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Country report

Gender equality



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Country report

Gender equality

How are EU rules transposed into
national law?

Romania

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Reporting period 1 January 2014 – 1 July 2015

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1. Introduction

1.1 Basic structure of the national legal system

The legal system in Romania is a civil law system. At the top of the legislative hierarchy is the Constitution, followed by organic laws, ordinary laws and government decisions. The court structure is organised at three level – at first instance, on a first appeal and appeals on grounds of law; not all cases go through all three levels, some are examined only at first instance and an appeal on grounds of law. At the top of the court hierarchy is the High Court of Cassation and Justice (Înalta Curte de Casație și Justiție (ICCJ)). The Constitutional Court examines whether laws comply with the Constitution. The Government may legislate when there is a matter of urgent attention and the acts adopted are called Government Ordinances (OG) or Government Emergency Ordinances (OUG).

In the field of gender equality, legislation has been adopted at the level of Parliament and the Government. On 6 October 2015, the National Agency for Equal Opportunities between Women and Men (Agenția Națională pentru Egalitate de Șanse între Femei și Bărbați (ANES)) was re-established. This agency is a specialized body of the national public administration, having legal personality, under the control of the Ministry of Family, Social Protection and the Elderly (Ministerul Muncii, Familiei, Protecției Sociale și Persoanelor Vârstnice); it promotes the principle of equal opportunities and equal treatment between women and men with the aim of eliminating all forms of sex discrimination in all national policies and programmes. According to Article 24(1) of the Gender Equality Law (Law No. 202/2002 regarding equal opportunities between women and men), ANES controls a national structure called the National Commission in the field of equal opportunities between women and men (Comisia națională în domeniul egalității de șanse între femei și bărbați), composed of representatives of various ministries or other bodies at the level of the national administration, including civil society. This National Commission discusses the reports filed by the equivalent local-level commissions from every country which are made up of representatives of various institutions at the level of the local administration that deal with aspects that have a connection with equal opportunities between women and men.¹

1.2 List of main legislation transposing and implementing Directives

- Legea nr.202/2002 privind egalitatea de șanse între femei și bărbați (Law No. 202/2002 regarding equal opportunities between women and men);
- Ordonanța Guvernului nr.137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare (Government Ordinance No. 137/2000 regarding the prevention and sanctioning of all forms of discrimination);
- Ordonanța de Urgență nr. 96 din 14 octombrie 2003 privind protecția maternității la locurile de muncă (Government Emergency Ordinance No. 96/2003 regarding the protection of maternity at the workplace);
- Ordonanța de Urgență a Guvernului nr.61/2008 privind implementarea principiului egalității de tratament între femei și bărbați în ceea ce privește accesul la bunuri și servicii și furnizarea de bunuri și servicii (Government Emergency Ordinance No. 61/2003 regarding the implementation of the principle of equal treatment between women and men with respect to access to goods and the provision of services).

¹ Law 202/2002 regarding equal opportunities and equal treatment between women and men (*Legea nr.202/2002 privind egalitatea de șanse și de tratament între femei și bărbați*), Articles 24 and 25 (hereafter, 'Gender Equality Law').

2. General legal framework

2.1 Constitution

2.1.1 Does your national Constitution prohibit sex discrimination?

Yes. The Romanian Constitution of 1991 includes the principle of non-discrimination and equality before the law, 'sex' being one of the ten protected grounds expressly recognised in Articles 4 and 16 of the Constitution.² Article 4(2) of the Constitution stipulates that Romania is the common, indivisible country of all its citizens without differentiation as to race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin. Article 16(1) of the Constitution stipulates that citizens are equal before the law and public authorities without privileges or discrimination. In paragraph 3 of Article 16, the State guarantees equal opportunities for women and men to access public offices.

2.1.2 Does the Constitution contain other Articles pertaining to equality between men and women?

Yes. Specifically regarding gender equality, there are only two provisions in the Constitution, which have a limited scope. First, Article 41(4) stipulates the principle of equal pay for equal work; it only covers salaries, but not other payments, such as bonuses, benefits etc.³ Second, in Article 16(3) the State guarantees equal opportunities for women and men to access public offices.⁴

2.1.3 Can the Article(s) mentioned in the two previous questions be invoked in horizontal relations (between private parties)?

Yes.

2.2 Equal treatment legislation

2.2.1 Does your country have specific equal treatment legislation?

Yes. In 2000, the Government adopted a multi-ground general anti-discrimination statute which covered discrimination on the ground of sex, as part of an open-ended list of grounds of discrimination such as race, ethnic origin, religion, disability, age, sexual orientation, HIV status, etc. (hereafter, 'Antidiscrimination Law').⁵

Two years later, Parliament adopted a special law dealing exclusively with gender equality: the Law on equal opportunities between women and men (hereafter, 'Gender Equality Law').⁶

² Constitution of 1991, Articles 4 and 16.

³ Constitution of 1991, Article 41(4).

⁴ Constitution, as amended in 2003, Article 16(3).

⁵ Government Ordinance 137/2000 regarding the preventing and sanctioning of all forms of discrimination (*Ordonanta Guvernului nr.137/2000 privind prevenirea si sanctionarea tuturor formelor de discriminare*) (hereafter, 'Anti-discrimination Law').

⁶ Law 202/2002 regarding equal opportunities and equal treatment between women and men (*Legea nr.202/2002 privind egalitatea de sanse si de tratament intre femei si barbati*) (hereafter, 'Gender Equality Law').

3. Implementation of central concepts

3.1 Sex/gender/transgender

3.1.1 Are the terms gender/sex defined in your national legislation?

No.

3.1.2 Is discrimination due to gender reassignment explicitly prohibited in your national legislation?

No. The list of grounds protected by the Anti-discrimination Law is an open-ended list and, in principle, discrimination due to gender reassignment is covered in national law under the expression 'any other ground.' The author is not aware of any case law concerning discrimination on the ground of gender reassignment.

3.2 Direct sex discrimination

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Yes. Article 6(1) of the Gender Equality Law explicitly prohibits all forms of discrimination. Article 4(a) of the Gender Equality Law defines direct discrimination as the less favourable treatment of a person based on sex compared to how another person is, has been or would be treated in a comparable situation.⁷ In the author's view this complies with the EU definition.

3.2.2 Are pregnancy and maternity discrimination explicitly prohibited in legislation as forms of direct sex discrimination?

Yes. Article 10(1) of the Gender Equality Law explicitly prohibits discrimination based on maternity and Article 10(2) of the Gender Equality Law explicitly prohibits discrimination based on pregnancy and maternity leave.

3.2.3 Are there specific difficulties in your country in applying the concept of direct sex discrimination? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant

The CNCD has developed substantial case law which sanctions employers for harassment and the unlawful dismissal of women on the ground of pregnancy as being sex discrimination.⁸ However, the Court of Appeal of Bucharest has overturned certain decisions of the CNCD in this field.⁹ The judges who examined those cases did not take into account the fact that discrimination based on pregnancy or maternity is sex discrimination. In particular, they found that the ground 'sex' was not applicable because there was no evidence that the employees had been treated in that way because they were women.

3.3 Indirect sex discrimination

Yes. Article 6(1) of the Gender Equality Law explicitly prohibits all forms of discrimination. Article 4(b) of the Gender Equality Law defines indirect discrimination as an apparently neutral provision, criterion or practice that would put persons of one sex

⁷ Gender Equality Law, Article 4(a).

⁸ Consiliul Național pentru Combaterea Discriminării (CNCD), Decision No. 417 of 15 December 2010, Decision No. 28 of 18 January 2012, and Decision No. 61 of 6 February 2013.

⁹ Court of Appeal of Bucharest, Judgment Nos 3918 of 9 December 2013, 1712 of 27 May 2013, and 4585 of 24 July 2012.

at a particular disadvantage compared to persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.¹⁰ In the author's view, this definition complies with the EU definition.

- 3.3.1 Is statistical evidence used in your country in order to establish a presumption of indirect sex discrimination? Please provide some examples of cases, if available.

Information on the courts' case law is not available because courts do not register data regarding gender equality aspects of cases in the case law database (ECRIS) which is available to the public.¹¹

The National Council for Combating Discrimination (NCCD) is open to using statistical evidence to establish a presumption of indirect discrimination. The author cannot provide examples of relevant cases, however. In addition, the content of the decisions of the NCCD are not made public.

- 3.3.2 Is in your view the objective justification test applied correctly by national courts? Please provide some examples of cases, if available.

Information on the courts' case law is not available because courts do not register data regarding gender equality aspects of cases in the case law database (ECRIS) which is available to the public (ECRIS).

- 3.3.3 Are there specific difficulties in your country in applying the concept of indirect sex discrimination? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

In the past, the NCCD only considered intent as an element to differentiate between direct and indirect discrimination.¹² But when it came to reaching a decision regarding the dismissal of predominantly women, the NCCD then applied the correct criteria for finding indirect discrimination.¹³ First, it compared the number of women proposed for evaluation and the number of women dismissed with the number of men in the same situation. Specifically, the CNCD found that the numbers of women and men proposed for evaluation were equal (18 women and 18 men), but the number of women subsequently dismissed was disproportionate compared to men (nine women and two men). Second, the CNCD looked at the criteria for making an evaluation and discovered that the employer was unable to demonstrate that it had based its decision on objective criteria, but only on subjective criteria.

3.4 Multiple discrimination and intersectional discrimination

- 3.4.1 Is multiple discrimination – i.e. discrimination based on two or more grounds simultaneously – and/or intersectional discrimination – i.e. discrimination resulting from the interaction of grounds of discrimination which interact to

¹⁰ Gender Equality Law, Article 4(b).

¹¹ ECRIS is the name of the electronic system implemented by the Ministry of Justice in order to register all cases that are being examined by the national courts. Information about the procedural decisions taken at each stage of a case is made available to the public. At the same time, the system has a very limited option to access case law. More information about ECRIS is available at <http://portal.just.ro/SitePages/despre.aspx#portal>.

¹² For example, CNCD, Decision No. 240 of 23.11.2010 which referred to the launching of a national online portal created by the Ministry of Communication and Information Technologies to promote Romanian values ('E-Romania'); the only information present on the portal with regard to religion referred to the Orthodox religion, although in Romania there are 18 religious denominations recognized by the state.

¹³ CNCD, Decision of 4 December 2013.

produce a new and different type of discrimination - explicitly addressed in national legislation?

Yes. Multiple discrimination is addressed in Article 2(6) of the Anti-discrimination Law and Article 4(h) of the Gender Equality Law. By multiple discrimination, discrimination based on two or more grounds is understood. Intersectional discrimination is not explicitly addressed in national legislation and there are no proposals in this sense.

3.4.2 Is there any case law that addresses multiple discrimination and/or intersectional discrimination (where gender is one of the grounds at stake)?

Nothing relevant to report.

3.5 Positive action

3.5.1 Is positive action explicitly allowed in national legislation?

Positive action is permitted, but not required.¹⁴ There are two different provisions in the Gender Equality Law regarding positive action. On the one hand, Article 4(e) of the Gender Equality Law defines positive action as being special action that is adopted on a temporary basis in order to accelerate the realisation of equal opportunities between women and men in practice.¹⁵ On the other hand, Article 6(5)(b) of the Gender Equality Law is aimed at protecting certain categories of women or men, and not women as a group in comparison to men.¹⁶ The author is of the opinion that the definition of positive action complies with Article 157(4) TFEU, although it is not sufficiently detailed: it does not explain what equal opportunities between women and men actually means; it does not refer to the underrepresentation of one sex; and it is not specific in underlining that specific action implies special advantages.

3.5.2 Are there specific difficulties in your country in relation to positive action? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

In a case concerning a refusal to provide maternal healthcare to a pregnant woman with HIV, on appeal the Bucharest Tribunal misapplied the definition of discrimination, in particular when considering unlawful behaviour in giving priority for a Caesarean section at 38 weeks of a pregnancy to a woman with HIV.¹⁷ The court called this treatment 'positive discrimination' which it considered to be an unlawful form of discrimination against the majority in favour of the minority, an argument that is often used in society to dismiss anti-discrimination legislation seen as a special right for minorities to the detriment of the majority. The court disregarded the fact that in Romanian legislation 'positive discrimination' is not regulated. Moreover, the definition of 'affirmative measures' or 'positive action' (Article 2(9) of the Anti-discrimination Law) did not apply in this case because the medical intervention at 38 weeks in the case of the complainant was made possible by law as well as medical standards for health reasons related to HIV mother-to-child transmission. The obligation to provide maternal healthcare was not for reasons of ensuring substantive equality of opportunities or protecting a group exposed to discrimination, which is indeed a reason for applying affirmative measures. Nevertheless, even if we accept that the prevention of HIV mother-to-child transmission is to be considered as an 'affirmative measure' or (in the language of the court) 'positive discrimination,' such behaviour is under no circumstances sanctioned by law as discrimination against the majority, as the court implied in its decision, but is imposed

¹⁴ Gender Equality Law, Articles 4(e) and 5(b).

¹⁵ Gender Equality Law, Article 4(e).

¹⁶ Gender Equality Law, Article 5(b).

¹⁷ Bucharest Tribunal (*Tribunalul Bucuresti*), Civil decision No. 582A of 12.05.2014.

by the law with regard to hospitals and medical personnel for the purpose of preventing HIV transmission.

3.5.3 Has your country adopted measures that aim to improve the gender balance in company boards?

No. There are no pending proposals that address the gender balance on company boards.

There are no policy measures aimed at addressing the gender balance on company boards, for instance a charter or media campaign on this issue.

3.5.4 Has your country adopted other positive action measures to improve the gender balance in some fields, e.g. in political candidate lists or political bodies? If so, please describe these measures.

No.

3.6 Harassment and sexual harassment

3.6.1 Is harassment explicitly prohibited in national legislation?

Yes. Art 4(c) of the Gender Equality Law defines harassment as any unwanted conduct related to the sex of a person, having the purpose or effect of affecting the dignity of the respective person and creating an intimidating, hostile, humiliating and offensive environment.¹⁸ In the author's opinion this definition complies with the EU definition found in Article 2(1)(c) of Directive 2006/54.

3.6.2 Does the definition of harassment cover a broader scope than employment in your country? If so, please specify the scope.

Yes. Any form of discrimination, including harassment, applies to 'all areas of public life in Romania'.¹⁹

3.6.3 Is sexual harassment explicitly prohibited in national legislation?

Yes. Sexual harassment is sanctioned by two distinct laws. Article 4(d) of the Gender Equality Law sanctions any unwanted behaviour having a sexual nature, manifested physically, verbally or non-verbally, having the purpose or effect of affecting the dignity of the respective person and, especially, creating an intimidating, hostile, degrading, humiliating or offensive environment.²⁰ In the author's opinion this definition complies with the EU definition found in Article 2(1)(d) of Directive 2006/54.

The New Criminal Code, which entered into force on 1 February 2014, sanctions acts of repeatedly demanding sexual favours in a labour or a similar relationship if the victim has been intimidated or placed in a humiliating situation (Art. 223).²¹

3.6.4 Does the definition of sexual harassment cover a broader scope than employment in your country? If so, please specify the scope.

Yes. The definition of sexual harassment in the Gender Equality Law covers a broader scope than employment; like all forms of discrimination, it is forbidden in all areas of

¹⁸ Gender Equality Law, Article 4(c).

¹⁹ Gender Equality Law, Article 1(1).

²⁰ Gender Equality Law, Article 4(d).

²¹ New Criminal Code, Article 223.

public life.²² At the same time, the new definition of sexual harassment in the New Criminal Code no longer extends outside the framework of labour relations (for example, sexual harassment by a teacher or a doctor against a student or a patient no longer falls under the criminal offence of sexual harassment).²³

3.6.5 Does national legislation specify that harassment and sexual harassment as well as any less favourable treatment based on the person's rejection of or submission to such conduct amounts to discrimination (see Article 2(2)(a) of Directive 2006/54)?

Yes. Article 4(g) of the Gender Equality Law specifies that harassment and sexual harassment as well as any less favourable treatment based on the person's rejection of or submission to such conduct amount to discrimination.

3.7 Instruction to discriminate

3.7.1 Is an instruction to discriminate explicitly prohibited in national legislation?

Yes. Article 6(2) of the Gender Equality Law stipulates that an instruction to discriminate is any order or provision to discriminate.²⁴

3.7.2 Are there specific difficulties in your country in relation to the concept of instruction to discriminate? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

Nothing to report.

3.7.3 Is incitement to discrimination explicitly prohibited in your country?

Article 369 of the New Criminal Code criminalises incitement to hatred or discrimination which is understood as public incitement to hatred or discrimination against a category of persons. Article 369 does not specify which groups are protected and if sex is one of the protected grounds.

3.8 Other forms of discrimination

Are any other forms of discrimination prohibited in national law, such as discrimination by association or assumed discrimination?

No.

²² Gender Equality Law, Article 1(1).

²³ Old Criminal Code, Article 203.

²⁴ Gender Equality Law, Article 6(2).

4. Equal pay and equal treatment at work (Article 157 TFEU and Recast Directive 2006/54)

4.1 Equal pay

4.1.1 Is the principle of equal pay for equal work or work of equal value implemented in national legislation?

Yes. The Romanian Constitution lays down the principle of equal pay but only in a limited fashion. It does not cover work of equal value, only equal work, and it only applies to salaries, not to other types of remuneration or benefits for work.²⁵ There is no case law by the Constitutional Court explaining how these limitations should be interpreted.

Despite the Constitutional provisions, Article 6(3) of the Labour Code fully transposes the principle of equal pay. It applies to equal work and work of equal value and to 'all the elements and conditions of remuneration.'²⁶ Similar provisions are stipulated in Article 6(b) and (c) of the Anti-discrimination Law²⁷ and Article 7(c) of the Gender Equality Law.²⁸

4.1.2 Is the concept of pay defined in national legislation?

Yes. The scope of the notion of 'pay', as stipulated by Article 160 of the Labour Code, includes salaries, any other remuneration or benefits, bonuses and other supplements;²⁹ it is in compliance with Article 157(2) of the Lisbon Treaty. According to Article 166 of the Labour Code, the payment in kind of part of the salary is only allowed if it has been expressly provided for in the applicable collective labour agreement or in the individual employment contract.³⁰

4.1.3 Does national law explicitly implement Article 4 of Recast Directive 2006/54 (prohibition of direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration)?

Yes. Article 9(1)(d) and (e) of the Gender Equality Law explicitly prohibits discrimination in employment by the employer through practices that disadvantage persons based on sex with respect to remuneration, other benefits than the salary, as well as social security. Moreover, Article 159(3) of the Labour Code prohibits discrimination in the establishing and provision of salaries.

4.1.4 Is a comparator required in national law as regards equal pay?

Yes. The general provisions on direct discrimination as stipulated in Article 4(a) of the Gender Equality Law require a comparator. Therefore, in theory, in the case of a claimant in an equal pay case (on the ground of sex), a comparator is required; the comparator can even be a hypothetical one because Article 4(a) of the Gender Equality Law stipulates that for such direct discrimination the person must be 'treated less favourably than another person is, was or would be treated in a comparable situation.'³¹

However, we could not identify any case law that clarifies how the legal definition is applied to equal pay cases (on the ground of sex) in practice. In its case law in general, when examining the existence of direct discrimination, the National Council for

²⁵ Constitution, Article 41(4).

²⁶ Labour Code, Article 6(3).

²⁷ Anti-discrimination Law, Article 6(b), (c).

²⁸ Gender Equality Law, Article 7(c).

²⁹ Labour Code, Article 160.

³⁰ Labour Code, Article 166.

³¹ Gender Equality Law, Article 4.(a).

Combating Discrimination invokes the definition of direct discrimination provided by Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and by Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation with respect to the need for a comparator, even a hypothetical one. However, in the case law regarding equal pay, the National Council for Combating Discrimination requires the parties to provide evidence regarding a real comparator.³² This practice is explained by the fact that in Romania, except for public employees, in most cases there are no norms establishing salary schemes to allow for a hypothetical comparator – the salaries are established by direct negotiations between the employer and the employee.

4.1.5 Does national law lay down parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions?

No.

4.1.6 Does national (case) law address wage transparency in any way?

No.

4.1.7 Is the European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency applied in your country? If so, how?

No.

4.1.8 Which justifications for pay differences are allowed in legislation and/or case law?

The legislation does not address the issue of justifications for pay differences. Article 162 of the Labour Code stipulates that the individual salary is determined by individual direct negotiations between the employer and the employee. Moreover, according to Article 163 of the Labour Code, salaries are confidential.

4.1.9 Are there specific difficulties related to the application of the principle of equal pay for equal work and work of equal value in practice? For example in case of out-sourcing?

Except for the public sector where salary scales apply, in the private sector there is complete discretion to negotiate salaries as mentioned above and it is indeed possible to create specific difficulties for women related to the application of the principle of equal pay for equal work and work of equal value. In particular, there is a lack of transparency regarding salaries and men may be more successful in negotiating their salary than women. Nevertheless, there are no statistics or study data available on this issue or on the lack of transparency.

³² E-mail correspondence with a member of the Steering Committee of the National Council for Combating Discrimination. See also Decision Nos. 75 of 19.02.2013, 393 of 12.06.2013 and 564 of 12.12.2012 (on file with the National Expert).

4.2 Access to work and working conditions

- 4.2.1 Is the personal scope in relation to access to employment, vocational training, working conditions etc. defined in national law (see Article 14 of Directive 2006/54)?

Yes. Article 7(2) of the Gender Equality Law contains a list of persons who benefit from the protection regarding equal opportunities and treatment between women and men in employment. This list covers all workers, including self-employed persons and their spouses who are not employees of or associates in the enterprise but contribute to the activity of the self-employed person by fulfilling the same tasks or complementary tasks, according to national law. Moreover, Article 7(3) of the Gender Equality Law stipulates that the law also applies to public officials, to contractors from the public and private sector, including from public institutions, to military personnel, as well as to other categories of persons whose status is stipulated as such in special laws.

- 4.2.2 Is the material scope in relation to (access to) employment defined in national law (see Article 14(1) of the Recast Directive 2006/54)?

Yes. Article 7(1) of the Gender Equality Law stipulates the material scope of the protection against sex discrimination. The scope is broader than the scope of Article 14(1) of Recast Directive 2006/54. It consists of non-discrimination in freely choosing or exercising a profession or an activity, the hiring process in all positions and all jobs available, at all levels of the professional hierarchy, equal pay for work of equal value, vocational guidance, vocational training, advanced vocational training and retraining, including apprenticeships, promotion at all professional and hierarchical levels, employment and working conditions in compliance with health and safety legal requirements at the workplace, including conditions of dismissal, benefits other than the salary as well as public and private social security systems, employers' organizations, trade unions and professional organizations, as well as benefits provided by these organizations, and social services and assistance, according to the law.

- 4.2.3 Has the exception on occupational activities been implemented into national law (see Article 14(2) of Recast Directive 2006/54)?

Yes. Article 9(2) of the Gender Equality Law contains an exception for occupational activities that are understood to be jobs that require a characteristic related to one sex as a genuine and determining occupational requirement by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out. This exception applies subject to the condition that its objective is legitimate and the requirement is proportionate. There has been no assessment of this issue by Romania. In one case decided in October 2014, the NCCD found sex segregation in recruitment to be legitimate due to determining occupational requirements for the military professions depending on the type of military force, but disproportionate because of the significant difference in the numbers of the two sexes (a very low number of places for women when compared to men at higher education schools for the military).³³

- 4.2.4 Has the exception on protection for women, in particular as regards pregnancy and maternity, been implemented in national law (see Article 28(1) of Recast Directive 2006/54)?

³³ National Council for Combating Discrimination, Decision No. 568 of 8 October 2014.

Yes. Article 6(5) of the Gender Equality Law contains an exception for special measures specified by law for the protection of maternity, birth, postnatal care, breastfeeding and child rearing.

4.2.5 Are there particular difficulties related to the personal and/or material scope of national law in relation to access to work, vocational training, employment, working conditions etc.?

Nothing to report.

5. Pregnancy and maternity protection; maternity, paternity, parental leave and adoption leave (Directive 92/85, relevant provisions of the Directives 2006/54 and 2010/18)

5.1 Pregnancy and maternity protection

5.1.1 Does national law define a pregnant worker?

Yes. Article 2(c) of Government Emergency Ordinance No. 96/2003 on the protection of maternity at the workplace defines a pregnant worker as a woman who informs her employer of her pregnancy status in written form and attaches a medical certificate from her GP or a gynaecologist confirming her status.

5.1.2 Are the protective measures mentioned in the Articles 4-7 of Directive 92/85 implemented in national law?

Yes. Articles 4-14 of Government Emergency Ordinance No. 96/2003 on the protection of maternity at the workplace stipulate the protective measures mentioned in Articles 4-7 of Directive 92/85. In June 2015, Parliament adopted new amendments to bring the law into compliance with this directive.³⁴ Article 5 of the GEO 96/2003 stipulates the obligation of the employer to assess the risk of exposure to agents, processes or working conditions that could endanger the safety or health and have any possible effect on the pregnancies or breastfeeding of workers. After doing this, the employer must inform the employees who are exposed to such risks and the company doctor.

When necessary, the employer will take one of the following measures to protect these employees: a temporary adjustment of the working conditions and/or the working hours of the worker concerned so that the risk of exposing that worker to such risks is avoided.³⁵ If the adjustment of her working conditions and/or working hours is not possible or cannot reasonably be required on duly substantiated grounds, the employer shall take the necessary measures to transfer the worker concerned to another job.³⁶ If moving the employee to another job is not possible or cannot reasonably be required on duly substantiated grounds, the worker concerned is granted leave due to maternal risks for the whole of the period necessary to protect her safety or health before giving birth and during breastfeeding.³⁷

In the author's view, this is a correct implementation of the provisions from the directive mentioned above.

5.1.3 Is dismissal prohibited in national law from the beginning of the pregnancy until the end of the maternity leave (see Article 10(1) of Directive 92/85)?

Yes. According to Article 21(1) of Governmental Emergency Ordinance No. 96/2003 a dismissal is prohibited in national law during pregnancy, maternity leave and breastfeeding for reasons directly connected to this situation. Any dismissal is also prohibited, irrespective of the reason for this, during maternal risk leave, maternity leave and parental leave, and six months after a return from maternity leave and parental leave.

³⁴ Law No. 154 of 18 June 2015 on the amendment of Government Emergency Ordinance No. 96/2003 on the protection of maternity at the workplace (*LEGE nr. 154 din 18 iunie 2015 pentru modificarea și completarea Ordonanței de urgență a Guvernului nr. 96/2003 privind protecția maternității la locurile de muncă*).

³⁵ Government Emergency Ordinance No. 96/2003 on the protection of maternity at the workplace (*Ordonanța de Urgență nr. 96 din 14 octombrie 2003 privind protecția maternității la locurile de muncă 96/2003*), Article 9(1) (hereafter 'OUG 96/2003').

³⁶ OUG 96/2003, Article 9 (2).

³⁷ OUG 96/2003, Article 10.

The exceptions permitted by law refer to a judicial reorganization and the dissolution and bankruptcy of the employer (Article 21(3) of Governmental Emergency Ordinance No. 96/2003).

According to Article 23 of Government Emergency Ordinance No. 158/2005 on types of leave and payments for such leave from public health insurance, when an employee is made redundant during her maternity leave, the payment for maternity leave does not cease if the woman concerned was dismissed due to no fault of her own.

5.1.4 In cases of dismissal from the beginning of pregnancy until the end of maternity leave, is the employer obliged to indicate substantiated grounds for the dismissal in writing (see Article 10(2) of Directive 92/85)?

Yes. In any case of dismissal the employer must indicate, in written form, the substantiated grounds for the dismissal and go through a formal dismissal procedure, according to Chapter V of the Labour Code.

5.2 Maternity leave

5.2.1 How long (in days or weeks) is maternity leave? Please specify the relevant legislation and Article(s).

126 days, according to Article 23(1) of Government Emergency Ordinance No. 158/2005 on types of leave and payments for such leave from public health insurance.

5.2.2 Is there an obligatory period of maternity leave before and/or after birth?

Yes. After birth the obligatory period of maternity leave is 42 days, according to Article 24 (2) of Government Emergency Ordinance No. 158/2005 on types of leave and payments for such leave from public health insurance.

5.2.3 Is there a legal provision insuring that the employment rights relating to the employment contract are ensured in the cases referred to in Articles 5, 6 and 7 of Directive 92/85?

Yes. Article 27 of Governmental Emergency Ordinance No. 96/2003 lays down administrative sanctions (fines) for employers that do not fulfil their legal obligations in the cases referred to in Articles 5, 6 and 7 of Directive 92/85.

5.2.4 Is there a legal provision that ensures the employment rights relating to the employment contract (including pay or an adequate allowance) are ensured during the pregnancy and maternity leave?

Yes. According to Articles 25(1) and 31 of Government Emergency Ordinance No. 158/2005 the woman in question is entitled to a percentage of her salary paid by the employer from the monthly contribution that goes to the public health insurance fund.

5.2.5 Is pay or an allowance during the pregnancy and maternity leave at the same level as sick leave or is it higher?

During maternal risk leave (special leave which is available if the pregnant worker has health issues or the workplace is dangerous for the pregnancy) the woman in question is entitled to 75 % of her salary (Article 31 of Government Emergency Ordinance No. 158/2005). During maternity leave she is entitled to 85 % of her salary (Article 25(1)). The amount for sick leave is 85 %. There is no ceiling.

5.2.6 Are statutory maternity benefits supplemented by some employers up to the normal remuneration?

No.

5.2.7 Are there conditions for eligibility for benefits applicable in national legislation (see Article 11(4) of Directive 92/85)?

Yes. According to Article 23 of Government Emergency Ordinance No. 158/2005 the condition for eligibility is that the woman is insured, meaning that she is employed or has a contract which she has concluded with the public health insurance as a self-employed person or any other quality. Moreover, women who have lost their insurance eligibility may benefit from maternity leave if they give birth during the following nine months after losing their status as an insured person.

5.2.8 In national law, is there a provision that guarantees the right of a woman to return after maternity leave to her job or to an equivalent job, on terms and conditions that are no less favourable to her, and to benefit from any improvement in working conditions to which she would have been entitled during her absence (see Article 15 of Directive 2006/54)?

Yes. Article 10(8) of the Gender Equality Law stipulates that at the end of the maternity leave, the employee has the right to return to the same or an equivalent job having equivalent working conditions and she will benefit from any improvement in working conditions to which she would have been entitled during her absence.

5.3 Adoption leave

5.3.1 Does national legislation provide for adoption leave?

No. Not explicitly. Article 8(2) of Government Emergency Ordinance No. 111/2010 regarding parental leave and the monthly allowance for parental leave stipulates that parental leave applies to parents who adopt a child, subject to the same conditions as for natural parents.

5.3.2 Did the Government take measures to address the specific needs of adoptive parents (see Clause 4 of Directive 2010/18)?

No.

5.3.3 Does national legislation provide for protection against dismissal of workers who take adoption leave and/or specify their rights after the end of adoption leave (see Article 16 of Directive 2006/54)?

Yes. This is not a specific measure for adoption leave because we do not have adoption leave, but the leave that can be taken by the adoptive parents is parental leave and they are protected as beneficiaries of parental leave.

5.4 Parental leave

5.4.1 Has Directive 2010/18 been explicitly implemented in your country?

Yes. It was implemented in Government Emergency Ordinance No. 111/2010 regarding parental leave and the monthly allowance for parental leave.

5.4.2 Is the national legislation applicable to both the public and the private sector (see Clause 1 of Directive 2010/18)?

Yes.

5.4.3 Does the scope of the national transposing legislation include contracts of employment or employment relationships related to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency?

The law applies to all contracts of employment, including employment relationships with an agency for temporary work.

5.4.4 What is the total duration of parental leave? If the provisions regarding duration differ between the public and the private sector, please address the two sectors separately.

Parental leave can last for one or two years – the monthly allowance is less in the case of parental leave for two years.

5.4.5 Is the right of parental leave individual for each of the parents?

Yes.

5.4.6 What form can parental leave take (full-time or part-time, piecemeal, or in the form of a time-credit system)? Do the various available options allow taking into account the needs of both employers and workers and if so, how is that done (see Clause 3 of Directive 2010/18)?

Only full-time parental leave is available.

5.4.7 Is there a notice period and if so, how long is it? Does the national legislation take sufficient account of the interests of workers and of employers in specifying the length of such notice periods and how is that done? (see Clause 3 of Directive 2010/18)?

No notice period is stipulated by law.

5.4.8 Is there a work and/or length of service requirement in order to benefit from parental leave?

Yes. A person must have contributed to the social insurance fund for at least twelve months prior to the birth. The twelve months may be composed of periods from successive fixed-term contracts with the same employer or different employers.

5.4.9 Are there situations where the granting of parental leave may be postponed for justifiable reasons related to the operation of the organisation?

No.

5.4.10 Are there special arrangements for small firms?

No.

5.4.11 Are there any special rules/exceptional conditions for access and modalities of application of parental leave to the needs of parents of children with a disability or a long-term illness?

Yes. However, the only special provision is that the parents of children with a disability may take parental leave for up to three years (Article 2(1)(a) of Government Emergency Ordinance No. 111/2010).

5.4.12 Are there provisions to protect workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave (see Clause 5 of Directive 2010/18)?

Yes. Article 10(3) of the Gender Equality Law protects women or men against discrimination on the ground of parental leave.

5.4.13 Do workers benefitting from parental leave have the right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with their employment contract or relationship?

Yes. Article 10(8) of the Gender Equality Law lays down this right.

5.4.14 Are rights acquired or in the process of being acquired by the worker on the date on which parental leave starts maintained as they stand until the end of the parental leave?

Yes. Article 10(8) of the Gender Equality Law also lays down this right.

5.4.15 What is the status of the employment contract or employment relationship for the period of the parental leave?

The employment contract is suspended by law during parental leave.

5.4.16 Is there continuity of the entitlements to social security cover under the different schemes, in particular healthcare, during the period of parental leave?

Yes.

5.4.17 Is parental leave remunerated by the employer? If so, how much and in which sectors?

No.

5.4.18 Does the social security system in your country provide for an allowance during parental leave? If so, how much and in which sectors?

The monthly allowance for parental leave is paid from the social security fund in all sectors, except for lawyers who contribute to a private social security fund. It is 85 % of the average income of the employee during the last twelve months, but is not less than EUR 140 (RON 600) and not more than EUR 790 (RON 3 400) for the parental leave for one year and EUR 280 (RON 1 200) for the parental leave for two years.

5.4.19 In your view, regarding which issues does the national legislation apply or introduce more favourable provisions (see Clause 8 of Directive 2010/18)?

Nothing to report.

5.5 Paternity leave

5.5.1 Does national legislation provide for paternity leave?

Yes. Article 1 of Law No. 210/1999 lays down the right of insured persons to take paternity leave for five days, paid in full. If the father graduates from a class for parents, he has the right to an extra ten days of leave, also paid in full. This is a short-term course that is provided by hospitals or private education providers that teaches future parents the basics about taking care of a newborn baby.

5.5.2 Does national legislation provide for protection against dismissal of workers who take paternity leave and/or specify their rights after the end of paternity leave (see Article 16 of Directive 2006/54)?

No.

5.6 Time off/care leave

5.6.1 Does national legislation entitle workers to time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident (see Clause 7 of Directive 2010/18)?

No. Article 153 of the Labour Code provides for the possibility for an employer to offer both male and female employees a certain number of paid days off for exceptional family events when this is stipulated in the internal regulations or a collective agreement. The Labour Code provides for the possibility for an employer to offer both male and female employees unpaid leave to resolve personal matters when this is stipulated in the internal regulations or a collective agreement.

5.7 Leave in relation to surrogacy

5.7.1 Is parental leave available in case of surrogacy?

No.

5.8 Leave sharing arrangements

5.8.1 Does national law provide a legal right to share (part of) maternity leave?

No. Each employer has his/her right to parental leave that can only be exercised by one person per couple at a time until the child reaches the age stipulated by law; Article 11 of Government Emergency Ordinance No. 111/2010 provides for one month parental leave that must be taken by the second parent or it will be lost from the parental leave of the first parent.

5.8.2 Is there a possibility for one parent to transfer part of the parental leave to the other parent?

No.

5.9 Flexible working time arrangements

5.9.1 Does national law provide workers with a legal right (temporarily or otherwise) to reduce working time on request?

No.

5.9.2 Does national law provide workers with a legal right to adjust working time patterns (temporarily or otherwise) on request?

No.

5.9.3 Does national law provide workers with a legal right to work from home or remotely (temporarily or otherwise) on request?

No.

5.9.4 Are there any other legal rights to flexible working arrangements, such as arrangements by which workers can "bank" hours to take time off in the future?

No.

6. Occupational pension schemes (Chapter 2 of Directive 2006/54)

6.1 Is direct and indirect discrimination on grounds of sex in occupational social security schemes prohibited in national law?

Not applicable in Romania. From the beginning of 2008, the pension system in Romania consists of three pillars. The first pillar is the universal social security fund, a 'pay as you go' type, which is mandatory for persons in an employment relationship or for self-employed persons. It uses the majority of the contributions to the social insurance fund paid by the employer and the employee. The second pillar is a mandatory and fully-funded pension fund with defined contributions which are allotted to individual accounts run by licensed pension insurance companies. The third pillar includes supplementary pension schemes on a voluntary basis.

6.2 Is the personal scope of national law relating to occupational social security schemes more restricted or broader than specified in Article 6 of Directive 2006/54? Please explain and refer to relevant case law, if any.

N/A.

6.3 Is the material scope of national law relating to occupational social security schemes more restricted or broader than specified in Article 7 of Directive 2006/54? Please explain and refer to relevant case law, if any.

N/A.

6.4 Have the exclusions from the material scope as specified in Article 8 of Directive 2006/54 been implemented in national law?

N/A.

6.5 Are there laws or case law which would fall under the examples of sex discrimination as mentioned in Article 9 of Directive 2006/54?

N/A.

6.6 Is sex used as an actuarial factor in occupational social security schemes?

N/A.

6.7 Are there specific difficulties in your country in relation to occupational social security schemes, for example due to the fact that security schemes in your country are not comparable to either statutory social security schemes or occupational social security schemes? If so, please explain with reference to relevant case law, if any.

Security schemes in Romania are not comparable to either statutory social security schemes or occupational social security schemes.

7. Statutory schemes of social security (Directive 79/7)

7.1 Is the principle of equal treatment for men and women in matters of social security implemented in national legislation?

Not applicable in Romania. From the beginning of 2008, the pension system in Romania consists of three pillars. The first pillar is the universal social security fund, a 'pay as you go' type, which is mandatory for persons in an employment relationship or for self-employed persons. It uses the majority of the contributions to the social insurance fund paid by the employer and the employee. The second pillar is a mandatory and fully-funded pension fund with defined contributions which are allotted to individual accounts run by licensed pension insurance companies. The third pillar includes supplementary pension schemes on a voluntary basis.

Nevertheless, Article 2(d) of Law 263/2010 regarding the unified public pensions system, that regulates the social security system, includes a general non-discriminatory clause. Article 6(5) of Law 411/2004 concerning pension funds managed by private entities, that regulates voluntary supplementary pension schemes, also includes a general non-discriminatory clause. Moreover, Articles 7(g) and 9(e) of the Gender Equality Law prescribe equal access for women and men to social security systems, be they public or private.

7.2 Is the personal scope of national law relating to statutory social security schemes more restricted or broader than specified in Article 2 of Directive 79/7? Please explain and refer to relevant case law, if any.

N/A.

7.3 Is the material scope of national law relating to statutory social security schemes more restricted or broader than specified in Article 3 par. 1 and 2 of Directive 79/7? Please explain and refer to relevant case law, if any.

N/A.

7.4 Have the exclusions from the material scope as specified in Article 7 of Directive 79/7 been implemented in national law? Please explain (specifying to what extent the exclusions apply) and refer to relevant case law, if any.

N/A

7.5 Is sex used as an actuarial factor in statutory social security schemes?

N/A.

7.6 Are there specific difficulties in your country in relation to implementing Directive 79/7? For example due to the fact that security schemes in your country are not comparable to either statutory social security schemes or occupational social security schemes? If so, please explain with reference to relevant case law, if any.

Security schemes in Romania are not comparable to either statutory social security schemes or occupational social security schemes.

8. Self-employed workers (Directive 2010/41/EU and some relevant provisions of the Recast Directive)

8.1 Has Directive 2010/41/EU been explicitly implemented in national law?

The Gender Equality Law transposes Directive 2010/41 in Romania. The law was amended for this purpose by Government Emergency Ordinance No. 83/2012 approved with amendments by Law No. 115/2013. In particular, the above-mentioned amendment extended the scope of the Gender Equality Law to the establishment, equipping or extension of a business or the launching or extension of any other form of self-employed activity to self-employed workers and their spouses who work with them but are not paid.

In addition, Law No. 4/2014 on the amendment of Government Emergency Ordinance No. 44/2008 on the carrying out of economic activities by authorised individuals, individual firms and family businesses transposed Article 2 of Directive 2010/41 by establishing certain rights for the spouse of the self-employed person who works with that person without being employed.

8.2 What is the personal scope related to self-employment in national legislation? Has your national law defined self-employed or self-employment? Please discuss relevant legislation and national case law (see Article 2 Directive 2010/41/EU)

There is no definition of a 'self-employed worker' in the Gender Equality Law or in any other legislation in Romania. Article 7(2) of the Gender Equality Law simply includes self-employed workers among the subjects covered by the law, without providing any further details.

However, 'self-employed work' is only defined in Article 7(1).4 of the Tax Code (*Codul Fiscal*) as being any activity that is not a dependent activity (employment relations) and is carried out on a regular basis by a person. Article 46 of the Tax Code enumerates categories of income that are subjected to tax as income from self-employed work: commercial activities, including the provision of services and the practising of a profession, freelance activities (such as the medical professions, lawyers, notaries, financial auditors, tax consultants, expert accountants, authorized accountants, brokers, architects, and other professions regulated by law which are carried out independently), and intellectual activities that generate intellectual property. The norms for the application of the Tax Code define 'self-employed work' as being an activity that is carried out regularly, on an independent basis, and is for profit.³⁸ According to these norms, the criteria that define self-employed work are: the freedom to choose the activity that is being carried out, to establish the working programme and the workplace, the risk implied for the freelancer, the activity being carried out for several clients, and the possibility for the activity to be carried out not only directly by the self-employed worker, but also by employees hired by him according to the law.³⁹

³⁸ Government Decision 44/2004 regarding the Norms for the application of Law 571/2003 regarding the Tax Code (*Normelor metodologice de aplicare a Legii nr. 571/2003 privind Codul fiscal, aprobate prin Hotărârea Guvernului nr. 44/2004*).

³⁹ Government Decision 44/2004 regarding the Norms for the application of Law 571/2003 regarding the Tax Code (*Normelor metodologice de aplicare a Legii nr. 571/2003 privind Codul fiscal, aprobate prin Hotărârea Guvernului nr. 44/2004*).

8.3 Related to the personal scope, please specify whether all self-employed workers are considered part of the same category and whether national legislation recognises life partners.

Agricultural workers are dealt with separately in the Tax Code;⁴⁰ agricultural work, including forestry and fishing, is not included in the category of self-employed work. Nevertheless, the rights and benefits in the area of pregnancy and maternity apply similar to the way in which they apply to the remainder of self-employed workers (see below Section 10).

National legislation in Romania does not recognise life partners. The provisions transposing Directive 2010/41 are limited to the spouses of self-employed workers.⁴¹

8.4 How has national law implemented Article 4 Directive 2010/41/EU? Is the material scope of national law relating to equal treatment in self-employment more restricted or broader than specified in Article 4 Directive 2010/41/EU?

Article 4(1) has been transposed by Article 2(1) of the Gender Equality Law, as amended by Government Emergency Ordinance 83/2012. The previous version of Article 2(1) did not contain any explicit reference to self-employed activity. However, the newly introduced text follows the wording in the repealed Directive 86/613/EEC: '[t]he measures to promote equal opportunities and equal treatment between women and men and for the elimination of all forms of discrimination on the ground of sex apply ... with respect to the establishment, equipping or extension of a business or the launching or extension of any other form of self-employed activity.'⁴²

8.5 Has your State taken advantage of the power to take positive action (see Article 5 Directive 2010/41/EU)? If so, what positive action has your country taken? In your view, how effective has this been?

The expert is not aware of any positive action taken by the state to ensure full equality in practice between men and women in working life.

8.6 Does your country have a system for social protection of self-employed workers (see Article 7 (Directive 2010/41/EU)?

There is a system to offer social protection to self-employed workers. By registering as an authorised individual (PFA), an individual enterprise or family business, an authorised professional (e.g. a lawyer, an accountant) or by declaring income as another category of self-employed person (e.g. an author, an inventor), these self-employed persons are automatically registered as taxpayers and contributors to the social insurance and health insurance public funds. The contributions are calculated in relation to the amount of income earned per year. Those self-employed workers who pay their contributions benefit from social protection covering public pensions and health. These self-employed workers may also conclude an insurance contract covering unemployment.⁴³

There is only one general system of social protection – the public social protection system; lawyers, however, have their own private system of social protection covering

⁴⁰ Law No. 571/2003 regarding the Tax Code (*Legea 571/2003 privind Codul fiscal*), as amended, Chapter 7, published in Official Journal No. 927 of 23 December 2003.

⁴¹ Gender Equality Law, Article 7(2).

⁴² Gender Equality Law, Article 2(1) (a).

⁴³ Law No. 76/2002 on the insurance system for unemployment and stimulating employment (*Legea 76/2002 privind sistemul asigurărilor pentru șomaj și stimularea ocupării forței de muncă*), Articles 20 and 22, published in Official Journal No. 103 of 6 February 2002.

pensions and maternity benefits. The public social protection system and the lawyers' private social protection system are mandatory. Self-employed persons who want to enter into contracts to provide private pensions or private health insurance can only choose them as additional insurance and their contributions cannot be deducted from their income.

In January 2014, an amendment to the law regulating the economic activities of authorised individuals, individual firms and family businesses established that the spouse of the self-employed person who works with that person without being employed has the right to conclude insurance contracts for a public pension, public healthcare and unemployment support, similar to every taxpayer who earns an income.⁴⁴ This insurance system is voluntary for spouses. Nevertheless, self-employed persons are obliged to declare a spouse that works with him/her without being employed.⁴⁵

The public pension scheme and the public health insurance scheme are mandatory for self-employed persons, but not for their spouses.

8.7 Has Article 8 Directive 2010/41/EU regarding maternity benefits for self-employed been implemented in national law?

Self-employed workers and their spouses who are registered as spouses who work with them without being employed are eligible for maternity benefits similar to any employee if they have a minimum of one month contribution to the public health insurance fund in the last twelve months.⁴⁶ The total duration of maternity leave is 126 days, out of which 42 days after giving birth are mandatory for the woman.⁴⁷ The criterion used for the maternity allowance is the one from Article 8(3)(a) of Directive 2010/41. The allowance is 85 % of the average income of that person in the last six months (this average income is capped at 12 minimum salaries per month established at the national level – the minimum salary per month as of 1 January 2015 was EUR 220 (RON 950)).⁴⁸

There is no consolidated system of services supplying temporary replacements or existing national social services available as an alternative to or part of the allowance, in accordance with Article 8(4) of Directive 2010/41.

8.8 Has national law implemented the provisions regarding occupational social security for self-employed persons (see Article 10 of Recast Directive 2006/54)?

Not applicable to Romania as we have a different system of social security.

⁴⁴ Law No. 4/2014 on the amendment of Government Emergency Ordinance 44/2008 on the carrying out of economic activities by authorised individuals, individual firms and family businesses (*Legea 4/2014 de completare a Ordonanței de Urgență 44/2008 privind desfășurarea activităților economice de către persoanele fizice autorizate, întreprinderile individuale și întreprinderile familiale*), Article 1.3.

⁴⁵ Law No. 4/2014 on the amendment of Government Emergency Ordinance 44/2008 on the carrying out of economic activities by authorised individuals, individual firms and family businesses (*Legea 4/2014 de completare a Ordonanței de Urgență 44/2008 privind desfășurarea activităților economice de către persoanele fizice autorizate, întreprinderile individuale și întreprinderile familiale*), Article 1.2.

⁴⁶ Emergency Ordinance No. 158/2005 on health insurance leave and allowances (*Ordonanța de Urgență nr. 158 din 17 noiembrie 2005 privind concediile și indemnizațiile de asigurări sociale de sănătate*), Articles 2(1) and 7, published in Official Journal No. 1.074 of 29 November 2005.

⁴⁷ Emergency Ordinance No. 158/2005 on health insurance leave and allowances (*Ordonanța de Urgență nr. 158 din 17 noiembrie 2005 privind concediile și indemnizațiile de asigurări sociale de sănătate*), Article 24, published in Official Journal No. 1.074 of 29 November 2005.

⁴⁸ Emergency Ordinance No. 158/2005 on health insurance leave and allowances (*Ordonanța de Urgență nr. 158 din 17 noiembrie 2005 privind concediile și indemnizațiile de asigurări sociale de sănătate*), Articles 10 and 25, published in Official Journal No. 1.074 of 29 November 2005.

8.9 Has national law made use of the exceptions for self-employed persons regarding matters of occupational social security as mentioned in Article 11 of Recast Directive 2006/54? Please describe relevant law and case law.

N/A.

8.10 Is Article 14(1) (a) of Recast Directive 2006/54 implemented in national law as regards self-employment?

Yes. Article 7(2) of the Gender Equality Law includes self-employed workers among the subjects covered by the law; the material scope of the law includes conditions for access to a profession or an occupation (Article 7(1) (a)).

9. Goods and services (Directive 2004/113)

9.1 Does national law prohibit direct and indirect discrimination on grounds of sex in access to goods and services?

Yes. The Anti-discrimination Law⁴⁹ and the Gender Equality Law⁵⁰ have a wider scope than the field of employment. They also cover the issue of equal access to goods and services, including on the ground of sex. However, the Romanian Government decided to adopt a separate piece of legislation exclusively transposing Directive 2004/113: *Ordonanta de Urgenta a Guvernului nr.61/2008 privind implementarea principiului egalitatii de tratament intre femei si barbati in ceea ce priveste accesul la bunuri si servicii si furnizarea de bunuri si servicii*. While it fully transposes the Directive, this law has numerous provisions showing an overlap with the remainder of the existing legislation in the field of equality and non-discrimination.

9.2 Is the material scope of national law relating to access to goods and services more restricted or broader than specified in Article 3 of Directive 2004/113? Please explain and refer to relevant case law, if any.

The Goods and Services Law exactly reproduces the scope provided for in Directive 2004/113. It applies to all persons who provide goods and services available to the general public, public or private legal persons and public bodies.

9.3 Have the exceptions from the material scope as specified in Article 3(3) of Directive 2004/113, regarding the content of media, advertising and education, been implemented in national law?

Yes. According to the Goods and Services Law, the goods and services are offered outside the field of private and family life and do not apply to the media and advertising, education and employment, including the independent professions. Such legal limitations are inconsistent with the rest of Romanian legislation, which exceeds the requirements of Directive 2004/113 and was in place even before the Goods and Services Law was adopted. First, the Anti-discrimination Law does not allow for any exceptions, e.g. regarding real estate contracts, bank loans and any other type of contract.⁵¹ Second, the Gender Equality Law applies to services in the field of education and the media and advertising. This situation suggests that the Government has rather bluntly performed a copy-paste exercise to reproduce the Goods and Services Directive by adopting this new law, whilst simultaneously ignoring existing rules. If a conflict arises on this issue, it is difficult to say which law would apply.

9.4 Have differences in treatment in the provision of the goods and services been justified in national law (see Article 4(5) of Directive 2004/113)? Please provide references to relevant law and case law.

Nothing to report.

⁴⁹ Government Ordinance No.137/2000 regarding the prevention and sanctioning of all forms of discrimination (*Ordonanța Guvernului nr.137 din 31 august 2000 privind prevenirea și sancționarea tuturor formelor de discriminare*), republished in Official Journal No. 166 of 7 March 2014.

⁵⁰ Law 202/2002 regarding equal opportunities between women and men (*Legea nr.202 din 19 aprilie 2002 privind egalitatea de șanse și de tratament între femei și bărbați*), republished in Official Journal No. 326 of 5 June 2013.

⁵¹ Anti-discrimination Law, Article 10.

9.5 Does national law ensure that the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services shall not result in differences in individuals' premiums and benefits (see Article 5(1) of Directive 2004/113)?

As to compliance with the *Test-Achats* case, on 11 September 2013 the Commission for the Surveillance of Insurances (*Comisia de Supraveghere a Asigurărilor*) adopted norms for the regulation of unisex premiums and benefits.⁵² The norms stipulate that 'sex; as an actuarial factor in the calculation of premiums and benefits should not determine differences in the premiums and benefits for the insured person (Article 3(2)). All contracts concluded before the entry into force of the norms that followed the exception prescribed by the old law are to be reported annually to the Commission for the Surveillance of Insurances (Article 6). Moreover, the norms state that all insurance companies have the obligation to draft and apply internal norms and procedures regarding the collection, processing, publishing and updating of statistical and actuarial data used for the calculation of premiums and/or benefits (Article 4).

At the same time, the Goods and Services Law⁵³ was amended. On 30 April 2013 Parliament implemented the results of the *Test-Achats* case by passing Law No. 128/2013 repealing the paragraphs related to the use of sex as a factor in the assessment of risk based on relevant and accurate actuarial and statistical data (Article 7(4)-(5)).⁵⁴

9.6 How has the exception of Article 5(2) of Directive 2004/113 been interpreted in your country? Please report on the implementation of the C-236/09 *Test-Achats* ruling in national legislation.

Proportionate differences in individuals' premiums and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data are no longer allowed by law.⁵⁵ Moreover, sex as a factor in the assessment of premiums and benefits within insurance services and associated financial services must not determine differences in premiums and benefits for the insured person in all contracts concluded by this person.⁵⁶

⁵² Comisia de Supraveghere a Asigurărilor, Norm No. 11/2013 on the implementation of the principle of equal treatment between women and men in access to services in the field of insurances and the provision of services in the field of insurances (*Norma nr.11/2013 privind implementarea principiului egalității de tratament între femei și bărbați în ceea ce privește accesul la serviciile din domeniul asigurărilor și furnizarea de servicii în domeniul asigurărilor*), published in Official Journal No. 593 of 20 September 2013.

⁵³ Emergency Ordinance No. 61/2008 regarding the implementation of the principle of equal treatment between women and men with respect to access to and the supply of goods and services (*Ordonanța de urgență a Guvernului nr. 61/2008 privind implementarea principiului egalității de tratament între femei și bărbați în ceea ce privește accesul la bunuri și servicii și furnizarea de bunuri și servicii*), published in Official Journal No. 385 of 21 May 2008.

⁵⁴ Law No. 128/2013 repealing paragraphs (2)-(4) of Article 7 of Emergency Ordinance No. 61/2008 on the implementation of the principle of equal treatment between women and men with regard to access to goods and services and the provision of goods and services (*Legea nr. 128 din 26 aprilie 2013 pentru abrogarea alin. (2)-(4) ale art. 7 din Ordonanța de urgență a Guvernului nr. 61/2008 privind implementarea principiului egalității de tratament între femei și bărbați în ceea ce privește accesul la bunuri și servicii și furnizarea de bunuri și servicii*), published in Official Journal No. 248 of 30 April 2013.

⁵⁵ Law No. 128/2013 repealing Article 7(2)-(4) of Emergency Ordinance No. 61/2008 regarding the implementation of the principle of equal treatment between women and men with respect to access to and the supply of goods and services (*Legea 128/2013 pentru abrogarea alin. (2)-(4) ale art. 7 din Ordonanța de urgență a Guvernului nr. 61/2008 privind implementarea principiului egalității de tratament între femei și bărbați în ceea ce privește accesul la bunuri și servicii și furnizarea de bunuri și servicii*), Article I.

⁵⁶ Law No. 128/2013 repealing Article 7(2)-(4) of Emergency Ordinance No. 61/2008 regarding the implementation of the principle of equal treatment between women and men with respect to access to and the supply of goods and services (*Legea 128/2013 pentru abrogarea alin. (2)-(4) ale art. 7 din Ordonanța de urgență a Guvernului nr. 61/2008 privind implementarea principiului egalității de tratament între femei și bărbați în ceea ce privește accesul la bunuri și servicii și furnizarea de bunuri și servicii*), Article II.

9.7 Has your country adopted positive action measures in relation to access to and the supply of goods and services (see Article 6 of Directive 2004/113)?

No.

9.8 Are there specific problems of discrimination on the grounds of pregnancy, maternity or parenthood in your country in relation to access to and the supply of goods and services? Please briefly describe relevant case law.

Nothing to report.

10. Violence against women and domestic violence in relation to the Istanbul Convention

10.1 Has your country ratified the Istanbul Convention?

No. At the instigation of the Ministry of Labour, Family, Social Protection and the Elderly (*Ministerul Muncii, Familiei, Protecției Sociale și Persoanelor Vârstnice*) its Department of Equal Opportunities between Women and Men (*Departamentul pentru Egalitate de Șanse între Femei și Bărbați*) prepared a draft law for the ratification of the Istanbul Convention in January 2015. The bill received approvals from several ministries and the Ministry of Justice made comments regarding the translation of the text of the Convention into Romanian. Once the approval process at the level of the ministries is completed the bill will be subjected to debate in the Romanian Parliament.⁵⁷

⁵⁷ Information provided by the Department of Equal Opportunities between Women and Men (*Departamentul pentru Egalitate de Șanse între Femei și Bărbați*), Response No.1914 of 05.06.2015 (on file with the national expert).

11. Enforcement and compliance aspects (horizontal provisions of all directives)

11.1 Victimisation

11.1.1 Are the provisions on victimisation implemented in national legislation and interpreted in case law?

Yes. Article 2(7) of the Anti-discrimination Law considers any adverse treatment in response to a complaint or a legal action to amount to a breach of the principle of equal treatment and non-discrimination. The author considers that the protection against victimisation under Romanian law complies with the Directives.

11.2 Burden of proof

11.2.1 Does national legislation and/or case law provide for a shift of the burden of proof in sex discrimination cases?

Yes. The burden of proof has three different definitions in the three laws in this area.⁵⁸ Only the 2013 amended provisions regarding the burden of proof in the Anti-discrimination Law are in compliance with the Directives.⁵⁹ The CNCD applies the burden of proof from this general law in cases of alleged discrimination on the ground of sex. This practice is beneficial, given the fact that the definitions in the Gender Equality Law and the Goods and Services Law are unclear, and therefore fail to correctly transpose the Directives. Nevertheless, the CNCD remains inconsistent when applying the burden of proof in cases of discrimination on all grounds.

11.3 Remedies and Sanctions

11.3.1 What types of remedies and sanctions (e.g. compensation, reinstatement, criminal sanctions, administrative fines etc.) exist in your country for breaches of EU gender equality law? Please specify the applicable legislation.

Under civil law, compensation, reinstatement, and administrative sanctions are remedies which are available to victims of breaches of the principle of gender equality. The Gender Equality Law introduces a difference regarding employees who complain about discrimination on the ground of sex, compared to all other victims of discrimination. They first have to file an internal complaint with the employer, and only if the conflict is not resolved by mediation may they submit a complaint to the courts or to the CNCD.⁶⁰ The same is prescribed for alleged victims of sex discrimination related to access to and the supply of goods and services: they must first seek to reconcile with the service provider.⁶¹ The administrative sanctions vary from EUR 680 (RON 3 000) to EUR 22 720 (RON 100 000), except for cases that occur in the field of access to and the supply of goods and services, where the administrative fine is lower (from EUR 340 (RON 1 500) to EUR 3 400 (RON 15 000)).

11.3.2 In your opinion, do the remedies and sanctions meet the standards of being effective, proportionate and dissuasive? Please explain, if possible referring to relevant legislation or case law.

⁵⁸ Anti-discrimination Law, Articles 20(6) and 27(4), Gender Equality Law, Article 44, and Goods and Services Law, Article 12.

⁵⁹ Law No. 61/2013 on the amendment of Government Ordinance No. 137/2000 regarding the prevention and sanctioning of all forms of discrimination (*Legea 61/2013 pentru modificarea Ordonantei Guvernului nr. 137/2000 privind prevenirea si sanctionarea tuturor formelor de discriminare*).

⁶⁰ Gender Equality Law, Article 39.

⁶¹ Goods and Services Law, Article 9.

In practice, administrative fines imposed by the CNCD are nearer the minimum range; this is when the CNCD does not choose to issue written warnings and recommendations instead of fines. Moreover, compensation for moral damages under civil law, when awarded by the courts for breaches of the principle of equality, is very low in the Romanian justice system, thereby rendering the mechanism ineffective.

11.4 Access to courts

11.4.1 In your opinion, is the access to courts safeguarded for alleged victims of sex discrimination? Please explain and discuss particular difficulties and barriers victims of sex discrimination have encountered. Refer to relevant legislation and case law.

Yes. Administrative complaints and court actions against sex discrimination are exempt from tax.

11.4.2 In your opinion, is the access to courts safeguarded for anti-discrimination/gender equality interest groups or other legal entities? Please explain and refer to relevant legislation and case law.

In 2012, an amendment to the Gender Equality Law limited the possibility of alleged victims to be represented or assisted by trade unions or non-governmental organisations in administrative procedures only, but not in court proceedings, which is in breach of the Directives.⁶² Nonetheless, the Anti-discrimination Law prescribes that all groups exposed to discrimination may benefit from such support in both administrative procedures and court proceedings.⁶³

11.4.3 What kind of legal aid is available for alleged victims of gender discrimination? Special legal aid is not available to victims of gender discrimination.

11.5 Equality body

11.5.1 Does your country have an equality body that seeks to implement the requirements of EU gender equality law?

On 9 September 2015, a law reinstating the National Agency for Equal Opportunities between Women and Men (*Agenția Națională pentru Egalitate de Șanse între Femei și Bărbați* (ANES)) as the national gender equality body passed through Parliament⁶⁴. By the time of this report, the law has not yet been published in the Official Journal. ANES was closed down in 2010 due to budgetary cuts.

At the same time, the CNCD is the national equality body dealing with all grounds of discrimination, including sex.

⁶² Gender Equality Law, Article 44, introduced by Emergency Government Ordinance 83/2012 for the amendment of Law No. 202/2002 regarding equal opportunities and treatment between women and men (*Ordonanta de Urgenta a Guvernului 83/2012 pentru modificarea si completarea Legii nr. 202/2002 privind egalitatea de sanse si de tratament intre femei si barbati*).

⁶³ Anti-discrimination Law, Article 28.

⁶⁴ Information available at http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=13134 (accessed 30.09.2015).

11.6 Social partners

- 11.6.1 What kind of role do the social partners in your country play in ensuring compliance with and enforcement of gender equality law? Are there any legislative provisions in this respect?

The social partners do not play a decisive role in Romania in ensuring compliance with and enforcement of the Gender Equality Law. According to Article 44 of the Gender Equality Law, trade unions or non-governmental organisations may represent victims in administrative procedures only, but not in court proceedings, which is in breach of the Directives.⁶⁵

11.7 Collective agreements

- 11.7.1 To what extent does your country have collective agreements that are used as means to implement EU gender equality law? Please indicate the legal status of collective agreements in your country (binding/non-binding, usually declared to be generally applicable or not).

Although they are legally binding, collective agreements are not widespread and they are not used as a specific means to implement gender equality.

⁶⁵ Gender Equality Law, Article 44, introduced by Emergency Government Ordinance 83/2012 for the amendment of Law No. 202/2002 regarding equal opportunities and treatment between women and men (*Ordonanta de Urgenta a Guvernului 83/2012 pentru modificarea si completarea Legii nr. 202/2002 privind egalitatea de sanse si de tratament intre femei si barbati*).

12. Overall assessment

The implementation of the EU gender equality acquis is satisfactory and this is mainly due to the adoption of the general Anti-discrimination Law and the establishment of the National Council for Combating Discrimination. Although having special legislation focusing exclusively on gender equality shows particular political support for gender issues, the way in which EU legislation has been transposed has resulted in an overlap, a lack of clarity and inconsistencies that affect women from all groups protected against discrimination. This situation makes it more difficult for the courts or other competent authorities to examine and sanction discrimination in an effective, proportionate and dissuasive way. It is imperative that all laws in the field of anti-discrimination and gender equality are consolidated in one piece of legislation, while bearing in mind that higher standards established in each of these laws should be preserved.

Despite generous legal provisions, the courts and the CNCD choose milder or symbolic sanctions, frequently rendering the sanctioning mechanism ineffective. This has an impact on the limited case law because persons exposed to discrimination do not feel motivated to bring complaints or take further legal action.

The closing down of the national gender equality body (ANES) in 2010 was detrimental because now there was no longer a specialised institution focusing exclusively on gender equality. The Equal Opportunities Department within the Ministry of Labour and the CNCD did not substitute the ANES's absence. This is the reason why the reinstatement of ANES by passing legislation in this sense in September 2015 is an important step towards reconsidering the political commitment to gender equality in the country.⁶⁶

⁶⁶ Law No. 229 of 6 October 2015 on the amendment of Law No. 202/2002 on equal opportunities and treatment between women and men (*Lege nr. 229 din 6 octombrie 2015 pentru modificarea și completarea Legii nr. 202/2002 privind egalitatea de șanse și de tratament între femei și bărbați*).

Annexes

Bibliography

Nothing to report.

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