



## **REPORT ON MEASURES TO COMBAT DISCRIMINATION Directives 2000/43/EC and 2000/78/EC**

### **COUNTRY REPORT 2007 Romania**

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**State of affairs up to 29 February 2008**

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## INTRODUCTION

### 0.1 The national legal system

*Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed between different levels of government.*

The broad general constitutional provisions<sup>1</sup> are implemented in practice by specific anti-discrimination legislation adopted in August 2000 through delegated legislation, the Governmental Ordinance 137/2000 (hereafter referred to as 2000 Anti-discrimination Law).<sup>2</sup> The Governmental Ordinance 137/2000 was amended subsequently to enhance transposition with the Directive 2000/43/EC and the Directive 2000/78/EC.<sup>3</sup> The last amendment to Anti-discrimination Law took place in 2006.<sup>4</sup> The 2000 Anti-discrimination Law is enforceable nation-wide and it is supported by relevant provisions in the legislation on equal opportunities for men and women,<sup>5</sup> the relevant provisions from the legislation on the protection of persons with disabilities,<sup>6</sup> in the Criminal Code,<sup>7</sup> and in the Labour Code.<sup>8</sup> In case of conflicting provisions of different relevant pieces of legislation, the 2000 Anti-discrimination Law would prevail as *lex specialis*.

The 2000 Anti-discrimination Law provides for the establishment of the national equality body, *Consiliul Național pentru Combaterea Discriminării* [National Council for Combating Discrimination (NCCD)] which is supposed to ensure its enforcement.

1 See 1.a) Constitutional provisions on protection against discrimination and the promotion of equality

2 The Ordinance was adopted by the Government based on a constitutional procedure which allows the Parliament to delegate limited legislative powers to the Government during the parliamentary vacation according to Art. 114 and 107 (1) and (3) of the Constitution. The ordinances (Statutory Orders) must be submitted to the Parliament for approval, though in the interval between their adoption by the Government and the moment of their adoption (or rejection, or amendment) by the Parliament, they are binding and generate legal consequences.

3 Romania/ Governmental Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (Statutory Order) was published in Monitorul Oficial al României (the Official Gazette) No. 431 of September 2000. See also: Romania/ Law 48/2002 concerning the adoption of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (31.01.2002); see also Romania/ Government Ordinance 77/2003 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (30.08.2003); see also Romania/ Law 27/2004 concerning the adoption of the Government Ordinance 77/2003 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (11.04.2004);

4 Romania/ Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (20.07.2006)

5 Romania/ Law 340/2006 for the amendment and approval of Law 202/2002 regarding equal opportunities between women and men] (25.07.2006).

6 Romania/Law 448/2006 on the protection and promotion of the rights of persons with a handicap (06/12/2006).

7 Romania/ Criminal Code, Law 278] (4.07.2006).

8 Romania/ Labour Code (24.01.2003).



The NCCD has as a mandate in preventing discrimination through awareness raising and information and education campaigns, mediating between the parties, providing legal assistance to victims of discrimination, investigating and sanctioning discrimination, including initiating *ex officio* cases, monitoring discrimination cases, as well as proposing legislative bills and public policies to ensure harmonisation of legal provisions with the equality principle.<sup>9</sup>

Alternatively, the Anti-discrimination Law can be enforced by civil courts if the plaintiff seeks only civil remedies. A decision of the NCCD in such cases is not required but it might help in making a claim for damages under general torts provisions. Civil complaints on grounds of the Anti-discrimination Law are exempted from judicial taxes.

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9 Romania/ Consiliul Național pentru Combaterea Discriminării [National Council for Combating Discrimination (NCCD)]. The official website of the institution is available at: <http://www.cncd.org.ro> (06.05..2008).



## 0.2 State of implementation

*List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.*

- a. The provisions on the burden of proof are not in full compliance with the Directives as the Romanian 2006 amendments to the 2000 Law introduced the concept of ‘sharing the burden of proof’ meaning that ‘the person interested has the obligation of proving the existence of facts which allow to presume the existence of direct or indirect discrimination and the person against whom a complaint was filed has the duty to prove that the facts do not amount to discrimination.’<sup>10</sup> While the NCCD’s interpretation of this provision was in compliance with the Directives, judicial interpretation varied and some courts interpreted it as placing an unreasonable burden on the victim, in contradiction of the provisions of the Directives in relation to burden of proof.
- b. In the case of housing, access to services and goods, restrictions are allowed by the 2000 Anti-discrimination Law, if such a ‘restriction is objectively justified by a legitimate purpose and the methods used to reach such a purpose are adequate and necessary.’<sup>11</sup> The possibility to allow justification of direct discrimination in the fields of housing and services is in breach of Directive 2000/43, which does not foresee any such possibility.
- c. None of the definitions of harassment provided for in the different relevant pieces of legislation are in complete compliance with the definition of harassment spelled out in the Directives.

*Has the Member State taken advantage of the option to defer implementation of Directive 2000/78 to 2 December 2006 in relation to age and disability?*

Such an option was never taken into consideration.

## 0.3 Case-law

*Provide a list of any important case-law within the national legal system relating to the application and interpretation of the Directives. This should take the following format:*

- a. Name of the court
- b. Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage.
- c. Name of the parties
- d. Brief summary of the key points of law (no more than several sentences)

➔ Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law concerning the equality grounds of the 2 Directives, even if it does not relate to the legislation transposing them (e.g. if it concerns previous legislation unrelated to the transposition of the Directives)

<sup>10</sup> Art.20 (6) of the Governmental Ordinance 137/2000.

<sup>11</sup> Art.10, Romania/ Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (20.07.2006).



*Note of the author:* As this is the first national report for Romania, the following list reflects a selection of the most important cases of the NCCD and of the courts in relation to the application of anti-discrimination legislation.

1. Romani CRISS v. Traian Băsescu

- a. Name of the court: Consiliul Național pentru Combaterea Discriminării [National Council on Combating Discrimination]
- b. Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage: Date: 23.05.2007, Decision 92/2007; the NCCD decision was appealed by both parties before the courts of law, the final decision of the High Court of Cassation and Justice is not public yet;
- c. Name of the parties: Romani CRISS v. Traian Băsescu
- d. Brief summary of the key points of law (no more than several sentences): On May 19<sup>th</sup> 2007, the President of Romania was recorded while discussing with his wife in his car, while calling a journalist who allegedly harassed him “filthy Gypsy,” after publicly calling her “birdie” (păsărică), a pejorative with demeaning and sexual connotations. The NGO Romani CRISS filed a complaint with the NCCD for the racist remarks of the President. (The video recording and the press articles are available at [http://www.antena3.ro/Basescu-despre-o-jurnalista--tiganca-imputita\\_act\\_32833\\_ext.html](http://www.antena3.ro/Basescu-despre-o-jurnalista--tiganca-imputita_act_32833_ext.html), accessed on May 21<sup>st</sup>, 2007.) The NCCD decided that the expression “filthy Gypsy,” is “discrimination according to Art.2.1 and 4 of the GO 137 from 2000...and that the use of this expression damaged the dignity of persons belonging to Roma community.” Mr Băsescu subsequently contested the decision before the courts of law arguing that the decision is illegal. The case raised both substantive and procedural issues such as the discussion on the legal value of the general definition spelled out as principle in the Anti-discrimination Law in the cases when it is not subsequently detailed in express provisions of the law; balancing the right to privacy in the case of public persons and the right to information; the definition of private message (can a private discussion become public due to a fraudulent recording?); the use of evidences under Anti-discrimination Law. The NCCD found that a) the act reported by the plaintiff in terms of discrimination on grounds of gender does not fall under administrative liability; b) the act reported by the plaintiff in terms of discrimination on grounds of ethnicity amounts to discrimination as per Art.2(1) and Art.2(4) of the Governmental Ordinance 137/2000, republished and decided that Mr. Traian Băsescu will be sanctioned with an administrative warning. The sanction per se does not carry any penalty and has merely a symbolic value, but it had a huge impact given the media coverage of the topic- this was the highest ranking official against whom the NCCD issued sanctioned.

2. B. R. v. A. V., administrator of the Oradea Zoo, M. I., human resources manager and Regia Autonomă de Piețe, Agrement și Salubritate Oradea

- a. Name of the court: Tribunalul Bihor [Bihor County Tribunal]
- b. Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage.



Date: 01.10.2007. Sentinta Civila [Civil Judgement] No.620/L.M./2007, File No.6094/111/2006;

- c. Name of the parties: B. R. represented by ACCEPT v. A. V., administrator of the Oradea Zoo, M. I., human resources manager and Regia Autonomă de Piețe, Agreement și Salubritate Oradea (employer)
- d. Brief summary of the key points of law (no more than several sentences): B. R. was subjected to discrimination and victimisation by his superiors and by his employer because of his supposed sexual orientation. The acts of discrimination included discriminatory remarks in the presence of his colleagues; B. R. was asked to resign; B. R. was given a disciplinary sanction because he lodged a complaint of discrimination with the equality body (NCCD) which conducted an investigation at his workplace;  
B. R. was removed from his position at the Zoo and sent to a different work place, the cemetery, also in the administration of the employer. B. R. was subjected to discrimination, harassment and victimisation by the employer through its representatives (A. V. and M. I.). This was demonstrated by the decision of the NCCD and by the declaration of one witness. The disciplinary sanction and the removal from his position at the Zoo are illegal and void. These behaviours created serious suffering for B. R. and require compensation. The application to the discrimination cases of the civil responsibility principle: the acts of the employees perpetrated at work or in relation to their work fall under the responsibility of the employer. The labour decisions sanctioning the plaintiff were declared illegal and void. The payment of 3,000 lei (EUR 900) compensation for moral damages. Injunction upon the employer to end all discrimination, harassment and victimisation and to present public apologies in front of the Zoo's employees. 50 lei (around EUR 1.50) civil fine for each day of delaying the enforcement. The appeal against this decision was rejected by Curtea de Apel Oradea, secția civilă mixtă [Oradea Court of Appeal - civil law section] in decision 647/2008-R from 17.04.2008 and remained final. The decision against the employer was not enforced as for July 15<sup>th</sup>, 2008. Since the employer is a public company, the case can be used to lobby the government to include standards of non-discrimination within public companies.

### 3. Fundația P.M. v. Consiliul Național pentru Combaterea Discriminării.

- a. Name of the court: Înalta Curte de Casație și Justiție, Secția de contencios administrativ și fiscal, Dosar nr. 2072/2005, nr. 8675/1/2005, [High Court of Cassation and Justice, Administrative Law Section]
- b. Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage. Date: 21.03.2006/Decision 957/2006 in File no. 2072/2005
- c. Name of the parties: Fundația P.M. v. Consiliul Național pentru Combaterea Discriminării
- d. Brief summary of the key points of law (no more than several sentences): The Foundation P.M. was sanctioned by the NCCD following a complaint of one of its employees for discriminating in labour relations on grounds of age. The Foundation appealed against the decision issued by the NCCD both on substantive and procedural grounds as the decision was signed by five out of the seven members of the Steering Board.





The Court of Appeal maintained the decision of the NCCD and the Foundation P.M. appealed to the High Court. The High Court interpreted the provisions of Governmental Decision 1514/2004 and maintained that the Steering Board as collegial deliberating body can not issue legal documents such as decisions, instructions and orders in the field of sanctioning discrimination, unless all seven members of the Steering Board are present and their votes are valid. The High Court quashed the decision of the NCCD as illegal due to the fact that the decision was not signed by all the members of the Steering Board of the NCCD. The decision of the High Court highlights the need for procedures and internal regulations for the NCCD.

4. “Ziua” newspaper and The Union of Armenians from Romania v. Traian Băsescu.

- a. Name of the court: Consiliul Național pentru Combaterea Discriminării [National Council on Combating Discrimination]
- b. Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage. Date. 02.04.2007, File No. 534/2007
- c. Name of the parties: Newspaper “Ziua” and The Union of Armenians from Romania v. Traian Băsescu,
- d. Brief summary of the key points of law (no more than several sentences): Following a surgery conducted by a doctor of Armenian descent, president Băsescu, mentioned in a press conference on 9.09.2007 while shaking hands with dr. Ghemigian: „*Finally, I see a good Armenian*” adding „*a competent Armenian.*” The newspaper Ziua joined by several NGOs filed a complaint and NCCD decided that the statement of the President was of a political nature in the context of a pending conflict between the President and the Minister of Finances also of Armenian descent and hence protected by the constitutional shield of immunity and that his statement must be read in the context of other statements of the President expressing his respect for the Armenian community. The NCCD decided that the statements of President Băsescu were not meant to trigger a distinct treatment against Armenians and that there was no discrimination.

5. Glina School Segregation case

- a. Name of the court: Consiliul Național pentru Combaterea Discriminării [National Council on Combating Discrimination]
- b. Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage. Date: 27.08.2007. Glina School Segregation case, File no. 22A Bis /2006,
- c. Name of the parties: NCCD started the case *ex officio* against 3 schools in Ilfov county
- d. Brief summary of the key points of law (no more than several sentences): The NCCD started an *ex officio* investigation following a newspaper article entitled “*La Glina, țiganii sunt exilați în clasele lor*” [In Glina, Gypsies are Exiled in Their Own Classrooms] published in „Gândul” on 10.11.2006.



The report mentioned the disparate percentage of Roma pupils in two different schools in Jilava (almost no Roma pupils in one of the schools and 95% Roma pupils in the other) and the segregation of Roma pupils in Jilava and Glina where Roma students were enrolled in separate classes. In its reasoning, the NCCD referred to international prohibitions of school segregation (1960 UNESCO Convention on Fight against Discrimination in Education and Council of Europe and CERD recommendations) and used the definition of school segregation proposed by the Ministry of Education as „establishment of groups including exclusively or preponderantly Roma pupils, regardless of the reasons invoked for the segregation.” The NCCD found that the composition of the two schools in Jilava is justified by the topography of the Roma community (which was nearby the school with a higher percentage of Roma pupils and 3 kilometres to the other school) and that Roma pupils were segregated in the case of the school from Glina. The NCCD found that the situation in one of the schools amounted to segregation and issued an administrative warning to sanction the deed of discrimination under Art. 2 (1) and Art. 2(4) of the Ordinance 137/2000. The administrative warning is an administrative sanction carrying no pecuniary penalty which has mostly an educational value.

6. Daniel Zăvoian v. Distrigaz Sud

- a. Name of the court: Judecătoria sectorului 4 Bucureşti; [court of first instance No.4, Bucharest]
- b. Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage. Date: 01.08.2007, Decision 4222 in File no.710/4/2006
- c. Name of the parties: Daniel Zăvoian v. Distrigaz Sud, Decision 4222
- d. Brief summary of the key points of law (no more than several sentences): The plaintiff complained of being subjected to discriminatory conduct based on his affiliation with an NGO defending the rights of LGBT in Romania (ACCEPT Bucureşti). The plaintiff is employed by the NGO and when he went to pay the monthly bill of the NGO to the defendant, employees of the defendant subjected him to degrading remarks.

The plaintiff sought civil damages and asked the court to order to the defendant to take institutional measures to preclude discriminatory behaviour in the future, to include in its internal norms a specific prohibition of discrimination on all grounds and to train its employees on anti-discrimination provisions. The court defined “interest” in conjunction with “the practical gain obtained.” The interest must exist, be personal, real and actual and legal. The plaintiff proved the existence of the facts entailing an act of discrimination while the defendant did not prove that the facts proved are not discriminatory. The court clarified the concept of liability of the employer for the deeds of its employees under the anti-discrimination legislation in conjunction with the provisions of the Civil Code for torts. The court also discussed the issue of system remedies such as the institutional measures on combating discrimination and diversity management policies or the trainings requested by the plaintiff as a possible remedy. In the decision the court also offered an explanation of the concept of sharing the burden of proof, linking it to accessibility of evidence.





The defendant was ordered to pay EUR 1000 as civil damages but the Court considered that there is no interest for the plaintiff to request institutional measures on combating discrimination in the workplace. The decision was appealed both by the defendant and by the plaintiff but the decision of the first court was maintained.

7. P.M.G. v. priest I.S.

- a. Name of the court: Consiliul National pentru Combaterea Discriminarii [National Council on Combating Discrimination]
- b. Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage. Date: 18.01.2005, Decision 16
- c. Name of the parties: ACCEPT and CRL on behalf of P.M.G. v. priest I.S.
- d. Brief summary of the key points of law (no more than several sentences): ACCEPT and the Center for Legal Resources filed a complaint on behalf of the plaintiff who worked as a singer in the church choir of Biserica Adormirea Maicii Domnului, Braila County. After the religious service, the local priest presented a local newspaper with an announcement of a young gay man seeking a partner, claiming that the announcement belonged to P.M.G. P.M.G. complained to the Bishop but the priest started to spread rumours in the community and convened a local council to investigate the private life of PMG. The NCCD found that the deeds of the priest had the effect of excluding P.M.G. from the local community and from his position as a singer in the church choir and that the priest spread rumours with the effect of restricting the right to privacy and the right to dignity. The NCCD noted that the statements of the defendant were issued *nome proprio*, after the religious service and did not represent the position of the Orthodox Church, noting that the hierarchy of the church tried to intervene and mediate in the dispute. In the dissenting opinion, it was underlined that the priest acted as a representative of the Orthodox Church which considers homosexuality as a sin and that the priest is under a religious oath all the time. The NCCD issued an administrative fine of 10,000,000 ROL (EUR 278).

8. A.M. v. Direcția Generală a Finanțelor Publice a județului Harghita [Harghita County Public Finances General Inspectorate]

- a. Name of the court: Consiliul Național pentru Combaterea Discriminării [National Council on Combating Discrimination]
- b. Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage. Date: 09.01.2008 Decision no. 43 from file number 353/2007,
- c. Name of the parties: A.M. v. Direcția Generală a Finanțelor Publice a județului Harghita, [A.M. v. Harghita county Public Finances General Inspectorate],
- d. Brief summary of the key points of law (no more than several sentences): A.M. complained against the advertising of hiring possibilities as civil servants with the local finances inspectorate mentioning as specific condition 'knowledge of Hungarian language.' The NCCD applied the provisions of Art. 9 of GO 137/2000 and assessed both the legitimacy of the aim pursued and the methods used.



Though the purpose of ensuring services to minorities in their mother tongue was legitimate and the defendant justified its actions by invoking the legal requirement of making arrangements to ensure services for minorities when they amount to 20 per cent of the total population in a locality. The NCCD commended the value of affirmative measures such as establishing linguistic requirements in areas where national or ethnic minorities live but emphasised that such measures should be temporary and should cease once the objective of protecting the minority is achieved. The NCCD questioned the adequacy of the methods chosen to reach that particular aim and their negative impact in relation to the Romanian community which, in that particular area, is a *de facto* minority. The NCCD found that when the percentage of employees from a certain community is approximately the same with the percentage of that particular community in the area, affirmative measures cannot be maintained because otherwise they would generate by themselves a situation of discrimination. The NCCD sanctioned the Harghita county Public Finances General Inspectorate with an administrative fine of 1,000 RON (EUR 300).

*Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.*

A fair amount of the complaints received by the NCCD are complaints filed by Roma victims or Roma NGOs on behalf of Roma victims.<sup>12</sup> The NCCD does not use Roma-ethnicity as a separate category in its data collection, and there are no clear guides available on how the national equality body defines a case as a case of racial discrimination or as a case of ethnic discrimination.<sup>13</sup>

In 2006, the NCCD compiled different statistics of its jurisprudence on ethnic discrimination for the period 2002-2006 and separate for 2005 – the methodology for the data published was not available. The 2006 report of the NCCD states that from a total of 1.542 complaints received by the time of the reporting for the interval 2002-2006:

- Only in nine per cents (135 sanctions) the NCCD issued an administrative sanction.
- 40 per cent (252 complaints) are complaints of alleged ethnic discrimination. In this case, the proportion of finding and sanctioning discrimination deeds is higher: 21 per cent.

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12 Romanian anti-discrimination law creates legal standing for NGOs with an interest in combating discrimination - Art. 22.1, Romania/ Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (20.07.2006): (1) Human rights non-governmental organisations can appear in court as parties in cases involving discrimination pertaining to their field of activity and which prejudice a community or a group of persons. (2) The organisations provided in the above paragraph can also appear in court as parties in cases involving discrimination which prejudices a natural entity, if the latter delegates the organisation to that effect.

13 Interview with Mr. Istvan Haller, member of the NCCD (20.03.2008).

## NCCD statistics on ethnic discrimination occurred according to sanctions applied 2002-2006

Area of discrimination	Sanctions/Year			
	2002/03	2004	2005	2006
Discriminatory advertisement in press: 14	9	0	5	0
Discriminatory press articles on Roma: 12	8	0	4	0
Denial of access to public places: 10	7	1	2	0
Hate speech: 8	1	2	5	0
Discrimination in sport (racist slogans): 2	0	0	2	0
Employment (commercial relations): 1	0	0	1	0
Segregation in education (Roma): 2	1	0	0	1
Denial of service in public places: 1	0	0	1	0
Denial of access to stores: 1	0	0	1	0
Discriminatory statistics of Police: 2	0	0	1	0
Eviction and discriminatory relocation of Roma: 1	0	0	1	0
Total: 53	26	3	23	1

Although the number of complaints against alleged discriminatory behaviour of public officials (institutions) is the highest (18 complaints), no sanction was issued in this area by the NCCD. The behaviours most likely to be sanctioned are discriminatory remarks against Roma, media articles related to Roma (prejudice and stereotypes) (nine sanctions), and access to public places and stores (denial of access) (four sanctions) or discriminatory advertising (four).

The following data is generated by a private researcher, currently a member of the Steering Board of the NCCD, Mr. Istvan Haller who reviewed and compiled all the decisions of the NCCD up to 2006.<sup>14</sup>

In 2003, out of its 415 decisions, the NCCD had 69 decisions on racial discrimination (16,63 per cent).

- In 13 cases the NCCD issued an administrative warning (representing 18,8 per cent out of the total of decisions on racial discrimination<sup>15</sup>).
- The NCCD issued administrative fines in nine decisions (13 per cent); The total of fines applied on racial discrimination in 2003, amounts to 47.000.000 ROL (approx. EUR 13.500).

<sup>14</sup> Istvan Haller, Study on Racial and Ethnic Discrimination – analysis of statistical data: 2003-2006(work in progress).

<sup>15</sup> Out of these, 7 decisions were issued in cases of discrimination in advertising (decisions nr. 188-194/2003).



Haller's study for 2003 shows 48 decisions on Roma (representing 69,9 per cent of all racial discrimination decisions) – out of which:

- in 31 cases there was no sanction,
- in 7 cases the NCCD issued a warning, and
- in 9 cases it applied an administrative fine.

### **2003 Decisions on racial discrimination in general (Roma included), by type of solution issued**

<b>Field</b>	<b>Number of decisions</b>	<b>%</b>	<b>No sanction</b>	<b>Administrative warning</b>	<b>Fine</b>
Equality in trade, labour relations and hiring	11	16,0	4	7	0
Access to services and access to public places	21	30,4	12	5	4
Access to education	4	5,8	3	1	0
Freedom of movement	0	0,0	0	0	0
Free choice of residence	0	0,0	0	0	0
Right to personal dignity	22	31,9	14	0	8
Other	13	18,8	13	0	0

In 2004, out of its 373 decisions, the NCCD had 82 decisions on racial discrimination (23,06 per cent).

- In 7 cases the NCCD issued an administrative warning (representing 8,1 per cent out of the total of decisions on racial discrimination).
- The NCCD issued an administrative fine only in one decision (1,2 per cent); the quantum of the fine was not specified in the decision.

Haller's study for 2004 states that there were 59 decisions on discrimination against Roma, representing 67,8 per cent of racial discrimination decisions, out of which:

- in 54 cases there was no sanction,
- in 4 cases the NCCD issued a warning, and
- in 1 case the NCCD applied an administrative fine.



## 2004 Decisions on racial discrimination in general (Roma included), by type of solution issued

Field	Number of decisions	%	No sanction	Administrative warning	Fine
Equality in trade, labour relations and hiring	7	8,0	6	1	0
Access to services and access to public places	10	11,5	10	0	0
Access to education	4	4,6	4	0	0
Freedom of movement	0	0,0	0	0	0
Free choice of residence	7	8,0	7	0	0
Right to personal dignity	33	37,9	26	6	1
Other	26	29,8	26	0	0

In 2005, out of its 366 decisions, the NCCD had 111 decisions on racial discrimination (30.33 per cent).

- In 12 cases the NCCD issued an administrative warning (representing 10,8 per cent out of the total of decisions on racial discrimination).
- The NCCD issued administrative fines in 14 decisions (12,6 per cent); the quantum of the fines reaches 21.500 RO (EUR approx. 6.143);
- In 3 cases discrimination was found but no sanction was issued;
- In 2 cases the NCCD brokered a mediation between the victims and the perpetrators.

Haller's study for 2005 states that there were 67 decisions on discrimination against Roma, representing 60,4 per cent of racial discrimination decisions, out of which:

- in 48 cases there was no sanction,
- in 10 cases the NCCD issued a warning, and
- in 9 cases the NCCD applied an administrative fine.



## 2005 Decisions on racial discrimination in general (Roma included), by type of solution issued

Field	Number of decisions	%	No sanction	Administrative warning	Fine
Equality in trade, labour relations and hiring	22	8,0	18	2	2
Access to services and access to public places	12	11,5	6	3	3
Access to education	2	4,6	2	0	0
Freedom of movement	0	0,0	0	0	0
Free choice of residence	3	8,0	2	0	1
Right to personal dignity	53	37,9	38	7	8
Other	17	33,4	17	0	0

In 2006, out of its 376 decisions, the NCCD had 91 decisions on racial discrimination (24,20 per cent).

- In 4 cases the NCCD issued an administrative warning (representing 4,4 per cent out of the total of decisions on racial discrimination).
- The NCCD issued administrative fines in 2 decisions (2,2 per cent); the quantum of the decisions was of 5.500 RON (EUR approx 1.572)
- The NCCD found discrimination in 4 cases without issuing any sanction.

Haller's study for 2006 states that there were 52 decisions on discrimination against Roma, representing 57,1 per cent of racial discrimination decisions, out of which:

- in 48 cases there was no sanction,
- in 3 cases the NCCD issued a warning, and
- in 2 cases it applied an administrative fine.





## 2006 Decisions on racial discrimination in general (Roma included), by type of solution issued

Field	Number of decisions	%	No sanction	Administrative warning	Fine
Equality in trade, labour relations and hiring	8	8,8	8	0	0
Access to services and access to public places	9	9,9	8	0	1
Access to education	4	4,4	3	1	0
Freedom of movement	0	0,0	0	0	0
Free choice of residence	2	2,2	2	0	0
Right to personal dignity	50	54,9	45	3	2
Other	19	20,9	19	0	0

2007 data is still not available, an interim report for 03.01 – 30.07.2007 stated that out of the 384 petitions received by the NCCD, no petition was filed on ground of race, eight on ground of nationality and 40 on ground of ethnicity in this period. Out of the 105 decisions issued, the NCCD solved no petition on grounds of race, two petitions on grounds of nationality and five petitions on grounds of ethnicity. Data on the particular type of discrimination is not yet available, the NCCD Annual Report was supposed to be published in April.



**Table with the situation of petitions received by the NCCD in 2007 based on the criteria of discrimination (as of 23.07.2007)**

No	Criterion for discrimination	Number of petitions received	Number of petitions solved (including petitions pending from previous years)
1	Race	0	0
2	Nationality	8	2
3	Ethnicity	40	5
4	Language	4	1
5	Religion	5	1
6	Social category	183	42
7	Beliefs	8	2
8	Gender	9	3
9	Sexual Orientation	3	0
10	Age	11	4
11	Disability	20	33
12	Chronic disease – not contagious	0	0
13	HIV status	4	0
14	Un-favorised category	3	1
15	Other	86	41
<b>TOTAL</b>		<b>384</b>	<b>105</b>



Recent relevant cases include a decision against President Băsescu for discriminatory remarks in relation to a journalist labelled as “filthy Gypsy,”<sup>16</sup> a decision in favour of Prime-Minister Tăriceanu finding that no discrimination took place,<sup>17</sup> and the NCCD decided not to analyse a complaint filed following the statements of the former Ministry of Foreign Affairs suggesting that persons who “are a shame for Romania” should be deported in the desert in Egypt.<sup>18</sup> The last decision was based on procedural grounds, as absent its own internal procedures, the NCCD invoked the provisions of the Civil Procedure Code on the prohibition (of the judges) to issue a decision in a case after making comments on the facts of that case. As the president of the institution had a press release on the issue, NCCD decided to abstain from issuing a decision once a complaint was filed.<sup>19</sup>

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16 NCCD. Decision 92 of the National Council on Combating Discrimination, from 23 May 2007. The Court of Appeal maintained the NCCD decision in Dosar Nr. 4510/2/2007, Curtea de Apel Bucuresti, sentinta civila nr.2799 from November, 8th, 2007.

17 NCCD, *Romani CRISS v. Călin Popescu-Tăriceanu*, Decision no.180 from July 17, 2007; National Council on Combating Discrimination, appeal currently pending before the Appeal Court Bucharest. The Prime Minister Mr. Călin Popescu-Tăriceanu reportedly declared that Romanian police officers will be sent to Italy to help catch and repatriate the Roma who commit felonies, as they commit “all crimes possible, from violent theft, prostitution, to robbery and drug trafficking.” The police officers who will be sent would train Italian officers on “how to deal with the psychology and modus operandi of Roma who commit crimes.” I want you to understand me very well; if Italy has been known in the 20’s due to the Mob, I don’t want Romania to affect, ruin its image because of these groups who commit all possible crimes from robbery, prostitution, drug trafficking, paedophilia and the list could continue.” The NCCD maintained that the provisions of Art. 20 para.6 of the law on the burden of proof is not an accurate transposition of the reversal of the burden of proof and stated that the Romanian legislation provides in fact for a division of the burden of proof and a transfer of responsibility towards the defendant in relation with the elements under his responsibility. The NCCD stated that the Romanian law establishes “the obligation of the plaintiff to support his statements by proving the existence of a deed of such a nature which would create a presumption of differential treatment...only than, the defendant has the duty that the facts (complained against) are not discriminatory” In debating, ways in which media reported statements can amount to discrimination, the NCCD stated that “the use of appellatives such as ‘Gipsy/Gipsies’, ‘Rom/Roma’, ‘homosexuals’, ‘sidos’[pejorative for person living with AIDS], ‘crow/crows’ etc., when speaking about certain categories of persons, must be analysed in the context, taking into consideration the manner of doing it and the location of the speech, the reason, the statements, articulated, publications, title of articles as well as their content, the points of view of those who wrote them, the method and the context of the statements as well as their impact and effects.”

18 NCCD, *Romani CRISS v. Adrian Cioroianu*, Decizie from November, 15, 2007, Decision of the National Council on Combating Discrimination, the NCCD rejected the appeal and a judicial appeal is currently pending before Bucharest Appeal Court. Following the media crisis generated by the murder of an Italian citizen, allegedly by a Romanian Roma, the Ministry of Foreign Affairs, Mr. Cioroianu stated in a talk-show that the visit paid by him in Egypt gave him the idea that the Romanian state should buy land in the Egyptian desert to relocate all those who commit offences like the one of which is the Romanian Roma Romulus Nicolae Mailat is accused, and for all those “harming our image”. Before receiving a complaint from Romani CRISS, the NCCD had issued a press release condemning the statements of the Minister.

19 The NCCD rejected the complaint considering that a press release condemning the comments of the plaintiff raised procedural impediments in issuing a decision. An appeal is currently pending before the courts of law.



A quarter of the Roma interviewed in the Roma Inclusion Barometer declare that they know about the NCCD.<sup>20</sup> Furthermore, Roma respondents declare that they feel most discriminated against when interacting with local public administration, police and the medical system. The lowest level of discrimination is perceived in educational institutions.<sup>21</sup>

Notable cases won by Roma applicants against Romania before the ECHR include:

- Moldovan and others v. Romania, 12.7.2005 (killing of a Roma man, arson, destruction of properties and failure in ensuing investigations):
  - continuing violation of Article 8 (right to respect for private and family life and home) of the European Convention on Human Rights;
  - violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention;
  - no violation of Article 6 § 1 (access to court);
  - violation of Article 6 § 1 (right to a fair hearing) on account of the length of the proceedings;
  - violation of Article 14 (prohibition of discrimination) taken in conjunction with Articles 6 § 1 and 8.
- Cobzaru v. Romania, 26.7.2007 (police violence against Roma man and failure in ensuing investigation):
  - violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights concerning the ill-treatment of the applicant – who is of Roma origin – by the police;
  - violation of Article 3 concerning the inadequate investigation into the applicant's allegations of ill-treatment;
  - violation of Article 13 (right to an effective remedy) of the Convention;
  - violation of Article 14 (prohibition of discrimination) concerning the Romanian authorities failure to investigate possible racial motives in the applicant's ill-treatment and their attitude during the investigation.
- Stoica v. Romania, 04.03.2008 (racially motivated beating of a Romani youth aged 14 at the time by police officers, and the failure to ensure an adequate official investigation):
  - violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights concerning the applicant's allegation of ill-treatment by the police;

20 Forty-six per cent of those who are aware of the mandate of the NCCD declare that they have a good opinion about this institution and 47 per cent think that the actions of the NCCD help in diminishing discrimination in Romania. Out of those who think that Roma are discriminated against, 52 per cent declare that they are unhappy with the work of the NCCD. For more information, see: Open Society Institute, Bădescu, Gabriel, Grigoraș, Vlad, Rughiniș, Cosima, Voicu, Mălina, Voicu, Ovidiu, Roma Inclusion Barometer, (Bucharest: Open Society Foundation, 2007), available at: [http://www.edrc.ro/docs/docs/barometrulper\\_cent20includiuniiper\\_cent20romilor.pdf](http://www.edrc.ro/docs/docs/barometrulper_cent20includiuniiper_cent20romilor.pdf) (11.10.07).

21 Open Society Institute, Bădescu, Gabriel, Grigoraș, Vlad, Rughiniș, Cosima, Voicu, Mălina, Voicu, Ovidiu, Roma Inclusion Barometer, (Bucharest: Open Society Foundation, 2007), available at: [http://www.edrc.ro/docs/docs/barometrulper\\_cent20includiuniiper\\_cent20romilor.pdf](http://www.edrc.ro/docs/docs/barometrulper_cent20includiuniiper_cent20romilor.pdf) (11.10.07).



- violation of Article 3 of the Convention concerning the lack of an effective investigation;
  - no violation of Article 13 (right to an effective remedy);
  - violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 3.
- Gergely v. Romania, 26.04.2007 and Kalanyos and Others v. Romania 26.07.2007. The applicants complained about destruction of their property and the ensuing proceedings before the domestic courts, relying on Articles 3 (prohibition of inhuman or degrading treatment), 6 § 1 (right to a fair trial), 8 (right to respect for private and family life), 13 (right to an effective remedy) and 14 (prohibition of discrimination). The cases were struck out following measures taken by the Romanian government.
  - Notar v. Romania, 20.04.2004 (beating of Romani youth during arrest and subsequent detention, ill-treatment and degrading treatment during investigations relying on Article 3, failure in ensuring proper criminal investigations upon the complaint of the victim relying on Article 13, unlawful arrest and detention relying on Article 5 §§ 1, 2, 3, 4 and 5). The case has been struck out following a friendly settlement in which the applicant is to receive EUR 40,000 plus EUR 875 for pecuniary damage and EUR 8,712.66 for costs and expenses.



## 1. GENERAL LEGAL FRAMEWORK

### Constitutional provisions on protection against discrimination and the promotion of equality

- a) *Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?*

The equal treatment of all citizens and general anti-discrimination provisions are guaranteed by the Romanian 1991 Constitution in Art.1.(3), 4.(2), 6 and 16.<sup>22</sup>

- Article 1(3): ‘Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed.’
- Article 4: ‘(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.’
- Art.6: (1) The State recognizes and guarantees the right of persons belonging to national minorities to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity. (2) The protection measures taken by the Romanian State for the preservation, development and expression of identity of the persons belonging to national minorities shall conform to the principles of equality and non-discrimination in relation to the other Romanian citizens.
- Art. 16: ‘(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.’<sup>23</sup>

The material scope of the equality clause covers all fundamental rights. Specific grounds spelled out by the Constitution in the context of the equality principle are: race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property and social origin.

22 The Constitution of Romania of 1991 was amended and completed by the Law 429/2003 on the revision of the Constitution of Romania, (29.10.2003), available at <http://www.cdep.ro/pls/dic/site.page?id=371> (10.01.2008).

23 The Constitution of Romania of 1991 was amended and completed by the Law 429/2003 on the revision of the Constitution of Romania, (29.10.2003), available at <http://www.cdep.ro/pls/dic/site.page?id=371> (10.01.2008).





The constitutional text does not explicitly provide for the protection against discrimination on grounds of disability, age or sexual orientation as stated in the Directive 2000/78/EC but it mentions protection against discrimination on grounds of language, opinion, political adherence, property or social origin – none of these categories is further defined by the constitutional provisions or by implementing legislation.

The provision of positive measures from Art.6 (2) is specific to national minorities only, though nor the Constitution or the subsequent legislation define national minorities.

*b) Are constitutional anti-discrimination provisions directly applicable?*

The constitutional provisions are not self-enforcing, subsequent legislation is necessary for the effective implementation of all these principles.

*c) In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?*

The provisions of the Romanian Constitution cannot be directly enforced against public or private actors and subsequent implementing legislation is required.



## 2. THE DEFINITION OF DISCRIMINATION

### 2.1 Grounds of unlawful discrimination

*Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.*

Art. 2 of GO 137/2000 defines discrimination as:

‘any difference, exclusion, restriction or preference based on race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, age, disability, chronic disease, HIV positive status, belonging to a disadvantaged group or any other criterion, aiming to or resulting in a restriction or prevention of the equal recognition, use or exercise of human rights and fundamental freedoms in the political, economic, social and cultural field or in any other fields of public life.’<sup>24</sup>

Art.4 of GO 137/2000 defines ‘disadvantaged group’ as: ‘the category of persons that is either placed in a position of inequality as opposed to the majority of citizens due to personal differences or is faced with rejection and marginalisation.’ Prior to the 2006 amendment, the text included as exemplifications ‘chronic non-infectious disease, HIV infection or the status of refugee or asylum-seeker’ but this exemplification was deleted by the Parliament during subsequent rounds of amendments.

The Romanian Anti-discrimination Law includes all grounds listed by the Directives and opens up for an even more inclusive approach by asserting also other protected grounds such as ‘social status,’ ‘belonging to a disadvantaged group’ or ‘any other criterion.’ Particularly the catch-all phrase ‘any other criterion’ proved itself useful in cases when discrimination was not based on any of the criteria spelled out in the law.

In a 2005 case started *ex officio*, the NCCD sanctioned Consiliul Județean Cluj (Cluj County Council) with ROL 40,000,000 (EUR 1,150) for treating differently employees in the private sector from employees in the public sector in relation to access to a national program of subsidised housing. For the purposes of the case, persons employed in the private sector were defined as belonging to a social category and were considered to be discriminated against on grounds of their belonging to such a group.<sup>25</sup>

In a 2007 case, the trade union from a private entity with public funding, SC STIPO SA filed a complaint against the Ministerul Muncii, Solidarității Sociale și Familiei [Ministry of Labour, Social Solidarity and Family] and Agenția Națională pentru Ocuparea Forței de Muncă [the National Authority for Employment] regarding the policies adopted during the redundancies between 2003-2006 and the compensations offered.<sup>26</sup>

<sup>24</sup> The official English translation of the Ordinance 137/2000 had been used, unless the terminology used needed more clarifications.

<sup>25</sup> NCCD Decision, Cluj County Council case, 2005.

<sup>26</sup> NCCD Decision, Sindicatul Liber al Sticlarilor din cadrul SC STIPO SA Dorohoi v. Ministerul Muncii, Solidarității Sociale și Familiei și Agenția Națională pentru Ocuparea Forței de Muncă, from 13.03.2007, file 282/2006.



The plaintiff alleged that the employees of STIPO SA made redundant received a different treatment than employees made redundant in 2003 and 2004, though their situation was comparable. The NCCD found that ‘even though at the basis of the difference in treatment there was no criterion mentioned by the Ordinance as ground for discrimination, the failure of paying the compensation for those made redundant in 2006 generated the infringement of recognising a right granted in the legislation by the Emergency Ordinance 8/2003 regarding special measures of social protection.’ The NCCD found that the different treatment applied to groups in a comparable situation amounted to discrimination and recommended to the National Agency for Employment to take adequate measures.

### 2.1.1 Definition of the grounds of unlawful discrimination within the Directives

- a) *How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation?*

Nor the Romanian Anti-discrimination Law or other specific pieces of legislation define racial or ethnic origin, religion or belief, age or sexual orientation.

The NCCD does not use Roma-ethnicity as a separate category in its data collection, and there are no clear guides available on how it defines a Roma related case as a case of racial discrimination or as a case of ethnic discrimination.<sup>27</sup>

*Is there a definition of disability on national level and how does it compare with the concept adopted by the European Court of Justice in case C-13/05, Chacón Navas, Paragraph 43, according to which "the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life"?*

Romanian Anti-discrimination Law does not define ‘disability,’ or the connected protected grounds of chronic non-infectious disease or HIV infection. The disability-related legislation still uses the concept of ‘handicap’ defined as ‘those persons lacking abilities to normally carry out daily activities due to a physical, mental or sensorial impairment and require protective measures for rehabilitation, integration and social inclusion.’<sup>28</sup> The law further defines disability (*handicap*) in Art.5 (16) as

‘the generic term for impairments/deficiencies, limitations in the activity and restrictions in participation defined according to the International Classification of Functioning, Disability and Health adopted by the World Health Organization, and which highlight the negative aspect of the interaction between the individual and the environment.’<sup>29</sup>

There are no reported decisions of the NCCD or of the courts elaborating on the concept of disability.

<sup>27</sup> Interview with Mr. Istvan Haller, member of the NCCD (20.03.2008).

<sup>28</sup> Art.2 of Romania/Law 448/2006 on the protection and promotion of the rights of persons with a handicap (06/12/2006).

<sup>29</sup> Art.3(16) of Romania/Law 448/2006 on the protection and promotion of the rights of persons with a handicap (06/12/2006).



The scope of the Romanian legislation on protecting the rights of persons with disabilities is not limited to employment relations and participation in professional life, but also includes provisions on social solidarity, prohibition of discrimination in general, the role of the community in the integration of the person with disabilities, a beneficiary-focused approach in providing services, protection against neglect and abuse, selecting the less restrictive alternative in designing the type of assistance and support, integration and social inclusion of persons with disabilities.<sup>30</sup>

b) *Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law (e.g. the interpretation of what is a 'religion'; or a "disability", sometimes defined only in social security legislation)? Is recital 17 of Directive 2000/78/EC reflected in the national legislation against discrimination?*

'Ethnic and racial origin' as well as 'sexual orientation' and 'age' are not defined or further interpreted in Romanian legislation.

'Religion or belief' is not defined in specific legislation either.<sup>31</sup> The Romanian Constitutional Court referred to the interpretation of the European Court of Human Rights in deciding cases involving religious education.<sup>32</sup>

'Disability' is not defined in the 2000 Anti-discrimination Law and the special legislation is not using the concept of 'disability' using instead the concept of 'handicap.'<sup>33</sup> The scope of the protection against discrimination of persons with disabilities has a broad scope of application than the one of Directive 2000/78/EC.<sup>34</sup> The use of the concept of 'handicap' might have a negative impact on the justiciability of relevant cases as under the special legislation, 'handicap' needs a medical certification which means that in order to make a case before the courts, disability must be medically certified.

c) *Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?*

Besides mentioning 'age' as one of the protected grounds, the Romanian Anti-discrimination Law does not provide any guidance on the scope of this protected ground. There is no minimum or maximum age and in practice the NCCD applied the concept of discrimination on grounds of 'age' both in relation to a lower and an upper ceiling, mostly in cases of access to employment.

In the case L.D. v. Uniunea Notarilor Publici [Notary Public Union], from 20.01.2004, the NCCD sanctioned as discriminatory the provision of the Statute of the Notary Public Union, limiting the access to the competition for notary public of persons over 35.

30 Art.3 of Romania/Law 448/2006 on the protection and promotion of the rights of persons with a handicap (06/12/2006).

31 Romania/ Law 489/2006 on Religious Freedom and the General Status of Religions, Romania (8.01.2007).

32 Romanian Constitutional Court, Decision 72 (18.07.1995).

33 See 2.1.1.a).

34 Romania/Law 448/2006 on the protection and promotion of the rights of persons with a handicap (06/12/2006).



In its defence, the Notary Public Union mentioned that this age limit for entering the profession as junior notary public was commonly agreed by the General Assembly of the Notary Public Union in order to encourage young candidates to apply. The NCCD noted that by establishing the upper age ceiling, the declared aim is not likely to be reached, though both legitimate and commendable, and that this restriction infringes the principle of equality. The NCCD found that the methods used are not adequate as they are limiting the free access to the profession of junior notary public and are infringing the free exercise of the profession. The NCCD issued an administrative warning for the Notary Public Union.<sup>35</sup>

- d) *Please describe any legal rules (or plans for the adoption of rules) or case-law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination.*

Multiple discrimination is treated by the Anti-discrimination Law as an aggravating circumstance. Art.2 (6) of the law reads:

‘Any distinction, exclusion, restriction or preference based on two or more of the criteria foreseen in para. 1 shall constitute an aggravating circumstance in establishing the contraventional responsibility, unless one or more of its components is not subject to criminal law.’<sup>36</sup>

### 2.1.2 Assumed and associated discrimination

- a) *Does national law prohibit discrimination based on assumed characteristics? e.g. where a woman is discriminated against because another person assumes that she is a Muslim, even though that turns out to be an incorrect assumption.*

Romanian Anti-discrimination Law does not provide specifically for a prohibition of discrimination based on assumed characteristics. The NCCD discussed the concept in the interpretation of the law and considered such aspects in its case law but did not use it in its reasoning.<sup>37</sup>

- b) *Does national law or case law prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group)? If so, how?*

The Anti-discrimination Law and the case law did not cover discrimination based on association with persons with particular characteristics.

35 NCCD, L.D. v. Uniunea Notarilor Publici [Notary Public Union], from 20.01.2004.

36 Art.2(6), Romania/ Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (20.07.2006).

37 NCCD Decision 92 from 23 May 2007, case Romani CRISS v. Traian Băsescu. The NCCD analysed the assumption made by the President when calling a journalist “filthy Gipsy” as being discriminatory to the Roma community in general.



## 2.2 Direct discrimination (Article 2(2)(a))

### a) *How is direct discrimination defined in national law?*

Art.2 (1) of the GO 137/2000 defines direct discrimination as ‘any difference, exclusion, restriction or preference based on race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, age, disability, chronic disease, HIV positive status, belonging to a disadvantaged group or any other criterion, aiming to or resulting in a restriction or prevention of the equal recognition, use or exercise of human rights and fundamental freedoms in the political, economic, social and cultural field or in any other fields of public life.’ Different from the definitions proposed by the Directive 2000/43/EC and the Directive 2000/78/EC, the Romanian 2000 Anti-discrimination Law provides a detailed definition, attempting to cover the whole variety of actions and inactions leading to discrimination.

### b) *Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).*

The Romanian 2000 Law does not permit any general exemption or exception justifying direct discrimination (including in the particular case of age). In the case of housing, access to services and goods, restrictions are allowed by the law, if such a ‘restriction is objectively justified by a legitimate purpose and the methods used to reach such a purpose are adequate and necessary.’<sup>38</sup> The possibility to allow justifications in cases of direct discrimination regarding housing and access to services and goods is in breach of Directive 2000/43.

### c) *In relation to age discrimination, if the definition is based on ‘less favourable treatment’ does the law specify how a comparison is to be made?*

The Romanian 2000 Anti-discrimination Law does not include a definition of discrimination on ground of age and does not provide for justifications in the case of age discrimination.

## ➔ 2.2.1 Situation Testing

### a) *Does national law permit the use of ‘situational testing’? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court. For what discrimination grounds is situation testing permitted? If all grounds are not included, what are the reasons given for this limitation?*

The Romanian 2000 Anti-discrimination does not include specific provisions on situational testing and there is no definition stated. The NCCD does not have particular guidelines or protocols on the use of situation testing and only anecdotal data reflect the use of testing as means of evidence in judicial proceedings. In practice, Roma NGOs and the NCCD used testing particularly in the context of denial of access to services (clubs and pubs) and there are plans to use testing in cases of access to employment on grounds of ethnic background.

38 Art.10, Romania/ Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (20.07.2006).





- b) *Is there any reluctance to use situational testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?*

In its recent practice, the NCCD did not use testing. It is unclear if this was a legal decision based on the limitations of this method in terms of admissibility as means of evidence or if it was an internal decision generated by the scarce human and material resources the NCCD has to deal with.

- c) *Outline important case-law within the national legal system on this issue.*

Recent cases using testing are not available.

In a case started by the NCCD *ex officio* following media reporting, the Council sanctioned the refusal to allow access to a swimming club from Timisoara “No Name” for persons older than 35. The evidence was provided by a journalist who was refused access while recording the whole incident with a hidden camera. The perpetrators were sanctioned with an administrative warning.<sup>39</sup>

- d) *Outline how situation-testing is used in practice and by whom (e.g. NGOs)*

NGOs, particularly Roma NGOs such as Romani CRISS used testing in the past in the field of denial of access to services (clubs and pubs) and there are plans to use testing in cases of access to employment on grounds of ethnic background.

## 2.3 Indirect discrimination (Article 2(2)(b))

- a) *How is indirect discrimination defined in national law?*

Though not asserting it as indirect discrimination, Art. 2 (3) of GO 137/2000 prohibits:

‘any provisions, criteria or practices apparently neutral which disadvantage certain persons on grounds of one of the protected grounds from para.(1), unless these practices, criteria and provisions are objectively justified by a legitimate aim and the methods used to reach that purpose are appropriate and necessary.’<sup>40</sup>

In a complaint filed by a Syrian citizen, B.A., the NCCD found that the requirement established by the Law 306/2005 on exercising the profession of medical doctor, which is restricting the right to obtain an authorisation for the free practice of the medical profession to Romanian citizens, citizens of the EU Member States, spouses or descendants of EU citizens and long term residents (but not to spouses of Romanian citizens as in the case of the plaintiff), amounts to indirect discrimination on grounds of nationality.<sup>41</sup>

<sup>39</sup> NCCD, *ex officio* case, decision 01.08.2006.

<sup>40</sup> Art.2(3) of Romania/ Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (20.07.2006).

<sup>41</sup> NCCD, B.A v. Ministerul Sănătății și Comisia Medicilor din România [Ministry of Health and the College of Doctors], from 31.08.2005.



- b) *What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?*

In its decision D. v. N. and Șofronea swimming pool, case no. 221 from 21.09.2005, regarding the denial of access to a swimming pool to a Moslem woman wearing a swimming costume appropriate to her religious beliefs but perceived by the owners of the pool as ‘casual clothing,’ the NCCD invoked the provisions of Art.2(3) under its previous wording, sanctioning ‘Any active or passive behaviour which, through its consequences, favours or prejudices in an unjustified manner or subjects an individual, a group of individuals or a community to an unjust or degrading treatment, in relation to other individuals, groups of individuals or communities, shall trigger contraventional liability according to the present norm, unless it falls under the incidence of criminal law.’ In this 2005 decision, the NCCD did not look in depth at the question of legitimate aims which might justify discrimination and did not develop any kind of test in assessing the aims and the methods used to reach a particular legitimate aim. The NCCD mentioned cursorily the constitutional provisions on restriction of rights and freedoms (Art.53 of the Romanian Constitution). The Council concluded that by requesting the plaintiff to leave the swimming pool, the owners of the club restricted her fundamental rights on account of her religious practices.<sup>42</sup> The NCCD sanctioned the owner of the swimming pool with 1.000 RON (EUR 300).

- c) *Is this compatible with the Directives?*

The 2006 amendments to the definition of indirect discrimination brought this concept in line with the European standard. Further interpretation by the courts and by the NCCD will prove if the definition is fully compatible.

- d) *In relation to age discrimination, does the law specify how a comparison is to be made?*

No specific references are provided on developing a test and on the use of comparable data in particular cases such as age discrimination.

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<sup>42</sup> Art.53 of the Romanian Constitution provides: ‘(1) The exercise of certain rights or freedoms may only be restricted by law, and only if necessary, as the case may be, for: the defence of national security, of public order, health, or morals, of the citizens’ rights and freedoms; conducting a criminal investigation; preventing the consequences of a natural calamity, disaster, or an extremely severe catastrophe. (2) Such restriction shall only be ordered if necessary in a democratic society. The measure shall be proportional to the situation having caused it, applied without discrimination, and without infringing on the existence of such right or freedom.’



e) *Have differences in treatment based on language been perceived as indirect discrimination on the grounds of racial or ethnic origin?*

In a ground breaking decision, A.M. v. Direcția Generală a Finanțelor Publice a județului Harghita, [A.M. v. Harghita county Public Finances General Inspectorate], decision no. 43 from 09.01.2008, file number 353/2007, regarding the advertising of hiring possibilities as civil servants with the local finances inspectorate mentioning as specific condition ‘knowledge of Hungarian language,’ the NCCD applied the provisions of Art. 9 of GO 137/2000 stating that ‘the provisions of Art.5-8 (prohibition of discrimination in employment relations), cannot be interpreted as restricting the right of the employer to refuse hiring a person who does not correspond to determining occupational requirements in that particular field, as long as the refusal does not amount to an act of discrimination under the understanding of this ordinance, and the measures are objectively justified by a legitimate aim and the methods used are adequate and necessary.’ In order to assess both the legitimacy of the aim pursued and the methods used, the NCCD used the test developed by the European Court of Human Rights. The NCCD cited the provisions of the Romanian Constitutions, of the ECHR, of ICERD Art.1 (1) and (4), the European Charter of Regional and Minority Languages (Art.10), the Framework Convention for the Protection of National Minorities (Art.10). The NCCD noted that ‘the difference in treatment amounts to discrimination not only when people in analogous positions are treated differently without objective and reasonable justifications, but also when the states fail to treat differently persons who are in incomparable, different situations, also without objective and reasonable justifications.’<sup>43</sup> The NCCD commended the value of affirmative measures such as establishing linguistic requirements in areas where national or ethnic minorities live but emphasised that such measures should be temporary and should cease once the objective of protecting the minority is achieved. Though the purpose of ensuring services to minorities in their mother tongue was legitimate and the defendant justified its actions by invoking the legal requirement of making arrangements to ensure services for minorities when they amount to 20 per cent of the total population, the NCCD questioned the adequacy of the methods chosen to reach that particular aim and their negative impact in relation to the Romanian community which in that particular area is a *de facto* minority. The NCCD found that when the percentage of employees from a certain community is approximately the same with the percentage of that particular community in the area, affirmative measures cannot be maintained because otherwise they would generate by themselves a situation of discrimination. The NCCD sanctioned the Harghita Public Finances Inspectorate with an administrative fine of 1,000 RON (EUR 300).

43 NCCD, decision A.M. v. Direcția Generală a Finanțelor Publice a județului Harghita, [A.M. v. Harghita county Public Finances General Inspectorate], decision no. 43 from 09.01.2008, file number 353/2007.



### 2.3.1 Statistical Evidence

- a) *Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court.*

Art. 20 (6) of the GO 137/2000 provides that

‘the person interested has the obligation of proving the existence of facts which allow to presume the existence of direct or indirect discrimination and the person against whom a complaint was filed has the duty to prove that the facts do not amount to discrimination. Any means of evidence can be invoked before the Steering Board, including audio and video recordings or statistical data.’ The law does not establish any subsequent criterion for the admissibility of such evidence before the NCCD or the courts of law.

- b) *Is the use of such evidence commonly used? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law?*

There is scarce evidence of the use of statistical data in the past. A ground breaking case from January 2008 introduced a thorough use of statistical analysis in determining the adequacy and appropriateness of the methods used in order to ensure the right of national minorities to use their mother tongue in relation to public local officials.<sup>44</sup>

- c) *Please illustrate the most important case law in this area.*

In decision A.M. v. Direcția Generală a Finanțelor Publice a județului Harghita, [A.M. v. Harghita county Public Finances General Inspectorate], decision no. 43 from 09.01.2008, file number 353/2007, regarding the advertising of hiring possibilities as civil servants with the local finances inspectorate mentioning as specific condition ‘knowledge of Hungarian language,’ the NCCD made extensive use of the statistical data. By looking at the percentages of civil servants speaking only Romanian or Hungarian and their specific position within the institution as well as their geographical representation compared in the context of the percentages of Hungarians or Romanians in each city, the NCCD assessed the ways in which the defendant understood to fulfil its legal obligation to make arrangements to respond to the needs of national minorities in the counties where national minorities represent at least 20 per cent of the population. The NCCD sanctioned the Harghita county Public Finances General Inspectorate with an administrative fine of 1,000 RON (EUR 300).

<sup>44</sup> NCCD, decision A.M. v. Direcția Generală a Finanțelor Publice a județului Harghita, [A.M. v. Harghita county Public Finances General Inspectorate], decision no. 43 from 09.01.2008, file number 353/2007.



- d) *Are there national rules which permit data collection? Please answer in respect to all 5 grounds. The aim of this question is whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/ generated?*

The Law 677/2001 on the protection of persons regarding the use of personal data and the free movement of personal data prohibits in Art. 7.(1) ‘the use of personal data regarding the racial or ethnic origin, political, religious, philosophical or similar beliefs, trade union membership, as well as personal data regarding health status or sexual life,’<sup>45</sup> hence barring data collection on all five grounds. This provision is invoked in practice by authorities when required to compile or provide statistical data by domestic or international institutions. International reports described this prohibition as a deterrent to effective data gathering and policy making in the case of women<sup>46</sup> or Roma.<sup>47</sup> Theoretically, the collection of personal data is possible under certain limitations provided by Art.7 (2):

- a. with the express consent of the individual,
- b. when required for the purpose of observing specific duties or rights of the operator in the area of employment,
- c. when required for the protection of life, physical integrity or health of the individual or of another person,
- d. when conducted during legitimate activities by a foundation, association or any other non-for-profit organization and with a political, philosophic, religious or trade union related mandate, if the individual is a member or has regular relations with the institution,
- e. when done in relation to data made publicly available by the individual,
- f. when necessary for establishing, exercising or defending a right before the courts of law,
- g. when necessary for purposes of preventive medicine,
- h. when the law includes an express provision with the purpose of protecting an important public interest, under the condition that the collecting of data should be done with the observance of the rights of the person involved and with all guarantees provided by the law.

The list of exemptions, particularly the one on data collection in relation to an important public interest (such as designing effective public policies in relation to minorities) creates the possibility to compile and use relevant statistical data if there is a will.

<sup>45</sup> Romania/Law 677 on the protection of persons in relation with use of personal data (21.11.2001).

<sup>46</sup> In its Concluding Comments on Romania, the Committee on the Elimination of All Forms of Discrimination Against Women ‘regrets the limited availability of statistical data disaggregated by sex as well as by ethnicity, age, and by urban and rural areas, which makes it more difficult to assess progress and trends over time in the actual situation’ and ‘calls upon the State to enhance its data collection in all areas covered by the Convention so as to assess the actual situation of women and their enjoyment of their human rights, disaggregated by sex, as well as by ethnicity, age, and by urban and rural areas as applicable, and to track trends over time. See, CEDAW/C/ROM/CO/6, Concluding comments of the Committee on the Elimination of Discrimination against Women, Romania, June 2006.

<sup>47</sup> DecadeWatch : Roma activists assess the progress of the Decade of Roma Inclusion 2005-2006, available at: <http://www.romadecade.org/index.php?content=6> , (10.10.2007).



Similarly, the Law 489/2006 on religious freedom and the general regime of religious denominations prohibits in Art.5 (5):

‘the processing of personal data concerning religious beliefs or membership of denominations, except for the case of a national census as sanctioned under the law or the situation where the concerned individual has provided explicit agreement to that effect.’

The law 489/2006 provides that ‘it is hereby forbidden to compel an individual to declare their religion, in any relationship with public authorities or private-law legal entities.’<sup>48</sup>

When private or public operators make general statistical data available or when the National Institute for Statistics<sup>49</sup> is publishing its findings, such information is used in designing public policies (e.g. the case of the National Strategy for Improving the Situation of Roma<sup>50</sup> or the National Strategy for the Protection of the Rights of the Child<sup>51</sup>). There are no guidelines regarding the handling of ethnic data in the context of general statistical endeavours.

## 2.4 Harassment (Article 2(3))

- a) *How is harassment defined in national law? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.*

Art.2.(5) of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination defines harassment as a form of discrimination:

‘any behaviour on grounds of race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, belonging to a disadvantaged group, age, disability, refugee or asylum seeker status or any other criterion, which leads to establishing an intimidating, hostile, degrading or offensive environment.’

A specific definition of sexual harassment is provided by the Law on equal opportunities between men and women, in Art.4 (c):

‘any form of behaviour in relation to gender, about which the person who is responsible knows that is affecting the dignity of persons, if such a behaviour is rejected and represents the motivation for a decision affecting those persons.’<sup>52</sup>

48 Art.5 (6) of Romania/ Law 489/2006 on Religious Freedom and the General Status of Religions, Romania (8.01.2007).

49 The National Institute for Statistics is the national operator in charge with collecting data and organizing the census. Data available at: [www.insse.ro/](http://www.insse.ro/) (01.05.2008)

50 Strategia Guvernului României de îmbunătăţire a situaţiei romilor, aprobată prin H.G. Nr.430/2001 [Government Strategy for improving the situation of Roma ], available at <http://www.anr.gov.ro/> (01.05.2008)

51 Strategia naţională pentru protecţia copilului [the National Strategy for the Protection of the Rights of the Child] available at <http://www.copii.ro/content.aspx?id=40> (01.05.2008)

52 Romania/ Law 340/2006 for the amendment and approval of Law 202/2002 regarding equal opportunities between women and men] (25.07.2006).





The New Romanian Criminal Code also sanctions sexual harassment by providing that:

‘the harassment by threatening or forcing a person, with the purpose of gaining sexual satisfactions, by a person abusing his or her status or the power ensured by a particular position in work relations, is punishable with prison from three months to one year or with criminal fines.’<sup>53</sup>

None of the definitions provided for are in complete compliance with the definition of harassment spelled out in the Directives.

*b) Is harassment prohibited as a form of discrimination?*

The Anti-discrimination Law specifically prohibits harassment in Art.2 (5) and provides for the specific sanctions in Art.26, the amount of the fines differs: when the victim is only one individual, the amount varies from 400 RON to 4,000 RON (EUR 114-1,114) when the victims consist in a group or a community (e.g.: ethnic minority or the LGBT community as a group), the fine ranges between 600 and 8,000 RON (EUR 170-2,285).<sup>54</sup>

*c) Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?*

Besides the anti-discrimination framework legislation prohibiting harassment on all grounds, sexual harassment is defined and sanctioned in the Law on equal opportunities between women and men in Art.4 (c):

‘any form of behaviour in relation to gender, about which the person who is responsible knows that is affecting the dignity of persons, if such a behaviour is rejected and represents the motivation for a decision affecting those persons.’<sup>55</sup>

## **2.5 Instructions to discriminate (Article 2(4))**

*Does national law prohibit instructions to discriminate?*

Article 30(7) of the Constitution while providing for freedom of expression also prohibits hate speech:

‘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.’

<sup>53</sup> Art.223 of Romania/2004 Criminal Code republished, (12.04.2005).

<sup>54</sup> Art.26 of Romania/ Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (20.07.2006).

<sup>55</sup> Romania/ Law 340/2006 for the amendment and approval of Law 202/2002 regarding equal opportunities between women and men] (25.07.2006).



Art. 2(2) of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination: ‘The order to discriminate a person on any ground mentioned in para.(1) is considered discrimination.’

The members of the Steering Board of the NCCD acknowledge the difficulty in investigating cases of alleged instruction to discriminate due to the challenges raised by the need to prove the existence of the order (particularly in the cases of access to pubs or clubs when the bodyguards invoke an instruction from the owners or from the management).

## **2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)**

- a) *How does national law implement the duty to provide reasonable accommodation for people with disabilities? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of ‘reasonable’. e.g. ➔ does national law define what would be a "disproportionate burden" for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden?*

The Anti-discrimination Law does not provide for reasonable accommodation for persons with disabilities.<sup>56</sup> The special legislation on the promotion and protection of the rights of persons with disabilities provides for the duty to ensure reasonable accommodation in accessing various public and private services and facilities and in labour relations. The law 448/2006 defines reasonable accommodation in the workplace as:

‘all the changes undertaken by the employer in order to facilitate the exercising of the right to work of the person having a disability (*handicap*); this entails adjusting the work schedule, buying supporting equipment, devices and technologies related to the disability and other similar measures.’<sup>57</sup>

Reasonable accommodation in the work place is ensured both to persons with disabilities seeking a job and for those already hired according to Art.83 of the law, no matter what type of disability they might have. Law 448/2006 does not provide for any limitation or restriction regarding persons entitled to claim reasonable accommodation.

<sup>56</sup> Romanian legislation still uses the concept of ‘handicap’ instead of ‘disability’ (see Romanian Constitution, the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination as well as special legislation such as 448/2006 on the protection and promotion of the rights of persons with a handicap).

<sup>57</sup> Art.5(4) of Romania/Law 448/2006 on the protection and promotion of the rights of persons with a handicap (06/12/2006).



There is no sanction provided by this law in case of failure to comply but the general anti-discrimination provisions can be applied under the caveat of Art.9 of GO 137/2000 which allows exemptions from the prohibition of discrimination in labour relations when the employer is

‘refusing to hire a person who does not correspond to determining occupational requirements in that particular field, as long as the refusal does not amount to an act of discrimination under the understanding of this ordinance, and the measures are objectively justified by a legitimate aim and the methods pursued are adequate and necessary.’

There is no interpretation of what is ‘reasonable’ and what constitutes a ‘disproportionate burden’ neither in the practice of the NCCD, or of the *Autoritatea Națională pentru Persoanele cu Handicap* [National Authority for Persons with a Disability (NAPD)].

Law 448/2006 introduces certain benefits for the employers of persons with disabilities, including deductions from the taxes of the costs of the adaptation of the work place and equipments and devices bought to ensure accommodation of the persons with disabilities.<sup>58</sup>

b) *Does failure to meet the duty count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?*

Law 448/2006 on the promotion and protection of the rights of persons with a disability does not include specific sanctions on failure to ensure reasonable accommodation in the work place and does not define this failure as discrimination. Theoretically, the 2000 Anti-discrimination Law can be applied accordingly (Art.5-8). Art.9 of GO 137/2000 allows for justifications in cases of differential treatment in labour relations when the measures are objectively justified by a legitimate aim and the methods pursued are adequate and necessary.

c) *Has national law implemented the duty to provide reasonable accommodation in respect of any of the other grounds?*

Law 448/2006 on the promotion and protection of the rights of persons with a disability details on the duty to provide reasonable accommodation in particular areas and includes specific sanctions for failure to ensure appropriate conditions:

- Education - Art. 18 of Law 448/2006 mentions the duty to provide technical equipment, adapt the furniture to the needs of pupils with disabilities, ensure special handbooks and software applications. Failure to comply with this obligation is sanctioned with a fine of RON 3.000 -9.000 (EUR 833-2500). The authority in charge with finding and sanctioning such cases is the NAPD.<sup>59</sup>

<sup>58</sup> Art.84 of Romania/Law 448/2006 on the protection and promotion of the rights of persons with a handicap (06/12/2006).

<sup>59</sup> Art.100 of Romania/Law 448/2006 on the protection and promotion of the rights of persons with a handicap (06/12/2006).



- Access to public buildings (including private buildings under the ownership of the state) and to local administration facilities - the duty to take measures for ensuring access is provided for by Art.63 (3) and the sanction for failing to observe this duty is a fine of RON 3.000 -9.000 (EUR 833-2500). The authority in charge with finding and sanctioning such cases is the NAPD.<sup>60</sup>
  - Access to transport services - Art. 64 provides for an obligation of local public authorities to gradually adapt all public means of transportation (by Dec 31<sup>st</sup> 2010) and adapt all stations for public transportation. The sanction for failing to observe this duty is a fine of RON 3.000 -9.000 (EUR 833-2500). The authority in charge with finding and sanctioning such cases is the NAPD.<sup>61</sup>
- d) *Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?*

The Anti-discrimination Law does not include specific provisions establishing an obligation to make services available to the public but is sanctioning in Art.10 as discrimination the denial of access to services and facilities. The wording of Art.10 can be interpreted as applicable also in the cases of *de facto* denial of access to facilities and services triggered by lack of appropriate infrastructure which would allow accessibility. There is no relevant jurisprudence of the NCCD reported on this topic.

Law 448/2006 on the promotion and protection of the rights of persons with a disability provides for an obligation to ensure access to public buildings (including private buildings under the ownership of the state) and to local administration facilities and for the duty to take measures for ensuring access in Art.63 (3). The sanction for failing to observe this duty is a fine of RON 3.000 -9.000 (EUR 833-2500) which is decided by NAPD.<sup>62</sup>

- e) *Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?*

The framework law concerning people with disabilities, Law 448/2006, in force since January 6<sup>th</sup> 2008, has a broader, general approach including provisions on the rights of these persons, health and integration, education, housing, culture, sport and tourism, transportation, legal assistance, fiscal facilities, social services, social benefits granted to persons having a disability, accessibility, labour relations, establishing the different categories of disability and the procedure for being recognised a certain category, the financing of the system of protection of persons with disabilities and the role of the National Authority for the Persons with a Disability.

60 Art.100 of Romania/Law 448/2006 on the protection and promotion of the rights of persons with a handicap (06/12/2006).

61 Art.100 of Romania/Law 448/2006 on the protection and promotion of the rights of persons with a handicap (06/12/2006).

62 Art.100 of Romania/Law 448/2006 on the protection and promotion of the rights of persons with a handicap (06/12/2006).



Law 448/2006 provides for special rights and facilities for persons with disabilities which vary depending on the type of disability and the category of disability assigned following a strict procedure. There are four different categories of disability depending on the gravity of the infliction: light, medium, accentuated and serious according to Art.86 (1) and the law lists various types of disability in Art. 86 (2): physical, visual, hearing, somatic, mental, psychical, HIV/AIDS, associated, rare diseases. The criteria for assigning a particular category of disability are decided in a joint order of the Ministry of Health, the Ministry of Labour and Social Protection following the proposal of the NAPD. The mandate of the evaluation committees in charge with assessing the situation of persons with disabilities and assigning a particular degree of disability is defined by the law. The commissions are established at county level and function under the monitoring of the NAPD.

Some of the benefits provided for persons with disabilities in Law 448/2006 include:

- free medical assistance, including free medication, free hospitalisation and treatment and reimbursement for supportive devices and technologies – Art.10;
- pupils with disabilities receive free meals and accommodation in school boarding - Art.16 (7);
- students with disabilities (serious and accentuated disability) receive upon request a waiver of 50% for meals and accommodation in school canteens and student dormitories – Art. 16(8);
- persons with disabilities have priority in being assigned public housing -Art.20;
- persons certified with a serious disability can receive an supplementary room and have a minimal rent in public housing -Art.20(2);
- adults with a serious or accentuated disability and the person accompanying such an adult have free access to shows, exhibitions, museums, artistic and sportive events and adults with a medium or light disability pay reduced tickets– Art.21(4);
- persons with a serious or accentuated disability have free transportation on all venues in urban public transportation, this benefit applies also to assistants of persons with serious disability, assistants of children with accentuated disability, assistance of persons with accentuated hearing and mental disabilities, based on a social inquiry conducted by a social assistant from the local mayor's office, personal assistants of persons with a serious disability and professional assistants of persons with a serious or accentuated disability – Art.23;
- persons with a serious or accentuated disability have the following fiscal facilities – Art.26:
  - a) exemption from paying income tax for salaries and similar income;
  - b) exemption from paying land and property taxes;
  - c) exemption from paying taxes for cars, bikes, motorbikes adapted to the disability;
  - d) exemption from paying the tax for issuing the authorisation for functioning for economic activities and the annual certification;
  - e) exemption from paying hotel tax.
- adults with a serious or accentuated disability can receive a credit and the interest will be paid from the state budget in case of acquiring a vehicle or adapting a house according to personal access needs – Art.27;
- persons with a disability owing cars adapted to their disability are exempted from paying the fees for using the national roads – Art.28;



- the person with a serious disability can choose to have a personal assistant paid by the state – Art.35;
- the adult with a serious or accentuated disability who does not have any living conditions and does not have any income or has an income of the average income in the economy can choose to have a personal professional assistant paid by the state – Art.45;
- the person with a disability can receive social services in day care centres and in residential centres – Art.51;
- the adult with a disability receives the following amounts monthly – Art. 58(4):
  - a) monthly indemnity, no matter what income the person has:
    1. RON 179(EUR 50) for adult with a serious disability;
    2. RON 147 (EUR 40) for adult with accentuated disability;
  - b) monthly personal complementary budget, no matter what income the person has:
    1. RON 80 (EUR 20) for adult with a serious disability;
    2. RON 60 (EUR 16), or adult with accentuated disability;
    3. RON30 (EUR 8), for adult with a medium disability.
- any person with a disability who wants to be integrated and work, has access to free evaluation and professional counselling, no matter what age, type or category of disability he or she has – Art. 72;

## 2.7 Sheltered or semi-sheltered accommodation/employment

- a) *To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for workers with disabilities?*

Law 448/2006 on the promotion and protection of the rights of persons with a disability provides for sheltered employment and sheltered units in Art. 79. The law defines as sheltered employment:

‘the adequate space for the activity of a person with a disability, adapted to his or her needs, including at least the location where that person works, the equipment used, the toilet and the access space (Art.5).

The law specifies that any private or public legal person or even individuals can establish a sheltered unit which is defined as ‘the public or private law economic agent, autonomously administered, in which at least 30 per cent of the total number of employees having an individual labour contract are persons with a disability.’<sup>63</sup> Sheltered units can have legal personality or can have no legal personality and operate autonomously as workshops or other structures within economic agents, public institutions or non-governmental organisations. NAPD adopted an order on the procedure for authorising a sheltered unit.<sup>64</sup>

63 Art.5 of Romania/Law 448/2006 on the protection and promotion of the rights of persons with a handicap (06/12/2006).

64 Romania/ Ordinul preşedintelui Autorităţii Naţionale pentru Persoanele cu Handicap nr. 60/2007 privind aprobarea Procedurii de autorizare a unităţilor protejate, Order of the President of the National Authority for Persons with Handicap No. 60/2007 regarding the approval of the Procedure for authorizing sheltered units (3.05.2007).





Sheltered units receive the following benefits according to Art.82:

- a) exempted from paying taxes for being established and subsequent taxes;
- b) exempted from paying profit taxes, under the condition that at least 75 per cent of the amount generated due to the exemption will be used for restructuring or for purchasing technology, vehicles, tools, equipment and/or adapting the sheltered work units;
- c) other facilities granted by local public administration and funded from local budget.

In order to maintain their status, sheltered unit must present at the beginning of each year a report to the NAPD.

*b) Would such activities be considered to constitute employment under national law?*

Law 448/2006 spells out that the employment of a person with disabilities can take the following forms: a) general free market employment; b) work from home; c) sheltered work.<sup>65</sup> All these forms constitute employment and are protected by the Labour Code.

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<sup>65</sup> Art.79 of Romania/Law 448/2006 on the protection and promotion of the rights of persons with a handicap (06/12/2006).





### 3. PERSONAL AND MATERIAL SCOPE

#### 3.1 Personal scope

##### 3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)

*Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?*

Art.1(2) of the Ordinance 137/2000 guarantees the principle of equality among citizens and speaks about the exclusion of discrimination in the same context. The limitation is triggered by the constraints of Art.1 (3) of the Romanian Constitution which guarantees fundamental rights in relation to citizens only. However, the comprehensive definition of discrimination provided in Art.2 (1) of GO 137/2000 does not include any citizenship or nationality requirements as proved by the case law of the NCCD.<sup>66</sup>

##### 3.1.2 Natural persons and legal persons (Recital 16 Directive 2000/43)

*Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?*

Under the Romanian Anti-discrimination Law both natural and legal persons are protected against discrimination, with higher fines in the case of discrimination perpetrated against groups or communities according to Art.26: if the victim is an individual, the amount of the fine ranges from RON 400 to 4,000 (EUR 114-1,114) when the victims consist in a group or a community, the fine ranges between RON 600 -8,000 (EUR 170-2,285).<sup>67</sup>

Art.2 (4) of the GO 137/2000 specifies that all public and private natural or legal entities have an obligation to observe the principles of Art.1 (2) and Art.26 (2) provides that the sanctions can be enforced against legal persons as well. Furthermore, 2000 Law establishes an obligation for 'legal representatives of authorities and public institutions and of the economic agents under control, as well as natural persons to:

- a. provide any document that might help in clarifying the objectives of the control;
- b. provide information and explanations verbally or in writing, in relation to the issue under control;
- c. provide copies of the documents requested;
- d. provide support and ensure adequate conditions for carrying out the control and help out in view of clarifications.'

<sup>66</sup> See NCCD case D. v. N. and Șofronea swimming pool, case no. 221 from 21.09.2005, in which the victim of discrimination was an Egyptian national.

<sup>67</sup> Art.26 of Romania/ Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (20.07.2006).



### 3.1.3 Scope of liability

*What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin) service-providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?*

The Anti-discrimination Law does not include specific provisions on the scope of the liability. Liability is individual and in order to find discrimination, the NCCD is identifying the agent of discrimination and his or her responsibility. The case law of the NCCD indicates that employers can be held liable for actions of their employees, if there is joint responsibility. The NCCD used personal liability in determining the degree of responsibility for each party. Employers had not been held liable for actions of third parties. Trade unions or professional associations cannot be held liable for the actions of their members. The courts imposed vicarious liability upon the employers for the action of their employees.<sup>68</sup>

## 3.2 Material Scope

### 3.2.1 Employment, self-employment and occupation

*Does national legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office?*

Art. 5-9 of the Romanian Anti-discrimination Law prohibiting the various aspects of discrimination in labour relations do not distinguish between the different types of actors (public or private, secular or religious).

The Labour Code provides for a specific prohibition of discrimination in relation to labour relations, in Art.5:

- (1) In labour relations the principle of equal treatment in relation to all employees and employers applies.
- (2) It is prohibited any direct or indirect discrimination in relation to an employee on grounds of gender, sexual orientation, genetic characteristics, age, nationality, race, colour, ethnicity, religion, political options, social origin, disability, family situation or responsibility, membership or activity in a trade union.
- (3) Direct discrimination consists in exclusion, difference, restriction or preference, based on one or more grounds provided for in para (2), which have the purpose or the effect of not granting, limiting or denying the recognition, use or exercise of the rights provided for in the labour legislation.

<sup>68</sup> Romania/Tribunalul Bihor [Bihor County Tribunal] Sentinta Civila [Civil Judgement] No.620/L.M./2007, File No.6094/111/2006; 01.10.2007. B. R. v. A. V., administrator of the Oradea Zoo, M. I., human resources manager and Regia Autonomă de Piețe, Agreement și Salubritate Oradea (employer).



(4) Indirect discrimination consists in acts or facts which in appearance are based on other criteria than those provided for in para. (2) but which generate the effects of direct discrimination.

Furthermore, Art. 59 of the Labour Code prohibits firing of employees

- a) on grounds of gender, sexual orientation, genetic characteristics, age, nationality, race, colour, ethnicity, religion, political options, social origin, disability, family situation or responsibility, membership or activity in a trade union.
- b) for exercising, according to the law, the right to strike and trade-union related right.

While discrimination is prohibited, the Labour Code does not offer guidance in the case of employees dismissed or sanctioned as they are not available or competent to do their job due to a family situation or disability and labour law jurisprudence is vague in this regard.

The Criminal Code includes specific provisions applicable only to civil servants guilty of discrimination in the form of abusing their official position. Art.247 of the Criminal Code provides:

‘the limitation of the use or of the exercise of certain rights of a person by a civil servant or the fact that a civil servant creates a situation of inferiority on grounds of race, nationality, ethnicity, language, religion, gender, sexual orientation, opinion, political membership, beliefs, wealth, social origin, age, disability, non-contagious chronic disease or HIV/AIDS is punishable with prison from six months to five years.’

*In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.*



### **3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))**

The Anti-discrimination Law sanctions discrimination in relation to employment of any type and on grounds of race, nationality, ethnic group, religion, social status, on one's beliefs, sex or sexual orientation and disadvantaged group (interpreted by the NCCD as including age<sup>69</sup> and disability<sup>70</sup>), including in selection criteria, recruitment conditions, treatment during the work relations and promotion or professional training or other benefits, as well as in ending the work relation:

Art. 5 – According to the ordinance herein, conditioning the participation of a person in an economic activity or one's freely chosen exercise of a profession on one's belonging to a race, nationality, ethnic group, religion, social status, on one's beliefs, sex or sexual orientation, respectively, or on one's belonging to a disadvantaged group shall constitute an offence.

Art. 6 –According to the ordinance herein, the following constitute offences: discrimination on account of the race, nationality, ethnic group, social status, disadvantaged group one belongs to, respectively on account of one's beliefs, sex or sexual orientation in a labour and social protection relation, excepting the cases provided for by the law, with respect to:

- a) initiation, suspension, modification or the end of the labour relation;
- b) establishing and modifying of job-related duties, of the work place or of the wages;
- c) granting of social rights other than the wages;
- d) professional training, refreshment, conversion or promotion;
- e) enforcement of disciplinary measures;
- f) right to join a trade union and to access to the facilities it ensures;
- g) any other conditions related to the carry out of a job, in accordance with the law in force.

Art. 7 - (1) In accordance with the ordinance herein, the refusal of any legal or natural entity to hire a person on account of the applicant's race, nationality, ethnic belonging, religion, social status, beliefs, sex or sexual orientation shall constitute an offence, excepting the cases specified by the law.

(2) If, in any job advertisement or interview, the employer or employer's representative set conditions related to the belonging to a race, nationality, ethnic group, religion, sex or sexual orientation, social status or disadvantaged group or the applicant's beliefs for filling in a position, except for the situation provided under Art. 2 paragraph 9, this deed shall constitute an offence.

69 NCCD. Decision 2707 of the National Council on Combating Discrimination, from 20 January 2004.

70 NCCD. Decision P/0797 of the National Council on Combating Discrimination, from 06 April 2006



(3) Natural or legal entities involved in mediating and distributing work places shall ensure the equal treatment of all applicants, their free and equal access to opportunities to consult the supply and demand of the labour market, to consulting on opportunities to obtain a job or a qualification, and shall refuse to support the employers' discriminatory requirements. All information related to the race, nationality, ethnic belonging, sex or sexual orientation of applicants for a job or any other private information shall be confidential.

Art. 8 - Discrimination committed by employers against their employees with regard to the social facilities they grant their employees on account of the employees' belonging to a race, nationality, mother tongue, ethnic background, religion, sex, social status, sexual orientation or beliefs shall constitute an offence.

Art. 9 - None of the provisions of articles 5-8 shall be interpreted as a restriction of the employer's right to refuse to hire a person who does not correspond to determining occupational requirements in that particular field, as long as the refusal does not amount to an act of discrimination under the understanding of this ordinance, and the measures are objectively justified by a legitimate aim and the methods pursued are adequate and necessary.'

In practice, the NCCD applied these provisions also to the case of different treatment in relation to access to the profession and professional development in the case of resident doctors who graduated in different years. In its decision from 27.07.2006, G.T. v. the Ministry of Health, the NCCD sanctioned as discriminatory the Order 1000/2005 of the Ministry of Health which established that in the case of graduates of medical schools who graduated in 2005, the access to continuing professional studies as resident doctors in the area of general practitioners can be done on the basis of a request upon meeting a minimal set of criteria, while graduates from other years of the same faculties did not have access to the same procedure. The NCCD noted that the Order established a different treatment for graduates of medical schools from different years and this resulted in differences in their enjoyment of the right to professional development.<sup>71</sup>

### **Is the public sector dealt with differently to the private sector?**

No difference specified between public and private sector.

<sup>71</sup> NCCD, decision G.T. v. the Ministry of Health (27.07.2006).



### 3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

- a) *Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.*

Discrimination in employment and working conditions, including pay, social benefits other than wages, dismissal is specifically mentioned by the Anti-discrimination Law in Art.5-9:

Art. 5 – According to the ordinance herein, conditioning the participation of a person in an economic activity or one's freely chosen exercise of a profession on one's belonging to a race, nationality, ethnic group, religion, social status, on one's beliefs, sex or sexual orientation, respectively, or on one's belonging to a disadvantaged group shall constitute an offence.

Art. 6 –According to the ordinance herein, the following constitute offences: discrimination on account of the race, nationality, ethnic group, social status, disadvantaged group one belongs to, respectively on account of one's beliefs, sex or sexual orientation in a labour and social protection relation, excepting the cases provided for by the law, with respect to:

- a) initiation, suspension, modification or the end of the labour relation;
- b) establishing and modifying of job-related duties, of the work place or of the wages;
- c) granting of social rights other than the wages;
- d) professional training, refreshment, conversion or promotion;
- e) enforcement of disciplinary measures;
- f) ...
- g) any other conditions related to the carry out of a job, in accordance with the law in force.

Art. 7 - (1) In accordance with the ordinance herein, the refusal of any legal or natural entity to hire a person on account of the applicant's race, nationality, ethnic belonging, religion, social status, beliefs, sex or sexual orientation shall constitute an offence, excepting the cases specified by the law.

(2) If, in any job advertisement or interview, the employer or employer's representative set conditions related to the belonging to a race, nationality, ethnic group, religion, sex or sexual orientation, social status or disadvantaged group or the applicant's beliefs for filling in a position, except for the situation provided under Art. 2 paragraph 9, this deed shall constitute an offence.

- b) *In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/7 ?*

There are no provisions in the Anti-discrimination Law prohibiting discrimination in respect of occupational pensions.





The framework law on pensions, Law 19/2000 on the public pension system and other social security rights<sup>72</sup> mentions in Art.2. 2 the principle of equality as ‘ensuring to all participants in the public system, tax payers and beneficiaries, a treatment without discrimination in respect of the rights and obligations provided for in the law’ without further detailing on prohibitions against discrimination or including any sanctions in this regard. Law 204 from May 2006<sup>73</sup> on facultative pension schemes provides in Art.51 that ‘all participants and beneficiaries to a private pension scheme have the same rights and obligations and are treated without discrimination...they have the right to equal treatment ...’ Art.51 (4) provides:

No person wishing to become a participant (in a facultative pension scheme cannot be discriminated against and cannot be rejected from joining the scheme as participant if he or she is eligible.

Law 204/2006 does not include any sanction correlative to the prohibition to discriminate in respect of facultative pension schemes.

### **3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))**

*Note that there is an overlap between ‘vocational training’ and ‘education’. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does the national Anti-discrimination law apply to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult life long learning course?*

Though not using expressly the wording of the Article 3(1)(b) of the Directive 2000/43, the Ordinance 137/2000 mentions express prohibitions against discrimination in access to vocational guidance, professional training, continuing professional training and practical work both in the section on access to labour and in the section on access to education which is not distinguishing between the different forms, types, stages or levels of education:

Art. 6 –According to the ordinance herein, the following constitute offences: discrimination on account of the race, nationality, ethnic group, social status, disadvantaged group one belongs to, respectively on account of one’s beliefs, sex or sexual orientation in a labour and social protection relation, excepting the cases provided for by the law, with respect to:

d)professional training, refreshment, conversion or promotion;

...

g)any other conditions related to the carry out of a job, in accordance with the law in force.

Art. 11 (1) Under the ordinance herein, denying the access of a person or of a group of persons to the state-owned or private education system of any kind, degree or level, on account of their belonging to a race,

<sup>72</sup> Romania/ Law 19/2000 Law on the public pensions system and other social benefits.(17.03.2000).

<sup>73</sup> Romania/Law 204/2006 on Facultative Pensions Schemes (22.05.2006).





nationality, ethnic group, religion, social category or to a disadvantaged category, on account of their beliefs, sex or sexual orientation, shall constitute an offence.

(2) The provisions of the paragraph above shall be applicable to all stages and levels of education, including admission or enrolment in education institutions and the assessment and examination of students' knowledge.

...

(4) The provisions under paragraphs (1), (2) and (3) shall not be interpreted as a restriction of the right of an education institution to deny the application of a person whose knowledge and/or prior results do not meet the required admission standards of that institution, as long as the refusal is not determined by the person's belonging to a race, ethnic group, nationality, religion, social category or to a disadvantaged category, by his/her beliefs, sex or sexual orientation.

...

(6) According to the ordinance herein, any restrictions based on belonging to a race, nationality, ethnic group, religion, social category or to a disadvantaged category in the establishment and licensing of education institutions set up in accordance with the legal framework in force shall constitute an offence.'

### **3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))**

Different from Art.3 (1)(d) of the Directive 2000/43/EC, the Romanian Anti-discrimination Law does not spell out expressly the prohibition of discrimination on grounds of membership in a trade union or in a any professional organization (employers' association, lawyers' bars, professional colleges or unions). Still, all these categories are protected by the anti-discrimination legislation as interpreted by the NCCD and by the courts which decided that membership in trade unions or professional organizations is falling under the protected grounds 'social category' or under 'any other category.' The 2000 Law also mentions trade unions in the context of the denial to discriminate in restricting the right to join the trade unions:

Art. 6 –According to the ordinance herein, the following constitute offences: discrimination on account of the race, nationality, ethnic group, social status, disadvantaged group one belongs to, respectively on account of one's beliefs, sex or sexual orientation in a labour and social protection relation, excepting the cases provided for by the law, with respect to:

....

f) right to join a trade union and to access to the facilities it ensures;  
g) any other conditions related to the carry out of a job, in accordance with the law in force.'



Further protection is ensured in the special legislation on trade unions<sup>74</sup> and in the Labour Code which clearly spells out the prohibition against firing employees due to their exercise of the right to strike and of their rights related to their trade union activities – Art.59.b) of the Labour Code.

*In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.*

### **3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)**

*In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?*

Protection against discrimination in social protection is provided for both in connection with work relations and in general:

Art. 6 –According to the ordinance herein, the following constitute offences: discrimination on account of the race, nationality, ethnic group, social status, disadvantaged group one belongs to, respectively on account of one's beliefs, sex or sexual orientation in a labour and social protection relation, excepting the cases provided for by the law, with respect to:

...

c)granting of social rights other than the wages;

...

g)any other conditions related to the carry out of a job, in accordance with the law in force.

Art. 8 - Discrimination committed by employers against their employees with regard to the social facilities they grant their employees on account of the employees' belonging to a race, nationality, mother tongue, ethnic background, religion, sex, social status, sexual orientation or beliefs shall constitute an offence.'

More specific provisions on prohibition of discrimination in social services and health care services are listed in Art.10 (a) of the GO 137/2000 which states:

'Under the ordinance herein, the following deeds shall constitute an offence, if the deed does not fall under the incidence of criminal law, when perpetrated against a person or a group on account of their belonging or to the belonging of the management to a race, nationality, ethnic group, religion, social category or disadvantaged group, on account of their beliefs, sex or sexual orientation:

a) the refusal to ensure legal and administrative public services.

<sup>74</sup> Romania/Law 54 /2003 Trade Unions Law (24.01.2004).



- b) denying the access of a person or of a group of persons to public health services (choice of a family doctor, medical assistance, health insurance, first aid and rescue services or other health services).
- ...
- h) the refusal to ensure rights and benefits to a person or to a group of persons.'

The Romanian legislation does not include any exemptions for payments of any kind made by state schemes or similar, including state social security or social protection schemes, relying on the exception allowed in Article 3(3), Directive 2000/78.

### 3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

*This covers a broad category of benefits that may be provided by either public or private actors granted to people because of their employment or residence status, for example, e.g. reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of 'social advantages' or if discrimination in this area is likely to be unlawful.*

The Ordinance 137/2000 prohibits discrimination in granting social advantages in Art. 6.c and in Art. 8 without distinguishing between the different types of benefits private or public actors might grant to their employees:

Art. 6 –According to the ordinance herein, the following constitute offences: discrimination on account of the race, nationality, ethnic group, social status, disadvantaged group one belongs to, respectively on account of one's beliefs, sex or sexual orientation in a labour and social protection relation, excepting the cases provided for by the law, with respect to:

...

- c)granting of social rights other than the wages;

...

- g)any other conditions related to the carry out of a job, in accordance with the law in force.

Art. 8 - Discrimination committed by employers against their employees with regard to the social facilities they grant their employees on account of the employees' belonging to a race, nationality, mother tongue, ethnic background, religion, sex, social status, sexual orientation or beliefs shall constitute an offence.



A general prohibition of discrimination in the context of access to public services of administrative and legal nature, health and other services, goods and facilities is spelled out in Art. 10 (h) of the Anti-discrimination Law:

Under the ordinance herein, the following deeds shall constitute an offence, if the deed does not fall under the incidence of criminal law, when perpetrated against a person or a group on account of their belonging or to the belonging of the management to a race, nationality, ethnic group, religion, social category or disadvantaged group, on account of their beliefs, sex or sexual orientation: (h) refusal to grant the rights or benefits to a person or a group of persons.

### 3.2.8 Education (Article 3(1)(g) Directive 2000/43)

*This covers all aspects of education, including all types of schools. Please also consider cases and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.*

Art. 11 of the Anti-discrimination Law substantiates the prohibition of discrimination in education, at all levels and in all forms, both private and public:

‘(1) Under the ordinance herein, denying the access of a person or of a group of persons to the state-owned or private education system of any kind, degree or level, on account of their belonging to a race, nationality, ethnic group, religion, social category or to a disadvantaged group, on account of their beliefs, sex or sexual orientation, shall constitute an offence.

(2) The provisions of the paragraph above shall be applicable to all stages and levels of education, including admission or enrolment in education institutions and the assessment and examination of students’ knowledge.

(3) Under the ordinance herein, requiring a declaration to prove a person’s or group’s belonging to an ethnic group as a condition for access to education in their mother tongue shall constitute an offence. The exception to the rule is the situation when the candidates apply in the secondary and higher education system for places allotted specifically to a certain minority, in which case they must prove their belonging to that minority by means of a document issued by a legally established organisation of the respective minority.

(4) The provisions under paragraphs (1), (2) and (3) shall not be interpreted as a restriction of the right of an education institution to deny the application of a person whose knowledge and/or prior results do not meet the required admission standards of that institution, as long as the refusal is not determined by the person’s belonging to a race, ethnic group, nationality, religion, social category or to a disadvantaged group, by his/her beliefs, sex or sexual orientation.



(5) The provisions under paragraphs (1) and (2) shall not be interpreted as a restriction of the right of education institutions that train religious personnel in view of being employed in worship places to deny the application of a person whose religious status does not meet the requirements established for access to the respective institution.

(6) According to the ordinance herein, any restrictions based on belonging to a race, nationality, ethnic group, religion, social category or to a disadvantaged category in the establishment and licensing of education institutions set up in accordance with the legal framework in force shall constitute an offence.'

The requirement from Art. 11 (3) had been interpreted as a certificate or letter issued by a legally established non-governmental organisation of the respective minority or declaring in its by laws interest in working on behalf of a particular minority group.

The NCCD applied the provisions of Art.11 in the context of segregation and denial of access to education cases particularly in the cases of Roma children and in the cases of children and youth living with HIV/AIDS. In a case started *ex officio* following an article in the newspaper Gândul under the headline '*La Glina, țiganii sunt exilați în clasele lor*' [In Glina Gypsies are exiled in their own classrooms], the NCCD decided in the file 22A Bis/2006, that the situation of de facto segregation amounts to direct discrimination under Art.11 of the Ordinance and sanctioned Glina school with an administrative warning.<sup>75</sup> In its decision, the NCCD mentioned the ECHR jurisprudence on Art. 14 highlighting that in finding that discrimination occurred it must be established that persons in analogous and comparable situation, receive a preferential treatment and that this distinction does not have an objective and reasonable justification, citing *Fredin v. Sweden*, *Hoffman v. Austria*, *Spadea and Scalabrino v. Italy* and *Stubbings and others v. U.K* as well as the jurisprudence of the Romanian Constitutional Court and the relevant standards spelled out in UNESCO Convention against Discrimination in Education, ICERD General Recommendation XXVII, Recommendation 4/2000 of the Council of Ministers of the Council of Europe, ECRI Recommendation no. 3. The case predated the Grand Chamber decision in *D.H. and Others v. CZECH REPUBLIC* (13 November 2007) and does not reflect upon the findings in that case. Similarly, the NCCD found against schools segregating Roma pupils in a series of cases mainly brought by a Roma NGO.<sup>76</sup>

<sup>75</sup> NCCD, Glina segregation case, in the file 22A Bis/2006. (27.08.2007).

<sup>76</sup> Romani CRISS filed on 25.01.2007 a complaint to the NCCD regarding the differentiated treatment applied to Roma pupils in Dumbrăveni by separating them from the majority pupils in grades 1st-8th and moving them from the local Theoretical Highschool to a special school. According to Romani Criss, over 90 per cent of the students in the special school are Roma, and they are transferred to the special schools because they fail to obtain passing grades in the mainstream school, and not because they have special needs. Roma parents claim that their children fail because they are seated at the back of the classroom, and the teachers do not pay due attention to them. Available at: <http://www.romanicriss.org> (20.10.2007). In a similar case, on 07.02.2007, Romani CRISS filed a complaint to the NCCD reporting on discrimination against Roma children in 3rd, 4th and 6th grade in School no. 17, and 1st, 3rd and 4th grade students in School no. 19, both in Craiova, Dolj County. These children are allegedly segregated from majority students because their parents enrol them late. Roma parents state that the teachers physically abuse their children and the educational provision is of worse quality than that received by the majority students in the same school. The NCCD issued a decision stating that discrimination occurred in the schools, and urging the school to initiate the desegregation process.



In regard of segregation in education, the Romanian Ministry of Education adopted Order no. 1540/2007 on Banning School Segregation of Roma Children and on approving the Methodology on Preventing and Eliminating School Segregation of Roma Children. The Order aims at preventing, banning and eliminating segregation, seen as a severe form of discrimination, with negative consequences on equal access of children to quality education. The Order includes sanctions for those who do not observe its provisions. Segregation of Roma remains as problem as evidenced by the Fourth Quarterly Report of a multiannual Phare programme of the Romanian Ministry of Education, Research and Youth, which stated that out of a total of 209 schools investigated, nine schools had 100 percent Roma students, and in 31 schools there were segregated classes.<sup>77</sup>

‘Equal Access to Quality Education for Roma, Romania’ a report produced by the Open Society Institute<sup>78</sup> identifies the following constraints on access to education for Roma in Romania: structural constraints, legal and administrative requirements, costs, residential segregation/geographical isolation, school and class placement procedures, and language. The report discusses the following barriers to education: school facilities and human resources, school results, curricular standards, classroom practice and pedagogy, school-community relations, discriminatory attitudes, and school inspections. Lack of identification documents acts as a significant barrier to school enrolment. The report finds that the costs for maintaining a child in school are not affordable for most Roma families: a clear connection exists between the economic status of Roma and the educational attainment of their children. Widespread geographical segregation in Romania has led to a high proportion of Roma children living in Roma-majority settlements and neighbourhoods, often at a distance from majority communities and infrastructure, including schools. According to the report, some Roma children are still placed by their parents in special schools to take advantage of meals and accommodation benefits.<sup>79</sup>

Education of pupils and students with disabilities is accommodated according to the Education Law and the special legislation on the rights of persons with disabilities. Art.15 of Law 448/2006 on special protection for persons with disabilities guarantees the right to education of the child with disabilities (not distinguishing between the different types or categories of disabilities) in the form chosen by the child, his parents or guardians.<sup>80</sup> Art. 15 (2) guarantees the right to permanent education and continuing education of persons with disabilities.

77 Access to Education for Disadvantaged Groups. See inception and interim reports of Phare RO 2004/016-772.01.01.02, available at: <http://www.acces-la-educatie.edu.ro> (22.10.2007).

78 Report produced by the Open Society Institute, EU Monitoring and Advocacy Program, Education Support Program, Roma Participation Program, in 2007. According to the report, Roma appear more likely to drop out of school than their non-Roma peers, and a much higher percentage of Roma over the age of ten have not completed any level of schooling. Segregation is a persistent and pervasive issue; the separation of Roma settlements from majority communities has led to the growth of Roma-only schools serving these settlements and neighbourhoods. Available at: <http://www.eumap.org/topics/romaed> (20.10.2007).

79 Open Society Institute, EU Monitoring and Advocacy Program, Education Support Program, Roma Participation Program, <http://www.eumap.org/topics/romaed> (20.10.2007).

80 Art. 17, Lege nr. 448/2006 privind protecția și promovarea drepturilor persoanelor cu handicap [Law on the protection and promotion of the rights of persons with a handicap] (06/12/2006).





Access to education can be realised according to Art. 16 in one of the following forms:

- a. special educational units,
- b. individual integration in regular educational institutions,
- c. special groups or classes within regular educational institutions,
- d. educational services through visiting teachers,
- e. home schooling up to the end of high school studies but not later than turning 26,
- f. education in the hospital, during hospitalization,
- g. educational alternatives.

The Education Law provides in Art. 41 for the possibility of organising home schooling for children with special educational needs who are unable to move as long as education is mandatory.<sup>81</sup> The Education Law fails to address the issue of children dropping out as a result of discrimination and harassment on grounds of disability and is establishing fines for the parents who fail to make sure that the children go to school but there is no sanction for harassment inducing drop outs. Also, the Education Law does not provide for sanctions for the schools or school inspectorates which refuse to create the appropriate schooling solutions for children.

Integration and the chance to equal opportunities in social life are recognised as critical needs in subsequent legislation. Thus, the Law on the protection of the rights of the child establishes an 'obligation for central and local public authorities to initiate projects and provide the funding to develop services targeted to satisfy the needs of children with disabilities in conditions observing their dignity, autonomy and active participation in the life of the community.'<sup>82</sup> Law 272/2004 on the protection of the rights of the child mentions that 'the child with disabilities has the right to education, recuperation, compensation, rehabilitation and integration, adapted to the own possibilities, in view of his or her personality.'<sup>83</sup> Law 272/2004 fails to provide an implementation mechanism that would allow its enforceability.

In the particular case of children living with HIV/AIDS, their right to education is provided for in Art. 3 of Law 584/2002, the framework law for the protection of persons living with HIV/AIDS which is stating that 'the persons infected with HIV or living with AIDS are entitled to social protection and non-discriminatory treatment in regard of their right to education.'<sup>84</sup> Law 584 does not include an enforcement mechanism or correlative sanctions.

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81 Art. 15. 10, Romania/Lege pentru modificarea și completarea Legii învățământului nr.84/1995, Law No. 268/2003 from June 13 2003, on amending and completing Education Law 84/1995 (13.06.2003). See also, Art. 17, Romania/Lege 519 din 12 Iulie 2002 pentru aprobarea Ordonanței de urgență a Guvernului nr. 102/1999 privind protecția specială și încadrarea în muncă a persoanelor cu handicap, Law No. 519/2002 of July 12, 2002 on approving the Emergency Ordinance 102/1999 on special protection and the employment of persons with disabilities, (29.07. 2002).

82 Art.46.4, Romania/Lege nr. 272 din 21 Iunie 2004, privind protecția și promovarea drepturilor copilului, Law 272/2004 on the protection and promotion of the rights of the child, (21.06.2004).

83 Art.46.2, Romania/Lege nr. 272 din 21 Iunie 2004, privind protecția și promovarea drepturilor copilului, Law 272/2004 on the protection and promotion of the rights of the child, (21.06.2004).

84 Art. 3, Romania/Lege 584 din 29 Octombrie 2002 privind măsurile de prevenire a răspândirii bolii SIDA în România și de protecție a persoanelor infectate cu HIV sau bolnave de SIDA, Law No. 584/2002 of October 29, 2002 on measures to prevent the spread of AIDS in Romania and to protect persons infected with HIV or suffering from AIDS, (29.10.2002).





### 3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)

*Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.*

In regard of access to and supply of goods and services, Art.10 of the Ordinance 137/2000 lists the different types of services and goods.

Different from the Directives, the 2000 Law allows for limitations when such a restriction is objectively justified by a legitimate purpose and the methods used to reach such a purpose are adequate and necessary. Law does not distinguish between private and public actors:

Art.10: 'Under the ordinance herein, the following deeds shall constitute an offence, if the deed does not fall under the incidence of criminal law, when perpetrated against a person or a group on account of their belonging or to the belonging of the management to a race, nationality, ethnic group, religion, social category or disadvantaged group, on account of their beliefs, sex or sexual orientation:

- a) the refusal to ensure legal and administrative public services.
- b) denying the access of a person or of a group of persons to public health services (choice of a family doctor, medical assistance, health insurance, first aid and rescue services or other health services)
- ...
- d) the refusal to grant a bank credit or to conclude any other kind of contract, excepting the cases when such a restriction is objectively justified by a legitimate purpose and the methods used to reach such a purpose are adequate and necessary;
- e) refusal of access for a person or a group to services offered by theatres, movie theatres, libraries, museums, exhibitions, excepting the cases when such a restriction is objectively justified by a legitimate purpose and the methods used to reach such a purpose are adequate and necessary;
- f) refusal of access for a person or a group to services offered by stores, hotels, restaurants, pubs, discos or any kind of service provider, whether private or public, excepting the cases when such a restriction is objectively justified by a legitimate purpose and the methods used to reach such a purpose are adequate and necessary;
- g) refusal of access for a person or a group to services provided for by public transportation companies – plane, ship, train, subway, bus, trolley, tram, cab, or any other means of transportation, excepting the cases when such a restriction is objectively justified by a legitimate purpose and the methods used to reach such a purpose are adequate and necessary;
- (h) refusal to grant the rights or benefits to a person or a group of persons.'



### 3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

*To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination of the Roma and other minorities or groups.*

The Anti-discrimination Law covers selling as well as renting a plot of land or a building for housing purposes, as well as illegal forced evictions and deportations on any of the grounds protected.

In infringement of Directive 2000/43, the 2000 Romanian Law allows for exemptions when such a restriction is objectively justified by a legitimate purpose and the methods used to reach such a purpose are adequate and necessary:

Art.10: 'Under the ordinance herein, the following deeds shall constitute an offence, if the deed does not fall under the incidence of criminal law, when perpetrated against a person or a group on account of their belonging or to the belonging of the management to a race, nationality, ethnic group, religion, social category or disadvantaged group, on account of their beliefs, sex or sexual orientation:

(c) the refusal to sell or rent a plot of land or building for housing purposes, excepting the cases when such a restriction is objectively justified by a legitimate purpose and the methods used to reach such a purpose are adequate and necessary.'

Art. 16 - (1) Any threats, constraints, use of force or any other means of assimilation, colonisation or forced movement of persons with a view to modify the ethnic, racial or social composition of a region or of a locality shall constitute an offence.

(2) According to the ordinance herein, any behaviour consisting in forcing a person belonging to a race, nationality, ethnic group or religion, or a community, respectively, to unwillingly leave their residence, deportation or lowering their living standards with a view to determine them to leave their traditional residence shall constitute an offence. Forcing a group of persons belonging to a national minority to leave the area or regions where they live or a group belonging to the majority population to settle in areas or regions inhabited by a population belonging to national minorities shall both represent violations of the ordinance herein.

Art. 17 - (1) Any behaviour aiming to determine a persons or group of persons to move away from a building or neighbourhood or aiming to chase them away on account of their belonging to a race, nationality, ethnic group, religion, social category or to a disadvantaged category, on account of their beliefs, sex or sexual orientation, shall constitute an offence.

(2) The provision above shall not be interpreted as a restriction of the authorities' right to enforce urbanism plans, as long as the movement is effected under the law, with fair compensation, and the measure is not determined by the person's or group's belonging to a race, nationality, ethnic group, religion, social category or to a disadvantaged category, by their beliefs, sex or sexual orientation.



The Housing Law does not mention any prohibition on discrimination in the area of housing.<sup>85</sup>

There are no official statistics on racist incidents and discrimination in housing against Roma; media and NGOs report cases of institutional violence against and assaulting of Roma, such as police raids and evictions taking place in Roma communities, without providing them with alternative accommodations.

The high prices of urban private rent and deficit of social housing as well as the high cost of public utilities is disproportionately affecting Roma and the main cases of discrimination (evictions, demolitions, spatial segregation) are concentrated at the level of Roma communities. A report on Roma situation in Romania released in August 2006, includes an annex with cases of eviction, exclusion or marginalisation of Roma, including regarding housing rights.<sup>86</sup>

A study financed by the World Bank provides relevant data for a typology of Roma communities affected by poverty with a clear focus on the spatial exclusion: 2/3 of Roma being situated at the periphery.<sup>87</sup> According to the author 23 per cent of the communities have severe problems with the infrastructure, 11 per cent are situated in the vicinity of a garbage pit, and 10 per cent are affected by a chronic lack of water.

A study conducted by the University of Architecture and Urbanism in 2006, Housing and Extreme Poverty. The Roma Communities' Case describes the typology of housing with examples of spatial discrimination. Cases exemplified by the study: the Dorohoi case is used to exemplify an attempt of the authorities to separate, using a fence, a Roma community of 48 families living in the historical centre; Valea Rece – Târgu Mureş, for the chronic lack of water (one source of water for 1600 people); and Cantonului street, Pata Rât, Cluj, for the placement of evicted people on an improper piece of land, near a railway.

The Open Society Foundation undertook in October 2006 a survey concluding that Roma have poor housing conditions, lack access to new social housing and are residentially segregated. More than a fourth of Roma households did not have a valid tenancy contract or ownership for the house they reside in.<sup>88</sup>

85 Romania/Housing Law, Law.114/1996 republished (11.101996).

86 See Romania/ Agenția de Dezvoltare Comunitară Impreună, Romania/ Romani CRISS, Overview of the Roma Situation in Romania: for European Commission consideration at the 2006 Country Report, joint submission for the European Commission, August 2006, on file with the author.

87 See the World Bank, Roma Social Mapping. Targeting by a Community Poverty Survey.

88 Rughiniș Cosima, 2007, 'Excluziunea formală a cetățenilor de etnie romă' [Formal exclusion of Roma citizens], in: Roma Inclusion Barometer, Open Society Foundation, Bucharest (p.44).



There were meagre attempts of tackling the discrimination in housing by the NCCD, with limited impact. In a 2006 complaint filed by the NGO Liga Pro Europa, the NCCD found that the segregation of the Roma community in Sfântu Gheorghe (in the form of a high cement wall separating Roma from Hungarians and Romanians) amounted to discrimination and recommended to the Sfântu Gheorghe public officials to take all measures necessary to eliminate the situation of discrimination.<sup>89</sup> The wall was not demolished and local Roma NGOs consider filing a new complaint with the NCCD or starting a criminal case.

The NCCD sanctioned discrimination on grounds of ethnicity, in the case of a group of Roma (10-11 families, approx. 120 persons) who were evicted and moved, against their will from their flats (social housing contracted with the Miercurea Ciuc city council). These families were moved outside the city, near a water waste filtering plant, in spite of clear warning against dangers of the vicinity with the plant due to the toxicity of the plant. The group was moved in metal barracks and shanty houses and the access to the houses was limited due to lack of proper infrastructure and mud.

The NCCD decided that moving the Roma families in the vicinity of the water waste filtering plant is an infringement of the right to family life and of the right to a healthy environment and amounts to discrimination and sanctioned the local authorities from Miercurea Ciuc with 4000 RON (EUR 1142) and send the case to the General Prosecutor Office in regard of criminal aspects evidenced during the investigation (the plaintiffs alleged that two children died due to toxicity and poor conditions in the new location).<sup>90</sup>

Public policies had been developed at the local level following the friendly settlement in the ECHR decision in Moldovan and Others v. Romania(1), which involved *inter alia* severely overcrowded and unsanitary environment and its detrimental effect on the health and well-being of the persons concerned. In Moldovan the Court analysed the evident racial animus on the part of authorities, the right of access, the right of occupation, and the right not to be expelled or evicted, and the principle of legal security of tenure. The Court interpreted Article 1 of Protocol 1 to the European Convention -- guaranteeing the peaceful enjoyment of one's possessions -- to include the protection of housing rights.

89 NCCD, decision Liga Pro Europa v. primaria Sf. Gheorghe, (28.02.2006).

90 NCCD, decision A.I. v. primaria Miercurea Ciuc (23.08.2005).



## 4. EXCEPTIONS

### 4.1 Genuine and determining occupational requirements (Article 4)

*Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?*

The Anti-discrimination Law uses the exemption of occupational requirements in the context of access to labour though the wording of Art.9 of Ordinance 137/2000 is not identical with the language of Art.4 of Directive 2000/43/EC leaving the future jurisprudence of the NCCD and of the courts to ascertain whether the two concepts are fully compatible:

‘the provisions of Art.5-8 (prohibition of discrimination in employment relations), cannot be interpreted as restricting the right of the employer to refuse hiring a person who does not correspond to determining occupational requirements in that particular field, as long as the refusal does not amount to an act of discrimination under the understanding of this ordinance, and the measures are objectively justified by a legitimate aim and the methods pursued are adequate and necessary.’

As the grounds covered by the Romanian Law are broader than the protected grounds of the two Directives, the differences of treatment in case of determining occupational requirements can be based not only on the five grounds mentioned in the Directives, but on all protected grounds.

### 4.2 Employers with an ethos based on religion or belief (Art. 4(2) Directive 2000/78)

*a) Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?*

The Ordinance 137/2000 does not include specific provisions on an exemption for employers with an ethos based on religion or belief to comply with Article 4(2) of Directive 2000/78, but the provisions of Art. 9 on determining occupational requirements which are recognised as exemptions under a clear legitimacy and adequacy test can be interpreted as to allow for ethos or religion based exceptions:

Art. 9 - None of the provisions of articles 5-8 shall be interpreted as a restriction of the employer’s right to refuse to hire a person who does not correspond to determining occupational requirements in that particular field, as long as the refusal does not amount to an act of discrimination under the understanding of this ordinance, and the measures are objectively justified by a legitimate aim and the methods pursued are adequate and necessary.



The Law on religious freedom and the general status of religious denominations includes provisions on labour relations taking place within state recognised religious denominations - law 489/2006 established a three tier system with traditional religious denominations being granted the status of state recognised religious denominations (*culte*), religious associations (*asociații religioase*) and religious groups (*grupuri religioase*) which do not meet the strict criteria established by the law or choose not to register as legal persons.<sup>91</sup>

According to Art.23-26 of the Law on religious freedom and the general status of religious denominations, state recognised religious denominations have the right to select, appoint, hire and discipline their own employees. Issues of internal discipline are solved according to bylaws and internal provisions by the religious courts of each denomination. Theoretically, the legal regime established in this chapter only to religious personnel of recognised denominations should be extended to religious personnel of other entities (associations and religious groups) according to the legal principle that where the reason behind a normative provision is the same, the norm applied should be the same accordingly.

b) *Are there any specific provisions or case-law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination?*

The Anti-discrimination Law and the Law on religious freedom and the general status of religious denominations fail to address the issue of potential conflicting regimes between the two or between the religious autonomy as granted by Law 489/2006 and the Labour Code.

In the case P.M.G. v.I.S. and Episcopia D., decision 16/18.01.2005,<sup>92</sup> adopted prior to the adoption of Law 489/2006, the NCCD chose to focus on the issue of individual responsibility and avoided discussing internal labour relations within the church. This decision is the only case of discrimination in employment, in the context of a religious denomination acting as employer and being accused of discriminating against one of its employees.<sup>93</sup> The NCCD noted that the discriminatory statements of the defendant (a priest) were issued in *nome proprio*, after the religious service, and did not represent the position of the Orthodox Church, noting that the hierarchy of the church tried to intervene and mediate the conflict between the priest and the plaintiff.<sup>94</sup> The defendant was fined with an administrative fine of 10,000,000 ROL (EUR 300).

91 Romania/Law 489/2006 Law on Religious Freedom and the General Status of Religious Denominations (8.01.2007).

92 Two NGOs ACCEPT and CRL filed a complaint on behalf of the victim who worked as a singer in the church choir of Biserica Adormirea Maicii Domnului, Braila County. After the religious service, the local priest presented a local newspaper with an announcement of a young gay man seeking a partner, claiming that the announcement belonged to PMG. PMG complained to the Bishop but the priest started spreading rumors in the community that PMG "goes after men" and convened a local council to investigate the private life of PMG. The NCCD found that the deeds of the priest had as effect excluding PMG from the local community and from his position as singer in the choir of the church and that he spread rumors with the effect of restricting the right to privacy and the right to dignity. See also Section 0.3 for a full presentation of the case.

93 NCCD case, decision 16/18.01.2005, Mr. P.M.G. v.I.S. & Episcopia D. The case was filed by two human rights NGOs following the complaint of a choir singer who reported being harassed by the local priest on ground of his alleged sexual orientation.

94 In the dissenting opinion, it was underlined that the priest acted as a representative of the Orthodox Church which considers homosexuality as a sin and that the priest is under a religious oath all the time.





No other case-law is reported to indicate trends in balancing the guarantee for religious autonomy (only for state recognised denominations) against the general prohibition of discrimination.

#### **4.3 Armed forces and other specific occupations (Art. 3(4) and Recital 18 Directive 2000/78)**

- a) *Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?*

The Anti-discrimination Law does not include specific provisions to comply with Art.3(4) and Recital 18 of the Directive 2000/78 but the general exemptions for a legitimate objective provided for in Art. 9 can be invoked in relation to age and disability requirements for armed forces:

Art. 9 - None of the provisions of articles 5-8 shall be interpreted as a restriction of the employer's right to refuse to hire a person who does not correspond to determining occupational requirements in that particular field, as long as the refusal does not amount to an act of discrimination under the understanding of this ordinance, and the measures are objectively justified by a legitimate aim and the methods pursued are adequate and necessary.

National defence institutions are exempted from the obligation for all authorities and public institutions, public or private legal persons with at least 50 employees to hire persons with disabilities in a percentage of at least four per cent of the total amount of employees, according to Art.78(4) of Law 488/2006.

- b) *Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?*

No specific provisions to comply with Recital 18 of the Directive 2000/78 are included in the Governmental Ordinance 137/2000, but the general exemptions for a legitimate objective provided for in Art. 9 can be invoked in relation to occupational requirements relating to employment in the police, prison or emergency services.

Public institutions dealing with public order and national security are exempted from the obligation for all authorities and public institutions, public or private legal persons with at least 50 employees to hire persons with disabilities in a percentage of at least four per cent of the total amount of employees, according to Art.78(4) of Law 488/2006.

- c) *Are there cases where religious institutions can select people (on the basis of their religion) to hire or to dismiss from a job - when that job is in a state entity, or in an entity financed by the State (example: the Catholic church in Italy or Spain can select religious teachers in state schools)? In what conditions is that selection done ? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both ?*





The Education Law, Law 84/1995<sup>95</sup> provided that Romanian public schools teach Religion as a standard subject on confessional grounds. Art. 9 of the Education Law of 1995 provides that parents and tutors of pupil and students older than 10 can either choose the state recognised religion to be studied during Religion classes according to their religious affiliation—or choose not to attend such classes. The Ministry of Education is under a duty to make all arrangements to facilitate access for religious teachers of the 18 state-recognised religious denominations according to the needs of the pupils. Under this system, the curriculum for religious education is set by the state recognised religious denomination and approved by the Ministry of Education.<sup>96</sup> The confessional model of teaching religion has a negative impact on the legal regime applicable to teaching personnel which is *de facto* in a dual relation of subordination, having to observe both internal religious norms and the general provisions on educational personnel.<sup>97</sup>

The Education Law and the Status of the Educational Personnel do not include provisions on the right of the state recognised religious denomination to select, hire or dismiss teachers of religion. However, the Law on religious freedom and the general statute of religious denominations provides in Art. 32. (2) that the state recognised denominations have wide powers in training, selecting, approving and dismissing the teaching personnel for Religion classes:

- (2) The religion-teaching staff in public schools shall be appointed in agreement with the denomination they represent, under the law.
- (3) In case a teacher commits serious violations of his denomination's doctrine or morals, that denomination can withdraw its agreement that he teach religion, which will lead to the termination of that person's labour contract.
- (4) On request, in the situation where the school cannot provide teachers of religion who are members of the denomination the students are members of, such students can produce evidence of studies in their respective religion that is provided by the denomination they are members of.

The wide competency of state recognised denominations in selecting, approving or dismissing educational personnel teaching Religion classes is conflicting with the principles established by the Labour Code and by the Status of the Educational Personnel and arbitrarily places the educational personnel teaching Religion classes in a burdensome situation. So far, no cases were reported by the NCCD or by the courts of complaints from teachers of Religion dismissed from their positions in public schools after not being deemed acceptable due to infringement of doctrinal requirements (e.g.: divorce in the case of Catholic education, single mothers or people living in consensual relations or homosexuality in the case of Orthodox education, women not willing to wear the hijab in the case of teaching Islam).

95 Education Law 84 of 1995, published as amended at Law 151 of 1999, Monitorul Oficial, No. 370/August 3, 1999.

96 Id. at Art. 9.5.

97 Promovarea interesului superior al copilului în educația religioasă. Monitorizarea educației religioase în școlile publice din România, Coordinator: Smaranda Enache, Editura Pro Europa, Târgu-Mureș 2007, available at [http://www.proeuropa.ro/norme\\_si\\_practici.html#juridic](http://www.proeuropa.ro/norme_si_practici.html#juridic) (10.02.2008)



The Law on the status of the educational personnel, Law 128/1997 provides in Art. 136 the conditions for employment of Religion teachers, on the basis of agreements between the Ministry of Education and the state recognised religions (not other religious denominations). Such agreements concluded under the domestic law provide for the structure of religious education, including the requirements for religion teachers. The law allows for cultic personnel, which graduated higher religious education or the theology seminaries, with an work experience of at least five years in the field, to teach Religion for undergraduate classes; such personnel would be paid by the Ministry of Education as teachers under the requirement of passing an exam as established by the Education Law (Art.68).

#### **4.4 Nationality discrimination (Art. 3(2))**

*Both the Race Directive and the Framework Employment Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).*

- a) *How does national law treat nationality discrimination? Does this include stateless status?*  
*What is the relationship between ‘nationality’ and ‘race or ethnic origin’, in particular in the context of indirect discrimination?*  
*Is there overlap in case law between discrimination on grounds of nationality and ethnicity (ie where nationality discrimination may constitute ethnic discrimination as well) ?*

The Romanian Anti-discrimination Law does not include specific provisions or exceptions on differences of treatment based on nationality, including stateless status according to Art.3(2) of the Directives. The Ordinance 137/2000 spells out the right to be free from discrimination on grounds of nationality in general, without further describing the notion of nationality or listing exemptions.

As the 2000 Law and the case-law do not mention any definition of ‘nationality’, ‘race or ethnic origin’ it is impossible to assess how the NCCD is using these notions, or the practice of the national equality body in cases of potential overlapping between discrimination on grounds of nationality and ethnicity.

- b) *Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?*

There are no exceptions in the Romanian Anti-discrimination Law or other pieces of legislation relying on Art.3(2) of the Directives.



#### 4.5 Work-related family benefits (Recital 22 Directive 2000/78)

*Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employee and their partner. Certain employers limit these benefits to the married partners or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note: this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.*

- a) *Does national law permit an employer to provide benefits that are limited to those employees who are married?*

Romanian legislation does not mention any provision on the right of employers to provide benefits solely to a certain category of employees (married, with children etc.). The general prohibition from Art. 6 and 8 of Ordinance 137/2000 would apply:

Art. 6 –According to the ordinance herein, the following constitute offences: discrimination on account of the race, nationality, ethnic group, social status, disadvantaged group one belongs to, respectively on account of one's beliefs, sex or sexual orientation in a labour and social protection relation, excepting the cases provided for by the law, with respect to:

...

c)granting of social rights other than the wages;

...

Art. 8 - Discrimination committed by employers against their employees with regard to the social facilities they grant their employees on account of the employees' belonging to a race, nationality, mother tongue, ethnic background, religion, sex, social status, sexual orientation or beliefs shall constitute an offence.

- b) *Does national law permit an employer to provide benefits that are limited to those employees with opposite-sex partners?*

There is no provision on the right of employers to provide benefits solely to employees with opposite-sex partners. Same-sex partnership is not recognised in the Romanian legislation. The general prohibition from Art. 6 and 8 of Ordinance 137/2000 would apply.



#### 4.6 Health and safety (Art. 7(2) Directive 2000/78)

*Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?*

*Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery etc)?*

The Ordinance 137/2000 does not provide for specific exceptions in relation to disability in the context of health and safety regulations similar to the provisions of Art.7(2) of Directive 2000/78. However, the general exception of objective and justified limitation, allowed by Art. 9 of the Ordinance would be applicable:

Art. 9 - None of the provisions of articles 5-8 shall be interpreted as a restriction of the employer's right to refuse to hire a person who does not correspond to determining occupational requirements in that particular field, as long as the refusal does not amount to an act of discrimination under the understanding of this ordinance, and the measures are objectively justified by a legitimate aim and the methods pursued are adequate and necessary.

The Anti-discrimination Law does not mention exceptions relating to health and safety law in relation to any other grounds. Similarly, the legitimacy and proportionality test indicated in Art.9 of the Ordinance 137/2000 would be applicable for exceptions based on dressing codes or religious tenants.

#### 4.7 Exceptions related to discrimination on the ground of age (Art. 6 Directive 2000/78)

Romanian legislation does not mention specific exceptions regarding discrimination on the ground of age, under the wording of Art.6 of the Directive 2000/78. Discrimination on the ground of age might be justified under Art.9 of the Ordinance stating 'the employer's right to refuse to hire a person who does not correspond to determining occupational requirements in that particular field, as long as ...the measures are objectively justified by a legitimate aim and the methods pursued are adequate and necessary.'



#### 4.7.1 Direct discrimination

- a) *Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the European Court of Justice in the Case C-144/04, Mangold ?*

The Romanian 2000 Law allows for discrimination in employment relations, including on the ground of age, under the specific test established in Art.9 of the Ordinance 137/2000. The wording of the test is compliant with the test provided by Art.6, Directive 2000/78.

Art. 9 - None of the provisions of articles 5-8 shall be interpreted as a restriction of the employer's right to refuse to hire a person who does not correspond to determining occupational requirements in that particular field, as long as the refusal does not amount to an act of discrimination under the understanding of this ordinance, and the measures are objectively justified by a legitimate aim and the methods pursued are adequate and necessary.

It is up for future case-law to confirm compliance of the Romanian test in assessing whether discriminatory measures are objectively and reasonably justified by a legitimate aim, including a legitimate employment policy (such as the objective of encouraging professional reinsertion of senior workers), labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

In its decision no.42 from 09.01.2008, in the file 498/2007, in the case F.K v. Ministerul Educației, Cercetării și Tineretului [Ministry of Education], Inspectoratul Școlar Județean M. [M. county school inspectorate], the NCCD noted that the refusal to allow the plaintiff to participate in a competition for the position of school director because he had less than four years before reaching the pensionable age amounts to discrimination. The refusal was based on an Order of the Ministry of Education<sup>98</sup> which provided that 'at the date of the competition, candidates should have an age with at least four years less than the standard pensionable age.' The NCCD considered that the refusal to allow the plaintiff to participate in the competition for a position of school director is discriminatory and recommended to the Ministry of Education to modify the criteria for the competitions for the position of school director.<sup>99</sup>

In a 2006 decision, I.N. v. Administrația Națională a Penitenciarelor [National Administration of Penitentiaries], the NCCD found that the age limit of less than 35 established for taking the exam in the case of penitentiary agents was discriminatory and recommended to the Ministry of Justice and to the National Administration of Penitentiaries to modify this requirement, in spite of claims of the authorities that a lower age is required in order to secure 'dynamism, flexibility and optimism.'<sup>100</sup>

98 Ordinul Ministrului Educației și Cercetării nr. 5617 (14.11.2006).

99 NCCD, decision no.42 from 09.01.2008, in the file 498/2007, in the case F.K v. Ministerul Educației, Cercetării și Tineretului [Ministry of Education], Inspectoratul Școlar Județean M. [M. county school inspectorate].

100 NCCD, decision I.N. v. Administrația Națională a Penitenciarelor [National Administration of Penitentiaries], (11.05.2006).



*b) Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?*

The Romanian Anti-discrimination Law does not include any specific provision allowing for differences in treatment based on age for any activities within the material scope of the Directives.

The Labour Code provides for specific protective measures in relation to employees under 18 who have a work program of six hours/day and 30 hours/week (Art.109), cannot work supplementary hours (Art.121) or during the night shift (Art.125), have a lunch break of at least 30 minutes (Art.130), have a supplementary vacation of three days (Art.142).

*c) Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits under it taking up the possibility provided for by article 6(2) ?*

The Romanian Anti-discrimination Law does not include any specific provision on the right of occupational pensions schemes to fix ages for admission to the scheme or for entitlement to benefits as allowed by Art.6(2) of Directive 2000/78. The Law 411/2004 on private pensions makes participation in private pension schemes mandatory for people under 35.

The special law on pensions, Law 19/2000 on the public pension system and other social security rights<sup>101</sup> establishes the general age for retirement (60 for women, 65 for men) and the required number of years of contribution to the pension schemes (at least 30 years of participation for women and 35 for men). Law 19/2000 provides for different criteria of calculation in special cases (work in the nuclear sector, pilots, mining etc.). The law established a unified public pension system, integrating the majority of former independent systems; the only system left outside is the pension system for militaries.

#### **4.7.2 Special conditions for young people, older workers and persons with caring responsibilities**

*Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.*

The Anti-discrimination Law does not mention special conditions for younger or older workers or persons with caring responsibilities.

The Labour Code provides for specific protective measures in relation to employees under 18 who have a work program of six hours/day and 30 hours/week (Art.109), cannot work supplementary hours (Art.121) or during the night shift (Art.125), have a lunch break of at least 30 minutes (Art.130), have a supplementary vacation of three days (Art.142).

<sup>101</sup> Romania/ Law 19/2000 Law on the public pensions system and other social benefits.(17.03.2000).





Employers might receive fiscal facilities if they hire students during the vacation or fresh graduates, according to Law 76/2002.<sup>102</sup> Art.80 of Law 76/2002 provides that employers who hire young graduates for at least three years, are exempted from paying the fiscal contributions for the unemployment public fund, for the graduates hired for 12 months and receive a monthly contribution from the state which can be the minimum average income or higher depending on the education of the employee. According to Art. 85 of the Law 76/2002, employers hiring unemployed people who are over 45, or unemployed persons who are with caring responsibilities (sole parent) receive similar facilities. The employers are under a duty to maintain the work relation for at least two years.

The Labour Code as modified by Law 371/2005 provides an exception from the general prohibition against individual labour contract on a determined period of time, and allows such contracts in Art. 81 d) in the case of a person who is looking for employment and who will reach the standard pensionable age in five years.

#### 4.7.3 Minimum and maximum age requirements

*Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?*

There are no exceptions permitting minimum and/or maximum age requirements in relation to access to employment. The Labour Code established the minimum age in relation to access to employment, which is of 16, according to Art. 13 of the Labour Code, or 15, with the approval of the parents or of the guardians, 'if the health, and professional development are not jeopardized.' Employment of children under 15 is prohibited.<sup>103</sup>

#### 4.7.4 Retirement

*In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).*

- a) *Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?*

The Law 19/2000 on the public pension system and other social security rights<sup>104</sup> establishes the general age for retirement. Art. 41(2) of the Law 19/2000 establishes that 'the standard retirement age is of 60 for women and 65 for men, and the standard retirement age will be reached in 13 years from the adoption of the law, by gradually increasing the pensionable age, starting with 57 for women and 62 for men, according to the annex.' Besides the standard retirement age, potential pensioners are required to fulfil a number of years of contribution to the pension schemes (at least 30 years of participation for women and 35 for men).

102 Romania/Law 76/2002 on the system of funds for unemployment and encouraging occupation/ Legea nr.76/2002 privind sistemul asigurărilor pentru șomaj și stimularea ocupării forței de muncă.

103 Romania/ Codul Muncii [Labour Code] (24.01.2003).

104 Romania/ Law 19/2000 Law on the public pensions system and other social benefits.(17.03.2000).



According to Law 19/2000 the pensions are calculated based on an announced formula, using points and taking into account the employee's contribution and the contribution period; one pension point is equal with 45 per cent from the average gross salary paid in Romania; the pay-as-you-go (PAYG) system become a combined one: defined benefits for minimum stage of contribution and defined contribution for the rest.<sup>105</sup>

The individuals who reach the pensionable age but want to work longer, can carry on their activities if the employers agree. After retiring, pensioners can work under an individual work contract or under a civil convention. In this case, the pensioners can collect both the pension and the salary received for their professional activity, no matter the amount collected. There are limitations provided in relation to the number of hours pensioners can work: minimum two hours/day or eight hours/day.

The individuals who retired before reaching the statutory age, for medical reasons, cannot work while collecting the pension.

In the case dr. D.M., dr. I.G., dr. V.O., dr. D.A., dr. L.P. v. Colegiul Medicilor [the College of Medical Doctors] from 27.06.2006 the NCCD found that the different retirement age for men and women established by the Law 95/2006 regarding the reform in the public health system is discriminatory and recommended to the Ministry of Health to make adequate changes.<sup>106</sup> The NCCD noted that 'the different pensionable age for men and women was intended to be an affirmative measure but it is *de facto* a discriminatory provision, meaning that for a similar type of work, under the same category and the same number of years of contribution, women have to retire earlier than men.' The NCCD indicated that 'such a provision could be perceived as an affirmative measure if the retirement of women at 60 would be optional and not a legal obligation.'

b) *Is there a normal age when individuals can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?*

In addition to the public PAYG pension, a mandatory personal accounts system was introduced at the beginning of 2007. A system of voluntary pension schemes also started operating in 2007.

<sup>105</sup> The pension is calculated using a points system: the employee receives a maximum of three credit points per full years of earnings at or above the average economy-wide wage. The pension points are calculated as the ratio of the individual's monthly gross wages and other compensation to the national average monthly gross wage for that year. The employee's pension is determined by multiplying the pension points with the pension point value, which is laid down in the social security budget law every year. The system aims to ensure a pension of 45% of the average wage in the year of retirement for an employee with a full career. By 2015, the full old age pension will be payable to men aged 65 with 35 years of service and women aged 60 with 30 years of service. Early retirement of up to 5 years is possible if the full service period has been fulfilled. See, OECD Report: Romania, <http://www.oecd.org/dataoecd/13/30/38708660.pdf> (06.05.2008).

<sup>106</sup> Law 95/2006 regarding the reform of the public health system, amended the provisions of the Law 221/2005 which established the retirement age for medical doctors at 65, irrespective of gender, to establish that the retirement age for women medical doctors is 60 and for men is 65, excepting the situation of persons who have a Ph.D. in Medicine for whom the retirement age can be 65 for women and 70 for men.



Participation in pension schemes (*pensii private*) is compulsory for employees beginning with 2007, according to Law 411/2004 on private (universal) pension schemes. Any worker under the age of 35 should become a contributor to a private pension fund. The contributions are optional for the active workers between the ages 36-45. The retirement age is the same as for the social security pension, with the law providing the possibility to request retirement 5 years earlier if the participant has reached the full contribution period.

A voluntary system of contributions is established by Law 204 from May 2006 on facultative pension schemes<sup>107</sup> according to which the occupational pension schemes are considered facultative/ optional pension schemes proposed either by the employers or by the employers and the unions. Employees and the self-employed may participate in voluntary schemes. Participation is voluntary for employees. Employees can participate in as many occupational schemes as they wish and cumulate pension rights and benefits. The contribution can be shared between employer and employee in accordance with the scheme regulations or a collective agreement. Employees may at any time change the level of contributions or cease paying contributions altogether, but must notify the employer and the administrator. Participants can retire when they reach the age of 60 years (both men and women), under the condition of having made contributions for a period of at least 90 months.

c) *Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, if so please state which. Have there been recent changes in this respect or are any planned in the near future?*

The state-imposed retirement age is not mandatory as the persons of pensionable age who want to carry on their activities, can do so, if their employers agree.

The Labour Code establishes the possibility in Art.61 e) for the employer to ask for the termination of employment relations when the employee reached the standard pensionable age and has contributed the required number of years to the state contribution schemes, even if the employee did not file a request for retirement. The law does not specify if the opposition of the employee triggers any effect. In practice, if the legal conditions are met the request of the employer is followed by the termination of the contract.

Special laws provide for limitations in certain sectors such as education. Art.128 of Law on the status of the educational personnel, Law 128/1997 establishes that undergraduate teaching personnel, proving extraordinary professional competencies, can be maintained on a tenure track for up to three years after the retirement age, with the approval of the council of teachers of that educational unit. Academics, who earned a Ph.D. degree can maintain their activity until they are 65 - in the case of individuals with exceptional professional competencies, upon request, the faculty senate can approve annually the continuation of their work, until they are 70, according to Art. 129.

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107 Romania/Law 204/2006 on Facultative Pensions Schemes (22.05.2006).



The National Collective Contract for 2007-2010, signed according to Art. 10 of Law 130/1996 on collective labour contracts<sup>108</sup> provides in Art.24 that for certain sectors (difficult conditions of labour, dangerous, poisoning or embarrassing conditions), the employees can benefit of reductions of the pensionable age, according to special laws and special collective contracts concluded at the level of each sector of the economy.

d) *Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?*

The National Collective Contract for 2007-2010<sup>109</sup> allows for reductions in the pensionable age in certain sectors (difficult conditions of labour, dangerous, poisoning or embarrassing conditions), according to special laws and special collective contracts concluded at the level of each sector.

The standard pensionable age cannot be increased as Art.38 of the Labour Code provides that ‘the employees cannot give up on the rights recognised by law. Any transaction having as purpose the renouncement of rights provided for the employees in the law is null and void.’ Similarly, Art.238 of the Labour Code provides that the collective contracts can not include clauses introducing less rights than those established in the collective contracts signed at the national or higher level. ‘Individual work contracts cannot include clauses establishing less rights than those guaranteed in the collective contracts.’

If discriminatory retirement ages would be established as a result of collective bargaining or individual contracts, the NCCD would sanction them as discriminatory treatment. An analogy can be drawn with the NCCD decision in the case Uniunea Sindicatelor Libere din Învățământul Preuniversitar [the Undergraduate Education Trade Union] v. Ministerul Educației și Cercetării [the Ministry of Education], from 16.04.2007, file no. 78/2007, in which the NCCD sanctioned the fact that teaching and auxiliary educational personnel, received a minimum gross salary lower than the minimum gross salary provided at the national level in the National Collective Contract for 2007-2010. The NCCD recommended to the Ministry of Labour, Social Solidarity and Family to make relevant changes to ensure that the minimum gross salary – as a social protection measure – is the same for all categories of employees.<sup>110</sup>

108 The National Collective Contract for 2007-2010, signed according to Art. 10 of Law 130/1996 (29.01.2007).

109 The National Collective Contract for 2007-2010, signed according to Art. 10 of Law 130/1996 (29.01.2007).

110 NCCD, case Uniunea Sindicatelor Libere din Învățământul Preuniversitar [the Undergraduate Education Trade Union] v. Ministerul Educației și Cercetării [the Ministry of Education], from 16.04.2007, file no. 78/2007.



- e) *Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment or are these rights lost on attaining pensionable age or another age (please specify)?*

*For these above questions, please indicate whether the ages are different for women and men.'*

The general anti-discrimination law does not include any provisions on different treatment in relation to protection against dismissal on grounds of age.

The Labour Code protection against dismissal applies to all workers irrespective of age, including in the case of persons who reached pensionable age and choose to continue working with the approval of the employer. If the employee reached the standard pensionable age and has contributed the required number of years to the state contribution schemes, the employer can ask for the termination of employment relations, even if the employee did not file a request for retirement or opposes to the termination of the labour relations, according to Art.61 para. e).

The National Collective Contract for 2007-2010 provides for an exemption in the case of effective reductions of personnel.<sup>111</sup> According to Art.81 of the National Collective Contract, after reducing vacant positions, personnel reductions will be done under the following priority scheme:

- a. individual work contracts of those having two or more positions as well as of those collecting both a pension and a salary;
- b. individual work contracts of those who fulfil the standard requirements of age and period of contribution for retirement but who did not requested to be retired;
- c. individual work contracts of those who fulfil the standard requirements of age and period of contribution for retirement, upon their request.

#### **4.7.5 Redundancy**

- a) *Does national law permit age or seniority to be taken into account in selecting workers for redundancy?*

Age or seniority are not expressly taken into consideration in selecting workers for redundancy but Art.81 of the National Collective Contract, introduces the concept of pensionable age as after reducing vacant positions, personnel reductions should be done under the following scheme:

- a. individual work contracts of those having two or more positions as well as of those collecting both a pension and a salary;
- b. individual work contracts of those who fulfil the standard requirements of age and period of contribution for retirement but who did not requested to be retired;
- c. individual work contracts of those who fulfil the standard requirements of age and period of contribution for retirement, upon their request.

<sup>111</sup> Effective reductions of personnel as provided for in the National Collective Contract involve funding made available from different budgetary sources than regular retirement schemes.



*b) If national law provides compensation for redundancy, is this affected by the age of the worker?*

There are no provisions on different levels of compensation for redundancy depending on the age of the worker in the anti-discrimination legislation or in labour legislation.

#### **4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)**

*Does national law include any exceptions that seek to rely on Article 2(5) of the Framework Employment Directive?*

The Anti-discrimination Law does not include language mentioning that anti-discrimination measures should be taken without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others. Specific articles allow for exceptions when the measures are objectively justified by a legitimate aim and the methods pursued are adequate and necessary (Art.9, Art.10 and 11 of the Governmental Ordinance 137/2000).

National defence institutions and public institutions dealing with public order and national security are exempted from the obligation for all authorities and public institutions, public or private legal persons with at least 50 employees to hire persons with disabilities in a percentage of at least four per cent of the total amount of employees, according to Art.78(4) of Law 488/2006.

#### **4.9 Any other exceptions**

*Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.*

No other exceptions are provided in the national law.





## 5. POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

- a) *What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case-law or relevant legal/political discussions on this topic*

Art.2(9) of the Governmental Ordinance 137/2000 defines positive action as an exemption from the prohibition against discrimination stated in Art.2 as:

‘Measures taken by public authorities or by legal entities under private law in favour of a person, a group of persons or a community, aiming to ensure their natural development and the effective achievement of their right to equal opportunities as opposed to other persons, groups of persons or communities, as well as positive measures aiming to protect disadvantaged groups, shall not be regarded as discrimination under the ordinance herein.’

The definition of positive action in the Romanian legislation is not limited to racial or ethnic origin, religion or belief, disability, age or sexual orientation and covers all protected grounds.

Positive action measures came under the attack of extreme-right groups such as *Noua Dreapta* [New Right]<sup>112</sup> which filed petitions with the NCCD all of them being quashed. In a distinct case of the NCCD, the decision 433 from 05.11.2007, file number 448/2007, C.E v. C. where the denial of access to special measures in relation to a Roma student had been questioned, the NCCD cited the jurisprudence of the European Court of Justice in relation to the principle of equality which prohibits a different treatment for comparable situations, excepting the cases when the treatment has an objective justification. The NCCD stated that ‘the measures adopted by the Romanian authorities, in particular the Ministry of Education in relation to Roma pupils had the purpose of ensuring the equality of opportunities, resulting in the implementation of affirmative measures. Such affirmative measures, by their own nature, had as purpose progressive equalization of the situation of Roma children from the perspective of opportunities for chances in education, in order to bring them in the position of pupils in a similar analogous situation with other pupils. The Ministry of Education prepared specific procedures in order to implement such measures.’<sup>113</sup>

In its assessment of positive action, the NCCD stated that ‘employment of persons belonging to minority communities implies an affirmative measure in relation to that particular community. Such a measure can be maintained only until the objectives are reached and not afterwards.

112 Noua Dreapta [New Right] is a non-governmental organisation registered in Romania. It acknowledges its descent from the interwar fascist movement of Legionari, whose head was Corneliu Zelea Codreanu – executed by the Romanian authorities during the operation to eliminate reactionary, undemocratic movements. See more information on the organisation’s website <http://www.nouadreapta.ro>.

113 NCCD, case C.E v. C decision no. 433 from 05.11.2007, file number 448/2007. The plaintiff complained that her son was not accepted on special places for Roma students in the institution of his choice as the application filed for her son under a particular procedure was set aside by his teachers being replaced with a fake application on his behalf. The NCCD found that the plaintiff did not observe the special requirements in filing the application to qualify for special places for Roma students and decided that discrimination took place as alleged by the plaintiff.



When the percentage of the employees from a community in a particular institution corresponds with the percentage of the respective community in the area of its location, affirmative measures cannot be maintained because they would create in themselves a situation of inequality.’<sup>114</sup>

- a) *Do measures of positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted., classifying them into broad social policy measures, quotas, ~~reasonable accommodation for people with disabilities~~ or preferential treatment narrowly tailored.*  
*Refer to measures taken in respect of all 5 grounds, in particular refer to the measures related to disability and any quotas for access of people with disabilities to the labour market, any related to Roma and regarding minority rights based measures.*

Besides the definition of affirmative measures in the Anti-discrimination Law, specific legislation introduces affirmative measures in relation to particular groups: Roma, children and youth, particularly children and youth living with HIV/AIDS, persons with disabilities, single parents, unemployed, socially vulnerable or senior citizens.

The Law 488/2006, on the promotion and protection of the rights of persons with a disability introduces in Art. 78(2) the obligation for all authorities and public institutions, public or private legal persons with at least 50 employees to hire persons with disabilities in a percentage of at least four per cent of the total amount of employees. The institutions which fail to hire persons with disabilities according to the law can choose between:

- a. monthly payment of an amount representing 50 per cent of the minimal average salary for each position they were supposed to open up for a person with disabilities and failed to;
- b. to use products and services from authorized protected units on the basis of a partnership, in the quantum of the amount owed to the state budget.

Among the affirmative measures provided for persons with disabilities in Law 448/2006 include:

- free medical assistance, including free medication, reimbursement for supportive devices and disability-related equipment – Art.10;
- pupils with disabilities receive free meals and accommodation in school boarding - Art.16 (7);
- students with disabilities (serious and accentuated disability) receive upon request a waiver of 50% for meals and accommodation in school canteens and student dormitories – Art. 16(8);
- persons with disabilities have priority in being assigned public housing -Art.20;
- persons certified with a serious disability can receive an supplementary room and have a minimal rent in public housing -Art.20(2);

<sup>114</sup> NCCD, decision A.M. v. Direcția Generală a Finanțelor Publice a județului Harghita, [A.M. v. Harghita county Public Finances General Inspectorate], decision no. 43 from 09.01.2008, file number 353/2007.



- persons with a serious or accentuated disability have free transportation on all venues in urban public transportation, this benefit applies also to assistants of persons with serious disability, assistants of children with accentuated disability, assistance of persons with accentuated hearing and mental disabilities, based on a social inquiry conducted by a social assistant from the local mayor's office, personal assistants of persons with a serious disability and professional assistants of persons with a serious or accentuated disability – Art.23;
- persons with a serious or accentuated disability have the following fiscal facilities – Art.26:
  - a) exemption from paying income tax for salaries and similar income;
  - b) exemption from paying land and property taxes;
  - c) exemption from paying taxes for cars, bikes, motorbikes adapted to the disability;
  - d) exemption from paying the tax for issuing the authorization for functioning for economic activities and the annual certification;
  - e) exemption from paying hotel tax.
- adults with a serious or accentuated disability can receive a credit and the interest will be paid from the state budget in case of acquiring a vehicle or adapting a house according to personal access needs – Art.27;
- persons with a disability owing cars adapted to their disability are exempted from paying the fees for using the national roads – Art.28;
- the adult with a disability receives the following amounts monthly – Art. 58(4):
  - a) monthly indemnity, no matter what income the person has:
    - 1. RON 179(EUR 50) for adult with a serious disability;
    - 2. RON 147 (EUR 40) for adult with accentuated disability;
  - b) monthly personal complementary budget, no matter what income the person has:
    - 1. RON 80 (EUR 20) for adult with a serious disability;
    - 2. RON 60 (EUR 16), or adult with accentuated disability;
    - 3. RON30 (EUR 8), for adult with a medium disability.
- any person with a disability who wants to be integrated and work, has access to free evaluation and professional counselling, no matter what age, type or category of disability he or she has – Art. 72;

The Housing Law, Law 114/1996 provides for access to social housing for families with a low income, youth below 35, youth coming from social protection institutions who are more than 18, persons with disabilities, retired persons, veterans and widows of war veterans.

In the particular case of Roma, the National Strategy for Improving the Situation of Roma<sup>115</sup> provides for obligations to establish positive measures in rather general terms:

- Affirmative action regarding the employment of Roma in central and local administration;

<sup>115</sup> See Romania/ Government Decision 522/2006, regarding the modification and adjustment of the Government Decision 430/2001 regarding the Romanian Government's Strategy on the Improvement of the Roma Situation, (19.04.2006), available at: <http://www.anr.gov.ro/strategia-anr/>



- Designing and implementing special programs for training and professional reconversion for Roma;
- Adopting legislative measures to support Roma with the purpose of ensuring facilities in the field of education for Roma and from the perspective of promoting Roma in administration of educational institutions;
- Increasing fiscal facilities for legal persons hiring employees coming from families with many children and without adequate means;
- Increasing the number of medical personnel of Roma ethnicity by establishing special Roma places for Roma students in public medical schools;
- Designing and implementing specific programs for funding income-generating activities and micro businesses for Roma families and communities, including Roma women;
- Reducing Roma unemployment rate and combating discrimination in employment by establishing facilities for employers hiring Roma;
- Supporting small businesses belonging to Roma entrepreneurs by providing preferential credits;
- Hiring Roma personnel in child protection institutions;
- Establishing facilities and financed places for young Roma who want to undertake graduate education;
- Attracting Roma youth towards institutions training civil servants and personnel for public institutions (Social Assistance, Public Administration, Medical faculties, military and police academies).

Though there is no comprehensive analysis of the implementation of the National Strategy for Improving the Situation of Roma,<sup>116</sup> many of these provisions were defined as merely declarative intentions, lacking follow up implementing measures, with the outstanding exception of the area of education where quotas are established every year for most universities and for high schools. The October 2007, annual report on the state of education in Romania/ Starea învățământului din România of the Minister of Education, Research and Youth<sup>117</sup> mentions between 2-3000 special places set aside for Roma students who have completed the 8<sup>th</sup> grade to transfer to the 9<sup>th</sup> grade in upper secondary education, and 454 special places in 2007 in universities as well as 422 scholarships granted in 39 universities for Roma students. Internal regulations of universities establish the procedures for accessing such special places, most requiring a letter from a Roma NGO or a community leader indicating ethnicity.

116 There are isolated reports and evaluations of the National Strategy (e.g. see EUMAP).

117 Report available at: <http://www.edu.ro/index.php/articles/8907> (20.10.2007).



## 6. REMEDIES AND ENFORCEMENT

### 6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

#### a) *What procedures exist for enforcing the principle of equal treatment (judicial/administrative/alternative dispute resolution such as mediation)?*

In the event of an alleged act of discrimination, the victim of discrimination or any person interested can choose between filing a complaint with the NCCD, and/or filing a civil complaint for civil damages with the court of law, unless the act is criminal and in such a case the Criminal Code provisions apply. The two venues (NCCD and civil case) are not mutually exclusive and the plaintiff can choose to use them simultaneously, which in practice creates problems for the parties, the NCCD and the judiciary. The complaint with the NCCD might result in an administrative sanction (administrative warning or fine), while the civil case results in civil damages payable to the victim of discrimination, re-establishing *staus quo antes*, the situation as prior to the act of discrimination occurred or nullifying the situation established as a result of the discrimination, in accordance to civil law provisions on torts.

#### a.1. NCCD as preferred venue in tackling discrimination

Any individual or any legal entity with an interest can file a complaint with the NCCD within one year of the event of alleged discrimination or from the date when that person could have known about the discrimination. According to Art.19 of Ordinance 137/2000, the NCCD can also initiate cases *ex officio* and it used this mandate in many cases reported by the media. The NCCD has 90 days to investigate the case, organise hearings and sub poena all parties and decide whether anti-discrimination provisions were breached.

The NCCD rules on the existence of a discriminatory act and issues an administrative sanction while compensation claims for discrimination can be decided only in the civil court. The NCCD findings of discrimination and its sanctions can be appealed before the administrative courts in 15 days after their communication, by any of the parties. In 2006, for example, the decisions of the Council had been appealed before the courts of law in 46 cases out of the 376 decisions issued by the NCCD (approximately eight per cent) and the courts maintained the decisions of NCCD in 34 cases and quashed the decisions of the NCCD in six cases – the provisional statistics offered by the NCCD do not distinguish between the different types of cases.<sup>118</sup>

The NCCD can try to solve the conflict by using mediation, or can issue administrative sanctions: administrative warnings (which are mere written findings of discrimination with recommendations for redress and carrying no pecuniary penalty) and fines.<sup>119</sup>

<sup>118</sup> Consiliul Național pentru Combaterea Discriminării (CNCD) [the National Council on Combating Discrimination (NCCD)], Raport de activitate, 2006, [Report 2006].

<sup>119</sup> The amount of the fines differs: when the victim is only one individual, the amount varies from 400 RON to 4,000 RON (EUR 114-1,114) when the victims are a group or a community (e.g.: ethnic minority or the LGBT community as a group), the fine ranges between 600 and 8,000 RON (EUR 170-2,285).





The NCCD has informally developed a practice of adopting recommendations carrying no financial damages when the perpetrators are central governmental agencies or public actors (e.g. discrimination is triggered by a minister's orders or the internal regulations of central public administration).<sup>120</sup> Access to the NCCD is fairly easy, no legal representation being required and the burden of proof is shared between the victim and the defendant.

#### a.2. Civil courts as preferred venue in tackling discrimination

The 2006 amendments of the Anti-discrimination Law underlined the optional character of the administrative procedure for sanctioning discrimination before the NCCD.<sup>121</sup>

According to Article 27 of Government Ordinance 137/2000, the person who considers him or herself discriminated against has three years to file a complaint for civil damages, requesting moral and pecuniary damages, or re-establishing *status quo antes* or, nullifying the situation established as a result of the discrimination, according to civil law. Such cases are based on the general torts clauses, articles 998-999 of the Civil Code on liability for damages but are exempted from judicial taxes. The procedure before the civil courts entails several modifications as the Anti-discrimination Law introduces the concept of sharing the burden of proof - 'the interested party has the obligation to prove the existence of facts which allow the existence of direct or indirect discrimination to be presumed, and the party against whom a complaint was filed has the duty to prove that the facts do not amount to discrimination.' Also, the 2006 amendment of the Anti-discrimination Law allowed as means of proof for acts of discrimination any type of evidence, including audio and video recordings, as well as statistical data.<sup>122</sup>

The courts of law can also decide according to Art.27 of the Ordinance that the public authorities will withdraw or suspend the authorisation of legal persons who caused significant damage as a result of discriminatory action or who repeatedly infringed the provisions of the anti-discrimination legislation.

Courts decide independently, but, if the NCCD has issued a decision prior to the civil case, the NCCD decision has the benefit of a strong presumption of legality and such a decision can be used before the civil court in proving discrimination, liability and the existence of damages. This presumption in favour of the NCCD decision is not, however, absolute and the defendant can challenge the legality of the decision by the NCCD and submit evidence which would lead the civil court to pass over the NCCD decision.

#### a.3. Criminal cases

Victims of discrimination can invoke the provisions on insult and slander in the Criminal Code. The law of July 2006 amending the Criminal Code<sup>123</sup> introduced hate speech, as incitement to discrimination based on any of the grounds of discrimination sanctioned by the anti-discrimination law.<sup>124</sup>

120 See NCCD Decision 260, ACCEPT v. the Ministry of Health (29.08.2007)

121 See Article 21 of Romania/ Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, amended (20.07.2006).

122 See Article 19-5 para. (6) and Article 21 para.4 of the Romania/ Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, amended (20.07.2006).

123 Romania/Lege 278/2006 on the amendment and completion of the Criminal Code, and on the amendment and completion of other laws (04.07.2006).

124 Article 317 of the Criminal Code.





This broadened the scope of application of an earlier provision which criminalised only ‘national and xenophobic propaganda’ and incitement to racist and nationalistic hatred. The 2006 amendments of the Criminal Code also introduced the legal aggravating circumstance for any criminal offence conducted with discriminatory motivation on any ground mentioned by the Anti-discrimination Law,<sup>125</sup> and expanded the list of grounds protected in the case of two criminal offences already existing in the Criminal Code: abuse in the exercise of power by a civil servant (Article 247) and incitement to hatred (Article 317).<sup>126</sup>

*b) Are these binding or non-binding?*

The decisions of the NCCD as well as the decisions of courts are binding.

*c) Can a person bring a case after the employment relationship has ended?*

*In relation to each, please note whether there are different procedures for employment in the private and public sectors.*

*In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body)?*

*Are there available statistics on the number of cases related to discrimination brought to justice ? If so, please provide recent data.*

The anti-discrimination Law specifies in Art.20 that any individual or any legal entity with an interest can file a complaint with the NCCD within one year of the event of alleged discrimination or from the date when it was reasonable to expect that the person knew about the discrimination. The case before the civil courts can be filed in maximum three years from the event. There is no requirement of continuing employment relationship while bringing a case on employment both in the private or in the public sector.

Cases brought before the NCCD or before the courts of law under the Anti-discrimination Law are exempted from judicial taxes according to Art.27 of the Ordinance 137/2000.

The presence of a lawyer is not necessary before the NCCD, as the institution provides minimal legal guidance. It is up to the parties to hire a lawyer if they want to. The 2006 amendments to the law introduced strict deadlines which will hopefully solve the problem of the backlog of cases.

<sup>125</sup> Article 75. (1), point c<sup>1</sup> of Romania/ Criminal Code amended in 2006.

<sup>126</sup> Article 247 and Article 317 of Romania/ Criminal Code amended in 2006.



## 6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

*Please list the ways in which associations may engage in judicial or other procedures*

- a) *in support of a complainant*
- b) *on behalf of one or more complaints (please indicate if class actions are possible)*

Art.28 of the Romanian Anti-discrimination Law creates legal standing for NGOs with an interest in combating discrimination:

- (1) Human rights non-governmental organisations can appear in court as parties in cases involving discriminations pertaining to their field of activity and which prejudice a community or a group of persons.
- (2) The organisations provided in the above paragraph can also appear in court as parties in cases involving discrimination that prejudice a person, if the latter delegates the organization to that effect

Trade unions are not specifically mentioned as having legal standing but the NCCD and the courts interpreted Art. 28 as applying to trade unions as well.<sup>127</sup>

Class actions are not allowed under Romanian law. Association having as mandate protection of human rights and combating discrimination can file complaints on their own behalf when the target of discrimination is a group or a community and can intervene on behalf of one individual if the victim delegated the association. Not mentioned specifically by the law but accepted in the practice of the NCCD is to allow associations to submit amicus briefs in support of a complainant. The internal procedures of the NCCD mention the possibility of *amicus curiae* from NGOs with expertise in a particular field.<sup>128</sup>

<sup>127</sup> NCCD, Uniunea Sindicatelor Libere din Învățământul Preuniversitar v. Ministerul Educației și Cercetării, file no. 78-2007, 16.04.2007. NCCD, Sindicatul Liber al Sticlarilor din cadrul SC STIPO SA Dorohoi v. SC STIPO SA Dorohoi, file no. 282+2006, 13.03.2007.

<sup>128</sup> Romania/ Consiliul Național Pentru Combaterea Discriminării Ordin nr. 144 din 11 aprilie 2008 privind aprobarea Procedurii interne de soluționare a petițiilor și sesizărilor, NCCD Order approving the internal procedure in solving petitions.



### 6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

*Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).*

The 2006 amendment to the Romanian Anti-discrimination Law introduced the concept of 'sharing the burden of proof.' According to Art.20 (6) and Art.27 (4) of GO 137/2000:

'the person interested has the obligation of proving the existence of facts which allow to presume the existence of direct or indirect discrimination and the person against whom a complaint was filed has the duty to prove that the facts do not amount to discrimination.'

The wording of the provision on the burden of proof mentions cases of direct and indirect discrimination, but the NCCD used the definition of direct discrimination in cases concerning different types of discrimination (including harassment or victimisation). Though not completely complying with the provisions of Art. 8 Directive 2000/43 and Art.10 Directive 2000/78, the provisions on the burden of proof are a novelty in the context of an extremely conservative Romanian civil procedure under which only written documents and witnesses are allowed as means of proof and the general rule is that the proof is incumbent on the applicant. During the parliamentary debates for the amendment of the anti-discrimination law in view of introducing the principle of the shift in the burden of proof, the representatives of the national equality body had to use the argument of the EU accession in order to convince the deputies to agree with such a radical change. While the NCCD's interpretation of this provision was to comply with the Directives, judicial interpretation varied and some courts interpreted it as placing an unreasonable burden on the victim, in contradiction of the substantive provisions of the Directives.<sup>129</sup>

In the case M.D. v. Palatul National al Copiilor, decision no. 256 from 17.09.2007 in file no. 380/2007, regarding the complaint of M.D. against the institution which refused to hire him as teacher on grounds of his being certified as having an accentuated disability,<sup>130</sup> the NCCD applied the shifting in the burden of proof and noted that the plaintiff as person interested proved that he was rejected from being hired and that he had the competencies required for the position, while the defendant failed to prove that the refusal to hire the plaintiff did not amount to discrimination according to Art.20 (6) and sanctioned the employer, through its legal representative with an administrative fine of RON 400 (EUR 111).<sup>131</sup>

<sup>129</sup> Judges participating in training sessions on combating discrimination within the National Institute for Magistrates declared that they will have difficulties in applying them to practical cases with respect to prima facie evidens. These statements were made within four sessions of training on the issue of combating discrimination organized within the National Institute for Magistrates, in cooperation with the NGO Center for Legal Resources, during the year 2006 (February, July, October).

<sup>130</sup> There are four different categories of disability depending on the gravity of the infliction: light, medium, accentuated and serious according to Art.86 (1) of Law 448/2006.

<sup>131</sup> NCCD, M.D v. Palatul National al Copiilor, decision no. 256 from 17.09.2007 in file no. 380/2007.



#### 6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

*What protection exists against victimisation? Does the protection against victimisation extend to persons other than the complainant? (e.g. witnesses, ➔ or person that help the victim of discrimination to present a complaint)*

Art.2 (7) of the Anti-discrimination Law defines as discrimination ‘any adverse treatment triggered by a complaint or by a case lodged with the courts of law regarding the infringement of the principle of equal treatment and non-discrimination.’ The protection against victimisation is not limited by the Romanian law to the complainant but also to the witnesses. As the law does not distinguish, victimisation is prohibited not only in relation to complaints file with the NCCD but also in relation to any other public or private institution (labour inspectorate, consumers’ protection office etc.).

#### 6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

*a) What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.*

When finding that discrimination occurred, the NCCD can issue administrative sanctions: administrative warnings and fines. The amount of the fines varies: when the victim is only one individual, the amount of the fine varies from 400 RON to 4,000 RON (EUR 114-1,114); if the victims are a group or a community, the fine ranges between 600 and 8,000 RON (EUR 170-2,285). A downside in NCCD practice is that when the perpetrators are central or local governmental agencies or public actors, the NCCD has informally developed a custom of sanctioning them with administrative warnings or of issuing recommendations carrying no financial damages.

In the case of a civil complaint for damages, the plaintiff can request pecuniary and moral damages and other types of sanctions (withdrawal or suspension of license for private entities providing services). The courts of law can decide that the public authorities will withdraw or suspend the authorisation of legal persons who caused significant damage as a result of discriminatory action or who repeatedly infringed the provisions of the anti-discrimination legislation according to Art.27 of the Ordinance.

Also in labour conflicts brought before the labour courts (labour law specialised sections within civil courts), the plaintiffs can request moral damages, including on grounds of discrimination. The Labour Code has been amended in 2007 to include ‘moral liability:’ a specific obligation for the employer to pay both moral and material damages to the employee, to compensate the employee for loss, injury or any harm suffered during employment, or in connection with work activities.<sup>132</sup>

<sup>132</sup> Romania/Law 237/2007 amending the Labour Code (12.07.2007).



b) *Is there any ceiling on the maximum amount of compensation that can be awarded?*

Compensations can be awarded solely by the courts of law. There are no ceilings established for the amount of compensation awarded in a civil case for damages on grounds of discrimination.

c) *Is there any information available concerning:*

- *the average amount of compensation available to victims*
- *the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as is required by the Directives?*

There is no data available on the average amount awarded to victims filing civil complaints in cases of discrimination. No studies assessed the impact of the sanctioned issued by the NCCD or by the courts in cases of discrimination.

Though the Ordinance 137/2000 mentions in Art.19 d) the monitoring of discrimination deeds among the functions of the NCCD, in practice, there is no mechanism which would allow adequate monitoring of the sanctions issued by the NCCD and the NCCD is not active in relation to this part of its mandate. In practice, the monitoring of the enforcement of the sanctions or recommendations depends on the interest of the member of the NCCD Steering Board in charge with the file. When requested information on this issue, the NCCD wrote that after issuing a decision on an administrative fine, both the NCCD and the courts of law communicate to local public fiscal authorities the decision. In theory, the person fined by the NCCD or by the courts has a duty to send a proof for paying the fine (copy of the receipt) – there is no information available if such communication ever occurred and whether the NCCD compiles this type of information.<sup>133</sup>

The lack of adequate monitoring in the enforcement of the sanctions issued by the NCCD infringes on the effectiveness and on the dissuasive and educational nature such sanctions are supposed to have.

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<sup>133</sup> NCCD, Official communication no. 6082 from 22.04.2008.



## 7. SPECIALISED BODIES

*Body for the promotion of equal treatment (Article 13 Directive 2000/43)*

*When answering this question if there is any data regarding the activities of the body (or bodies), include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.*

- a) *Does a ‘specialised body’ or ‘bodies’ exist for the promotion of equal treatment irrespective of racial or ethnic origin?*

Though Art. 23 of Ordinance 137 from August 2000 provided that a national equality body would be established within 60 days of the law being published, it took more than a year for the government to issue a decision establishing the NCCD.<sup>134</sup> After a rather slow start in its first years of functioning, the NCCD gradually became a proactive actor, engaging in a multitude of projects and establishing itself as a serious voice in combating discrimination.

The NCCD is a specialised body mandated to deal with all forms of discrimination on every ground, including race or ethnic origin, nationality, religion, disability, sexual orientation. Since September 2006, the NCCD became an autonomous public authority under the control of the Parliament. The NCCD remains independent in carrying out its mandate:

Art. 17 In exercising its mandate, the NCCD is carrying out its activity independently, without being hindered or influenced by other institutions or public authorities.

Art.18 (1) The Council is responsible for enforcing and controlling the observance of the provisions of this law, in its line of work, as well as for harmonising the provisions from normative or administrative act infringing the principle of non-discrimination.

(2) The Council develops and enforces public policies in the field of anti-discrimination. With this purpose, the Council will consult with public authorities, non governmental organisations, trade unions and other legal entities with a mission in protecting human rights or with a legitimate interest in combating discrimination.

Art. 19 With the purpose of combating discrimination, the Council will exercise its mandate in the following areas:

- a) preventing cases of discrimination;
- b) mediating in cases of discrimination;
- c) investigating, finding and sanctioning cases of discrimination;
- d) monitoring cases of discrimination;
- e) providing specialised assistance to victims of discrimination.

(2) The Council is exercising its mandate upon request from an individual or a legal person or ex officio.

<sup>134</sup> Romania/ Government Decision 1194 from 2001 establishing the National Council on Combating Discrimination (12.12.2001).





Different departments within the NCCD handle investigation, mediation and assistance for the victims, only the Steering Board of the NCCD is in charge with analysing the petitions and issuing decisions.

*b) Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable.*

In September 2006, the NCCD became an autonomous public authority under the control of the Parliament but maintains its independence in carrying out its mandate. This change was intended to ensure the independence of the NCCD. With this came also a change in the procedure of appointing the members of the Steering Board (the governing body of the NCCD) and the risk of increased politicisation of the Steering Board as the Parliament tends to appoint on base of political algorithm.<sup>135</sup>

The NCCD is governed by a Steering Board of nine members ranking as Secretaries of State,, managed by a President elected by the members of the Steering Board (Art.22). The Steering Board is a collegial body, responsible with enforcing the legal mandate of the NCCD (Art.23). The members of the Steering Board are proposed and appointed in a joint session of the Parliament by the two Chambers -Art.23 (2), with the requirement that at least two thirds of them are Law graduates. Any Romanian citizen can be appointed as member of the Steering Board under the following conditions:

1. has full legal capacity;
2. graduated university education with a diploma (*licența*)
3. does not have a criminal record and has a good reputation;
4. his/her activity in the field of protecting human rights and combating discrimination is well known;
5. did not collaborate with the Communist political police;
6. did not collaborate with the secret service.

Art.24 of the Anti-discrimination Law establishes the procedures for the appointment of the members of the Steering Board: the proposals are sent to the Permanent Bureaus of the two chambers at least 30 days prior to the date when the positions are vacated. The Permanent Bureaus publish the proposals with the candidates on their web sites and send the proposals to specialised committees for organising hearings in a joint session. The law provides for a period of 15 days when anybody can register written objections in relation to the candidates. Following the hearings of the candidates, the specialised committees issue a joint opinion which is presented to the chambers convened in a joint session. Candidates are approved with the majority of votes of deputies and senators present. The mandate of the members is of five years (Art.25).

Since their number raised from seven to nine persons, in the autumn of 2007 the Parliament started the procedures for the appointment of two new members.

<sup>135</sup> The amended law prescribes a special procedure of designating the candidates, their selection and appointment through vote by the plenum of the Parliament etc.

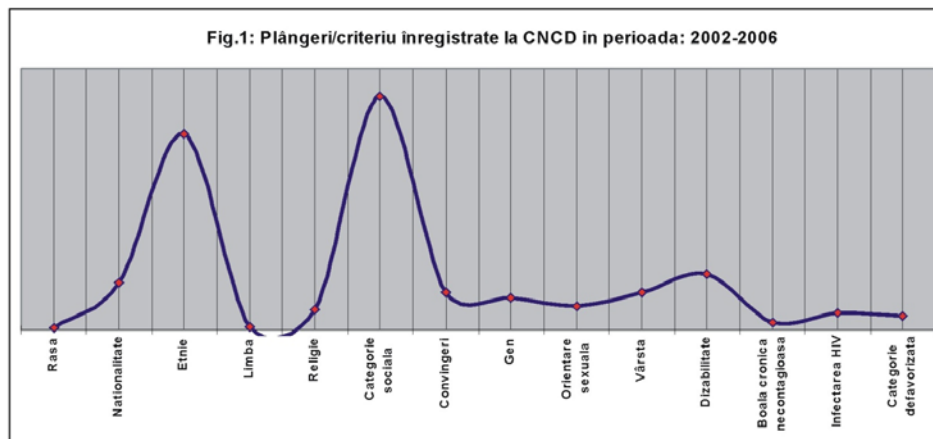
NGOs publicly expressed their concerns that the appointments will only follow the political algorithm, and not the conditions requested by the law and proposed professional standards for the assessment of potential candidates.<sup>136</sup>

The NCCD presents annually its activity report for deliberation and approval to the two chambers of the Parliament according to Art.22(2). The budget of the NCCD is approved within the state budget.

The following statistics indicate the evolution of the cases brought before the NCCD and the types of discrimination encountered, as reported by the NCCD in its annual 2006 report:

### Evolution of complaints filed with the NCCD for 2002-2006

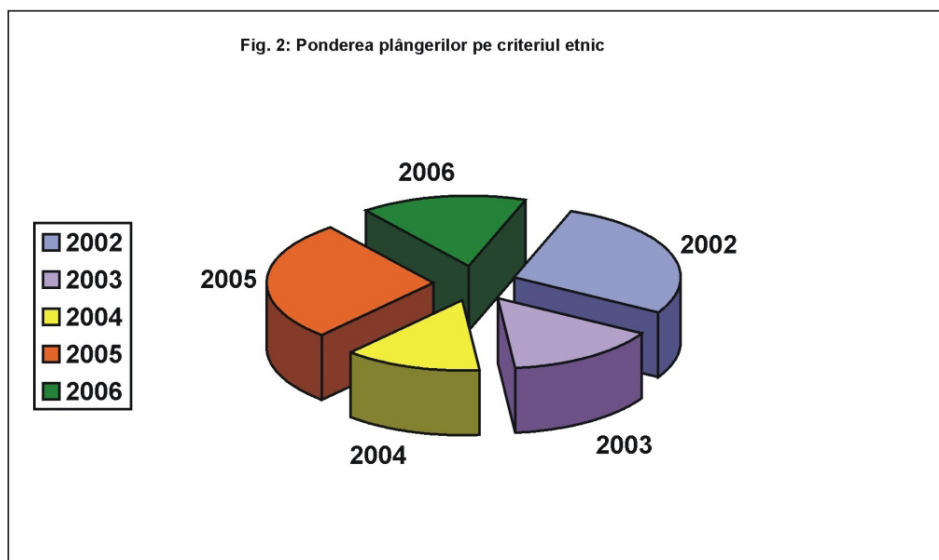
Fig 1: Complaints by criterion registered with the NCCD between 2002-2006: race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, disability, not contagious chronic disease, HIV status, disadvantaged group.



136 Press release 09.10.2006 and letters of October 2006 and February 2007 signed by a number of twenty NGOs, available at: <http://www.antidiscriminare.ro/> (15.10.2006).

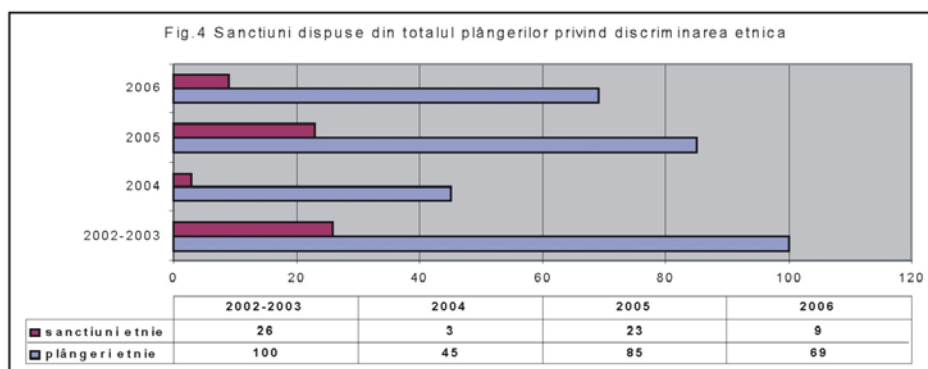
## Preponderance of complaints of discrimination based on ethnic criteria

Total of complaints/ complaints based on ethnicity



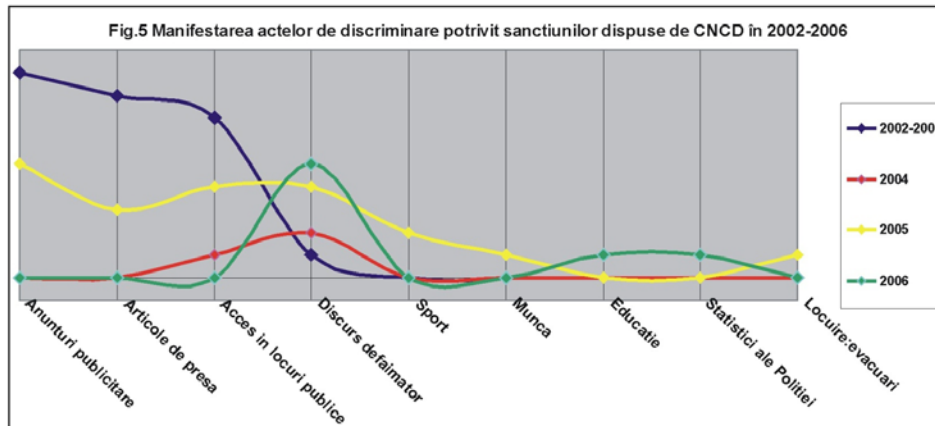
	2002	2003	2004	2005	2006
Total plângeri	134	473	353	382	432
Plângeri criteriu etnic	34	66	45	85	69

## Number of sanctions out of total number of complaints on grounds of ethnic discrimination



### Evolution of sanctions issued by NCCD by type of discrimination in 2002-2006:

Advertising, media articles, access to public places, offensive language, sports, labour, education, statistics done by the police, housing (evictions)



- c) *Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.*

The mandate of the NCCD includes preventing discrimination on all grounds via awareness raising and education campaigns, mediating between the parties, providing support for the victims of discrimination, investigating and sanctioning discrimination, including ex officio, monitoring discrimination, as well as initiating drafts to ensure harmonisation of legal provisions with the equality principle.<sup>137</sup>

Art. 19 -With the purpose of combating discrimination, the Council will exercise its mandate in the following areas:

- preventing cases of discrimination;
- mediating in cases of discrimination;
- investigating, finding and sanctioning cases of discrimination;
- monitoring cases of discrimination;
- providing specialised assistance to victims of discrimination.

One of the competences of the NCCD is to present to the Government draft laws in the field of combating discrimination and to initiate drafts to ensure the harmonisation of other legal provisions with the equality and non-discrimination principle.<sup>138</sup> In cases of petitions with respect to discriminatory situations generated by the legislation (laws or minister's orders) the NCCD recommended the authorities to amend the legal provisions so that they will comply with the principle of non-discrimination.

<sup>137</sup> Romania/ Consiliul Național pentru Combaterea Discriminării, Strategia națională de implementare a măsurilor de prevenire și combatere a discriminării (2007-2013) [National Strategy for the Implementation of Measures for Preventing and Combating Discrimination].

<sup>138</sup> Art.18 of the GO 137/2000; also Article 2 para. (1) point (b), (c), (d) of the Romania/ Government Decision 1194/2001 regarding the organization and functioning of the National Council for Combating Discrimination, amended (17.11.2003).



- d) *Does it / do they have the competence to provide assistance to victims, conduct surveys and publish reports and issue recommendations on discrimination issues?*

The NCCD has the specific competences to provide assistance to victims, conduct surveys and publish reports and issue recommendations on discrimination issues:

Art. 19 -With the purpose of combating discrimination, the Council will exercise its mandate in the following areas:

- a) preventing cases of discrimination;
- d) monitoring cases of discrimination;
- e) providing specialised assistance to victims of discrimination.

In fulfilling its mandate, the activity of the NCCD is limited by the lack of adequate human and material resources. Due to the large number of complaints and the backlog of cases, the resources of the NCCD already strained are focused on investigating, finding and sanctioning cases of discrimination and less on preventing discrimination via awareness raising campaigns, researching various aspects of discrimination or creating an effective system of support for the victims of discrimination.

- e) *Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?*

According to Art. 19 (2) and Art.21 the NCCD can exercise its mandate upon request from an individual or a legal person or *ex officio*.

Following the 2006 changes in the law, the NCCD must be sub poenaed as intervening party in all cases filed directly with the courts. This provision, spelled out under imperative terms in Art.27(3) of the law, further contributed to straining the already limited resources of the Council and generated a serious backlog.<sup>139</sup>

- f) *Is the work undertaken independently?*

The Anti-discrimination law provides that the NCCD is independent in exercising its mandate.

Art. 17 In exercising its mandate, the NCCD is carrying out its activity independently, without being hindered or influenced by other institutions or public authorities.

Recent complaints challenging the constitutionality of the NCCD presented the argument that the NCCD is not independent due to the system of appointment of the members of the Steering Board by the Parliament and due to the fact that the NCCD presents its annual report to the Parliament annually.

<sup>139</sup> Until October 2007, the NCCD was sub poenaed in almost 400 cases. Interview with Mr Dezideriu Gergely, member of the Steering Board of the NCCD.



- g) *Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.*

Strategia Guvernului României de Îmbunătățire a Situației Romilor (2001-2010) [National Strategy for Improving the Situation of Roma]<sup>140</sup> provides that Roma will be represented in the Steering Board of the National Council on Combating Discrimination. Roma representation was achieved with the appointment of a Roma activist as member of the Steering Board but the 2006 changes in the appointment procedures, leaving to the Parliament the nomination and selection of the Board members makes further Roma appointments difficult, unless political support is secured.

The National Strategy for the Implementation of Measures for Preventing and Combating Discrimination/ Strategia națională de implementare a măsurilor de prevenire și combatere a discriminării (2007-2013) published in October 2007 is spelling out the main principles, the priorities and the directions of intervention of NCCD for 2007-2013, and mentions Roma-related objectives without making Roma-related themes a priority of NCCD's work.<sup>141</sup>

The official position of the NCCD in relation to Roma is that 'from the NCCD statistics it comes out that Roma are the most frequent victims of discrimination in all areas of social life: access to education (cases of segregation), equality in the labour market (refusal to hire Roma), access to services and public places (refusal to provide certain services, to allow access in public places such as clubs, pubs, restaurants, internet cafes), right to dignity (public statements, hostile and degrading media articles). Consequently, the NCCD launched campaigns for combating racism and offered specialised training for relevant categories such as civil servants, teachers, policemen, magistrates as well as persons who can provide support to the victims of discrimination.'<sup>142</sup>

140 Romania/ Government Decision 522/2006, regarding the modification and adjustment of the Government Decision 430/2001 regarding the Romanian Government's Strategy on the Improvement of the Roma Situation, (19.04.2006), available at: <http://www.anr.gov.ro/strategia-anr/>

141 Consiliul Național pentru Combaterea Discriminării (CNCD), Strategia națională de implementare a măsurilor de prevenire și combatere a discriminării (2007-2013) [National Strategy for the Implementation of Measures for Preventing and Combating Discrimination] on file with the NFP.

142 NCCD official position communicated on May 8th, 2008.





## 8. IMPLEMENTATION ISSUES

### 8.1 Dissemination of information, dialogue with NGOs and between social partners

*Describe briefly the action taken by the Member State*

- a) *to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)*

The National Council on Combating Discrimination is coping with a serious lack of human, financial and material resources without receiving solid institutional support from the political realm or from the Government. Though the NCCD already organised prior consultations with vulnerable groups and NGOs and had a draft document as a national strategy for the Year 2007 – European Year of Equal Opportunities for All, when choosing the national implementation body, the Government decided in favour of the Ministry of Labour, Social Solidarity and Family *Agencia Națională pentru Egalitate de Șanse* [National Agency for Equal Opportunities (NAEO)].<sup>143</sup> This triggered the NCCD's public protest<sup>144</sup> and its refusal to take part in the process of drafting the Strategy for Year 2007.

NCCD used PHARE funding to carry out information and education campaigns about legal protection against discrimination.

As a part of the European Year of Equal Opportunities for All, the implementing agency NAEO, subcontracted two NGOs, the Romanian Society for Feminist Analysis Ana and the National Institute for Scientific Research in the Field of Labor and Social Protection to conduct a study on multiple discrimination in the field of employment.<sup>145</sup> The methodology and the text of the report are not yet publicly available, only a concise description of the findings being published so far. The study found that 16,9 per cent of the population investigated felt discriminated against at least once in the last three years, the main criteria invoked being: ethnicity, poverty and age. The preliminary findings published in a press release state that 10,9 per cent of those in a situation of differential treatment/discrimination in the last three years were aware that the treatment they were subjected to was determined by at least two criteria of discrimination.<sup>146</sup> Also, as a part of the European Year of Equal Opportunities for All, NAEO also sub-contracted an ethnographic research on multiple discrimination which includes a documentary with three short stories and a qualitative research conducted by EOS, Timișoara, the Asociația pentru Sănătate Iași and ImaginED.<sup>147</sup>

143 The decision was taken in the Government's meeting on the 6th of September 2006. See the complete documentation available at: <http://www.anes.ro> (14.10.2006).

144 See Romania/ NCCD's Press Release 19.09.2006, available at: <http://www.cncd.org.ro/comunicatpresa.swf> (14.10.2006).

145 Studiu Privind Discriminarea Multipla pe Piata Muncii, comunicat de presa, press release on Study on Multiple Discrimination on the Labour Market, available at <http://www.anes.ro/> (19.01.2008).

146 Studiu Privind Discriminarea Multipla pe Piata Muncii, comunicat de presa, press release on Study on Multiple Discrimination on the Labour Market, available at <http://www.anes.ro/> (19.01.2008).

147 Agenția Națională pentru Egalitatea de Șanse între Femei și Bărbați (ANES) - Raportul de activitate al ANES 2007 - Cercetarea Etnografică, available at <http://www.anes.ro/> (19.01.2008).



- b) *to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78) and*

The NCCD works closely with NGOs representing various vulnerable groups and consults with main NGOs in developing its programs on relevant areas.

- c) *to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)*

The governmental institutions do not have as an objective promoting dialogue with social partners to give effect to the principle of equal treatment within the workplace. There are however governmental initiatives in this regard: under a Phare 2004 project ‘Angajat/ă European/ă= Angajat/ă Egal/ă!’ ‘European Employee=Equal Employee!’, the Center for Legal Resources and the Center Partnership for Equality carried on a qualitative research on ‘Combating Discrimination in the Workplace’ and subsequently developed a guide of good practices for companies and organized a training for 20 human resources managers from big companies on diversity management.

Under the European Year of Equal Opportunities for All, the Center Partnership for Equality carried out a project entitled ‘Discrimination in the Labour Place: Diversity management in Romanian Organizations.’<sup>148</sup> The program consisted in the release of a brochure and a series of workshops on diversity management for 65 human resources managers and for trade unions.

- d) *to specifically address Roma and Travellers*

The General Secretariat of the Government implemented between October 2006-March 2008 a wide campaign S.P.E.R. – ‘Stop prejudecăților împotriva etniei romilor’ [‘Stop the Biases against Roma!’] which included a project on information and awareness raising focused on the problems of the Roma community and targeting both Roma and the general public.<sup>149</sup>

## **8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)**

- a) *Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).*

As the principle of equality is clearly guaranteed in the Constitution, any contrary provisions would be unconstitutional and illegal under the Anti-discrimination Law as *lex specialis*.

148 RAPORT NARATIV FINAL, Fundația „Centrul Parteneriat pentru Egalitate” Proiect: „Discriminarea la locul de muncă. Managementul diversității în organizațiile din România” Nr. contract: 1354-31.08.2007, available at <http://www.anes.ro/> (19.01.2007)

149 <http://www.sper.org.ro/index.php?page=2> (08.05.2008)



The constitutional provisions and the framework established by Ordinance 137/2000 prevails in relation to any clauses included in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions.

*b) Are any laws, regulations or rules contrary to the principle of equality still in force?*

Romanian legislation still includes norms containing provisions contrary to the principle of equality. In some cases, the NCCD found that particular norms were contrary to the principle of equality and recommended to relevant authorities to amend the legislation, without an adequate follow up. Among relevant cases which were mediated:

- the two cases regarding restrictions applied to homosexual men in relation to donating blood. The measures proposed by the Ministry of Health (permanent exclusion of gay men from donating blood) were considered both inadequate and unnecessary but as the initial decisions and recommendations were not observed, a second petition was necessary and the issue was tabled even after a second decision.<sup>150</sup>
- the NCCD Decision No. 323 from November, 21<sup>st</sup>, 2006, recommending to the Ministry of Education to draft a set of regulations to ensure the exercise of the right to education in equal conditions for all pupils, observe the right of parents and guardians to ensure the religious education of their children as they choose, observe the secular character of the State and the autonomy of religious denominations, ensure the freedom of religion and beliefs for all children equally and allow for the display of religious symbols only during classes of Religion or in places devoted to religious education. The decision was partially appealed and the NCCD recommendations were upheld by the Court in Appeal. Still, on June 11<sup>th</sup>, the High Court of Cassation and Justice accepted the final appeal submitted by the Ministry of Education and a coalition of religious associations and quashed the decision of the Court of Appeal – as the appeal regarded only parts of Decision 323, the decision of the High Court of Cassation and Justice is voiding only relevant recommendations and the Ministry of Education is supposed to enforce remaining recommendations but the Ministry refuses to do so and invokes the High Court Decision.

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150 Romania/CNCD/ ACCEPT v. the Ministry of Health for the National Institute of Haematology, Decision 337, from 21.11.2005) and Romania/CNCD/ ACCEPT v. the Ministry of Health, Decision 260, from 29.08.2007. A second case was made necessary due to the fact that the Ministry of Health did not comply with the recommendation of the NCCD.



## 9. OVERVIEW

*This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.*

*This could also be used to give an overview on the way (and if at all) national law has given rise to complaints or changes, including, eventually a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.*

The NCCD still has no internal procedure for monitoring cases of discrimination. The internal procedures adopted in May 2008 address solely the internal proceedings in solving the cases of discrimination it receives.<sup>151</sup> In absence of a clear mechanism for monitoring enforcement and compliance with its decisions, the impact of the NCCD work remains rather limited.

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151 Romania/ Consiliul Național Pentru Combaterea Discriminării Ordin nr. 144 din 11 aprilie 2008 privind aprobarea Procedurii interne de soluționare a petițiilor și sesizărilor, NCCD Order approving the internal procedure in solving petitions.



## 10. CO-ORDINATION AT NATIONAL LEVEL

*Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?*

By law, the NCCD is responsible for all aspects regarding anti-discrimination in Romania. Conflicts of competences occurred, with the courts deciding in favour of the NCCD in two important cases: the Bucharest Court of Appeal decided that the NCCD and not the *Consiliul Național al Audiovizualului* [National Audiovisual Council] is competent to decide whether an advertising clip is discriminatory or not. Also, in July 2006, the Parliament adopted an amendment clarifying that the National Agency for Equal Opportunities<sup>152</sup> can only receive and forward the petitions on alleged discrimination on grounds of gender to the NCCD.<sup>153</sup> The NCCD is the competent body to decide on the existence of discrimination and to order the administrative sanctioning of the perpetrator.<sup>154</sup> However, when choosing the national implementation body for the Year 2007 – European Year of Equal Opportunities for All, the Government arbitrarily decided in favour of the National Agency for Equal Opportunities.<sup>155</sup> Also, when appointing the national implementation body for the Year 2008 – European Year of Intercultural Dialogue, the Government decided in favour of a newly created unit within the Ministry of Culture and Religious Denominations.<sup>156</sup>

152 The National Agency for Equal Opportunities is a department within the Ministry of Labour, Social Solidarity and Family dealing with preventive measures and policies with respect to ensuring equal opportunities on the ground of sex - The official website of the institution is available at: <http://www.anes.ro> (08.05.2008).

153 Art. 26 para. (1) point (i) of the Romania/ Law 202/2002 regarding equal opportunities between women and men, amended by Law 340/2006 for the modification and adjustment of the Law 202/2002 regarding equal opportunities between women and men (25.07.2006).

154 Art.50 para. (2) point (b) of the Romania/ Law 202/2002 regarding equal opportunities between women and men, amended (25.07.2006).

155 The decision was taken in the Government's meeting on the 6th of September 2006. See the complete documentation available at: <http://www.anes.ro> (05.05.2008).

156 Information available at: <http://www.dialog2008.ro/home> (09.05.2008).



## ANNEX

- 1. Table of key national anti-discrimination legislation**
- 2. Table of international instruments**





## ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country: Romania

Date

<b>Title of Legislation (including amending legislation)</b>	<b>In force from:</b>	<b>Grounds covered</b>	<b>Civil/ Administrative/ Criminal Law</b>	<b>Material Scope</b>	<b>Principal content</b>
This table concerns only key national legislation; please list the main anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.	Please give month / year			e.g. public employment, private employment, access to goods or services (including housing), social protection, social advantages, education	e.g. prohibition of direct and indirect discrimination, harassment, instruction to discriminate or creation of a specialised body



Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/ Administrative/ Criminal Law	Material Scope	Principal content
Legea nr. 324/2006 pentru modificarea și completarea Ordonanței Guvernului nr. 137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare [Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (20.07.2006).]	August/2000	-race, -nationality, -ethnic origin, -language, -religion, -social status, -beliefs, -sex, -sexual orientation, -age, -disability, -chronic disease, -HIV positive status, -belonging to a disadvantaged group -or any other criterion	Administrative	Any field in general (going beyond fields listed in the two Directives)	Prohibition of direct, indirect and multiple discrimination, harassment, instruction to discriminate and victimisation. Establishing the specialised body, the National Council on Combating Discrimination ( <a href="http://www.cncd.org.ro">www.cncd.org.ro</a> )



<b>Title of Legislation (including amending legislation)</b>	<b>In force from:</b>	<b>Grounds covered</b>	<b>Civil/ Administrative/ Criminal Law</b>	<b>Material Scope</b>	<b>Principal content</b>
Lege 340/2006 pentru modificarea și completarea Legii nr. 202/2002 privind egalitatea de șanse între femei și bărbați [Law 340/2006 for the amendment and approval of Law 202/2002 regarding equal opportunities between women and men] (25.07.2006)	April/2002	Gender equality	Administrative	Employment relations, access to goods and services	Prohibition of direct, indirect discrimination in the context of equal opportunities between women and men and of sexual harassment. Establishing a body mandated to develop equal opportunities policies, the National Agency for Equal Opportunities Between Men and Women. ( <a href="http://www.anes.ro">www.anes.ro</a> )
Lege nr. 448/2006 privind protecția și promovarea drepturilor persoanelor cu handicap [Law on the protection and promotion of the rights of persons with a handicap] (06/12/2006)	January/2008	Disability	Administrative	Any field in general	Rights and duties of persons with disabilities. Obligations in relation to the accommodation of the needs of persons with disabilities. Establishing the National Authority for the Persons with a Handicap. ( <a href="http://www.anph.ro">www.anph.ro</a> )



Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/ Administrative/ Criminal Law	Material Scope	Principal content
Codul Muncii [Labour Code] (24.01.2003)	February 2003	-gender, -sexual orientation, -genetic characteristics, -age, -national belonging, -race, -colour, -ethnicity, -religion, -political option, -social origin, -disability, -family situation or responsibility, -trade union membership or activity	Employment/administrative	Employment relations	-direct and indirect discrimination



<b>Title of Legislation (including amending legislation)</b>	<b>In force from:</b>	<b>Grounds covered</b>	<b>Civil/ Administrative/ Criminal Law</b>	<b>Material Scope</b>	<b>Principal content</b>
Legea publicității [law on Advertising]	August 2000	-race, -sex, -language, -origin, -social origin, -ethnic identity or -nationality	Administrative	Advertising	Prohibition of discrimination in advertisement.
Codul Civil [Civil Code] (1.12.1865)	1866	No specific provision	Civil	Damages	-complaints for civil damages in cases of discrimination can be filed with civil courts under general Civil Code liability provisions.
Codul Penal [Criminal Code, Law 278] (4.07.2006)	June/2006	All grounds covered by anti-discrimination legislation	Criminal	Specific crimes and crimes perpetrated with discriminatory motivation.	-legal aggravating circumstance for any criminal offence conducted with discriminatory motivation (Art. 75. (1), point c <sup>1</sup> ). -abuse in the exercise of power by a civil servant (Art. 247) -incitement to hatred (Art. 317)

**ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS**

Name of country: Romania

Date: May, 9<sup>th</sup>, 2008

<b>Instrument</b>	<b>Signed (yes/no)</b>	<b>Ratified (yes/no)</b>	<b>Derogations/ reservations relevant to equality and non- discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
European Convention on Human Rights (ECHR)	Yes.	Yes.	No.	Yes.	Slow process of recognition of the relevant case law of the ECHR by the courts and legal profession.
Protocol 12, ECHR	Yes.	Yes.	No.	-	NTR.
Revised European Social Charter	Yes.	Yes.	No.	Ratified collective complaints protocol? No.	NTR.
International Covenant on Civil and Political Rights	Yes.	Yes.	Yes.	Yes. No interstate complaints (art.41)	NTR.
Framework Convention for the Protection of National Minorities	Yes.	Yes.	No.	-	NTR.
International Convention on Economic, Social and Cultural Rights	Yes.	Yes.	Yes.	-	NTR.



<b>Instrument</b>	<b>Signed (yes/no)</b>	<b>Ratified (yes/no)</b>	<b>Derogations/ reservations relevant to equality and non- discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
Convention on the Elimination of All Forms of Racial Discrimination	Yes.	Yes.	Yes.	Yes.	NTR.
Convention on the Elimination of Discrimination Against Women	Yes.	Yes.	No.	-	
ILO Convention No. 111 on Discrimination	Yes.	Yes.	No.	-	NTR.
Convention on the Rights of the Child	Yes.	Yes.	No.	-	NTR.
Convention on the Rights of Persons with Disabilities	Yes.	No.	NTR.	-	NTR.