the monthly insertion incentive.
Starting from July 2016, the child raising allowance and the monthly insertion incentive are granted to persons who, in the last two years preceding the child's birth, earned for a period of minimum 12 months incomes subject to the income tax, according to the provisions of the Fiscal Code.
Pursuant to the provisions of Government Emergency Ordinance no. 111/2010, any forms of employment are considered when establishing the entitlement to the child raising leave and allowance, as well as all the categories of incomes, namely those from salary activities, incomes from independent activities, as well as incomes from agricultural activities.
At present, there is just one version of the child raising leave, and the child raising allowance is a compensation ensured from the state budget for parents who decide to interrupt their professional activity, and request child raising leave for children up to 2 years old, respectively 3 years old, in case of children with disabilities.

The minimum amount of the child raising allowance was increased from 600 lei to 85% of the gross minimum guaranteed salary, whose value was 1,250 lei as of July 2016 (1,063 lei). The maximum amount of the child raising allowance was established as 85% of the average net incomes earned by the parent, without limitation to a certain threshold.

Any of the natural parents of the child, as well as one of the persons adopting the child, to whom the child was entrusted for adoption, or who has the child in custody or in emergency custody, is entitled, optionally, to the monthly allowance and the insertion incentive, except for the professional maternity assistant or the person that was designated a guardian. These two provisions are granted for each birth or, as the case may be, for each of the situations aforementioned.
Pursuant to the provisions of the Labor Code (Law no. 53/2003), the employee is entitled to request the suspension of the individual employment agreement for taking the child raising leave. Pursuant to the provisions of Government Emergency Ordinance no. 111/2010, the child raising leave is approved by the employer, upon the request of the person entitled, and the employer has the obligation to approve the period of leave together with the employee.

The legislation on granting the child raising leave sets forth also other measures of job protection for the persons entitled to such leave. These measures consider as follows:

- the employers are forbidden to cause the termination of the employment relationship for the employee that is on child raising leave or paid the insertion incentive. Such interdiction extends for a period of 6 months, after the person resumes their activity.
- upon the expiry of the leave, the worker is entitled to resume their last job or an equivalent job, in equivalent work conditions and also to enjoy any improvement in the work conditions they would have between entitled to during their absence.

The persons that are entitled to receive the child raising allowance, and who carry out professional activities and earn incomes subject to tax are entitled also to a monthly insertion incentive.
The monthly insertion incentive is granted until the child is 3 years old, in amount of 50% of the value of the minimum allowance, namely 532 lei (as of July 2016), if the parent decides to resume professional activity within 60 days before the child is 2 years old. Such incentive is a measure to stimulate parents to resume their activity before the child is 2 years old, respectively, 3 years old, in case of handicapped children.

Benefits and allowances for raising children with disabilities (articles 31 and 32 in Government Emergency Ordinance no. 111/2010 regarding the child raising leave and allowance, as subsequently amended and supplemented). These are granted to persons that take care of children with disabilities, aged up to 7 years old, or to persons with disabilities who become parents and take care of children. Pursuant to the provisions of the Law no.66/2016, the amount of the benefit for raising a child with disabilities, granted to parents that take care of a child with disabilities, aged 3 – 7 years, and who are entitled to the child raising leave was increased from 450 lei to 1,063 lei, as of July 2016. Further, the amounts of benefits and allowances granted to persons/parents that take care of children with disabilities, as well as to persons with disabilities that take care of children were also increased. Their amounts vary from 185 lei to 555 lei.

- monthly allowance for raising handicapped children, in amount of 1,063 lei, granted to persons that take care of children with disabilities, aged 3-7 years, and who received the entitlements established under Government Emergency Ordinance no. 111/2010, and who wish to take child raising leave until the child is 7 years old;
- monthly support for raising children with disabilities, in amount of 478 lei (45% of the amount of the minimum allowance – lei 1,063), granted to persons with severe or accentuated disability, who take care of children with disabilities, aged 0 – 3 years, and who do not earn other incomes besides the welfare benefits granted to persons with disabilities.
- monthly support for raising children with disabilities, in amount of 372 lei (35% of the amount of the minimum allowance – lei 1,063), granted to persons with severe or accentuated disability, who take care of children with disabilities, aged 3 – 7 years, and who do not earn other incomes besides the welfare benefits granted to persons with disabilities.
- monthly support for raising children with disabilities, in amount of 372 lei (35% of the amount of the minimum allowance – lei 1,063), granted to persons who take care of children with disabilities, aged 0 – 3 years, and who do not meet the conditions set forth by Government Emergency Ordinance no. 111/2010 for being granted child raising leave and monthly child raising allowance.
- monthly support for raising children with disabilities, in amount of 159 lei (15% of the amount of the minimum allowance – lei 1,063), granted to persons who take care of children with disabilities, aged 3 – 7 years, and who do not meet the conditions set forth by Government Emergency Ordinance no. 111/2010 for being granted child raising leave and monthly child raising allowance.
- monthly support for child raising, in amount of 478 lei (45% of the amount of the minimum allowance – lei 1,063), granted to persons with severe or accentuated disability, who take care of a child aged 0 – 2 years, and who do not meet the conditions set forth by Government Emergency Ordinance no. 111/2010 for being granted child raising leave and allowance.

- monthly support for child raising, in amount of 159 lei (15% of the amount of the minimum allowance – lei 1,063), granted to persons with severe or accentuated disability, who take care of a child aged 2 – 7 years, and who do not meet the conditions set forth by Government Emergency Ordinance no. 111/2010 for being granted child raising leave and allowance.

The new legal provision establishes a new type of allowance granted to persons who take care of a child with disabilities, and who are working or wish to resume their activity, having a part-time employment agreement concluded. They receive an allowance of 50% of the minimum amount of the allowance (532 lei), an amount that may be cumulated with the person's salary.

Provision type	2013 (lei)	2014 (lei)	2015 – June 2016 (lei)	July 2016 – December 2016 (lei)
Child raising allowance	85% of the average net incomes earned over the last 12 months preceding the child's birth, which cannot be less than lei 600 and more than lei 1,200 or lei 3,400.	85% of the average net incomes earned over the last 12 months preceding the child's birth, which cannot be less than lei 600 and more than lei 1,200 or lei 3,400.	85% of the average net incomes earned over the last 12 months preceding the child's birth, which cannot be less than lei 600 and more than lei 1,200 or lei 3,400.	85% of the average net incomes earned over the last 12 months in the last 2 years preceding the child's birth, which cannot be less than 85% of the amount of the gross minimum guaranteed salary at the national level. (lei 1,063)
Benefits and allowances for raising children with disabilities (granted to persons who take care of children with disabilities, or persons with disabilities who take care of children)	150/300/450	150/300/450	150/300/450	159/372/478/532
Insertion incentive	500	500	500	532

Provisions for supporting the child and family	2013 Monthly average number of recipients	2014 Monthly average number of recipients	2015 Monthly average number of recipients	2016 Monthly average number of recipients
Child benefit Total, of which:	3,779,894	3,727,859	3,691,195	3,662,793
lei 200 < 2 years (3 years for children with disabilities)	343,117	337,951	335,576	339,183
lei 200 disability > 3 years	54,630	55,216	55,976	58,266
RON 84 >2 years	3,382,147	3,334,692	3,299,643	3,265,344
Child raising allowance	142,170	139,572	138,350	141,151
Insertion incentive	30,780	33,659	37,384	41,334
Special allowances for taking care of children with disabilities Total, of which:	7,873	8,497	8,566	8,644

Allowance for raising handicapped children, for children aged 3 - 7 years;	4,063	4,291	4,059	3,858
Monthly support granted to persons with severe or accentuated disability, who take care of children with disabilities, aged 0 – 3 years, and who do not earn other incomes;	28	38	46	71
Monthly support granted to persons with severe or accentuated disability, who take care of children with disabilities, aged 3 – 7 years, and who do not earn other incomes;	92	99	102	153
Monthly support granted to persons who take care of children with disabilities, aged 0 – 3 years, and who do not meet the conditions for being granted child raising leave and monthly child raising allowance	157	211	269	186
Monthly support granted to persons who take care of children with disabilities, aged 3 – 7 years, and who do not meet the conditions for being granted child raising leave and monthly child raising allowance.	569	575	591	647
Monthly support granted to persons with severe or accentuated disability, who take care of a child aged 0 – 2 years, and who do not meet the conditions for being granted child raising leave and allowance.	1,030	1,192	1,237	1,132
Monthly support granted to persons with severe or accentuated disability, who take care of a child aged 2 – 7 years, and who do not meet the conditions for being granted child raising leave and allowance.	1,934	2,091	2,262	2,573
Monthly allowance granted to persons who take care of a child with disabilities and who are working, having a part-time employment agreement concluded.	-	-	-	24

Provisions for supporting the child and family	2013 Amounts paid	2014 Amounts paid	2015 Amounts paid	2016 Amounts paid
Child benefit	2,718,491,547	2,684,862,102	3,541,590,789	4,415,501,616
Child raising allowance	1,534,501,939	1,552,480,562	1,578,924,746	2,060,258,501
Insertion incentive	189,548,710	207,880,985	230,358,988	263,932,900
Special allowances for taking care of children with disabilities	34,900,103	37,356,001	36,238,816	48,060,642

C. Welfare benefits for supporting persons with special needs:

Special benefits granted to children with disabilities (art. 58 in the Law no.448/2006):

The family or the legal representative of the child with severe, accentuated or average disability receives a monthly complementary personal budget, notwithstanding the incomes they have, for the period in which they take care of, supervise or raise the child with disability.

Amounts are different, depending on the child's disability degree. For 2016, the following amounts were established:

a) 106 lei, for the family or legal representative of the child with severe handicap, notwithstanding the incomes;
b) 79 lei, for the family or legal representative of the child with accentuated handicap, notwithstanding the incomes;
c) 39 lei, for the family or legal representative of the child with average handicap, notwithstanding the incomes;

Provision type	2013 (lei)	2014 (lei)	2015 (lei)	2016 (lei)
Complementary monthly budget (amounts have increased as of	91/68/35.5	91/68/35.5	106/79/39	106/79/39

January 2015)				

Complementary monthly budget	2013	2014	2015	2016
Monthly average number of recipients, total of whom:	60,156	59,068	60,276	61,361
Child with severe handicap	31,740	31,970	32,760	33,476
Child with accentuated handicap	11,922	12,176	12,793	13,146
Child with average handicap	16,494	14,922	14,723	14,739
Amounts paid	51,019,020	50,845,500	59,975,749	61,941,732

D. Welfare benefits for special situations:

Under Government Decisions, *emergency aid* may be granted to families and persons that are in need due to natural calamities, fires, accidents, as well as other special situations due to the heath condition or other causes that may lead to the risk of social exclusion. Such emergency aid is granted under the Law no. 416/2001 regarding the minimum guaranteed income.
Further, mayors may grant from the local budget other emergency aid to families and persons that are in need due to natural calamities, fires, accidents, as well as in other special situations, established under the decision of the local council.

Emergency aid	2013		2014		2015		2016	
	Total number of aids	Amounts paid -lei-	Total number of aids	Amounts paid -lei-	Total number of aids	Amounts paid -lei-	Total number of aids	Amounts paid -lei-
State budget	732	2,046,350	1,655	3,866,050	2,409	7,885,103	1,779	9,499,395
Local budget	77,909	24,295,522	82,835	28,527,834	42,381	18,786,517	80,940	21,933,789

Paragraph 2

There are no legislative amendments for the reference period.

In the reported period, the results of the control actions regarding extra work are as follows:

No.	INDICATORS	2013	2014	2015	2016
1.	No. of fines	565	531	561	595
2.	Aggregate amount of fines imposed (lei)	893,800	838,450	878,300	921,500

Paragraph 3

Pursuant to art. 5 par.(1) in the Law no. 53/2003 - The Labor Code, republished, as amended and supplemented, within the employment relationships, operates the principle of equal treatment of all the employees and employers, and, pursuant to art. 5 par.(2), any direct or indirect discrimination against an employee, based on gender, sexual orientation, genetic characteristics, age, nationality, race, color, ethnicity, religion, political option, social origin, handicap, family background or responsibility, union membership or activity, is forbidden.

Article 6 par. (3) in the Labor Code, republished, as amended and supplemented, sets forth that for equal or equal in value work, it is forbidden any discrimination based on gender as regards any remuneration elements and conditions.

Thus, as regards employment relationships, the principle of equal treatment of all the employees and employers operates.

We should mention that, pursuant to the dispositions of art.7 letter b) and of art. 27 in the Government Ordinance no.137/2000 regarding the prevention and punishment of any forms of discrimination, republished, as amended and supplemented, it is contravention, according to this ordinance, the discrimination against a person because they belong to a certain race, nationality, ethnicity, religion, social category or a disadvantaged category, respectively because of their beliefs, age, gender or sexual orientation, within an employment and social protection relationship, except for the cases set forth by law, appearing in the following matters: (...) establishing and changing the job duties, workplace or the salary.

The person who considers themselves discriminated may file with the court of law a claim for damages and reinstatement of the situation as prior to discrimination, or the elimination of the situation created by discrimination, according to common law.

Further, the principle of equal pay for work of equal value is regulated also in the Law no. 202/2002 regarding equal opportunity for women and men, republished, as subsequently amended and supplemented.

Thus, pursuant to the provisions of art. 4, letter (f) in the Law no. 202/2002, work of equal value means remunerated activity, which, following comparison, based on the same indicators and the same units of measurement, with another activity, shows the use of some similar or equal professional knowledge and skills and making some equal or similar intellectual and/or physical efforts.

The violation of the principle of equal pay for work of equal value is a form of discrimination based on gender, and Labor Inspection is in charge with identifying and punishing such act.

The gender pay gap is the gap between the men's salaries and the women's salaries, calculated based on the average gap between the gross hour remunerations of women employees and men employees, and indicates the discrimination and inequalities on the labor market. The indicator established at the level of the European Union (EU) is calculated annually through the European statistic system. Equal pay does not refer exclusively to gross salary incomes. The indicator includes also bonuses, extra hours, holiday bonus, the payment for sick leave and incentives. Within the public system, theoretically, such gaps should not appear, the public system employees having the specific legislation, with fixed salary grids, depending on the job/position they hold. There may be cases in which discrimination appears upon access to professional training and promotion, which may lead to a higher salary. In private companies, things are different, because each employer establishes its own salary grid and, especially, its own human resources policy. At the level of economic branches, there are feminized fields, those in which women work in higher percentage: services, care, health and education.

According to the data provided by Eurostat, the gender pay gap in Europe is 16.3%, while in Romania is 5.8%.

The pay inequality between women and men is based on various reasons, among which:

- women's work is still perceived as less valuable than the work performed by men;
- gender related stereotypes limit for both women and men the possibility of choosing their education and profession, a fact that leads to the creation of a labor market which is gender segregated and where the women dominated occupations are undervalued, by comparison with the men dominated occupations;
- women who have children work on a shorter and more flexible work schedule, in order to deal with and take care of them.
- women's careers are shorter and with interruptions, in occupations and industries situated on a lower value scale.
- unfortunately, women have lower pensions because their remuneration per work hour is lower, as well as the total number of hours worked during life. Therefore, women are more exposed to the risk of poverty in old age.

From the point of view of public policies, within the National Strategy for Equal Opportunity for Women and Men, for the period 2014-2017, reviewing the reasons for gender salary gap is a specific objective. Thus, on 3 November 2016, the National Agency for Equal Opportunity for Women and Men (ANES) carried out an ample action for increasing awareness, upon the celebration of the European Equal Pay Day, by publishing a press release and sending by email some information materials to the members of the National Commission for Equal Opportunity for women and men; the presidents of the County Commissions for Equal Opportunity for women and men; the management of the Bucharest Stock Exchange (BVB) and the 72 companies listed on BVB; the directorates and subordinates of the Ministry of Labor and Social Justice.

Labor Inspection performs control actions, preventive in character, regarding the manner in which the provisions of the Law no. 202/2002 regarding equal opportunity and treatment for women and men, republished, as amended and supplemented, are complied with.

For the reference period, the results of the control actions are as follows:

No.	INDICATORS	2013	2014	2015	2016
1.	No. of controls performed	32,463	38,854	22,474	21,123
2.	Total no. of sanctions enforced, of which:	722	282	44	72
	▪ *No. of fines*	*1*	*2*	*0*	*1*
	▪ *No. of warnings*	*721*	*280*	*44*	*71*
3.	Aggregate amount of fines imposed (lei)	3,000	6,000	0	3,000

Paragraph 4

Art. 75 par. (1) in the Law no. 53/2003 – The Labor Code, as subsequently amended and supplemented, sets forth that the persons fired pursuant to art. 61 letter c) and d), art. 65 and 66 are entitled to a prior notice period, which cannot be less than 20 working days.

The dispositions mentioned set forth the same prior notice period to be granted to all employees, in case of termination of the individual employment agreement, for reasons that are not imputable to the employee, notwithstanding their length of service.

We should mention that the regulations contained in the Law no. 53/2003 – The Labor Code, republished, as subsequently amended and supplemented, were the result of negotiations between social partners, who considered the prior notice period of 20 working days reasonable as the employees' protection measure in case of termination of the individual employment agreement.

We should mention that, initially, the prior notice period was 15 working days, but, later, following the amendments to the Labor Code, the prior notice duration was prolonged to 20 working days, as an employees' protection measure in case of termination of the individual employment agreement.

We should also mention that the prior notice period for employees whose individual employment agreement is terminated for reasons that are not imputable to them, as previously mentioned, has a minimal character, the parties being able to negotiate additional rights in this respect.

Further, we should mention that the employees fired for reasons that are not imputable to them benefit from active measures for combating unemployment, and may receive compensations in the conditions set forth by law and the applicable collective labor agreement.

Pursuant to the dispositions of the labor legislation, dismissal may be ordered only in the conditions and in compliance with the procedures established by law.

According to the provisions of art. 78 in the Law no. 53/2003 - The Labor Code, republished, as subsequently amended and supplemented, if dismissal is ordered without complying with the procedure set forth by law, it is subject to absolute nullity.

Thus, if dismissal was caused without grounds or illegally, the court shall order its annulment and shall oblige the employer to pay compensation amounting to the indexed, increased and re-updated salaries and the other entitlements the employee would have received, pursuant to the provisions of art. 80 par. (1) in the Law no. 53/2003 – The Labor Code.

Therefore, in case of illegal dismissal, the person concerned should receive all the entitlements they would have received, as an employee.

Art. 38 in the Labor Code sets forth that employees may not waive the rights granted to them by law. Any transaction aiming at the employees waiving their rights according to law or the limitation of such rights is null.

Therefore, the employer is obliged to acknowledge and respect anything that the law or collective agreements grant to employees, in the form of rights; otherwise, every employee being able to file a suit in order to oblige their employer to respect their rights.

We should mention that the obligation of granting the compensations set forth in art. 80 par. (1) in the Law no. 53/2003 – The Labor Code is incumbent on the employer, if dismissal was performed without grounds or illegally.

We should also mention that the rule in matters of conclusion of individual employment agreements is the conclusion of agreements for an unlimited period of time, while the conclusion of agreements for a limited period of time is regulated only as an exception.

Pursuant to art.87 par.(2) in the Labor Code, the comparable permanent employee is the employee whose individual employment agreement is concluded for an unlimited period of time and who carries out the same activity or a similar one, within the same entity, taking into account professional qualification/skills.

The same article sets forth in par.(1) that, as regards the employment and working conditions, the employees under an individual employment agreement for a limited period of time should not be treated less favorably than the comparable permanent employees, only based on the duration of the individual employment agreement, unless the different treatment is justified by objective reasons.

Therefore, no employees under an individual employment agreement for a limited period of time may be treated less favorably than the comparable permanent employees, working under an employment agreement for an unlimited period of time, who carry out the same or a similar activity.

Paragraph 5

Pursuant to art. 169 in the Law 53/2003 - The Labor Code, no withholding of salary may be performed, unless in the cases and conditions prescribed by law.

(2) Withholdings as damages caused to the employer may be performed only if the employee's debt is due, liquid and payable, and was established as such under a final and irrevocable judgment.

(3) If the employee has multiple creditors, the following order is to be followed:

a) maintenance expenses, according to the New Civil Code;

b) contributions and taxes owed to the state;

c) damages caused to public property by illicit acts;

d) settlement of other debts.

(4) Cumulated salary withholdings may not exceed every month half of the net salary.

Pursuant to art. 273 in the same law, the amount established for settlement of damages shall be withheld in monthly installments from the salary entitlements due to the relevant person from the employer for whom they are employed. The installments may not be higher than one third of the net monthly salary, and may not exceed together with the other withholdings from the person concerned half of their salary.

Therefore, withholdings as damages caused to employer may not exceed one third of the net monthly salary.

Article 5 – The right to organize

Legislative evolution in the reported period 2013-2016:

- The Law no. 248/2013 regarding the organization and operation of the Economic and Social Council, as subsequently amended and supplemented by the Law no. 222/2015 and the Law no. 235/2016, was adopted;
- The Law no. 62/2011 regarding social dialogue was amended and supplemented by the Law no. 255/2013, in correlation with the provisions of the Civil and Criminal Code, and by the Law no.1/2016. In 2017, the consultations with social partners were initiated, for the purpose of improving the regulation in matters of social dialogue.

Referring to the data provided in the previous report, for conformity with the reported period, we should mention that the Law no. 248/2013 – The Law regarding the Economic and Social Council (ESC) aimed to correlate the organization of ESC with the one of the European Economic and Social Committee and the separation of the tripartite social dialogue (Government-social partners) from the dialogue with and between the representatives of the organized civil society, in general.

The Economic and Social Council (ESC) was created as an autonomous structure of dialogue between the representatives of nationally representative union and employer confederations and those of the organized civil society, is financed through the state budget and plays a consultative role with the Government and the Parliament. ESC has 45 members, 15 elected by each of the 3 groups represented, is managed by a president, vice-presidents and a general secretary, and operates in the Hearing Panel, Executive Bureau and 9 specialist commissions. The nationality requirement was removed from the legal provisions.

The consultative approval of ESC is mandatory within the legislative procedure.

ESC is entitled to an independent initiative, supported inclusively by accessing European Funds, namely for development of studies, measure proposals, etc., upon guiding the Government decisions.

ESC has a collaboration relationship with EESC, and is a member of the European states ESC network.

In the reported period, the Law no. 248/2013 was amended, at the request of social partners, in view of improving the operation and clarification of the procedures of designation of the members of the Hearing Panel, by the Law no. 222 of 24 July 2015, which includes transitory provisions regarding reconfirmation of the mandates of the members of the Hearing Panel and establishing the term for updating the internal operation regulation, and by the Law 235/24 November 2016, which establishes new provisions regarding the distribution of the places held by union and employer confederations in the ESC Hearing Panel, with mentions regarding the establishment of the new Hearing Panel of ESC by 31 December 2016 (art. II, par. (3) – (5)).

As an autonomous structure, ESC develops its own operation regulation and its own reports of activity/operation, available on the Council's website. Link: www.ces.ro

Creation of union and employer organizations

As regards the Conclusions from 2010, the Committee recalls that the requirement of a minimum number of members for setting up a union is pursuant to art. 5, if such number is reasonable and does not prevent the financing of organizations (Conclusions XIII-5 (1997) Portugal).

In this respect, in answer to the information required by the Committee as regards the actual impact of the provision concerning the minimum number of 15 employees of the same entity for

setting up a union, we should mention that the average number of employees of companies is calculated according to the methodology of the National Institute of Statistics. According to INS communications, in 2015, the largest number of employees of companies was witnessed in industry (35.5% of the total number), and the average number of employees of an enterprise in industry was 25.8 employees, against 4.9 employees in services.

Further, the members' fee is established according to law at 1% of the gross salary, and does not exceed, as a rule, 2% under the autonomous decisions in the unions' own statutes. Pursuant to the dispositions of art. 24 par. 2 in the Law regarding social dialogue no. 62/2011, republished, as subsequently amended and supplemented – the fee paid by union members is deductible in amount of maximum 1% of the gross income earned, according to the provisions of the Fiscal Code.

The minimum number of 15 members took into account ensuring the premises for financing the organization and start of the activity of the organization created, considering also the financial affordability of the union fee for the employees, so that not to discourage association/ affiliation (for ex., the gross average salary at the economy level has annually increased, being in 2016 of lei 2,681, that is approximately EUR 630)

In the period 2012-2015, the number of union organizations created witnessed an average annual increase of 3%, from 5,721 union organizations created by the end of 2012, to 6,295 union organizations created by the end 2015 (as per the Annual Statistical Directory 2011, 2016)

Further, based on the data provided to the administration by sector union federations, which do not consider the situation of the unions not affiliated to federations and the federations that did not register administratively, as regards 2015, we mention comparatively the situation in several sectors:

- Metallurgic industry sector: 3 union federations with 34 affiliated unions with 14,000 employee members of 32,000 employees/sector;
- Energy, oil, gases and energy mining sector: 5 union federations with 109 affiliated unions with 98,000 employee members of 103,000 employees/sector;
- Financial, banking and insurance activities sector: one union federation with 12 affiliated unions with 13,000 employee members of 103,000 employees/sector;
- Machine constructions and metal constructions industry sector: 2 union federations with 56 affiliated unions with 43,000 employee members, of 280,000 employees/sector.

We present in the table below the distribution of the number of employees working as of 31.12.2016, based on the enterprise size:

Class size	Enterprise size	No. of employers	No. of working employees[3]
1	<= 9	470,569	1,313,303
2	[10, 49]	69,396	1,401,515
3	[50, 249]	14,192	1,377,975
4	>= 250	2,496	1,955,006
TOTAL		556,653	

The freedom to join or not a union

Within the National Tripartite Council for Social Dialogue and other tripartite consultations, no cases of companies conditioning employment on the union non-membership were reported.

[3] The number of working employees should not be added up, given that some employees may work under several employment agreements.

The law prescribes legal means of complaint and appeal against abuses. The cases of conditioning employment on union non-membership may be notified administratively to the Labor Inspection, to the National Council for Combating Discrimination (an authority coordinated by the Parliament) and/or referred to court, considering the guarantees of the labor legislation as regards the recognition of the right to association, the recognition of the right to unionize at the level of all employers (art. 217), whereas art. 38 in the Labor Code, applicable to the situation prior to employment, forbids waiving legal rights. Punishing discrimination deeds as regards access to employment is set forth also in the Government Ordinance 137/2000 regarding punishment of discrimination cases.

(responsible - the National Council for Combating Discrimination, link: http://cncd.org.ro/profil)

Examples of case law regarding union related discrimination are set out in Annex 1 to this report.

Representativeness

Collective negotiation is defined in art. 1 par. b) (iii) as being the negotiation between employer or the employer organization and the union or union organization or the employees' representatives, as the case may be, which aims at regulating employment or job relationships between the two parties, as well as any other agreements on matters of mutual interest;

For clarification purposes, the union organization, pursuant to art. 1 par. u) is „the generic name for union, union federation or confederation. It is created based on the right to free association, for the purpose of defending the rights set forth in the national legislation, in the collective and individual employment agreements, or in the collective labor agreements, as well as in the international pacts, treaties and conventions Romania is a party to, in order to promote the professional, economic and social interests of its members;

For the same purposes, the right to protection of the union members and management (art. 10) and the right of representation in court and the capacity to sue (art. 28) are guaranteed for all the union organizations, defined pursuant to art. 1, as well as the facilities related to the entitlement to free days for carrying out union activity (art. 35, corroborated with art. 153), to offices or property, freely or onerously, required for achieving the purpose for which the organization was created. (art. 22, par. 1) and art. 23)

Further, union prerogatives, inclusively the right to collective negotiation are recognized pursuant to art. 27, for all the union organizations, and not only for the representative ones: „in order to achieve the purpose for which they were created, union organizations are entitled to use specific means, such as: negotiations, procedures of adjudication of disputes through conciliation, mediation, arbitrage, petition, protest, picket, march, rally and demonstration or strike, in the conditions set forth by law".

Art. 153 in the law regarding social dialogue guarantees for any union organization the right to voluntary negotiation of agreements, in the name of the members, based on the mutual recognition of the parties (voluntary mechanism of collective negotiation)

As regards the employer's obligation of information within the legal procedure of collective negotiation, this refers to all the parties entitled to negotiate (as the case may be), and not only to the representative union (art. 130, par. 1), 2), 3), 4)), and the employees' representatives, defined pursuant to art. 3 par. d) in the Law no. 467/2006 regarding the information and consultation of employees, as being „the representatives of union organizations or, if there is no union, the persons elected and empowered to represent the employees, according to law" should be informed and consulted as regards matters related to the economic situation and the evolution of the enterprise and of employment, changes in the organization of employment and of employment relationships, etc. (art. 5 in the Law 467/2006)

The Law regarding social dialogue does not recognize the right of unions to participate in the Boards of Directors (autonomy of private capital), but provides for the possibility of the

representative union being invited to the Boards of Directors, in any case, the management having the obligation to send the union the decisions made. (art. 30 (1)-(3))

In the reported period 2013-2016, the Law no. 255/2013 was adopted, which amends the Law no. 62/2011 regarding social dialogue, in correlation with the dispositions of the new Civil and Criminal Codes as regards exercising some functions and the means of initiating criminal action by the members elected in management positions, in the event of conditioning or constraints aiming at the limitation of exercising their duties, pursuant to art. 218, par. (3).

In January 2016, was adopted, at the Parliament's initiative, the Law no. 1/2016 amending the Law 62/2011, which amends and supplements the current provisions of the law regarding social dialogue by new provisions related to: the duty of the National Tripartite Council as regards establishing and approving negotiation sectors (art. 1), transferring the member fee from the employer to the union, with the employees' consent (art. 41), avoiding multiple affiliations of employer/union organizations to higher organizations (art. 55) and amending the rules on the representative collective negotiation at the enterprise level (art. 134 and art. 138^1).

Art. 134 in the Law no. 62/2011 regarding the parties' representation upon collective negotiation was amended by the amending Law 1/2016, and, according to the new provisions of art. 134 par. 2 a) in the amending law, the employees are represented within collective negotiation: „at entity level, by the legally created and representative unions. If the union is not representative, the representation is performed by the federation that union is affiliated to, if the federation is representative at the level of the sector the entity is part of; if there are no unions, by the employees' elected representatives."

Art. 138 in the Law 62/2011 regarding the conclusion of collective labor agreements in the budgetary sector was supplemented by the amending Law 1/2016, and, pursuant to the provisions of the new art. 138^1: "collective labor agreements are also negotiated at the level of state companies, national companies, similar to entity groups, as well as at the level of public authorities and institutions which have subordinated or coordinated other legal entities that employ labor. As regards public authorities and institutions which have subordinated or coordinated other legal entities that employ labor, the collective agreement is concluded by the public authority or institution manager and the legally created and representative unions, according to law".

Paragraph (2) in the new article sets forth that, as regards employment agreements concluded at the level of sector of activity, for the personnel in the budgetary sector „the parties shall establish expressly the modes of negotiation of collective labor agreements at the level of authorities and institutions which have subordinated or coordinated other legal entities that employ labor, authorities/institutions coordinated by or subordinated to the central public authority".

Also during 2016, another parliamentary legislative initiative was adopted, a law amending and supplementing the Law regarding social dialogue no. 62/2011¸whose sole article referred to establishing an additional protection for the persons elected in the union management bodies, pursuant to the newly inserted paragraph 11 in art. 10: "It is forbidden, subject to the absolute nullity of the dismissal decision, to dismiss the persons elected in the management bodies of unions throughout their mandate, as well as for a period of 2 years since its expiry, for reasons that are not imputable to the employee, for professional incompetence, or for reasons related to the fulfillment of the mandate they were granted by the entity employees". Paragraph 2, newly inserted in article 10: „the duly application of the dispositions in par. (1) and (1^1) and of the work relationship of civil servants and civil servants with a special status".

Art. 135, amended by the same law, in the meaning of inserting union mandate in the representation of the parties upon collective negotiation, pursuant to par. (1), letter a) :"if there is a union at the entity level, affiliated to a representative union federation in the sector of activity the entity is part of, negotiation is to be performed by the representatives of the union federation, at the request and under the mandate from the union, pursuant to art. 134, point 2 letter A).

As regards prolonging the protection against dismissal of the persons elected in the management bodies of unions for a period of 2 years from the expiry of their mandate, the Constitutional

Court has retained the unconstitutionality of par. 1^1 in art. 10 of the Law amending the Law 62/2011, under the Decision 681/2016, printed in the Official Gazette on 13.12.2016, which reiterates the conclusions of the CCR Decision 814/2015, which stipulates that "the legal protection of persons holding eligible functions in a union body is required, but should operate exclusively as regards the union activity carried out." In the motivation of the Constitutional Court, the new additional protection of the union elected inserted in art. 10 par. (1^1), contravenes to art. 16 in the Constitution, because it establishes a privilege for the union elected, although they are in the same situation as other employees whose jobs are eliminated and are to be laid off. Although union leaders have a protected status, in the meaning that are elected in view to defend the employees' interests, as regards the objective situation of the elimination of the job held (dismissal for reasons that are not imputable to the employee), they are in an analogous situation to the other employees that do not hold union positions, in face of dismissal as defined by labor legislation. In the same capacity of defendants of the employees' interests act also the employees' representatives, elected under the conditions in art. 221 *et seq.* in the Law no. 53/2003 - The Labor Code.

The union rights and freedoms are guaranteed by the Law regarding social dialogue no. 62/2011, republished, as subsequently amended and supplemented, for all the union organizations, defined as such in art. 1 in the law, as regards exercising union prerogatives, according to the OIM rules and the provisions of art. 5 in the Charter:

- the right of negotiation, representation of members before public authorities and in court, the right of settlement of disputes, the right to rally, picket, protest (art. 27, 28)
- protection granted to leaders elected in the management of union organizations (art. 10) and organization facilities (art. 21 par. 1)
- the right of collective negotiation, exercised both as a party to the representative negotiation (*erga omnes*), through the higher representation organizations they are affiliated to (new art. 134), and as a direct party to voluntary negotiation of agreements in the name of the members (art. 153).

Article 6 – The right to bargain collectively

Paragraph 1

According to legal dispositions, the associative structures of civil society are appointed, under a decision of the Prime Minister, at the proposal of the Ministry of Labor, Family, Social Protection and the Elderly, at present, the Ministry of Labor and Social Justice. The organizations of civil society are proposed based on open selection, on criteria established by civil society, from the following fields, similar to the ones of the European Economic and Social Committee:

- human rights organizations, inclusively for the rights of women, the youth and children;
- resource center organizations;
- organizations in the field of healthcare and persons with disabilities;
- organizations for social services and eradication of poverty;
- environmental organizations and for matters related to the rural environment;
- academic associations, professional associations, for consumer protection;
- social economy organizations; cooperative organizations of liberal professions;
- farmers' organizations;
- pensioners' organizations;
- organizations of local communities and other non-governmental organizations carrying out activities in the fields of competence of the Economic and Social Council.

The Law no.62/2011, republished, regarding social dialogue does not establish a bipartite institutionalized framework for the negotiation of collective labor agreements at sector level.

Pursuant to the Emergency Government Ordinance no.28/2009 regarding the regulation of some social protection measures, as subsequently amended and supplemented, sector committees are formed as social dialogue structures, which have the task to establish professional and occupational qualification standards at sector level; these do not have the same function as the European sector committees, but could be a consultation framework for sector collective negotiation (for ex., the Health and Social Assistance Sector Committee).

Pursuant to the Law no.188/1999, republished, the Statute of Civil Servants, as subsequently amended and supplemented, in the public sector, are created and operate joint committees for the negotiation of and monitoring the implementation of collective agreements at the level of institution or authority.

Paragraph 2

By way of supplementation of the information in art. 5 in the Charter regarding representativeness, we should mention that the procedure of collective negotiation at enterprise level aims at establishing the legitimate parties to negotiate in the name of all the employees and to conclude collective agreements as a law source, applicable *erga omnes*. As a party, non-representative unions may participate through higher representation organizations (representative federation).

If there is a representative union, the participation of unions in the collective negotiation procedure established by law is not conditional, the application of legal provisions being based on the principle of good cooperation between the unions of the enterprise, taking into account their joint tasks.

At the level of sector of activity, the sector collective agreements concluded apply only to employer entities affiliated to the signing parties, taking into account the legal and financial effects of the undertakings assumed under collective agreements as a law source.

For the same purposes, sector negotiation was affected (as in other member states) by the lack of interest of employer organizations in undertakings at sector level, the employers favoring the settlement of problems generated by the crisis at the enterprise level.

Statistic data indicate an increase in the number of collective agreements concluded at the level of enterprise and groups of enterprises, in the conditions of representativeness stipulated by law, in the context of the joint interest of the parties to maintain, support and re-launch employment and increase the flexibility of employment relationships.

Based on the right to bargain recognized for all the union organizations and exercised voluntarily pursuant to art. 153 in the Law regarding social dialogue no. 62/2011, republished, as subsequently amended and supplemented, sector union and employer organizations negotiated sector agreements, as for instance the Sector Agreement regarding collective negotiation and contracting in the constructions sector 2014-2018, concluded based on undertakings mutually assumed by the parties and implemented at the level of the member entities.

Of the statistic data regarding the number of collective agreements registered according to the procedure in the law regarding social dialogue, which do not take into account the voluntary agreements concluded pursuant to art. 153, we should mention:

Collective agreements at enterprise level: in 2013, 8,367 collective agreements at enterprise level were registered, while, in 2016, 9,366 collective agreements at enterprise level were registered, the number of employees covered being circa 33% of the number of the working ones (Commission).

Situation of registration of collective labor agreements concluded at entity level, in the period 2013 and 2016, resulting from the data sent by the territorial labor inspectorates:

	December 2013	December 2016
Collective labor agreements registered	6,029	7,193
Ongoing collective labor agreements	13,375	15,124

Collective agreements at the level of groups of entities: in 2013, 12 agreements were registered, applicable to 4,605 employees, while, in 2016, 7 agreements were registered, applicable to 26,180 employees.

Sector collective agreements: in 2014, 3 agreements were registered, in 2016, none.

Enterprise and sector agreements concluded on a voluntary basis pursuant to art.153 are not administratively registered and are not included in statistics.

In 2014, 2015 and 2016, in the public sector, were negotiated and granted salary entitlements to the administration, healthcare and education personnel.

By way of clarification, we should mention that the employment relationships, the employees' rights and the employment conditions are governed by the Labor Code (and related legislation) and by special legislation, supplemented by more favorable dispositions, negotiated under collective labor agreements (law source) at various negotiation levels.

In light of national practice, the evolution of collective agreements reflects to a great extent the real will of the parties to engage in collective negotiation (representative or voluntary) and to conclude some collective agreements - law source - which may discourage undertakings, in the absence of some joint, mutually advantageous interest, taking also into account the existence of an applicable legal framework, which governs, according to the European regulations, the employment relationships, labor health and safety, professional training, the employment rights and conditions and the minimum guaranteed salary.

Paragraph 3

The employees' rights to initiate collective work conflicts in relation to the start, progress and completion of negotiations of collective labor agreements is guaranteed by law. As regards collective work conflicts, the employees are represented by representative union organizations or the employees' representatives, as the case may be, who participate in the collective negotiations of the applicable collective labor agreement or convention.

Collective work conflicts may be initiated in the following situations:

a) the employer or the employer organization refuses to start the negotiation of a collective labor agreement or convention, in the conditions in which it does not have such an agreement or convention concluded, or the previous one expired;
b) the employer or employer organization does not accept the claims raised by the employees;
c) the parties do not reach an agreement regarding the conclusion of a collective labor agreement or convention by the date established mutually for the finalization of negotiations.

During the validity of a collective labor agreement or convention, the employees cannot initiate the collective work conflict.

In 2016, the territorial labor inspectorates conciliated 30 collective work conflicts initiated at the entity level, of which 11 in the processing industry. Of the total number of conflicts, 13 were settled by conciliation, 4 were partially conciliated, and in 13 the parties did not reach an agreement. As regards the place of conciliation, 19 conflicts were conciliated at the office of the territorial labor inspectorate and 11 on the enterprise premises[4].

The dispositions of the Law regarding social dialogue no. 62/2011, republished, as subsequently amended and supplemented, make no distinction between (public, private) sectors as regards

[4] Data provided by the Labor Inspection

the registration and amicable settlement through conciliation, mediation or arbitrage of collective work conflicts.

In 2016, at a national level, 33 collective work conflicts at the entity level were registered according to the legal procedure, of which 14 in the processing industry, and, of the 33 collective conflicts, 13 were settled finally through conciliation, 2 were partially settled, and 18 remained unsettled, at the discretion of the conflict parties. As regards the location of implementation of the procedure of conciliation of collective work conflicts (of interests), of the 33 collective conflicts registered, 21 were conciliated by the Territorial Labor Inspection and 12 were settled independently by the enterprise[5]. (Statistic Bulletin 2016)

Further, in 2016, were conciliated 3 collective work conflicts at the level of groups of entities (The National Administration of Penitentiaries, the Ministry of Youth and Sports, the Ministry of Internal Affairs), settled following conciliation.

Paragraph 4

Collective action: definition and objectives

In order to clarify some issues, taking into account that the notion of „collective action" is not defined and recognized uniformly, at the level of European states, we should mention that the law regarding social dialogue governs the collective labor conflicts, the modes of amicable settlement and strike, as an extreme form of collective conflict.

As regards the Committee's request, we advise that the procedure of conciliation of collective work conflicts legally registered is implemented in fact within the term set forth by law, taking into account the proximity facility of deployment of the procedure (location: Territorial Labor Inspectorate) and the role of conciliator of the territorial labor inspectors.

For example, according to statistics, in 2016, at a national level, 33 collective work conflicts (of interests) were registered according to the legal procedure, of which 14 in the processing industry, and, of the 33 collective conflicts, 13 were settled finally, 2 were partially settled, and 18 remained unsettled, at the discretion of the conflict parties.

As regards the location of implementation of the procedure of conciliation of collective conflicts of interests, of the 33 collective conflicts registered, 21 were conciliated by the Territorial Labor Inspection and 12 were settled independently by the enterprise. (source: Statistic Bulletin 2016)

In some situations, actions are performed directly, without notifying the employer and the registration of the collective work conflict, the court being the one to establish their nature and legality.

Initiation of collective action

In the meaning of previous mentions, collective work conflicts are initiated according to law by the representative union or, in its absence, by the employees' representatives, defined broadly as the representatives of non-representative unions and of non-affiliated employees, elected without distinction by the vote of all employees, who are parties to the collective conflict related to the implementation and completion of the collective negotiation. (collective conflict of interests)

In the absence of a collective agreement at the entity level, there are no legal limitations as regards the decision to initiate collective action, in the meaning of law.

The solidarity strike is subject to some conditions, in order to avoid financial losses for some third parties – enterprises, which are not party to the collective conflict. (the proportionality principle)

[5] Data provided by the Ministry of Public Consultation and Social Dialogue.

In line with the European practice and the practice of OIM, the Law regarding social dialogue aimed at promoting the mechanisms of amicable settlement of collective work conflicts (conciliation, voluntary mediation and voluntary arbitrage), in order to avoid deepening the conflicts (strike), which is costly for the parties involved.

Specific restrictions of the right to strike and procedural demands

In response to the Committee's request related to clarification of the provisions of art. 202 in the Law no. 62/2011, we should mention that the provisions related to „other persons" refer to the provisions of the relevant law, in art. 203 and art.204, respectively to the personnel of air, naval, road transports of any kind, who cannot declare strike since the time of departure on mission and until its end, while the personnel embarked on commercial ships under Romanian flag can declare strike only in compliance with the rules established under international conventions ratified by the Romanian state, under the conditions of art. 203.

As regards the decisions pronounced by courts in matters of illegal strike, in most cases in which the cessation of strike was decided, the strike being considered illegal, the motivation of the court was related to the failure to comply with the legal procedures, such as the initiation of the conflict during the period of validity of a collective labor agreement, demands of rights that involve legislative amendments and are not within the scope of collective conflicts, or situations in which the employees interrupted their work voluntarily and spontaneously, without this being undertaken by organizers.

For example, under the civil sentence no. 1263/2015 pronounced by Prahova Tribunal, the court decided the cessation of the strike, the strike being considered illegal, given the voluntary interruption of work by the employees of a private enterprise, while the collective labor agreement 2014-2016 was still in force, was collectively negotiated and registered according to legal procedures; in this context, 1,300 employees interrupted their work voluntarily, being followed by other 1,300 employees that refused to start working, requesting salary increases. The motivation of the court was related to the failure to comply with legal procedures regarding the initiation of collective work conflicts and conciliation, as well as with the ones forbidding the initiation of a collective conflict during the period of validity of the collective agreement concluded.

In another case regarding a public institution employer, under the civil sentence pronounced by Bucharest Tribunal in November 2016, in the case of the general strike initiated in the healthcare sector by the representative union Federation SANITAS, the court decided the cessation of strike, the strike being considered illegal, the motivation being related to the failure to comply with the procedures of registration of the collective conflict and of initiation of strike, taking into account the legal interdiction (art. 164) to initiate a collective conflict during the period of validity of the collective labor agreement, valid in the healthcare sector as of the strike date, and the nature of demands involving amendments to laws which are not within the scope of negotiation and of the collective work conflicts according to law. (art. 157)

Court decisions are enforceable, but may be challenged by appealing.

Consequences of the strike

For clarification purposes, we should mention that, according to legal provisions, only at the express request of the employer, courts may decide, in case of illegal strike, to grant penalties and compensations in proportion to the financial or property losses. Unions create, as a rule, a strike fund, in order to be able to support the actions and consequences of strike.

The right to collective action, broadly (rally, protest, picket, collective conflict and strike, amicable settlement and representation in court of collective interests), is recognized for all the union organizations, according to the law regarding social dialogue. (art. 27, 28).

The parties entitled to initiate collective work conflicts, in the meaning of the law regarding social dialogue and strike, as an extreme form of collective conflict, are the representative union and, in its absence, the employees' representatives, elected by employees, who may be

representatives of „non-representative" unions, given that the law makes no distinction between union representatives and representatives of non-affiliated employees, leaving the employees the freedom to elect the representatives to defend their interests.

Article 21 The right to information and consultation

The Law no. 467/2006 regarding the general framework of information and consultation of employees transposes in full Directive 2002/14/EC, which aims at information and consultation of employees through their representatives (collective information).
The individual information of employees as regards matters related to working conditions and to labor organization is the obligation of the employer, according to the dispositions of the Law no.53/2003 - The Labor Code, republished, as amended and supplemented.

Article 28 The right of workers' representatives to protection in the undertaking and facilities to be accorded to them

According to national legislation, the representatives elected in the management bodies of unions, as well as the employees' representatives are provided protection of the law against any forms of conditioning, constraint or limitation to exercising their duties.

Thus, art. 226 in the Labor Code sets forth that, throughout their fulfilling their mandate, the employees' representatives may not be discharged for reasons related to the fulfillment of the mandate they were granted by the employees.

Similar dispositions govern measures of protection of the representatives elected in the management bodies of unions, namely art. 220 par.2 in the Labor Code.

Further, other measures of protection of the persons elected in the management bodies of unions are set forth in special laws and in the applicable collective labor agreement.

Pursuant to the provisions of art. 237 in the Law no. 53/2003 - The Labor Code, the enforcement of the general and special regulations in matters of employment relationships, labor health and safety is subject to the control of Labor Inspection, as a specialist body of the central public administration, such institution having jurisdiction as regards controlling the compliance with labor legislation.

Based on the facts mentioned above, we consider that the regulations of the national legislation provide for efficient protection of the representatives elected in the management bodies of unions, as well as of the employees' representatives against the employers' abuses, they having thus the possibility to notify the Labor Inspection and the courts of law with jurisdiction, should their rights be violated.

We consider that union leaders enjoy increased protection, in the form of a legal guarantee against potential constraint, blackmail or repression actions, meant to prevent the fulfillment of their mandate, conceived for the purpose of respecting union freedom.

Protection ensured for the workers' representatives

The provisions of the Labor Code (art. 221-226) set forth protection against dismissal of employees' representatives, based on their mandate of defenders of the employees' interests. The duties of the employees' representatives, the manner of fulfilling them, as well as the duration and limits of their mandate are established at the general assembly of employees, according to law. (art. 224)

Extended or additional protection measures may be established, according to legal provisions, under the collective labor agreements, or by direct negotiation with the employer.

As an actual example of extension of protection through collective negotiation, set forth in the clauses of the collective labor agreement, we mention as illustration the Collective Agreement concluded in 2015, at the level of Agenţia pentru Plăţi şi Intervenţii în Agricultură (The Agency for Payments and Interventions in Agriculture) which, in chapter VI, articles 58-89, stipulates expressly the protection and facilities granted to the union, to union representatives and union members, in addition to those set forth by law, as regards non-discrimination and the objective attitude of the employer towards the union leaders and members (against harassment), protection against suspension of the employment relationship up to two years after the expiry of the mandate in the union management, priority access of the union to the management, for settlement of union problems, the possibility of inviting in the Management Board the union representatives (with right to opinion), a number of free days paid by the employer in proportion to the duties of the union elected (3-5 days), free office space (and office facilities) for carrying out union activity, a car at the disposal of the union management for union travel, etc.

Other forms of protection set forth by the Labor Code and the Law regarding social dialogue refer to forbidding constraint and prevention of union activity and the discrimination treatment for reasons related to union activity or union membership, as well as including the facilities and additional protection of the union elected/employees within the scope of collective negotiation or direct negotiation with the employer.

The adoption of the new Criminal Code, which introduces harassment as a crime, as well as O.G. no. 137/2000 regarding the prevention and punishment of any forms of discrimination are legal bases for punishment of harassment and of harassment in the workplace. The injured persons, notwithstanding their capacity, may prove harassment by various means of evidence, allowed by the legislation in force, such as: photos, declarations, documents, audio-video recordings, emails, and may address several authorities, as the case may be: the National Council for Combating Discrimination (CNCD), Labor Inspection, courts of law or Anti-Mobbing Centers.

Facilities granted to employees' representatives

Labor legislation leaves the collective or direct negotiation with the employer to establish the additional facilities for the employees' representatives, according to the decisions of the general assembly.

Workers' representatives within Labor Health and Safety Committees do not exercise union prerogatives, having duties related to the information and participation of employees in the implementation of the labor health and safety rules. The representatives are elected from among the employees with competences in such matters, according to the provisions of the collective labor agreement, the internal regulation or the regulation of organization and operation. The Committee (employer's members and employees' representatives) cooperates directly with the Labor Inspection.

Discrimination and harassment in the workplace are punished according to legal provisions, and compensations and damages may be requested in court, upon enforcement of the Labor Code (art. 253).

The Committee's Conclusion – failure to comply with art. 28, because the protection guaranteed to employees' representatives is not extended for a reasonable period of time, after the expiry of their mandate.

Citizens' equality before the law is stipulated by the Romanian Constitution (art. 16).

The protection against dismissal, guaranteed by the Labor Code to the employees' representatives is related to the duration of their mandate as defenders of the employees' interests, granted to them by the general assembly of employees.

The Decision of the Constitutional Court of Romania no. 681/2016 established as unconstitutional the granting of extended protection against dismissal to the union elected, after the expiry of their representation mandate, because it establishes a privilege in the

objective situation of elimination of the job held (dismissal for reasons that are not imputable to the employee), when employees are in an analogous situation before the law, notwithstanding their capacity, the dismissal as an act not being related to union activity.

The dispositions of labor legislation and social dialogue legislation include within the scope of collective negotiation and of direct negotiation with the employer the additional facilities and protection, which may envisage both the union elected and the employees' representatives.

Article 29 – The right of information and consultation in collective redundancy procedures

According to art. 69 par.(1) in the Labor Code, if the employer intends to proceed to collective redundancies, it has the obligation to initiate in due time and for the purpose of reaching an agreement, in the conditions set forth by law, consultations with the union or, as the case may be, with the employees' representatives, as regards at least:

a) the methods and means to avoid collective redundancies or the reduction of the number of employees to be made redundant;

b) the mitigation of the consequences of redundancies, by implementing social measures envisaging, among other, support for the professional requalification or reconversion of the employees made redundant.

Redundancies caused by not complying with the procedure prescribed by law are subject to absolute nullity, as set forth by the dispositions of art. 78 in the same law.

Annex 1

Master Table[6] of case law 2013 - 2016			
Decision no.	Judgment	Fine	Year
162/03.04.2013	no discrimination		2013
275/15.05.2013	case dismissal		2013
564/19.09.2013	no discrimination		2013
326/22.05.2013	non-jurisdiction CNCD		2013
668/13.11.2013	discrimination		2013
668/13.11.2013	discrimination		2013
372/04.06.2013	non-jurisdiction CNCD		2013
49/22.01.2014	no discrimination		2014
575/02.10.2013	no discrimination		2014
5/15.01.2014	no discrimination		2014
721/11.12.2013	no discrimination		2014
279/14.05.2014	discrimination		2014
84/29.01.2014	no discrimination		2014
126/19.02.2014	no discrimination		2014
140/26.02.2014	no discrimination		2014
458/27.08.2014	tardiness		2014
261/30.04.2014	case dismissal		2014
280/14.05.2014	discrimination		2014
280/14.05.2014	discrimination		2014
307/28.05.2014	non-jurisdiction CNCD		2014
285/21.05.2014	discrimination		2014
166/12.03.2014	non-jurisdiction CNCD		2014
513/17.09.2014	no discrimination		2014
256/30.04.2014	case dismissal		2014
154/12.03.2014	non-jurisdiction CNCD		2014
358/26.06.2014	no discrimination		2014
516/17.09.2014	no discrimination		2014
715/10.12.2014	Passive discrimination		2014
	1 - discrimination	fine lei 2000	
587/22.10.2014	discrimination	fine lei 3000	2014
306/28.05.2014	no discrimination		2014
	1 - non-jurisdiction CNCD	2 - fine lei 2000;	
	2 - discrimination	4 – fine lei 2000	
	3 - no discrimination		
	4 – discrimination		
202/09.03.2016	1 - non-jurisdiction CNCD		2014
	2 - no evidence		2014
	3 - no evidence		2014
	4 - no evidence		2014

[6] Master Table provided by the National Council for Combating Discrimination.

	5 - no evidence		2014
650/05.11.2014	1 - discrimination,	1 - fine 2000	2014
	2 - discrimination	2 - fine 2000	2014
	3 – discrimination	3 – fine 2000	2014
651/05.11.2014	non-jurisdiction CNCD		2014
630/29.10.2014	non-jurisdiction CNCD		2014
26/14.01.2015	discrimination	fine lei 2000	2015
187/07.04.2015	discrimination	fine lei 5.000	2015
	No capacity to be sued		
371/02.09.2015	1 - no discrimination	lei 2000, publishing the summary, recommendation	2015
	2 - discrimination		
312/01.07.2015	no discrimination		
342/22.07.2015	1 - discrimination	fine lei 30000	2015
	2 - discrimination	publishing the summary	
	3 - discrimination		
415/16.09.2015	discrimination	fine lei 2000	2015
136/17.02.2016	1 - no discrimination		2015
	2 - no discrimination		
	3 - no discrimination		
	4 - no discrimination		
443/07.10.2015	no discrimination		2015
520/27.07.2016	no discrimination		2015
343/22.07.2015	no discrimination		2015
406/16.09.2015	no discrimination		2015
558/25.11.2015	no discrimination		2015
433/30.09.2015	non-jurisdiction CNCD		2015
327/22.07.2015	no capacity to sue		2015
330/22.07.2015	no discrimination		2015
308/24.06.2015	no discrimination		2015
257/27.05.2015	discrimination	fine lei 5000	2015
205/16.03.2016	non-jurisdiction CNCD		2015
151/24.02.2016	case dismissal	not mentioning the petition	2015
574/25.11.2015	case dismissal	no data	2015
505/11.11.2015	no discrimination		2015
401/09.09.2015	non-jurisdiction CNCD		2015
204/16.03.2016	non-jurisdiction CNCD		2015
454/14.10.2015	case dismissal		2015
455/14.10.2015	case dismissal		2015
386/02.09.2015	No subject matter		2015
354/12.08.2015	non-jurisdiction CNCD		2015
305/24.06.2015	case dismissal		2015
67/27.01.2016	no discrimination		2015
551/18.11.2015	no discrimination		2015

453/14.10.2015	case dismissal		2015
389/02.09.2015	discrimination	warning	2015
598/09.12.2015	discrimination	fine lei 20,000	2015
520/11.11.2015	non-jurisdiction CNCD		2015
124/10.02.2016	no discrimination		2015
285/06.04.2016	no discrimination		2015
391/02.09.2015	no discrimination		2015
550/07.09.2016	case dismissal		2015
529/18.11.2015	non-jurisdiction CNCD		2015
253/23.03.2016	no discrimination		2015
411/16.09.2015	non-jurisdiction CNCD		2015
490/04.11.2015	1 - non-jurisdiction CNCD	fine lei 20,000	2015
	2 - case dismissal		
	3 - tardiness		
	4 - discrimination		
333/22.07.2015	non-jurisdiction CNCD		2015
402/09.09.2015	non-jurisdiction CNCD		2015
334/22.07.2015	non-jurisdiction CNCD		2015
335/22.07.2015	case dismissal		2015
339/22.07.2015	discrimination warning		2015
565/25.11.2015	case dismissal		2015
94/03.02.2016	discrimination	fine lei 5000, publishing the summary	2016
56/20.01.2016	non-jurisdiction CNCD		2016
494/11.11.2015	case dismissal		2016
165/24.02.2016	non-jurisdiction CNCD		2016
124/10.02.2016	no discrimination		2016
144/17.02.2016	non-jurisdiction CNCD		2016
425/15.06.2016	no capacity to be sued		2016
330/27.04.2016	discrimination	fine 1000 lei, publishing the summary	2016
327/27.04.2016	case dismissal		2016
450/29.06.2016	non-jurisdiction CNCD		2016
477/21.10.2015	non-jurisdiction CNCD		2016
77/27.01.2016	no discrimination		2016
760/23.11.2016	case dismissal		2016
630/12.10.2016	no capacity to sue		2016
272/06.04.2016	tardiness		2016
371/18.05.2016	discrimination	fine lei 5000	2016
652/26.10.2016	non-jurisdiction CNCD		2016
266/30.03.2016	no discrimination		2016
293/06.04.2016	non-jurisdiction CNCD		2016
377/25.05.2016	no discrimination		2016
577/14.09.2016	discrimination	fine lei 5000, publishing the summary	2016
56/20.01.2016	non-jurisdiction CNCD		2016

67/27.01.2016	no discrimination		2016
77/27.01.2016	no discrimination		2016
124/10.02.2016	no discrimination		2016
136/17.02.2016	1 - no discrimination,		2016
	2 - no discrimination;		
	3 - no discrimination;		
	4 - no discrimination		
144/17.02.2016	non-jurisdiction CNCD		2016
151/24.02.2016	Case dismissal	not mentioning the petition	2016
165/24.02.2016	non-jurisdiction CNCD		2016
202/09.03.2016	1 - non-jurisdiction CNCD;		2016
	2 - no evidence;		
	3 - no evidence;		
	4 - no evidence;		
	5 - no evidence		
204/16.03.2016	non-jurisdiction CNCD		2016
205/16.03.2016	non-jurisdiction CNCD		2016
253/23.03.2016	no discrimination		2016
266/30.03.2016	no discrimination		2016
272/06.04.2016	tardiness		2016
285/06.04.2016	no discrimination		2016
293/06.04.2016	non-jurisdiction CNCD		2016
315/20.04.2016	1 – non-jurisdiction CNCD;		2016
	2 - no capacity to be sued;		
	3 - tardiness		
327/27.04.2016	case dismissal	no data	2016
377/25.05.2016	no discrimination		2016
425/15.06.2016	No capacity to be sued		2016
450/29.06.2016	non-jurisdiction CNCD		2016
454/29.06.2016	discrimination	fine lei 1,000	2016
520/27.07.2016	no discrimination		2016
550/07.09.2016	case dismissal	No data	2016
580/21.09.2016	1 - discrimination,	1 - lei 10000,	2016
	2 - discrimination,	2 - lei 10000,	
	3 - discrimination,	3 - lei 20000,	
	4 - discrimination	4 - lei 10000 , publishing the summary	
630/12.10.2016	no capacity to sue		2016
652/26.10.2016	non-jurisdiction CNCD	opinion	2016
675/26.10.2016	Case dismissal		2016
707/09.11.2016	case dismissal	no data	2016
735/09.11.2016	non-jurisdiction CNCD		2016
747/16.11.2016	non-jurisdiction CNCD		2016
760/23.11.2016	case dismissal	No data	2016
775/07.12.2016	Correction of material		2016

	error		
94/01.02.2017	discrimination	fine 5000, publishing the summary	2017
14/11.01.2017	no capacity to sue		2017
34/18.01.2017	non-jurisdiction CNCD		2017
75/01.02.2017	no capacity to sue		2017
9/11.01.2017	case dismissal	Petition withdrawal	2017

Decisions involving fines, which are relevant to illustration[7]

DECISION NO. 26
dated 14.01.2015.

Complainant: Poșta Română Constanța Union
Complainee: The National Company Poșta Română

Subject matter: Different treatment of the complainant by the complainee.

Subject matter of notification and description of the alleged discrimination deed

2.1 The Complainant contends that, within Poșta Româna S.A, several union organizations were set up; among them, the largest organization, which was also granted in court the status of a representative union, is "Sindicatul Lucrătorilor Poștali din România" („The Romanian Mail Workers Union". The latter, through its representatives, made pressures so that the members of "Sindicatul Poșta Română Constanța" („Constanta Romanian Mail Union") leave the organization. In order to determine them to do this, the complainee refused to maintain on the payroll the related union fee.

Parties' Contentions

Complainants' Contentions
The Complainant contends that several union organizations were set up within "Poșta Româna S.A"; among them, the largest organization, which was also granted in court the status of a representative union is "Sindicatul Lucrătorilor Poștali din România" („The Romanian Mail Workers Union"). After the adoption of the Law no. 62/2011, the requirements for the representativeness of union organizations were changed. In this context, the claimant contends that Mr. Matei Brătianu, former Member of Parliament on part of PSD, set up and led the unions set up within the company in every county, being as such incompatible with his positions.
Therefore, the complainant contends that there was an incompatibility between Mr. M B's office as a Member of Parliament and his position in the union federation; most member unions, being under influence or constraint, decided, at the initiative of the same former president, to set up a new Union. „Then, our organization refused to take part in that undertaking and to merge within the new union organization. In this manner, Mr. MB overcame the incompatibilities set forth by law between his office as a member of the Parliament and his position of a President of the federation or of a union federation. The Law 161/2003 does not set forth the incompatibility between the office of a Member of Parliament and the position of a president of a union. Further, taking advantage of the culpable complicity of the company managers, members of the same political party he is a member of, one achieved the amendment to the collective labor agreement of CN POSTA ROMANA SA 2008 -2018, concluding an addendum in 2012, whereby the social partner is no longer Federaţia Sindicatelor din Posta si Comunicaţii (the Federation of Mail and Communications Unions), the initial signatory (an organization our union is also a member of), but only Sindicatul Lucratorilor Poştali din România – namely the union led by M B".
As a consequence, the complainant contends that a lot of members of the organization waived their membership in that union and decided to enroll in his organization or in one of the other unions legally set up within the company; „...through the company management, a wide campaign of threats and pressures on our members was launched, in order to determine them to withdraw from the organization". „Given that these actions had no effect, and the number of our members increased constantly, whereas the number of the members of the union led by M B, supported by the company board of directors, decreased, the company management advised us that, starting from 14.07.2014, would no longer maintain on the payroll the related union fee, considering that they had such obligation only to Sindicatul Lucratorilor Poştali din România, and not to other organizations". „We consider that this decision of CN POSTA ROMÂNĂ

[7] Decisions provided by Consiliul Național pentru Combaterea Discriminării (The National Council for Combating Discrimination.

S.A is unlawful, contravening completely to the legal dispositions that warrant equal treatment of all employees, notwithstanding their membership in one union organization or another".

The Complainee's Contentions

The Complainee represents that, within "C.N POȘTA ROMÂNĂ S.A", several union organizations were set up; among them, the one that was granted the status of a representative union under the Civil Sentence no.3182/20.09.2011, pronounced by Vaslui Tribunal in the file no. 6445/333/2011, is "Sindicatul Lucrătorilor Poșta Română" („The Romanian Mail Workers' Union"). "We should mention that, after the adoption of the Law no.62/2011, there is no legal possibility for the employees to be represented at the entity level by a federation, such role being allowed only to a union, pursuant to art. 223 corroborated with art. 51 par. 1 letter c in the Law no. 62/2011. Therefore, for being still able to defend the employees' interests, the federation unions decided to reorganize, so that to meet the new requirements/ legal dispositions, and also for being able to take over fast and efficiently all the duties within the relationship with the employer, duties that were previously held by the federation; thus, „Sindicatul Lucratorilor Poştali din România" was set up, acquiring the capacity of a representative union. Therefore, the reason behind the creation of SLPR was to be a successor of the federation, within its relationship with the employer, and a representative of the employees at the level of CNPR SA, pursuant to the dispositions under art. 222 par. 3 final thesis in the Law no. 62/201, setting forth that: „In the event an employer or a union organization, a signatory of a collective labor agreement, loses its capacity of a representative organization, any party entitled to negotiate the relevant collective labor agreement is entitled to request the renegotiation of the relevant collective labor agreement before its expiry. If renegotiation is not sought for, the relevant collective labor agreement shall remain in force until the expiry of the term it was concluded for".

3.5 The Complainee, as regards the failure to withhold the union fee from the members of „Sindicatul Posta Romana Constanta", contends that, pursuant to the dispositions of the Law regarding social dialogue no. 62/2011, as subsequently amended and supplemented, there are no provisions concerning the employer's obligation to withhold the fee owed by the union members. Pursuant to the dispositions under art. 24 in the Law no. 62/2011, the legislator governed the tax matters related to the fees paid by the union members, in corroboration with the provisions of the Fiscal Code and, in no case, methods of collecting the union fee owed by the union members". „We should mention that ensuring equal treatment does not necessarily mean uniformity, not considering the particularities and different circumstances of specific requirements".

De facto and de jure reasons

The CNCD Steering Board has retained that the petition filed describes a situation in which the complainee applies a different treatment to the complainant and the other unions within C.N POSTA ROMÂNĂ S.A.

As regards the definition of discrimination as regulated in O.G. no. 137/2000, as republished, the Steering Board mentions that, in case of persons who are treated differently, the relevant treatment is due to their qualification for one of the criteria set forth in the law, namely art. 2 in O.G. no.137/2000, as republished. The Steering Board should review whether the different treatment was applied due to some criterion set forth under art.2 par.1), namely race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, chronic, not contagious disease, HIV infection, membership in a disadvantaged category, which was the determining factor for applying such treatment; or the criterion requirement as a determining factor should be constructed for the purpose of existence as a concrete, materialized circumstance, which is the cause of the discriminatory action or deed and which, in the event of inexistence, would not determine discrimination. Thus, the nature of discrimination, as regards what makes it so, arises exactly from the fact that the different treatment is determined by the existence of a criterion, a fact that involves a cause-effect relation between the different treatment applied and the criterion forbidden by law, invoked in the case of the person that considers themselves discriminated. The Steering Board, according to the documents submitted in the case file by the complainant has found that the complainee refuses to maintain on its employees' payroll the fee for the non-representative union, namely "Sindicatul Poșta Română Constanța". As such, the complainant considers that the complainee,

based on the criterion of membership in a union form of its employees, applies a different treatment to it; „Therefore, by comparison with the other non-representative unions and the representative union (Sindicatul, Lucrătorilor Poșta Română), the complainee makes a discrimination by refusing to withhold from its employees on the payroll the fee for payment of the entitlements due to the union representatives".
Reiterating that the nature of discrimination, as to what makes it so, arises exactly from the fact that the different treatment is determined by the existence of a criterion, a fact that involves a cause-effect relation between the different treatment applied and the forbidden criterion invoked by the person that considers themselves discriminated, the Steering Board observes that a comparability relation may be established in this case. In the case submitted for settlement, the Complainee's deeds consist of refusing to withhold further its employees' fee on the payroll, for the entitlements due to the union management.
Pursuant to O.G no.137/2000, as amended, the Steering Board has found that there are some indications for assuming that a forbidden criterion, as stipulated under art. 2 par.1), art. 2 par. 4) "Any active or passive conduct which, through the effects it generates, advantages or disadvantages without grounds, or applies an unfair or degrading treatment to a person, a group of persons or a community against other persons, groups of persons or communities shall result in civil liability, pursuant to this ordinance, unless subject to the criminal law" was an *obiter dictum* regarding the refusal to withhold on the payroll the fee for the union management of the Constanta Romanian Mail. Such an assumption allows at least assuming that, between a forbidden criterion and the Complainee's deed, there is a cause-effect relation, determining a less favorable treatment between the two unions, which have as their purpose the representation of employees before the Complainee. The Steering Board has decided that the Complainee, namely "Compania Națională Poșta Română S.A", through its legal representative, be punished by a civil fine in amount of lei 2,000 (two thousand) for the different treatment applied to the Complainant, according to art. 26, par. 1) and 2), in O.G no.137/2000, as amended.
Considering those mentioned above, pursuant to art. 20 par. (2) in O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination, as republished, with the unanimity of votes of the members attending the meeting,

THE STEERING BOARD
HAS DECIDED AS FOLLOWS:

1.As regards the Complainant's petition - it is a discrimination deed, pursuant to the provisions under art. 2 par.1) and par. 4) "Any active or passive conduct which, through the effects it generates, advantages or disadvantages without grounds, or applies an unfair or degrading treatment to a person, a group of persons or a community against other persons, groups of persons or communities shall result in civil liability, pursuant to this ordinance, unless subject to the criminal law ".
2.Punishment of the Complainee, "Compania Națională Poșta Română S.A", by a civil fine in amount of lei 2,000 (two thousand) for the different treatment of the Complainant, pursuant to art. 26, par. 1) and 2), in O.G no.137/2000, as amended.

The Decision No. 94
of 03.02.2016

Complainant: „Poștașul Român" National Union
Complainee: „Poșta Română" National Company

Subject matter of the petition and description of the alleged discrimination deed
In the petition filed, the Complainant shows that the Complainee applied a different treatment to the members of the non-representative union against the ones of the representative union. In this case, the Complainee issued an address advising the union that, as of 14.07.2015, no withholdings of the union fee were to be made on the payroll. The Complainee mentions also

that it has the obligation to withhold the fee only for the members of the representative union, at the entity level.
It shows that there is a different treatment between unions, aiming at reducing the number of members of non-representative unions and the movement of members towards the representative union.

The Parties' Contentions
The Complainant's Contentions
On 07.07.2014, the Complainee issued the Complainant an address, advising the Complainant that, as of 14.07.2014, the Complainee would not proceed to withholding the union fee on the payroll for the Complainant's members. Further, it mentions that the Complainee does not have the obligation to withhold the fee, unless is for the members of the representative union at the entity level.
Following this address, the Complainant requested the Complainee to proceed further to withholding the union fee, according to the written request from the union members, considering that neither the social dialogue law, nor the provisions of the collective labor agreement provide for the obligation to withhold the union fee only for the members of the representative union at the entity level.
The Complainee showed that the withholding could not be performed, given that the Complainant is not a representative union at the entity level or a signatory of the collective labor agreement.
The Complainee decided to apply a different treatment to the employees. Such treatment is different both for the members of the representative union and for the other employees, who are members of some non-representative unions, for whom the withholding is performed.
The Complainee, as an employer, cannot decide not to withhold the fee for its employees, as members of the complainant union, because there is no collective labor agreement between the Complainant and the Complainee, given that the collective labor agreement applicable at the company level is applied to all the company employees, notwithstanding that some of them are represented by the union that is a signatory of the collective labor agreement.
It is also showed that the Complainee, by its attitude, restrains the freedom of association of the employees, in the meaning that, by refusing to apply an equal treatment to the company employees, notwithstanding their membership in a union organization, it aims to make the employees leave the complainant union and join the representative union.
The mentions stated retain that the Complainant requested the Complainee to withhold the union fees for its members, by a written request accompanied by a master table containing the employees' identification data, as well as the statements by which they consent to the withholdings.
Further, we should mention that both on the date when the petition was filed and at this moment, the dispositions under art. 24 in the Law no. 62/2011 regarding social dialogue have been in force, with the following content: "The fee paid by the union members is deductible in amount of maximum 1% of the gross income earned, according to the provisions of the Fiscal Code."
The Complainant considers that the employer and its representative apply a different, discrimination treatment to the employees of CNPR, based on their membership in a union organization, requesting the discrimination deed be retained, the consequences of discrimination be removed, the situation prior to discrimination be restored, and the punishment of the Complainee be ordered.
As regards the objection to the capacity to be sued, its rejection is requested, on the grounds that the petition is accompanied by a power of representation of the union to represent the interests of the union members.
The Addendum to the collective labor agreement invoked by the Complainee is dated April 2012. In the period between April 2012 (after the effective date of the Addendum) and the date of the address from July 2014 mentioned, the employer withheld the union member fee also for the employees of SNPR (the Complainant herein). Therefore, the employer's representative may not base its decision from 2014 on and Addendum from 2012, given that, in the period April 2012-July 2014, the employer withheld the fees for all the company employees – union members, provided that the union submitted the employer its request in this respect and the annex containing the employees' agreement on such withholding.

The only changed element between April 2012 and July 2014 is the general manager of the employer. As of June 2014, the current general manager was appointed. Since then, the only union for which withholding was continued was the representative union, as acknowledged also in the address no. 101/2835/07.07.2014.
It has been also retained that no agreement was concluded between the representative union and the employer, under the conditions in art. 153 in the Law regarding social dialogue, but the relationship is based strictly on the provisions of the collective labor agreement, as amended by the addenda.
Even if invoking the provisions of a yet not promulgated law, which, as such, is not in force, these neither can be withheld for the benefit of the employer, given that art. 24, as proposed to be amended, comes with an additional requirement, namely the need for the express agreement of the union members on withholdings.
The request of the complainant union has been always accompanied by the employees' agreement and by their master table.
The invocation of the dispositions of art. 133 in the Law regarding social dialogue cannot be retained in the defense of the employer, given that the complainant union filed this petition exactly for complaining about the discrimination character of the employer and of its representative against the employees – union members of SNPR. The petition did not complain about the discrimination character against the union but only against the employees – union members of SNPR, given that, for them, due to their membership in SNPR, withholding the fee was refused.
The Council's decision no. 26 of 14.01.2015 is also mentioned, the Complainee, through its legal representative, being punished.
As regards the invocation of the dispositions of the Timisoara Court of Appeal, it has retained that legal practice is not a law source in the Romanian law system and, as such, one should consider the evidence taken in this case.
In conclusion, it considers that the employer and its representative apply a different, discrimination treatment to CNPR employees, based on their membership in SNPR. By this discrimination conduct, the employer aims that SNPR decreases is number of members, through their migrating to the representative union.

The Complainee's Contentions
The Complainee invokes the Complainant's lacking capacity to sue, given that the requirements set forth in art. 28, par. 2 in the Law no. 62/2011 regarding social dialogue are not met, namely the missing power signed by the union members containing their agreement on being represented by the complainant union.
In fact, by the address no. 101/2835/07.07.2014 issued by the Complainee, the Complainant was advised that, as of 14.07.2014, the Complainee would not withhold any longer the union fees on payroll for the members of the complainant union. Further, it was mentioned that the Complainee did not have the obligation to withhold the fee, unless for the members of the representative union at the entity level.
It was mentioned that, as regards the Complainee, several union organizations were set up; among them, the one that acquired the status of a representative union under the civil sentence no. 3182/20.09.2011, pronounced by the Vaslui Tribunal in the file no. 6445/333/2011, is Sindicatul Lucrătorilor Poştali din România (SLPR).
The Complainant's contentions according to which "neither the Law regarding social dialogue, nor the provisions of C.L.A. provide for the employer's obligation to withhold the union fee only for the employees that are members of the representative union at the entity level" are groundless, given that the provisions of art. 63 in the Addendum no. 27/17.04.2012 restated the dispositions of art. 133 in C.L.A. 2008/2018, reading now as follows: „ For purposes of application of the provisions of art. 24 in the Law no.62/2011- the Law regarding social dialogue and at the request of S.L.P.R.(Sindicatul Lucrătorilor Poştali din România), CNPR shall withhold and transfer the fee for the union members as withheld on the monthly payroll. At the same time, one shall proceed to the tax deduction of the fee from the monthly income of the union member, according to legal provisions. The withholding and tax deduction of the fee are to be performed at the request of SLPR, accompanied by the list of the union members for whom the union fee is to be withheld and transferred. The list shall be submitted to CNPR at the beginning of every year, and shall be updated whenever required by SLPR. From the fee withheld, a share

notified by SLPR shall be transferred into its account, while the remainder into the account of the union structures notified by SLPR. The liability for the data submitted stays in full with SLPR".
As regards the tax treatment applicable to the union member fee, both for the members of Sindicatul Lucrătorilor Poştali din România and for the members of Sindicatul Naţional Poştaşul Român, we should mention that this is an equal tax treatment for all the members, for the following reasons:
The dispositions of the Law regarding social dialogue no. 62/2011, as subsequently amended and supplemented, contain no provisions regarding the employer's obligation to withhold the fee owed by union members.
By the disposition of art. 24 in the Law no. 62/2011 regarding social dialogue, the legislator regulated tax issues regarding the fees paid by union members, in corroboration with the provisions of the Fiscal Code and, in no way, methods of collecting the union fee owed by union members, setting forth as follows: „the fee paid by union members is deductible in amount of 1% of the gross income earned, according to the provisions of the Fiscal Code."
The Law amending and supplementing the Law regarding social dialogue no. 62/2011, in the form submitted for promulgation, introduces new regulations regarding the possibility for the employers to withhold and transfer the union fee on the monthly payroll, at the request of union organizations and with the prior agreement of their members, in the meaning that, under art. I point 2 in the law submitted for promulgation, „Art. 24 in the Law no. 62/2011 is supplemented by a new paragraph, setting forth that, at the request of union organizations and with the prior agreement of their members, the employers should withhold and transfer to the union the union fee on the monthly payroll".
The case law of the European Court of Human Rights retained that: "although salary entitlements are not real rights such as the ownership title, but claims, as regards their protection, they are considered property, being set forth that the notions of "asset" and "property" have a meaning that << is not limited to the ownership title to physical property, but contains also other property-related rights and interests."(case Beyler vs. Italy, 2000).
Therefore, salary entitlements are subject to the provisions of art. 44 in the Constitution and of art. 1 paragraph 1 in the First Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, which stipulates that: „Any individual or legal entity is entitled to the respect of their property. No one can be deprived of their property, unless in case of public use and in the conditions set forth by law and by the general provisions of international law".
Further, according to the dispositions of art. 167 par. (1) in the Labor Code, „the salary should be paid directly to the owner or the person empowered by them". The President of the country submitted to the Upper Chamber for review the Law regarding social dialogue, considering that „the employer may not withhold and transfer the union fee on the monthly payroll, at the request of union organizations, because the salary according to the Labor Code should be paid directly to the owner".
The tax deductibility of the union fee is governed by the Rules of application of the Fiscal Code. The provisions of art. 111^2 in the Rules of application of the Fiscal Code, as approved by HG no. 44/2004, as subsequently amended and supplemented, set forth expressly that: ,,As regards the amounts paid directly by the employee, a union member, for determining the basis for calculation of the salary income tax, the union fee paid should be deducted, to the extent set forth by law, from the incomes earned in the month in which the fee was paid, based on the supporting documents issued by the union organization".
Pursuant to the provisions of art. 169 in the Labor Code ,,no salary withholding may be performed, except for the cases and in the conditions set forth by law".
Ensuring equal treatment does not necessarily mean uniformity, not considering particularities, different situations or specific requirements.
Art. 153 in the Law no. 62/2011 sets forth that: "according to the principle of mutual recognition, any legally created union organization may conclude with an employer or with an employer organization any other kinds of agreements, conventions or arrangements in a written form, which represent the law of the parties and whose provisions are applicable only to the members of the signatory organizations".
Therefore, „unless concluding with the employer an agreement, a convention or an arrangement in a written form, establishing their obligation to withhold on the payroll the fee of the

members of the non-representative union and to transfer it to the latter, as well as in the absence of a legal regulation regarding such employer's obligation, a non-representative union within the entity is not discriminated by comparison with the representative union within the same entity, which agreed in a clause in the collective labor agreement at the entity level on such an obligation of the employer, and the employer is not obliged to withhold on the payroll the fee of the member of the non-representative union and to transfer it to the latter, so that such fee has a contractual source" – Decision of Timişoara Court of Appeal.
Based on the facts presented, it considers that the opinion stated in the address no. 101/2835/07.07.2014 complies with the legal provisions in force and is not liable to create discriminations between employees, as regards the tax treatment prescribed by law, according to the distinctions set out above.
The Complainee requests to be taken into consideration also the provisions of the Law no. 62/2011 regarding social dialogue, as well as the dispositions of art. 111A2 in the Rules of application of the Fiscal Code, as approved by HG no. 44/2004, as subsequently amended and supplemented, retaining that the refusal to withhold the fee is not discrimination, and such measures are justified objectively by a legitimate purpose.
Thus, for the reasons invoked, it requests the dismissal as ungrounded of the Complainant's contentions "given that the opinion stated by CN Poşta Română SA in the address no. 101/2835/07.07.2014 is not liable to create discriminations between employees, as to the tax treatment prescribed by law".
As regards the tax treatment applicable to the union member fee, both for the members of Sindicatul Lucrătorilor Poştali din România and for the members of Sindicatul Naţional Poştaşul Roman, it emphasizes that this is an equal tax treatment for all the union members.
The Complainant contends that, both on the date when the petition was filed and currently, the dispositions of art. 24 in the Law no. 62/2011 regarding social dialogue are in force, as follows: "the fee paid by union members is deductible in amount of maximum 1% of the gross income earned, according to the provisions of the Fiscal Code". The Complainee mentions that it invoked the law mentioned by the Complainant, and emphasized that, by the dispositions of art. 24 in the Law no. 62/2011 regarding social dialogue, the legislator regulated the tax issues related to the fees paid by union members, in corroboration with the provisions of the Fiscal Code and, in no way, methods of collecting the union fee owed by union members.

De facto and de jure reasons
De facto, the Steering Board has retained the existence of a different treatment applied by the Complainee, between the Complainant and the other unions, by not withholding on the payroll the union fee.
De jure, pursuant to the dispositions of art.63 in the Internal Procedure of Adjudication of Petitions and Complaints, setting forth that „(1) The Steering Board shall rule first the procedure objections, as well as the objections on the merits that do not require, in full or in part, the review of the merits of the petition.(2) The objections may be unified with the merits, if it is necessary to take evidence regarding the adjudication of the petition on the merits.
In the opinion stated, the Complainee invokes the lacking capacity to sue of the Complainant, on the grounds that the power of the union members is missing. The Steering Board has retained that there is in the file – sheets 17-35 – a table of powers of the union members, exactly for being represented before the Board. Considering the Parties' contentions and the documents submitted in the file, the Board is to dismiss the objection invoked and to review the merits of the petition.
Pursuant to art. 2 par. 1 in O.G. no. 137/2000 regarding the prevention and punishment of any kinds of discrimination, as subsequently amended and supplemented, republished, it is considered discrimination "any differentiation, exclusion, restriction or preference, based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection or falling into a disadvantaged category, which has as its purpose or effect the restriction or removal of recognition, use or exercising under equal conditions human rights and fundamental freedoms or the rights recognized by law, in the political, economic, social and cultural fields or any other fields of public life".
Pursuant to art. 7, letter f in O.G. no. 137/2000, regarding the prevention and punishment of any kinds of discrimination, as subsequently amended and supplemented, republished, is

considered contravention, according to this ordinance, the discrimination of any person on the grounds of belonging to a certain race, nationality, ethnicity, religion, social category or a disadvantaged category, respectively due to their beliefs, age, gender or sexual orientation, in an employment and social protection relationship, except for the cases set forth by law, as expressed in the following matters: f) the right to join a union and access to the facilities granted by it.

A deed may be considered a discrimination deed, if meeting cumulatively several conditions:

- The existence of a different treatment expressed by differentiation, exclusion, restriction or preference (the existence of some persons or situations in comparable positions)
- The existence of a discrimination criterion pursuant to art. 2, par.1 in O.G. no. 137/2000, as republished. According to law, the discrimination criteria are: race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection, falling into a disadvantaged category, as well as any other criterion.
- The different treatment having as a purpose or effect the restriction, removal of recognition, use or exercising under equal conditions some right recognized by law;
- The different treatment not being objectively justified by a legitimate purpose, and the methods of achieving such purpose not being appropriate and necessary.

The Steering Board reviewed the petition considering the constitutive elements of a discrimination deed. Thus, the Steering Board reviewed whether there is a different treatment between different persons found in comparable situations and who are treated differently due to some discrimination criterion. The refusal by the Complainee to withhold the union fee for the Complainant, while such union fee was withheld for the representative union and other unions harms the Complainant, being subject to art. 2 par. 1 and art. 7 letter f in O.G. no. 137/2000 as republished. We should consider that the differentiation, exclusion, restriction or preference should be based on one of the criteria set forth in art. 2, par. 1, but should refer to persons found in comparable situations, treated differently, due to their falling into one of the categories set forth in this law article. The Steering Board reviewed whether there is a criterion that might be retained according to art. 2, par. 1 in O.G. no. 137/2000, as republished, which was the basis for the treatment invoked. The Steering Board has found that the basis of the treatment invoked was the membership in the non-representative union.

As regards the objective justification, in its case law, the European Court of Human Rights has showed that the objective and reasonable justification should aim at a legitimate purpose, and the measure enforced should be proportional to the purpose envisaged; as regards the different treatment based on race, color or ethnicity, the notion of objective and reasonable justification should be construed as strictly as possible (D.H. and others vs. the Czech Republic, 13 November 2007, Sampanis and others vs. Greece, 5 June 2008). When reviewing the legitimate purpose, one should review the existence of such purpose, by comparison with the right infringed upon through differentiation. Upon reviewing the appropriate and necessary method, one should establish whether, by using the chosen method, one is able to reach the desired purpose, and whether there are or not other methods by which that purpose may be reached, without creating a differentiation situation. As regards proving the discrimination deeds, the Steering Board has showed that in discrimination matters, the burden of proof is shared by the Complainant and the Complainee (O.G. no. 137/2000, art. 20 par. 6: „The stakeholder has the obligation to prove the existence of some deeds that enable one to assume the existence of some direct or indirect discrimination, and the person the petition was filed against is responsible to prove that the said deeds are not discrimination.”. Further, pursuant to art. 4 in Directive of the Council 97/80/EC: „Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.”

Sharing the burden of proof is a principle strictly applied in discrimination matters by the European Court of Justice. This principle is applied also by the European Court of Human Rights: „in such matters [discrimination] the burden of proof is reversed, so that if an applicant proves the existence of a different treatment, the Government has the obligation to prove that such differentiation in treatment is objectively justified” (D.H. and others vs. the Czech

Republic, 13 November 2007, Sampanis and others vs. Greece, 5 June 2008); „as regards the existence of some elements liable to be evidence for transferring the burden of proof to the state, there are no procedural impediments to allow evidence or predefined formulae applicable to their assessment; such a conclusion is supported by the free evaluation of evidence, inclusively such a reasoning arises from the deeds and comments of the contract parties; the evidence may arise from the coexistence of some indications or assumptions that are sufficiently strong, accurate and coherent; moreover, the extent of conviction required for reaching a particular conclusion and, as regards this, regarding the distribution of the burden of proof is related inherently to the specificity of the deeds, the nature of the contentions and of the law invoked" (D.H. and others vs. the Czech Republic, 13 November 2007, Sampanis and others vs. Greece, 5 June 2008).
Considering the petition as filed, as well as the documents submitted in the file, it is clear that the Complainant proved the existence of some facts allowing the assumption of the existence of some discrimination, and the Complainee did not prove by the documents submitted that the treatment applied to the Complainant was not based on the criterion invoked by the latter, as set forth by art. 20 par. 6 in O.G. no. 137/2000 regarding the prevention and combating any forms of discrimination, as republished.
Thus, the Complainants showed that the Complainee withheld the union fee both for the representative union and for other non-representative unions, while the response to the request from the Complainant union was based on the fact that the law does not oblige it to withhold the fee. The Complainant showed that the withholding was performed both for the representative union at the entity level, for several subsidiaries of the representative union and for Sindicatul Poşta Română Prahova.
Even if there was not, at that time, any obligation to conclude an agreement with the complainant union, the Complainee performed withholdings for the representative union and also for another union. The difference in treatment becomes discrimination when comparable situations are treated differently, the Complainee having the obligation to treat the complainant union in the same way as the other unions.
The Complainee justifies the failure to withhold the fee for the members of the complainant union and its withholding it for the members of the representative union as a result of the amendment to the collective labor agreement 2008-2016, namely to art. 133, under the Addendum concluded between the Complainee and the representative union, registered with ITM under no. 27/17.05.2012.
However, since the effective date of the addendum until 2014, the employer had performed withholdings of the member fee also for employees that were members of the complainant union.
Therefore, invoking the addendum cannot be an objective justification of the refusal stated by the Complainee.
As regards punishing the discrimination deeds, the Steering Board considered the provisions of the Directives of the European Union in such matters, which requests the European Union member states to enforce effective, proportional and deterring punishments. Proportionality may be ensured by gradually imposing the fine, depending on the severity of the deed, to the extent set forth by law. The Steering Board has retained that the Complainee was punished in the past by a civil fine, in amount of lei 2,000 under the decision no. 26/14.01.2015 (CNCD case 453/2014), for similar deeds.
Pursuant to art. 26 par.1^2 in O.G. no. 137/2000 regarding the prevention and combating any forms of discrimination, as republished and updated, the Council or, as the case may be, the court of law may oblige the party that committed the discrimination deed to publish in mass-media a summary of the decision, respectively of the court sentence.
Considering the reasons presented above, the Steering Board has retained that the constitutive elements of a discrimination deed, as set forth in art. 2 par. 1 and art. 7 letter f) in O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination, as republished, are cumulatively found. The Steering Board considers that, in this case, there are elements evidencing the discrimination deeds the Complainee is accused of.
Based on the facts above, pursuant to art. 20 par. (2) in O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination, as republished, with unanimity of votes of the members attending the meeting,

THE STEERING BOARD
HAS DECIDED AS FOLLOWS:
1. To reject the objection to the Complainant's capacity to sue
2. To retain the existence of a different discrimination treatment pursuant to art. 2 par. 1 and art. 7 letter f) in O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination, as republished;
3. To punish **„Poşta Română"** National Company, represented by its General Manager, Alexandru Petrescu, by a civil fine in amount of lei 5,000, for the deeds set forth under art. 7 letter f) in O.G. 137/2000, as republished, pursuant to art. 26 par. 1 in O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination, as republished.

DECISION 94
of 01.02.2017

Complainant: Sindicatul Liber AIC-MK
Complainees: S.N. Aeroportul Internațional Mihail Kogălniceanu – Constanța S.A.; Sindicatul Independent al S.N. AIMKC S.A.

Subject matter: conditioning the right to negotiate, set forth in art. 97 in C.L.A.; the phrase "initiative" considered as being discrimination

Subject matter of the petition and description of the alleged discrimination deed
In the brief registered under no. 386/27.01.2016, the Complainant shows that the complainee company and the representative union negotiated and inserted in C.L.A. 2015-2016 an article (art. 97), which sets forth that: „The negotiation of individual employment agreements should start at the initiative of one of the signatories of the collective labor agreement."

The Parties' Contentions
The Complainant's Contentions
In the brief registered under no. 386/27.01.2016, the Complainant shows that the complainee company and the representative union negotiated and inserted in C.L.A. 2015-2016 an article (art. 97) contravening to the CNCD sanctions and the provisions of the court judgment, whereby they are again conditioned by the employer or the representative union's initiative in order to have the right to negotiate the employment agreement.

- The Complainant discusses the decision no. 342/2015, by which the National Council for Combating Discrimination found that discrimination deeds were committed against the members of the complainant union.
- one did not proceed according to legal provisions, and this is the reason why, although requests for negotiations were filed, the employer and the representative union condition the right on their „initiative".
- the article complained about sets forth as follows: „The negotiation of individual employment agreements should start at the initiative of one of the signatories of the collective labor agreement."
- thus, the capacity of members of other not obedient union organizations makes the employer to condition this on the existence of some „initiative" of „the signatories of C.L.A..

Contentions of S.N. Aeroportul Internațional Mihail Kogălniceanu S.A.
In the document registered under no. 1434/10.03.2016, the complainee requests to find the injudicious character of the petition, and claims that one should review the effects of C.L.A. on the employees of the company;

- The Complainant's contentions according to which its union members did not benefit from the provisions of C.L.A. are groundless; after the individual employment agreements became effective, their clauses were and still are applied to all the employees;
- according to law, the representative union is the social partner of dialogue in all matters regarding the implementation of C.L.A.;

- according to the considerations of the court of law, within the collective negotiations, the provisions regarding the initiation of the negotiation of IEA were amended, for the purpose of not limiting the employees, in their capacity of parties to this individual employment agreement, their right to initiate the negotiation of IEA;

- when drawing up C.L.A. an editing error was made, so that, in the final form of the article complained about, the phrase „of the collective labor agreement" was deleted (the final form being: The negotiation of individual employment agreements should start at the initiative of one of the signatories");

- it shows that this provision is not limitative, it does not prevent the airport employees from renegotiating IEA, but establishes the obligation of the employer and employees to start the individual negotiation, if requested.

Documents are attached to the file.

Contentions of Sindicatul Independent al S.N. AIMKC S.A.

In the document registered under no. 24/14.032016, submitted at the hearing of 15.03.2016, Sindicatul Independent al S.N. AIMKC S.A. contends as follows:

- C.L.A. is the convention concluded in a written form between the employer or the employer's organization, on the one hand, and the employees, represented by unions or in another manner set forth by law, on the other hand, applicable to all employees, whereby clauses are established regarding working conditions, remuneration, as well as other rights and obligations arising from the employment relationships;

- it is a *sui generis* document, given that the compliance with its regulations is imposed also on the employees that did not take part expressly in their negotiation and signing (the persons employed after the agreement was concluded);

- the legal power of the provisions contained in C.L.A. is similar to the regulations contained in laws;

- it requests the dismissal of the petition as groundless

Documents are attached to the file.

De facto and de jure reasons

De facto, the Steering Board of the National Council for Combating Discrimination (C.N.C.D.) has found that the Complainant is conditioned by the employer's association and the representative union's initiative as regards exercising its right to negotiate the employment agreement (art. 97 in the C.L.A. 2015-2016)

De jure, the Government Ordinance no. 137/2000 regarding combating and punishing any forms of discrimination, as republished (called hereinafter O.G. no. 137/2000), sets forth in art. 2 par. (1) as follows: „According to this ordinance, discrimination means any differentiation, exclusion, restriction or preference, based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection, falling into a disadvantaged category, as well as any other criterion with the purpose or effect of restraining, eliminating the recognition, use or exercising under equal conditions human rights and fundamental freedoms or the rights recognized by law, in the political, economic, social and cultural field or in any other fields of public life."

5.3. Pursuant to art. 7 letter f) „It is contravention, according to this ordinance, the discrimination of a person for the reason that they belong to a certain race, nationality, ethnicity, religion, social category or disadvantaged category, respectively due to their beliefs, age, gender or sexual orientation, within an employment and social protection relationship, except for the cases set forth by law, expressed in the following matters: (…) f) the right to join a union and access to the facilities granted by it; …"

In order to find the existence of a direct discrimination deed, the meeting of the following elements is required:

• a differentiation
• between two persons or situations found in comparable position
• based on a criterion
• which infringes upon a right.

The Steering Board has found that the phrase „initiative" contained in the provisions of art. 97 in C.L.A. is a differentiation.

The differentiation criterion is, in this case, the membership in a non-representative union, which falls into the category „any other criterion".
The right infringed upon is the right to work, which is guaranteed by the Romanian Constitution.
In conclusion, the provisions of art. 2 par. 1 and art. 7 letter f) in O.G. no. 137/2000, as republished, apply hereto. Thus, conditioning the right to negotiate set forth in art. 97 in C.L.A. is a differentiation, based on the membership in a non-representative union, which infringes upon the right to work.
The criteria listed in art. 2 par. 1 are only illustrative and not comprehensive, as showed by ECHR as regards art. 14 (Engel and others vs. Holland, 8 June 1976, §72).
In this case, the criterion is the representative character of a union against the other union, which is non-representative, namely the capacity of a member of a representative union against the capacity of a member of a non-representative union. Pursuant to art. 20 par. 6 in O.G. no. 137/2000: „The stakeholder should present some deeds based on which one may assume the existence of some direct or indirect discrimination, and the person the petition was filed against is responsible to prove that no breach of the equal treatment principle took place." This principle, defined as the principle of reversal (sharing) the burden of proof is applied inclusively by ECHR (Nachova and others vs. Bulgaria, 6 July 2005, §156, Horváth and Kiss vs. Hungary, 29 January 2013, §108).
A deed may be considered as discrimination, if infringes upon a right among any of the ones guaranteed by the international treaties ratified by Romania, or the ones set forth by the national legislation. According to the case law of C.N.C.D. and to the Romanian courts of law, rights may be set forth also by contract agreements.
The rights granted by the employer only to the representative union under the collective labor agreement should be extended also to the non-representative unions, under the conditions of the Law regarding social dialogue. Art. 97 in C.L.A. sets forth that „The negotiation of individual employment agreements should be initiated at the initiative of one of the signatories of the collective labor agreement". For this purpose, the capacity of members of another non-obedient union organization makes the employer's association to condition this only if there is „initiative" of the „signatories" of C.L.A.. The Steering Board has retained that the signatories of C.L.A. are the employer and the representative union.
Advantaging the representative union in a number of fields, granting rights is discrimination, because it is a differentiation, exclusion, preference based on union membership, which has as an effect the restraining of union rights and of the ones set forth in the collective labor agreement.
Based on the issues reviewed above, the Board, with unanimity of votes of the members attending the meeting, has found that the conditions of the direct discrimination deed, as set forth in art. 2 par.1, corroborated with the provisions of art. 7 letter f) in O.G. no.137/2000, as republished, are met, and has decided to punish the employer (S.N. Aeroportul Internațional Mihail Kogălniceanu – Constanța S.A.) by a civil fine in amount of lei 5,000, pursuant to art. 26 par. 1 in O.G. no. 137/2000, considering the following issues:
- the discrimination targeted a group of persons;
- the discrimination is liable to harm the independent activity of non-representative unions and to create the monopoly of one union, the representative one;
- the first complainee acts in capacity of employer and, as such, has clear obligations towards its employees and their representatives.
5.14. Par. 2 in art. 26 sets forth that: „The Council or, as the case may be, the court of law may oblige the party that committed the discrimination deed to publish in mass-media a summary of the decision, respectively of the court sentence".
5.15. The Steering Board obliges the first complainee to publish the summary of this decision, excluding the personal data, in a national coverage newspaper.
Based on the facts above, pursuant to art. 20 par. (2) in O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination, as subsequently amended, with the unanimity of votes of the members attending the meeting,

THE STEERING BOARD
HAS DECIDED AS FOLLOWS:

Advantaging the representative union in a number of matters, granting of rights is discrimination, pursuant to art. 2 par. 1 and art. 7 letter f) in O.G. no. 137/2000;
It imposes a civil fine in amount of lei 5,000 on S.N. Aeroportul Internațional Mihail Kogălniceanu – Constanța S.A., 4 Tudor Vladimirescu St., Mihail Kogălniceanu no. 4, Constanța county, J13/2498/1998, CUI RO11212645 pursuant to art. 26 par. 1 in O.G. no. 137/2000;
It obliges the first complainee to publish the summary of this decision, excluding the personal data, in a national coverage newspaper, pursuant to art. 26 par. 2 in O.G. no. 137/2000;

DECISION No. 187
of 07.04.2015

Complainant: Sindicatul Şoferilor RATB, Asociaţia Profesională a Transportatorilor APT; Sindicatul Transportatorilor APT din RATB; Sindicatul Realitatea URAC (Alianţa Sindicatelor RATB)
Complainees: Regia Autonomă de Transport Bucureşti; Sindicatul Transportatorilor din Bucureşti

Subject matter: granting some benefits in a discriminatory manner under the new collective labor agreement

Subject matter of petition and description of the alleged discrimination deed
The petition refers to the employer's discriminatory actions, consisting of the negotiation of C.L.A. 2014-2016 at the entity level, setting forth a number of rights only for the representative unions, having discriminatory effects on the non-representative unions.

The Parties' Contentions
The Complainant's Contention
In the petition no. 3770 of 29.05.2014, the Complainant claims that the complainees, namely RATB management and Sindicatul Transportatorilor din Bucureşti negotiated the collective labor agreement 2014-2016 at the entity level, setting forth rights only for the leaders of that union, while discriminating the leaders of the other legally created unions within RATB. It is mentioned that, upon the negotiation of the employment agreement 2012-2014, the same parties discriminated the union organizations by similar provisions, CNCD civilly punishing the complainees, under the Decision no. 132 of 11.04.2012.
The negotiations for the conclusion of the collective labor agreement of RATB were carried out only between the employer's representatives and the representative union. Thus, under the new collective labor agreement, only the representatives of representative unions have a number of rights, with discriminatory effects on the non-representative union leaders and the employee, a member of a non-representative union, such as:
- paid union activity hours;
- unpaid various union activities;
- the insertion in all the articles regarding the union of the statement that the representative union establishes and grants rights to all the RATB employees.

The employer, upon enforcing the law, uses an apparently neutral criterion, that of the representative union, which disadvantages indirectly the non-representative union leaders and the members of the latter organizations.
The union leaders that are not paid for the union activity hours are disadvantaged against the ones that are paid.
The union members whose organization leaders are not remunerated for the union activity days are disadvantaged indirectly, because they cannot organize themselves efficiently upon the representation of legal rights.
Further, the union members whose organization leaders are not remunerated for the union activity days are infringed indirectly the right to free association, they being constrained indirectly by the employer to leave non-representative unions, respectively the unions whose leaders cannot carry out union activity, or they carry it out under unequal conditions because of the employer's failure to pay the union activity days.

The indirect constraint of the employee to leave the non-representative union or the union whose leaders cannot carry out their union activity or carry it out under unequal conditions, due to the provisions in C.L.A. RATB, which set forth throughout the statement that the representative union negotiates and represents the employees of RATB, and due to the employer's failure to pay the union activity days and other union activities is the negative effect of such measures, in the meaning that the employee no longer sees the usefulness of the existence of such forms of union organization, insofar as the employer treats differently the union organization and its representatives.
In these conditions, the non-representative union or the differently treated union cannot carry out a union activity that is useful to its members. Such a construction and enforcement of the Law no. 62/2011 regarding social dialogue has, as effect, the indirect infringement on the right to free association within unions of the employees and also the pluralism principle within union organization. In support of the facts mentioned above, see the attached CD containing the collective labor agreement of RATB.

The Complainee's Contentions
In the address no. 4910 of 15.07.2014, Sindicatul Transportatorilor din Bucureşti invokes the objection to the capacity to sue, on the grounds that it has no legal personality and, therefore, it cannot exist as an association without legal personality, to the extent its purpose is to represent the performance of activities reserved for unions by persons/entities that do not meet the requirements set forth in the Law no. 62/2011 for the legal creation of a union organization.
The petition does not mention any attributes or other identification elements of the legal entity, and the research on the portal of courts of law did not evidence the existence of any file in which legal personality was granted to the alleged union alliance/organization, created through the association of unions signatories of the petition with a professional association (namely, „Asociaţia Profesională a Transportatorilor APT" – which do not provides either identification attributes/elements).
Considering the dispositions of the Law no. 62/2011 regarding social dialogue, especially Title II, Chapter IV - „Forms of association of union organizations", the Complainee mentions that it has serious doubts regarding the existence of such alliance, given that, pursuant to art. 41 in the Law, the association may be created between two or several unions, or between two or several union federations.
Should it be possible to include a professional association in a union alliance/organization, the entire difference the legislator makes between unions and other lawful subjects, without a property purpose, would become devoid of meaning. The conditions regarding the creation of union organizations, the organization, operation, their acquiring legal personality etc. are governed by the Law no. 62/2011 regarding social dialogue, and the ones regarding the creation, organization an operation of associations and foundations are found in OG no. 26/2000 regarding associations and foundations, approved by the Law no. 246/2005, as subsequently amended and supplemented.
Further, art. 1 par. 3 in OG no. 26/2000 regarding associations and foundations sets forth expressly that „Political parties, unions and religious cults are not subject to this ordinance". Pursuant to art. 5 par. 2 in OG 26/2000, „individuals may associate without forming a legal entity, when the achievement of the purpose proposed allows it". One may not proceed to such association for the purpose of carrying out union activity. For the achievement of such purpose, the legal creation of a union organization is required, in compliance with the dispositions of the Law regarding social dialogue.
According to the facts mentioned above, in the petition filed, at least an entity that is not a legally created union (or cannot prove it) claims „the payment of union activity hours" or a remuneration from the employer for „union activity days", showing that the leaders of such entity/entities would be indirectly disadvantaged by the employer, given that „they cannot carry out union activity or they carry it out under unequal conditions due to the employer's failure to pay the union activity days".
It considers that it would be worse than „unequal", it would be even illegal, should any kind of associations/entities (with or without legal personality) carry out union activity, respectively, perform activities recognized by law as specific exclusively to unions, while failing to meet the legal requirements for the creation of a union (requirements to be found under a court

judgment by the court with jurisdiction, pursuant to the dispositions of art. 14 *et seq.* in the Law regarding social dialogue).
The right to free association is guaranteed (art. 40 par. 1 in the Constitution), but it is exercised „according to law" (art. 9 in the Constitution). And the legislator is entitled to establish procedures, conditions and demands as regards union activity (hence the difference of regulation mentioned above. Only as an example, the legislator shows that, for the creation of a union, a number of at least 15 employees of the same entity is necessary (art. 3 par. 2 in the Law 62/2011), whereas an association may be created by minimum 3 persons). The signatories of the petition claim equal treatment for different situations.
The unions and the association signing the petition start by recalling that „upon the negotiation of the collective labor agreement 2012-2014, the same parties discriminated the union organizations by means of similar provisions" (sheet 1, par. 3, line 6 in the petition), claiming that some act was cancelled.
It mentions that, in the case no. 8162/3/2012 of the Bucharest Tribunal, Section VIII Employment and Social Security Disputes, with the subject matter the amendment to and declaring the nullity of several clauses in the collective labor agreement aforementioned, the National Council for Combating Discrimination participated also as an expert.
Under the Civil Sentence no. 8954/26.10.2012, pronounced in the case aforementioned, the Tribunal dismissed the action filed by several non-representative unions within RATB against the complainees RATB and the representative union S.T.B (respectively the complainees in the petition in this case). Among the several claims and reasons invoked by the non-representative unions was also „Ensuring paid union activity hours for every legally created union" (page 2, line 28 in the Sentence – which remained final and irrevocable when the appeal was dismissed by the Bucharest Court of Appeal on 17.04.2013).
In the case aforementioned, the non-representative unions raised also an unconstitutional objection, which was dismissed by the Constitutional Court, under the Decision no. 92 of 28.02.2013, printed in the Official Gazette no. 196/08.04.2013.
In the motivation of the unconstitutional objection, the non-representative unions invoked, essentially, the same arguments that they reiterate in the petition no. 3770/29.05.2014 addressed to CNCD, reasons that may be easily noticed by comparing the petition in this case with the ones retained by the Constitutional Court in the introductory part of the Decision no. 92/2013.
In the motivation of the Decision dismissing the unconstitutional objection, the Constitutional Court retains that „the situation of a non-representative union is not similar to the situation of a representative union", reiterating the argument used constantly in its case law, according to which the equality principle does not exclude but, on the contrary, involves „different judgments for different situations".
Pursuant to the dispositions in art. 1, par. 1. letter t in the Law regarding social dialogue no. 62/2011, the representative character is an attribute of the union organizations, acquired according to the provisions of law, which grants the status of a social partner.
The representativeness is acquired under court judgment (art. 221 in the Law no. 62/2011 regarding social dialogue) pronounced by the court that granted legal personality to the union organization(art. 51 par. 2 in the Law), based on finding that the applicant fulfills some criteria set forth by law (namely the criterion „at least half plus one of the number of the entity employees", set forth in art. 51 par. 1 letter C. c in the Law no. 62/2011 for acquiring representativeness at the entity level), after the court checks the documentation set forth by law (art. 52) for proving the fulfillment of the representativeness conditions (art. 52 par. 1, letter C) and the prior fulfillment by the applicant of some procedures set forth by law (art. 53 par. 3).
Based on the facts above, the Complainee shows that one may not claim that the representativeness is an „apparently neutral criterion", or that the employer invented it in order to use „an apparently neutral criterion, that is, the representative union".
The criterion is set forth by law, and is objectively justified by legitimate purposes, such as: the need to ensure the participation of a valid interlocutor upon the collective negotiations with the employer, the need not to leave the decision of initiation of some strikes to any 15 employees grouped in a union; such a decision could be made by representative union organizations, under the conditions and by the vote set forth in art. 183 par. 1 in the Law regarding social dialogue, etc.

The representativeness found under court judgment is the condition set forth by law for the legitimacy of the union as a representative of employees upon collective negotiation.
Pursuant to art. 134 par. 1 in the Law no. 62/2011, „The parties to the collective labor agreement are the employers and employees". At the entity level, employees are represented upon negotiations by „the legally created union, which is representative according to this law" (art. 134 par. 1 letter B. a.). The legal provision does not require that the representation of employees, as a party to the collective labor agreement, be made exclusively by the union, but prescribes the condition that, when the employees are represented upon negotiations by the union, the latter be not only legally created, but also representative. The legislator appealed to the solution of the representativeness of the union created at the entity level, in order to ensure the participation of a valid interlocutor upon the collective negotiations with the employer.
The legislator provided also for the action to be taken when there is no representative union within an entity. Pursuant to art. 135 in the Law, within the entities where there are no representative unions, the collective labor agreement should be negotiated by the employees' representatives (given that these, in their turn, are „elected by the vote of at least half of the total number of employees", pursuant to art. 221 in the Labor Code), who shall negotiate by themselves or together with other representatives of union organizations, according to the distinctions set forth in art. 135 in the Law.
The legal requirement that the union organization that negotiates and concludes the collective labor agreement at the entity level represents, in a significant proportion, the entity employees is normal and necessary, given that the clauses of the agreement concluded and registered are effective for all the entity employees (pursuant to art. 133 par. 1 letter a in the Law no. 62/2011 regarding social dialogue).
The legislator's option to establish such proportion at the level of „at least half plus one of the number of entity employees" (pursuant to art. 51 par. 1 letter C. c in the Law regarding social dialogue), similar to the percentage by which the employees' representatives are elected (pursuant to art. 221 in the Labor Code), is its exclusive attribute. The legislator is entitled to establish both the conditions in which the unions carry out their activity and the representativeness conditions.
It mentions that the negotiations for the conclusion of the collective labor agreement of RATB for the period 2014-2016 were performed in the conditions set forth by law, namely between the employer and the employees (parties to C.L.A.), the latter being represented upon negotiations by Sindicatul Transportatorilor din Bucureşti, under the Civil Sentence no. 17345/299/2012, pronounced by the Bucharest 1st District Court of Law in the case no.17345/299/2012, under which the representativeness of Sindicatul Transportatorilor din Bucureşti at the level of RATB was retained.
The agreement thus concluded „is applicable to all the employees", pursuant to art. 4 in the collective labor agreement for the period 2014-2016 of Regia Autonoma de Transport Bucureşti.
Considering all the arguments above, one may not claim, without being culpable of hypocrisy, that the non-representative unions within RATB would carry out their activity in unequal conditions „due to the provisions of C.L.A. RATB, claiming throughout the statement that the representative union negotiates and represents the RATB employees" or due to the fact that statements were inserted in the agreement according to which „the representative union establishes and grants rights to all the RATB employees". The Law itself prescribes the requirement that the employees be represented upon negotiations by the representative union, and the collective labor agreements concluded thus be effective for all the entity employees according to law (art. 133 par. 1 letter a), whether there is or not a similar provision inserted in the agreement.
The fact that the representativeness at the entity level is acquired only if the number of union members is at least half plus one of the number of the entity employees is related exclusively to the legislator's policy, and is not in any way an „indirect constraint of the employer", as the petition signatories try to claim. The employer has no possibility to refuse the enforcement of legal provisions, or to dismiss the court judgment under which the representativeness was granted to S.T.B. (and these, possibly, for the benefit of some non-representative union leaders or leaders of other entities that do not prove at least their valid creation).
From the same representativeness, other consequences arise as well, namely only representative unions may negotiate the provision of spaces and facilities required for carrying

out union activity (art. 22 par. 2 in the Law 62/2011), may participate in the board of directors upon the debate of professional, economic and social matters (art. 30 par. 1 in the Law), or receive from employers the information required for the negotiation of collective labor agreements according to law (art. 30 par. 2 in the Law), may make the decision to start strikes, in the conditions and by the vote set forth in art. 183 par. 1 in the Law. Or, in other words, the Law itself applies „a different treatment" to representative unions against the non-representative ones, in consideration of their different legal status. The legal status imposes also a different legal treatment of their rights and obligations.
The legal dispositions quoted in the previous paragraph show the existence of some differences in duties between representative union organizations and non-representative ones. Moreover, it is evident that the activity of a representative union, whose number of members is more than half of the number of entity employees, having the duty to represent the entity employees upon the collective negotiations and to conclude the collective labor agreement, effective for all the entity employees, is not comparable/equal to the activity of another union.
Or, given all the differences mentioned above, the question is whether the employer should treat uniformly the members elected in the executive management bodies of the entity union organizations, whether the latter are or not representative.
Moreover, considering the dispositions of art. 3 par. 2 in the collective labor agreement for the period 2014-2016 of Regia Autonoma de Transport Bucureşti, according to which „The unions within RATB are recognized as legal entities and sole representatives of the employees that are union members and carry out their activity according to the Law 62/2011 regarding social dialogue" as well as the dispositions of art. 153 in the Law regarding social dialogue, which consecrates the principle of mutual recognition, nothing prevents „any legally created union organization" from concluding with the employer „any other types of agreements, conventions or arrangements in a written form, which represent the parties' law and whose provisions are applicable only to the members of the signatory organizations". In such agreements, conventions, arrangements, etc., the union organizations, which prove first their legal creation and the union activity carried out according to the Law no. 62/2011 regarding social dialogue, may negotiate and agree with the employer inclusively on the payment for the days spent for their union activity.
In the address no. 5241/29.07.2014, Regia Autonomă de Transport București – RA submitted written notes requesting the dismissal of this petition as groundless.
As regards the first claim, the Complainee mentions that the conclusion of the collective labor agreement at R.A.T.B. level was negotiated and concluded between Regia Autonomă de Transport București and the representative union, namely ,,Sindicatul Transportatorilor din București, pursuant to art. 134 in the Law 62/2011.
As regards the failure to include in the collective labor agreement some facilities for the union activity of non-representative unions, it is mentioned that: C.L.A. is the result of a negotiation between two parties, not being a one-sided act of the employer, R.A.T.B. In this respect, R.A.T.B. cannot be accused that some of the clauses of the collective labor agreement are not accepted by all the employees of Regia, or are not agreeable to all of them. It is reminded that C.L.A. is concluded by the representative union in the name of all employees, whether they are members or not of a union, be it a non-representative one.
The Complainee claims that both the representative union and the non-representative union organizations benefited, without any discrimination, of the number of paid union activity hours, depending on the number of members of each union organization.

De factor and de jure reasons
By way of objection, the Board shall dismiss the objection to the capacity to sue, invoked by the Complainee; the petition signatories, namely: Sindicatul Şoferilor din RATB, Asociaţia Profesională a Transportatorilor APT; Sindicatul Transportatorilor APT din RATB; Sindicatul Realitatea URAC have the capacity to sue.
The Steering Board has retained that the Complainants, union organizations, were not invited by the employer, the Complainee, to the negotiations regarding the collective labor agreement for the period 2014-2016. In the collective labor agreement, the Complainee granted rights only to the representatives of the representative union.
The Complainants consider that the refusal of the Complainee, employer, to grant paid union hours also to other legally created unions, than the representative union, is a discrimination

deed. The Steering Board has retained that the Law regarding social dialogue no. 62 of 2011 stipulates under art. 30 par. (1) and par. (2) a distinction between representative unions and non-representative ones, in the meaning that the employer has the obligation to send information only to the first category of unions for the negotiation of the collective labor agreement. Further, art. 35 par. (1) in the Law regarding social dialogue states that „the members elected in the executive management bodies of the union, who work directly within the entity as employees are entitled to the reduction of the monthly work schedule by a number of days used for union activity, as negotiated in the collective labor agreement or convention at entity level, without the employer's obligation to pay any salary entitlements for such days."
CNCD is an authority with administrative-jurisdictional duties, which may not decide on the constitutional character of the legal provisions involved, but only on the manner of construction and enforcement of such provisions, in light of the existence of a discrimination deed.
Thus, the Board has found that the construction and enforcement of art. 35 par. (1) in the Law no. 62/2011 has discriminatory effects on the non-representative union leaders and the employee, a non-representative union member, pursuant to art. 2 par. (3) and art. 7 letter f) in O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination, as republished.
In this case, we review indirect discrimination, in which the employer, the complainee, uses upon the enforcement of law, an apparently neutral criterion, of the representative union, which disadvantages indirectly the non-representative union leaders and the members of the latter organization.
Art. 35 par. (1) in the Law regarding social dialogue no. 62/2011 stipulates a right of the members elected in the executive management bodies of the union (whether the latter is representative or not), who work directly within the entity as employees but without the employer's obligation to pay their salary entitlements for the days in which they carry out their union activity. What happens, however, when the employer, the complainee, chooses to pay the salary entitlements for the days in which the union leader, also an employee, carries out union activities, by reducing the number of working hours?
The Steering Board has found that the non-transparent and discretionary payment of working hours for the days in which the union leader carries out union activities has as an effect the discrimination against those union leaders whose union activity hours are not paid for and against the members of such unions.
The union leaders that are not paid for the union activity hours are disadvantaged against the ones that are paid.
The union members whose organization leaders are not remunerated for the union activity days are disadvantaged indirectly by the fact they are not able to organize themselves efficiently upon the representation of their legal rights.
Further, the union members whose organization leaders are not remunerated for the union activity days are infringed upon indirectly the right to free association, they being constrained indirectly by the employer to leave non-representative unions, namely the unions whose leaders cannot carry out union activity or they carry it out in unequal conditions due to the employer's failure to pay the union activity days.
The indirect constraint on the employee to leave the non-representative union or the union whose leaders are not able to carry out union activity or they carry it out in unequal conditions, due to the employer's failure to pay the union activity days is the negative effect of such measures, in the meaning that the employee no longer perceives the usefulness of the existence of such forms of union organization (non-representative or treated differently by the employer), since the employer treats differently the union organization and its representatives. In these conditions, the non-representative union or the differently treated union is not able to carry out a useful union activity for its members.
Such a construction and enforcement of the Law no. 62/2011 regarding social dialogue has as an effect the indirect infringement upon the right to free association in unions of the employees and also upon the pluralism principle in union organization.
Under the Sentence no. 4946 of 13.09.2012, the Bucharest Court of Appeal, Section VIII Administrative and Tax Disputes has maintained as grounded and legal the Decision of CNCD, No. 132/11.04.2012 regarding the granting in a discriminatory manner by Regia Autonomă de Transport București of some benefits under the collective labor agreement, being retained that the non-transparent and discretionary payment of working hours for the days in which the union

leader carries out union activities has as an effect the discrimination against those union leaders whose union activity hours are not paid and against the members of such unions. Such a construction and enforcement of the Law no. 62/2011 regarding social dialogue has as an effect the indirect infringement upon the right to free association in unions of the employees and also the pluralism in union organization.
For the reasons aforementioned, CNCD has found that the employee, the complainee, committed the discrimination deed as set forth under art. 2 par. (3) and art. 7 letter f) in O.G. 137/2000, as republished, and shall impose a civil fine on the complainee, in amount of lei 4,000.
Considering the above, pursuant to art. 20. par.(2), in O.G.137/2000 regarding the prevention and punishment of any forms of discrimination, as subsequently amended and supplemented, in unanimity,

THE STEERING BOARD
HAS DECIDED AS FOLLOWS:

1. The issues raised are subject to the provisions of art. 2 par. 3 and art. 7 letter f) in O.G. no. 137/2000 regarding the prevention and punishment of any forms of discrimination, as republished, and the deeds are punished civilly, as follows:
2. Punishment of the Complainee, Regia Autonomă de Transport București, through its legal representative, by a civil fine in amount of lei 5,000, pursuant to art. 2 par.11 and art. 26 par.1 in O.G. no. 137/2000, corroborated with art. 8 in O.G. no.2/2001 regarding the judicial status of contraventions, as subsequently amended and supplemented;

DECISION NO. 257
of 27.05.2015

Complainant: Gorj Subsidiary of the National Liberal Party
Complainee: S.C. Complexul Energetic Oltenia S.A.

Subject matter: granting bonuses for 8th March only to women that are members of certain unions agreed by the company directors

Subject matter of petition and description of the alleged discrimination deed
In the petition filed, the discrimination of women employees of S.C. Complexul Energetic Oltenia S.A. is complained against, they not being granted benefits as "bonuses for 8th March". The bonus for 8th March, in amount of lei 100, was granted only to employees that are members of certain unions, agreed by the company directors, namely „members of unions that signed the agreement with the directors".

The Parties' Contentions
The Complainant's Contentions
The Complainant has showed that the Complainee, through its representatives, discriminates the company women employees, granting benefits as "bonuses for 8th March" only to the women employees that are members of certain unions, these not being granted to all the women employees.
The Complainant considers that the women's rights were seriously violated, through the discrimination against women employees based on a union criterion.
In fact, on the International Women's Day, the Complainee granted bonuses to women, but only to the women employees that are members of certain unions, agreed by the company directors.
The representatives of the Board of Directors of the company publicized their decision, their statements being published on the website of the daily newspaper, "Pandurul". The Manager of the Energy Department stated: "all the ladies that are members of the unions signatories of the agreement with the directors shall receive bonuses."
By granting bonuses only to a part of the women employees of the Complainee, the Board of Directors of the company violates the Labor Code, which stipulates that "within employment

relationships, the principle of equal treatment of all the employees and employers is applicable", the provisions of art. 8 in Government Emergency Ordinance no. 137/2000 regarding the prevention and punishment of any forms of discrimination being also infringed upon.
By the measures taken, the Complainee violated both national legislation and the regulations of the European Union, which fight against discrimination, any discrimination being forbidden under the Treaties.

The Complainee's Contentions
In its point of view as filed, the Complainee requests the dismissal of the petition as groundless and illegal, for the following reasons:
The petition is groundless, considering that the bonus of lei 100 was granted to all the Complainee's women employees, on the occasion of 8th March.
This bonus was granted following the agreement concluded on 19.03.2015 between all the social partners, called Protocol, underlining once again the need for concluding a collective labor agreement at the entity level, urgently.
Although the negotiations for the conclusion of a collective labor agreement were carried out as of 7 January 2015, in compliance with the procedure, these could not be completed before February, when the previous collective labor agreement would expire, given that one of the federations (F.N.M.E.) refused constantly to do it, leaving systematically the negotiation meeting; ultimately, it initiated a work conflict, I.T.M. being notified pursuant to the dispositions of the Law no. 62/2011 (art. 166).
I.T.M. has found that there are no legal grounds for a work conflict, but the Federation decided not to resume negotiations, engaging in other forms of protest, although the other unions requested to resume negotiations.
In these conditions, pursuant to art. 153 in the Law no. 62/2011, the other union organizations requested the conclusion of an agreement as a legal alternative to the missing collective labor agreement.
The law does not set forth expressly the levels such conventions may be concluded at, prescribing the written form as a validity condition. The only limits are the ones prescribed by law and public order, *these being effective only for the members of the signatory union organizations*.
The constant refusal of the Federation to resume negotiations for the conclusion of a collective labor agreement resulted in the involvement of the Ministry of Energy in consultations and bringing the Federation again at the negotiation table.
For this purpose, a protocol was concluded on 19.03.2015, between all the social partners, which underlined once again the need for the conclusion of a collective labor agreement at the entity level. This Protocol set forth also the bonus of lei 100 for women employees on the occasion of 8th March. This bonus was granted to all the women employees, the deed invoked by the Complainant being thus groundless.
In the conditions aforementioned, was concluded also the collective labor agreement at the entity level, valid for the period 2015-2017, establishing the rights and obligations of all the employees.
Considering the defenses filed, the dismissal of the petition as groundless is requested.

De facto and de jure reasons
De facto, the Steering Board is to rule the issues notified, namely the fact that a part of the women employees received the bonus for 8th March, while another part did not receive it. The Protocol, point 2, letter i) set forth also „a bonus of lei 100 for the women employees that have not received it yet".
De jure, upon reviewing the facts retained in the petition, the Steering Board considers the European Court of Human Rights, which, as regards article 14, forbidding discrimination, considered that the difference in treatment becomes discrimination, in the meaning of article 14 in the Convention, when distinctions are made between analogous and comparable situations, without these being based on a reasonable and objective justification. The European Court has constantly decided that, for such an infringement to occur, "we should establish that persons found in analogous or comparable situations, in such matters, receive a preferential treatment, and such distinction has no objective or reasonable justification".

In the same meaning, the European Court of Justice set forth the equality principle as one of the general principles of community law. In matters of community law, the equality principle excludes that comparable situations be treated differently and different situations be treated similarly, unless such treatment is objectively justified.
Retaining, in corroboration with these issues, the definition of discrimination, as regulated in article 2 par.1 in O.G.137/2000, as subsequently amended and supplemented, as republished, the Steering Board has retained that, in order for a deed to be considered a discrimination deed, it should meet cumulatively several conditions:

a) The existence of a different treatment of some analogous situations or the omission to treat differently different, incomparable situations. In this case, the Steering Board acknowledges the Complainant's contention that shows that the representatives of the Complainee's management stated that "all the ladies that are members of the unions signatories of the agreement with the directors shall receive bonuses." This statement was published in the daily newspaper „Pandurul" on 05.03.2015. Later, the situation was remedied, upon the conclusion of the protocol on 19.03.2015, granting this bonus to „all the women employees that have not received it yet" being set forth. Although the situation was remedied meanwhile, there was a differentiation between the women employees of the company, those who were members of the unions - signatories of the agreement with the directors being advantaged.

b) The existence of a discrimination criterion pursuant to art. 2 par. 1 in *O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination*, as republished, as subsequently amended. In this case, the Steering Board has retained that the issues notified by the Complainant were based on the criterion of union membership, such issues being considered upon arguing under point a).

c) The treatment should have as its purpose or effect the restraining, removal of recognition, use or exercising, in equal conditions, of a right recognized by law. In this case, the Board has retained that the issue was a bonus granted to women on the occasion of the International Women's Day, a differentiation being made between women employees, following their membership in one or another of the unions existing within the company complained about. Later, such bonus was granted to all the women employees, the Board retaining the existence of a discrimination deed even in this case, finding a situation of differentiation. The issues notified and the statements of the Complainee's representative were taken over by a local daily newspaper.

d) The different treatment should not be objectively justified by a legitimate purpose, and the methods of achieving such purpose should not be appropriate and necessary. The Complainee showed that the relevant bonus was granted to all the women employees, the impossibility of negotiating with all the parties concerned being the fact that resulted in the differentiation notified by the Complainant. Later, on the occasion of completing the negotiations and concluding the Protocol, the bonus was granted also to the women employees that had not received it yet. The Steering Board considers that there is no objective justification, the statements published in the local press being clear in this respect.
The Board has also retained the statements of the manager of the Energy Department, published in *Pandurul* newspaper, which read "the bonus shall be received by all the ladies who are members of the unions signatories of the agreement with the directors", retaining a similarity with „Feryn" case C-54/07, judged by the European Court of Justice, a case in which one of the managers of a company from Belgium declared that he would not hire immigrants to work for the company. This declaration was considered discriminatory, even if the employer did not act according to his own statements. The Board considers the statements made as discriminatory, even if the bonus was eventually granted to all the women employees.
Although it was a bonus granted in general to all the women employees, this was not granted from the very beginning, being granted only following the conclusion of the Protocol on 19.03.2015. Should such protocol not be concluded, this differentiation based on union membership, had remained, such situation resulting in a differentiation between women employees, although all the women employees were entitled to it.
After reviewing the Complainant's petition and the Complainee's Contentions, the Board has retained the cumulative meeting of the requirements qualifying the deed as a discrimination deed.

Considering the facts above, pursuant to art. 20 par. (2) in O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination, as republished, by the unanimity of votes of the members attending the meeting,

THE STEERING BOARD
HAS DECIDED AS FOLLOWS:

1. Finding the existence of a different, discriminatory treatment pursuant to art. 2 par.1 and par. 5 and art. 7 letter c), letter f) and letter g) in *O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination*, as republished;
2. Punishing S.C. Complexul Energetic Oltenia S.A. by a civil fine in amount of lei 5,000 for the deeds set forth in art. 7 letter c), letter f) and letter g) in O.G. 137/2000, as republished, pursuant to art. 26 par. 1 in *O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination*, as republished.

DECISION no. 306
of 24.06.2015

Complainant: S S
Complainee: —

Subject matter: violation of the right to inheritance, abuses

Subject matter of the petition and description of the alleged discrimination deed
In the petition made, the Complainant notifies the Board of the land 12,600 sq m in area, acquired in capacity of a heir of the deceased M I. The Complainant has showed that a number of actions were filed in courts, which refused to leave her the land, as recorded under point 3 in the Inheritance Certificate. Several judgments were pronounced the Complainant does not agree on, given that she just asked to have her inheritance right complied with. The Complainant attaches the Civil Sentence no. 181/04.04.2014, pronounced by Vrancea Tribunal in the case no. 852/91/2014.

The Parties' Contentions
The Complainant's Contentions
The Complainant, in the petition registered with CNCD under no. 2386/01.04.2015 (sheet 1 in the file), describes a number of abuses and the failure to comply with her inheritance right.

De facto and de jure reasons
The Steering Board has found that the Complainant describes a number of abuses and the failure to comply with her inheritance right.
O.G. no. 137/2000 regarding the prevention and punishment of any forms of discrimination, as subsequently amended and supplemented (called hereinafter *O.G. no. 137/2000*), refers exclusively to discrimination deeds that are clearly defined.
The internal procedure for adjudication of petitions and complaints, regarding the missing subject matter, sets forth as follows:
„Art. 33. The members of the Steering Board may raise ex officio the objection to the subject matter of the petition, if finding that the subject matter of the petition is clearly groundless, in relation to the scope of the provisions of the Government Ordinance no. 137/2000, as republished.
Art. 34.
(1) The objection to the clearly groundless subject matter or to the subject matter of the petition is debated by the Complainant or the person concerned that notifies the Board, so that to state their opinion.
(2) The Steering Board grants a term to the Complainant or the party concerned for submitting their opinion.
Art. 35

(1) The Steering Board judges the objection after requesting the opinion of the Complainant or of the party concerned that notified the Board.
(2) The failure to submit the opinion within the term granted does not prevent the judgment on the petition.
Art. 36. The Council judges on the objection under a decision of the Steering Board."
5.4. The Board has found that, given that the procedural provisions were complied with, under the address registered under no. 04.06.2015, the Complainant resumes her request to have her inheritance right complied with.
5.5. Considering that the petition has not as its subject matter an alleged discrimination deed, the Steering Board admits the objection to the subject matter of the petition pursuant to art. 33-36 in *the Internal Procedure for adjudication of petitions and complaints*.
Considering the facts above, pursuant to art. 20 par. (2) in *O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination*, as republished, with the unanimity of members attending the meeting,

THE STEERING BOARD
HAS DECIDED AS FOLLOWS:

To admit the objection to the subject matter of the petition pursuant to art. 33-36 in *The Internal Procedure for Adjudication of Petitions and Complaints*;

DECISION NO.330
of 27.04.2016

Complainant: C M
Complainee: Wizz Air Hungary Ktf Budapest, Otopeni Subsidiary

Subject matter: dismissal of the complainant based on the criterion of union membership

Subject matter of the notification and description of the alleged discrimination deed
The complainant claims that his dismissal for disciplinary reasons was ordered for acts related to the creation of Aerolimit Professional Union, whose President is, under the Civil Sentence no. 3100/02.07.2014, pronounced by Giurgiu Tribunal.

The Parties' Contentions
The Complainant's Contentions
The complainant holding the position of Trainer of the Board Crew within the company Wizz Air Hungary KFT, Otopeni Subsidiary, claims that his dismissal for disciplinary reasons was ordered for acts related to the creation of Aerolimit Professional Union, whose President is, under the Civil Sentence no. 3100/02.07.2014, pronounced by Giurgiu Tribunal.
The complainant claims that, in the same period, of circa 400 employees, 19 employees were dismissed for restructuring reasons. All the 19 persons dismissed were union members. They obtained after 8 months the cancellation of the dismissal decisions in the case 79/93/2015, the decision no. 2050/2015, being pronounced on 16 July 2015, by the same Ilfov Tribunal.
Further, the complainant claims that the Complainee filed an action in court for the dissolution of Aerolimit Professional Union. On 18 December 2015, an employee of Otopeni base filed a writ of summons with the Giurgiu Tribunal, complaining that recent dismissals took place at the base, and the Union no longer met the creation conditions, asking its dissolution. Giurgiu Tribunal admitted the objection to the Complainee's interest, invoked by the union, and dismissed the request, under the decision no. 218/2015 issued on 12 May 2015.
The complainant mentions that the Council ruled under the Decision no. 260/03.06.2015, punishing the complainee by a fine of lei 25,000.
The complainant claims that all the complainee's actions have just one purpose, namely the dissolution of the union created within Wizz Air, the first action being the dismissal of the

complainant for the false reason of willful misconduct, a fact confirmed by the very decision of Ilfov Tribunal no. 914/2015.
Since 19 March 2015, the complainee has refused to enforce a court sentence, the complainant being refused his right to work and to dignity, for the reason that he would be a hazard for the flight safety. Since the reintegration date up to the present, the complainant has not received the work badge, the uniform, access to the information system of the company, and neither flight or training tasks as per his job description. On the other hand, he was remunerated as per the contractual base salary, this being the smallest element the complainant's salary is composed of.
Further, the complainee's decision to exclude him from the information system infringed upon his right to use the employees' ticket system (Private Travel) and the related benefits, a fact causing him financial losses.
The reason for the marginalization of the two union leaders invoked by the complainee and the Hungarian Civil Aviation Authority (HCAA) being the criminal petitions filed in the name of the illegally dismissed union members.
The complainant submits copies of the following documents: the individual employment agreement, the disciplinary call from 2014, the minutes and decision to set up the Aerolimit Professional Union, the Decision no. 2050/2015 of 16 July 2015, pronounced by Ilfov Tribunal, the action for union dissolution, the CNCD Decision no. 260/03.06.2015, the Decision no. 914/2015 of 19.03.2015, pronounced by Ilfov Tribunal, the application for effective reintegration and the answers of Wizzair company, the correspondence between the complainee and the Hungarian Civil Aviation Authority.

The Complainees' Contentions
In the opinion issued and submitted in the file registered under no. 6896/26.10.2015, the Complainee invokes the objection to the jurisdiction of the Council as regards the issues notified, namely work disputes, the dismissal of other employees of WizzAir for reasons unrelated to the employees, personally, the legality of the decision of dismissal for disciplinary reasons, the enforcement of a court sentence, as well as regards the legality of the measures taken by the Complainee, depending on the characteristics of the activity carried out and the actual professional requirements the position held by the complainant involves.
It requests the dismissal of the claims already reviewed by the Council in the file no. 698/2014, judged under the decision no.260/03.06.2015, respectively restructuring the Otopeni base as regards an alleged discrimination for reasons of union membership of the former employees of Wizz Air.
In the complainee's opinion, the complainant proposes for discussion the file no. 20920/236/2014 with the subject matter the request for dissolution of the Union, filed by the named A. C., a Wizz Air employee, this being a judicial dispute the complainee is not a party to.
The complainee describes the contractual evolution of the complainant with Wizz Air, and considers that there is no discrimination treatment, for the following reasons:
- as of 20.10.2014 and 21.10.2014, the complainant breached the internal policies of the complainee, namely art. 3 in the Policy regarding the external communication of the complainee, as well as art.17 in the individual employment agreement, according to which the complainant had the obligation of confidentiality regarding any information about
    a. the employment relationship;
    b. the internal policies of Wizz Air;
    c. the technical and financial data of Wizz Air, the external communication of Wizz Air employees should take place only in the conditions and terms established in the internal policies binding on employees, so that to avoid any risk of harming the company, through the statements made publicly by its employees.
The violation of the provisions aforementioned took place when the complainant posted some comments on the Facebook page of Aerolimit Professional Union, publicizing deliberately some confidential information about the employment policy and terms of Wizz Air, information liable to affect inclusively the image of Wizz Air on the labor market and, especially, to expose the company to the risk of some financial losses, personnel and image losses. The complainant's comments put Wizz Air in a disadvantageous position and a

position of inferiority against competitive companies, which operate on the same low cost passenger air transport market.
On 28.10.2014, after finding that the deeds previously described are willful misconduct, the complainee issued the dismissal decision no. 1/28.10.2014 regarding the cancellation for disciplinary reasons of the complainant's employment agreement.
The complainant challenged the dismissal decision, and the reintegration in the previously held position was decided, as well as obliging the complainee to pay all the salary entitlements due for the period between the date of issue of the dismissal decision challenged and the reintegration date, as indexed, increased and re-updated, and obliging the complainee to pay moral damages in amount of lei 1,000.
The complainee shows that the deeds considered by the complainant as discriminatory do not indicate the existence of a discrimination deed, in the meaning of O.G. 137/2000.
As regards the Complainant's contentions regarding the flight tasks, it shows that the particularities of the field of activity the complainee operates in require it to comply strictly with legal provisions, inclusively the ones adopted at the European Union level, namely: The (EC) Regulation no. 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency and repealing Council Directive 91/670/EEC, Regulation (EC) no. 1592/2002 and Directive 2004/36/EC, and (b) the Commission Regulation (EU) no.965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) no.216/2008 of the European Parliament and of the Council.
Thus, the complainee claims that it has the obligation to carry out its activity, including the organization of the means required for the extent and scope of operations, such as the organization of the flight schedule and staffing the airships with the proper personnel, for maintaining a high level of safety of the flights operated by Wizz Air.
In this context, the complainee, as an air operator performing commercial air transport operations, should take the measures it considers fit for effecting the key requirement of ensuring the conditions for safe operation of airships. Such measures may include exercising the operator's right to request its employees not to fulfill the duties incumbent on them under the individual employment agreement, for certain periods of time, for instance: the operator is entitled to request its employees holding positions of flight attendants not to carry out their specific activity through boarding and participating as crew members in the flights performed by Wizz Air airships.
As regards the complainant, the complainee decided not to request the first to fulfill his job-related duties, following the identification of a potential risk regarding flight safety. Thus, after the cancellation of the dismissal decision, the complainee received a significant number of reports and notices (by email and from the Otopeni base, signed by the employees), whereby other flight attendants with Wizz Air stated their opinion that the flight safety might be endangered, should the complainant participate with them as a crew member on the flights operated by Wizz Air, and requested they would not be employed on the same flight with the complainant (it quotes some notices received by Wizz Air from some employees).
The complainee mentions that the preventive measure for maintaining and improving flight safety was taken by the complainee also in the context of some communications and consultations with the Hungarian Civil Aviation Authority, which performs, according to law, supervision of the activity carried out by the complainee, such measure being confirmed by the authority, as evidenced by the correspondence between the complainee and the authority submitted in the file by the complainant.
The complainee invokes the failure to meet the conditions in art. 2. par.1 in OG 137/2000, namely no criterion, no evidence, no different treatment.
Moreover, it mentions that there were various cases of some persons in analogous an comparable situations with the complainant to which the same treatment was applied, for instance, members of the flight crew who were no longer requested to carry out their activity for certain periods of time (M.V.and MMI).
In conclusion, it requests the dismissal of the complaint as inadmissible, in the meaning that CNCD has no jurisdiction to judge the complainant's requests regarding the enforcement of

the Civil Sentence no.914/19.03.2015, and, as regards the merits, it requests the dismissal of the petition as groundless, given that the issues notified are not discrimination deeds.

De facto and de jure reasons

By way of objections, the Steering Board is to dismiss the objection to the material jurisdiction invoked by the complainee as regards the issues notified, namely the work disputes and the enforcement of a court sentence. The Steering Board has retained that the cancellation of the employment agreement was based on the complainant's membership in the Aerolimit Professional Union (as a union leader). In this respect, we should mention that the Steering Board did not review the grounds and the legality of the dismissal decision (the latter being reviewed by the court of law with jurisdiction in the case no. 3553/93/2014, with the subject matter „challenge of the dismissal decision"), but reviewed the effects generated, namely the treatment that resulted in the dismissal of the complainant for union reasons. The reason for dismissal was due to the postings on the Facebook page of the information about the union, violating thus the internal regulation that forbids negative comments on the company. The court of law (Ilfov Tribunal) repealed this decision. After the court repealed the dismissal decision, the employer did not provide the job badge, the uniform, the complainant's Aims and Webmail account was not activated, for the same reason that he was the leader of Aerolimit Professional Union. As regards the complainee's request for dismissal of the petition, as the previous one, given that CNCD reviewed another alleged discrimination based on the criterion of union membership of former employees of Wizz Air within the restructuring process, judged under the Decision no.260 of 03.06.2015, the Steering Board has retained that the complainant, in the complaint judged under the decision mentioned above, acted in capacity of a representative of union members and not as a complainant. Thus, it is the opinion of the Steering Board that the relevant petition was not filed in his own name, for being dismissed as the previous petition.

The Government Ordinance no. 137/2000 regarding the prevention and punishment of any forms of discrimination, as republished (called hereinafter *O.G. no. 137/2000*) under art. 2 par. 1 sets forth: *„According to this ordinance, discrimination means any differentiation, exclusion, restriction or preference, based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection or falling into a disadvantaged category, as well as any other criterion that has as its purpose or effect the restriction or removal of recognition, use or exercising under equal conditions human rights and fundamental freedoms or the rights recognized by law, in the political, economic, social and cultural fields or any other fields of public life."*

Thus, discrimination may be considered:

- a differentiation
- based on a criterion
- which violates a right.

According to the ECHR case law in these matters, the difference in treatment becomes discrimination when distinctions are made between analogous and comparable situations, without these being based on a reasonable and objective justification. The European Court has constantly decided that, for such a violation to take place, *„one should establish that persons found in analogous or comparable situations, in these matters, receive a preferential treatment and such distinction has no objective or reasonable justification"*. ECHR considered in its case law that the contractual states have a certain assessment margin, in order to establish whether and to what extent the differences between analogous or comparable situations are liable to justify the distinctions of judicial treatment applied (for ex.: *Fredin vs. Sweden*, 18 February 1991; *Hoffman vs. Austria*, 23 June 1993, *Spadea and Scalambrino vs. Italy*, 28 September 1995, *Stubbings and others vs. the United Kingdom*, 22 October 1996).

The Steering Board has found that the opposition of the management of the complainee company to the idea of existence of a union is a differentiation between those that stated such intention and the other persons.

Likewise, the Steering Board has found that the dismissal of the complainant (flight attendant) and the failure to dismiss others (also flight attendants) is a differentiation.

The discrimination deed is determined by the existence of a criterion. One may invoke any criterion (*O.G. no. 137/2000*, art. 2 par. 1: [...] *„based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection or falling into a disadvantaged category, as well as any other criterion"* [...]; *The Additional Protocol no. 12 to the European Convention on Human Rights* (called hereinafter *Protocol no. 12*), art. 1 par. 1: [...] *„without any discrimination based especially on gender, race, color, language, religion, political opinions or any other opinions, national or social origin, belonging to a national minority, wealth, birth or any other situation"*), and between this criterion and the deeds imputed to the complainee there should be a cause-effect relation.

The Steering Board has found as follows:

- the management of the complainee company stated its disagreement on the creation of the union;
- it cancelled the employment agreement of the complainant (union leader), because he promoted the union on Facebook;

The Steering Board's opinion is that the employer's opposition through its management bodies against the creation of the Aerolimit Professional Union, the effects generated per se by the treatment that led to the complainant's dismissal, as well as the subsequent attitude of trying by any means (inclusively by dismissing some union members, under the appearance of reorganization of activity) to obtain the dissolution of the union is an interference with the complainant's right to union freedom, defended by art. 11 in the Convention.

A deed may be considered as discriminatory if infringing upon a right, any of those rights guaranteed by the international treaties ratified by Romania, or the ones set forth in the national legislation (*O.G. no. 137/2000*, art. 1 par. 2: *„The principle of equality between citizens, of excluding privileges and discrimination are guaranteed, especially, upon exercising the following rights:* [...]*"*, art. 2 par. 1: [...] *„restraining, eliminating the recognition, use or exercising, in equal conditions, human rights and fundamental freedoms or the rights recognized by law* [...]*"*; *Protocol no. 12*, art. 1 par. 1: *„Exercising any right set forth by law* [...]*"*.

The rights invoked by the complainant are the right to dignity and the right to work. Through the complainee's actions, an intimidating atmosphere was created, thus such right was infringed upon, while, through the cancellation of the employment agreements, the right to work was infringed upon.

In conclusion, the provisions of art. 2 par. 1 in *O.G. no. 137/2000*, as republished, are applicable. The complainee's deeds are direct discrimination, given that a differentiation is created based on the criterion of union membership, which had as its purpose the limitation of the right to dignity, respectively of the right to work.

Art. 2 par. 4 in O.G. no. *137/2000* establishes: *„Any active or passive conduct which, through the effects it generates, advantages or disadvantages, without grounds, or applies an unfair or degrading treatment to a person, a group of persons or a community against other persons, groups of persons or communities shall result in civil liability pursuant to this ordinance, unless subject to the criminal law."*

The Steering Board has found that, through the complainant's dismissal, the complainee evinced an active conduct, which generated effects that disadvantaged in an unjustified manner the members of the union whose president/leader was the complainant, so that the provisions of art. 2 par. 4 in O.G. no. *137/2000* are applicable. This deed results in the complainee's civil liability.

Art. 7 in O.G. no. *137/2000* sets forth: *„It is contravention, according to this ordinance, the discrimination against a person because they belong to a certain race, nationality, ethnicity, religion, social category or a disadvantaged category, respectively because of their beliefs, age, gender or sexual orientation, within an employment and social protection relationship, except for the cases set forth by law, appearing in the following matters:*

a) the conclusion, suspension, amendment or termination of the employment relationship; [...] f) the right to join the union and access to the facilities granted by it; [...]".

The Steering Board has found that the cancellation of the employment agreement was based on a subjective assessment (chapter „general attitude") which disadvantaged the persons associated with the union created, namely the union leader, therefore, the provisions of art. 7 letter a in O.G. no. *137/2000* are applicable.
Pursuant to art. 26 par. 1 *„the contraventions set forth in art. 2 par. (4), (5) and (7), art. 5-8, art. 10, art. 11 par. (1), (3) and (6), art. 12, art. 13 par. (1), art. 14 and 15 are punished by a fine in amount of lei 1,000 - lei 30,000, if the discrimination targets an individual, respectively by a fine in amount of lei 2,000 - lei 100,000, if the discrimination targets a group of persons or a community"*.
The Steering Board has decided to impose a civil fine in amount of lei 1,000 for the effects generated per se by the treatment leading to the complainant's dismissal for union-related reasons, considering the following:

- the European Union Directives in these matters (for ex. *The Council Directive 2000/43/EC*, art. 15) and the case law of the European Court of Justice request the European Union member states to impose effective, proportional and deterring punishments;
- the discrimination has as its purpose to stop the union movement, an extremely serious deed.

Pursuant to par. 2, art. 26 in O.G. no. *137/2000*, *„The Council or, as the case may be, the court of law may oblige the party that committed the discrimination deed to publish in mass-media a summary of the decision, respectively of the court sentence"*.
Therefore, the Steering Board obliges the complainee to communicate the summary of this decision inn mass-media with national coverage.
Considering the facts above, pursuant to art. 20 par. (2) in *O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination*, as republished, with the unanimity of the members attending the meeting,

THE STEERING BOARD
HAS DECIDED AS FOLLOWS:

1. It dismisses the objection to the material jurisdiction regarding work disputes and the enforcement of a court sentence invoked by the complainee;
2. The effects generated per se by the treatment leading to the complainant's dismissal for union-related reasons is discrimination, pursuant to art. 2 par. 1 and 4, corroborated with art. 7 letter a) in O.G. no. *137/2000*;
3. Imposing a civil fine in amount of lei 1,000 (for the effects generated per se by the treatment leading to the complainant's dismissal for union-related reasons) on WIZZ Air Hungary Kft. Budapest, Otopeni Subsidiary, Airport Plaza Building, 1A Drumul Gării Odăii, 3rd floor, room 307, entrance B, postal code 075100, Otopeni, Ilfov county, registered with the T.R. under no. J23/2805/2013, CUI 26621427, pursuant to art. 26 par. 1 in O.G. no. *137/2000*.

DECISION no. 342
of 22.07.2015

Complainant: Sindicatul Liber AIC-MK
Complainees: S.N. Aeroportul Internațional Mihail Kogălniceanu – Constanța S.A., Sindicatul Independent al S.N. AIMKC S.A.

Subject matter: obliging all the employees to pay the fee to the representative union, exclusive consultation of the representative union in all matters regarding the employees, exclusive participation of the representative union in various commissions, only the employees holding management positions in the representative union are reimbursed transport expenses for union

activities; only for the members of the representative union was accepted further employment after reaching the retirement age

Subject matter of the notification and description of alleged discrimination deed
The complainant considers as discriminatory obliging all the employees to pay the fee to the representative union, the exclusive consultation of the representative union in all matters regarding the employees, the exclusive participation of the representative union in various commissions, the fact that only the employees holding management positions in the representative union are reimbursed transport expenses for union activities; the fact that only for the members of the representative union was accepted further employment after reaching the retirement age.

The Parties' Contentions
The Complainant's Contentions
The complainant, by the address registered with C.N.C.D. under *no. 477/23.01.2015* (sheets 1-21 in the file), has showed that the complainee company and the representative union negotiated and set forth in the collective labor agreement for the period 2013-2014 and 2014-2015 some discriminatory clauses. Such clauses set forth:
- the employees that are not union members should contribute by 0.6% of their gross salary earned, such amounts being transferred into the account of the representative union;
- only the representative union is consulted as regards the employees' working hours and schedules, extra working hours, the improvement of work conditions, granting the increase for complexity of work (10-20%), the employees' requests (inclusively the negotiation of individual agreements), the cancellations of the employment agreement, redundancies, etc.);
- only the members of the representative union participate in the Labor Health and Safety Committee, the commissions for the employment and selection of persons that are to be employed;
- the employees holding management positions in the representative union are reimbursed the transport expenses for union activities;
- only the representative union is provided with spaces and other conditions for carrying out its activity;
- three persons reached the retirement age and two of them requested to continue employment, but only the request of the representative union members was approved, and not the one of the person who was not a member of this union.
He submitted documents in the file (sheets 22-103 in the file).
In the address registered in the file under *no. 1836/10.03.2015* (sheets 110-112 in the file), the complainant shows that the union members submitted requests and proposals. He maintains what he stated in the petition.
He submitted documents in the file (sheets 113-158 in the file).
In the address registered with C.N.C.D. under *no. 3795/02.06.2015* (sheet 288 in the file), the complainant submitted in the file a list of signatures of the union members (sheet 289 in the file).
The complainant, in the address registered with C.N.C.D. under *no. 4265/18.06.2015* (sheets 302-306, annex sheets 305-311) requests the dismissal of the objection to the capacity to sue, and maintains the facts previously stated.

The Complainees' Contentions
The second complainee, in the *Address no. 58/09.03.2015*, registered with C.N.C.D. under *no. 1779/09.03.2015* (sheet 107 in the file) requests a new hearing date, because he was not able to ensure his defense.
The first complainee, in the *Address no. 3767/09.03.2015*, registered with C.N.C.D. under *no. 1816/09.03.2015* (sheets 108-109 in the file) requests a new hearing date, because he was not able to ensure his defense.
In the *Address no. 68/20.04.2015*, registered with C.N.C.D. under *no. 2825/22.04.2015* (sheets 161-163 in the file), the second complainee invokes the objection to the complainant's capacity

to sue, showing that a person in the list attached by the complainant is no longer employed with the company, therefore no longer being able to act as a union member. Another person is mentioned twice, a third person is not the member of the complainant union. On the merits, it considers that there is no discriminatory provision in the collective labor agreements.
He submitted documents in the file (sheets 164-180 in the file).
In the *Address no. 6022/21.04.2015*, registered with C.N.C.D. under *no. 2824/22.04.2015* (sheets 181-187), the first complainee states the following relevant issues:
- it invokes the objection to the complainant's capacity to sue, stating that a person in the list attached by the complainant is no longer employed with the company, therefore no longer being able to act as a union member. Another person is mentioned twice, a third person is not the member of the complainant union.
- it considers that there is no discriminatory provision in the collective labor agreements;
- the complainant's statements are not proved;
- no rights were violated;
- the legal provisions were complied with.
It submitted documents in the file (sheets 188-227 in the file).
The first complainee, in the address registered with C.N.C.D. under *no. 3210/08.05.2015* (sheets 228-231), maintains the facts previously stated.
It submitted documents in the file (sheets 232-281 in the file).
The second complainee submitted in the file some written conclusions in the *Address no. 132/17.06.2015*, registered with C.N.C.D. under *no. 4237/17.06.2015* (sheets 290-292 in the file), maintaining the facts previously stated.
The first complainee submitted in the file some written conclusions in the *Address no. 9187/17.06.2015*, registered with C.N.C.D. under *no. 4238/17.06.2015* (sheets 293-294 in the file), maintaining the facts previously stated.

De facto and de jure reasons
The Steering Boards has found the following facts with absolute certainty, without any doubts, based on the documents submitted by the parties:
- the employees that are not union members contribute by 0.6% of their gross salary earned, such amounts being transferred into the account of the representative union (art. 3 par. 3 in the collective labor agreement 2013-2014, art. 3 par. 3 in the collective labor agreement 2014-2015);
- the budget draft of the payroll fund is drawn up by considering the proposals of the representative union (art. 11 par. 4 in the collective labor agreement 2014-2015);
- as regards the schedules and flexible working hours, the representative union is consulted (art. 14 par. 6 in the collective labor agreement 2013-2014, art. 14 par. 6 in the collective labor agreement 2014-2015);
- as regards the start and end hours of the schedule, the representative union is consulted (art. 17 par. 1 in the Collective labor agreement 2013-2014);
- the employees may work over 120 extra hours, with the agreement of the representative union (art. 19 par. 5 in the Collective labor agreement 2013-2014, art. 19 par. 5 in the Collective labor agreement 2014-2015);
- the measures regarding the improvement of work conditions are established together with the representative union (art. 23 par. 3 letter b) in the Collective labor agreement 2013-2014, art. 23 par. 3 letter b) in the Collective labor agreement 2014-2015);
- the establishment and change of job tasks may be requested by the representative union (art. 27 par. 3 in the Collective labor agreement 2013-2014, art. 27 par. 3 in the Collective labor agreement 2014-2015);
- the Labor Health and Safety Committee is formed exclusively of the members of the representative union (art. 44 par. 2 in the Collective labor agreement 2013-2014);
- for granting the increase for work complexity, the representative union is consulted (art. 49 par. 2 letter d) in the Collective labor agreement 2013-2014);
- the entity issuing meal vouchers is established by mutual agreement with the representative union (art. 50 par. 1 letter a) in the Collective labor agreement 2013-2014);
- the Christmas bonus may be increased by consultation with the representative union (art. 50 par. 1 letter b) in the Collective labor agreement 2013-2014, art. 50 par. 2 letter e) in the Collective labor agreement 2014-2015);

- occasional bonuses, salary changes are granted following consultation with the representative union (art. 50 par. 3 in the Collective labor agreement 2014-2015);
- the representative union participates in the mode of remaining at the disposal of the entity (art. 51 par. 4 in the Collective labor agreement 2013-2014);
- the unpaid work leave is granted with the agreement of the representative union (art. 51 par. 6 in the Collective labor agreement 2013-2014);
- the employees holding management position in the representative union are reimbursed transport expenses for travels for the purpose of carrying out specific activities (art. 53 par. 4 in the Collective labor agreement 2013-2014);
- the employer may dismiss the employee's request only with the agreement of the representative union (art. 69 par. 4 in the Collective labor agreement 2013-2014);
- the negotiation of individual employment agreements is initiated at the initiative of the representative union (art. 74 par. 2 in the Collective labor agreement 2013-2014, art. 74 par. 2 in the Collective labor agreement 2014-2015);
- the representative of the representative union within the commission for the negotiation of individual employment agreements acts in capacity of supporter of the union members and in capacity of observer for the other employees, and receives a copy of the minutes (art. 74 par. 3 in the Collective labor agreement 2013-2014);
- the representative of the representative union is a member of the employment commissions (art. 75 par. 2 in the Collective labor agreement 2013-2014, art. 75 par. 2 in the Collective labor agreement 2014-2015);
- the hours of absence during the prior notice period may be granted cumulatively, in the conditions established with the representative union (art. 81 par. 3 in the Collective labor agreement 2013-2014);
- the representative union is entitled to check the cancellation of the employment agreement for reasons not imputable to the employee (art. 85 par. 4 in the Collective labor agreement 2013-2014);
- in the event of redundancies, the representative union is provided with the technical-economic justification, the change of the work schedule, the organization of qualification courses, etc., and the representative union may rise objections to them and submit proposals to be reviewed (art. 86 par. 1-2 in the Collective labor agreement 2013-2014);
- the employer advises the representative union of the measures based on which the number of employees is reduced, of the redistribution possibilities (art. 86 par. 3 in the Collective labor agreement 2013-2014);
- if several persons are in an identical situation, redundancies are to be made in consultation with the representative union (art. 88 par. 4 in the Collective labor agreement 2013-2014);
- upon the participation in various professional training sessions, the representative union is consulted (art. 90 par. 2 in the Collective labor agreement 2013-2014);
- upon the identification of the jobs requiring professional training, the representative union is consulted (art. 91 par. 2 letter a) in the Collective labor agreement 2013-2014, art. 91 par. 2 letter a) in the Collective labor agreement 2014-2015);
- the representative of the representative union participates as an observer in any form of examination (art. 91 par. 2 letter b) in the Collective labor agreement 2013-2014, art. 91 par. 2 letter b) in the Collective labor agreement 2014-2015);
- the employer has the obligation to invite a representative of the representative union, entitled to an opinion, but without the right to vote, to the meetings debating professional, economic, financial, social and cultural issues (art. 102 par. 4 in the Collective labor agreement 2013-2014, art. 102 par. 4 in the Collective labor agreement 2014-2015);
- the decisions of the board of directors regarding professional, economic and social issues are communicated to the representative union (art. 102 par. 6 in the Collective labor agreement 2013-2014, art. 102 par. 4 in the Collective labor agreement 2014-2015);
- the employer and the representative union notify each other of their decisions on any important issues related to employment relationships (art. 103 par. 2 in the Collective labor agreement 2013-2014, art. 103 par. 2 in the Collective labor agreement 2014-2015);
- the employer notifies in writing the representative union quarterly of the economic and financial standing of the entity, as well as of the personnel structure (art. 104 par. 1 in the Collective labor agreement 2013-2014, art. 104 par. 1 in the Collective labor agreement 2014-2015);

- the disciplinary rules are established in consultation with the representative union (art. 111 par. 2 in the Collective labor agreement 2013-2014);
- the employer and the representative union acknowledge each other as permanent and equal social partners (art. 111 par. 3 in the Collective labor agreement 2013-2014, art. 111 par. 3 in the Collective labor agreement 2014-2015);
- the delegation days for union activities reduce the monthly work schedule of the representative union (art. 117 par. 2 in the Collective labor agreement 2013-2014);
- the actual time spent by the representative union members at meetings agreed with the employer shall be paid as usual working hours (art. 118 par. 1 in the Collective labor agreement 2013-2014, art. 118 par. 1 in the Collective labor agreement 2014-2015);
- on the entity premises, the employer provides the space and furniture for the representative union (art. 119 par. 1 in the Collective labor agreement 2013-2014);
- the employer provides freely to the representative union stationery, copier, fax, telephone, printer, office equipment, internet, email address, computer, a means of transport (or the reimbursement of transport expenses) (art. 119 par. 2-3 in the Collective labor agreement 2013-2014) or only a means of transport (art. 119 par. 3 in the Collective labor agreement 2014-2015);
- the employer provides the representative union with a display space (art. 119 par. 4-5 in the Collective labor agreement 2013-2014, art. 119 par. 5 in the Collective labor agreement 2014-2015);
- the route for the personnel transport to and from the workplace is established by mutual agreement with the representative union (art. 124 in the Collective labor agreement 2013-2014, art. 124 in the Collective labor agreement 2014-2015);
- the employer and the representative union notify each other of the changes in the form of ownership of the entity (art. 127 par. 1 in the Collective labor agreement 2013-2014);
- the internal regulation is drawn up in consultation with the representative union (art. 128 par. 1 in the Collective labor agreement 2013-2014, art. 128 par. 2 in the Collective labor agreement 2014-2015);
- of the 3 persons who reached the retirement age, 2 (members of the representative union) were approved to remain employees, while the third (member of the complainant union) was not.

The aggregate claims form three groups of issues to be reviewed:
- (1) obliging persons that are not members of the representative union to pay fee to this union;
- (2) advantaging the representative union in a number of matters, granting rights, such as the exclusive consultation of the representative union as regards the cancellation of employment agreements of some persons, and maintaining the agreements while no objective decision is possible, or the exclusive consultation of the representative union as regards persons attending training courses;
- (3) maintaining as employees some persons that reached the retirement age based on the criterion of union membership.

All the claims are included in these three matters.

The Steering Board dismisses the objection to the complainant's capacity to sue, considering the provisions of art. 28 in the *Law no. 62/2011*, which, under par. 2 establish that: *„Upon exercising the duties set forth in par. (1), union organizations are entitled to perform any action prescribed by law, inclusively to file actions in court in the name of their members, under a written power from them."* The Steering Board has found that the complainant submitted in the file the agreement of some union members as regards filing an action with C.N.C.D.. It is not required that all the members agree on the action, and the signatures may not be fully annulled due to potential material errors.

The Government Ordinance no. 137/2000 regarding the prevention and punishment of any forms of discrimination, as republished (called hereinafter *O.G. no. 137/2000*) under art. 2 par. 1 sets forth: *„According to this ordinance, discrimination means any differentiation, exclusion, restriction or preference, based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection, falling into a disadvantaged category, as well as any other criterion with the purpose or effect of restraining, eliminating the recognition, use or exercising under equal conditions human rights and fundamental freedoms or the rights recognized by law, in the political, economic, social and cultural field or in any other fields of public life."*

Thus, discrimination may be considered
• a differentiation
• based on a criterion
• which infringes upon a right.
According to the ECHR case law in these matters, differentiation means the different treatment of persons found in a similar or analogous situation: *„art. 14 protects the persons found in a similar situation"* (*Marckx vs.Belgium*, 13 June 1979, §32). Thus, *„we should establish, among others, whether the situation of the alleged victim may be considered as similar with that of the persons that were treated more favorably"* (*Fredin vs. Sweden*, 18 February 1991, §60). Differentiation is made also when persons found in significantly different situations are not treated differently (*Thlimmenos vs. Greece*, 6 April 2000, §44).
Obliging the persons that are not members of the representative union to pay fee to this union is differentiation, given that the persons that are in significantly different situations (are or not members of the representative union) are not treated differently (being obliged to pay a fee to the representative union.
Advantaging the representative union in a number of matters, granting rights, is differentiation given that similar situations (the need for protecting the employees by the unions, representative or not) are treated differently (giving a real chance only to the representative union).
The approval that, of the 3 persons of retirement age only the members of the representative union remain employees, in the absence of a motivation showing that the three persons were not in a similar situation, is differentiation.
The criteria listed in art. 2 par. 1 are only illustrative and not comprehensive, as showed also by ECHR regarding art. 14 (*Engel and others vs. Holland*, 8 June 1976, §72).
In this case, the criterion is the representativeness of a union against the other union that is non-representative, respectively the capacity of member of a representative union against the capacity of member of a non-representative union. Pursuant to art. 20 par. 6 in O.G. no. *137/2000 „the person concerned shall present facts based on which the existence of direct or indirect discrimination may be assumed, and the person the complaint was filed against is responsible to prove that no violation of the principle of equal treatment took place"*. This principle, defined as the principle of reversal (sharing) the burden of proof is applied inclusively by ECHR (*Nachova and others vs. Bulgaria*, 6 July 2005, §156, *Horváth and Kiss vs. Hungary*, 29 January 2013, §108). The Steering Board has found that the complainee did not invoke a real reason, besides union membership, for which the employee that was not a member of the representative union was not prolonged the employment agreement.
A deed may be considered discriminatory, if it infringes upon a right, any of the ones guaranteed by international treaties ratified by Romania, or the ones set forth by the national legislation. According to C.N.C.D. case law and the Romanian courts of law, rights may be set forth also under contract agreements.
Obliging persons that are not members of the representative union to pay fee to this union infringes upon the ownership right, guaranteed both by the *Romanian Constitution* and by the *Additional Protocol no. 1 to the European Convention on Human Rights*.
Advantaging the representative union in a number of matters, granting of rights, infringes upon union rights (why should employees join a union that has no possibility to protect them?), and also the rights granted by the employer to the representative union under the Collective labor agreement, which should be extended also to the non-representative unions, under the conditions of the *Law regarding social dialogue*.
The refusal to maintain the capacity of employee infringes upon the right to work, set forth in the *Romanian Constitution*.
In conclusion:
- (1) Obliging the persons that are not members of the representative union to pay fee to this union is discriminatory, because it is differentiation and preference, based on the union membership, having as an effect restraining the ownership right. Both complainees are culpable.
- (2) Advantaging the representative union in a number of matters, granting of rights, is discriminatory because it is differentiation, exclusion, preference based on the union membership, having as an effect restraining union rights and the rights set forth in the Collective labor agreement. Both complainees are culpable.

- (3) Approving that, of the 3 persons of retirement age only the members of the representative union remain employees is discriminatory, because it is differentiation, exclusion, preference based on union membership, which infringes upon the right to work.
For all these three deeds, the first complainee is culpable. The complainee union tried to obtain more advantageous conditions for itself and its members; the employer had the obligation, according to legal provisions, to extend such rights to the other unions and the employees who were members of the non-representative unions.
Pursuant to art. 2 par. 5 in O.G. no. *137/2000*, *„It is harassment and is punished civilly any conduct based on criteria such as race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, falling into a disadvantaged category, age, handicap, status of refugee or asylum seeker, or any other criterion resulting in the creation of an intimidating, hostile, degrading or offensive environment."*
All the three groups of issues found, as a whole, present a conduct based on the criterion of union membership, which results in the creation of an intimidating and hostile environment. Given that the members of other unions have to pay fee to the representative union, the non-representative unions are not consulted in relation to any work issue, and the members of the non-representative unions are retired, whereas the members of the non-representative unions are not, naturally, an intimidating situation is created for the members of the non-representative union, and the employer and employees have a hostile position against the non-representative union.
Art. 7 in O.G. no. *137/2000* sets forth: *„It is considered contravention, according to this ordinance, the discrimination of any person on the grounds of belonging to a certain race, nationality, ethnicity, religion, social category or a disadvantaged category, respectively due to their beliefs, age, gender or sexual orientation, in an employment and social protection relationship, except for the cases set forth by law, as expressed in the following matters: a) the conclusion, suspension, change or termination of the employment relationship; [...] f) the right to join a union and access to the facilities granted by it; [...]"*.
The approval that, of the 3 persons of retirement age, only the members of the representative union remain employees is discrimination, on the grounds of union membership, expressed in the termination of the employment relationship.
All the three groups of issues found, as a whole, are discrimination, on the grounds of union membership, expressed in joining the union and access to the facilities granted by it. Under the conditions mentioned under point 5.1, joining a union is no longer expressing one's own will and the members of the non-representative union may no longer enjoy the facilities granted by this union, given that, actually, they do not exist.
Upon making its decision, the Steering Board considered also the judgments of the courts of law relevant to the case (such as the *Civil Sentence no. 847/09.04.2014*, pronounced by Constanța Tribunal).
Art. 26 par. 1 in O.G. no. *137/2000* sets forth: *„The contraventions set forth under art. 2 par. (2), (4), (5) and (7), art. 6-9, art. 10, art. 11 par. (1), (3) si (6), art. 12, 13, 14 and 15 are punished by fine from lei 1,000 to lei 30,000, if the discrimination targets an individual, respectively by fine from lei 2,000 to lei 100,000, if the discrimination targets a group of persons or a community."*
The Steering Board imposes the civil fine in amount of lei 30,000 on S.N. Aeroportul Internațional Mihail Kogălniceanu – Constanța S.A., considering the following issues:
- the discrimination targeted a group of persons;
- the discrimination was found in over 40 claims (should the minimum civil fine of lei 2,000 have been imposed for each claim, the overall fine would have been much higher, but the Steering Board considers that the aggregate fine established is sufficient punishment);
- the discrimination is liable to affect the independent activity of non-representative unions and to create a monopoly of one union, the representative one;
- the first complainee acts in capacity of employer, having clear obligations to its employees and their representatives.
Pursuant to art. 26 par. 2 in O.G. no. *137/2000 „The Council or, as the case may be, the court of law may oblige the party that committed the discrimination deed to publish in mass-media a summary of the decision, respectively of the court sentence."*
The Steering Board obliges the first complainee to publish the summary of this decision, excluding the personal data, in a newspaper of national coverage.

Considering the facts above, pursuant to art. 20 par. (2) in O.G. *137/2000 regarding the prevention and punishment of any forms of discrimination*, as subsequently amended, by unanimity of votes of the members attending the meeting,

THE STEERING BOARD
HAS DECIDED AS FOLLOWS:

1. To dismiss the objection to the complainant's capacity to sue, pursuant to the provisions of art. 28 in the *Law no. 62/2011*;
2. To oblige the persons that are not members of the representative union to pay fee to this union is discriminatory, pursuant to art. 2 par. 1, par. 5 and art. 7 letter f) in O.G. no. *137/2000*;
3. To advantage the representative union in a number of matters, granting of rights, is discriminatory pursuant to art. 2 par. 1, par. 5 and art. 7 letter f) in O.G. no. *137/2000*;
4. Approving that, of the 3 persons of retirement age, only the members of the representative union remain employees is discriminatory pursuant to art. 2 par. 1, par. 5 and art. 7 letter a) and f) in O.G. no. *137/2000*;
5. It imposes the civil fine in amount of lei 30,000 on S.N. Aeroportul Internațional Mihail Kogălniceanu – Constanța S.A., 4 Tudor Vladimirescu St., Mihail Kogălniceanu no. 4, Constanța county, J13/2498/1998, CUI RO11212645 pursuant to art. 26 par. 1 in O.G. no. *137/2000*.

DECISION 371
of 02.09.2015

Complainant: "Extracţie Gaze şi Servicii" Union
Complainee: Societatea Națională de Gaze Naturale Romgaz S.A Mediaş

Subject matter: Negotiation of C.L.A. 2015-2016 in favor of its own representative union.

Subject matter of notification and description of the alleged discrimination deed
The union representative claims that, on 24.12. 2014, acknowledged the content of C.L.A. 2015-2016, finding that SNGN Romgaz made a number of concessions to the representative union, to the disadvantage of "Extracţie Gaze şi Servicii" Union, for the purpose of limiting the exercise of their duties by the members elected in the management bodies of the Union.

The Parties' Contentions.
The Complainant's Contentions
The union representative claims that on 24.12.2014 acknowledged the content of C.L.A. 2015-2016, finding that SNGN Romgaz made a number of concessions to the representative union, to the disadvantage of "Extracţie Gaze şi Servicii" Union, for the purpose of limiting the exercise of their duties by the members elected in the management bodies of the Union.
The president of "Extracţie Gaze şi Servicii" Union is a former employee of the company and free access to the workplace by the union members is forbidden , respectively to SNGN Romgaz subsidiaries, access being allowed only by a Travel Order, a procedure considered as contravening to the OIM Convention no. 135/1971 regarding the protection of workers' representatives within the enterprise and the facilities granted to them.
The C.L.A. parties may not derogate at their will from the imperative rules established by the legislator, therefore, the performance of social dialogue to the disadvantage of "Extracţie Gaze şi Servicii" Union, a non-representative union, granted by law the capacity of social partner, and considered as harming any procedure implemented between the employer and the representative union in matters in which the requirement of the representativeness of the union does not have to be fulfilled.
It mentions that SNGN ROMGAZ is obliged to consult also the non-representative unions within the entity, in matters such as the scheduling of work leaves, the development of labor health and safety measures, the development of the professional training plan and drawing up the internal regulation.

It mentions that the Internal Regulation was amended under the Decision no. 363 dated 17.12. 2014, without consulting „Extracţie Gaze şi Servicii" Union.
The union representative requests to have replaced with another phrase a number of items in the negotiated C.L.A. 2015-2016 which indicate ill faith.
By means of the document submitted with C.N.C.D. under no. 1000/11.02.2015, the complainant requests the dismissal of the objection to material jurisdiction, an objection invoked *ex officio*.
By means of the document submitted to C.N.C.D. under no.1463/25.02.2015, the complainant contends that the complainee did not answer to all the claims in the petition, and did not present the evidence used as defense against every separate claim.

The Complainees' Contentions
In the opinion issued and submitted in the file registered under no. 951/10.02.2015, the complainee requests the acceptance of the objection to CNCD jurisdiction.
The complainee claims that the complainant acknowledges that Sindicatul Liber Romgaz is representative at the company level and, implicitly, that the number of union members is half plus one of the number of the entity employees, whereas the complainant union is non-representative, as defined by the legislator in the Labor Code, the Law no. 467/2006 r establishing the general framework of information and consultation of employees.

De facto and de jure reasons
De facto, the Steering Board of CNCD has retained that the petition, as filed, shows a situation in which the complainant, a non-representative union, and its members consider that they are treated in a discriminatory manner by the complainee.
De jure, corroborated with the law that governs the prevention and punishment of any forms of discrimination, as well as the duties and object of activity of the National Council for Combating Discrimination, the Steering Board should review to what extent the subject matter of the petition is liable to be subject to the provisions of O.G. no.137/2000 regarding the prevention and punishment of any forms of discrimination, as republished. Thus, the Steering Board reviews closely to what extent the subject matter of a petition contains in first instance the elements under art. 2 in O.G. no.137/2000, as republished, from Chapter I, Principles and Definitions, of the Ordinance and, subsequently, the elements of the deeds set forth and civilly punished in Chapter II, Special Dispositions, Section I-VI in the Ordinance. To the extent one retains that the elements of discrimination, as defined in art. 2 are present, the conduct in this case is civilly liable, as the case may be, provided that the constitutive elements of contraventions as set forth and punished by O.G. no. 137/2000, as republished, are present.
Pursuant to art. 2 par.1 in O.G. 137/2000, regarding the prevention and punishment of any forms of discrimination, as subsequently amended and supplemented, it is discrimination "*any differentiation, exclusion, restriction or preference, based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection or falling into a disadvantaged category, as well as any other criterion that has as its purpose or effect the restriction or removal of recognition, use or exercising under equal conditions human rights and fundamental freedoms or the rights recognized by law, in the political, economic, social and cultural fields or any other fields of public life*".
After reviewing the petition content, the documents submitted in the file, as well as the legislation in force, the Steering Board of the National Council for Combating Discrimination shall proceed, pursuant to the dispositions of art. 63 in the Internal Procedure for Adjudication of Petitions and Complaints, printed in the Official Gazette no. 348 of 6 May 2008, as follows *„(1) The Steering Board shall pronounce itself first on the procedure objections, as well as on those regarding the merits, which no longer require, in full or in part, reviewing the petition on the merits."* and of art. 64, in the same procedure aforementioned *„(1) When, before the Steering Board, its jurisdiction is debated, the institution or another body with jurisdiction should be indicated...(3) The Steering Board shall start to judge the petition, the party unsatisfied being able to appeal the decision on the merits before the administrative court, according to law.*"
As regards this case, one raised *ex officio* the objection to the material jurisdiction of C.N.C.D., pursuant to art. 28 in the Internal Procedure for adjudication of petitions and complaints, which

sets forth that ,,The members of the Steering Board may raise *ex officio* the objection to jurisdiction when, obviously, they find that the petition filed is not within the jurisdiction of the Council, pursuant to the provisions of O.G. no.137/2000 regarding the prevention and punishment of any forms of discrimination, as republished,, The Steering Board is to pronounce itself on it.

The jurisdiction exercised by the National Council for Combating Discrimination is an „administrative jurisdiction", involving a special administrative-jurisdictional procedure, based on the principle of independence of the body issuing the act from the parties to dispute, ensuring the principle of contradiction and of the right to defense.

Thus, as regards the alleged discrimination treatment applied by the complainee, we should retain that, according to the dispositions of O.G. 137/2000, the National Council for Combating Discrimination, pursuant to art.16, is *„the state authority in discrimination matters, with legal personality, under parliamentary control and, at the same time, the guarantor of compliance with and application of the principle of non-discrimination, according to the national legislation in force and the international documents Romania is a party to".* Further, the National Council for Combating Discrimination is, pursuant to art.18 par.1 in the same ordinance, „*responsible for the application and control of compliance with the provisions of this law*" and pursuant to art.19, par.1, which mentions the powers of C.N.C.D., „*The Council fulfills its duties in the following matters: a) prevention of discrimination deeds; b) mediation of discrimination deeds; c) investigation, finding and punishing discrimination deeds; d) monitoring discrimination cases; e) providing specialist assistance to discrimination victims*".

To the extent the presence of the constitutive elements under art. 2 is retained, the relevant conduct is civilly liable, as the case may be, provided that the constitutive elements of contraventions, as set forth and punished by O.G. no. 137/2000, as republished, exist.

The Steering Board reviews whether in the case notified by the complainant the conditions for the existence of a discrimination deed are found. For a deed to be considered discriminatory, it should meet the following conditions:

a) The existence of a different treatment of some analogous situations, or the omission to treat differently different, incomparable situations.

b) The existence of a discrimination criterion pursuant to art. 2 par. 1 in *O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination*, as republished, as subsequently amended.

c) The treatment should have as its purpose or effect the restraining, removal of recognition, use or exercising, in equal conditions, of a right recognized by law.

d) The different treatment should not be objectively justified by a legitimate purpose, and the methods of achieving such purpose should not be appropriate and necessary.

Considering the reasons presented, the legal provisions invoked above, as well as the petition as filed, at the deliberation meeting, the members of the Steering Board dismissed the objection to material jurisdiction invoked *ex officio*.

As regards the first claim, related to not consulting the non-representative unions within the entity in matters such as: scheduling work leaves, developing labor health and safety rules, developing the professional training program and drawing up the internal regulation, the Steering Board is to pronounce itself.

Retaining in corroboration with these conditions as listed above, for the existence of a discrimination deed and the definition of discrimination, as regulated in article 2 par.1 in O.G.137/2000, as subsequently amended and supplemented, as republished, the Steering Board considers the manner in which the constitutive elements in art. 2 in O.G. 137/2000 cumulatively exist. In order to be within the scope of art. 2, par. 1, *the differentiation, exclusion, restriction or preference* should be based on one of the *criteria* set forth in art. 2, par. 1, and should refer to persons found in *comparable situations* but who are treated *differently* due to their falling into one of the categories set forth in the law aforementioned. As showed in the motivation previously invoked, in order to be in the presence of a discrimination deed, we should have two comparable situations to which the treatment applied was different. Subsequently, the different treatment should aim at or have as its effect restraining or removing the recognition, use or exercising, under equal conditions, human rights and fundamental freedoms or rights recognized by law, in the political, economic, social and cultural field or in any other fields of public life.

In the second claim, the complainant shows that the complainee did not consult the non-representative unions within the entity as regards certain matters. The Steering Board

acknowledges the opinion stated by the complainee, according to which the law does not set forth such obligation; in this respect, it referred to what the legislator set forth in the Law no. 467/2006 establishing the general framework of information and consultation of employees as to such issues and the Labor Code.
Or, after reviewing the claim regarding not consulting the non-representative unions, it is the opinion of the Board that such issue cannot be classified as a discrimination deed, in the meaning in art. 2 par. 1 in O.G. no.137/2000, as republished, because the law does not set forth such obligation.
As regards the second claim, regarding the articles/procedures within C.L.A. 2015-2016 containing the phrase „signatory union", the Steering Board is to pronounce itself.
After reviewing the articles in C.L.A. 2015-2016, the Board has retained that the phrase used is *„signatory union"*, as for instance in art. 40 in the regulation *„consultations with the union signatory of this contract..."*, in art. 52 par. 2 in the regulation *„to be done with the union signatory of this contract…"*, in art. 189 par. 1 in the regulation *„to ensure for the union signatory of this contract..."*, in art. 192 par. 2 "*it has the union organization signatory of this contract…"*, etc.
It is the opinion of the Steering Board that the use of this phrase in the regulation is a differentiation, given that it excludes from consultations the non-representative unions. The employer, according to law, is obliged to conduct negotiations with the representative union. However, after such negotiations, the employer is obliged to consult also the non-representative unions.
Advantaging the representative union in a number of matters, granting rights, is a differentiation, given that similar situations (the need for protecting the employees by the unions, be they representative or not, are treated differently (providing a real chance only to the representative union).
Using the phrase „signatory union", in the absence of a motivation showing that non-representative unions are not in a similar situation, is a differentiation.
In this case, the criterion is the representativeness of a union against the other union that is non-representative. Pursuant to art. 20 par. 6 in O.G. no. *137/2000 „the person concerned shall present facts based on which the existence of direct or indirect discrimination may be assumed, and the person the complaint was filed against is responsible to prove that no violation of the principle of equal treatment took place"*. This principle, defined as the principle of reversal (sharing) the burden of proof is applied inclusively by ECHR (*Nachova and others vs. Bulgaria*, 6 July 2005, §156, *Horváth and Kiss vs. Hungary*, 29 January 2013, §108). The Steering Board has found that the complainee did not invoke a real reason, besides union membership, for which the employee that was not a member of the representative union was not prolonged the employment agreement.
A deed may be considered discriminatory, if it infringes upon a right, any of the ones guaranteed by international treaties ratified by Romania, or the ones set forth by the national legislation. According to C.N.C.D. case law and the Romanian courts of law, rights may be set forth also under contract agreements.
Advantaging the representative union in a number of matters, granting of rights, infringes upon union rights (why should employees join a union that has no possibility to protect them?), and also the rights granted by the employer to the representative union under the Collective labor agreement, which should be extended also to the non-representative unions, under the conditions of the *Law regarding social dialogue*.
In conclusion:
Advantaging the representative union in a number of matters, granting of rights, is discriminatory because it is differentiation, exclusion, preference based on the union membership, having as an effect restraining union rights and the rights set forth in the Collective labor agreement.
Art. 7 in O.G. no. *137/2000* sets forth: *„It is contravention, according to this ordinance, the discrimination against a person because they belong to a certain race, nationality, ethnicity, religion, social category or a disadvantaged category, respectively because of their beliefs, age, gender or sexual orientation, within an employment and social protection relationship, except for the cases set forth by law, appearing in the following matters:*
[...] f) the right to join the union and access to the facilities granted by it; [...]".

The facts presented in the second claim are discrimination, on the grounds of union membership and of access to the facilities granted by it.
Upon making its decision, the Steering Board considered also the judgments of the court of law relevant to the case (such as the Civil Sentence no. 847/09.04.2014, pronounced by Constanta Tribunal).
Art. 26 par. 1 in O.G. no. 137/2000 sets forth: *„The contraventions set forth in art. 2 par. (2), (4), (5) and (7), art. 6-9, art. 10, art. 11 par. (1), (3) and (6), art. 12, 13, 14 and 15 are punished by a fine in amount of lei 1,000 - lei 30,000, if the discrimination targets an individual, respectively by a fine in amount of lei 2,000 - lei 100,000, if the discrimination targets a group of persons or a community"*
The Steering Board imposes a civil fine in amount of lei 2,000 on Societatea Naţională de Gaze Naturale Romgaz S.A Mediaş, considering the following issues:
- the discrimination targeted a group of persons;
- the discrimination is liable to impair the independent activity of non-representative unions and to create the monopoly of one union, the representative one;
- the complainee acts in capacity of employer and, as such, has clear obligations towards its employees and their representatives.
Pursuant to art. 26 par. 2 in O.G. no. 137/2000: „The Council or, as the case may be, the court of law may oblige the party that committed the discrimination deed to publish in mass-media a summary of the decision, respectively of the court sentence".
The Steering Board recommends the complainee to eliminate the phrase „signatory union" from C.L.A. 2015-2016.
The Steering Board obliges the first complainee to publish the summary of this decision, excluding the personal data, in a national coverage newspaper.
Based on the facts above, pursuant to art. 20 par. (2) in O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination, as subsequently amended, with the unanimity of votes of the members attending the meeting,

THE STEERING BOARD
HAS DECIDED AS FOLLOWS:

1. To dismiss the objection to material jurisdiction invoked *ex officio*;
2. As regards the first claim regarding not consulting the non-representative unions within the entity in matters such as: scheduling the work leaves, developing labor health and safety rules, developing the professional training program and drawing up the internal regulation, the Steering Board established that the constitutive elements of a discrimination deed are not present, pursuant to art.2 par. 1 in O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination, as republished.
3. Using the phrase „signatory union" is discriminatory, pursuant to art. 7 letter f) in O.G. no. *137/2000*;
4. It charges a civil fine in amount of lei 2,000 on Societatea Naţională de Gaze Naturale Romgaz S.A Mediaş pursuant to art. 26 par. 1 in O.G. no. *137/2000*;

DECISION NO. 371
of 18.05.2016.

Complainant: Sindicatul Transportorilor APT din RATB, Sindicatul Transportatorilor Publici de Persoane
Complainee: Regia Autonomă de Transport Bucureşti R.A

Subject matter: different treatment applied to the non-representative unions by the complainee, for the purpose of their members leaving the organizations and joining the representative union.

Subject matter of notification and description of the alleged discrimination deed

Discrimination treatment applied to the non-representative union management by the complainee, for the purpose of their members leaving the organizations and joining the representative union.

The Parties' Contentions

The Complainant's Contentions

The complainants, as representatives of some non-representative unions, claim that the complainee infringes directly upon their right to unionize, their members being constrained to leave the organizations and to join the representative union. The latter being the only union called to participate in the negotiations of the collective labor agreement and in the negotiations regarding the employees' rights and facilities. The complainants show that between the representative union and the complainee a protocol was concluded as regards the reimbursement of rest and treatment tickets. The members of the non-representative unions are not reimbursed the expenses on rest and treatment tickets, unless they leave the union organization. The complainants indicate also a salary difference between the employees of the three union organizations. Such differences are found in the salary grid and the work performed by their members is equal, they have the same tasks and responsibilities and work in identical conditions. Thus, the complainants consider that the salary differences are granted based on purely subjective criteria, generated by the membership in a form of union.

The complainants request the Council to order the removal of the consequences of the discriminatory deeds, to reinstate the previous situation and to punish accordingly the complainee. In the case file, after the hearing meeting on 23.02.2016, a supplementation to the complaint is submitted by Mr. T C, an employee of Regia Autonoma de Transport București, which describes a number of abusive decisions made against him by the complainee, because of his being a member of the complainant union. The abusive measure being that, according to the salary grid, the salary is paid differently, he is no longer provided the vehicle for his own transportation, he living far away from Bucurestii Noi Depot, where he is currently carrying out his activity. For this reason, he has to use his private car, or the public transport vehicles of Regia, was assigned to work in other depots, a measure he considers abusive. Saturday and Sunday as working days, which are paid doubly, are allocated preferentially, in breach of the Collective labor agreement by the complainee.

The Complainee's Contentions

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De facto and de jure reasons

The Steering Board of CNCD has retained that the petition as filed shows a situation in which the complainants, in their capacity of representatives of some non-representative unions, as well as its members are treated differently by the complainee.

As regards the definition of discrimination, as regulated in O.G. no. 137/2000, as republished, the Steering Board mentions that, in case of persons differently treated, the relevant treatment is due to their pertaining to one of the criteria set forth by law, in art. 2 in O.G. no.137/2000, as republished. The Steering Board has to review whether the different treatment was applied due to a criterion set forth in art.2 par.1), respectively race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection, falling into a disadvantaged category, which was the determining factor for applying such treatment. Or the condition of criterion as a determining factor should be construed in the meaning of existence as a materialized circumstance, which is the cause of the discriminatory act or deed and which, if inexistent, would not determine the committing of discrimination. Thus, the nature of discrimination, as regards its constitutive aspect arises exactly from the fact that the difference in treatment is determined by the existence of a criterion, which involves a cause-effect relation between the imputed different treatment and the criterion forbidden by law, invoked in the case of a person that considers themselves discriminated against. The European Court of Justice showed that, in discrimination cases, if the person that considers themselves discriminated against would establish an actual situation allowing the assumption of the existence of a direct or indirect discrimination based on a forbidden criterion, the effective application of the principle of equal treatment would impose then the burden of proof on the person accused of discrimination, who should prove that no

breach of the principle mentioned took place. In this context, the complainee (accused) could contest the existence of such breach, establishing by any legal means, especially, that the treatment applied to the person that considers themselves discriminated against is justified by objective factors, independent of any discrimination based on a forbidden criterion. (See in this respect also the case law of the European Court of Justice, case Bilka Kaufhaus, par.31; case C-33/89 Kowalska [1990] ECR I-2591, par. 16; case C-184/89 Nimz [1991] ECR I-297 par. 15; case C-109/88 Danfoss [1989] ECR 3199, par. 16; case C-127/92, Enderby [1993] ECR 673 par. 16).
The Steering Board admits the objection to material jurisdiction raised through the procedure of summoning the parties, as regards the removal of the discriminatory deeds and reinstating the previous situation. According to the subject matter of the petition, the Steering Board has retained that the complainants act in capacity of „non-representative unions" within the complainee company, namely Regia Autonoma de Transport București. This applies an unequal/different treatment to the non-representative union organization, by comparison with the representative union. The different treatment applied to the members of non-representative unions consist of refusing to reimburse the expenses on rest and treatment tickets, refusing to call for negotiations regarding the collective labor agreement, different salaries between employees, depending on the union they joined, etc. The said tickets are reimbursed by the company only if the members of the non-representative unions leave their union organizations and join the representative union agreed by the company. Moreover, the representative union is the only union called to participate in the negotiations of the collective labor agreement, respectively, in the negotiations regarding the employees' rights and facilities. Following the different treatment, the complainants state that there are differences in the salary grid of employees that are members of the three union organizations (non-representative and representative), the work performed by their members being equal, involving the same tasks and responsibilities and identical work conditions. The Steering Board has found that the construction and application of art.35, par.1 in the Law no.62/2011 regarding social dialogue has discriminatory effects on the non-representative union leaders/members. As such, in this case, the complainee, by the discriminatory attitude against the members of the complainant union organizations, creates a hostile, degrading and humiliating environment, conditioning the receiving of the entitlements due on giving up the union membership. In conclusion, the complainee applies a different treatment to the union organizations, for the purpose of making the affiliated members leave their unions, in consideration of some benefits and the elimination of the competitive union activity. The discrimination treatment imputed to the complainee consists of paying the employee's entitlements by conditioning this on leaving the non-representative union organization, a different salary for its members, the refusal to call them to the collective employment negotiations. Thus, it is the Steering Board's opinion that, in this case, one may retain a cause-effect relation between a forbidden criterion (union membership) and the complainee's deeds, being a discrimination treatment pursuant to art. 2 cu par.1, art.7 (f, "the right to join a union and access to the facilities granted by it" corroborated with art.9 „it is a contravention, according to this ordinance, the discrimination of employees by the employers, as regards the social benefits granted, due to the employees pertaining to a certain race, nationality, ethnicity, religion, social category or to a disadvantaged category or based on age, gender, sexual orientation or beliefs they promote".
The Steering Board orders the punishment of the complainee, namely Regia Autonomă de Transport București R.A, through its legal representative, by a civil fine in amount of lei 5,000 (five thousand), pursuant to art. 26, par. 1) and 2) in O.G. no.137/2000, as amended, corroborated with art.8 in O.G. no.2/2001, regarding the judicial status of contraventions.
Considering the facts above, pursuant to art. 20 par. (2) in O.G. *137/2000 regarding the prevention and punishment of any forms of discrimination*, as republished, by the unanimity of votes of the members attending the meeting,

THE STEERING BOARD
HAS DECIDED AS FOLLOWS:

1. The issues notified are a discrimination deed, pursuant to art. 2 corroborated with par.1, art.7 with letter (f, "the right to join a union and access to the facilities granted by it" corroborated with art.9 „it is a contravention, according to this ordinance, the discrimination of employees by the employers, as regards the social benefits granted,

due to the employees pertaining to a certain race, nationality, ethnicity, religion, social category or to a disadvantaged category or based on age, gender, sexual orientation or beliefs they promote".

2. The punishment of the complainee, namely Regia Autonomă de Transport București R.A, through its legal representative, by a civil fine in amount of lei 5,000 (five thousand), pursuant to art. 26, par. 1) and 2) in O.G. no.137/2000, as amended, corroborated with art.8 in O.G. no.2/2001, regarding the judicial status of contraventions.

DECISION NO. 415
of 16.09.2015

Complainant: Sindicatul Șoferilor Independenți din RATB
Complainee: Regia Autonomă de Transport București R.A.

Subject matter: different treatment applied to the complainant by the complainee, as a representative of a non-representative union within Regia Autonoma de Transport București R.A.

Subject matter of notification and description of the alleged discrimination deed
The complainant, as a representative of a non-representative union, as well as its members are treated in a discriminatory manner by the complainee, wishing the dissolution. Due to the unequal treatment applied, the union remained with 140 members of the approximately 418, more than half of them leaving.

The Parties' Contentions
The Complainant's Contentions
The representative of Sindicatul Șoferilor Independenți din RATB claims that the complainee inserted in the Collective labor agreement for the period 2012-2013 some clauses, which aimed at a number of limitations to the non-representative unions. In his opinion, the complainee should recognize all the union rights equally, for all the non-representative organizations within RATB. The complainant invokes that, due to the unequal treatment, the union remained with 140 members of approximately 418. Thus, more than half of them left. The union members that remained do not benefit from an equal distribution of the working hours along the route, the distribution of legal holidays such as Saturday or Sunday, these being paid higher than the working days, their monthly schedule through speed is not ensured, the drivers use in traffic other buses than the ones they were allocated to, initially, and they are obliged to make statements, respectively to pay willingly the repair of buses or the extra consumption of fuel.
By this abusive conduct, the complainant states that the complainee violates the right to free meeting and association, which is protected and guaranteed by the special legislation art. 7 in the Labor Code, as well as by art.1, par.(2, in O.G, no. 137/2000, as amended, by the Romanian Constitution. In support of the facts stated, the complainant, *Sindicatul Șoferilor Independenți din RATB,* attaches to its complaint a number of statements of some employees, union members that are subject to a number of abuses by the management of the complainee.

The Complainee's Contentions
The complainee, namely Regia Autonomă de Transport București R.A., invokes the objection to the complainant's capacity for representation. "..the complainant is not represented, the legal provision in case of representation not being thus complied with; the proof of the union being empowered by its members was not submitted; it invokes the objection to late filing of the complaint", „... the complainant refers to abuses taking place in 2013 and the lacking subject matter of the petition." "Based on the documents submitted in the file, we should mention that no abuses within the scope of the provision of O.G no.137/2000, as amended, are evident".
On the merits of the case, the complainee claims that monthly distributions are performed via an information program developed by RATB, based on and in compliance with the provisions of the Labor Code. „At the request of the automotive base, the information program equalizes the work tasks not only as regards pre-establishing work shifts, but also on a whole, in view of

balancing the monthly workload for all the bus drivers. A number of activities, considered to be *time worked,* cannot be introduced in the monthly distribution under a date established with its development, *special trips, training sessions, blood donations,* etc. The workload is the result of the route hours plus other activities as listed, so that the normal duration of the working time is influenced by activities or problems that may arise along the route, faults along the route, traffic incidents, decrease/increase of the car fleet. Every entity tries to balance the route hours of all the drivers, notwithstanding their union membership". „The petition mentions that the drivers are obliged to drive along the route on other buses. We would like people to understand that car drivers were not employed together with the means of transport, they are obliged to drive along the route on the bus provided..., as regards the distribution on Saturdays, Sundays and on legal holidays, pursuant to art. 40, par. 3, this is done in a fair manner".

De acto and de jure reasons

The Steering Board of CNCD has retained that the petition as filed shows a situation in which the non-representative union complainant, as well as its members are treated in a discriminatory manner by the complainee, wishing to dissolve it.

As regards the definition of discrimination, as regulated in O.G. no. 137/2000, as republished, the Steering Board mentions that, in case of persons treated differently, the relevant treatment is due to their pertaining to one of the criteria set forth in the law, art. 2 in O.G. no.137/2000, as republished. The Steering Board has to review whether the different treatment was applied due to a criterion set forth in art.2 par.1), respectively race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection, falling into a disadvantaged category, which was the determining factor for applying such treatment. Or the condition of criterion as a determining factor should be construed in the meaning of existence as a materialized circumstance, which is the cause of the discriminatory act or deed and which, if inexistent, would not determine the committing of discrimination. Thus, the nature of discrimination, as regards its constitutive aspect arises exactly from the fact that the difference in treatment is determined by the existence of a criterion, which involves a cause-effect relation between the imputed different treatment and the criterion forbidden by law, invoked in the case of a person that considers themselves discriminated against. The European Court of Justice showed that in discrimination cases, if the person that considers themselves discriminated against would establish an actual situation allowing the assumption of the existence of a direct or indirect discrimination based on a forbidden criterion, the effective application of the principle of equal treatment would impose then the burden of proof on the person accused of discrimination, who should prove that no breach of the principle mentioned took place. In this context, the complainee (accused) could contest the existence of such breach, establishing by any legal means, especially, that the treatment applied to the person that considers themselves discriminated against is justified by objective factors, independent of any discrimination based on a forbidden criterion. (See in this respect also the case law of the European Court of Justice, case Bilka Kaufhaus, par.31; case C-33/89 Kowalska [1990] ECR I-2591, par. 16; case C-184/89 Nimz [1991] ECR I-297 par. 15; case C-109/88 Danfoss [1989] ECR 3199, par. 16; case C-127/92, Enderby [1993] ECR 673 par. 16).

The Board has retained from the documents submitted in the case file that Sindicatul Șoferilor Independenți din RATB, as a complainant and as a "non-representative union" within Regia, was applied by the complainee an unequal treatment by comparison with the representative union. As such, the complainee took against the drivers/ members of the non-representative union a number of measures to constrain them to leave the union; „... following the unequal treatment applied, the union remained with 140 members of approximately 418, more than half of them leaving".

The different treatment imputed to the complainee, consisting of actions performed against the members of the union (also drivers) as regards granting some rights; „...equal distribution of the working hours along the route, the distribution of legal holidays such as Saturday or Sunday, these being paid higher than the working days, their monthly schedule through speed is not ensured, the drivers use in traffic other buses than the ones they were allocated to initially, and they are obliged to make statements, respectively to pay willingly the repair of buses or the extra consumption of fuel". In this respect, the complainant (non-representative union), through its legal representative, accuses the different treatment applied by the complainee, for the obvious purpose of dissolving it.

Reiterating that the nature of discrimination in its constitutive aspect arises exactly from the fact that the difference in treatment is determined by the existence of a criterion, which involves a cause-effect relation between the different treatment imputed and a forbidden criterion invoked by the person that considers themselves discriminated against, the Board has noted that such a relation may be established in this case. In this case, there are indications allowing one to assume that a discrimination conduct took place via a different treatment, as regards not granting some equal rights to driver employees that joined the „non-representative" complainant union, by comparison with the other drivers that are members of the „representative union within Regia Autonoma de Transport București", pursuant to the provisions of art. 2 par.1), it consisted of an *obiter dictum* as regards decreasing the didactic load by the complainee. Thus, it is the Board's opinion that, in this case, one may not retain a cause-effect relation between a forbidden criterion pursuant to art. 2 par. 3) and par. 4) "Any active or passive conduct which, through the effects it generates, advantages or disadvantages without grounds, or applies an unfair or degrading treatment to a person, a group of persons or a community against other persons, groups of persons or communities shall result in civil liability, pursuant to this ordinance, unless subject to the criminal law" and art.7 par. g) "any other conditions of performance of work, according to the legislation in force", in O.G. no. 137/2000 as republished. The punishment of the complainee, Regia Autonomă de Transport București R.A., through its legal representative, by a civil fine in amount of lei 2,000 (two thousand), for the different treatment applied to the complainant, pursuant to art. 26, par. 1) and 2) in O.G. no.137/2000, as amended. The Council rules the obligation of the complainee to publish in mass-media a summary of the decision.
Considering the facts above, pursuant to art. 20 par. (2) in O.G. *137/2000 regarding the prevention and punishment of any forms of discrimination*, as republished, by unanimity of votes of the members attending the meeting,

THE STEERING BOARD
HAS DECIDED AS FOLLOWS:

1. The facts presented in the petition are a discrimination deed pursuant to the provisions of art. 2 par.3) and par. 4) "Any active or passive conduct which, through the effects it generates, advantages or disadvantages without grounds, or applies an unfair or degrading treatment to a person, a group of persons or a community against other persons, groups of persons or communities shall result in civil liability, pursuant to this ordinance, unless subject to the criminal law" and art.7 par. g) " any other conditions of performance of work, according to the legislation in force ".
2. The punishment of the complainee, Regia Autonomă de Transport București R.A., through its legal representative, by a civil fine in amount of lei 2,000 (two thousand), for the different treatment applied to the complainant, pursuant to art. 26, par. 1) and 2) in O.G. no.137/2000, as amended. The Council rules the obligation of the complainee to publish in mass-media a summary of the decision.

DECISION NO. 454
of 29.06.2016

Complainant: Sindicatul Naţional al Drumarilor din România pentru Suliman Matin
Complainee: D M
Complainees: Compania Naţională de Autostrăzi şi Drumuri Naţionale S.A
A V-Department Head
Z E-Human Resources Department Head

Subject matter: Discriminatory work tasks. The criterion consists of the complainant's disagreement on the managerial act

Subject matter of notification and description of the alleged discrimination deed

In the address no. 6682 of 15.10.2016, the complainant notifies potential harassment, intimidation and excessive supervision deeds committed against him, through the imposition by the institution management of a discriminatory job task.

The Parties' Contentions

The Complainant's Contentions

In this notification, the complainant, an engineer in the mechanization department within the working point DRDP Constanţa, represented by Sindicatul Naţional Profesional al Drumarilor din Romania, describes the following aspects:

- at the end of August, he was assigned under the decision no. 422/19.08.2015 to inventory the gasoil stock in one of the working sub-points subordinated to DRDP Constanţa. As regards the content of this decision, the employee made in writing a number of grounded comments, the address submitted by him being refused for reception by the secretariat. Following this action, under the Decision no. 442/09.09.2015, the employee was required as a job task to draw up daily a written activity report, to be submitted to his line manager and forwarded to the Regional Manager for approval.
- reference is made to the fact that, according to his job description, he does not perform a work involving the preparation of daily activity reports, he being the only employee that was obliged to draw up the said report, even if the employees within the working point, who have, in general, the same job duties were not targeted by similar decisions.

He attaches a copy of the report submitted daily.

The circumstances that preceded and determined, in the complainant's opinion, committing the discrimination deed followed the Decision aforementioned, under which the complainant was appointed in a commission inventorying the gasoil stock in some of the working sub-points subordinated to DRDP Constanţa. On 21.08.2015, the employee submitted a note of comments (the document attached) advising the entity management that the decision does not meet the conditions of the legal inventorying regulations. The employee's comments had as their purpose to eliminate the risks of performing an illegal and inefficacious inventory, resulting in his potential job-related fault upon inventorying, liable to result in his disciplinary or property-related liability. Upon the complainant presenting these comments in person to the Manager, Dima Marin, the latter reacted violently, verbally, only the complainant being present, and threatened him to make him pay, so that not to allow himself to give lessons to his superiors, from his position of a mere employee.

The complainant requests the Council to find that the Decision no. 442/09.09.2015, issued by the management of DRDP Constanţa, imposed, beyond the appearance of normality, a measure that does not identify by content any real, objective and legal justification in relation to the fulfillment of job tasks or the implementation of the complainant's employment agreement – its purpose being only to harass, intimidate and excessively supervise the complainant.

Given that the decision targets just one employee, namely the complainant within the entity, and given that the employees within the working point DRDP Constanţa and at least the employees of the same department in which the employee carries out his activity have, in general, the same job duties, without being targeted by similar decisions, and based on missing an objective justification, his opinion is that the decision aforementioned has as its sole purpose the harassment in the workplace, the principle of equal and non-discriminatory treatment being thus violated, determining its illegal character, pursuant to art. 2 in OG 137/2000, corroborated with art.7 letter a) and g) and art. 5 art 6 par.1 in the Labor Code. The complainant requests the acknowledgment of the discrimination deed, pursuant to art. 7 letters a and g, enforcing the punishment by civil fine of the complainees, publishing in mass-media the summary of the decision, as well as obliging the complainees to eliminate the consequences of the discriminatory deeds, and to reinstate the situation as before discrimination.

The Complainees' Contentions

In the address no. 7258 of 13.11.2015, Compania Naţională de Autostrăzi şi Drumuri Naţionale din România S.A., through Direcţia Regională de Drumuri şi Poduri Constanţa, as well as Mr. M D, a Regional Manager within Direcţia Regionala de Drumuri şi Poduri Constanţa, invoked the obvious objection to the material jurisdiction of the Council, on the grounds that the court of law has jurisdiction.

Further, it invoked the objection to the material jurisdiction of the Council as regards the complainant's request for purposes of reinstating the situation as before the issuance of the decision and obliging the employer to revoke it.
Moreover, it mentions the fact that, by issuing the Decision, it considered that the complainant would remedy the manner of his fulfilling the job tasks, in order to avoid a potential disciplinary investigation and his punishment, due to some interruptions in his activity - report 81355/18.08.2015.
Should the complainant not revise his attitude as regards his job tasks and duties, by his failure to achieve when due or in full or in part his tasks, this could result directly in disturbing / making more difficult the activity of D.R.D.P. Constanţa, by failing to fulfill some objectives or fulfilling them late.
The decision no.442/03.09.2015 has a concrete finality, namely that, by the complainant drawing up that daily report, he was made accountable as regards the job activities and tasks he has to fulfill.
The fact that the complainant draws up a written report has resulted at least by now in more careful and timely approach to the job duties he has to fulfill and also to those directed by his managers.
The employer did not consider or think at any moment that, by trying to remedy/correct the complainant's attitude, the latter would construe this fact as a punishment; on the contrary, the employer thought that this would make him aware that his activity is not conforming and would determine him to remedy this thing. The measure disposed by the employer was taken following a Report drawn up by the head of the department the complainant works in, following a review of the manner of fulfillment of job duties.
The fact that it established only in charge of one employee within Serviciul Exploatare Auto si Utilaje, more precisely in charge of the complainant such a measure does not mean that the complainant was discriminated, or that he is not applied an equal treatment, but only that, up to the present, some problems have been identified in the complainant's activity, a fact that does not exclude in the future, should other employees carry out their activity with difficulty, similar decisions would be issued.
The fact that, at the moment, the employer took such measure only as regards the complainant does not exclude in any way the possibility that such measure would be disposed in the future for other employees, the complainant's workmates. Moreover, the employer wished, at the moment of making the decision, exactly the opposite, namely, it considered that, by issuing such decision, the complainant would remedy and correct the manner of fulfilling his job tasks, in order to avoid a potential disciplinary investigation and punishment, a much serious measure.
The complainee claims that, before initiating an investigation procedure, in case it is notified of some negative issues regarding the activity of an employee, it tries, at least at the level of D.R.D.P. Constanţa, to remedy the latter's activity by administrative, non-pecuniary measures, other than disciplinary punishment, and, in case such measure is not sufficient, and only then it proceeds to the legal measures regarding disciplinary liability.
On 27.05.2016, they submitted a copy of the Civil Sentence under which the complainant's request to have the Decision annulled is dismissed.

Contention of Mr. A.V.-Service Head
In the address no. 7721 of 07.12.2015, the complainee states that the reason based on which the Decision no. 442/03.09.2015 was issued was the following:
Since he was the head of the service, he has found that the complainant has carried out his activity deficiently, has not fulfilled all the job tasks assigned to him, and has not fulfilled timely and rigorously the job obligations incumbent on him.
Although he had several discussions with the complainant regarding the manner in which the latter understands to fulfill the assigned job tasks and the ones described in his Job Description, the complainant did not proceed to remedy his activity, maintaining the same negative attitude towards his job obligations.
Noticing that the complainant does not try, cannot or does not want to consider the constructive advice and remarks of the complainee, by the manner in which he understands to carry out his activity within DRDP Constanţa, he considered that he should, in his capacity of manager, notify the management of DRDP Constanţa regarding this issue; this is the reason why he drew up in writing a report addressed to the Regional Manager of DRDP Constanţa, advising

him of the manner in which the complainant carries out deficiently his activity within the service he coordinates.
The report drawn up by the complainee was endorsed by the Regional Manager, who, in his capacity of head of DRDP Constanta, approved the complainee's proposal requesting the complainant prepare a written activity report.
Subsequently, after the Report was endorsed and signed, it was registered with the registry of DRDP Constanţa, according to the circuit of documents at the entity level, being assigned the registration number 81355/18.08.2015, the document being distributed both to Mrs. Ernestina Zamfir (Head of the Human Resources, Payroll Department) for the issuance of the decision, and to the complainee, for confirming the activity carried out by the complainant. The complainee mentions that, in his opinion, the fact the employer approved the complainee's proposal and the issuance of the Decision no. 442/03.09.2015 is not a discrimination deed, even if, within the service he coordinates, the complainant is the only employee who has as a job task to draw up daily an activity report.
He considers that the measure proposed and approved by the employer was absolutely necessary, exactly because the complainant carried out deficiently and with difficulty his activity; although he discussed several times with the complainant on this subject, the latter did not understand in any way to answer the complainee's requests and to revise the manner in which he fulfills his job obligations and duties.

Contention of Mrs. Z E – Head of the Human Resources and Payroll Department
In the address no. 7720 of 07.12.2015, the complainee stated that the reasons based on which the Decision no. 442/03.09.2015 was issued were the following:

- On 18.08.2015, she received, through the Registry Service the Report registered under no. 81355/18.08.2015, drawn up by Mr. A V, Head of Serviciu Exploatare Auto şi Utilaje, a document signed and apostilled by the Regional Manager of D.R.D.P. Constanța.
- In the Report no. 81355/18.08.2015, the Service Head informed the management of DRDP Constanţa of some negative issues regarding the complainant's activity, and proposed for remedying the situation the issuance of a Decision under which the complainant would have as a daily job task the preparation of a written activity report, such proposal regarding the daily task aforementioned and the issuance of the Decision being approved by the Regional Manager.

Upon exercising the duties incumbent on her, she drew up and issued the Decision no. 442/03.09.2015, mentioning the job task disposed for the complainant, and later, also through the registry service, she proceeded to communicating the Decision to the complainant.
She requests to have retained that she just implemented the disposition of the Regional Manager through the apostille affixed to the Report no. 81355/18.08.2015, not being involved in any way as regards the de facto and de jure reasons based on which this measure was taken as regards the complainant.

De facto and de jure reasons
De facto, the Steering Board has retained harassment, intimidation and excessive supervision deeds committed against the complainant, by the imposition by the institution management of a discriminatory job task.
By way of objections, the Steering Board is to dismiss the obvious objection to material jurisdiction of the Council, invoked by the complainees on the grounds that the latter has jurisdiction to pronounce itself on the facts notified by the complainant pursuant to O.G. no. 137/2000 regarding the prevention and punishment of any forms of discrimination, as subsequently amended and supplemented, as republished. Further, as regards the objection to jurisdiction invoked by the complainees as to the elimination of the consequences of discriminatory deeds and reinstating the situation as before discrimination, the Steering Board is to allow the objection invoked, on the grounds that such issues are within the jurisdiction of the court of law.
The Steering Board of C.N.C.D. refers to the European Court of Human Rights, which, as regards article 14 on forbidding discrimination, considered that, according to its case law, discrimination involves the different treatment, without an objective and reasonable justification, of some persons found in relatively similar situations (see the case *Orsus and others vs. Croatia*, the decision of 16.03.2010, as well as the case *Willis vs. the United*

Kingdom, no. 36042/97, § 48, ECHR 2002-IV, the case *Okpisz vs. Germany*, no. 59140/00, § 33, 25 October 2005). Article 14 does not forbid member states to treat differently some groups of persons, for the purpose of remedying „actual inequalities" between them. Indeed, in certain situations, the failure per se of trying to remedy inequalities by a different treatment may result in breaching Article 14 (see the case *"relating to certain aspects of the laws on the use of languages in education in Belgium"*, § 10; the case *Thlimmenos vs. Greece*, no. 34369/97, § 44, ECHR 2000-IV; the case *Stec and others vs. the United Kingdom* [GC], no. 65731/01, § 51, ECHR 2006-VI). The contractual states have an assessment margin in order to review whether and under what conditions the differences applied to some similar situations justify a different treatment.

The European Court of Justice has stipulated the principle of equality as one of the general principles of community law. Within the scope of community law, the principle of equality excludes that comparable situations are treated differently and different situations are treated similarly, unless the treatment is objectively justified.

Art. 2 par. 1 in O.G. no. 137/2000, as republished, defines the concept of discrimination as meaning "any differentiation, exclusion, restriction or preference, based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection or falling into a disadvantaged category, which has as its purpose or effect the restriction or removal of recognition, use or exercising under equal conditions human rights and fundamental freedoms or the rights recognized by law, in the political, economic, social and cultural fields or any other fields of public life". Further, pursuant to art. 2 par.3: „Are discriminatory the provisions, criteria or practices apparently neutral, which disadvantage certain persons, based on the criteria set forth in par. (1), against other persons, unless such provisions, criteria or practices are objectively justified by a legitimate purpose, and the methods of achieving such purpose are adequate and necessary". Pursuant to art. 2 par.5: "It is harassment and is punished as a contravention any conduct based on criteria such as race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, falling into a disadvantaged category, age, handicap, status of refugee or asylum seeker, or any other criterion resulting in the creation of an intimidating, hostile, degrading or offensive environment".

Based on the Parties' Contentions and the documents in the file, the Steering Board has retained that the complainant was subject to a discrimination treatment, because he dared to make in writing a number of justified comments, the address submitted being refused to be received through the secretariat. Following this action, under the Decision no. 442/09.09.2015, the employee was imposed as a job task to draw up daily a written activity report, to be submitted to his line manager and forwarded to the Regional Manager for approval.

The Steering Board has retained the opinion of the complainee, according to which, by issuing the Decision, he considered that the complainant would remedy the manner of fulfilling the job tasks, in order to avoid a potential disciplinary investigation and his punishment, due to having some interruptions in his activity – report 81355/18.08.2015.

After reviewing the issues in the complaint as filed, the Steering Board considers the provisions of art. 2 par. 5 in O.G. no.137/2000, as subsequently amended and supplemented, as republished. Pursuant to art. 2 par.5, "It is harassment and is punished as a contravention any conduct based on criteria such as race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, falling into a disadvantaged category, age, handicap, status of refugee or asylum seeker, or any other criterion resulting in the creation of an intimidating, hostile, degrading or offensive environment". Harassment is a form of discrimination, introduced by the Romanian legislator in the process of transposition of the provisions of the Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, printed in the Official Journal of the European Communities (OJEC) no. L180 of 19 July 2000.

In this respect, we had retained that, in matters of non-discrimination legislation, as the *acquis communautaire* is transposed, for having a harassment deed, it is necessary that its constitutive elements are cumulatively existent. Thus, the harassment deed is identified in a conduct that may take different forms. The legal text includes the phrase „any conduct". The phrase „any conduct" indicates the legislator's intention to cover a wide range of conducts and not a restrictive one, allowing to retain some different qualifications in reality, which might vary from case to case, and which are circumscribed in the form of some statements expressed by words,

gestures, acts or deeds, etc. The reason or cause of the conduct is determined by an inherent criterion, which is expressly set forth by the legislator, in a non-comprehensive list, considering that the content of the law sets out in a limited listing the criterion of „race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, falling into a disadvantaged category, age, handicap, status of refugee or asylum seeker". The non-comprehensive character is given by the very phrase „or any other criterion" attached to the criteria expressly listed under art. 2, par. 5. The phrase „or any other criterion" gives, actually, the possibility of retaining any other element not specified in the law, but which is materialized as a determining factor in the committing of the discrimination form called harassment. Showing such conduct based on any of the criteria set forth by law is „resulting in the creation of an intimidating, hostile, degrading or offensive environment". This constitutive element of harassment allows retaining those conducts which, even if not showed intentionally, have the effect of creating an environment defined as „intimidating, hostile, degrading or offensive." This aspect is even more evident given that the very Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, defines harassment in art. 2 par.3 as „an unwanted conduct related to racial or ethnic origin which takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment."
Including harassment as a form of discrimination in the *acquis communautaire* and transposing the latter in the national legislation is extremely important. Discrimination does not manifest per se only in the form of some legal provisions or practices, but also in the form of conducts having an impact on the environment, in general, varying from physical violence to remarks or statements racist, sexist, xenophobic, etc. in character to general ostracism. This form of discrimination infringes upon the dignity, in psychic or emotional respects, pertaining to a minority or another.
Taking into account these considerations, corroborated with the petition and evidence material in the file, the Steering Board is of opinion that the effect created by imposing the daily reporting of activity had connection with the fact that the complainant made in writing a number of comments, a fact that resulted in the creation of an intimidating, offensive and humiliating environment, in the meaning of the provisions in art. 2 par.5 in O.G. no. 137/2000 as republished. In this respect, the Steering Board acknowledges that, according to his job description, the complainant does not perform a work involving the preparation of daily reports of activity, being the only employee who was obliged to draw up the relevant report, even if the employees within the working point who have, in general, the same job duties were not targeted by similar decisions.
Considering the facts above, the Board cannot ignore the complainee's action and cannot accept his opinion according to which some problems were identified only in the complainant's activity.
Therefore, considering the provisions of art. 20 par. 6 in OG no. 137/2000 as republished, according to which "The person concerned has the obligation to prove the existence of some facts allowing to assume the existence of a direct or indirect discrimination, and the person against whom the complaint was filed has the task to prove that the facts are not discrimination. Before the Steering Board, one may invoke any kind of evidence, inclusively audio and video recordings or statistic data", The Board considers the evidence submitted by the complainant as justified.
Considering the facts above, pursuant to art. 20 par. (2) in O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination, as republished, by unanimity of votes of the members attending the meeting,

THE STEERING BOARD
HAS DECIDED AS FOLLOWS:

1. to dismiss the objection to material jurisdiction invoked by the complainees;
2 to allow the objection to material jurisdiction invoked by the complainees as regards the elimination of the consequences of discriminatory deeds and reinstating the situation as before discrimination;
3. the issues notified are subject to the provisions of art. 2 par. 1 and 5 corroborated with art. 6 letter b) in O.G. no. 137/2000 regarding the prevention and punishment of any forms of discrimination, as republished, and the deeds are civilly punished as follows:

4. punishment of Mr. D M, a representative of Direcţia Regionala de Drumuri şi Poduri Constanţa subordinated to CNADNR, with the office in mun. Constanţa, Prelungirea Traian F.N, Constanţa county, by a civil fine in amount of lei 1,000, pursuant to art.2 par.11 and art. 26 par.1 in O.G. no. 137/2000, corroborated with art. 8 in O.G. no.2/2001 regarding the judicial status of contraventions, as subsequently amended and supplemented;

DECISION no. 490
of 04.11.2015

Complainant: Aerolimit Professional Union, C.A.-D.
Complainee: WIZZ Air Hungary Kft. Budapest, Otopeni Subsidiary

Subject matter: the complainant's harassment based on the criterion of union membership, removing her from the flight, the one-sided amendment to the employment agreement.

Subject matter of notification and description of the alleged discrimination deed
The complainants consider as discriminatory the complainant's harassment based on the criterion of union membership, her removal from flight, the one-sided amendment to the employment agreement.

The Parties' Contentions
The Complainant's Contentions
The petition registered with C.N.C.D. under *no. 3615/25.05.2015* (sheets 1-6 in the file), filed by the first complainant in the name of the second complainant states as follows:
- on 17.04.2014, she was punished by a written warning, after, on 16.04.2014, she informed the central management that she was harassed and discriminated in the workplace by the base head;
- in June 2014, she was removed from flights and called to Budapest, being threatened that, if she files action against the company, she would lose her job and would never be hired by another company in the future;
- in September 2014, 30 persons received gifts from the base head, except for her;
- on 6 October 2014, the creation of the union the complainant contributed to was announced;
- on the following days, a term to dissolve the union was granted;
- on 28 October 2014, the president of the union was fired, later, on 19 March 2015, the dismissal decision was annulled by the court of law;
- the complainant, holding the position of secretary in the union was removed from the flight on the grounds she posed a danger to the flight;
- 7 persons were hired for a probation period of 3 months, then, in November 2014, 19 employees, of which 18 union members (of the total number of 63 members), were fired;
- in December 2014, it was claimed that the complainant was not well trained and should attend further training, being at the same time threatened with dismissal;
- in February 2015, she filed an action in court for receiving the night benefits according to the Romanian legislation;
- on 26 February 2015, the entire base was called to sign new agreements, without being given the possibility to study in advance the new agreement, and such agreements set forth the decrease in the base salary to which the night benefit was added;
- under such conditions, she refused to sign the agreement;
- she asked in writing to be provided with the new agreement, in order to consult a lawyer;
- the agreement was sent to her by email, and she refused to sign it;
- even if she did not sign the new employment agreement, the new decreased salary was applied to her;
- on 15 April 2015, she was removed from the flight;
- then she took a sick leave;
- when returning from the sick leave, she was placed in standby, in June, too;
- thus, she was deprived of the flight per diems;
- she invokes the union criterion for discrimination and harassment deeds, requesting a civil fine be imposed on the complainee.

She submitted documents in the file (sheets 7-47 in the file).
In the address registered in the file under *no. 4671/07.07.2015*, the complainant submitted documents in the file (sheets 250-280 in the file).
In the address registered in the file under *no. 6223/28.09.2015*, (sheets 361-369 in the file) the complainant union states the following relevant facts:
- the two persons removed from flight and compared with the complainant's case failed the flight exam, therefore, were removed until the next exam;
- it completes the petition with new claims.
It submitted documents in the file (sheets 370-385 in the file).

The complainee's contentions
The complainee, in the address registered with C.N.C.D. under *no. 4648/06.07.2015* (sheets 47-71 in the file), states as follows:
- it requests the certified translation into Romanian of the evidence submitted by the complainants;
- it invokes the objection to the proof of capacity as representative of the complainant union as regards the complainant;
- it invokes the objection to the material jurisdiction of C.N.C.D., on the grounds that the subject matter of the action refers to labor law, on which only the courts of law may rule;
- it invokes the objection to tardiness regarding facts prior to 25.05.2014;
- the complainant did not invoke which one of the deeds listed is discrimination;
- the complainant invokes the union criterion for discrimination, before the creation of the union;
- the complainant does not prove the existence of a cause-effect relation between the union criterion and differentiation;
- there is no evidence regarding the statements made in the petition;
- the complainant was punished, on 17 April 2014, for breaching internal procedures;
- no discrimination of the complainant took place at the meeting in Budapest;
- not promoting the complainant in the positions of senior flight attendant is not discrimination, given that the internal procedures were complied with;
- not granting paid free days in September 2014 is not discrimination;
- not performing flights is not discrimination, given that:
• it is required to maintain a high level of safety on flights;
• the complainee had to take measures for observing flight safety, inclusively by not requesting a flight attendant to board on;
• anonymous reports were received, according to which other flight attendants refused to fly with the complainant;
• the measure was supported by the Hungarian flight authorities;
• the complainant was informed about the situation;
• other persons were in the same situation;
• the complainant's treatment was objectively justified;
• the complainant's right to work was not removed;
• the fight schedule for November was changed for several flight attendants and not only for the complainant;
- the complainant's participation in training is not discrimination, given that periodical training of the personnel is an obligation of the company;
- the amendment to agreements was not discriminatory in character.
It submitted documents in the file (sheets 66-249 in the file).
4.2.2. The complainee, in the address registered with C.N.C.D. under *no. 6264/30.09.2015* submitted in the file written conclusions maintaining the facts stated previously (sheets 386-402 in the file).

Investigation report
Following the performance of an investigation, the following report was drawn up:
„Prior to performing the control at the office of Wizz Air, the investigation team handed the complainant a copy of the opinion drawn up by Wizz Air Hungary Kft. Budapest Otopeni Subsidiary, on 29.07.2015. Further, the representatives of C.N.C.D. requested Mrs. Chelu Anamaria Denisa to submit the audio – video evidence mentioned in her complaint, as well as to

designate prospective witnesses who would support her claims. The complainant refused to submit the evidence mentioned, and did not designate any witnesses.
At the complainee's office, the representatives of C.N.C.D. had discussions with the following persons:
[...]
The three persons proposed as witnesses agreed to make written statements regarding the issues described by Mrs. Chelu Anamaria Denisa in her petition to the National Council for Combating Discrimination, registered under no. 3615/25.05.2015 and part in the file no. 333/2015.
In the presence of the investigation team, the witnesses mentioned that they were never in conflict with Mrs. Chelu Anamaria Denisa, a conflict that would motivate their statements, and claimed that they were not influenced in any way by the management of Wizz Air upon describing the issues set out in their statements.
The investigation team requested the representatives of Wizz Air a statistics regarding the status of the persons assigned to the Otopeni Subsidiary, in 2015, agreeing with the complainee's lawyers to have it sent to the Council within a week at the latest from the date of this control."
Upon the investigation, a number of documents were submitted in the file (sheets 290-352 in the file).

De facto and de jure reasons
The Steering Board has found that, under the *Decision 260/2015,* the Steering Board adjudicated the claims regarding the harassment of union members and the cancellation of the employment agreements from October 2014 until November 2014. Therefore, it shall pronounce itself as regards the second complainant, concerning the following facts:
- on 17.04.2014, the complainant was punished by a written warning, after, on 16.04.2014, she informed the central management that she was harassed and discriminated in the workplace by the base head;
- in June 2014, the complainant was removed from flights and called to Budapest, being threatened that, if she files action against the company, she would lose her job and would never be hired by another company in the future;
- in September 2014, 30 persons received gifts from the base head, except for her;
- on 6 October 2014, the creation of the union in which the complainant became a secretary was announced;
- the complainant was removed from the flight, on the grounds she posed a danger to the flight;
- in December 2014 the complainant attended further training;
- as of February, the flight attendants' salaries were decreased, and the night benefit was added to them;
- the complainant refused to sign this new agreement;
- as of April 2015, the complainant was removed from the flight, thus she received a base salary without any benefit or per diem.
As regards the request to submit the evidence, through the certified translation into Romanian on the part of complainants, the Steering Board has found that, within the complainee company, the English language was used, the relevant documents being exactly communications from the complainee, therefore, their certified translation is not necessary. The legislator set forth as regards discrimination matters a simple procedure, which does not require material efforts from the party addressing C.N.C.D. or the court of law, according to the directives and customs of the European Union in such matters.
The Steering Board dismisses the objection to the complainant union's capacity to sue, as invoked by the complainee, stating that the petition filed by the union was signed by the complainant. There are no legal grounds for dismissing a petition signed by the complainant herself.
The Board allows in part the objection to the material jurisdiction of C.N.C.D., as invoked by the complainee, stating as follows:
- the courts of law showed constantly that the subject matter of action before C.N.C.D. is a contravention, which cannot be the subject matter of action before courts of law; thus, even if a person may address courts of law, too, this does not mean that C.N.C.D. has no jurisdiction to find the discriminatory character of some deeds and to impose the appropriate civil fines;

- the issues related to the amendment to the employment agreements, targeting the entire personnel and not only the union members are evidently a labor law issue, and not a discrimination matter, therefore, in this respect, C.N.C.D. has no material jurisdiction.

The Steering Board allows the objection to tardiness regarding the facts prior to 25.05.2014, as invoked by the complainee, considering the provisions of art. 20 par. 1 in O.G. no. *137/2000*, setting forth: *„The person that considers themselves discriminated may notify the Council within one year since the date when the deed was committed or since the date when they could become aware of its being committed."* In any case, a discrimination deed based on the union criterion could not be found long before the union existed.

The Steering Board dismisses the claims filed after summoning, pursuant to the provisions of the *Internal Procedure for Adjudication of Petitions and Complaints*, art. 11 par. 2, which set forth: *„The petition may be supplemented by new claims until the first hearing date, subject to termination."*

Considering these aspects, the Steering Board should pronounce itself on one aspect: whether keeping the complainant, a flight attendant, on ground, for a long period of time, is or not discrimination.

The Government Ordinance no. 137/2000 regarding the prevention and punishment of any forms of discrimination, as republished (called hereinafter *O.G. no. 137/2000*), in art. 2 par. 1 sets forth: *„According to this ordinance, discrimination means any differentiation, exclusion, restriction or preference, based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection, falling into a disadvantaged category, as well as any other criterion with the purpose or effect of restraining, eliminating the recognition, use or exercising under equal conditions human rights and fundamental freedoms or the rights recognized by law, in the political, economic, social and cultural field or in any other fields of public life."*

Thus, discrimination may be considered:

• a differentiation
• based on a criterion
• which infringes upon a right.

According to the ECHR case law in these matters, the difference in treatment becomes discrimination when distinctions are made between analogous and comparable situations, without these being based on a reasonable and objective justification. The European Court has constantly decided that, for such a violation to take place, *„one should establish that persons found in analogous or comparable situations, in these matters, receive a preferential treatment and such distinction has no objective or reasonable justification"*. ECHR considered in its case law that the contractual states have a certain assessment margin in order to establish whether and to what extent the differences between analogous or comparable situations are liable to justify the distinctions of judicial treatment applied (for ex.: *Fredin vs. Sweden*, 18 February 1991; *Hoffman vs. Austria*, 23 June 1993, *Spadea and Scalambrino vs. Italy*, 28 September 1995, *Stubbings and others vs. the United Kingdom*, 22 October 1996).

The Steering Board has found that keeping the complainant on the ground, by comparison with other workmates who flew is differentiation.

The discrimination deed is determined by the existence of a criterion. One may invoke any criterion (*O.G. no. 137/2000*, art. 2 par. 1: [...] „*based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection, falling into a disadvantaged category, as well as any other criterion"* [...]; *The Additional Protocol no. 12 to the European Convention on Human Rights* (called hereinafter *Protocol no. 12*), art. 1 par. 1: [...] „*without any discrimination based especially on gender, race, color, language, religion, political opinions or any other opinions, national or social origin, belonging to a national minority, wealth, birth or any other situation"*), and between this criterion and the facts imputed to the complainee there should be a cause-effect relation.

As regards the differentiation criterion, the Steering Board has found as follows:

- previously, under the *Decision 260/2015,* the Steering Board has found the discrimination of union members (harassment, cancellation of employment agreements) by the complainee, therefore, it may be assumed that leaving the complainant on the ground has a connection with

her union membership; likewise, the court of law has found the illegality of cancellation of the employment agreement of the union leader;
- pursuant to art. 20 par. 6, *„The person concerned shall present facts based on which the existence of direct or indirect discrimination may be assumed, and the person the complaint was filed against is responsible to prove that no violation of the principle of equal treatment took place"*, thus, the complainee has the task to prove that the union membership was not relevant to keeping the complainant on the ground;
- The Steering Board has found, based on the documents submitted by the complainee itself, as follows:
• in the complainee's address dated 08.05.2015 (sheet 151 in the file), it requested to have completely removed from the schedule two persons, the union leader and the complainant, the union secretary, mentioning that *„it refers to «union members»"*, *„although presently there is no representative union"* and, inclusively, the capacity of the two persons within the union is mentioned; the address claims that the complainant filed criminal petitions against her workmates, a statement that is not confirmed by evidence, therefore, the Hungarian transport authority was misled;
• the Hungarian transport authority (sheet 155 in the file) stated that it would take measures only *„when we would understand and be convinced that the safety level could no longer be maintained"*, requesting evidence for the purposes of the complainee's statements;
• the motivation regarding the danger posed to the flight refers to the fact that the two persons kept on the ground filed criminal petitions for the obstruction of the union, therefore, in relation to their union activity.
- the address submitted by the complainant (sheet 254 in the file) shows that the Hungarian transport authority did not investigate the situation in view of withdrawing the complainant's right to fly;
- there is no criminal petition in the file that the complainant filed against her flight attendant workmates, therefore, we cannot exclude the possibility that the complainee launched such rumors against the complainant, as it suggested even before C.N.C.D.;
- the fact that other two persons were kept on the ground is not relevant, given that the complainee did not state the reasons for such measure (the complainant stated that the said persons failed the exam); the Steering Board has not reviewed whether, under certain circumstances, some persons may be forbidden to board on, but the connection between the complainant's interdiction and her union activity.
Considering the facts described above, the Steering Board has found that the complainant's union activity resulted in her being kept on the ground.
A deed may be considered discriminatory if infringes upon a right, any of those guaranteed by international treaties ratified by Romania, or the ones set forth by the national legislation (*O.G. no. 137/2000*, art. 1 par. 2: *„The principle of equality between citizens, of exclusion of privileges and discrimination are guaranteed especially upon exercising the following rights:* [...]*"*, art. 2 par. 1: [...] *„restraining, removing recognition, use or exercising, under equal conditions, human rights and fundamental freedoms or the rights recognized by law* [...]*"*; *Protocol no. 12*, art. 1 par. 1: *„Exercising any right set forth by law* [...]*"*.
Keeping the complainant on the ground affects the complainant's salary entitlements, given that during such period she receives only the base salary. Further, such a fact affects inclusively the right to dignity.
Thus, keeping the complainant, a flight attendant, on the ground, for a long period of time, is discrimination, pursuant to art. 2 par. 1 in O.G. no. *137/2000*, being a restriction, based on union membership, which had as its purpose restraining the recognition and use, under equal conditions, of salary entitlements and which affected her right to dignity.
Pursuant to art. 2 par. 5 in O.G. no. *137/2000*, as republished, *„It is harassment and is civilly punished any conduct based on criteria such as race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, falling into a disadvantaged category, age, handicap, status of refugee or asylum seeker, or any other criterion resulting in the creation of an intimidating, hostile, degrading or offensive environment."*
The Steering Board has found that the measure of keeping the complainant on the ground results in the creation of an intimidating and hostile environment for her, therefore, the provisions of art. 2 par. 5 in O.G. no. *137/2000* are applicable.

Art. 7 in O.G. no. *137/2000* sets forth: *„It is contravention, according to this ordinance, the discrimination against a person because they belong to a certain race, nationality, ethnicity, religion, social category or a disadvantaged category, respectively, because of their beliefs, age, gender or sexual orientation, within an employment and social protection relationship, except for the cases set forth by law, appearing in the following matters: [...] f) the right to join the union and access to the facilities granted by it; [...] g) any other conditions of performing work, according to the legislation in force"*.
The Steering Board has found that keeping the complainant on the ground, based on the criterion of union membership, deters the employees from joining the union, therefore, the provisions of art. 7 letter a in O.G. no. *137/2000* are applicable. Further, the discrimination occurred in matters of performance of work, therefore the provisions of art. 7 letter f) in O.G. no. *137/2000* are also applicable.
Pursuant to art. 26 par. 1 *„the contraventions set forth in art. 2 par. (4), (5) and (7), art. 5-8, art. 10, art. 11 par. (1), (3) and (6), art. 12, art. 13 par. (1), art. 14 and 15 are punished by a fine in amount of lei 1,000 - lei 30,000, if the discrimination targets an individual, respectively by a fine in amount of lei 2,000 - lei 100,000, if the discrimination targets a group of persons or a community"*.
5.23. The Steering Board has decided to impose a civil fine in amount of lei 20,000, considering the following:

- the European Union Directives in these matters (for ex. *The Council Directive 2000/43/EC*, art. 15) and the case law of the European Court of Justice request the European Union member states to impose effective, proportional and deterring punishments;
- the discrimination targeted a person;
- the discrimination has as its purpose to stop the union movement, an extremely serious deed.
- previously, the complainee was fined also for discrimination, but it continued, however, to commit discriminatory deeds.

Pursuant to par. 2, art. 26 in O.G. no. *137/2000*, *„The Council or, as the case may be, the court of law may oblige the party that committed the discrimination deed to publish in mass-media a summary of the decision, respectively of the court sentence"*.
Therefore, the Steering Board obliges the complainee to communicate the summary of this decision in mass-media with national coverage and on its own internet page, in English, with link on the first page.
Considering the facts above, pursuant to art. 20 par. (2) in O.G. *137/2000 regarding the prevention and punishment of any forms of discrimination*, as republished, with the unanimity of the members attending the meeting,

THE STEERING BOARD
HAS DECIDED AS FOLLOWS:

1. To dismiss the objection to the complainant union's capacity to sue;
2. To allow the objection to the material jurisdiction regarding the amendment to employment agreements involving salary decrease, pursuant to art. 28-32 in the *Procedure for adjudication of petitions and complaints*;
3. To allow the objection to tardiness regarding the facts prior to 25.05.2014, invoked by the complainee, considering the provisions of art. 20 par. 1 in O.G. no. *137/2000*;
4. To dismiss the claims filed after summoning, pursuant to the provisions of the *Internal procedure for adjudication of petitions and complaints*, art. 11 par. 2;
5. Keeping the complainant, a flight attendant, on the ground for a long period of time is discrimination, pursuant to art. 2 par. 1, art. 2 par. 5 and art. 7 letter f) and g) in O.G. no. *137/2000*;
6. To impose a civil fine in amount of lei 20,000 on WIZZ Air Hungary Kft. Budapest, Otopeni Subsidiary, Airport Plaza Building, 1A Drumul Gării Odăii, 3rd floor, room 307, entrance B, postal code 075100, Otopeni, Ilfov county, registered with TR under no. J23/2805/2013, CUI 26621427, pursuant to art. 26 par. 1 in O.G. no. *137/2000*;

DECISION 577
of 14.09.2016

Complainant: Sindicatul Național Solidaritatea 2012
Complainee: Societatea Transporturi Auto Suceava S.A.
Subject matter: Discrimination of employees that are union members

Subject matter of notification and description of the alleged discrimination deed
In the notification made, the complainant accuses that the union members, employees of the complainee company, are discriminated by the management, due to their membership in a union.

The Parties' Contentions
The Complainant's Contentions
In the brief registered under no. 8139/31.12.2015, the complainant notifies that a group of employees of the complainee company joined the complainant union, the reason for this being the violation of employees' rights and the company exercising illegal pressures through the company manager.
The complainant claims that it went to the complainee's office, in order to inform the company management of the existence of some employees that would join the union and, further, the submittal of a request by a union member was intended. The complainant intended to submit the briefs with the complainee's secretariat, in order to be registered, but the registration of documents was refused, and they were notified by the complainee's manager that he was not interested in the complainant's offer, that the company had a representative of the employees, and that the employees were forbidden, by the internal regulation of the company, to join or to create a union.
The complainant claims that as regards the union member (C D), prior investigation was carried out, without the union being able to provide assistance, although he made a request to be represented by the union. A reason for investigation was that Mr. C D carried out union activities.
In the document registered under no. 2219/08.04.2016, the complainant claims that, by submitting a copy of the application to join of Mr. C D and by the power granted by him, the complainant can prove its capacity to sue.
The complainant claims that it could not notify the complainee of the creation of a union, given that the company manager fought persistently against the creation of a union, performing an operation of intimidation of the employees, in order not to join the union, the complainant being obliged to explain the employees of the complainee company in other ways that their only chance was to join an operational union.
The complainant challenges the complainee's claim that it was not notified of the creation of a union, mentioning that the company refused to register the notification when the complainant's representative went to the complainee's office, in order to notify the company of the creation of the union, a thing that was refused to the complainant's representative. The solution found by the complainant in order to notify the company was to send on the same day the document that they wanted registered, by the official fax of the company.
The complainant advises that the relevant employee requested several times to be represented upon the hearing by the representatives of the union he was a member of, such requests being dismissed by the management of the complainee company, they considering that it was not mandatory that the employee be represented by the union, insofar as they had a representative of the employees hired within the company, this being a gross violation of the employee's rights and discrimination.

The Complainee's Contentions
In the document registered under no. 1468/14.03.2016, the complainee requests the Steering Board to dismiss the petition as groundless and illegal.
The complainee invokes the objection to the complainant's capacity to sue, considering that the petition was filed by a person without the capacity to sue and who did not act in the name of

some members (company employees), the complainant not having any evident legitimate interest.
The complainee mentions that the complainant did not perform any legal act the management was aware of, as regards the fact that a legal union was created and joined by employees of the complainee company. Further, the complainee company was not advised, by means of a written or at least verbal notice, of the discrimination the employees were subject to; neither was advised the Territorial Labor Inspectorate, therefore, the complainee company considers that there are no discrimination deeds it should stop.
The complainee advises that, in this case, the cumulative existence of elements regarding a treatment of differentiation, restriction, exclusion, preference between persons found in comparable situations but treated differently may not be retained.
The complainee claims that, actually, the said employee, Mr. C D, attended the prior disciplinary investigation, being assisted by the employees' representative. On the date and at the time scheduled for the disciplinary investigation, a certain person came to the secretariat, on the complainant's part, who wished to have a document registered, but the secretary was at an emergency meeting together with other employees, and asked the said person to come back later, or to send the document by mail.
The complainee mentions that it is forbidden to carry out union activities during the working hours, a fact that the relevant employee did not recognize that was done, upon the disciplinary investigation, but several employees of the complainee recognized that they were approached by the said employee during the working hours, in order to sign their joining this union, under the pretext that such union would free drivers of controls along the routes.
The complainee attached to the file the collective labor agreement, the disciplinary investigation report and the employees' statements.
In the document registered under no. 2955/10.05.2016, the complainee claims that the complainant has no capacity to sue in this file, and requests the dismissal of the petition and ruling that this was filed by a person that acted in the name of some members, employees of the company.
The complainee mentions that it was not notified of its employees joining a union, and, as regards the fax mentioned in the complainant's conclusions, the complainee company states that they did not receive any official document from the complainant.

The complainee claims that it did not perform any operations of intimidation of employees so that not to join the union, but only requested from employees their opinions about their dissatisfactions, if they would like to join a union.
The complainee claims that the said employee did not recognize that he was a member of a union, in the statement made, and that, as regards other disciplinary investigations, the employees were granted the right to be represented, giving the example of an employee that was represented by a lawyer upon his disciplinary investigation. The company claims that the said employee, Mr. C, wanted to be represented by a person outside the company, who did not act as his proxy, no power of attorney or power to attend the investigation being submitted.
The complainee mentions that, at the beginning of his statement, the employee left a blank space, that at the end of the statement, after receiving a SMS on his phone, he completed as follows:
„I request assistance from Sindicatul Național Solidaritatea 2012, whose member I am".
The complainee claims that everything was premeditated by the employee, the latter not recognizing that he carried out union activities during the working hours and not informing the company of the fact he was a member of a certain union. Further, the complainee claims that the employee made pressures on the company drivers, misleading them that, should they sign their joining the union, they would be freed of controls along the routes, and receive further benefits.
Moreover, he is accused also that, during the working hours, he did not perform his activities according to the job tasks, an entire series of violations of his job description being imputed to him.
The complainee attached documents to the file.

De facto and de jure reasons

De facto, the Steering Board of the National Council for Combating Discrimination (C.N.C.D.) has found that the complainee limits the right to join a union and the access to the facilities granted by it, and that the members of the complainant union are harassed in the workplace through the actions performed.
De jure, the Steering Board of the National Council for Combating Discrimination shall proceed according to the dispositions of art. 63 in the Internal Procedure for Adjudication of Petitions and Complaints, printed in the Official Gazette no. 348 of 6 May 2008, as follows *„(1) The Steering Board shall pronounce itsef first on the procedure objections, as well as on those on the merits which no longer require, in full or in part, reviewing the petition on the merits."*
Pursuant to art. 5 in the Procedure for adjudication of petitions and complaints *"the complainant is the person that considers that is discriminated, and notifies the Council of a discrimination deed being committed against him".*
Further, art. 7 par. 1 in the Procedure for adjudication of petitions and complaints sets forth that *"the person concerned is either the person that considers themselves discriminated and notifies the Council of a discrimination deed being committed against themselves, or one of the persons set forth in art. 8 par. 1 and 2, or other persons who have a legitimate interest in combating discrimination, and represent a person, a group of persons or a community against whom a discrimination deed was committed".*
After reviewing the petition, the Steering Board acknowledges that, in this case, the complainant submitted in the file the application for joining the union and the power of one of the union members.
Considering these facts, the Steering Board, in compliance with the applicable legal provisions, is to dismiss the objection to the complainant's capacity to sue, invoked by the complainee, because this represents the union members in the case submitted for adjudication by the Council (the representation power submitted in the file evidences that the complainant union has the capacity to sue in this case).
On the merits, the Government Ordinance no. 137/2000 regarding the prevention and punishment of any forms of discrimination, as republished (called hereinafter *O.G. no. 137/2000*) in art. 2 par. (1) sets forth: *„According to this ordinance, discrimination means any differentiation, exclusion, restriction or preference, based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection or falling into a disadvantaged category, as well as any other criterion that has as its purpose or effect the restriction or removal of recognition, use or exercising under equal conditions human rights and fundamental freedoms or the rights recognized by law, in the political, economic, social and cultural fields or any other fields of public life."*
Pursuant to art. 2 par. (4) *„Any active or passive conduct which, through the effects it generates, advantages or disadvantages without grounds, or applies an unfair or degrading treatment to a person, a group of persons or a community against other persons, groups of persons or communities shall result in civil liability, pursuant to this ordinance, unless subject to the criminal law."*
Pursuant to art. 7 letter f) *„It is contravention, according to this ordinance, the discrimination against a person because they belong to a certain race, nationality, ethnicity, religion, social category or a disadvantaged category, respectively because of their beliefs, age, gender or sexual orientation, within an employment and social protection relationship, except for the cases set forth by law, appearing in the following matters: [...] f) the right to join the union and access to the facilities granted by it; [...]"*.
In order to find the existence of a direct discrimination deed, the existence of the following elements is required:
- a differentiation
- between two persons or situations found in a comparable position
- based on a criterion
- which violates a right.

The Steering Board has found that, in this case, limiting the right to join a union and the access to the facilities granted by it is a differentiation.
The differentiation criterion is, in this case, based on the union membership, which falls into the category of *„any other criterion".*
The right violated is the right to work, guaranteed by the *Romanian Constitution*.

After reviewing the documents submitted in the file, the Steering Board has retained that the complainee's refusal to register the documents by which the complainant union wished to advise the company management of the existence of some employees to join the union is discrimination.
Further, under art. 7 letter i) in the Internal Regulation of the company, the complainee forbids its employees to join or create a union, for the reason that there is a representative of employees. By reference to the case to be adjudicated, the Steering Board has found that art. 7, letter i) in the Internal Regulation of the company is discrimination, the complainee limiting the right to join a union and access to the facilities granted by it to all the employees.
Pursuant to art. 2 par. (5) *„It is harassment and is civilly punished any conduct based on criteria such as race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, falling into a disadvantaged category, age, handicap, status of refugee or asylum seeker, or any other criterion resulting in the creation of an intimidating, hostile, degrading or offensive environment."*
The Steering Board has retained that a member of the complainant union was subject to a disciplinary investigation by the company management, being accused that, during the working hours, he carried out union activities and that, during the working hours, he did not carry out the activities according to job tasks.
After reviewing the documents submitted in the file, the Steering Board has retained that the prior investigation was performed without the possibility of the union providing assistance although the union member investigated made numerous requests to be represented/assisted by the complainant union's delegate.
The Steering Board has retained that these requests were dismissed by the management of the complainee company, on the grounds that it is not mandatory that an employee is represented by the union, insofar as there is a representative of the employees hired within the company.
In this respect, the Steering Board has found that the complainee had a conduct that resulted in the creation of an intimidating environment for the union member that wished to be represented by a proxy of the union he was a member of, his requests submitted to this effect being dismissed.
In conclusion, limiting the right to join a union and access to the facilities granted by it and harassing the complainant union members in the workplace is discrimination pursuant to art. 2 par. 1, art. 2 par. 4, art. 2 par. 5, corroborated with the provisions of art. 7 letter f) in O.G. no. *137/2000, as republished*.
Pursuant to art. 26 in O.G. no. *137/2000,* the Steering Board imposes on the company Transporturi Auto Suceava S.A. a civil fine in amount of lei 5,000, considering the following:
- the discrimination targeted a group of persons;
- the discrimination is liable to affect the independent activity of unions and limited the right to join a union and the access to the facilities granted by it;
- the complainee had a conduct that resulted in the creation of an intimidating environment for the union member that wished to be represented by a proxy of the union he was a member of
- the complainee has the capacity of employer, with clear obligations towards its employees and their representatives.
Par. 2 in art. 26 sets forth: *„The Council or, as the case may be, the court of law may oblige the party that committed the discrimination deed to publish in mass-media a summary of the decision, respectively of the court sentence*".
The Steering Board obliges the complainee to publish in mass-media a summary of this decision.
Considering the facts above, pursuant to art. 20 par. (2) in O.G. *137/2000 regarding the prevention and punishment of any forms of discrimination*, as subsequently amended, by unanimity of votes of the members attending the meeting,

THE STEERING BOARD
HAS DECIDED AS FOLLOWS:

1. The facts notified are discrimination, pursuant to the dispositions of art. 2 par. 1, art. 2 par. 4, art. 2 par. 5, corroborated with the provisions of art. 7 letter f) in O.G. no. *137/2000, as republished*.
2.It imposes on the company Transporturi Auto Suceava S.A. a civil fine in amount of lei 5,000, pursuant to art. 26 par. 1 in O.G. no. *137/2000*;

DECISION no. 580
of 21.09.2016

Complainants: Sindicatul Liber Decirom, S.C., S. S., B. M., M. E., Z. N., M. M., L. D., H. G., I. A., B. M., A. I., O. C., E. C., C. T., R. D., M. C., U. M.
Complainees: S.C. Decirom S.A.

Subject matter: not granting salary increases, granting some entitlements (vouchers, Christmas bonuses, bonuses on the Port Worker's Day; holiday bonus, three base salaries upon retirement, not reimbursing the transport to the workplace), consulting only one union, cancellation of the employment agreements of employees who are union members, removing the union leaders from the employer's management position, based on the criterion of union membership

Subject matter of notification and description of the alleged discrimination deed
The complainants consider as discriminatory not granting salary increases, granting some entitlements (vouchers, Christmas bonuses, bonuses on the Port Worker's Day; holiday bonus, three base salaries upon retirement, not reimbursing the transport to the workplace), consulting only one union, cancellation of the employment agreements of employees who are union members, removing the union leaders from the employer's management position, based on the criterion of union membership.

The Parties' Contentions
The Complainants' Contentions
The Prefect's Institution – Constanța county, under the address registered with CNCD under *no. 237/19.01.2016* (sheet 1 in the file *no. 26/2016*) submitted for adjudication the address of the complainant union (sheets 2-3 in the file *no. 26/2016*), notifying the following discrimination deeds based on union membership:
- not granting salary increases;
- not reimbursing transport to the workplace;
- consulting only another, non-representative union;
- the cancellation of employment agreements of employees that are union members;
- removing the union leaders from the employer's management positions.

It mentions also that it is the only representative union.
The complainant union submitted documents in the file (sheets 13-122 in the file *no. 26/2016*).
The second complainant, in the address registered in the file under *no. 385/27.01.2016* (sheets 1-2 in the file *no. 47/2016*), states that the members of the other union were granted a salary increase, received vouchers, a holiday bonus, and 3 base salaries upon retirement.
It submitted documents in the file (sheets 3-8 in the file *no. 26/2016*).
The second complainant in the address registered in the file under no. 998/22.02.2016 (sheets 11-32 in the file *no. 26/2016*) submitted documents.
The complainants 3-17, in the petition registered with CNCD under *no. 1340/07.03.2016* (sheets 1-3 in the file *no. 164/2016*) consider as discriminatory granting the following, based on the criterion of union membership:
- salary increase;
- bonus on the Port Worker's Day;
- Christmas bonus;
- holiday bonus.

The 18th complainant, in the petition registered with CNCD under *no. 1702/22.03.2016* (sheets 1-2 in the file *no. 215/2016*), considers as discriminatory granting the following entitlements based on the union criterion:
- salary increase;
- bonus on the Port Worker's Day;
- Christmas bonus
- three base salaries upon retirement.

In the address registered with CNCD under *no. 2314/12.04.2016* (sheets 70-85 in the file *no. 215/2016*), the 18th complainant submitted documents.
The complainant union requested the corroboration of files in the address registered with CNCD under *no. 3202/20.05.2016* (sheet 717 in the file *no. 215/2016*).
Powers were submitted in the file, under the address registered with CNCD under *no. 3538/07.06.2016* (sheets 775-788 in the file *no. 26/2016*).
The first complainant submitted documents in the file, under the address registered with CNCD under *no. 3549/07.06.2016* (sheets 789-844 in the file *no. 26/2016*).
The first complainant submitted in the file written conclusions maintaining the facts previously stated (address registered with CNCD under no. 5199/05.09.2016, sheets 948-954, with annexes, in the file *no. 26/2016*)

The Complainee's Contentions
The complainee, under the address registered with CNCD under *no. 2766/29.04.2016* (sheet 461 in the file *no. 26/2016*), submitted a power in the file.
In the address registered with CNCD under *no. 2668/26.04.2016* (sheets 480-485), the complainee mentions the following issues:

- after a strike in December 2014, another union was set up, besides the complainant union;
- there is no collective labor agreement at the company level, ITM Constanta refusing to register the agreement negotiated with the second union and not with the first union;
- a protocol was signed with the second union;
- the provisions of this protocol apply to the members of the second union, the protocol was negotiated with;
- there is no legal framework for granting the same rights to the members of the complainant union.

It submitted documents in the file (sheets 486-716 in the file *no. 26/2016*).
In the address registered with CNCD under *no. 3538/07.06.2016* (sheet 719 in the file *no. 26/2016*), the complainee maintains the facts previously stated.
The complainee submitted documents in the file, under the address registered with CNCD under *no. 3549/07.06.2016* (sheets 720-774 in the file *no. 26/2016*).
A power was submitted for the complainee, under the address registered with CNCD under *no. 3538/07.06.2016* (sheet 775 in the file *no. 26/2016*).
In the written conclusions submitted in the file by the complainee, address registered with CNCD under *no. 3701/13.06.2016* (sheets 921-945 with annexes in the file *no. 26/2016*), the facts previously stated are maintained, considering that the complainant union wishes only to create a tense climate between the employees and the employer.
The complainee also submitted the written conclusions in the file, registered with CNCD under *no. 5273/08.09.2016* (sheets 955-968, with annexes, in the file *no. 26/2016*).

The Intervener's Contentions
The intervener, in its opinion submitted in the file, registered with CNCD under *no. 2634/25.04.2016* (sheets 126-140 in the file *no. 26/2016*, the second copy and annexed sheets 141-253) mentions the following relevant issues:
- the salary entitlements were negotiated by the intervener union, thus, normally, these were not applied to the complainee union members;
- it considers that the issues related to the relocation of some persons may be judged by the courts of law, and not by CNCD.
The intervener submitted documents in the file (sheets 283-470 in the file *no. 26/2016*).
The intervener maintained the facts previously stated in the address registered with CNCD under *no. 2633/25.04.2016* (sheets 38-44 in the file *no. 47/2016*).
The intervener, in the address registered with CNCD under *no. 2632/25.04.2016* (sheets 14-21 in the file *no. 164/2016*), maintained the facts previously stated.
In the address registered with CNCD under *no. 2196/08.04.2016* (sheets 7-13 in the file *no. 215/2016*), the intervener maintained the facts previously stated. It submitted documents in the file (sheets 14-69 in the file *no. 215/2016*).
The same opinions were submitted under the addresses *no. 2632/25.04.2016* and *2633/25.04.2016*.

The intervener submitted also a similar opinion, by documents, upon its hearing (sheets 845-912 in the file). Further, it submitted documents under the address registered with CNCD under *no. 3669/10.06.2016* (sheets 914-920 in the file).

Contentions of the Territorial Labor Inspectorate Constanța
The Inspectorate, in the address registered with CNCD under *no. 1158/26.02.2016* (sheets 33-34 in the file *no. 47/2016*), mentions the following relevant issues:
- the complainee signed a protocol applicable only to the members of the intervener union, as a signatory;
- thus, in ill faith, the principle of an equal treatment of all the employees is violated;
- the preferential granting of rights is illegal and discriminatory, such rights are:
    - increase of the base salary;
    - granting bonuses;
    - granting 3 base salaries upon retirement.

De facto and de jure reasons
On 27.04.2016, the Steering Board decided to corroborate the files *no. 47/2016*, *no. 164/2016*, *no. 215/2016* with *no. 26/2016*, considering that all the petitions regard just one complainee, and the complainants are the employees of the said complainee, namely a union representing the employees, the subject matter being discrimination.
The Steering Board, based on the evidence submitted in the file, pursuant to the provisions of art. 20 par. 6 in O.G. no. *137/2000* (*„The person concerned shall present facts based on which the existence of a direct or indirect discrimination may be assumed, and the person against whom the complaint was filed has the task to prove that no violation of the equal treatment principle took place. Before the Steering Board, one may invoke any kind of evidence, in compliance with the constitutional status of fundamental rights, inclusively audio and video recordings or statistic data."*), has found as follows:
- the discussions regarding the collective labor agreement between the complainant union and the complainee reached a deadlock; in these conditions, the complainee signed a protocol with the intervener union, and based on such protocol, the members of the intervener union benefit from the following:
- salary increase;
- vouchers;
- bonuses on the Port Worker's Day;
- Christmas bonuses;
- holiday bonuses;
- three base salaries upon retirement.
Further, for the members of the complainant union, the transport to the workplace was not reimbursed, and the employer proceeded to the cancellation of the employment agreements of the members of the complainant union, and the union leaders were removed from the management positions of the complainee employer.
According to the *Internal Procedure for Adjudication of Petitions and Complaints* before CNCD, there are two parties: the complainant (inclusively the concerned party that complaints about a discrimination) and the complainee. The capacity of intervener is inexistent, but the contentions in favor of the complainee are considered *amicus curiae*, as recognized in the international common law. It results that the „intervener" union may not file objections, but may support the defense of the complainee, inclusively by documents that are evidence in the file.
The general definition of direct discrimination is stated in art. 2 par. 1 in O.G. no. *137/2000*, which sets forth: *„According to this ordinance, discrimination means any differentiation, exclusion, restriction or preference, based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection or falling into a disadvantaged category, as well as any other criterion that has as its purpose or effect the restriction or removal of recognition, use or exercising under equal conditions human rights and fundamental freedoms or the rights recognized by law, in the political, economic, social and cultural fields or any other fields of public life."*
Thus, discrimination may be considered:

- a differentiation
- based on a criterion
- which violates a right.

Upon reviewing the cases, CNCD refers inclusively to the judgments pronounced by the European Court of Human Rights (called hereinafter ECHR) in discrimination matters (art. 14 in the *European Convention on Human Rights,* respectively *The Additional Protocol no. 12*).

By non-differentiation, the ECHR judges understand, first, the equal treatment of persons found in a similar or analogous situation: *„art. 14 protects the persons found in a similar situation"* (*Marckx vs. Belgium*, 13 June 1979, §32), using also the phrase *„analogous"* (*Van der Mussele vs. Belgium*, 23 November 1983, §46) or *„relevantly similar"* (*Fredin vs. Sweden*, 18 February 1991, §60), later *„analogous or relevantly similar"* (*Sheffield and Horsham vs. the United Kingdom*, 30 July 1998, §75). Thus, *„it should be established, among others, whether the situation of the alleged victim may be considered as being similar to that of the persons who were treated more favorably"* (*Fredin vs. Sweden*, 18 February 1991, §60).

The differentiation should be based on the comparison with other persons, groups or communities (O.G. no. 137/2000, art. 1 par. 3: *„Exercising the rights stated in this article regards the persons found in comparable situations."*). Comparability is reviewed depending on the right invoked as being restricted or removed.

After reviewing the facts mentioned under points 5.4.-5.8., the Steering Board has retained that, pursuant to legal provisions (for ex. art. 134 in the Law *no. 62/2011*), representative unions are not in a comparable situation with the unions that are not representative as regards the negotiation of collective agreements. The status of representative union is disputed between the complainant union and the „intervener" union; the court of law has jurisdiction to rule this issue, CNCD may not establish the legality of negotiation with the union that claims that would be representative. In any case, the employer may sign protocols with different unions, whether they are representative or not. Therefore, the call to dialogue by S.C. Decirom to Sindicatul Independent Decirom is not discrimination, in the meaning of art. 2 par. 1 in O.G. no. *137/2000*.

As regards the second claim, granting some salary increases based on the criterion of union membership, the Steering Board has retained that such measure, in the meaning of the facts under points 5.7.-5.8. is differentiation, given that labor legislation sets forth very clearly that a right acquired by a union should be granted to all the employees and not only to the members of the union that acquired the relevant right (for ex. art. 133 in the Law *no. 62/2011*). Otherwise, the principle of equal pay for equal work is grossly violated.

The discrimination deed is determined by the existence of a criterion. Any criterion may be invoked, but between such criterion and the facts imputed to the complainee should be a cause-effect relation.

Evidently, the salary increase was granted taking into account the union membership of the employees, a fact acknowledged by the complainee.

A deed may be considered discriminatory, if it violates a right, any of the rights guaranteed by international treaties ratified by Romania, or the ones set forth by the national legislation.

Salary is part of the right of ownership, according to the ECHR case law and the case law of the Romanian courts of law in these matters.

Thus, granting a salary increase only to the members of the „intervener" union and not to the members of the complainant union is discrimination, in the meaning of art. 2 par. 1 in O.G. no. *137/2000*, because it is a differentiation, exclusion, preference, based on union membership, which has as effect restraining the right of ownership.

Art. 7 in O.G. no. *137/2000* sets forth: *„It is contravention, according to this ordinance, the discrimination against a person, because they belong to a certain race, nationality, ethnicity, religion, social category or a disadvantaged category, respectively because of their beliefs, age, gender or sexual orientation, within an employment and social protection relationship, except for the cases set forth by law, appearing in the following matters:*

a) the conclusion, suspension, amendment or termination of the employment relationship;

b) establishing and changing the job duties, the workplace or salary;

c) granting other social rights than the ones standing for the salary;

d) professional training, development, reconversion and promotion;

e) enforcing disciplinary measures;

f) the right to join a union and access to the facilities granted by it;

g) any other conditions of performance of work, according to the legislation in force."
Considering that the matter is the change in the employment relationships (salary is a relevant element of such relationship), the provisions of art. 7 letter a) in O.G. no. *137/2000* are applicable.
The provisions of art. 7 letter f) in O.G. no. *137/2000* are also applicable, given that the measure to advantage the members of a union by an employer, inclusively by salary increases, has the effect of intervening on the free choice of the capacity of a union member by the employees.
Pursuant to art. 26 par. 1, *„The contraventions set forth under art. 2 par. (2), (4), (5) si (7), art. 6-9, art. 10, art. 11 par. (1), (3) si (6), art. 12, 13, 14 and 15 are punished by fine from lei 1,000 to lei 30,000, if the discrimination targets an individual, respectively by fine from lei 2,000 to lei 100,000, if the discrimination targets a group of persons or a community"*.
For individualizing the punishment, the Steering Board takes into account the following:
- the discrimination targeted a large group of persons;
- advantaging an union to the detriment of another union by the employer has extremely serious effects on social relationships;
- the complainee is a private law legal entity, an employer;
- the complainee is at its first discrimination deed found;
- the disadvantaged employees may request their rights that were not granted to them in a discriminatory manner in the courts of law.
Thus the civil fine in amount of lei 10,000 is imposed for granting a salary increase only to the members of Sindicatul Independent Decirom, and not to the members of Sindicatul Liber Decirom.
Granting other advantages, such as vouchers, bonuses, reimbursement of transport to the workplace, three base salaries upon retirement are likewise discrimination, in the meaning of art. 2 par. 1 in O.G. no. *137/2000* and according to the facts mentioned under points 5.4.-5.8., 5.12.-5.15. (mentioning that such material advantages, as the salary, are a constitutive part of the right of ownership), given that it is a differentiation, exclusion, preference, based on union membership, which has as an effect restraining the right of ownership.
According to the facts mentioned under points 5.17.-5.19., the provisions of art. 7 letter c) (the vouchers, bonuses are other social rights than salary entitlements) and letter f) in O.G. no. *137/2000* are applicable.
Considering the facts mentioned under points 5.20.-5.21., the Steering Board imposes the civil fine in amount of lei 10,000 for granting other social rights than the ones standing for the salary only to the members of Sindicatul Independent Decirom, and not to the members of Sindicatul Liber Decirom.
The cancellation of some employment agreements of the members of the complainant union is discrimination, in the meaning of art. 2 par. 1 in O.G. no. *137/2000* and according to the facts mentioned under points 5.4.-5.8., 5.12.-5.15. (mentioning that the right infringed upon is the right to work), given that it is a differentiation, exclusion, preference, based on union membership, which has its purpose restraining the right to work.
The provisions of art. 7 letter a) (termination of the employment relationships) and of letter f) in O.G. no. *137/2000* are applicable.
According to the facts mentioned under points 5.20.-5.21. (mentioning that the cancellation of employment agreements is a more serious deed than granting some material advantages), the Steering Board imposes the civil fine in amount of lei 20,000 for the cancellation of some employment agreements of the union members of Sindicatul Liber Decirom.
Likewise, it is discrimination, pursuant to art. 2 par. 1 corroborated with art. 7 letter a) (change in the employment relationships) and letter f) in O.G. no. *137/2000,* the replacement from the management positions of the complainant union leaders, according to the facts mentioned under points 5.4.-5.8., 5.12.-5.15., 5.17.
The Steering Board has decided to impose the civil fine in amount of lei 10,000, according to the facts mentioned under points 5.20.-5.21. and considering the provisions of art. 26 par. 1 in O.G. no. *137/2000*.
Considering the provisions of *O.G. no. 137/2000*, art. 26 par. 2 (*„The Council or, as the case may be, the court of law may oblige the party that committed the discrimination deed to publish in mass-media a summary of the decision, respectively of the court sentence*").

The Steering Board obliges the complainee to publish in the national press a summary of this decision, observing the confidentiality of individuals' personal data.
Considering the facts above, pursuant to art. 20 par. (2) in O.G. *137/2000 regarding the prevention and punishment of any forms of discrimination*, as republished, with the unanimity of the members attending the meeting,

THE STEERING BOARD
HAS DECIDED AS FOLLOWS:

1. The call to dialogue by S.C. Decirom to Sindicatul Independent Decirom is not discrimination, in the meaning of art. 2 par. 1 in O.G. no. *137/2000*;
2. Granting a salary increase only to the members of Sindicatul Independent Decirom, and not to the members of Sindicatul Liber Decirom is discrimination, in the meaning of art. 2 par. 1, corroborated with art. 7 letter a) and letter f) in O.G. no. *137/2000*;
3. It imposes the civil fine in amount of lei 10,000 for granting in a discriminatory manner the salary increase, pursuant to art. 26 par. 1 in O.G. no. *137/2000*;
4. Granting other advantages, such as vouchers, bonuses, the reimbursement of transport to the workplace, of three base salaries upon retirement only to the members of Sindicatul Independent Decirom, and not to the members of Sindicatul Liber Decirom is discrimination, in the meaning of art. 2 par. 1 corroborated with art. 7 letter c) and letter f) in O.G. no. *137/2000*;
5. It imposes the civil fine in amount of lei 10,000 for granting in a discriminatory manner some vouchers and bonuses, pursuant to art. 26 par. 1 in O.G. no. *137/2000*;
6. The cancellation of some employment agreements of the members of the complainant union is discrimination, in the meaning of art. 2 par. 1, corroborated with art. 7 letter a) and f) in O.G. no. *137/2000*;
7. It imposes the civil fine in amount of lei 20,000 for the cancellation in a discriminatory manner of some employment agreements of the union members of Sindicatul Liber Decirom, pursuant to art. 26 par. 1 in O.G. no. *137/2000*;
8. Replacing from the management positions the leaders of Sindicatul Liber Decirom is discrimination, pursuant to art. 2 par. 1, corroborated with art. 7 letter a) and letter f) in O.G. no. *137/2000*;
9. It imposes the civil fine in amount of lei 10,000 for replacing in a discriminatory manner from their positions the leaders of the complainant union, pursuant to art. 26 par. 1 in O.G. no. *137/2000*;

DECISION no. 587
of 22.10.2014

Complainant: ASTRAIA Union
Complainee: Societatea Națională a Sării S.A.

Subject matter: discriminatory clauses in the Collective labor agreement for the period 2014 – 2015 under art. 28 par. 2 (conditioning granting the benefit for reimbursement of the transport expenses on earning incomes smaller than lei 4,000) and art. 78 final thesis; not complying with the dispositions of art. 134 par. 1 and 2 and art. 135 in C.L.A.

Subject matter of notification and description of the alleged discrimination deed
The complainant union complaints about the discrimination treatment of the employees, by inserting in the Collective labor agreement (called hereinafter C.L.A.) for the period 2014 – 2015 the clauses set forth under art. 28 par. 2 and 78 final thesis, and also by not complying with the dispositions of art. 134 par. 1 and 2 and art. 135 in the Collective labor agreement.

The Parties' Contentions
The Complainants' Contentions

The complainant union, in the brief registered with C.N.C.D. under *no. 2.808/18.04.2014* (sheets 1 – 6 in the file), requests finding that the complainee company applied a discriminatory treatment, by inserting in the Collective labor agreement (called hereinafter C.L.A.) for the period 2014 – 2015 the clauses set forth under art. 28 par. 2 and 78 final thesis, and also by not complying with the dispositions of art. 134 par. 1 and 2 and art. 135 in the Collective labor agreement.

The complainants attach to the brief the following:

- The Sole Collective labor agreement 2014 – 2015 (as per the minutes no. 1 of 18.02.2014) – sheets 8 – 22;
- The correspondence with the complainee's management (sheets 23 – 31).

The complainant union presents the actual situation, underlining that, since its very creation, dissatisfactions appeared in the complainee's management due to its activity, the union organization filing on the docket of Bucharest Tribunal an action with the subject matter granting employees their entitlements.

On 18 February 2014, the complainee refused the participation of the complainant union in the negotiation of the C.L.A. clauses at the level of the complainee company, although proving it met the legal conditions regarding the right to participate in negotiations, inclusively the one regarding the membership in a representative structure, namely Confederația Națională Sindicală (The National Union Confederation) „*Cartel Alfa*". Thus, at the company level, a sole C.L.A. was concluded for 2014 – 2015, registered under no. 90/03.03.2014, which became effective when registered with the relevant authority.

The complainant synthesizes and presents the 3 claims, of which 2 refer to 2 clauses in C.L.A. and the third one to the violation of the right of the persons in the union management to the decrease in the monthly work schedule for union activities, without affecting salary entitlements.

The first claim refers to art. 28 par. 2 in C.L.A. for the period 2014 – 2015, which sets forth the facility of full reimbursement of transport expenses for a distance between 5 and 60 km by public means of transport, based on supporting documents, only for the employees earning a gross base income lower than lei 4,000, unlike the previous C.L.A. (for the period 2012 – 2013) which did not take into account the salary earned.

The complainant considers that, in this way, the complainee company disadvantages in an unjustified manner the employees earning a gross base income over lei 4,000, as regards some social right that all the employees should have benefited from, in this case, the provisions of art. 2 par. 4 and 1 in O.G. no. 137/2000 being applicable.

Thus, the complainant considers that the salaries of employees within the company should differ, depending on the specifics of the activity performed, training, responsibility, workload, etc., and, if this is complied with and the employer acknowledges the complexity and importance of the work performed, no punishment of the relevant employees should exist, by excluding them from the disbursement of the transport expenses.

The complainant refers to the Decision no. 24/2008 of the High Court of Cassation and Justice, which imposes the principle of equal treatment upon establishing salaries, the differences having to be fully justified based on some rational, reasonable and objective criteria, and be based on a reasonable proportionality ratio between the means used and the purpose pursued.

The second claim refers to the provisions of art. 78, final thesis in the sole C.L.A. for the period 2014 – 2015, which stipulate that the personnel holding the positions set forth under art. 78 letter a) – g) (namely positions in the audit department, the specialist control department and legal counselors) may not hold functions in the executive management bodies of unions.

Considering the Law regarding social dialogue no. 62/2011, the complainant underlines that all the persons employed under an individual employment agreement have the right, without any limitation or prior authorization, to create and/or to join a union organization, the objections stipulated under art. 4 in the Law no. 62/2011 not being applicable to this case.

The legislator set forth expressly the conditions that any individual should cumulatively meet, in order to be elected in the management bodies, namely, to have full capacity for acting and not to serve a sentence related to the interdiction of the right to hold a position or exercise a profession, such as the one the relevant person used for committing the crime (art. 8 in the Law no. 62/2011). Checking whether such conditions were met or not, as well as granting legal personality to the Union is within the jurisdiction of the court of law that ruled in this respect,

under the civil sentence no. 16367/03.12.2013, when the Union was registered in the special register of unions kept by Ploiești Tribunal.
The complainant considers, in this respect, that the employer inserted such a clause in C.L.A. in a discretionary manner, without any argument, reasoning or legal justification, applying thus a discriminatory treatment to the employees of the complainee company, who are also members of the complainant union.
The third claim refers to the refusal of the management of the complainee company to approve the reduction of the monthly work schedule for union activities, without affecting the salary entitlements of the persons in the union management, pursuant to the provisions of art. 134 par. 1 and 2, respectively, art. 135 in C.L.A.
As a matter of fact, the president of the complainant union requested the management of the complainee company to grant an allowance on 17.01.2014, between 13^{00} – 17^{00} hours, respectively, on 24.01.2014, between the same hours, the first being approved, whereas the latter not (being considered abusive), a fact that resulted in the withholding the salary entitlements for one working day, as per the document that certifies the income earned in January. Thus, the complainant considers that the provisions of C.L.A. applicable at the company level were breached; according to them, the salary entitlements due to the union organization president cannot be affected insofar as they are within the limit of 5 days per month.
In the same situation was the treasurer/cashier of the complainant union, who, on 20.01.2014, announced his absence during the work schedule, due to the union activities carried out, a request that was dismissed in the same manner by the general manager of the complainee company.
The complainant union understands to achieve comparability with the members of the other unions, since the latter's similar requests were approved by the management of the complainee company, in some cases, asking even to be granted 3 consecutive free days for carrying out union activities.
Following the request from C.N.C.D., the complainant union submits in the file, under the address no. 3.826/02.06.2014 (sheets 34 – 51 in the file), the table with the signatures of its members, on behalf and in the name of the union organization that filed the petition, attaching the proof of the lawyer's capacity of representative, as well as an extract from the justice portal, relevant to the court dates established in the files on the docket of court of laws, a fact that makes impossible the attendance of the hearing meeting on 03.06.2014.
In the written notes submitted in the file on the second hearing date, registered under no. 4.355/24.06.2014 (sheets 91 – 153 in the file), the complainant submits in the file the following documents:

- Writ of summons in the file registered with Bucharest Tribunal under no. 12697/3/2014, with the subject matter of ruling the partial nullity of the dispositions of art. 28 par. 2 and art. 78 final thesis in the Collective labor agreement for the period 2014 – 2015 ;
- Extract from the justice portal ref. to the file no. 17709/3/2014;
- Statute of the complainant union;
- Civil Sentence regarding the creation of the union organization, pronounced by Ploiești Tribunal no. 16367/03.12.2013 in the file no. 27091/281/2013, final and irrevocable through the absence of an appeal;
- Address no. 14/21.01.2014 regarding the affiliation of the complainant union to Federația Națională Mine Energie;
- Representation power for the negotiation of the collective labor agreement, issued by CNS "CARTEL ALFA", and the civil sentence no. 5RZ/03.02.2012 pronounced by Bucharest Tribunal in the file no. 1281/3/2012 ref. to retaining that the criterion of representativeness at a national level was fulfilled;
- Addresses from the complainant union under no. 823/27.01.2014, 1373/07.02.2014, 1374/07.02.2014 and 1514/12.02.2014;
- SALROM address no. 1577/13.02.2014;
- Addresses from the complainant union no. 1581/13.02.2014 and 1587/13.02.2014;
- Notice from CNS "CARTEL ALFA" no. 204/19.02.2014, addressed to I.T.M. Bucharest, ref. to the request not to register the Sole C.L.A. at the level of the complainee company, submitted together with the address from I.T.M. Bucharest no. 10394/07.02.2013.

- Information from the complainant union regarding the employer's refusal to grant to persons holding management position in the union structure the reduction of the work schedule by 5, respectively 3 days a month, without the decrease in the salary entitlements;
- Criminal petition filed by the complainant union for abuse of position;
- The addresses issued by the Prosecutor's Office attached to Ploiesti Tribunal ref. to the registration of the information and of the criminal petition.

The complainant union, through its chosen conventional representative, submits in the file the list of supporting documents in support of its own statements, under registration no. with C.N.C.D. 4.544/01.07.2014 (sheets 154 – 340 in the file and 559 – 575):

- Power of attorney under which the lawyers are empowered by the complainant union to provide legal assistance/representation before C.N.C.D.
- The address filed by the union members regarding the objection to the inadmissibility of the claim 3;
- I.T.M. Bucharest address no. 11586/29.02.2012 ref. to the registration of S.C.L.A. for the period 2012 – 2013;
- Sole collective labor agreement at SALROM level for the period 2012 – 2013;
- I.T.M. Bucharest address no. 15439/07.03.2014 ref. to the registration of S.C.L.A. for the period 2014 – 2015;
- Minutes no. 1 concluded on 18.02.2014, respectively, no. 2 dated 19.02.2014, both upon the negotiation of S.C.L.A. of the complainee company for the period 2014 – 2015;
- Sole C.L.A. at SALROM level for the period 2014 – 2015;
- Address no. 5853/13.06.2014 ref. to the opinion stated by the Legal and Institutional Relations Department, following the general manager's request as regards the reimbursement of expenses borne by the complainant union president and by Mrs. I. M., upon the occasion of traveling to Ocna Mureș Salina during the period 14 – 15.05.2014. In this respect, it is considered grounded (pursuant to art. 28 (3) in S.C.L.A. of the complainee company 2014 – 2015), justified and proved, but it cannot be effected while a firm approval of the general manager of the company is missing (as set forth by par. 4 in art. 28 in S.C.L.A. 2014 – 2015).

Considering the objection to inadmissibility invoked as regards claim 3, filed by the complainee, the signatory union members provide the following explanations:

- The three claims in the initial petition addressed to C.N.C.D. were known and undertaken, all the actions within the scope of the file on the docket of C.N.C.D. being approved, a fact reiterated in the table of signatures inserted in these explanations;
- Even if the power submitted would contain material editing errors, there is still the firm approval of the representation of interests as regards the discrimination treatment applied by the employer, inclusively considering the differentiated application of art. 134 and 135 in C.L.A. 2014 – 2015 before C.N.C.D.

In the address no. 5.380/06.08.2014, received by e-mail (sheets 578 – 590 in the file), respectively, 5.393/06.08.2014 received by mail (sheets 591 – 602 in the file), the complainant union, through its lawyer, states some written conclusions, pointing out as follows:

- The objection to inadmissibility of claim 3, invoked by the complainee, cannot be supported, given that the complainant union had the express agreement of all its members; the initial power which, due to a material error, did not state completely the scope of activities for which they empowered the union organization to represent them being supplemented and undertaken subsequently. Inclusively the provisions of art. 28 par. 2 in the Law no. 62/2011 support the dismissal of such objection, given that the union members did not state any express opposition or waiver during the adjudication of the petition, but, on the contrary, they reconfirmed the representation power granted to the union.
- As regards the objection to the union's capacity to sue, the complainant wishes to be retained that the argument invoked by the complainee, namely of the union organization losing the legal personality due to the decrease in the minimum number of members set forth by the Law no. 62/2011, is completely independent of and prior to the legal relationship subject to judgment. The complainant considers that there is identity both between the plaintiff / complainant and the person who is the right's holder, on the one hand, and between the defendant / respondent and the person claimed to be bound within the legal relationship subject to judgment, on the other hand. The complainant mentions that inclusively at the time of filing these conclusions, the complainant union has legal

personality, the file no. 7361/281/2014 registered on the docket of Ploiești Tribunal not being adjudicated.

- As regards the complainee's request to suspend the adjudication of the petition until the final adjudication of the file no. 7361/281/2014, the complainant underlines that art. 413 par. 1, point 1 in the new Code of Civil Procedure, invoked by the complainee, is not applicable to this case, given that, in this case, the petition is not addressed to a court of law. Further, the complainant refers to the practice in discrimination matters which retains constantly and uniformly that the existence of a litigation on the docket of courts of law between the same parties or together with others and with a similar subject matter is a sufficient argument for ruling the suspension of adjudication of petition by C.N.C.D., even more so given that the Council's duties cannot be confused with the ones of courts of law.
- As regards the complainee's request to suspend the adjudication of petition until the final adjudication of the file registered on the docket of Bucharest Tribunal no. 12697/3/2014, the complainant considers that it should be rejected, given that there is not identity of subject matter between the 2 files; in court, one requested retaining the nullity of the contractual clauses expressly specified (art. 28 par. 2 and art. 78 final thesis in S.C.L.A. 2014 – 2015), a completely different issue from the request of retaining the potential discriminatory character and/or treatment, a fact confirmed once more by the scope of the different duties of the 2 authorities (the court of law and C.N.C.D.).
- The objection to the capacity of representative of the law firm cannot be supported, given that the proof of the capacity of representative was made by submitting in the file the power of attorney signed and stamped by the union, through its president.
- As regards the objection to the complainee's capacity to be sued, invoked by it, mentioning the Joint Committee, the complainant wishes to underline that no C.L.A. at the entity level is adopted by the Joint Committee or by the employer or another partner to social dialogue, but it expresses the willing agreement of the partners to social dialogue, established following the negotiations conducted in compliance with the legal regulations in force. Further, the Joint Committee is no longer regulated in the current law regarding matters of social dialogue. The creation of such committee is the consequence of the willing agreement of the partners to social dialogue, retained under the collective labor agreement negotiated and concluded at the company level, therefore, the committee exercising its duties may be only subsequent to the date of conclusion of S.C.L.A., therefore subsequent to establishing the benefits the employees are entitled to, under the relevant agreement (see annex 1 to S.C.L.A. 2014 – 2015 called "Regulation of Organization and Operation of the Joint Committee"). The complainant reiterates that the employer's capacity to be sued is independent of the mode or procedure of negotiation and conclusion of S.C.L.A. at the entity level; therefore, neither the complainee's argument according to which the employer would not have capacity to be sued, because of negotiating and concluding C.L.A. at the entity level with the representative union federation could be supported.
- On the merits, the complainant underlines that the act submitted through petition was not based on the exclusion of the complainant union from the category of partners to social dialogue, entitled to participate in the procedure of negotiation and conclusion of S.C.L.A. for the period 2014 – 2015, the issues related to the legality of compliance with the negotiation procedure being the subject matter of a litigation on the docket of Bucharest Tribunal.
- Under the Collective labor agreement for the period 2012-2013, all the employees benefited from the facility of full reimbursement of transport expenses, the clause inserted in the Collective labor agreement for 2014-2015 reduces the previously acquired entitlements and is discrimination, the persons earning gross salaries higher than lei 4,000 being excluded.
- The Collective labor agreement for the period 2014-2015 established new conditions for holding a position within the management bodies of unions, by means of which the complainee intervened abusively on the activity of unions.

The Complainee's Contentions

The complainee, in the *address no. 5486/02.07.2014*, registered with C.N.C.D. under *no. 3.834/02.06.2014* (sheet 52 in the file) requests to be granted a new hearing date, because of the impossibility of representation of the company by a legal counsel on the first date set for this case.
In the address no. 6.249/24.06.2014, registered with C.N.C.D. under no. 4.354/24.06.2014, the complainee states its own defenses, invoking a number of objections and prior issues.
Thus, the complainee invokes the objection to the union's capacity to sue, given that, as of the date when the petition was filed, namely 18.04.2014, it did not have the number required of members for existing (15 members, as set forth by the Law no. 62/2011), therefore, it did not have legal personality any longer. The complainee mentions that exactly retaining this case of dissolution of the legal entity is the subject matter of an ongoing legal action.
Further, the complainee requests the suspension of the case investigation until the completion of the trial, given that the right of the complainant union to file petitions depends on the outcome of the relevant trial, as well as in order to avoid jurisdictional overlapping, given that there is an identity of subject matter between the file on the docket of C.N.C.D. and the one registered with Bucharest Tribunal (annex to the opinion, sheets 58 – 68).
The complainee invokes also the objection to the lawyer's capacity as a representative, which, as resulting from the power submitted in the file, represents the individual (the union manager) and not the union itself.
Ultimately, the complainee invokes also the objection to the Company's capacity to be sued, given that the alleged discriminations are generated by a legal act that is not issued by the Company, but is a synallagmatic contract with a representative union federation within the company, an act checked and approved by I.T.M. Thus, not the Company, but the Joint Committee adopts S.C.L.A., therefore, the company cannot be a party to a litigation.
Secondly, the complainee mentions that this S.C.L.A. 2014 – 2015 benefits from the presumption of legality, which makes again the complainant responsible for the burden of proof.
In the address no. 6250/24.06.2014, registered with C.N.C.D. under no. 4.354/24.06.2014 (sheet 69 in the file), the complainee invokes the objection to inadmissibility as regards claim 3, namely the alleged discrimination treatment by not granting the right to days of union activity, given that, as resulting also from the „table" submitted by the complainant, such requests exceed the limits of the union members' power / request.
In the address no. 6251/24.06.2014 (sheets 70 – 73 in the file), the complainee presents the opinion on the merits, and denies the complainant's statement that the union was illegally prevented from participating in the negotiations and conclusion of C.L.A. for the period 2014 – 2015.
Pursuant to the address no. NSN 823/27.01.2014, the complainant union submitted the documents it considered necessary for proving its right to participate in the conclusion of S.C.L.A., namely a power from the representative confederation and not the union's power for the union confederation holding representativeness, as set forth in art. 135 in the Law no. 62/2011. Thus, the complainee mentions that this exclusive fault of the complainant union that appeared as a non-representative entity for the negotiation and conclusion of S.C.L.A. 2014 – 2015 of the complainee company, and did not request or empower "Cartel Alfa" Confederation (a confederation that had to appear in order to be party to the conclusion of S.C.L.A.) resulted in the impossibility of granting the complainant union the capacity of a party to the relevant activities and legal act.
As regards the first claim, namely limiting the support given through the reimbursement of transport expenses of employees with low incomes, the alleged discrimination of the employee (president of the complainant union), the complainee mentions that the only entity that may establish benefits for employees under S.C.L.A., different from the ones established under the individual employment agreement, is the Joint Committee. In fact, such benefit was expressly stipulated for the employees with low incomes and, moreover, for the employees working in a remote working point in Vâlcea county, namely "Cataracte".
The complainee underlines that all these issues were stated, submitted, supported and debated within the Joint Committee upon the negotiation of S.C.L.A. 2014 – 2015, which makes the discrimination impossible, this fact being an objective justification, even more so given that there is no identity of situation between the employees with low salaries and the ones working in remote areas, on the one hand, and the president of the complainant union, on the other hand.

As regards the second claim, the complainee mentions that the incompatibilities created between the positions of general manager, manager, management personnel to the level of the subsidiary chief engineer, of auditors, legal counsels and the personnel within the internal control service with management positions within unions are legal, the purpose envisaged by the Joint Committee being to protect the union activity against the administration abuse.
Thus, upon creation, the head of Corpul de Control Intern (the Internal Control Service) and the head of the Audit Service (the two control authorities within the company), a manager and other such employees held management positions, controlling this union. Thus, the premises of an abusive interference of the administration with the union activity were created, by the employees in the management of the complainant union unfairly exercising administrative authority, for the benefit of such union.
The complainee claims that a complaint was filed against the president of the complainant union, who abused his capacity as a counselor of the general manager during a union activity at Ocna Mures subsidiary.
Therefore, the complainee considers that establishing such incompatibility is completely justified, only the right to choose between the administrative management position and the union management position being generated.
The complainee also mentions that, according to the Decision of the Constitutional Court no. 1276/2010, the payment by the employer of exclusively union activities was declared unconstitutional, no differentiated treatment against other union organizations being applied.
The complainee attaches to the opinion stated a number of documents (sheets 74 – 90 in the file):

- the minutes of the Joint Committee dated 18.02.2014, retaining the documentary non-conformity of the complainant union's file for participating in S.C.L.A. no. SNS 1800/18.02.2014, respectively, the complainant union's documentation no. SNS 823/27.01.2014.

4.2.19. Under the address no. 6672/04.07.2014, registered with C.N.C.D. under no. 4.631/04.07.2014 (sheets 341 – 550 in the file), 4.630/04.07.2014 (sheets 561 – 556 in the file), respectively 4.641/07.07.2014 (sheets 554 – 556), the complainee submits in the file a number of documents and a supplementation to the opinion already filed, namely:

- the supplementation to the opinion no. 6687/04.07.2014 regarding the insertion in S.C.L.A. of an incompatibility between certain remunerated positions and the union management positions. In this respect, the complainee reiterates that inserting such clause is perfectly legal and justified, in the context in which the relevant incompatibilities are not mentioned expressly in the law, but there is no interdiction to establish them. The persons that may be in a conflict of interests are the ones holding management positions, in a double capacity, as employees of the complainee company, holding decision-making and/or representation positions (such as legal counsel) and the ones holding a union management position (president of the union or a member of the Permanent Bureau), such conflict subsisting exclusively as regards some legal acts. As regards the incompatibility between the position of legal counsel and the union management positions, the complainee mentions that the number of such specialists is quite small, as in any production company, and, due to the nature of the company, subject to the interdiction and extremely serious limitative conditioning on contracting external legal services, pursuant to the dispositions of Government Emergency Ordinance no. 26/2012, any incompatibility of the legal counsel is liable to incapacitate the company. Establishing the incompatibilities is the result of a union willing agreement, the signatories of S.C.L.A. on the part of the representative union federation with over 1,500 members, who, in the opinion of the complainee, are harassed by the representatives of a union with 15 members, of whom 11 hold management positions. The purpose of establishing such incompatibility arises exactly from the danger of using the remunerated position in one's union personal interest (as in the case of the president of the complainant union, who is also the counselor of the general manager). The complainee mentions also that the same facts notified in contravention matters (to C.N.C.D.) are also the subject matter of some civil actions before courts of labor law.

- Collective timesheet for February 2014;
- Liquidation sheet for February 2014;
- Minutes no. 1 concluded upon the negotiation of C.L.A. for the period 2014 – 2015;
- C.L.A. 2014 – 2015;
- Addendum to C.L.A. 2012 – 2013;
- C.L.A. for the period 2012 – 2013;

Under the address no. 8081/13.08.2014, registered with C.N.C.D. under no. 5.536/13.08.2014 (sheets 603 – 607 in the file), the complainee submits in the file written conclusions, stating as follows:

- The union presents itself as a victim as regards not participating in the negotiation and conclusion of SC.L.A. 2014-2015, but the request was dismissed as illegal, because it is not a representative union.
- The contention that certain union entitlements were not paid is false.
- By the interdiction introduced as regards the union management, one wished to avoid conflict of interests.

De facto and de jure reasons

De facto, the Steering Board has retained as follows:

a) art. 28 par. 2 in C.L.A. for the period 2014 – 2015 sets forth the facility of full reimbursement of transport expenses for a distance between 5 and 60 km by a public means of transport, based on supporting documents, only for the employees with a gross base income lower than lei 4,000, unlike the previous C.L.A. (for the period 2012 – 2013) which did not take into account the salary earned;

b) art. 78 in C.L.A. for the period 2014 – 2015 stipulates that the personnel holding positions in the audit department, the specialist control department and legal counsels may not hold positions in the executive management bodies of unions;

c) the management of the complainee company refused in some situations to approve the reduction of the monthly work schedule for union activities, without affecting the salary entitlements for the persons in the union management.

As regards the objections invoked, the Steering Board dismisses the objection to the complainant union's capacity to sue, invoked by the complainee, on the grounds that, as of the date when the petition was filed, the union did not have the required number of members to exist (15 members), therefore, did not have any longer legal personality, because the union was not dissolved by a court of law. It is not necessary to suspend the adjudication of the case, because, in the situation of dissolution of the union in court, the decision of C.N.C.D. may be appealed against, and one may request the reversal of the decision.

The Steering Board dismisses the objection to the complainee company's capacity to be sued, retaining that the third claim refers evidently to the action of the management, and the first two to the Collective labor agreement for the period 2014-2015, signed by the complainee company, which, by its signature and stamp, undertakes a responsibility.

The Steering Board dismisses the objection to inadmissibility in the third claim, stating that there are signatures of the union members that empower the complainant's action (sheets 559-560).

O.G. no. 137/2000, in art. 2 par. 1 sets forth: *„According to this ordinance, discrimination means any differentiation, exclusion, restriction or preference, based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection or falling into a disadvantaged category, as well as any other criterion that has as its purpose or effect the restriction or removal of recognition, use or exercising under equal conditions human rights and fundamental freedoms or the rights recognized by law, in the political, economic, social and cultural fields or any other fields of public life."*

Thus, discrimination may be considered:

- a differentiation
- based on a criterion
- which violates a right.

After reviewing the provisions of art. 28 par. 2 in C.L.A. for the period 2014-2015, the Steering Board has showed that, according to the case law of the European Court of Human Rights in

these matters, the difference in treatment becomes discrimination when distinctions are made between analogous and comparable situations, without these being based on a reasonable and objective justification. The European Court has constantly decided that, for such a violation to take place, *„one should establish that persons found in analogous or comparable situations, in these matters, receive a preferential treatment and such distinction has no objective or reasonable justification"*. The Court considered in its case law that the contractual states have a certain assessment margin at their disposal, in order to establish whether and to what extent the differences between analogous or comparable situations are liable to justify the distinctions of judicial treatment applied (for ex.: *Fredin vs. Sweden*, 18 February 1991; *Hoffman vs. Austria*, 23 June 1993, *Spadea and Scalambrino vs. Italy*, 28 September 1995, *Stubbings and others vs. the United Kingdom*, 22 October 1996).

In the decision pronounced in the case *Thlimmenos vs. Greece* of 6 April 2000, the Court concluded that *„the right not to be discriminated against, guaranteed by the Convention, is violated not only when states treat differently persons found in analogous situations, without providing objective and reasonable justifications, but also when states fail to treat differently, again without objective and reasonable justifications, persons found in different, not comparable situations"*.

In conclusion, there is a differentiation if persons found in similar situations are treated differently, or if persons found in different situations are treated identically.

Differentiation should be based on the comparison with other persons, groups or communities (*O.G. no. 137/2000*, art. 1 par. 3: *„Exercising the rights stated in this article regards the persons found in comparable situations."*). Comparability should be reviewed based on the right invoked as being restricted or removed.

The Steering Board has found that the reimbursement of transport expenses is a facility granted by the employer to employees, given that such expenses may be a serious impediment for persons with low salaries to reach the workplace.

The Steering Board has also found that the persons with low income are not in a comparable situation with the persons with high income, as regards the affordability of transport expenses through own sources.

Thus, the two categories of persons (with high income and with low income) are not in a comparable situation either as regards the need for reimbursement of the transport expenses.

The collective labor agreement set forth a limit (gross income of lei 4,000) as well as other limits (public transport, distance between 5 and 60 km), in order to establish clear criteria for reimbursement.

Under these conditions, considering that, as regards the possibility of payment of transport to the workplace, the situation of persons with high salaries is different from the situation of persons with low salaries, the Steering Board has found that the deed is not differentiation, therefore, neither discrimination. The Steering Board took into account inclusively the construction provided by the Constitutional Court of Romania (for ex. *Decisions no. 168/1998* and *294/2001*), which shows that the different situations in which different categories of employees are determine different solutions of the legislator regarding their remuneration, while such solutions do not violate the equality principle, a fact that does not mean uniformity. „*The principle of equal rights and non-discrimination applies only to equal or analogous situations, and the different legal treatment, established upon considering some objectively different situations does not mean either privileges or discriminations."* (*Decision no. 108 of 14 February 2006 of the Constitutional Court*).

As regards the interdiction to hold management positions in union by persons that hold positions in the audit department, the specialist control department and legal counsels within the complainee company, the Steering Board has retained that the statements under points 5.7.1. – 5.7.4. are applicable.

The Steering Board has found that the provisions of the Collective labor agreement are liable to establish a differentiation between employees, in general, and the employees that hold positions in the audit department, in the specialist control department and legal counsels. The complainee considered that the two categories of persons are in a different situation, given that abusive interferences of the administration may take place with the union activity. The Steering Board has showed that, given that the legislation (namely the Law *no. 62/2011*) does not set forth such differentiation, introducing such differentiation cannot be legitimate.

The discrimination deed is determined by the existence of a criterion. Any criterion may be invoked (*O.G. no. 137/2000*, art. 2 par. 1: [...] *„based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection or falling into a disadvantaged category, as well as any other criterion"* [...]; *The Additional Protocol no. 12 to the European Convention on Human Rights*, art. 1 par. 1: [...] „*without any discrimination based especially on gender, race, color, language, religion, political opinions or any other opinions, national or social origin, belonging to a national minority, wealth, birth or any other situation"*).
Between the criterion invoked and the deeds imputed to the complainee, there should be a cause-effect relation.
The Steering Board has found that differentiation is based in a social (socio-professional) criterion: the persons with positions in the audit department, the specialist control department and legal counsels are targeted. The intention to differentiate these categories of persons is obvious and so it is the cause-effect relation.
A deed may be considered discriminatory if violating any right, any of the rights guaranteed by international treaties ratified by Romania, or the ones set forth by the national legislation.
The right violated is the right to hold management positions in a union. The right to vote is correlated with the right to be voted. Likewise, the right to be a union member is correlated with the right to hold a management position in the union. The restriction affects the very existence of the union: as the complainee itself states, of 15 members of the union, 11 hold management positions.
In conclusion, the interdiction to hold management positions in the union by persons holding positions in the audit department, in the specialist control department and by legal counsels in the complainee company is discrimination, pursuant to art. 2 par. 1 in O.G. no. *137/2000*, the deed being an exclusion, a restriction based on the social (socio-professional) status, restraining the right to create a union and removing the right to hold management positions in the union.
Pursuant to art. 6 in O.G. no. *137/2000*, *„It is contravention, according to this ordinance, the discrimination against a person because they belong to a certain race, nationality, ethnicity, religion, social category or a disadvantaged category, respectively because of their beliefs, age, gender or sexual orientation, within an employment and social protection relationship, except for the cases set forth by law, appearing in the following matters: [...] f) the right to join the union and access to the facilities granted by it; [...]"*.
The Steering Board has found the applicability of the provisions of art. 6 letter f, that is, discrimination based on the social (socio-professional) criterion affects the right to join a union and access to the facilities granted by the union (see for such purposes point 5.8.8.).
As regards the refusal to approve in certain situation the reduction of the monthly work schedule for union activities, without affecting salary entitlements for persons in the union management, the Steering Board has retained that the facts mentioned under points 5.7.1. – 5.7.4. are applicable.
The complainant showed that the complainee's practice is not uniform, but the complainee motivated the fact that it did not apply consistently such a reduction of the work schedule, by stating that, according to its construction, such right does not exist. Therefore, one may not found the existence of a different treatment of the members of the complainant union, but an issue of construction and enforcement of the law; thus, the facts are not discrimination, pursuant to the provisions of art. 2 par. 1 in *O.G. no. 137/2000*, which does not mean that such refusal is necessarily legal.
5.10. *O.G. no. 137/2000*, in art. 26 lin. 1, sets forth: *„(1) The contraventions set forth under art. 2 par. (2), (4), (5) and (7), art. 6-9, art. 10, art. 11 par. (1), (3) and (6), art. 12, 13, 14 and 15 are punished by fine from lei 1,000 to lei 30,000, if the discrimination targets an individual, respectively by fine from lei 2,000 to lei 100,000, if the discrimination targets a group of persons or a community."*
The Steering Board punishes the discrimination by the trading company, by a civil fine in amount of lei 3,000 considering as follows:
- discrimination targeted a group of persons;
- discrimination was applied by a legal entity and not by an individual;
- discrimination violated union rights, which are extremely sensitive within the relationships between employers and employees.

Considering the facts above, pursuant to art. 20 par. (2) in O.G. *137/2000 regarding the prevention and punishment of any forms of discrimination*, as subsequently amended, with the unanimity of the members attending the meeting,

THE STEERING BOARD
HAS DECIDED AS FOLLOWS:

1. To dismiss the objection to the complainant union's capacity to sue, invoked by the complainee on the grounds that, as of the date when the petition was filed, the union no longer had legal personality, given that the union was not dissolved by a court of law.
2. To dismiss the objection to the complainee company's capacity to be sued, retaining the complainee's responsibility regarding the three claims.
3. To dismiss the objection to the inadmissibility of the third claim, given that there are signatures of the union members empowering the complainant's action.
4. The full reimbursement of transport expenses only for the employees with a gross base income lower than lei 4,000 is not discrimination, pursuant to art. 2 par. 1 in O.G. no. *137/2000*.
5. The interdiction to hold management positions in the union by persons holding positions in the audit department, the specialist control department and legal counsels within the complainee company is discrimination, pursuant to art. 2 par. 1 in O.G. no. *137/2000*.
6. The refusal to approve the reduction of the monthly work schedule for union activities, without affecting the salary entitlements for persons within the union management is not discrimination, pursuant to art. 2 par. 1 in O.G. no. *137/2000*.
7. It punishes Societatea Națională a Sării S.A. (mun. Bucharest, 220 Calea Victoriei St., 1st district, CIF 1590430 J40/4607/2010) by a civil fine in amount of lei 3,000 pursuant to art. 26 par. 1 in O.G. no. *137/2000*.

DECISIONS no. 598
of 09.12.2015

Complainant: Sindicatul Liber al Salariaţilor din Autoritatea Aeronautică Română
Complainee: Regia Autonomă - Autoritatea Aeronautică Civilă Română
ITM - Bucharest

Subject matter: discriminatory provisions of the Collective labor agreement

Subject matter of notification and description of the alleged discrimination deed
The negotiations for the conclusion of C.L.A.-AACR 2015-2017 were conducted only by the representatives of the Employer RA-AACR and the representatives of Sindicatul Personalului de Specialitate din Autoritatea Aeronautică Civilă Română (SPSAACR) – representative on its own 50%+1. The union SLSAAR submitted timely the proof of its representativeness, by a power (annex).
The management of ITM - Bucharest premeditated the acceptance of the discriminatory articles, or ignored this issue.
Discriminatory articles in C.L.A.: art.12 par. 2, art. 26 letter b), art. 47 par. 7, art. 57 par. 1, art. 59 par. 2, art. 63, art. 67, art. 68 par. 2, art. 70 par. 2, art. 71, art. 72, art. 73, art. 77, art. 78 par. 2, art. 79; Annex no. 4, art. 1 and art. 8; Annex no. 5, art. 2, letter a), art. 3, art. 7, art. 8, letter g), art. 9, art. 10, art. 11 and art. 12; Annex no. 7, art. 3.

The Parties' Contentions
The Complainant's Contentions
The complainant claims that the negotiations for the conclusion of C.L.A.-AACR 2015-2017 were conducted only by the representatives of the Employer RA-AACR and by the representatives of Sindicatul Personalului de Specialitate din Autoritatea Aeronautică Civilă Română (SPSAACR),

representative on its own 50%+1. The union SLSAAR submitted timely the proof of its representativeness, by a power (annex).
The complainant considers discriminatory the articles in C.L.A. which mention only the representative union, requesting the Council to retain the discrimination deed committed by the employer. Further, the complainant requests to retain the discrimination deed committed by the ITM – Bucharest management that premeditated the acceptance of the discriminatory articles or ignored such issue.
Discriminatory articles in C.L.A.:
Art. 12, par. 2: The employer has the obligation to inform and consult the employees through the representative union at the institution level and according to the applicable legal provisions as regards the decisions and measures that might affect the collective or individual rights, professional, economic or social interests.
Art. 26, letter b): The employer has the obligation to provide for the employees that are navigation personnel, according to law……the food required for strengthening and protecting the body, for the activity carried out in the air, in amount of 5,500 calories/day, by granting two meal vouchers according to special legislation.
Art. 47, par. 7: The employer, after consulting the employees' representatives through the representative union at the institution level, may grant also other free days to be aggregated with the legal holidays and free days according to this contract, these being recovered previously/subsequently, as agreed.
Art. 57, par. 1: The employer undertakes, whenever a reorganization or reduction of activity, with the result of a reduction of personnel, would be required according to needs, should the consultation of employees through the representative union at the institution level and according to the applicable legal provisions not identify other solutions, to proceed to the cancellation of individual employment agreements…..if the employees that cumulate two or more positions with different employers or the pension and salary of the persons that meet the retirement requirements, at their request.
Art. 59, par. 2: The allowances set forth under letters c) and f) are granted for the event. If there are several employees that request allowance for the same event, just one allowance is granted, divided proportionally to the number of the entitled applicants (as regards allowances granted to employees or their families for the death of the employee themselves – lei 20,000, whereas for the death of the husband (wife) or of a close relation - lei 15,000, respectively, lei 8,000 for the birth/adoption of every child; the employees that take leave for raising a child aged up to 2 years old, AACR shall cover the difference between the last base salary negotiated and earned and the benefit granted according to the legislation in force for child raising).
Art. 63: Within the continuous process of evaluation of professional performances, of the possibilities and prospects of career development, the promotion in positions and stimulating employees through the system of benefits and rewards, the Employer conducts the evaluation activity and granting grades for the work performed in the preceding year, according to the provisions of the Internal Regulation, drawn up by the Employer, in consultation with the employees through the representative union at the institution level and according to the legal provisions.
Art. 67: The employer and employees through the representative union at the institution level and according to the applicable legal provisions, consent, through proper negotiations and conventions, to identify and establish modes of collaboration or cooperation, based on partnership within employment relationships and on their mutual advantage.
Art. 68 par. 2: In order to participate in specific activities, the representatives of the representative union organizations at the level of the institutions signing this collective agreement, benefit from the travel rights under this C.L.A., provided that they notify the entity management in writing, with at least 48 hours before the planned travel date, based on supporting documents.
Art. 70 par. 2: For the representative union at the institution level, the days by which the monthly work schedule is reduced are paid by the employer.
Art. 71: The employer and employees, through the representative union at the institution level and according to the applicable legal provisions, as permanent social partners, agree to respect as regards every of them and the employees the freedom of opinion. The employer shall adopt a neutral and impartial position towards the employees, as represented according to the applicable legal provisions.

Art. 72: In order to motivate the actions set forth in art. 30, par. 2, in the Law no. 62/2011, the Employer shall send the employees, through the representative union at the institution level, and according to the applicable legal provisions, in writing and within the term requested, the information and documents required, the union representatives having the obligation to maintain the confidentiality of the data provided to them, confidential in character.
Art. 73: The employer shall notify the employees in writing, through the representative union at the institution level and according to the applicable legal provisions, bi-annually, of the economic and financial standing of the entity……
Art. 77: The employees, through the representative union at the institution level and according to the applicable legal provisions, acknowledge the employer's right to establish, according to law, the disciplinary or property related liability of the employees culpable for the violation of the labor discipline regulations or losses to the entity.
Art. 78 par. 2: If disagreements arise in connection with the enforcement of the provisions of the collective labor agreement, the employer and the employees, through the representative union at the institution level and according to the applicable legal provisions, shall try to settle them first within the Joint Committee at the entity level.
Art. 79: In order to ensure the social protection of employees and for the purposes of the Law no. 346/05.06.2002……..the employer, after the prior consultation of employees, through the representative union at the institution level and according to the applicable legal provisions, shall insure the labor against redundancy or losing the working capacity or against their death following work accidents or professional diseases, the following main objectives being fulfilled through insurance…..promotion of labor health and safety, prevention of work accidents and professional diseases, medical and socio-professional rehabilitation of employees – victims of work accidents and professional diseases, as well as the recovery of their working capacity, granting financial support in the long and in the short term, by way of benefits and other allowances.
Art. 1, Annex no. 4: the Joint Committee at the entity level is formed of representatives of the representative union at the institution level and according to the applicable legal provisions, signatories of C.L.A., who represent the employees and an equal number of representatives of the employer, on the part of the employer; the members of the Joint Committee are designated and accepted by mutual agreement by the signatories, within 10 days since the registration of C.L.A. with ITM Bucharest / MMFPSPV.
Art. 8, Annex no. 4: If disagreements arise in relation to the enforcement of the provisions of the Collective labor agreement, the employer and the employees, through the representative union at the institution level and according to the applicable legal provisions, shall try to settle them, first within the Joint Committee at the entity level. The Joint Committee has the obligation to construct the clauses of this C.L.A. in the most favorable meaning for the employees.
Art. 2, letter a) Annex no. 5: For the purposes of the provisions of this annex, the terms and phrases below have the following meanings...information – the employer sending data to the employees, through the representative union at the institution level and according to the applicable legal provisions, so that to allow them familiarization with the topic of the debate and their review in full awareness.
Art. 3, Annex no. 5: According to legal provisions, the employer has the obligation to inform and consult the employees, through the representative union at the institution level and according to the applicable legal provisions, as regards….the latest and likely developments of the activities that are relevant to the fulfillment of the object of activity of the entity and the economic standing of the entity, etc.
Art. 7, Annex no. 5: The employer has the obligation to consult the employees through the representative union at the institution level and according to the applicable provisions as regards …..the decisions that are likely to affect significantly their rights and interests. Development of labor health and safety rules, etc.
Art. 8, letter g) Annex no. 5: For the purpose of defending the rights and promoting the professional, economic and social interests of the members, the representative union organizations shall receive from employers or from their organizations the information required for negotiating the collective labor agreements or, as the case may be, collective agreements, according to law (art. 30 in the Law no. 62/2011), including at least data about the economic-financial standing up to date, the situation of employment (art.130 in the Law no. 62/2011).

Art. 9, Annex no. 5: The employees, through the representative union at the institution level and according to the applicable legal provisions, as well as the experts assisting them during the implementation of any procedures of consultation or collective negotiation are forbidden to disclose to employees or third parties any information that, in the legitimate interest of AACR, was provided to them expressly as confidential. Such obligation continues to apply to the representatives or experts also after the expiry of their mandate. The type of information subject to confidentiality is agreed by the parties under a confidentiality agreement.
Art. 10, Annex no. 5: The employer is not obliged to provide information or to conduct consultations, if these are liable to seriously impair the operation of the entity or its interests. The decision not to provide such information or not to conduct consultations should be motivated before the employees' representatives, through the representative union at the institution level and according to the applicable legal provisions.
Art. 11, Annex no. 5: If the employees, through the representative union at the institution level and according to the applicable legal provisions, do not consider as justified the employer's decision to invoke the confidentiality of information, or not to provide relevant information or not to initiate consultations under the conditions of points 9 and 10, they may address the courts of common law with jurisdiction.
Art. 12, Annex no. 5: The employees, through the representative union at the institution level and according to the applicable legal provisions, benefit from protection and guarantees allowing them to fulfill appropriately the obligations entrusted to them, according to the provisions of the Romanian legislation, for the entire term of their mandate.
Art. 3, Annex no. 7: The representative of the representative union designated by it, based on competence and experience in the field related to the job for which the relevant evaluation is performed, participates as an observer, with the right to opinion, in all the works of the evaluation commission, since its very formation.
In the address no. 4284/22.06.2015, the complainant claims that, after submitting the petition to CNCD, the complainee refused the complainant's travel to union activities, although such are set forth in C.L.A., a travel planned and approved in the annual travel plan. A copy of the answer received is attached.

The Complainee's Contentions
Autoritatea Aeronautică Civilă Română (The Romanian Civil Aviation Authority)
The complainee requests the Council to retain that the facts notified under petition, namely the articles of C.L.A. mentioned, are not discrimination deeds, on the grounds that SPSAACR submitted the proof of its representativeness, the negotiations for the conclusion of C.L.A. of AACR were conducted according to the provisions of art. 134 letter B letter a) in the Law regarding social dialogue no. 62/2011 between the representatives of the employer and of the representative union.
Thus, C.L.A. concluded at the entity level regulates the rights and obligations arising from the employment relationships, for the employer and employees (between the union and the employer not being any employment relationships) and promotes and defends the interests of the signatories, namely the employer and the representative union.
Further, by undertaking the obligation to consult the representative union at the entity level, the employer did not undertake not to consult, not to have a social dialogue with the other social partners.
The complainee requests the Council to retain that the constitutive elements under art. 2 are not met, and one cannot claim the existence of a discrimination deed insofar as there are not two comparable situations to which the treatment applied is different. It mentions that the different treatment of the two unions does not aim at, and does not have as an effect restraining or removing the recognition, use or exercising under equal conditions human rights and fundamental freedoms or the rights recognized by law, in the political, economic, social and cultural field or in any other fields of public life.

ITM – Bucharest
After checking the fulfillment of the conditions set forth by the Law regarding social dialogue no. 62/2011, republished, as amended and supplemented, based on the documents submitted by

AACR, it mentions that no causes were identified which could result in the failure to register the contract, ITM Bucharest proceeding to its registration in the Sole Register of the Inspectorate.

De facto and de jure reasons
De facto, the Steering Board has retained that, by using the phrase „representative union" in the Collective labor agreement at the level of RA-AACR, the rights of the members of Sindicatul Liber al Salariaților din Autoritatea Aeronautică Română – SLSAAR are affected, being subject to art. 2 par. 1, art. 7 letter f) in O.G. no. 137/2000 regarding the prevention and punishment of discrimination deeds, as republished.
De jure, after reviewing the petition and the legislation in force, the Steering Board has retained that the complainant notifies the manner in which the provisions of the collective labor agreement at the level of RA-AACR were negotiated and stated. Considering the phrases used upon stating C.L.A. at the level of RA-AACR, such as „representative union", the Steering Board considers that the rights of the members of Sindicatul Liber al Salariaților din Autoritatea Aeronautică Română - SLSAAR are affected, subject to art. 2 par. 1.
Pursuant to art. 2 par. 1 in O.G.137/2000, regarding the prevention and punishment of any forms of discrimination, as subsequently amended and supplemented, republished, it is discrimination "any differentiation, exclusion, restriction or preference, based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection or falling into a disadvantaged category, as well as any other criterion that has as its purpose or effect the restriction or removal of recognition, use or exercising under equal conditions human rights and fundamental freedoms or the rights recognized by law, in the political, economic, social and cultural fields or any other fields of public life".
Pursuant to art. 7 letter f) in O.G. 137/2000, as republished, it is contravention, according to this ordinance, the discrimination against a person because they belong to a certain race, nationality, ethnicity, religion, social category or a disadvantaged category, respectively because of their beliefs, age, gender or sexual orientation, within an employment and social protection relationship, except for the cases set forth by law, appearing in the following matters: f) the right to join the union and access to the facilities granted by it.
A deed may be considered as a discrimination deed, if meeting cumulatively several conditions:
- The existence of a different treatment expressed by differentiation, exclusion, restriction or preference (the existence of some persons or situations in comparable positions)
- The existence of a discrimination criterion pursuant to art. 2, par. 1 in O.G. no. 137/2000, as republished. According to law, the discrimination criteria are: *race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection, falling into a disadvantaged category, as well as any other criterion*.
- The different treatment having as a purpose or effect the restriction, removal of recognition, use or exercising under equal conditions some right recognized by law;
- The different treatment not being objectively justified by a legitimate purpose, and the methods of achieving such purpose not being appropriate and necessary.

The Steering Board reviewed the petition considering the constitutive elements of a discrimination deed. Thus, the Steering Board reviewed whether there is a different treatment between different persons found in comparable situations and who are treated differently due to some discrimination criterion. As regards art.12 par. 2, art. 47 par. 7, art. 57 par. 1, art. 63, art. 67, art. 68 par. 2, art. 70 par. 2, art. 71, art. 72, art. 73, art. 77, art. 78 par. 2, art. 79; Annex no. 4, art. 1 and art. 8; Annex no. 5, art. 2, letter a), art. 3, art. 7, art. 8, letter g), art. 9, art. 10, art. 11 and art. 12; Annex no. 7, art. 3. in C.L.A. at the level of RA-AACR, the Steering Board considers that, by using the phrase „the representatives of the representative union" the rights of the members of Sindicatul Liber al Salariaților din Autoritatea Aeronautică Română – SLSAAR are infringed upon, subject to art. 2 par. 1 and art. 7 letter f) in O.G. no. 137/2000 as republished. One should consider that the differentiation, exclusion, restriction or preference should be based on one of the criteria set forth in art. 2, par. 1, but should refer to persons in comparable situations, who are treated differently due to their falling into one of the categories set forth in this law article. The Steering Board has reviewed to what extent there is a criterion that may be retained pursuant to art. 2, par. 1 in O.G. no. 137/2000, as republished, and which was the basis of the treatment invoked. The Steering Board has found that the basis

of the treatment invoked was the membership in the non-representative union, namely the union that is not a signatory of C.L.A. at the level of RA-AACR.
As regards objective justification, in its case law, the European Court of Human Rights showed that the objective and reasonable justification should pursue a legitimate purpose, and the measure applied should be proportional with the purpose pursued; as regards the different treatment based on race, color or ethnicity, the notion of objective and reasonable justification should be construed in a manner as strict as possible (D.H. and others vs. the Czech Republic, 13 November 2007, Sampanis and others vs. Greece, 5 June 2008). Upon reviewing the legitimate purpose, one should review the existence of such purpose in connection with the right infringed upon by differentiation.
Upon reviewing the proper and necessary method, one should establish whether, by the method chosen, the purpose envisaged is achieved, and whether there are or not other methods by which the purpose may be achieved, without creating a situation of differentiation. The Steering Board considers that using the phrase „representative union" in the provisions of C.L.A. at the level of RA-AACR may result in interpretations, and the members of Sindicatul Liber al Salariaților din Autoritatea Aeronautică Română - SLSAAR may understand that, by waiving the capacity of member of such union and by joining Sindicatul Personalului de Specialitate within RA-AACR, they would enjoy the rights set forth in C.L.A. at the level of RA-AACR. The Steering Board considers that, by the phrase used in C.L.A. at the level of RA-AACR, are infringed upon, on the one hand, the rights of the members of Sindicatul Liber al Salariaților din Autoritatea Aeronautică Română – SLSAAR, who may not be represented by the union they chose, and, on the other hand, are infringed upon the rights of Sindicatul Liber al Salariaților din Autoritatea Aeronautică Română – SLSAAR, which is not able to represent its own members in relation to the company. The Steering Board considers that there is no objective justification as regards using the phrase „representative union" in the provisions of C.L.A. at the level of RA-AACR; by this method, the purpose envisaged is not achieved, namely establishing the employees' rights. Upon reviewing this case, the Steering Board has also considered the case law of CNCD, namely the Decision 132/11.04.2012.
As regards proving the discrimination deeds, the Steering Board has showed that in discrimination matters, the burden of proof is shared by the Complainant and the Complainee (O.G. no. 137/2000, art. 20 par. 6: „The stakeholder has the obligation to prove the existence of some deeds that enable one to assume the existence of some direct or indirect discrimination, and the person the petition was filed against is responsible to prove that the said deeds are not discriminatory.". Further, pursuant to art. 4 in the Council Directive 97/80/EC: „Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment."
Sharing the burden of proof is a principle strictly applied in discrimination matters by the European Court of Justice. (for ex.: Vasiliki Nikoloudi vs. Organismos Tilepikoinonion Ellados AE, 10 March 2005, the Queen vs. the Secretary of State for Employment, ex parte Nicole Seymour-Smith and Laura Perez, 9 February 1999, B. F. Cadman vs. Health & Safety Executive, 3 October 2006, Centrum voor gelijkheid van kansen en voor racismebestrijding vs. Firma Feryn NV, 10 July 2008, Jämställdhetsombudsmannen vs. Örebro läns landsting, 30 March 2000). This principle is applied also by the European Court of Human Rights: „in such matters [discrimination] the burden of proof is reversed, so that if an applicant proves the existence of a different treatment, the Government has the obligation to prove that such differentiation in treatment is objectively justified" (D.H. and others vs. the Czech Republic, 13 November 2007, Sampanis and others vs. Greece, 5 June 2008); „as regards the existence of some elements liable to be evidence for transferring the burden of proof to the state, there are no procedural impediments to allow evidence or predefined formulae applicable to their assessment; such a conclusion is supported by the free evaluation of evidence, inclusively such a reasoning arises from the deeds and comments of the contractual parties; the evidence may arise from the coexistence of some indications or assumptions that are sufficiently strong, accurate and coherent; moreover, the extent of conviction required for reaching a particular conclusion and, as regards this, regarding the distribution of the burden of proof is related inherently to the

specificity of the deeds, the nature of the contentions and of the law invoked" (D.H. and others vs. the Czech Republic, 13 November 2007, Sampanis and others vs. Greece, 5 June 2008).
Considering the petition as filed, as well as the documents submitted in the file, it is clear that the Complainant proved the existence of some facts allowing the assumption of the existence of some discrimination, and the Complainee did not prove by the documents submitted that the treatment applied to the Complainant was not based on the criterion invoked by the latter, as set forth by art. 20 par. 6 in O.G. no. 137/2000 regarding the prevention and combating any forms of discrimination, as republished.
As regards punishing the discrimination deeds, the Steering Board considered the provisions of the Directives of the European Union in such matters, which requests the European Union member states to enforce effective, proportional and deterring punishments. Proportionality may be ensured by gradually imposing the fine, depending on the seriousness of the deed, to the extent set forth by law. The Steering Board considers that, by using the phrase "representative union" in the provisions of C.L.A. at the level of RA-AACR, are infringed upon, on the one hand, the rights of the members of Sindicatul Liber al Salariaților din Autoritatea Aeronautică Română - SLSAAR, and, on the other hand, are infringed upon the rights of Sindicatul Liber al Salariaților din Autoritatea Aeronautică Română - SLSAAR, facts that are extremely serious, such treatment affecting an entire group of employees, namely the ones that chose to be represented by the complainant union.
Considering the reasons set out above, the Steering Board has found that the constitutive elements of a discrimination deed, as set forth in art. 2 par. 1, art. 7 letter f) in O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination, as republished, are cumulatively met. The Steering Board considers that, in the case, there are elements evidencing the discrimination deeds the complainee, Regia Autonomă-Autoritatea Aeronautică Civilă Română (RA-AACR) – is accused of.
As regards the complainee ITM – Bucharest, the Steering Board cannot retain the applicability of art. 2 par. 1, art. 7 letter f), on the grounds that ITM – Bucharest checked the fulfillment of the conditions set forth by the Law regarding social dialogue no. 62/2011, republished, as amended and supplemented, based on the documents submitted by AACR regarding its registration in the Sole Register of the Inspectorate.
As regards the claim regarding the complainee's refusal to approve the travel of complainant to union activities, although set forth in C.L.A., a travel planned and approved in the annual travel plan, as mentioned in the address no. 4284/22.06.2015, the Board has decided on the dismissal of the claim, on the grounds that this was mentioned after the hearing date.

Considering the facts above, pursuant to art. 20 par. (2) in O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination, as republished, by unanimity of votes of the members attending the meeting,

THE STEERING BOARD
HAS DECIDED AS FOLLOWS:

1. To retain the existence of a different, discrimination treatment, pursuant to art. 2 par. 1 and art. 7 letter f) in O.G. *137/2000 regarding the prevention and punishment of any forms of discrimination*, as republished, as regards the provisions of art.12 par. 2, art. 47 par. 7, art. 57 par. 1, art. 63, art. 67, art. 68 par. 2, art. 70 par. 2, art. 71, art. 72, art. 73, art. 77, art. 78 par. 2, art. 79; Annex no. 4, art. 1 and art. 8; Annex no. 5, art. 2, letter a), art. 3, art. 7, art. 8, letter g), art. 9, art. 10, art. 11 and art. 12; Annex no. 7, art. 3. in C.L.A. at the level of RA-AACR;
2. To punish Autoritatea Aeronautica Civila Româna R.A.(A.A.C.R.), legally represented by the General Manager, Mr. Armand Petrescu, by a civil fine in amount of lei 20,000, for the deeds set forth in art. 7 letter f) in O.G. 137/2000, as republished, pursuant to art. 26 par. 1 in *O.G. 137/2000 regarding the prevention and punishment of any forms of discrimination*, as republished;
3. The Steering Board has not retained any discrimination deeds against ITM – Bucharest;
4. As regards the claim regarding the complainee's refusal to approve the travel of complainant to union activities, although set forth in C.L.A., a travel planned and approved in the annual

travel plan, as mentioned in the address no. 4284/22.06.2015, the Board has decided on the dismissal of the claim, on the grounds that this was mentioned after the hearing date.

DECISION no. 650
of 05.11.2014

Complainants: M. A., M. A.
Complainee: Sucursala Regională C.F.R. Braşov

Subject matter: salary differences based on union criteria; granting union members an increase of 100% for the time worked on free days, against the ones that are not members, who receive an increase of 75%; obliging persons that are not union members to pay 1% of their salary.

Subject matter of notification and description of the alleged discrimination deed

The complainants consider as discriminatory the salary differences based on union criteria; granting union members an increase of 100% for the time worked on free days, against the ones that are not members, who receive an increase of 75%; obliging persons that are not union members to pay 1% of their salary.

The Parties' Contentions
The Complainants' Contentions
The complainants, in the address registered with C.N.C.D. under *no. 3995/10.06.2014* (sheets 1-3 in the file), show as follows:
- not being union members, they were excluded from the salary grid, were deprived of certain salary entitlements against their workmates – union members (the first complainant earns a salary of lei 2,836, by comparison with the workmates in the same salary class – union members -, who earn a salary of lei 2,893, the salary of the second complainant is lei 1,993, against lei 2,033);
- union members receive an increase of 100% for the time worked on free days, while those who are not union members an increase of 75%;
- they were forced to pay 1% of their income for social and humanitarian cases.
They submitted documents in the file (sheets 4-12 in the file).
The petition was submitted in the file twice, registered under *no. 5076/22.07.2014* (sheets 26-27, annexes sheets 28-86).
In the address *no. 5301/01.08.2014* (sheets 88 – 99), respectively, *5322/04.08.2014* (sheets 100 – 110 in the file), the complainants state written conclusions, regarding the opinion stated by the complainee.

The Complainee's Contentions
The Complainee, in the address *no. 650/3366/18.07.2014*, registered with C.N.C.D. under *no. 5048/21.07.2014* (sheets 15-16 in the file), shows as follows:
- complainants may become union members;
- as of May, the amount of 1% has not been withheld from the complainants' salaries;
- the complainants could address the court of law;
At present, the complainants enjoy all the rights set forth by law.
It submitted documents in the file (sheets 17-25 in the file).
In the address *no. 415/2014*, registered with C.N.C.D. under *no. 5516/12.08.2014* (sheet 111 in the file), the complainee mentions that it maintains the facts previously stated.

De facto and de jure reasons
The Steering Board has found as follows:
- the complainee does not deny that in the same salary class union members earn a higher salary than non-members;
- according to the collective labor agreement, union members receive an increase of 100% for the time worked on free days, while non-members only 75%;

- by May 2014, the complainants were withheld an amount of 1% of the salary, for not being union members.

The Steering Board dismisses the objection to material jurisdiction invoked by the complainee, on the grounds that the complainants could address the administrative court, showing that the subject matter of the petition before C.N.C.D. is a contravention, and, as such, cannot be reviewed by courts of law.

O.G. no. 137/2000, under art. 2 par. 1 sets forth: *„According to this ordinance, discrimination means any differentiation, exclusion, restriction or preference, based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection, falling into a disadvantaged category, as well as any other criterion with the purpose or effect of restraining, eliminating the recognition, use or exercising under equal conditions human rights and fundamental freedoms or the rights recognized by law, in the political, economic, social and cultural field or in any other fields of public life."*

Thus, discrimination may be considered:

• a differentiation

• based on a criterion

• which infringes upon a right.

According to the case law of the European Court of Human Rights in these matters, the difference in treatment becomes discrimination when distinctions are made between analogous and comparable situations, without these being based on a reasonable and objective justification. The European Court has constantly decided that, for such a violation to take place, *„one should establish that persons found in analogous or comparable situations, in these matters, receive a preferential treatment and such distinction has no objective or reasonable justification"*. The Court considered in its case law that the contractual states have a certain assessment margin, in order to establish whether and to what extent the differences between analogous or comparable situations are liable to justify the distinctions of judicial treatment applied (for ex.: *Fredin vs. Sweden*, 18 February 1991; *Hoffman vs. Austria*, 23 June 1993, *Spadea and Scalambrino vs. Italy*, 28 September 1995, *Stubbings and others vs. the United Kingdom*, 22 October 1996).

In the decision pronounced in the case *Thlimmenos vs. Greece* of 6 April 2000, the Court concluded that *„the right not to be discriminated against, guaranteed by the Convention, is violated not only when states treat differently persons found in analogous situations, without providing objective and reasonable justifications, but also when states fail to treat differently, again without objective and reasonable justifications, persons found in different, not comparable situations"*.

According to the Constitutional Court of Romania, *„the principle of equal rights and non-discrimination is applied only to equal or analogous situations, and the different judicial treatment, established upon considering some objectively different situations, does not consist of either privileges or discriminations." (Decision no. 108 of 14 February 2006 of the Constitutional Court).*

In conclusion, there is a differentiation if persons found in similar situations are treated differently, or if persons found in different situations are treated identically.

Differentiation should be based on the comparison with other persons, groups or communities (*O.G. no. 137/2000*, art. 1 par. 3: *„Exercising the rights stated in this article regards the persons found in comparable situations."*). Comparability should be reviewed based on the right invoked as being restricted or removed.

The complainants showed that, by comparison with other persons, union members, they earn a lower income. The complainee did not deny this situation. Considering the provisions of *O.G. no. 137/2000*, art. 20 par. 6, which set forth: *„The stakeholder shall present some deeds based on which one may assume the existence of some direct or indirect discrimination, and the person the petition was filed against has the task to prove that no violation of the equal treatment principle took place"*, the Steering Board has found the existence of differentiation by granting salary entitlements.

According to the collective labor agreement, union members receive an increase of 100% for the time worked on free days, while the non-members only an increase of 75%. Thus, a differentiation is established by granting the increase for the time worked on free days. Even if

this right was acquired by a union, according to the legislation in force, a right acquired by a union should be extended to all the employees.
Withholding 1% of the salary from the persons that are not union members by May 2014 is differentiation between the employees that are union members and the employees that are not union members.
The Steering Board considers that applying some coercing measures to non-members of union, in order to become union members, contravenes to the legislation in force.
The discrimination deed is determined by the existence of a criterion. Any criterion may be invoked (*O.G. no. 137/2000*, art. 2 par. 1: [...] *„based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection or falling into a disadvantaged category, as well as any other criterion"* [...]; *The Additional Protocol no. 12 to the European Convention on Human Rights*, art. 1 par. 1: [...] „*without any discrimination based especially on gender, race, color, language, religion, political opinions or any other opinions, national or social origin, belonging to a national minority, wealth, birth or any other situation"*).
Between the criterion invoked and the deeds imputed to the complainee, there should be a cause-effect relation.
In the case subject to adjudication, the criterion of union member was the reason for differentiation.
A deed may be considered discriminatory if violating a right, any of the rights guaranteed by international treaties ratified by Romania, or the ones set forth by national legislation.
In the case subject to adjudication, the ownership right is violated, both the income and increases, respectively withholdings from income affecting the complainants' ownership.
In conclusion, (1) salary differences based on union criteria; (2) granting union members an increase of 100% for the time worked on free days, against the ones that are not members, who receive an increase of 75%; (3) obliging persons that are not union members to pay 1% of their salary, having as an effect restraining the right of ownership, is discrimination, pursuant to art. 2 par. 1 in O.G. no. *137/2000*, being a differentiation, preference based on the union criterion, which has as an effect restraining the use and exercising, under equal conditions, the right of ownership.
The Steering Board has found that not granting equal salaries to union members and to non-members of union is contravention, pursuant to art. 6 letter b) a *O.G. no. 137/2000*, which sets forth: *„It is contravention, according to this ordinance, the discrimination against a person because they belong to a certain race, nationality, ethnicity, religion, social category or a disadvantaged category, respectively because of their beliefs, age, gender or sexual orientation, within an employment and social protection relationship, except for the cases set forth by law, appearing in the following matters: [...] b) establishing and changing the job duties, workplace or salary"*.
Granting union members an increase of 100% for the time worked on free days, against the ones that are not members, who receive an increase of 75%, is contravention, pursuant to art. 6 letter c) in *O.G. no. 137/2000*, which sets forth: *„It is contravention, according to this ordinance, the discrimination against a person because they belong to a certain race, nationality, ethnicity, religion, social category or a disadvantaged category, respectively because of their beliefs, age, gender or sexual orientation, within an employment and social protection relationship, except for the cases set forth by law, appearing in the following matters: [...] c) granting other social rights than the ones standing for salary;"*.
Obliging persons that are not union members to pay 1% of their salary is contravention, pursuant to art. 6 letter g) in *O.G. no. 137/2000*, which sets forth: *„It is contravention, according to this ordinance, the discrimination against a person because they belong to a certain race, nationality, ethnicity, religion, social category or a disadvantaged category, respectively because of their beliefs, age, gender or sexual orientation, within an employment and social protection relationship, except for the cases set forth by law, appearing in the following matters: [...] g) any other conditions of performance of work, according to the legislation in force."*.
Art. 26 par. 1 in O.G. no. *137/2000* sets forth: *„The contraventions set forth in art. 2 par. (5) and (7), art. 5-8, art. 10, art. 11 par. (1), (3) and (6), art. 12, art. 13 par. (1), art. 14 and 15 are punished by a fine in amount of lei 1,000 - lei 30,000, if the discrimination targets an*

individual, respectively by a fine in amount of lei 2,000 - lei 100,000, if the discrimination targets a group of persons or a community."
It imposes a civil fine of lei 2,000 for every contravention deed, amounting to lei 6,000 in total, considering the following issues:
- discrimination targeted a group of persons;
- discrimination aimed at constraining some persons, against their will, to become union members (a fact resulting inclusively from the complainee's response, according to which the complainants could choose to become union members).

Considering the facts above, pursuant to art. 20 par. (2) in O.G. *137/2000 regarding the prevention and punishment of any forms of discrimination*, as subsequently amended, by unanimity of votes of the members attending the meeting,

THE STEERING BOARD
HAS DECIDED AS FOLLOWS:

1. To dismiss the objection to material jurisdiction invoked by the complainee, showing that the subject matter of the petition before C.N.C.D. is a contravention;
2. Not granting equal salaries to union members and to non-members of union is a discrimination deed, pursuant to art. 2 par. 1 corroborated with art. 6 letter b) in O.G. no. *137/2000*;
3. Granting union members an increase of 100% for the time worked on free days, against the ones that are not members and receive an increase of 75% is a discrimination deed, pursuant to art. 2 par. 1 corroborated with art. 6 letter c) in O.G. no. *137/2000*;
4. Obliging persons that are not union members to pay 1% of their salary is a discrimination deed, pursuant to art. 2 par. 1, corroborated with art. 6 letter g) in O.G. no. *137/2000*;
5. To impose a civil fine on Sucursala Regională C.F.R. Braşov (J8/1134/2004, CUI 15509275), in aggregate amount of lei 6,000, pursuant to art. 26 par. 1 in O.G. no. *137/2000*;

Additional Informations for the accepted provisions concerning thematic group "Employment, trening and equal opportunities" (Conclusions 2016)

Article 1 – Right to work
Paragraph 3 – Free placement services

- Number of staff of the Public Employment Service (National Agency for Employment)*:*

- *2162 in 2011, 2162 in 2012, 2162 in 2013, 2142 in 2014;*

- Number of jobseekers*:*

- *1,252,237 in 2011, 1,106,288 in 2012, 1,153,259 in 2013, 1,106,363 in 2014;*

- Number of vacancies*:*

- *471,016 in 2011, 454,356 in 2012, 489,158 in 2013, 631,521 in 2014;*

Concerning the active measures implemented with support from private providers, the following results were registered in the reference period:

Active measures		2011	2012	2013	2014
Vocational information and counseling	Total number of persons counseled, out of which:	642,131	566,693	540,971	531,377
	through private service provides	19,716	11,624	8,255	7,788
	Total number of persons employed, out of which:	61,254	56,950	58,335	61,168
	through private service provides	-	-	-	-
Job-matching	Total number of persons who benefited from job-matching, out of which:	902,603	850,629	775,934	721,824
	through private service provides	24,725	22,887	387	736
	Total number of persons employed, out of which:	306,206	271,416	283,464	319,104
	through private service provides	4,011	3,269	43	677
Consultancy and assistance for starting an independent activity or a business	Total number of persons who received consultancy and assistance, out of which:	6,070	2,773	2,478	1,071
	through private service provides	442	163	270	254
	Total number of persons employed, out of which:	264	242	162	135
	through private service provides	-	-	-	-

Article 1 – Right to work
Paragraph 4 – Vocational guidance, training and rehabilitation

Continuing vocational trening

In Romania, the vocational training of persons who have the age at which they can establish working relationships and can participate in professional training programs is

carried out according to the Government Ordinance no. 129/2000 regarding the vocational training of adults, republished, with subsequent amendments and completions. Adults have equal rights of access to vocational training, without discrimination based on age, gender, race, ethnic origin, political or religious affiliation.

Adult vocational training is carried out by individuals or legal entities, of public or private law, established in Romania, in the Member States of the European Union or in the States belonging to the European Economic Area, irrespective of the legal form of their organization, hereinafter referred to as vocational training providers.

Adult vocational training has as its main objectives:

a) facilitating the social integration of individuals in line with their professional aspirations and the needs of the labor market;
b) preparation of human resources capable of increasing the competitiveness of workers;
c) updating knowledge and improving vocational training in the basic occupation, as well as in related occupations;
d) change of qualification, determined by economic restructuring, social mobility or changes in work capacity;
e) acquiring advanced knowledge, modern methods and procedures necessary for the fulfillment of the tasks;
f) promoting lifelong learning.

Vocational training providers may organize vocational training programs culminating in qualification or graduation certificates with national recognition only if they have provided in their status or, as the case may be, in the authorization of self-employment, training and are authorized in the conditions of the law.
Employers can organize training programs for their own employees, based on which they issue certificates of graduation recognized only within those units. Graduation certificates have national recognition only if employers are licensed as vocational training providers.
Authorization of vocational training providers is carried out by the authorization committees subordinated to the Ministry of Labor and Social Justice. In each county and in Bucharest there is an authorization commission based at the Payments and Social Inspection Agency.
Authorization committees are made up of 5 members, as follows:

a) the Executive Director of the County Agency for Payments and Social Inspection, respectively of the Bucharest Municipality, who is the President;
b) a representative of the county school inspectorate, respectively of the municipality of Bucharest;
c) a representative of the county employment agency, respectively of the municipality of Bucharest;
d) a representative of representative employers' associations at county level, proposed by consensus;
e) a representative of representative trade union organizations at county level, proposed by consensus.

Authorization committees have the following tasks: authorizing vocational training providers; provides advice and information to vocational training providers; monitor the activity of vocational training providers and organize graduation exams and, if necessary, withdraw their authorization; coordinates the organization of the graduation exams at the completion of initiation, qualification, retraining, professional training and other specific courses.
Authorization of vocational training providers is made on the basis of the assessment criteria for a period of 4 years with the possibility of renewal at the request of the vocational training providers at least 30 days before the expiry of the period of validity

of the authorization. The authorization is granted for each occupation / qualification / key competence / transversal competence for which vocational training providers organize training programs. The evaluation criteria for vocational training providers take into account the following elements:

a) the vocational training program;
b) implementation of the quality assurance criteria;
c) the experience of vocational training providers and the results of their pre-authorization work or other training programs they have carried out, where appropriate;
d) human, material and financial resources;
e) the authorizations and the approvals necessary for carrying out the vocational training programs, as the case may be.

In order to become qualified for training, vocational training must meet the following eligibility conditions:

- be legally constituted;
- to include in their statute or, where appropriate, in the establishing act, vocational training activities;
- to fulfill its obligations to pay the due taxes and contributions, according to the legislation in force.

Adult vocational training comprises initial vocational training and continuing vocational training organized in other forms than those specific to the national education system. Initial vocational training for adults provides the necessary training to acquire the minimum professional skills required to get a job. Continuing vocational training follows initial training and provides either the development of already acquired professional skills or the acquisition of new skills.
Adult vocational training is organized through programs of initiation, qualification, re-qualification, training, specialization, defined as follows:

a) initiation is the acquisition of one or more skills specific to a qualification according to the occupational or vocational training standard;
b) qualification, respectively re-qualification, represents the vocational training leading to the acquisition of a set of professional competences that allow a person to carry out specific activities to one or more occupations;
c) training, respectively specialization, represents the vocational training leading to the developing or completing of knowledge, skills or professional skills of a person who already has a qualification, respectively the development of competences within the same qualification, the acquisition of new skills in the same occupational field, a new occupational area, the acquisition of fundamental / key competencies or new technical skills.

The forms of adult vocational training are:

a) courses organized by vocational training providers;
b) courses organized by employers within their own units;
c) internships and specializations in units in the country or abroad;
d) other forms of vocational training.

Participants in vocational training programs take graduation exams at the end of the theoretical or practical training sessions. The graduation exam represents a set of theoretical and / or practical tests that reveal the acquisition of the competencies specific to the vocational training program, in compliance with the quality assurance criteria. The graduation exam is held in front of an examination committee made up of: 2 specialists outside the vocational training provider and one specialist who represents

the training provider. The exam can also be assisted by representatives of employers or representatives of beneficiaries of vocational training programs.

Depending on the type of program and the forms of vocational training, the authorized training provider may issue the following types of certificates:

a) for qualification or re-qualification courses and for apprenticeship at the workplace, certificate of professional qualification;
b) for courses and initiation programs, as well as for courses and specialization programs, graduation certificate.

In the case of vocational training programs structured on modules, upon completion of each module, after passing the evaluation test, a certificate of graduation is issued with mention of the acquired professional skills.
Vocational and graduation qualification certificates are printed by the Ministry of Labor and Social Justice, with the header of the Ministry of Labor and Social Justice and the Ministry of National Education and have the status of study act.

The qualification / graduation certificates forms are made available by the Ministry of Labor and Social Justice to the providers of vocational training programs, through the county agencies for payments and social inspection, respectively of the municipality of Bucharest. Vocational or graduation qualification certificates are issued together with an annex setting out the professional competences acquired.

Number of employed persons participating in vocational training financed out of the Unemployment Insurance Fund:

- 2 (women who renewed their activity following paid leave for raising their child) in 2011;
- 0 in 2012;
- 1 (woman who renewed her activity following paid leave for raising her child) in 2013;
- 0 in 2014.

Guidance and vocational training for persons with disabilities:
Regarding the non-conformity with the European Social Charter (Charter) on the ground that persons with disabilities does not have efectively guaranteed the measures who facilitate for vocational guidance and training, the National Authority for Person with Disabilities (NAPD) want to reiterate that, according with the special Law no. 448/2006 on the protection and promotion of rights of persons with disabilities, republished, devotes an entire chapter for measures on orientation, training, and employment for persons with disabilities. Thus, according to this law, any person with a disability who wants to integrate or reintegrate into employment market has free professional evaluation and orientation (regardless of age, type and degree of disability). The persons with disabilities actively participates in the evaluation and vocational guidance, access to information and choice of activity, according to its desires and skills.
More than that, from professional guidance benefit also a person who is in educational system and has the appropriate age for professional integration and does not have a job, does not have experience or one who, even is employed, wants to participate on a retraining course.
In conclusion, having this legislative process in mind, we consider that, according with our legislative framework Romania has been established that the rights of person with disabilities to vocational training is efectively guaranteed.

Article 15.1 – Right of persons with disabilities to independence, social integration and participation in the life of the community

Paragraph 1 – Vocational training for persons with disabilities

- *Not in conformity on the ground that the right of persons with disabilities to mainstream education is not effectively guaranteed*

The Ministry of National Education has been constantly preoccupied with the provisions of equal rights to both students enrolled in regular public schools and to students with special educational needs attending special schools. By means of its educational policy, it aims to ensure equal access to all pre-university educational forms and levels, as well as to lifelong learning, regardless of any kind of discrimination.
In Romania, the educational system is regulated by the Law of education no. 1/2011.
The 12th section of the law offers provisions regarding the education intended to persons with learning difficulties. These provisions were developed and implemented by means of the *Methodology for the provisions of the necessary support to persons with learning difficulties* approved by Ministerial Order no. 3124/2017.
This methodology regulates the assessment procedures used for the identification of students' learning deficiencies, as well as the type of intervention appropriate to an individualized and personalized kind of learning.
Students with special educational needs benefit from a more flexible even longer schooling period according to their individual needs, the deficiency type and severity which are regulated by a Ministerial Order.
At the same time, the Ministry of National Education approves the organization of *Second chance classes* for those students whose age exceeds the regular class age and who haven't finished primary education studies by the age of 14 out of various reasons. This program works for the lower secondary level as well.
As regards measures to raise the accessibility rate of children/students/teenagers from the vulnerable groups, it is important to be mentioned the Social Package for Education which comprises annual social programs for the pre-university education to ensure school supplies, hot meals for students lunch in schools, for all children with no discrimination.
Currently the number of pupils with specific educational needs integrated in mainstream schools is of 31.063 and through this strategy are targeted actions for a total number of 2.500 students with disabilities or deficiencies.

- Enrolled in special education is a number of 24.905 students with specific educational needs.
- The number of pupils with specific educational needs who are schooled at home or in hospitals is of 2054.
- In the school year 2016-2017, a total of 58.098 pupils with specific educational needs were enrolled in the education system in any form of schooling.

At the Ministry of National Education initiative, all students will benefit in the next school year of the provisions of the methodology for allocating amounts necessary to grant the rights of children/students/young people with special educational needs in mainstream schools or enrolled in special education units approved by the Government, on the basis of art. 51 para. (2) of the National Education Law.
In what concerns the prevention of discrimination, the Regulation of the organization and functioning of the pre-university education school units approved by the Ministerial Order no. 5079/2006 reiterates the obligation of obliterating any kind of discrimination in the pre-university educational system.
Regarding the measures taken to limit the placement of adults with disabilities in institutions, the strategy available for the period that we refer was a preoccupation for developing a series of alternative measures (services and support) which can really help the families of persons with disabilities not to place them in residential institutions. The actual national strategy available for 2016-2020 „*A free barrier society for persons with disabilities*" also continues this process; more than that, one of it's major priority is to develop a national plan for deinstitutionalization of adult persons with disabilities; the

success of this plan is, first of all, to effectively stop the new entries in the residential system and to continue to develop a strong structure of alternative measures/services.

Regarding the relevant statistics on person with disabilities living in residential institutions, the number of public institutions of social care for adults with disabilities at 31 December 2014 is 408 (compared with 392 on 31 December 2013), of which 352 residential (compared to 335 at 31 December 2013) and 56 non-residential - living (compared 57 December 31 2013). A third of residential institutions are centers of care and support, with 6,270 beneficiaries, 36.45% of the total of 17 202 persons in residential institutions. There are a significant number of beneficiaries in the 60 neuropsychiatric recovery and rehabilitation centers, namely 5.701 people.
Regarding what is inclusive education, according to the legislation into force, the following definitions are in use:

- ✓ Inclusion is the process through which the educational units include in the education process all members of the community, regardless of their characteristics, disadvantages or difficulties.

- ✓ Inclusive school is a friendly and democratic education unit that provides education for all children and is the most effective mean of combating attitudes of discrimination and segregation. The children / pupils in these educational establishments benefit from all educational, psychotherapeutic, medical and social rights and services, in accordance with the principles of social inclusion, equity and equal opportunities.

- ✓ School for Inclusive Education (SIE) is a school institution with a legal personality that, besides organizing, conducting the teaching / learning / evaluation process, builds other directions of institutional development: training / information in the field of special education, experimentation, as well as educational / community services. The purpose of SIES is the recovery, compensation, rehabilitation and school and social integration of different categories of children / pupils / young people with deficiencies.

According to the Order no. 5086/2016 for the approval of the Frame Methodology on home schooling, i.e. the establishment of groups / classes in hospitals, inclusive education has been defined as "a permanent process of improvement of the schools, aiming at exploiting existing resources, especially human resources, to support the participation in the learning process of all people within a community."
Regarding how many of such centers are in Romania, according to the most recent data available, there are 70 schools for inclusive education in the pre-university education system in Romania.
Regarding who attends SIE, The School for Inclusive Education is the institutional frame for action that provides access to formal education for all children and educational services for children with special educational needs, both in special education units and in mainstream education, as well as the staff involved in their education.
Consequently, SIE performs the training, education, recovery and social integration of children, pupils and young people with special education needs.
The target groups that benefit of the services of the school for inclusive education are defined by the Order no. 5555/2011 for the approval of the Regulation on the organization and functioning of the county Centers and the Bucharest Municipality for Educational Resources and Assistance, Annex 3, art. 9:

- preschool and school pupils from special education units and mainstream schools

- parents or legal guardians of children;

- staff employed in educational establishments or other institutions acting in the field of special education of children;
- pupils / students performing pedagogical practice modules;
- Members of the local community.

Regarding measures taken to improve the fact that almost half of the children with special educational needs are studying at special schools, The Ministry of National Education has undertaken a series of legislative measures to support the education of students with special education needs and their integration in mainstream schools:

- ✓ According to the provisions of the National Education Law no. 1/2011, as amended and supplemented, art. 54, the parent / legal tutor has an important role in reorienting the child from the special school to the mainstream school and vice versa. Depending on the evolution of the child, reorientation proposals from the special school to the mainstream school and vice versa may be made. The reorientation proposal is made by the teacher who worked with the child concerned or by the parents of the child / legal custodian and by the school psychologist. The reorientation decision is taken by the expertise commission of the County Center for Resources and Educational Assistance, with the consent of the family or the legal tutor.
- ✓ By Order no. 6134/2016 on the prohibition of school segregation in pre-university education establishments, the MofNE reiterates that the principles of the inclusive school are promoted ensuring "equity in education, in terms of equal access to all forms of education, but also in terms of quality of education for all children, without any discrimination" "on the basis of the ethnicity, disability or special educational requirements, the socio-economic status of the families, the residence environment and the school performances of the primary beneficiaries of education".
- ✓ Art. 5 of the mentioned above order defines school segregation based on disability and / or special educational needs as a physical separation of children with disabilities and / or special educational needs in "groups / classes / buildings / last two desks", so this percentage is disproportionate compared to the other group / class / building / last two desks percentage in the same pre-university school unit, at the same level."
- ✓ The Joint Order of the Ministry of Labor, Ministry of Health and Education no. 1985/1305/5805/2016 of October 4, 2016 regarding the approval of the methodology for the evaluation and the integrated interventions for the purpose of the evaluation of children with disabilities, on the scholar and professional orientation, as well as for the empowerment and rehabilitation is intended to provide a "conceptual and operational framework to ensure the right to education, equal opportunities for these children, as well as for their empowerment and rehabilitation, including inter-institutional collaboration and case management" (Article 1 paragraph 2). According to art. 2, paragraph 2, the disability evaluation is carried out only at the request of the parents / legal representative, and the enrollment of children with disabilities and special education needs is made only following the school and professional guidance provided by the School and Professional Guidance Committee.
- ✓ Complementary provisions to the above mentioned order are foreseen by the following subsequent legislation:

- ✓ According to Order no. 5.574 / 2011, art 5: "the school integration of people with special education needs is carried out in mainstream schools. In order to effectively integrate people with special education needs, it is necessary to create specialized support services for the psycho-pedagogical assistance for children / pupils / young people, as well as consultancy services for inclusive school teachers, other pupils, their families and community members (art. 6). The specialized services needed to integrate children with special education needs are provided by itinerant and support teachers in collaboration with all stakeholders (art 7)".
- ✓ The Governmental Decision no. 564/2017 foresees that all children with special educational needs enrolled in the pre-university education system are granted with financial benefits, as follows:
  - children integrated in mainstream education;
  - children from special education units;
  - children requiring periods of hospitalization longer than 4 weeks for which groups or classes are organized, as appropriate, within the sanitary unit where they are interned;
  - children who, for medical or disability reasons, follow home schooling for a period.

Regarding why does the percentage of young people (18-24 years) with disabilities (42.6% in 2012) leaving school early is much higher than that of young people without disabilities (17% in 2012) and the up-to-date percentages of young people with and without disabilities leaving school early, in 2015, the school dropout rate was 19.1% and in 2016 at 18.5%. Data collected in Romania on early school leaving, assumed by the Ministry of National Education are those that appear in the Education and Training Monitor 2016. According to the Education and Training Monitor 2016, "Children with special educational needs and children with disabilities are one of the most expected groups not to attend school, especially in rural areas. Data from the 2011 census showed that one out of three children aged of 7 to 14 years old with total or partial disability was never enrolled in school or dropped out the school.

- *Not in conformity on the ground that the right of persons with disabilities to vocational mainstream training is not effectively guaranteed*

In 2016 was approved, by Government Decision no. 317, the Strategy for vocational education and training in Romania for the period 2016-2020, whose specific objectives aim at facilitating access to education and training, with special focus on vulnerable groups, including people with disabilities. The strategy was validated by the European Commission in October 2016 and it is going to be implemented locally within a national framework of coordination and monitoring.

Starting with the school year 2014-2015, the vocational education and training with the duration of 3 years was regulated by the Minister of National Education Order no. 3136/2013; the system includes a significant component of practical training, performed in school workshops and at the companies' workplace: the first year, this component represents approximately 20% of the total time allocated to the program, in the second year about 60% of the time is spent for training, and the third year about 72% of the time.

To facilitate access to vocational training programs in the education system for young people with disabilities were included measures to be financed from structural funds through the Operational Program for Human Capital and from national funds, as follows:

- ✓ Development of sheltered workspaces and other training alternatives for students with disabilities of deficiencies to access vocational training programs to ensure better social and professional insertion,
- ✓ Delivery of teaching tools and assistive equipment in the sheltered workplaces,
- ✓ Develop educational materials for students with disabilities or deficiencies following training programs,
- ✓ Developing the capacity of County Centers for Educational Support to provide information services and school counseling to improve professional orientation of children with disabilities or deficiencies.

Article 15.1 – Right of persons with disabilities to independence, social integration and participation in the life of the community
Paragraph 2 – Employment of persons with disabilities

- *Not in conformity on the ground that persons with disabilities are not guaranteed effective access to the labour market*

The national strategy entitled "A barrier free society for persons with disabilities 2016 – 2020", has strategic objectives to make sure that the societal opportunities are equal for all of its members, without any act of discrimination. The policies that are taken into account have as priority, among others, to ensure that all the persons have equal opportunities on labour market to develop their real potential their entire lives is essential, from a psychological standpoint, as well as economic and social. Concretely, the proposed measures aim at a better awareness and more consideration given to the importance of professional trainings programs developed for persons with disabilities.
Regarding the low employment rate, the number of persons with disabilities in employment continues to increase: at the end of 2014 there were 30.556 and at the end of 2016 there were 33.571 persons with disabilities in employment.
- Number of persons with disabilities included in free-of-charge vocational training courses:
  - 283 in 2011;
  - 91 in 2012;
  - 114 in 2013;
  - 93 in 2014.

- Number of persons with disabilities employed following participation in active measures:
  - 815 in 2011;
  - 612 in 2012;
  - 715 in 2013;
  - 837 in 2014.