



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Romania
<b>Title:</b>	Aggressive campaign targeting disabilities activist protected as free speech
<b>Date:</b>	28 May 2015
<b>Expert:</b>	Romanița Iordache
<b>Context</b>	
<b>Issue at stake:</b>	National equality body rejects discrimination complaint filed by disabilities NGO attacked in media, defining the campaign as free speech
<b>Ground of discrimination:</b>	Disability
<b>Source:</b>	National equality body decision 14 from 14 January 2015 communicated on 22 May 2015
<b>Field:</b>	Other
<b>Applicable law:</b>	GO 137/2000, Art. 2 (4) and (8) and Art. 15

### Content

**Case development:** The case originates in the complaint filed with the National Council for Combating Discrimination by a Romanian NGO, the European Centre for the Rights of Children with Disabilities (*Centrul European pentru Drepturile Copiilor cu Dizabilități*, CEDCD). Following a two-year campaign of the CEDCD in support of a proposed bill on special education seeking to advocate for a CRPD-compliant reform of the system of education for children with disabilities, an aggressive media campaign attacking the NGO and its President, Mrs. Mădălina Turza, started in 2014.

The CEDCD filed a complaint with the NCCD against a journalist, the leader of a trade union of teachers and two teachers in special schools for their statements made in a series of articles published in a regional newspaper *Evenimentul Regional al Moldovei*.<sup>1</sup> The CEDCD also filed a submission under the early warning and urgent action procedures of the CRPD Committee which sent in January 2015 a letter from the Chairperson of the Committee on the Rights of Persons with Disabilities to the Romanian authorities in which it “requests the State party to investigate seriously and expeditiously the allegations of threats against organizations of persons with disabilities which have promoted the draft law.”<sup>2</sup>

<sup>1</sup> The texts are available in Romanian at: 1. “**Mercenarii copiilor cu dizabilități**” [“**The mercenaries of the children with disabilities**”], published on April 25, 2014, available at: <http://www.ziarulevenimentul.ro/stiri/moldova/mercenarii-copiilor-cu-dizabilitati--140919.html>. 2. “**Abandonati între două puteri oarbe**” [“**Abandoned between two blind powers**”], published on May 4, 2014, available at: <http://www.ziarulevenimentul.ro/stiri/moldova/abandonati-intre-doua-puteri-oarbe--142233.html>. 3. “**Cobaii unui experiment distructiv**” [“**Guinea pigs for a destructive experiment**”], published on April 17, 2014, available at: <http://www.ziarulevenimentul.ro/stiri/moldova/cobaii-unui-experiment-distructiv--144106.html>

<sup>2</sup> Office of the High Commissioner for Human Rights, Letter of the Chairperson of the Committee on the Rights of Persons with Disabilities in reply to the Note Verbal No 1937 of the Permanent Mission, CRPD/SP, 19 January 2015.

Among the statements present in this campaign, the CEDCD considered as discriminatory statements made by specialist staff claiming that children with disabilities cannot be integrated, personal attacks against the NGO President including disclosure of personal medical information from the file of her daughter and infringement of her right to privacy and obligation not to disclose personal data with potential of triggering discrimination or statements discriminating Roma children as well: "And all this, because this lady, Mădălina Turza, has an NGO and a kid who she wanted to integrate within the mass education and she had not been let in, for it cannot be that a child with Down and elements of autism, with a low IQ level, is to be enrolled in a normal school [...] and the tendency of this law is for these children to massively go within classes of mass education, where to benefit from those rights can be five-six times more expensive than they are now (in the special schools)."... "Too few children of Romanian ethnicity come to us, because of those of Roma ethnicity. Many parents remove their children from here, because of the Roma. A mixed class of Romanian and Roma children is a disaster. They complain that the others (Roma children) are dirty, have head lice, and smell badly."

**Decision of the NCCD:** The NCCD found that these statements do not amount to a breach of the GO 137/2000 (discrimination and infringement of the right to dignity) as they pertain to "a public debate which aims to lead to a progress of human relations..." The NCCD argued that the criticisms of the draft law published by the author of the article and his three expert guests "cannot be thought of as a differentiation, restriction, exclusion, preference having as purpose restricting or impeding the recognition, use or exercise of human rights and fundamental freedoms equally as prohibited by Art. 2 of the GO 137/2000." In deciding that there is no breach of the non-discrimination provision and no violation of the right to dignity, the NCCD invoked the ECHR jurisprudence on Article 10 mentioning the essential role of the media in a democratic society and the need to protect even the expression of information and ideas which are shocking, offensive or insulting as part of the pluralism defining a democratic society. The NCCD accepted as free speech and part of a "public debate aimed to lead to progress of human relations" statements against the claimant provided by the teachers from special schools, the trade union leader and the journalist instead of arguments regarding the measures proposed by the CEDCD to establish early interventions systems, desegregation and improvement of accessibility of mainstream education. The decision can be challenged before the Court of Appeal.

**Key points of analysis:**

The reasoning of the NCCD decision does not take into consideration the particular position of the defendants as opinion leaders in the educational community, the vulnerability of the complainant or the public disclosure and discussion of a personal and confidential medical diagnosis of the daughter of the complainant. The enjoyment of freedom of expression is invoked as justification for not sanctioning the statement invoked as discriminatory. The responsibilities entailed by free speech as enshrined in Article 10(2) are not analysed.

**Internet link source:** Text of the decision available in Romanian upon request.