

ROMANIA

LEGAL CONTEXT AND LEGAL INSTRUMENTS GUARANTEEING EQUAL ACCESS TO THE ACT OF JUSTICE

I. Actual legal context regarding women's protection and guaranty of equal access to the act of justice

Fighting the phenomenon of discrimination, regardless the criteria of such, was accounted as a priority of the Romanian state and, moreover, of the Ministry of Justice. The legal context towards equality and non-discrimination field is subject to a permanent revision, including the development of European and conventional provisions. Moreover, according to article 20 par. 2 of the Romanian Constitution, "[w]here any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions."

Accordingly, at this moment, the Romanian legal context regarding the suppression of discrimination, including discrimination based on ethnicity, is a complex one and it encapsulates all the necessary levers in order to prevent or, as appropriate, to punish any form of discrimination.

Hence, one of the most important legal instruments is the European Convention of Human Rights, ratified by Romania within the no. 30/1994 Law, which includes also the European Court of Human Rights' jurisprudence that is directly applicable.

Therewith, the Romanian Constitution states several provisions about discrimination¹ in Title I – General principles that establish the principle of equality of opportunity and non-discrimination and

¹ Article 4 *Unity of the people and equality among citizens*

(1) The State foundation is laid on the unity of the Romanian people and the solidarity of its citizens.

(2) Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin.

Article 11 *International law and national law*

(1) The Romanian State pledges to fulfill as such and in good faith its obligations as deriving from the treaties it is a party to.

(2) Treaties ratified by Parliament, according to the law, are part of national law.

(3) If a treaty Romania is to become a party to, comprises provisions contrary to the Constitution, its ratification shall only take place after the revision of the Constitution.

Article 16 *Equality of rights*

(1) Citizens are equal before the law and public authorities, without any privilege or discrimination.

(2) No one is above the law.

(3) Access to public, civil, or military positions or dignities may be granted, according to the law, to persons whose citizenship is Romanian and whose domicile is in Romania. The Romanian State shall guarantee equal opportunities for men and women to occupy such positions and dignities.

(4) After Romania's accession to the European Union, the Union's citizens who comply with the requirements of the organic law have the right to elect and be elected to the local public administration bodies.

Article 20 *International treaties on human rights*

(1) Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to.

(2) Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favorable provisions.

Article 30 *Freedom of expression*

(1) Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable.

(2) Any censorship shall be prohibited.

(3) Freedom of the press also involves the free setting up of publications.

(4) No publication shall be suppressed.

(5) The law may impose upon the mass media the obligation to make public their financing source.

(6) Freedom of expression shall not be prejudicial to the dignity, honor, privacy of a person, and to the right to one's own image.

(7) Any defamation of the country and the nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law.

(8) Civil liability for any information or creation made public falls upon the publisher or producer, the author, the producer of the artistic performance, the owner of the copying facilities, radio or television station, under the terms laid down by law. Indictable offences of the press shall be established by law.

also Title II - Fundamental rights, freedoms and duties embodies the principle of equality of rights between Romanian citizens.

In reference to Government Ordinance no. 137/2000 regarding the prevention and punishment of any form of discrimination, republished², it was transposed the provisions of Council Directive 2000/43/CE of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Within the aforementioned legal act, it assures a uniform interpretation of general principles of equality and non-discrimination, stated in the Romanian Constitution, as well as international provisions regarding the abolishment of discrimination, ratified by Romania, which is meant to set up the general framework. Hence, it provides the persons who are subject to such discrimination with access to effective mechanisms, according to which they can ask for termination of the discriminatory acts and acquiring effective remedies, such as punitive damages.

The provisions of Government Ordinance no. 137/2000 sanction contravenitionally any distinction, exclusion, restriction or preference based on race, nationality, ethnic origin, language, religion, social origin, beliefs, **sex**, sexual orientation, age, disability, non-contagious chronic disease, HIV infection, affiliation to a disadvantaged category and any other criteria which serves as purpose or effect for restraining and/or removing of recognition, usage or exercise, under conditions of equality, of fundamental human rights, freedoms and legal rights in the political, economical, social and cultural area or any other areas of the public life.

Moreover, through the Government Ordinance no. 137/2000 regarding the prevention and punishment of any form of discrimination, republished, it has been established the National Council for Combating Discrimination (hereinafter: CNCD) as an independent state authority in the field of discrimination, autonomous, with legal personality and under parliamentary control. Further, CNCD serves as guarantee for reliance and appliance of the non-discrimination principle, in accordance with the legal domestic framework and international documents to which Romania is a party.

Therewith, starting with the comprehensive reform of the judicial system wretched by the enforcement of Law no. 287/2009 regarding the Civil Code (the new Civil Code) on 1st of October 2012, it was taken into consideration the non-discrimination principle. Hence, according to article 30 of Civil Code, “the ethnicity, skin colour, nationality, language, religion, age, **sex** or sexual orientation, opinion, personal beliefs, political view or union membership, affiliation to a social group or disadvantaged origin, wealth, social origin, cultural skills and also any other similar situation have no influence towards the civil capacity”.

In the spirit of the law and in accordance with the legal framework presented above, the Law no. 134/2010 of Civil Procedure Code stated that: “In a civil lawsuit, the parties shall exercise their procedural rights equally and without any other discrimination (...)”³.

According to the teleological interpretation of the provisions stated in article 1 par. 2 and article 2 par. 1 of the Government Ordinance no. 137/2000, it can be concluded that the principle of equality between citizens and exclusion of privilege and discrimination (including by gender) are guaranteed, among others, with the support of the following right: “(..) the right to an equal treatment before the courts and any other judicial authority”.

II. Legal instruments which were recently enforced about the subject in matter

In 2013, the Ministry of Justice alongside with other institutions with related attributions has developed several legal suggestions in order to improve the legal framework of fighting discrimination, including discrimination by gender.

² According to article IV of no. 324/2006 Law for amending and supplementing the Government Ordinance no. 137/2000 regarding the prevention and punishment of any form of discrimination, published in Official Gazette of Romania, Part I, No. 626 of 20th of July 2006.

³ The new Civil Procedure Code was enforced at 15th of February, 2013.

Hence, through the Government Ordinance no. 19/2013 regarding the revision and completion of Government Ordinance no. 137/2000 regarding the prevention and punishment of any form of discrimination, initiated by the Ministry of Justice along with the Ministry of Labour, Family, Social Protection and Elderly Persons, the Ministry of National Education and the National Council for Combating Discrimination, has been adopted several legal instruments and mechanisms, such as:

- ✓ Implementing the expiration moment of the extinctive prescription regarding the impose of a penalty for a misdemeanour given by the National Council for Combating Discrimination, as a result of the preliminary ruling of the European Court of Justice in the case C-81/12 (*Accept Association*); the question referred was concerning whether or not the interpretation of a directive was wrongfully given in order to allow the national courts to apply its provisions that creates the proportional, effective and dissuasive character of the penalty.
- ✓ Introducing the exception of direct discrimination as a general provision, as stated in the 2000/43/CE Directive and the exclusion by default of the provisions of the Government Ordinance no. 137/2000 which stated this exception as a special provision.
- ✓ Revising the provisions that concerned exceptions of the actions which constitute acts of discrimination and which could have arose the possibility of such to extend and be interpreted also as exceptions of direct discrimination.
- ✓ Excluding the provisions that were not clearly identified with the definition and context of *indirect discrimination* and which were also giving a hard time to apply *the justification test* in such case, as stated in 2000/43/CE Directive.
- ✓ Linking and increasing the value of misdemeanours' penalties with the ones implemented in the Government Emergency Ordinance no. 83/2012 regarding the revision and completion of Law no. 202/2002 regarding the equality of opportunity and treatment between men and women. The scope of this process was to remove any kind of difference of penalty treatment between the protected criteria of different EU directives, but also in order to satisfy the preventive purpose of these provisions.

Moreover, within Law no. 61/2013 regarding the revision of Government Ordinance no. 137/2000 regarding the prevention and sanction of any kind of discrimination⁴, there were revised the provisions of article 20 par. 6 and article 27 par. 44, in order to reverse the burden of proof to the person who was subject to complaint (the revised article has the following structure: "The person concerned will present facts on which can be presumed the existence of a direct or indirect discrimination and the person against whom the complaint was submitted has the burden of proving that there was not a violation towards the principle of equality of treatment. In court, it can be produced any means of evidence in accordance with the constitutional system of fundamental rights, including the audio and video records or statistics.").

Besides the legal instruments available at this moment, it's compulsory to mention that the National Institute of Magistracy have included in the initial and continuous training of judges and prosecutors the issue of fighting against discrimination.

USEFUL LINKS:

[HTTP://WWW.JUST.RO/;](http://www.just.ro/)

[HTTP://EMAP.CSM1909.RO/SITE/PAGES.ASPX?ID_PAGE=14;](http://emap.csm1909.ro/site/pages.aspx?id_page=14;)

[HTTP://WWW.CNCD.ORG.RO/](http://www.cncd.org.ro/)

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⁴ Published in Official Gazette of Romania, Part I, No. 158 of 25th of March 2013.