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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

Iustina Ionescu

Reporting period 1 January 2017 – 31 December 2017

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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 levels – 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 county, 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 During the last few years, the National Commission and the local-level commissions have no longer been active.

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), amended by Law No. 62 of 1 April 2009; Law No. 128 of 26 April 2013;
- Legea 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 (Law No. 229 of 6 October 2015 for the amendment of the Law No. 202/2002 regarding equal opportunities between women and men);

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

- Legea 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 (Law No. 154 of 18 June 2015 for the amendment of the Government Emergency Ordinance No. 96/2003 regarding workplace maternity protection);
- Ordonanța de Urgență nr. 111 din 8 decembrie 2010 privind concediul și indemnizația lunară pentru creșterea copiilor (Government Emergency Ordinance No. 111 of 8 December 2010 on the leave and monthly allowance for child rearing), amended by Law No. 132 of 27 June 2011; Emergency Ordinance No. 124 of 27 December 2011; Law No. 166 of 9 October 2012; Law No. 187 of 24 October 2012; Law No. 126 of 23 September 2014; Law No. 66 of 19 April 2016; Emergency Ordinance No. 82 of 16 November 2016; Emergency Ordinance No. 6 of 18 January 2017.

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 county 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 Romania, Constitution of 1991, Articles 4 and 16.

³ Romania, Constitution of 1991, Article 41(4).

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

⁵ Romania, 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 Romania, Gender Equality Law', 2002.

3. Implementation of central concepts

3.1 Sex/gender/transgender

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

Yes. The 2015 amendment of the Gender Equality Law introduced definitions of sex and gender.⁷ 'Sex' is understood as the combination of biological and physiological features that define women and men.⁸ 'Gender' is understood as the combination of roles, behaviours, features and activities that society considers to be appropriate for women and men, respectively.⁹

The same amendment also introduced the definition of 'gender stereotypes' understood as the organised systems of generally accepted beliefs and opinions, perceptions and preconceptions regarding the tasks, characteristics and roles that women and men have or should have.¹⁰

On 28 March 2016, Law No.30 of 17 March 2016 on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence entered into force introducing also the definition of 'gender' in Article 3.(c) of the Convention.¹¹

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.' In 2017, the National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării*) (CNCD) examined the first case of alleged discrimination on the ground of gender identity. The case concerned a transgender woman who was allegedly subjected to harassment by the police in Bucharest. The incident started when a police officer refused to acknowledge her female identity because it did not correspond to the sex markers displayed in her identity documents. The woman filed an internal complaint with the police and an administrative complaint with the CNCD. At the end of 2017, the police referred the internal complaint to the prosecutor's office and no information about the investigation was provided. At the same time, the complaint of discrimination was still pending at the CNCD.¹² The legal recognition of gender reassignment is a very burdensome judicial procedure for transgender persons in Romania; for those who have not finalized the medical transition, the case law is contradictory because the legal framework is unclear.¹³ Two cases are currently pending before the European Court of Human Rights with respect to this legal issue.¹⁴

⁷ Romania, Law No. 229 of 6 October 2015 for the amendment of the Law No. 202/2002 regarding equal opportunities between women and men (*Legea 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*).

⁸ Romania, Gender Equality Law, 2002, Article 4(d²).

⁹ Romania, Gender Equality Law, 2002, Article 4(d³).

¹⁰ Romania, Gender Equality Law, 2002, Article 4(i¹).

¹¹ Romania, Law No. 30 of 17 March 2016 on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence, adopted at Istanbul on 11 May 2011 (*Legea nr.30 din 17 martie 2016 pentru ratificarea Convenției Consiliului Europei privind prevenirea și combaterea violenței împotriva femeilor și a violenței domestice, adoptată la Istanbul la 11 mai 2011*).

¹² CNCD, File No. 370/2017, the case is still pending.

¹³ ACCEPT, Transpersons in Romania. Legal Recognition of gender identity (Persoane trans în România Recunoașterea juridică a identității de gen), February 2014, available at <http://accept-romania.ro/wp-content/uploads/2014/02/Recunoasterea-juridica-a-identitatii-de-gen-a-persoanelor-trans-in-Romania-page-by-page.pdf>.

¹⁴ ECtHR, Application Nos. 2145/16 and 20607/16, the cases are still pending.

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.¹⁵ 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.¹⁶ However, the Court of Appeal of Bucharest has overturned certain decisions of the CNCD in this field.¹⁷ 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. In at least one of these cases, the High Court of Cassation and Justice overturned the Court of Appeal judgment and upheld the CNCD decision, confirming that the unlawful dismissal of women on the ground of pregnancy is sex discrimination.¹⁸ The CNCD is continuing its jurisprudential line.¹⁹

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 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.²⁰ In the author's view, this definition complies with the EU definition.

¹⁵ Romania, Gender Equality Law, 2002, Article 4(a).

¹⁶ 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.

¹⁷ Court of Appeal of Bucharest, Judgment Nos. 3918 of 9 December 2013 (File No. 3785/2/2013), 1712 of 27 May 2013, and 4585 of 24 July 2012.

¹⁸ High Court of Cassation and Justice, Decision No. 3177 of 15.10.2015 in File No. 3785/2/2013.

¹⁹ CNCD, Decision No. 264 of 14.05.2014, available at http://nediscriminare.ro/uploads_ro/docManager/487/hotarare_264-14_P_G_S_dosar_11114_s_1_Constatare_amenda_3000.pdf (a case of discrimination upon a return from parental leave was sanctioned with an administrative fine of RON 3 000 (EUR 666). See also CNCD, Decision No. 56 of 25.02.2016 (a case of a dismissal based on pregnancy was sanctioned with an administrative fine of RON 10 000 (EUR 2 222), CNCD Decision No. 88 of 03.02.2016 (a case of discrimination upon a return from parental leave was sanctioned with an administrative fine of RON 2 000 (EUR 444)).

²⁰ Romania, Gender Equality Law, 2002, Article 4(b).

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.²¹

The CNCD is open to using statistical evidence to establish a presumption of indirect discrimination. The author could not identify an example among the case law publicly made available by the CNCD for the years 2008-2015.²²

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 CNCD only considered intent as an element to differentiate between direct and indirect discrimination.²³ But when it came to reaching a decision regarding the dismissal of predominantly women, the CNCD then applied the correct criteria for finding indirect discrimination.²⁴ 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 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.

²¹ 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>.

²² CNCD case law for the years 2008-2015 is available online at www.nediscriminare.ro.

²³ 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.

²⁴ CNCD, Decision of 4 December 2013.

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)?

In 2015, the Bucharest Court of Appeal gave its final decision to uphold the appeal in a case of alleged multiple discrimination on the ground of sex and HIV status in access to healthcare.²⁵ In September 2010, a pregnant woman living with HIV was refused hospitalization for birth by Caesarean section at 38 weeks, which was recommended in her case as a means to prevent mother-to-child HIV transmission. The first instance court found discrimination on the ground of HIV status.²⁶ The appellate court overturned the judgment, reasoning that this case was not an emergency case because the membranes were intact.²⁷ The appellate court also reasoned its decision stating that by admitting this woman instead of other pregnant women who were also not emergency cases, she would have been privileged because of her HIV status, which represents a form of positive discrimination against the majority of women who were HIV negative. This reasoning is questionable for several reasons. Besides the criticism regarding the issue of positive action (detailed below), the issue of multiple discrimination was also missed by the courts that handled the case: they disregarded the role played by the fact that she is a woman and in particular, that a woman living with HIV who is also pregnant has specific needs in terms of healthcare – the legal obligations to ensure preventive measures for HIV transmission, among which is birth by Caesarean section at 38 weeks of pregnancy – which puts her in a particularly vulnerable position in relation to the healthcare personnel.

In a case from 2016, the CNCD examined a complaint of multiple discrimination on the ground of sex and age.²⁸ A 49-year old woman, a Regional Sales Manager at Heineken Romania, who had been working for 26 years for the same employer was dismissed after her position was axed. She alleged discrimination on the ground of sex and gender. The CNCD found discrimination based on age but not on sex because the employer proved that other female managers had retained their positions; CNCD did not raise the question of intersectional discrimination against the complainant as an older woman. At the same time, the employer could not provide objective reasons for doing away with the complainant's position specifically or that it offered the complainant another position, which was expected behaviour from an employer of its size which was in a long employment relationship with an employee who had scored highly in evaluations.²⁹

On 6 September 2017, the CNCD found the first case of multiple discrimination against Romani women.³⁰ The case concerned comments made during a political talk show on TV by a journalist who criticized parents for taking their six-month old child to a protest, comparing this behaviour to what he presented as being Romani mothers' irresponsible behaviour. In the discourse, the journalist identified Romani women of certain groups by their traditional clothing (skirts). This appeared to be an indication of the gender dimension of discrimination, besides the ethnic ground. According to the Romani women activists who brought the case (the E-Romnja Association), in previous cases involving young urban Romani women, who do not usually wear traditional skirts, the gender component had been overlooked by the CNCD.

²⁵ Bucharest Court of Appeal (*Curtea de Apel București*), Second Appeal Decision No.399R of 30.03.2015.

²⁶ First Instance Court Second District Bucharest (*Judecatoria Sector 2 Bucuresti*), Judgment No.4999 of 27.03.2013.

²⁷ Bucharest Tribunal (*Tribunalul București*), Decision No.582A of 12.05.2014.

²⁸ CNCD, Decision No. 490 of 13.07.2016.

²⁹ CNCD, Decision No. 490 of 13.07.2016.

³⁰ CNCD, Decision No. 484 of 06.09.2017.

3.5 Positive action

3.5.1 Is positive action explicitly allowed in national legislation?

Positive action is permitted, but not required.³¹ 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.³² 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.³³ 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.³⁴ 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 by the law with regard to hospitals and medical personnel for the purpose of preventing HIV transmission.

Positive action is a voluntary measure taken by an entity after a thorough analysis of a set of criteria. In principle, in the opinion of the author, courts should not *ex officio* qualify the measure as positive action in the absence of such a claim from the defendant. However, the CNCD appears to disregard this principle. For example, in a case concerning restructuring due to the economic constraints of one of two similar positions with the Romanian Federation of Athletics, a man was dismissed and a woman kept her job for what the employer presented as 'social reasons' – because the female colleague was married and was taking care of a minor child.³⁵ The CNCD established the presumption that the ground of discrimination was 'sex' because the two colleagues were differentiated

³¹ Romania, Gender Equality Law, 2002, Articles 4(e) and 5(b).

³² Romania, Gender Equality Law, 2002, Article 4(e).

³³ Romania, Gender Equality Law, 2002, Article 5(b).

³⁴ Bucharest Tribunal (*Tribunalul Bucuresti*), Civil decision No. 582A of 12.05.2014.

³⁵ CNCD, Decision No.33 of 14.01.2015, available at http://nediscriminare.ro/uploads_ro/docManager/50/hotarare_33-15.pdf.

by sex. The CNCD also decided *ex officio* to examine the dismissal as positive action to retain a woman employee, even though the employer did not present this argument, but claimed that 'marital status' and 'parental status' were the basis of the dismissal. The employer was found accountable for discrimination on the ground of sex because it had not made an evaluation of the competences of the two employees prior to the dismissal and women were not under-represented in the sector.³⁶

Moreover, the CNCD seemed to omit checking the legal conditions for assessing if a measure based on sex is positive action; the result is that the defendant's justifications for discriminatory treatment were treated as positive action without the defendant proving that the respective decision was based on an evaluation of women's representation at work – checking if there was a need to balance a lack of opportunity for the persons belonging to a particular sex. In a case from 2016, the CNCD qualified as 'positive action' the decision of a private employer specializing in selling electronics, especially photo-video equipment, to hire exclusively women for the position of Events & Community Assistant.³⁷ The employer argued that the reason for wanting to hire women only was to counterbalance the company's image as being an exclusively male company because they were selling electronics; it submitted that the measure was at most 'indirectly promoting women' and not discriminatory based on sex.³⁸ Without a proper evaluation of the legal conditions for positive action, such an argument raises questions as to whether it is still positive action when the impact was to ensure equal opportunities for women without the employer actually planning for such a result.

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. There are no public or private companies that feature voluntary policies promoting a gender balance on their boards or voluntarily releasing statistics regarding gender representation in their decision-making instances.

The CNCD decided that appointing an exclusively male board in a public company without making any effort to promote women amounted to sex discrimination.³⁹ The case concerned a local administration which owned a public company dealing with water supply at the local level. CNCD found that the defendant had not fulfilled the burden of proving that it aimed to promote women, but for objective reasons had failed thereby setting a standard in this regard.⁴⁰ From this case, it appears that, when statistics about gender representation are available to the CNCD, its approach is to consider the absence of efforts towards better gender representation per se as amounting to sex discrimination.

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.

³⁶ CNCD, Decision No. 33 of 14.01.2015, 5.2, available at http://nediscriminare.ro/uploads_ro/docManager/50/hotarare_33-15.pdf.

³⁷ CNCD, Decision No. 522 of 27.07.2016.

³⁸ CNCD, Decision No. 522 of 27.07.2016.

³⁹ CNCD, Decision No. 335 of 18 June 2014, available at http://nediscriminare.ro/uploads_ro/docManager/541/hotarare_335-14_Freies_Europa_dosar_148-14_g_I_constatare_cu_avertisment.pdf.

⁴⁰ CNCD, Decision No. 335 of 18 June 2014, ¶ 5.8, available at http://nediscriminare.ro/uploads_ro/docManager/541/hotarare_335-14_Freies_Europa_dosar_148-14_g_I_constatare_cu_avertisment.pdf.

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.⁴¹ In the author's opinion this definition complies with the EU definition found in Article 2(1)(c) of Directive 2006/54.

The 2015 amendment of the Gender Equality Law added psychological harassment to the list of prohibited behaviours, among direct discrimination, indirect discrimination, harassment and sexual harassment. 'Psychological harassment' is understood as any inappropriate behaviour carried out for a period of time, which is repetitive or systematic and includes physical behaviour, oral or written language, gesticulation or other intentional acts that could affect the personality, dignity or physical and psychological integrity of a person.⁴²

3.6.2 Please specify the scope of the prohibition on harassment (e.g. does it cover employment and access to goods and services; is it broader?).

The scope of the prohibition on harassment is broader, applying to 'all areas of public life in Romania'.⁴³

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.⁴⁴ 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).⁴⁵ On several occasions when the alleged acts of harassment took place within labour relations, the CNCD decided to declare the case inadmissible *rationae materiae*.⁴⁶ Since a criminal investigation into sexual harassment starts with a complaint from the alleged victim within three months from the time of the act, a period that is usually lost with CNCD procedures, the above-mentioned cases remain unresolved.⁴⁷

3.6.4 Please specify the scope of the prohibition on sexual harassment (e.g. does it cover employment and access to goods and services; is it broader?).

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 public life.⁴⁸

⁴¹ Romania, Gender Equality Law, Article 4(c).

⁴² Romania, Law No. 229 of 6 October 2015 for the amendment of the Law No. 202/2002 regarding equal opportunities between women and men, Article 4(d¹).

⁴³ Romania, Gender Equality Law, Article 1(1).

⁴⁴ Romania, Gender Equality Law, Article 4(d).

⁴⁵ Romania, New Criminal Code, Article 223.

⁴⁶ E.g. CNCD, Decision No. 589 of 22.10.2014, available at http://nediscriminare.ro/uploads_ro/docManager/727/hotarare_589-14_V.O.pdf, Decision No.648 of 20.11.2008, available at http://nediscriminare.ro/uploads_ro/docManager/896/hot.648-2008.pdf.

⁴⁷ Romania, New Criminal Code, Article 223, New Criminal Procedure Code, Article 296.

⁴⁸ Romania, Gender Equality Law, Article 1(1).

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).⁴⁹

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.⁵⁰

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.

3.8 Other forms of discrimination

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

No.

⁴⁹ Romania, Old Criminal Code, Article 203.

⁵⁰ Romania, 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.⁵¹ 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.'⁵² Similar provisions are stipulated in Article 6(b) and (c) of the Anti-discrimination Law⁵³ and Article 7(c) of the Gender Equality Law.⁵⁴

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;⁵⁵ 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.⁵⁶

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'.⁵⁷

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 Combating Discrimination invokes the definition of direct discrimination provided by Council Directive

⁵¹ Romanian Constitution, Article 41(4).

⁵² Romania, Labour Code, Article 6(3).

⁵³ Romania, Anti-discrimination Law, Article 6(b), (c).

⁵⁴ Romania, Gender Equality Law, Article 7(c).

⁵⁵ Romania, Labour Code, Article 160.

⁵⁶ Romania, Labour Code, Article 166.

⁵⁷ Romania, Gender Equality Law, Article 4.(a).

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.⁵⁸ 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.

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

⁵⁸ 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).

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.

Based on the existing jurisprudence, it seems that in the field of higher education for military forces two contradictory approaches have emerged regarding the conditions in which sex can be accepted as an occupational requirement. On the one side, the Court of Appeal of Bucharest rejected *de plano* the existence of occupational requirements in the field of research, communication, IT, logistics, and administration in the military (the judgment is not final, it will be reviewed by the High Court of Cassation and Justice).⁵⁹ On the other side, the National Council for Combating Discrimination (CNCD) found sex segregation in recruitment for military professions to be a determining occupational requirement. Then, the CNCD's decision to sanction discrimination or not depends on whether the measure is considered to be disproportionate or not. In one case concerning sex segregation in higher education for all military professions, the CNCD found that an average of 15 % places available for women and for some specialties 0 % was disproportionate,⁶⁰ while in another case the measure was considered to be proportionate given that approximately 30 % of the places in higher education for future intelligence service professionals were available for women, despite the fact that the sex segregation was for IT and psychology specialties, fields of activity in which the authorities did not prove gender-related specifics.⁶¹

The Court of Appeal of Bucharest stated that for an occupational requirement based on sex to be reasonably justified, the Ministry of National Defence (*Ministerul Apărării Naționale*) was supposed to describe the specificities of each activity and put them in

⁵⁹ Bucharest Court of Appeal (*Curtea de Apel București*), Decision No.1090 of 1 April 2016.

⁶⁰ National Council for Combating Discrimination, Decision No. 568 of 8 October 2014.

⁶¹ CNCD, Decision No. 577 of 13.10.2014, available at http://nediscriminare.ro/uploads_ro/docManager/715/hotarare_577-14.pdf.

relation to the number of women and men needed for the job in the context of the existing numbers of employees already hired in the system and of the international requirements.⁶² However, the ministry did not fulfil this burden of proof. Moreover, the Court rejected the defence of the ministry that the living conditions are very harsh in marine forces as not showing an actual difference between sexes because they are common for men and women working in marine forces.⁶³

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)?

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.

⁶² Bucharest Court of Appeal (*Curtea de Apel București*), Decision No. 1090 of 1 April 2016.

⁶³ Bucharest Court of Appeal (*Curtea de Apel București*), Decision No. 1090 of 1 April 2016.

5. Pregnancy, maternity, and leave related to work-life balance (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.⁶⁴ 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.⁶⁵ 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.⁶⁶ 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.⁶⁷

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.

⁶⁴ Romania, 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*).

⁶⁵ Romania, 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').

⁶⁶ Romania, OUG 96/2003, Article 9 (2).

⁶⁷ Romania, 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) 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 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.

There is no difference between the public and private sector in terms of duration of parental leave. Parental leave can last for up to two years, for any of the parents that qualifies for parental leave, each parent at the time, up until the child is two years old.

- 5.4.5 Is the right of parental leave individual for each of the parents, a family entitlement or a combination of the two? How many months are reserved for each parent on a take-it or leave it basis?

The right of parental leave is individual for each of the parents and can be taken by one parent at a time. One month is reserved for one parent on a take it or leave it basis, while the remainder of the parental leave can be taken by the other parent. In total, maximum duration of parental leave is 2 years and then parents (who must qualify for parental leave individually) can decide who takes how long and when, except for 1 month that is obligatory and non-transferable.

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

No.

- 5.4.9 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 in the last two years prior to childbirth. The twelve months may be composed of periods from successive fixed-term contracts with the same employer or different employers.

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

No.

5.4.11 Are there special arrangements for small firms?

No.

5.4.12 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).

5.4.13 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.

5.4.14 Do workers benefiting 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.

5.4.15 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.

In 2016, the CNCD decided a case of a refusal to promote women in public service who had suspended their work during parental leave. The complainant was not given permission to participate in the competition for promotion because she was unable to show the results of a professional evaluation during the last two years when she was on parental leave. The CNCD found direct sex discrimination in this case.⁶⁸

5.4.16 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.

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

Yes.

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

No.

⁶⁸ CNCD, Decision No. 125 of 10.02.2016.

5.4.19 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. Starting on 1 January 2018, the monthly allowance is 85 % of the average income of the employee during the last twelve months of the two years prior to childbirth, capped at a minimum of 2.5 times the Social Indicator of Reference (in 2018 this indicator is RON 500 (approx. EUR 108) with a maximum of RON 8 500 (approx. EUR 1 847).⁶⁹

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

Romania introduced more favourable provisions with respect to the length of the parental leave – up to two years– and the amount of the monthly allowance paid from the social security system.

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.

⁶⁹ Emergency Ordinance No. 111 of 8 December 2010 on the leave and monthly allowance for child rearing, as amended by Government Emergency Ordinance 82/2017, Art. 2(2).

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 social security 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 the same, 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 the same, 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 Has national law applied the exclusions from the material scope as specified in Article 8 of Directive 2006/54?

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 the same, 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 the same, 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 Has national law applied the exclusions from the material scope as specified in Article 7 of Directive 79/7? 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.⁷⁰ 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.⁷¹

In 2016, the CNCD found direct sex discrimination in a case when during procedures for the public procurement of veterinary services, the organizer had asked the applicant, a pregnant freelance veterinarian, to explain how she would provide the contracted services during the specific period of time. Because the woman refused to answer, she was disqualified. The CNCD found the question to be directly connected to pregnancy and the

⁷⁰ 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*).

⁷¹ 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*).

treatment to be discriminatory.⁷² In 2016-2017, the Court of Appeal of Timișoara rejected this interpretation by the CNCD and finally found no discrimination. The Court found that the woman in question had not been prevented from participating in the public procurement procedure, she had only been asked as a candidate contractor to explain how she would ensure service during the period of maternal and parental leave.⁷³

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;⁷⁴ 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.⁷⁵

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 the same, 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'.⁷⁶

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?

In 2015, the Ministry of Energy, Small and Medium-Sized Enterprises and Business Environment carried out several programmes to support small and medium-sized businesses (SMEs) with financial aid from the state budget. The target group was beginners, the youth, craftsmen and artisans, women and businesses from the field of commerce and services, aside from a general support programme for SMEs. Among the conditions for participating in the programme 'The Woman Manager' was that at least one of the shareholders is a woman holding 50 % of the company or is a self-employed woman.⁷⁷ Only 17 applicants were awarded support of up to RON 50 000 (EUR 11 000) for each applicant; this is a very limited step that, in the view of the author, should be extended in the future and supported with services that contribute to a life-work balance

⁷² CNCD, Decision No. 657 of 26.10.2016.

⁷³ Court of Appeal of Timișoara, Civil Judgment Nos.723 of 10.03.2016 and 165 of 29.05.2017.

⁷⁴ Romania, 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.

⁷⁵ Romania, Gender Equality Law, Article 7(2).

⁷⁶ Romania, Gender Equality Law, Article 2(1) (a).

⁷⁷ More information about the programme 'The Woman Manager' is available at <http://www.aippimm.ro/articol/programe/programe-nationale-2015/programul-intreprinderilor-mici-si-mijlocii-3>.

for self-employed women. The programme was acknowledged as positive action by the CNCD in a case that was filed against the Ministry for alleged discrimination against men.⁷⁸

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.⁷⁹

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 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.⁸⁰ 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.⁸¹

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.⁸² The total duration of maternity leave is 126 days, out of which 42 days after giving birth are mandatory for the woman.⁸³ The criterion used for the maternity allowance is the one from Article 8(3)(a) of Directive 2010/41. The allowance is

⁷⁸ CNCD, Decision No. 179 of 02.03.2016.

⁷⁹ Romania, 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.

⁸⁰ Romania, 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.

⁸¹ Romania, 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, Article 1.2.

⁸² Romania, 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.

⁸³ Romania, Emergency Ordinance No. 158/2005 on health insurance leave and allowances Article 24, published in Official Journal No. 1.074 of 29 November 2005.

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)).⁸⁴

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.

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)).

⁸⁴ Romania, Emergency Ordinance No. 158/2005 on health insurance leave and allowances, Articles 10 and 25, published in Official Journal No. 1.074 of 29 November 2005.

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 Law⁸⁵ and the Gender Equality Law⁸⁶ 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 Has national law applied the exceptions from the material scope as specified in Article 3(3) of Directive 2004/113, regarding the content of media, advertising and education?

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.⁸⁷ Second, the Gender Equality Law applies to services in the field of education and the media and advertising; moreover, the 2015 amendment of the Gender Equality Law introduced the explicit obligation that advertisement companies must not use gender stereotypes in their productions. 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; there has been no case law concerning this situation, yet.

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.

⁸⁵ Romania, 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.

⁸⁶ Romania, 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.

⁸⁷ Romania, 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.⁸⁸ 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 Law⁸⁹ 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)).⁹⁰

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.⁹¹ 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.⁹²

⁸⁸ 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.

⁸⁹ Romania, 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.

⁹⁰ Romania, 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.

⁹¹ Romania, 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.

⁹² Romania, 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?

Yes. On 25 March 2016, the law ratifying the Istanbul Convention was published in the Official Journal.⁹³ The bill proposing the ratification of the Convention received broad support in the Parliament – for example, in the Romanian Senate (*Senatul României*) there was only one vote against the bill and one abstention.⁹⁴

Romania made several reservations to the Convention. First, Romania reserves the right not to apply or to apply only in specific cases or conditions the provisions laid down in Article 30, paragraph 2, Article 44, paragraphs 1.e, 3 and 4, Article 55, paragraph 1, in respect of Article 35 regarding minor offences, and Article 59.v. Second, Romania reserves the right to provide for non-criminal sanctions, instead of criminal sanctions, for the behaviours referred into Articles 33 and 34.⁹⁵

⁹³ Romania, Law No. 30 of 17 March 2016 for the ratification of the Council of Europe Convention regarding the prevention and combating of violence against women and domestic violence, adopted at Istanbul on 11 May 2011 (*Lege nr. 30 din 17 martie 2016 pentru ratificarea Convenției Consiliului Europei privind prevenirea și combaterea violenței împotriva femeilor și a violenței domestice, adoptată la Istanbul la 11 mai 2011*).

⁹⁴ Romanian Senate (*Senatul României*), Law 633/2015 bill on the ratification of the Council of Europe Convention on the prevention and combating of violence against women and domestic violence, adopted in Istanbul, at 11 May 2011 (*L633/2015 proiect de lege pentru ratificarea Convenției Consiliului Europei privind prevenirea și combaterea violenței împotriva femeilor și a violenței domestice, adoptată la Istanbul, la 11 mai 2011*).

⁹⁵ Council of Europe, Full list of Reservations and Declarations for Treaty No.210 - Council of Europe Convention on preventing and combating violence against women and domestic violence, available at http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/declarations?p_auth=5HiR6pap.

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.⁹⁶ Only the 2013 amended provisions regarding the burden of proof in the Anti-discrimination Law are in compliance with the Directives.⁹⁷ 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. In the last few years, CNCD has improved its practice of applying the burden of proof in cases of discrimination on the ground of sex, especially in cases of dismissals when the Labour Code establishes positive obligations on behalf of the employer (such as an objective evaluation prior to a dismissal for economic reasons).^{98 99}

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.¹⁰⁰ 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.¹⁰¹ 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)).

⁹⁶ Anti-discrimination Law, Articles 20(6) and 27(4), Gender Equality Law, Article 44, and Goods and Services Law, Article 12.

⁹⁷ 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*).

⁹⁸ Labour Code, Chapter V, Sections 4 and 5.

⁹⁹ E.g. CNCD, Decision No. 719 of 04.12.2013, Decision No. 510 of 04.09.2013.

¹⁰⁰ Gender Equality Law, Article 39.

¹⁰¹ Goods and Services Law, Article 9.

- 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.

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.¹⁰² Nonetheless, the Anti-discrimination Law prescribes that all groups exposed to discrimination may benefit from such support in both administrative procedures and court proceedings.¹⁰³

- 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?

Law 229 of 6 October 2015 amending the Gender Equality Law reinstated 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.¹⁰⁴ ANES was closed down in 2010 due to budgetary cuts and during that time the Department for Equal Opportunities between Women and Men, within the Ministry of Labour, Family, Social Protection (*Departamentul pentru Egalitate de Șanse între Femei și Bărbați*) and the Elderly (*Ministerului Muncii, Familiei, Protecției Sociale și Persoanelor Vârstnice*), was acting in part ANES's mandate.¹⁰⁵ ANES is currently the specialized administrative body

¹⁰² Romania, 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 (*Ordonanța de Urgență a Guvernului 83/2012 pentru modificarea și completarea Legii nr. 202/2002 privind egalitatea de șanse și de tratament între femei și bărbați*).

¹⁰³ Romania, Anti-discrimination Law, Article 28.

¹⁰⁴ Romania, Law No.229 of 6 October 2015 for the amendment of the Law No. 202/2002 regarding equal opportunities between women and men, Article I.(9)-(11).

¹⁰⁵ Romania, Government Decision No.250/2014 on the organizing and functioning of the Department for Equal Opportunities between Women and Men (*Hotărârea de Guvern nr. 250/2014 privind organizarea și funcționarea Departamentului pentru Egalitate de Șanse între Femei și Bărbați*).

under the control of the Ministry of Labour, Family, Social Protection and the Elderly (*Ministerului Muncii, Familiei, Protecției Sociale și Persoanelor Vârstnice*), having the legal mandate to promote the principle of equal opportunities and equal treatment between women and men with the aim of eliminating all forms of discrimination on the ground of sex, in all national policies and programmes. This broad mission is accomplished through: drafting and implementing the Government's strategy and policies in the field, proposing legal amendments to the Government to ensure harmonisation with the EU law in the field, representing the Romanian Government in its field of activity and ensuring the active and visible integration of the gender perspective in all national policies and programmes.¹⁰⁶ ANES also has the mandate to receive complaints in the field of equal opportunities between women and men and non-discrimination. However, it only has the power to forward these complaints to the competent authorities in order to examine them, such as the National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării*) and the Labour Inspection (*Inspekția Muncii*). It also provides counselling to the victim of discrimination.¹⁰⁷

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

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.¹⁰⁸

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.

¹⁰⁶ Romania, Law No.229 of 6 October 2015 for the amendment of the Law No. 202/2002 regarding equal opportunities between women and men, Article I.(10).

¹⁰⁷ Romania, Law No.229 of 6 October 2015 for the amendment of the Law No. 202/2002 regarding equal opportunities between women and men, Article I.(10).(5).

¹⁰⁸ Romania, 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 (*Ordonanța de Urgență a Guvernului 83/2012 pentru modificarea și completarea Legii nr. 202/2002 privind egalitatea de șanse și de tratament între femei și bărbați*).

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 incipient 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 why ANES was reinstated in September 2015 as the gender equality body, which was considered an important step towards reconsidering the political commitment to gender equality in the country.¹⁰⁹

After Romania ratified the Istanbul Convention in 2016, in July 2018, the Parliament adopted several amendments improving the protection of women exposed to domestic violence by adopting Law No.174/2018 on the amendment of the Law No.217/2003 regarding the prevention and combating of violence in the family (*Legea nr. 174/2018 privind modificarea și completarea Legii nr. 217/2003 pentru prevenirea și combaterea violenței în familie*). Most importantly, the new law introduces the temporary protection order (*ordinul de protecție provizoriu*), an administrative protection order issued by the police officer for a period of up to five days. In the same time, a vocal minority group of religious-based non-governmental organizations¹¹⁰ and individuals working in the academia¹¹¹ criticised the Government for ratifying the Istanbul Convention. They argue this Convention is imposing what they call "gender ideology", teaching children that they can choose their gender, irrespective of biological sex that was assigned to them at birth.¹¹²

¹⁰⁹ Romania, Law No. 229 of 6 October 2015 on the amendment of Law No. 202/2002 on equal opportunities and treatment between women and men.

¹¹⁰ Platforma Împreună, Open Letter to the Prime-minister of Romania (*Scrisoare deschisă către Prim-ministrul României*), 19 June 2018, available at <http://platforma-impreuna.ro/scrisoare-deschisa-catre-prim-ministrul-romaniei/>.

¹¹¹ Active News, 2 March 2018, (*Scrisoare deschisă: Nouă profesori universitari, în frunte cu părintele Necula și Dr. Pavel Chirilă, denunță teoriile gender adoptate de România prin Convenția de la Istanbul, cer îndepărtarea „agresiunii la versetele Creației din hotarele acestui popor”*), available at <https://www.activenews.ro/stiri-social/Scrisoare-deschisa-Noua-profesori-universitari-in-frunte-cu-parintele-Necula-si-Dr.-Pavel-Chirila-denunta-teoriile-gender-adoptate-de-Romania-prin-Conventia-de-la-Istanbul-cer-indepartarea-„agresiunii-la-versetele-Creatiei-din-hotarele-acestui-popor-149599>.

¹¹² Active News, 2 March 2018, (*Scrisoare deschisă: Nouă profesori universitari, în frunte cu părintele Necula și Dr. Pavel Chirilă, denunță teoriile gender adoptate de România prin Convenția de la Istanbul, cer îndepărtarea „agresiunii la versetele Creației din hotarele acestui popor”*), available at <https://www.activenews.ro/stiri-social/Scrisoare-deschisa-Noua-profesori-universitari-in-frunte-cu-parintele-Necula-si-Dr.-Pavel-Chirila-denunta-teoriile-gender-adoptate-de-Romania-prin-Conventia-de-la-Istanbul-cer-indepartarea-„agresiunii-la-versetele-Creatiei-din-hotarele-acestui-popor-149599>.

Annexes

Bibliography

Nothing to report.

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