



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

NEWS REPORT

Country: Romania
Title: New draft bill for the amendment of the Anti-discrimination Law is reviewed by the Parliament
Date: 9 November 2015
Expert: Iordache, Romanița

Context

Issue at stake: Proposed amendments defining the following concepts: human dignity, tolerance, social group, social defamation, incitement to hatred, and social discrimination. Proposed measures to promote tolerance and combat discrimination in education, continuing professional development of teachers, of civil servants, and awareness raising through media. Proposed new institutional mechanisms for promoting human dignity and tolerance.

Ground of discrimination:

All grounds

Source:

Legislation

Field:

All fields with focus on education and administrative services

Applicable law:

Government Ordinance 137/2000 – Romanian Anti-discrimination Law

Content

Law development: On 5 September, deputy Liviu Dragnea, the leader of the Social Democrat Party submitted a bill for amending the Government Ordinance 137/2000. The explanatory documentation supporting the draft claims that it aims to introduce proactive mechanisms for promoting tolerance and combating discrimination. The bill was adopted by the Senate on 7 October and it received the endorsement of the Government. Currently, it is being discussed by the different relevant committees in the Chamber of Deputies.¹

The presentation of the bill was followed by a strong negative campaign in the media organised by NGOs active in supporting free speech and human rights. Critics were directed at the lack of clarity of some of the notions introduced which were interpreted as having the potential of introducing censorship.²

¹ The bill is still under consideration in the Human Rights Committee and the Legal Committee of the Chamber where it can still suffer amendments. Adoption by the plenary of the Chamber of Deputies would make it a law.

² A critical position regarding the potential of the law of introducing censorship if adopted in the current format was published by 8 NGOs and it is available at: <http://www.apador.org/proiectul-legii-dragnea-o-lipsa-cronica-de-intelegere-a-fenomenului-discriminarii/>.

The bill introduces a definition of human dignity; tolerance; a social group³ as well as specific provisions on “social defamation” and “incitement to hatred and social discrimination.” Social defamation is defined as “the deed or the statement by which a person is placed in a situation of inferiority based on his belonging to a certain social group” and it should be sanctioned according to the draft with a fine between RON 1000 and 30000 (approx. € 225-775) when targeting an individual and a fine between RON 2000 and 60000 (approx. € 550-1650) when targeting a social group. Incitement to hatred and social discrimination is defined as “incitement of the public by any means to hatred or discrimination against a social group.” These definitions were understood by some of the NGOs as creating a wall of protection for politicians. The definitions are problematic due to their lack of clarity and the attempt to regulate vague concepts that overlap with already existing norms.⁴

On the bright side, the proposed bill includes a very concrete set of special measures aimed at promoting human dignity and combating discrimination in education, public services and in the media.⁵

In order to ensure the enforcement of these measures and to sanction the newly defined misdemeanour of social defamation, the draft law proposes the establishment of a new department within the national equality body with a task force of a maximum 10 persons under a Vice-President of the National Council for Combating Discrimination and not under the entire Steering Board of the NCCD. This Department for Promoting Human Dignity and Tolerance has a task preparing guidelines, carrying on training activities for different professional groups, projects, preparing annual reports, monitoring the activities of public institutions, finding failures to comply with the law.

Key points of analysis: The draft defines as misdemeanours unclear deeds such as social defamation to be sanctioned with significant fines. Social defamation is presented and sanctioned as a form of discrimination though discrimination on grounds of social origin is already prohibited by the GO 137/2000. From the perspective of the basic prongs in limiting freedom of expression, the proposal fails to establish certainty and proportionality. The definitions of human dignity, tolerance and social group are far too general to be used in a legal norm. The proposed definition of a social group is so wide that it encompasses almost all criteria of groups already specifically protected in Art. 2 of GO 137/2000. The institutional mechanism proposed seems to be cumbersome and further jam the work of the national equality body. The subordination of the Department for Promoting Human Dignity and Tolerance to a Vice-president and not to the entire Steering Board of the NCCD represents a worrying departure from the principle of collegiality which was at the basis of the NCCD initially. In the current format, it seems that the draft suggests that in cases of “social defamation” the current procedures before the NCCD Steering Board with the basic procedural guarantees provided by the Anti-

³ The bill defines as social group “a category of persons who are distinct from the social point of view due to one or more elements of gender, age, race, religion, ethnic origin, mother tongue, cultural traditions, political affiliation, sexual orientation, social origin, wealth, disabilities, non-contagious chronic disease or HIV/AIDS status.”

⁴ Discrimination on grounds of social origin is already prohibited by Art. 2 of the GO 137/2000, thus the prohibition of social defamation is redundant

⁵ The draft proposes specific measures in order to promote respect for human dignity and tolerance at the level of teachers and civil servants by introducing clear elements of professional training, evaluation and monitoring of professional development, a duty of educational institutions to adopt an annual plan for combating discrimination and promoting tolerance, an assessment of educational materials, as well as the duty to organize at least one annual training for all teachers. At the Government and county council level , , the bill proposes a duty to present an annual analysis of the measures taken to promote human rights and human dignity in public administration which would include equality and non-discrimination measures applied to the subjects for the public servant exams as well as in the individual professional performance evaluation of civil servants. The bill states that any public institution, regardless of the number of employees, and any employer with at least 50 employees should include rules on observing human rights and combating discrimination in its internal regulations. The draft law also includes an obligation for the public TV and radio to include shows on diversity and tolerance in at least 1% of their content.

discrimination Law will be replaced by the procedures carried out by this newly established Department. There is no rationale for treating differently cases of discrimination on grounds of social origin. In such a case, the procedures provided for the Department do not meet basic legal guarantees of independence, contradictoriness, predictability. On the positive side, the draft consists in the specific policies measures targeting teachers, civil servants and the media which seem specific and with a potential for impact.

Internet link source:

Legislative history in the Chamber available at:

http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=14626, last accessed 6/11/2015.