



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

### FLASH REPORT

<b>Country:</b>	Romania
<b>Title:</b>	Labour Code definitions of discrimination amended
<b>Date:</b>	24 August 2020
<b>Expert:</b>	Romanița Iordache
<b>Context</b>	
<b>Issue at stake:</b>	Definitions of direct and indirect discrimination, harassment, discrimination by association, victimisation, order to discriminate and genuine occupational requirement All grounds
<b>Grounds of discrimination:</b>	
<b>Field of application:</b>	Employment
<b>Source:</b>	National legislation
<b>Applicable law:</b>	Law 151 from 23 July 2020 amending the Labour Code (Law No. 53/2003)

### Content

**Law development:** A recent amendment to the Labour Code introduced new wording and new concepts in the Code bringing it quite apart from the definitions included in the Anti-discrimination Law. The new Article 5.2 includes a general clause mentioning 'Any direct or indirect discrimination against an employee, discrimination by association, harassment or victimisation, based on the criteria of race, nationality, ethnicity, colour, language, religion, social origin, genetic traits, sex, sexual orientation, age, disability, chronic non-communicable disease, HIV infection, political choice, family situation or responsibility, membership or union activity, membership in a disadvantaged category, is prohibited.' Direct discrimination is defined in Article 5.3 as 'Any act or act of distinction, exclusion, restriction or preference, based on one or more of the criteria provided in par. (2), which have as purpose or effect the non-granting, restriction or removal of the recognition, use or exercise of the rights provided in the labour legislation.' Indirect discrimination is defined in Article 5.4. as 'Any seemingly neutral provision, action, criterion or practice that has the effect of disadvantaging a person over another person based on one of the criteria provided in par. (2), unless that provision, action, criterion or practice is objectively justified by a legitimate aim, and if the means to achieve that aim are proportionate, appropriate and necessary.'

The law introduces new concepts such as harassment in Article 5.5 defined as: 'any type of behaviour based on one of the criteria provided in para. (2) which has as its purpose or effect the damage of a person's dignity and leads to the creation of an intimidating, hostile, degrading, humiliating or offensive environment.' Article 5.6 defines discrimination by association as 'any act or act of discrimination committed against a person who, although not part of a category of persons identified according to the criteria provided in para. (2), is associated or presumed to be associated with one or more persons belonging to such a category of persons.' Article 58 defines the order to discriminate as 'any behaviour that consists in ordering, in writing or verbally, a person to use a form of discrimination, which

is based on one of the criteria provided in par. (2), against one or more persons is considered discrimination.'

Victimisation is defined in Article 5.7 as 'any adverse treatment, triggered in response to a complaint or legal action regarding the violation of the principle of equal treatment and non-discrimination.' Article 5.9 provides for genuine occupational requirements: 'Exclusion, distinction, restriction or preference in respect of a particular job does not amount to discrimination when, by the specific nature of the activity in question or the conditions under which the activity is performed, there are certain essential and decisive professional requirements, provided for the purpose to be legitimate and the requirements proportionate.'

Failure to observe the prohibition of discrimination as defined in Article 5.2-9 of the Labour Code is punished with a fine between RON 1 000 and 20 000 (approximately EUR 206 - 4 136) applicable by the labour inspectorates according to Article 260.

**Key points of analysis:** Notably, the protected grounds go beyond the open list provided for in the Anti-discrimination Law. While not identical, the definitions of the different forms of discrimination are quite similar. The definition of discrimination by association is a novelty in the Romanian legislation. Even if the fines applicable are similar to the fines provided for in the Anti-discrimination Law, it is regrettable that the amended law failed to mention specifically that not only labour inspectorates have a duty to find and fine violations of the Labour Code, but in cases of discrimination in the area of employment, the national equality body is also mandated to find the misdemeanours and sanction them.

**Internet link source:** Full text of the law available in Romanian on <https://www.codulmuncii.eu/modificari-codul-muncii/legea-nr-151-23-iulie-2020.html>.