



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

### FLASH REPORT

<b>Country:</b>	Romania
<b>Title:</b>	Anti-discrimination Law amended to include moral harassment
<b>Date:</b>	24 August 2020
<b>Expert:</b>	Romanița Iordache
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Moral harassment defined in an amendment to the Anti-discrimination Law and sanctions established for this deed with the NCCD and the courts having an additional mandate
<b>Grounds of discrimination:</b>	All grounds
<b>Field of application:</b>	Employment
<b>Source:</b>	National legislation
<b>Applicable law:</b>	Law 167 from 7 August 2020 amending the Governmental Ordinance 137/2000 (Romanian Anti-discrimination Law)

### Content

**Law development:** In spite of protests of the national equality body which sent its opinions to the parliamentary committees and criticized the bill for not being enforceable,<sup>1</sup> on 7 August 2020, a law amending the Romanian Anti-discrimination Law was published in the Official Gazette and entered into force. The amendment introduces the concept of moral harassment defined in a new Article 5<sup>1</sup> as 'any conduct committed against an employee by another employee who is his/her superior, by a subordinate and / or by a comparable employee from a hierarchical point of view, in relation to employment relationships, which have as purpose or effect a deterioration of working conditions by infringing the rights or dignity of the employee, by affecting his/her physical or mental health or by compromising his/her professional future, behaviour manifested in any of the following forms: a) hostile or unwanted conduct; b) verbal comments; c) actions or gestures.' In Article 5<sup>2</sup> the amendment further adds that 'Moral harassment in the workplace is any behaviour that, by its systematic nature, can harm the dignity, physical or mental integrity of an employee or group of employees, endangering their work or degrading the work environment. For the purposes of this law, stress and physical exhaustion are subject to moral harassment at work.'

The amending legislation includes in Article 5<sup>3</sup> the right of the employee to a job free from acts of moral harassment<sup>2</sup> and defines in Article 5<sup>4</sup> the type of liability incumbent

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<sup>1</sup> <https://www.q4media.ro/presedintele-cncd-csaba-asztalos-dupa-ce-presedintele-a-promulgat-legea-care-interzice-hartuirea-la-locul-de-munca-dupa-hartuirea-stradala-psihologica-mobbing-si-bullying-avem-si-aceasta-modific.html>.

<sup>2</sup> Article 5<sup>3</sup> Every employee has the right to a job free from acts of moral harassment. No employee shall be sanctioned, dismissed or discriminated against, directly or indirectly, including in respect of pay, vocational training, promotion or extension of employment, because he/she has been subjected or refused to be subjected to moral harassment at work.

on the perpetrators of moral harassment.<sup>3</sup> The amendment adds that moral harassment in the workplace is punishable by disciplinary, misdemeanour or criminal law, as the case may be.

In Article 5<sup>6</sup> and 5<sup>7</sup> the obligations of the employer are established, including the shift in the burden of proof.<sup>4</sup>

The amendments to Article 26.1 and 26.2 spell out the types of sanctions which are significantly different from the sanctions provided in the Anti-discrimination Law so far for other forms of discrimination, including for findings of harassment. Thus, Article 26.1<sup>1</sup> provides for fines for moral harassment between RON 10 000 to 15 000 (approximately 2 068-3 102), with the fines for the employer who fails to observe the duties from Article 2.5<sup>5</sup> ranging between RON 30 000-50 000 (approximately EUR 6 204-10 340) and for employers failing to comply with the provisions of Article 2.5<sup>6</sup> with fines ranging from RON 50 000 to 200 000 (approximately EUR 10 340-41 360).<sup>5</sup> Article 26.2 provides for different measures which can be ordered by the courts when finding moral harassment including an order to stop, reintegration, compensation, including moral damages. Instead, the NCCD can only order the employer to take all necessary measures to stop any acts or acts of moral harassment at work regarding the employee in question and order the employer to pay to the employee the amount necessary for the psychological counselling that the employee needs, for a reasonable period established by the occupational medicine doctor.<sup>6</sup> The failure of the employer to observe the orders issued by the Council when finding moral harassment is in itself defined as misdemeanour and punished with a fine ranging from EUR 20 680 to EUR 41 360.<sup>7</sup> One of the most worrying elements of the adopted law is that it abrogated Article 26.4 of the GO 137/2000 which provided for the statutory limitations for applying the sanctions issued by the Council when finding discrimination.<sup>8</sup>

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<sup>3</sup> Article 5<sup>4</sup> Employees who commit acts or acts of moral harassment at work are subject to disciplinary action, in accordance with the law and the internal regulations of the employer. Disciplinary liability does not remove the employee's misdemeanour or criminal liability for those acts.

<sup>4</sup> Article 5<sup>6</sup> It is forbidden for the employer to establish, in any form, internal rules or measures that oblige, determine or urge employees to commit acts or acts of moral harassment at work.

Article 5<sup>7</sup> The employee, a victim of moral harassment at work, must prove the factual elements of moral harassment, the burden of proof falling on the employer, in accordance with the law. The intention to harm through acts or acts of moral harassment in the workplace must not be proved.

<sup>5</sup> Article 26.1<sup>1</sup> The moral harassment at work committed by an employee, by infringing the rights or dignity of another employee, is a misdemeanour and it is punishable by a fine from RON 10 000 to 15 000.

(1 ^ 2) It constitutes a contravention and is sanctioned with a fine:

a) from RON 30 000 to 50 000 the non-fulfilment by the employer of the obligations provided in Article 2 paragraph 5<sup>5</sup>;

b) from RON 50 000 to 200 000 non-compliance by the employer with the provisions of Article 2.5<sup>6</sup>.

<sup>6</sup> Article 26.2<sup>1</sup> Whenever it finds the commission of an act of moral harassment at the workplace, the court may, in accordance with the law:

a) order the employer to take all necessary measures to stop any acts or acts of moral harassment at work regarding the employee in question;

b) to order the reintegration at work of the employee in question;

c) to order the employer to pay to the employee a compensation in an amount equal to the equivalent of the salary rights he was deprived of;

d) to order the employer to pay to the employee compensatory and moral damages;

e) to order the employer to pay to the employee the amount necessary for the psychological counselling that the employee needs, for a reasonable period established by the occupational medicine doctor;

f) to order the employer to modify the employee's disciplinary records.

Article 26.2<sup>2</sup> Whenever it finds the perpetration of an act of moral harassment at the workplace, the Council shall apply, in accordance with the law, any of the measures provided in Article 26.2<sup>1</sup>) lit. a) and e).

<sup>7</sup> Article 26.2<sup>3</sup> It constitutes a contravention and is sanctioned with a fine from RON 100 000 to 200 000 for the non-compliance by the employer to fulfil the measures ordered by the Council. The payment of the fine does not exonerate the employer from fulfilling the obligations provided in Article 26.2<sup>1</sup>.

<sup>8</sup> The former Article 26.4 provided that 'The enforcement of the misdemeanor sanctions provided in paragraph (1) shall be prescribed within 6 months from the date when the NCCD issues a decision regarding the complaint.'

**Key points of analysis:** The Romanian Anti-discrimination Law already defined harassment in Article 2(5) as 'any behaviour based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, membership in a disadvantaged category, age, disability, refugee or asylum status or any other criterion that leads to the creation of an intimidating, hostile, degrading or offensive environment'. This provision was applied by the NCCD as well as by the courts in line with the Directives. The amendments are a clear example of over-legislating, introducing vague terminology such as defining as forms of moral harassment 'actions and gestures' in very general terms or providing that 'stress and physical exhaustion are subject to moral harassment at work.'

The definition of moral harassment does not include a list of protected grounds and in this way, it can be invoked in situations not related to discrimination. Basically, a labour law concern regarding the dynamic of work relations was transplanted into the anti-discrimination law, with a mandate for the NCCD and the courts to find infringements and issue sanctions – fines as well as other remedial measures which are significantly higher than the sanctions provided for similar misdemeanours in the Anti-discrimination Law.

Article 26.4 was introduced in 2013 in the context of the judgment of the CJEU in *ACCEPT v. CNCD* C-81/12 and it was meant to ensure applicability of the NCCD sanctions, thus responding to the prior situation of not being able to issue a sanction in cases of findings of discrimination which were adopted by the NCCD rather late, when there was a legal bar on applying sanctions.

**Internet link source:** Full text of the law available in Romanian on <http://legislatie.just.ro/Public/DetaliiDocument/24129>.