



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

### **NEWS REPORT**

<b>Country:</b>	Romania
<b>Title:</b>	Private protected units for persons with disabilities are closed by the Government as a part of major legislative reshuffle of relevant legislation
<b>Date:</b>	1 September 2017
<b>Expert:</b>	Romanița Iordache
<b><u>Context</u></b>	
<b>Issue at stake:</b>	New provisions on employment of persons with disabilities generate major limitations to existing private protected units
<b>Ground of discrimination:</b>	Disability
<b>Source:</b>	Legislation – Emergency Ordinance
<b>Field:</b>	Employment
<b>Applicable law:</b>	Emergency Ordinance 60 from August 4, 2017 on modifying Law 448 from 2006 on the protection and promotion of the rights of persons with handicap

### **Content**

**Case/law/policy development:** On August 4<sup>th</sup>, the Government adopted by means of emergency ordinance major changes regarding the access to employment of persons with disabilities. The Emergency Ordinance 60/2017 introduces and modifies several clauses regarding access to employment of persons with disabilities and introduces a new way of calculating the monthly social benefits granted to persons with disabilities by linking them to the evolution of the social reference indicator.

The most controversial and criticised amendment introduced by the Emergency Ordinance 60/2017 is the rewording of art.81 of Law 448/2006 on protected units. Protected units are workshops or small factories developed in order to secure employment for persons with disabilities usually by NGOs but also by private for-profit actors. The new art. 81 limits the possibility to establish protected units to public entities, without providing for any accreditation mechanism to prevent the dissolution of existing private protected units. Out of the 732 protected units functioning at 30 June 2017, only one such unit functions within a public institution, the rest being private protected units, 206 of which being established by NGOs supporting persons with disabilities. The explanatory note of the emergency ordinance mentions the different models of protected units and suggests, without providing actual data, that some of the protected units abuse their legal regime as there are too few persons with disabilities hired or persons with disabilities have only a part-time contract.

The Emergency Ordinance 60/2017 also amends art. 78 regarding the obligation for entities with more than 50 employees which fail to hire at least 0.4 % of the employees

persons with disabilities to pay to the state budget 50 % of the minimum salary for each person not hired. This amount is now increased, the employers having to pay monthly a full minimum salary for each position in which a person with disabilities was not hired. The obligation to organize selection competitions to hire only persons with disabilities is added in art. 78(5) though no sanction is provided for failure to organize such competitions. The Emergency Ordinance also repeals Art. 78(3) letter b) providing for the possibility to buy products and services produced by persons with disabilities in protected units in the amount due to the state budget in the case of the employees which fail to comply with the obligation to hire persons with disabilities. No other measures to facilitate work integration of persons with disabilities and no special fund for inclusion are established.

The Emergency Ordinance 60/2017 was adopted in spite of the protests of disabilities NGOs and of negative advisory opinions issued by the Economic and Social Council.

**Key points of analysis:** The limitation of protected units to those established by public entities only will lead to the dissolution of all private units, including those functioning in good faith, without providing an alternative mechanism for the inclusion of persons with disabilities in the labour market. The de facto closing down of existing protected units is unconstitutional and some of the disabilities NGOs already called on the Ombudsperson to seize the Constitutional Court. No response was provided by the Ombudsman so far. Affected protected units have the possibility of challenging the Emergency Ordinance in court and raise an exception as to the unconstitutionality of the amendments.

Given that, so far, public entities fell so short on establishing protected units for persons with disabilities, the amendment of art. 81 is also unrealistic.

**Internet link source:** Text of the Emergency Ordinance 60/2017 available in Romanian here: [http://www.cdep.ro/pls/legis/legis\\_pck.frame](http://www.cdep.ro/pls/legis/legis_pck.frame).