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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 2019 – 31 December 2019

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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 – first instance, 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 Parliament is the regular legislator; 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 06 October 2015, the National Agency for Equal Opportunities for Women and Men (*Agenția Națională pentru Egalitate de Șanse între Femei și Bărbați* (ANES)) was re-established. This agency is a specialised body of the national public administration, having legal personality, under the control of the Ministry of Labour and Social Justice (*Ministerul Muncii și Justiției Sociale*); 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 for women and men), ANES controls a national structure called the National Commission in the field of equal opportunities for 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 for women and men.<sup>1</sup>

Over the last few years, the National Commission and the local-level commissions have no longer been active; gender equality was not a priority. In July 2018, the Ministry of Labour and Social Justice attempted to revive the county-level commissions (*COJES*) by explicitly mentioning which institutions at the local level appoint the President, Vice-president, and Executive Secretary of these commissions.<sup>2</sup> The change aims at ensuring the representation and contribution of local institutions that have a mandate and could contribute to fighting violence against women, such as the General Department for Social Assistance and Child Protection (*Direcția generală de asistență socială și protecția copilului* (DGASPC)). Moreover, an amendment of the Gender Equality Law from 19.07.2018 introduced the professions of equal opportunities expert and equal opportunities specialist that work at the level of employers to assessing gender inequalities and propose solutions.<sup>3</sup> The new amendment also created the possibility, although not the obligation, of public and private employers with more than 50 employees to assign the competences mentioned above to an employee or to hire a gender equality expert/specialist.<sup>4</sup>

At the same time, the OG No.137/2000 on the prevention and sanctioning of all forms of discrimination (*Ordonanța Guvernului nr.137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare*) established the general anti-discrimination system that

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<sup>1</sup> Law 202/2002 regarding equal opportunities for and equal treatment of 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').

<sup>2</sup> Gender Equality Law, Article 25.(6)-(10).

<sup>3</sup> Gender Equality Law, Article 2.(5).

<sup>4</sup> Gender Equality Law, Article 2.(4).

covers sex/gender discrimination, among many other protected grounds. The national equality body that has a general mandate to examine all cases of discrimination is the National Council for Combating Discrimination (CNCD) (*Consiliul Național pentru Combaterea Discriminării*). Any complaints about alleged cases of sex/gender discrimination received by the National Agency for Equal Opportunities for Women and Men are forwarded to the CNCD.

## 1.2 List of main legislation transposing and implementing the directives

The main legislation transposing and implementing the EU gender equality directives is:

- *Legea nr.202/2002 privind egalitatea de șanse între femei și bărbați* (Law No. 202/2002 regarding equal opportunities for women and men), amended by OG No. 84/2004, Law No. 501/2004, Law No. 340/2006, OUG No. 56/2006, Law No. 340/2006, Law No. 507/2006, OUG No. 68/2010, OUG No. 83/2012, Law No. 115/2013, Law No. 229/2015, Law No. 178/2018, Law No. 232/2018 (implementing Article 157 TFEU and Recast Directive 2006/54/EC).
- *OG 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), amended by Law No. 48/2002, OG No. 77/2003, Law No. 27/2004, Law No. 324/2006, OUG No. 75/2008, Law No. 61/2013, OUG No. 19/2013, Law No. 189/2013, Law No. 153/2017 (general multi-ground anti-discrimination law, implementing the Racial Equality Directive (Directive 2000/43/EC) and the Equality Framework Directive (Directive 2000/78/EC)).
- *OG 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), amended by Law No. 25/2004, OUG No. 158/2005, Law No. 154/2015 (implementing Directive 92/85/EEC and relevant provisions of Directive 2006/54/EC regarding pregnancy).
- *OG 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 1.4.2009, Law No. 128 of 26.4.2013 (implementing Directive 2004/113/EC);
- *OG nr. 111 din 8 decembrie 2010 privind concediul și indemnizația lunară pentru creșterea copiilor* (Government Emergency Ordinance No. 111 of 8.12.2010 on the leave and monthly allowance for child rearing), amended by Law No. 132 of 27.6.2011, OUG No. 124 of 27.12.2011, Law No. 166 of 9.10.2012, Law No. 187 of 24.10.2012, Law No. 126 of 23.9.2014, Law No. 66 of 19.4.2016, OUG No. 82 of 16.11.2016, OUG No. 6 of 18.1.2017, OUG No. 82 of 8.11.2017, OUG No. 15 of 7.3.2018, OUG No. 81 of 13.9.2018, Law No. 89 of 2.5.2019 (implementing Directive 2010/18/EU).

## 1.3 Sources of law

The main sources of gender equality law in Romania are the national legislation, international treaties ratified by Romania that become a part of national legislation, EU law which has supremacy over national law<sup>5</sup> and Constitutional Court decisions which are mandatory. National jurisprudence, including the decisions of the National Council for Combating Discrimination do not constitute precedent, but they are considered a reflection on how certain legal provisions are interpreted and applied by courts.

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<sup>5</sup> Constitution (*Constituția României*), Article 148(2).



## **2 General legal framework**

### **2.1 Constitution**

#### **2.1.1 Constitutional ban on sex discrimination**

The Romanian Constitution prohibits sex discrimination. It 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.<sup>6</sup> Article 4(2) of the Constitution stipulates that Romania is the common, indivisible country of all its citizens without differentiation based on 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 office.

#### **2.1.2 Other constitutional protection of equality between men and women**

The Constitution contains other articles pertaining to equality between men and women, specifically, there are only two provisions in the Constitution which have a limited scope. Firstly, 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.<sup>7</sup> Secondly, in Article 16(3) the State guarantees equal opportunities for women and men to access public office.<sup>8</sup>

### **2.2 Equal treatment legislation**

Romania has specific equal treatment legislation. 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, 'Anti-discrimination Law').<sup>9</sup>

In 2002, the Parliament adopted a special law dealing exclusively with gender equality: the Law on equal opportunities for women and men (hereafter, 'Gender Equality Law').<sup>10</sup>

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<sup>6</sup> Constitution of 1991, Articles 4 and 16.

<sup>7</sup> Constitution of 1991, Article 41(4).

<sup>8</sup> Constitution, as amended in 2003, Article 16(3).

<sup>9</sup> 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').

<sup>10</sup> Gender Equality Law, 2002.

### **3 Implementation of central concepts**

#### **3.1 General (legal) context**

##### **3.1.1 Surveys on the definition, implementation and limits of central concepts of gender equality law**

No surveys and/or reports have been published in Romania over the last five years which provide insights into the legal definition, implementation and limits in Romania of central concepts of gender equality law, i.e. sex/gender/transgender, direct and indirect sex discrimination, multiple and intersectional discrimination, positive action, harassment and sexual harassment or instruction to discriminate.

##### **3.1.2 Other issues**

One of the particularities of the Romanian legal framework in the field of gender equality is fragmentation. The central concepts are regulated on the one hand in the Anti-discrimination Law (the general law that applies to discrimination on all grounds, including sex/gender) and on the other hand in the Gender Equality Law (the special law that applies strictly to discrimination on the ground of sex/gender). Most of the times, the definitions are similar, but this duplication creates confusion and, in some instances, it means lower protection against discrimination on the ground of sex/gender, compared to other grounds. The Gender Equality Law provisions prevail in relation to the Anti-discrimination Law, because they are considered special law. For example, the Gender Equality Law has lower administrative fines compared to the Anti-discrimination Law.

##### **3.1.3 General overview of national acts**

The main law that contains provisions regulating the central concepts in the field of gender equality is Law No. 202/2002 on equal opportunities for women and men (hereafter Gender Equality Law). This law is complemented by the Government Ordinance No. 137/2000 on the prevention and combating of all forms of discrimination (hereafter Anti-discrimination Law) that contains similar central concepts applicable for all grounds of discrimination, including sex/gender. Because the administrative body that is the most active in applying the law in cases of complaints of sex discrimination is one and the same for all grounds of discrimination, the National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării* (CNCD)), the above-mentioned confusion has been handled by applying primarily the Anti-discrimination Law, with the Gender Equality Law being complementary. This approach is more favourable to the victims because the level of protection provided by the Anti-discrimination Law is higher than that contained in the Gender Equality Law. The downside of this approach is that the Gender Equality Law is less frequently used and courts and national equality bodies are not developing the case law of the Gender Equality Law.

##### **3.1.4 Political and societal debate and pending legislative proposals**

In 2018-2019, the impartiality of the CNCD became the subject of public debate, after a series of decisions issued by the national equality body in which the CNCD punished political leaders or opinion leaders for declarations against female politicians from the Government Party (Social Democratic Party (*Partidul Social Democrat* (PSD))). Despite the CNCD having been established as an independent body, its members receive their mandate from the Parliament, which in practice uses a political algorithm where each political party appoints a number of members based on political power.

The most widely discussed decision was the one concerning the PSD prime minister, Viorica Dăncilă. In January 2018, the CNCD punished a journalist for comparing the prime

minister's hairstyle with a monkey (EUR 200 (RON 1 000) fine for sex discrimination).<sup>11</sup> The Court of Appeal of Bucharest (*Curtea de Apel București*) overturned the decision, finding that the statement was not anti-women; it criticised the CNCD for not explaining how the fact that the prime minister is a woman determined the behaviour of the journalist or how the journalist would have behaved differently if she were a man.<sup>12</sup> The court found that the statement referred to aesthetics, an element of private life that politicians who present themselves to the public may be criticised about, even in harsh terms, by a journalist. In 2019, the CNCD jurisprudence improved to some extent because this time, they found political leaders liable of sex discrimination when they made public remarks associating alleged professional or political incompetence or inadequacy with the gender of PSD women leaders.<sup>13</sup>

Another area that was the subject of public debate in 2018 was opposition to what has been called 'gender ideology'. A vocal minority of religious-based non-governmental organisations that present themselves as 'concerned parents'<sup>14</sup> and individuals working in academia (primarily theologians)<sup>15</sup> have made a series of criticisms of the Government for measures based on what they call 'gender ideology'. This campaign has not turned into a major political or societal concern because Romanians are more concerned about common, day-to-day worries than theoretical, ideological issues.<sup>16</sup> Nevertheless, it has already had a disabling effect on the administration, causing it to refrain from taking necessary, but disputed measures – for example, the Ministry of Education withdrew a draft national strategy on parental education because it was criticised by these groups for allegedly promoting diverse families and not the nuclear family.<sup>17</sup> The project aimed to teach parents about positive practices in raising and educating children in order to address infant mortality, poverty (especially among rural children and Roma), child abandonment, the impact of economic migration on children, teen pregnancy, vaccination and child neglect. UNICEF and children's rights organisations proposed the draft that was initially accepted by the ministry.<sup>18</sup> After vocal opposition from the Coalition for Family, the Orthodox Church and the Romanian Academy, the Ministry of National Education dropped the project.<sup>19</sup>

<sup>11</sup> CNCD (2018), Decision 51 of 31.1.2018.

<sup>12</sup> Court of Appeal of Bucharest (*Curtea de Apel București*) (2018), Civil Judgment No. 2862/2018 of 19.6.2018.

<sup>13</sup> CNCD (2018), Decision Nos. 386 of 3 July 2019 and 417 of 10.7.2019.

<sup>14</sup> Platforma Împreună, Open Letter to the Prime-minister of Romania (*Scrisoare deschisă către Prim-ministrul României*), 19.6.2018, available at: <http://platforma-impreuna.ro/scrisoare-deschisa-catre-prim-ministrul-romaniei/>.

<sup>15</sup> Active News (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”*' ('Open Letter: Nine university professors, lead by Father Necula and Dr. Pavel Chirilă, denounce the gender theories adopted by Romania through the Istanbul Convention and demand the removal of "aggression against the verses of Genesis between the margins of this nation"'), 2.3.2018, 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-%e2%80%9eagresiunii-la-versetele-Creatiei-din-hotarele-acestui-popor-149599>.

<sup>16</sup> The October 2018 Referendum was not validated because the voter turnout was only 21 % compared to 30 % which is the mandatory minimum limit.

<sup>17</sup> Hotnews (2018), '*Strategia de educație parentală, în centrul unui scandal. Părinții și sindicatele cer Ministerului Educației să o anuleze: Pentru noi, conceptul de familie este definit în Constituția României, nimic mai mult*' ('The strategy for parental education, in the middle of a new scandal. Parents and trade unions ask the Ministry of Education to cancel it: For us, the concept of family is defined by the Romanian Constitution, nothing more') 5.7.2018, available at: [www.hotnews.ro/stiri-eduatie-22550399-strategia-educa-parental-centrul-unui-scandal-rin-sindicatele-cer-ministerului-educa-iei-anuleze.htm](http://www.hotnews.ro/stiri-eduatie-22550399-strategia-educa-parental-centrul-unui-scandal-rin-sindicatele-cer-ministerului-educa-iei-anuleze.htm).

<sup>18</sup> Hotnews (2018), '*Părinții trimiși la cursuri de educație parentală, când intră copiii la școală - prevede Strategia națională de parenting, pusă în dezbatere pe edu.ro*' ('Parents sent to parental education classes when their children start school – stipulated by the National Parenting Strategy, subjected to public debate on [www.edu.ro](http://www.edu.ro)'), 12.6.2018, available at: [www.hotnews.ro/stiri-eduatie-22504787-document-strategia-ional-parenting-lansat-dezbatere-ministerul-educa-iei-rin-sunt-trimi-cursuri-educa-parental-cnd-intr-copiii-coal.htm](http://www.hotnews.ro/stiri-eduatie-22504787-document-strategia-ional-parenting-lansat-dezbatere-ministerul-educa-iei-rin-sunt-trimi-cursuri-educa-parental-cnd-intr-copiii-coal.htm).

<sup>19</sup> Mediafax (2018), '*Ministerul Educației nu își asumă Strategia pentru Educație Parentală. Proiectul a fost retras*' ('Ministry of Education does not endorse the Strategy for Parental Education. It withdrew the project'), 6.7.2018, available at: [www.mediafax.ro/social/ministerul-educației-nu-isi-asuma-strategia-pentru-eduatie-parentala-proiectul-a-fost-retras-17346524](http://www.mediafax.ro/social/ministerul-educației-nu-isi-asuma-strategia-pentru-eduatie-parentala-proiectul-a-fost-retras-17346524). See also Adevărul (2018), '*Epopeea*

'Gender ideology' is a catch-all slogan that encapsulates the criticism that the religious right manifests against liberal values such as gender equality, the human rights of LGBT people, access to evidence-based health education for children, freedom of religion and belief and freedom of expression. For example, these groups criticised the Government for ratifying the Istanbul Convention, specifically because they argue this Convention is imposing 'gender ideology' on children, teaching them that they can choose their gender, irrespective of the biological sex that was assigned to them at birth.<sup>20</sup> Similar condemnations against a children's book aimed at illustrating gender roles and gender stereotypes fuelled the discourse in support of the October 2018 Referendum to restrict the definition of family in the Romanian Constitution to be understood exclusively as marriage between a man and a woman.<sup>21</sup>

## 3.2 Sex/gender/transgender

### 3.2.1 Definition of 'gender' and 'sex'

The terms gender and sex are defined in national legislation. The 2015 amendment of the Gender Equality Law introduced definitions of sex and gender.<sup>22</sup> 'Sex' is understood as the combination of biological and physiological features that define women and men.<sup>23</sup> 'Gender' is understood as the combination of roles, behaviours, features and activities that society considers to be appropriate for women and men, respectively.<sup>24</sup>

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.<sup>25</sup>

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.<sup>26</sup> This definition is in harmony with the existing national law definition that was adopted before the ratification of the Convention, but inspired by it (see above).<sup>27</sup>

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*conflictului generat de Strategia de Educație Parentală: între conservarea familiei tradiționale și atacul asupra Drepturilor Omului* ('The epic of the conflict generated by the Strategy for Parental Education: between preserving traditional family and the attack upon human rights'), 6.7.2018, available at: [https://adevarul.ro/educatie/scoala/epopeea-conflictului-generat-strategia--educatie-parentala-conservarea-familiei-traditionale-atacul-drepturilor-omului-1\\_5b3f4430df52022f75eb1a7c/index.html](https://adevarul.ro/educatie/scoala/epopeea-conflictului-generat-strategia--educatie-parentala-conservarea-familiei-traditionale-atacul-drepturilor-omului-1_5b3f4430df52022f75eb1a7c/index.html).

<sup>20</sup> Active News, 2.3.2018, '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”' ('Open Letter: Nine university professors, lead by Father Necula and Dr. Pavel Chirilă, denounce the gender theories adopted by Romania through the Istanbul Convention and demand the removal of "aggression against the verses of Genesis between the margins of this nation"'), 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-%e2%80%9eagresiunii-la-versetele-Creatiei-din-hotarele-acestui-popor-149599>.

<sup>21</sup> Federația Organizațiilor Ortodoxe Pro Vita din România, *Manualele otrăvite* (Poisoned manuals). Open letter to the Ministry of Education, 18.9.2018, available at: <https://bucovinaprofunda.wordpress.com/2018/09/18/manualele-otravite/>.

<sup>22</sup> Law No. 229 of 6.10.2015 for the amendment of Law No. 202/2002 regarding equal opportunities for 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*).

<sup>23</sup> Gender Equality Law, 2002, Article 4(d<sup>2</sup>).

<sup>24</sup> Gender Equality Law, 2002, Article 4(d<sup>3</sup>).

<sup>25</sup> Gender Equality Law, 2002, Article 4(i<sup>1</sup>).

<sup>26</sup> Law No. 30 of 17.3.2016 on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence, adopted at Istanbul on 11.5.2011 (*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*).

<sup>27</sup> Law No. 229 of 6.10.2015 for the amendment of Law No. 202/2002 regarding equal opportunities for 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*).

### 3.2.2 Protection of transgender, intersex and non-binary persons

The national non-discrimination law framework indirectly protects transgender, intersex and non-binary people from discrimination. The list of grounds protected by the Anti-discrimination Law (Article 2(1)) is an open-ended list and, in principle, discrimination against the above-mentioned people is covered in national law under the expression 'any other ground.' However, the CNCD refused to acknowledge gender identity as the ground of discrimination in complaints filed by transgender persons (of which there have been only three).

In 2017, the 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 contained in her identity documents. The woman filed an internal complaint with the police and an administrative complaint with the CNCD. The complaint of discrimination was dismissed for lack of evidence, but the CNCD did not use this case to clarify under which ground of discrimination such complaints are addressed – 'gender', 'sex', 'sexual orientation' or 'any other ground' – given that 'gender identity' is not explicitly mentioned in the list of protected grounds in the Anti-discrimination Law and 'gender' had recently been defined in the Gender Equality Law. Moreover, throughout the decision, the CNCD confused gender identity with sexual orientation and referred to the applicant with the masculine pronoun, despite her introducing herself as a transgender woman.<sup>28</sup>

In 2018, the CNCD dismissed another complaint directed against a pharmacy in Bucharest. The pharmacist refused to sell hormones to a trans woman who presented a medical letter prescribing hormones and not a medical prescription. Moreover, the pharmacist allegedly refused to address the trans woman with the female pronoun, despite her repeated requests. The CNCD dismissed the allegations of discrimination in access to healthcare based on the argument that the requirement to present a medical prescription was justified. As to alleged acts of harassment, the CNCD dismissed them as unsubstantiated and reasoned that the use of masculine pronouns was in compliance with the identity documents of the complainant.<sup>29</sup>

On 9 October 2019, the CNCD found discrimination on the ground of sexual orientation in a case against the director of a public music hall who refused to host a public event on gender equality (Gender Talk Focșani) because a transgender man was one of the invited speakers.<sup>30</sup> The event was organised by high school students and, in reaction, the local branch of a nationwide parents' association (Association of Parents for Religion Class (*Asociația Părinți pentru Ora de Religie* (APOR))), a vocal conservative group opposing sexuality education and human rights for LGBT persons, protested against the event and put pressure on local decision-makers to refuse to host it in a public space. Although this is the first case in which the CNCD has found discrimination concerning a transgender person, it failed to acknowledge the ground of discrimination – gender identity. At the same time, the administrative fine issued was only EUR 210 (RON 1 000), which is not dissuasive or proportionate.

### 3.2.3 Specific requirements

As mentioned above, transgender people are not explicitly mentioned in the non-discrimination and gender equality legislation. Therefore, there are no specific legal requirements imposed for them to be able to benefit from legal protection against discrimination. In principle, it is enough to prove that the person who allegedly discriminated against a transgender person based his/her behaviour on a particular ground

<sup>28</sup> CNCD (2018), Decision No. 3 of 10.1.2018.

<sup>29</sup> CNCD (2018), Decision No. 439 of 12.11.2018.

<sup>30</sup> CNCD (2019), Decision No. 690 of 9.10.2019.

of discrimination, in this case gender identity, and it is not necessary for the complainant to prove that they actually are transgender.

### **3.3 Direct sex discrimination**

#### **3.3.1 Explicit prohibition**

Direct sex discrimination is explicitly prohibited in national legislation. Article 6(1) of the Gender Equality Law explicitly prohibits all forms of sex discrimination. Article 4(a) of the Gender Equality Law defines direct sex 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.<sup>31</sup> In the author's view this complies with the EU definition.

#### **3.3.2 Prohibition of pregnancy and maternity discrimination**

Pregnancy and maternity discrimination are explicitly prohibited in legislation as forms of direct sex discrimination. 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.

#### **3.3.3 Specific difficulties**

The CNCD has developed substantial case law which sanctions employers for harassment and the unlawful dismissal of women on the ground of pregnancy as sex discrimination.<sup>32</sup> However, the Court of Appeal of Bucharest has overturned certain decisions of the CNCD in this field.<sup>33</sup> 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.<sup>34</sup> The CNCD is continuing its jurisprudential line.<sup>35</sup>

### **3.4 Indirect sex discrimination**

#### **3.4.1 Explicit prohibition**

Indirect sex discrimination is explicitly prohibited in national legislation. 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

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<sup>31</sup> Gender Equality Law, 2002, Article 4(a).

<sup>32</sup> CNCD (2010, 2012, 2013), Decision No. 417 of 15.12.2010, Decision No. 28 of 18.1.2012, and Decision No. 61 of 6.2.2013.

<sup>33</sup> Court of Appeal of Bucharest (*Curtea de Apel București*) (2013, 2012), Judgment Nos. 3918 of 9.12.2013 (File No. 3785/2/2013), 1712 of 27.05.2013, and 4585 of 24.07.2012.

<sup>34</sup> High Court of Cassation and Justice (*Înalta Curte de Casație și Justiție*) (2015), Decision No. 3177 of 15.10.2015 in File No. 3785/2/2013.

<sup>35</sup> CNCD (2014), Decision No. 264 of 14.5.2014, available at: [http://nediscriminare.ro/uploads\\_ro/docManager/487/hotarare\\_264-14\\_P\\_G\\_S\\_dosar\\_11114\\_s\\_I\\_Constatare\\_amenda\\_3000.pdf](http://nediscriminare.ro/uploads_ro/docManager/487/hotarare_264-14_P_G_S_dosar_11114_s_I_Constatare_amenda_3000.pdf) (a case of discrimination against an individual returning from parental leave was sanctioned with an administrative fine of RON 3 000 (EUR 666). See also CNCD, Decision No. 56 of 25.2.2016 (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 3.2.2016 (a case of discrimination against an individual returning from parental leave was sanctioned with an administrative fine of RON 2 000 (EUR 444)).

appropriate and necessary.<sup>36</sup> In the author's view, this definition complies with the EU definition.

### 3.4.2 Statistical evidence

Statistical evidence is used in Romania in order to establish a presumption of indirect sex discrimination. While 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,<sup>37</sup> the CNCD is open to using statistical evidence to establish a presumption of indirect discrimination. However, the CNCD has imposed certain requirements to using statistical evidence. Firstly, statistical evidence cannot be used as stand-alone evidence, but only corroborated with other evidence. For example, in a case concerning an incident of alleged gender inequality concerning the leadership of the Superior Council of Magistracy, which has always been male despite a relatively balanced membership, the CNCD found that statistical data should be corroborated by 'indications that women put themselves forward as candidates or wished to be candidates for the presidency of the Council'.<sup>38</sup> At the same time, in another case involving the appointment of an exclusively male board of a public company, the CNCD decided the opposite – statistical evidence was enough to shift the burden of proof to the defendant to show the measures undertaken to promote women.<sup>39</sup> Secondly, statistical data should be substantial – a comparison of a small number of people does not allow for statistical analysis, in the opinion of the CNCD, presented in a case regarding the refusal to hire a woman in the position of marine cadet.<sup>40</sup> In another case, the CNCD used statistical evidence to prove that the alleged discrimination against men was in fact a positive action to ensure women gain professional qualifications.<sup>41</sup>

### 3.4.3 Application of the objective justification test

The national equality body applies what it calls 'the discrimination test', with objective justification being part of that test. However, this comes into play at the end of the process, after the complainant has proved a particular disadvantage, meaning that objective justification is applied as an exception. However, in a case regarding refusal of access to maternal healthcare at birth for women living with HIV, the national courts appear to have applied objective justification as part of the definition of indirect sex discrimination. The complainant, a pregnant woman living with HIV, needed different treatment because of her fundamentally different condition – medical standards stipulated that doctors should attend her delivery by C-section at 38 weeks to prevent mother-to-child transmission of HIV. The doctor and the hospital claimed that they did not have the necessary equipment to attend childbirths of women living with HIV. The first instance court found discrimination on the ground of HIV status given that there was a clear refusal of treatment and not a postponement until the logistical shortcomings could be addressed. Bucharest Tribunal overturned this judgment by including in the assessment of the treatment the analysis of defendants' objective justifications. According to the appellate court, the doctor's refusal was justified because the case was not an emergency case – the membranes were intact – and admitting this woman instead of other pregnant women who were also not

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<sup>36</sup> Gender Equality Law, 2002, Article 4(b).

<sup>37</sup> ECRIS is the name of the electronic system implemented by the Ministry of Justice (*Ministerul Justiției*) 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>.

<sup>38</sup> CNCD (2008), Decision No. 44 of 9.1.2008.

<sup>39</sup> CNCD (2014), Decision No. 335 of 18.6.2014, 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](http://nediscriminare.ro/uploads_ro/docManager/541/hotarare_335-14_Freies_Europa_dosar_148-14_g_I_constatare_cu_avertisment.pdf).

<sup>40</sup> CNCD (2012), Decision No. 343 of 3.10.2012.

<sup>41</sup> CNCD (2013), Decision No. 386 of 12.6.2013.



emergency cases would have privileged her because of her HIV status, which represents a form of positive discrimination against the majority of women who were HIV negative.<sup>42</sup>

The CNCD applies a strict justification test, invoking the standards that the European Court of Human Rights has applied in race discrimination cases, such as *D.H. and Others v. Czech Republic*<sup>43</sup> and *Sampanis and Others v. Greece*.<sup>44</sup> According to the CNCD, the justification must be objective and reasonable, meaning that it must have a legitimate aim and the measure must be proportionate to that aim – that is, it must be adequate and necessary for achieving the legitimate aim.<sup>45</sup> The purpose is to ensure as much as possible that the legitimate aim is reached without creating a situation of differentiation, when there are other means to achieve that aim.

For example, in a series of cases from 2017, concerning the impact on women of the increase in the minimum height requirement of recruitment in police schools, the CNCD applied the justification test by taking each legitimate aim introduced by the defendant and determining whether the new height requirement was necessary and suitable for achieving that aim, and whether other requirements were more appropriate for achieving the legitimate aim.<sup>46</sup> First, with respect to the legitimate aim of 'having physical characteristics in order to use certain equipment', CNCD found that the authorities can assess physical capacity by subjecting the candidates to physical tests and that some of the current police officers do not comply with the new height requirement and yet are still doing their job appropriately.<sup>47</sup> Secondly, with respect to the legitimate aim of the 'perception of the public and the aggressors with respect to police representatives', the CNCD found that emotional capacity alongside physical capacity and other skills, abilities, and competencies deemed absolutely necessary for fulfilling the duties of the job, should be assessed only through tests.<sup>48</sup>

#### 3.4.4 Specific difficulties

In the past, the CNCD only considered intent as an element to differentiate between direct and indirect discrimination.<sup>49</sup> 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.<sup>50</sup> One such case regards a large private oil company, S.C. OMV Petrom S.A., that was going through reorganisation at the national level. The department where the complainant was working had to be reduced from 36 positions to 26 after an evaluation process. Firstly, the CNCD 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). Secondly, 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.

<sup>42</sup> Bucharest Tribunal (*Tribunalul București*) (2014), Decision No. 582A of 12.5.2014.

<sup>43</sup> ECtHR, *D.H. and Others v Czech Republic* [GC], No. 57325/2000, 13.11.2007.

<sup>44</sup> ECtHR, *Sampanis and Others v Greece*, No. 32526/05, 5.6.2008.

<sup>45</sup> CNCD (2017), Decisions Nos. 147 of 1.3.2017, 168 of 7.3.2017, 176 of 15.3.2017, 289 of 10.5.2017, 308 of 17.5.2017, 633 of 08.11.2017.

<sup>46</sup> CNCD (2017), Decision No. 147 of 1.3.2017, para. 5.13.

<sup>47</sup> CNCD (2017), Decision No. 147 of 1.3.2017, paras. 5.17, 5.21.

<sup>48</sup> CNCD (2017), Decision No. 147 of 1.3.2017, paras. 5.16, 5.18, 5.19.

<sup>49</sup> For example, CNCD (2010), 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 (*Ministerul Comunicațiilor și Tehnologiei Informației*) 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 recognised by the state.

<sup>50</sup> CNCD (2013), Decision No. 719 of 4.12.2013, available at: [http://nediscriminare.ro/uploads\\_ro/docManager/2530/719-13\\_.pdf](http://nediscriminare.ro/uploads_ro/docManager/2530/719-13_.pdf).



More recently, the CNCD fell back upon using intent as a way to identify indirect sex discrimination. This interpretation is not based in the national law; the definition of discrimination does not require intent, not even in cases of direct discrimination. The CNCD found 'lack of intent' to indicate indirect discrimination in cases about refusals to apply affirmative measures imposed by the law with respect to working conditions for pregnant women.<sup>51</sup>

The CNCD differentiates between direct and indirect discrimination based on the existence of a 'causality link' between the behaviour and the ground of discrimination. In direct discrimination cases, the causality link should be direct, meaning that the forbidden ground should be a relevant or determining factor for the unlawful behaviour:

'...direct discrimination implies that a causal link between the act or fact of differentiation and the nexus to one of the characteristics or one of the criteria stipulated in the law and individualised in the case of the person exposed to discrimination is identifiable. This causality link results from the definition stipulated in Article 2(1) of the OG 137/2000, in particular, the use of the expression "based on", stating that by discrimination is understood any differentiation, exclusion, restriction or preference "based on (...)". The causality link demands examination of the motive or motives that were at the basis of behaviour in cases of discrimination (differentiated treatment) and requires consideration of whether the forbidden ground (racial or ethnic origin, age, disability, sex, religion, beliefs etc.) invoked by the claimant is a relevant or determining factor for the action or inaction imputed on the defendant.'<sup>52</sup>

In indirect discrimination cases, the 'causality link' is not direct, meaning that the motives influencing the behaviour appear to be neutral:

'Indirect discrimination is where an apparently neutral criterion has been applied (meaning that the causality link is not relevant) but has resulted in a disadvantage affecting a person or a group of persons in relation to a characteristic or a forbidden ground of discrimination....'<sup>53</sup>

An example of how the causality link is creating difficulties for the CNCD when differentiating between cases of direct or indirect discrimination is a case from 2014, in which the CNCD found indirect discrimination on three grounds – sexual orientation, sex, family status – and rejected the claims of direct discrimination on the ground of sexual orientation as being unsubstantiated.<sup>54</sup> The case started from a homophobic incident in the locker room of World Class, a fitness centre in Bucharest. A gay couple raising three-year-old twins, a boy and a girl, were getting their children changed to go to the pool in the men's locker room. Another client started shouting slurs at the gay family in connection to their sexual orientation. Upon complaining to the management about the homophobic incident, World Class did not take any measures of redress, and, on the contrary, three weeks after the incident they changed internal rules according to which children can get changed only in the locker room of their corresponding sex, irrespective of the age of the child. For parents with children of a different sex, including the applicants, World Class gave them temporary directions to change in a public toilet under inappropriate conditions. Instead of presuming a direct causality link between homophobia and the disputed policy, which could have opened the way to finding direct discrimination on the ground of sexual orientation (*prima facie* case of direct discrimination on the ground of sexual orientation), the CNCD disconnected the two and found the homophobic incident between clients unsubstantiated due to lack of evidence and the policy as being indirect discrimination on

<sup>51</sup> CNCD (2017), Decision No. 673 of 22.11.2017.

<sup>52</sup> CNCD (2017), Decision No. 673 of 22.11.2017, para. 5.1.

<sup>53</sup> CNCD (2017), Decision No. 673 of 22.11.2017, para. 5.2.

<sup>54</sup> CNCD (2014), Decision No. 680 of 12.11.2014.

the ground of sex, sexual orientation and family status. Consequently, they only sanctioned World Class with a written warning.

A finding of indirect discrimination instead of direct discrimination is more likely to lead to a lesser sanction (a warning instead of an administrative fine), because the CNCD sees indirect discrimination as a less serious offence due to the assumption that it is unintended behaviour. This is problematic from the point of view of implementing effective, disproportionate and dissuasive remedies at the national level.

### **3.5 Multiple discrimination and intersectional discrimination<sup>55</sup>**

#### **3.5.1 Definition and explicit prohibition**

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. While complainants may invoke alleged discrimination on multiple grounds, they do not have a legal basis to invoke discrimination resulting from the interaction of grounds of discrimination, which produces a new and different type of discrimination.

#### **3.5.2 Case law and judicial recognition**

In 2015, the Bucharest Court of Appeal gave its final decision to uphold the appeal in the case of alleged multiple discrimination on the ground of sex and HIV status in access to healthcare for a pregnant woman living with HIV, as mentioned above.<sup>56</sup> In September 2010, a pregnant woman living with HIV was refused hospitalisation 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.<sup>57</sup> The appellate court overturned the judgment, reasoning that this case was not an emergency case because the membranes were intact.<sup>58</sup> 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 healthcare personnel.

In a case from 2016, the CNCD examined a complaint of multiple discrimination on the ground of sex and age.<sup>59</sup> 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 made redundant. She alleged discrimination on the ground of sex and gender. The CNCD found discrimination based on age but not on sex because the employer

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<sup>55</sup> See for more information Fredman, S. (2016), *Intersectional discrimination in EU gender equality and non-discrimination law*, European network of legal experts in gender equality and non-discrimination, available at: [www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb](http://www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb).

<sup>56</sup> Bucharest Court of Appeal (*Curtea de Apel București*) (2015), Second Appeal Decision No. 399R of 30.3.2015.

<sup>57</sup> First Instance Court Second District Bucharest (*Judecatoria Sector 2 Bucuresti*) (2013), Judgment No. 4999 of 27.3.2013.

<sup>58</sup> Bucharest Tribunal (*Tribunalul București*) (2014), Decision No. 582A of 12.5.2014.

<sup>59</sup> CNCD (2016), Decision No. 490 of 13.7.2016.

proved that other female managers had retained their positions; the 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 would be the expected response from an employer of its size which was in a long-term employment relationship with an employee who had scored highly in evaluations.<sup>60</sup>

On 6 September 2017, the CNCD found the first case of multiple discrimination against Romani women.<sup>61</sup> The case concerned comments made during a political talk show on TV by a journalist who criticised 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.

### 3.6 Positive action

#### 3.6.1 Definition and explicit prohibition

Positive action is explicitly allowed in national legislation, but not required.<sup>62</sup> 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 for women and men in practice.<sup>63</sup> 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.<sup>64</sup> 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 for women and men actually means; it does not refer to the under-representation of one sex; and it is not specific in underlining that specific action implies special advantages.

At the same time, Article 2(9) of the Anti-discrimination Law<sup>65</sup> only gives a definition of what appears to be positive action, but does not name it in any way; this definition applies to positive actions on all grounds of discrimination, not only sex.

#### 3.6.2 Conceptual distinctions between 'equal opportunities' and 'positive action' in national law

The national law considers 'equal opportunities' to be a separate concept from positive action – the first is the objective and the second is a means to achieve the objective. On the one hand, Article 1(2) of the Gender Equality Law defines 'equal opportunities' for women and men as taking into account the different capacities, needs and aspirations of people of the male and female sex, respectively. On the other 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 for women and men in practice.<sup>66</sup>

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<sup>60</sup> CNCD (2016), Decision No. 490 of 13.7.2016.

<sup>61</sup> CNCD (2017), Decision No. 484 of 6.9.2017.

<sup>62</sup> Gender Equality Law, 2002, Articles 4(e) and 5(b).

<sup>63</sup> Gender Equality Law, 2002, Article 4(e).

<sup>64</sup> Gender Equality Law, 2002, Article 5(b).

<sup>65</sup> Government Ordinance 137/2000 on the prevention and sanctioning of all forms of discrimination (*Ordonanta 137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare*), Article 2.(9).

<sup>66</sup> Gender Equality Law, 2002, Article 4(e).

### 3.6.3 Specific difficulties

In the case described above regarding the 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 pregnancy to a woman with HIV.<sup>67</sup> 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 'positive discrimination' does not exist as a concept in Romanian legislation. 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 mother-to-child transmission of HIV. 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 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.<sup>68</sup> The CNCD established the presumption that the ground of discrimination was 'sex' because the two colleagues were differentiated 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.<sup>69</sup>

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 people of a particular sex.

In a case from 2016, the CNCD qualified as 'positive action' the decision of a private employer specialising in selling electronics, especially photo and video equipment, to hire exclusively women for the position of Events & Community Assistant.<sup>70</sup> Such positions are usually filled with women because of the stereotype that women are better entertainers

<sup>67</sup> Bucharest Tribunal (*Tribunalul Bucuresti*) (2014), Civil decision No. 582A of 12.5.2014.

<sup>68</sup> CNCD (2015), Decision No. 33 of 14.1.2015, available at: [http://nediscriminare.ro/uploads\\_ro/docManager/50/hotarare\\_33-15.pdf](http://nediscriminare.ro/uploads_ro/docManager/50/hotarare_33-15.pdf).

<sup>69</sup> CNCD (2015), Decision No. 33 of 14.1.2015, 5.2, available at: [http://nediscriminare.ro/uploads\\_ro/docManager/50/hotarare\\_33-15.pdf](http://nediscriminare.ro/uploads_ro/docManager/50/hotarare_33-15.pdf).

<sup>70</sup> CNCD (2016), Decision No. 522 of 27.7.2016.

and product promoters. The employer argued that the reason for wanting to hire women only was to counterbalance the company's image of 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.<sup>71</sup> 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 employer cannot prove that it assessed the situation at the company level (i.e. in which departments there is gender imbalance), planned to ensure equal opportunities for women and that the impact brings more equal opportunities for women.

### 3.6.4 Measures to improve the gender balance on company boards

There are no measures aimed to improve the gender balance on company boards, nor pending proposals to do so.

The National Agency for Equal Opportunities for Women and Men (*Agencia Națională pentru Egalitate de Șanse între Femei și Bărbați* (ANES)), consulted for a previous thematic report, considers that in Romania there are no self-regulatory or legislative measures in place in the field of the Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures (hereafter GBB-Directive proposal).<sup>72</sup> Instead, there is only a set of provisions on balanced participation of women and men in leadership and decision-making.<sup>73</sup>

ANES refers to one article in the Gender Equality Law adopted in 2002, well before any discussions on the GBB-Directive proposal. Article 21(1) of the Gender Equality Law<sup>74</sup> stipulates the legal obligation for all entities that operate based on their own statutes of regulations 'to promote and support balanced participation of women and men in leadership and decision-making' and 'to adopt the necessary measures' to ensure this goal. This obligation also applies to processes for nominating members or participants to any council, group of experts and remunerated structures of management and/or consultancy, according to Article 21(2) of the Gender Equality Law.

This legal obligation is very generally worded. In principle, it applies to all types of enterprises: 'National and local public authorities and institutions, in the civil and military sphere, economic or social entities, as well as political parties, employers' organisations and trade unions or other not-for-profit organisations that operate based on their own statutes of regulations...'<sup>75</sup> It also applies to all types of boards: 'The nomination of members and/or participants to any council, group of experts and other remunerated structures of management and/or consultancy'.<sup>76</sup> The legal provision uses the expression: 'balanced participation of women and men'. Therefore, it is implied that the beneficiary is the under-represented sex. However, there is no concrete target set.

The above-mentioned provision is a legally binding provision that can be sanctioned with an administrative fine of RON 3 000-1 00 000 (EUR 681-22 727), according to Article 39(3) corroborated by Article 21 of the Gender Equality Law. However, the legal provisions in Article 21(1) and (2) are worded so generally that their binding nature is watered down. Firstly, these legal provisions are not applied in practice. Secondly, they risk being

<sup>71</sup> CNCD (2016), Decision No. 522 of 27.7.2016.

<sup>72</sup> Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures, COM/2012/0614 final - 2012/0299 (COD).

<sup>73</sup> National Agency for Equal Opportunities for Women and Men (*Agencia Națională pentru Egalitate de Șanse între Femei și Bărbați* (ANES)), Response No. 1797/A.C./D.M./SSPPMES/2017.05.22.

<sup>74</sup> Gender Equality Law.

<sup>75</sup> Gender Equality Law, Article 21(1).

<sup>76</sup> Gender Equality Law, Article 21(2).

challenged based on the argument that the principle of legal certainty is breached because these legal provisions are not clear and precise.

A decision of the CNCD illustrates how the provisions mentioned above are overlooked when talking about women on boards.<sup>77</sup> In 2014, the CNCD found discriminatory the lack of initiative by a local administration to promote women to the board of the main public company in the county (they assigned four men out of a total of seven nominations that were all men). The decision is forward-thinking, although the CNCD issued only a written warning and a recommendation to consider taking positive action to promote women on boards in the future.<sup>78</sup> However, it is not based on Article 21 of the Gender Equality Law. In fact, the CNCD does not even mention this article in the decision, only the general provisions regarding positive action from the Anti-Discrimination Law.<sup>79</sup>

Moreover, 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 bodies. In recent years, the situation has become worse. Between October 2010 and April 2014, the proportion of women on boards of large listed companies (top 10) decreased by 10 % to 14 %.<sup>80</sup> At the end of 2015, the Professional Women's Network Romania reported that this percentage had continued to decrease to 12 %.<sup>81</sup>

### 3.6.5 Positive action measures to improve the gender balance in other areas

Romania has not adopted other positive action measures to improve the gender balance in any area.

## 3.7 Harassment and sexual harassment

### 3.7.1 Definition and explicit prohibition of harassment

National legislation explicitly prohibits harassment. Article 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 person and creating an intimidating, hostile, humiliating and offensive environment.<sup>82</sup> In the author's opinion this definition complies with the EU definition found in Article 2(1)(c) of Directive 2006/54/EC.

Before August 2018, the Gender Equality Law only gave the definitions of harassment, sexual harassment and psychological harassment, omitting to include these in the list of behaviours sanctioned by Article 37. The new provisions<sup>83</sup> place under the power of police, gendarmes and local police the mandate to sanction all behaviours of harassment, sexual harassment and psychological harassment, irrespective of whether it takes place in public or in private.

The inaccuracies in the Gender Equality Law, including the fact that previously harassment was not included in the list of prohibited behaviours that are sanctioned by this law, come

<sup>77</sup> CNCD (2014), Decision No. 335 of 18.6.2014.

<sup>78</sup> CNCD (2014), Decision No. 335 of 18.6.2014.

<sup>79</sup> Government Emergency Ordinance No.137/2000 regarding the prevention and sanctioning of all forms of discrimination (*Ordonanța nr.137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare*), Article 2(9).

<sup>80</sup> National Agency for Equal Opportunities for Women and Men (*Agencia Națională pentru Egalitate de Șanse între Femei și Bărbați* (ANES)), Response No. 1797/A.C./D.M./SSPPMES/2017.05.22, citing Deloitte Report, *Women in the boardroom: A global perspective*.

<sup>81</sup> Deloitte and Professional Women's Network Romania Report, *Women on boards in Romania*, pp. 6, 8.

<sup>82</sup> Gender Equality Law, Article 4(c).

<sup>83</sup> Law No. 232 of 2.8.2018 on the amendment of Law No. 202/2002 regarding equal opportunities for women and men (*Legea nr.232 din 2 august 2018 pentru modificarea și completarea Legii nr. 202/2002 privind egalitatea de șanse și de tratament între femei și bărbați*).

from the repeated amendments of the law without coordination between various articles of the law. This new amendment aims to address such inaccuracies. At the same time, because several national laws overlap in the field of equality and non-discrimination – for example the Gender Equality Law and the Anti-discrimination Law – definitions and institutional mandate also overlap. For example, before the adoption of Law 232/2018, harassment, including harassment on the ground of sex, was already sanctioned under the Anti-discrimination Law (Government Ordinance No. 137/2000 on the prevention and sanctioning of all forms of discrimination, Articles 2(5) and 26(1)). The CNCD sanctioned several cases of sexual harassment or harassment on the ground of sex basing its decisions on the Anti-discrimination Law, not on the Gender Equality Law. From this point of view, this amendment is only duplicating already existing provisions. In itself this does not have a negative consequence. However, what is problematic is that Law 232/2018 gives the power to the police and gendarmes to sanction sexual harassment, instead of the CNCD, an institution that has developed a certain level of expertise of working on equality and non-discrimination for the last 15 years.

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.<sup>84</sup>

### 3.7.2 Scope of the prohibition of harassment

The scope of the prohibition on harassment is broader, applying to 'all areas of public life in Romania', including the media, advertising and education.<sup>85</sup>

### 3.7.3 Definition and explicit prohibition of sexual harassment

Sexual harassment is explicitly prohibited in national legislation. Sexual harassment is sanctioned by two distinct laws. Article 4(d) of the Gender Equality Law sanctions any unwanted behaviour of a sexual nature, manifested physically, verbally or non-verbally, with the purpose or effect of affecting the dignity of the person and, especially, creating an intimidating, hostile, degrading, humiliating or offensive environment.<sup>86</sup> In the author's opinion this definition complies with the EU definition found in Article 2(1)(d) of Directive 2006/54/EC.

At the same time, the New Criminal Code, which entered into force on 01 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 (Article 223).<sup>87</sup>

### 3.7.4 Scope of the prohibition of sexual harassment

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.<sup>88</sup> At the same time, the new definition of sexual harassment in the New Criminal Code no longer extends outside the framework of labour relations as it used to in the Old Criminal Code.<sup>89</sup> 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.

<sup>84</sup> Law No. 229 of 6.10.2015 for the amendment of Law No. 202/2002 regarding equal opportunities for women and men, Article 4(d<sup>1</sup>).

<sup>85</sup> Gender Equality Law, Article 1(1).

<sup>86</sup> Gender Equality Law, Article 4(d).

<sup>87</sup> New Criminal Code, Article 223.

<sup>88</sup> Gender Equality Law, Article 1(1).

<sup>89</sup> Old Criminal Code, Article 203.

### 3.7.5 Understanding of (sexual) harassment as discrimination

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 amounts to discrimination.

### 3.7.6 Specific difficulties

It appears that it is difficult for women who report harassment at the workplace to maintain their complaint throughout the procedure. In 2019, in three out of five complaints, the CNCD rejected the case without examining the merits because, when requested by the CNCD during the procedure, women refused to provide key details identifying the alleged perpetrators, such as their name and address.<sup>90</sup>

Because of the double regulation of sexual harassment in the Criminal Code and in the Gender Equality Law, on several occasions, when the alleged acts of harassment took place within labour relations, the CNCD decided to declare the case inadmissible *rationae materiae*, without actually referring the case to the prosecutor's office.<sup>91</sup> This is problematic because, according to the criminal procedure rules, 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 through CNCD procedures, and the above-mentioned cases remain unresolved because the statute of limitations for filing the complaint with the police expires.<sup>92</sup> In the end, the alleged victim remains without an effective remedy.

Another difficulty relates to the burden of proof in cases of sexual harassment. Because of the way sexual harassment is defined in the law, the CNCD requires direct evidence from a witness of the alleged unwanted conduct, a requirement that can rarely be met, given the circumstances in which sexual harassment usually takes place. In a decision from 2019, the CNCD gave a contradictory reasoning on this matter: on the one hand, it stated that the alleged victim should prove without doubt the facts of discrimination,<sup>93</sup> on the other hand, it stated that the victim could not establish the presumption of discrimination.<sup>94</sup> The case concerned acts of alleged harassment inflicted by a police officer in a police station. The internal affairs department rejected the testimony of an eyewitness for being 'subjective', due to their intimate relationship with the alleged victim, given that they were the woman's *de facto* life partner. The CNCD also did not take into account this testimony.<sup>95</sup> Therefore, it is clear that the shift of the burden of proof is not applied in practice in such cases.

## 3.8 Instruction to discriminate

### 3.8.1 Explicit prohibition

An instruction to discriminate is explicitly prohibited in national legislation. Article 6(2) of the Gender Equality Law stipulates that an instruction to discriminate is any order or provision to discriminate.<sup>96</sup>

<sup>90</sup> CNCD (2019), Decision Nos. 551 of 11.9.2019, 42 of 23.1.2019, 606 of 18.9.2019.

<sup>91</sup> E.g. CNCD (2014, 2008), Decision No. 589 of 22.10.2014, available at: [http://nediscriminare.ro/uploads\\_ro/docManager/727/hotarare\\_589-14\\_V.O.pdf](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](http://nediscriminare.ro/uploads_ro/docManager/896/hot.648-2008.pdf).

<sup>92</sup> New Criminal Code, Article 223, New Criminal Procedure Code, Article 296.

<sup>93</sup> CNCD (2019), Decision No. 128 of 6.3.2019, para. 20.

<sup>94</sup> CNCD (2019), Decision No. 128 of 6.3.2019, para. 21.

<sup>95</sup> CNCD (2019), Decision No. 128 of 6.3.2019, para. 22.

<sup>96</sup> Gender Equality Law, Article 6(2).



### 3.8.2 Specific difficulties

There is no case law in Romania on the instruction to discriminate. Therefore, it is difficult to assess what difficulties might come up with the application of this legal provision.

In the case mentioned above about the refusal of a concert hall to host Gender Talk Focșani because of the presence of a transgender man among the speakers, the complainants also maintained that there had been instructions to discriminate on the basis of gender, gender identity and sexual orientation.<sup>97</sup> In particular, they complained of the mobilisation of representatives of the local authorities to prevent the event from taking place in the local concert hall. A lawyer, the chief school inspector and the chief of the local bar association from Focșani allegedly pleaded with the director of the concert hall to ban the event from taking place on public premises. The argument on the instruction to discriminate invoked the symbolic authority of the aforementioned actors due to their positions of influence at the local level. The CNCD found the acts of the defendants to be an exercise of their freedom of expression and not instructions to discriminate, because the decision was clearly with the director of the concert hall, whom CNCD found liable for discrimination.<sup>98</sup>

### 3.9 Other forms of discrimination

There are no other forms of discrimination prohibited in national law, such as discrimination by association<sup>99</sup> or assumed discrimination.<sup>100</sup>

### 3.10 Evaluation of implementation

The national law that implements the EU law concepts discussed in this chapter is satisfactory.

### 3.11 Remaining issues

The Gender Equality Law contains two limitations of the material scope of the law. According to Article 3 of the Gender Equality Law, all provisions related to equal treatment based on sex/gender do not apply within religious denominations and within the private life of individuals. The author could not find any case law where this legal provision was invoked but the existence of such generally worded limitations leads to potential conflicts with the obligations under the Directives because it raises issues regarding the material scope and unjustified limitations of the application of the law. The CNCD considered this situation in a case concerning alleged sex and age discrimination in the field of a public advertisement regarding renting a room in an apartment only to women who are 35 years old or older.<sup>101</sup> The CNCD found that the different treatment applies to people who are in different situations because a young woman under 35 years old or a man are in a different situation compared to an older woman from the points of view of intimacy and private interaction in matters of housing, an aspect of private life. This differentiation was necessary because the Romanian law is more restrictive than the Directive 2004/113/EC in this field. The Anti-discrimination Law specifically applies to private interactions in the field of real estate and renting for housing purposes (Article 10(c) of the Anti-discrimination Law).

The discussion about the protection of transgender people through the anti-discrimination legislation only scratches the surface of the discrimination and basic rights violations to which transgender people are exposed in Romania due to gender bias and stereotypes.

<sup>97</sup> CNCD (2018), Case No. 532/2018.

<sup>98</sup> CNCD (2019), Decision No. 690 of 9.10.2019.

<sup>99</sup> See the Coleman case in relation to disability discrimination: C-303/06, *S. Coleman v Attridge Law and Steve Law* [2008] EU:C:2008:415.

<sup>100</sup> Someone assumes, for example, that a woman wearing a headscarf is a Muslim, even though that turns out to be an incorrect perception or assumption.

<sup>101</sup> CNCD (2018), Decision No. 166 of 25.4.2018.

The author thinks that it is essential to address the issue of legal recognition of transgender people. There are a few fundamental flaws identified by trans activists.<sup>102</sup> The legal framework is insufficient and allows for arbitrary decisions and interpretations by the authorities. Moreover, the arbitrariness also manifests itself in the mandatory court procedures, by making legal recognition conditional on the individual undertaking surgery, the duration and formality of court procedures that make the legal recognition process burdensome for trans people, the denial of justice in some cases by judges who do not understand their mandate, and the problematic reasoning of some court judgments where trans people are dehumanised by judges, prosecutors and forensic experts who question their mental capacity, identity or even their will and condition as human beings.

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<sup>102</sup> These conclusions are drawn from an interview with Patrick Brăila and Teodora Roseti-Ion-Rotaru of ACCEPT Association, a human rights organisation promoting LGBTI rights. They are working to publish the first legal and social research into the problems faced by the trans community in Romania.

## **4 Equal pay and equal treatment at work (Article 157 of the Treaty on the Functioning of the European Union (TFEU) and Recast Directive 2006/54)**

### **4.1 General (legal) context**

#### **4.1.1 Surveys on the gender pay gap and the difficulties of realising equal pay**

No surveys and/or reports have been published in Romania over the last five years which provide insights into specific factors that explain the gender pay gap in Romania and/or difficulties that hamper the realisation of equal pay for women and men.

#### **4.1.2 Surveys on the difficulties of realising equal treatment at work**

No surveys and/or reports have been published in Romania over the last five years which provide insights into specific factors that prevent the realisation of equal treatment at work.

#### **4.1.3 Other issues**

The institutions mandated to address equal pay and the institutions which have the tools to research the issue do not work on equal pay, which leaves the issue unaddressed in Romania. There is no legal obligation for employers to report on (equal) pay. However, information about the content of each individual working contract, including the individual wage, is registered in the General Registry of Employees (*Registrul General de Evidență al Salariilor (REVISAL)*). This registry is handled by the Labour Inspectorate which can generate statistical data about various aspects related to working contracts, including wages, etc. The Labour Inspectorate informed the author that it does not collect statistical data on equal pay between women and men.<sup>103</sup> Moreover, the National Agency for Equal Opportunities for Women and Men (*Agenția Națională pentru Egalitate de Șanse între Femei și Bărbați (ANES)*) which has the mandate to promote equal opportunities for women and men informed the author of this report that it does not work with such data, despite the fact that the National strategy on equal opportunities for women and men (2014-2017), for which this institution is responsible, has several objectives in the field of equal pay between women and men.<sup>104</sup>

#### **4.1.4 Political and societal debate and pending legislative proposals**

There has been no political and/or societal debate and there are no pending legislative proposals on the principles of equal pay and equal treatment at work.

### **4.2 Equal pay**

#### **4.2.1 Implementation in national law**

The principle of equal pay for equal work or for work of equal value is implemented in national legislation. 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.<sup>105</sup> There is no case law from 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

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<sup>103</sup> Labour Inspectorate (*Inspekția Muncii*), Response No. 95i/15290/22.09.2016.

<sup>104</sup> ANES, Response No. 4221/AMG/SS/30.09.2016.

<sup>105</sup> Constitution, Article 41(4).

elements and conditions of remuneration'.<sup>106</sup> Similar provisions are stipulated in Article 6(b) and (c) of the Anti-discrimination Law<sup>107</sup> and Article 7(c) of the Gender Equality Law.<sup>108</sup>

#### 4.2.2 Definition in national law

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;<sup>109</sup> it is in compliance with Article 157(2) of the TFEU. 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.<sup>110</sup>

#### 4.2.3 Explicit implementation of Article 4 of Recast Directive 2006/54

The national law explicitly implements Article 4 of Recast Directive 2006/54/EC (prohibition of direct and indirect discrimination on the ground of sex with regard to all aspects and conditions of remuneration). Article 9(1)(d) and (e) of the Gender Equality Law explicitly prohibits discrimination in employment by the employer through practices that disadvantage people 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 establishment and provision of salaries.

#### 4.2.4 Related case law

We cannot provide information about case law in the field because no information about relevant court decisions has been made public and access to databases of court decisions does not allow search criteria on equal pay. Moreover, there are indications that there is no case law issued by the courts on equal pay between men and women because the national equality body, which has to be subpoenaed by the courts in all cases concerning alleged discrimination, reports not having been subpoenaed in any such cases by the courts.<sup>111</sup>

In the only case on pay discrimination examined by the CNCD in the last five years, it did not find a breach of the principle of equal pay. The case is from 2014 and it concerns the Bucharest public transport company, R.A.T.B.<sup>112</sup> The complainant was a male employee who was refused payment of supplements for children on the occasion of the 2013 Christmas holidays ('*tichet cadou*'), stipulated by the collective agreement. His wife, who was also an employee of R.A.T.B. received the payment for their three children, despite the fact that in previous years both parents had been paid this supplement. The CNCD did not find gender discrimination; it based its decision on the reason that there was no right of the employee in relation to which discrimination could be examined, because it is the child who is entitled to the payment of the supplement, not the employee.<sup>113</sup> The reasoning of CNCD can be criticised in the sense that the employee does have a right to receive the supplement – the collective agreement stipulates this right for all employees. Therefore, the non-existence of the right should not form the basis for dismissing the case; instead the basis for the rejection of the case should be the existence of an objective reason for the refusal in the case of the complainant – if both parents work with the employer, only one of them receives the supplement for their children.

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<sup>106</sup> Labour Code (*Codul Muncii*), Article 6(3).

<sup>107</sup> Anti-discrimination Law, Article 6(b), (c).

<sup>108</sup> Gender Equality Law, Article 7(c).

<sup>109</sup> Labour Code, Article 160.

<sup>110</sup> Labour Code, Article 166.

<sup>111</sup> CNCD (2016), Response No. 5398/28.09.2016.

<sup>112</sup> CNCD (2014), Decision No. 254 of 30.4.2014.

<sup>113</sup> CNCD (2014), Decision No. 254 of 30.4.2014.

In another complaint, from March 2018, the CNCD found that only courts of law have jurisdiction to decide in cases when the alleged difference in pay between women and men refers to retroactive payments by an employer that has been declared bankrupt.<sup>114</sup>

#### 4.2.5 Permissibility of pay differences

The national legislation does not allow for pay differences.

#### 4.2.6 Requirement for comparators

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 to take place, the person must be 'treated less favourably than another person is, was or would be treated in a comparable situation'.<sup>115</sup>

However, the author 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 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.<sup>116</sup> 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.

#### 4.2.7 Existence of parameters for establishing the equal value of the work performed

The national law and case law do not lay down parameters for establishing the equal value of the work performed, such as the nature of the work, qualification requirements, training and working conditions.

#### 4.2.8 Other relevant rules or policies

There are no other relevant rules or policies that provide such parameters.

#### 4.2.9 Job evaluation and classification systems

There are no examples of good practice or guidance on job evaluation and classification systems.

#### 4.2.10 Wage transparency

The law imposes confidentiality. Article 162 of the Labour Code stipulates that the individual salary is determined by individual direct negotiations between the employer and the employee.<sup>117</sup> Moreover, according to Article 163(1) of the Labour Code, salaries are confidential; the employer has a legal obligation to take measures to ensure

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<sup>114</sup> CNCD, Decision No. 120 of 20.2.2019.

<sup>115</sup> Gender Equality Law, Article 4(a).

<sup>116</sup> E-mail correspondence with a member of the Steering Committee of the National Council for Combating Discrimination. See also Decision Nos. 75 of 19.2.2013, 393 of 12.6.2013 and 564 of 12.12.2012.

<sup>117</sup> Labour Code, Article 162.

confidentiality.<sup>118</sup> The law intends this provision to be a right of the employee. However, because the wording of Article 163(1) of the Labour Code is general, there is the understanding that not only employers, but also the employees have the obligation to keep their salaries confidential.

The law stipulates only one exception – trade unions or the representatives of employees may access information regarding salaries in order to promote the employees' interests and defend their rights.<sup>119</sup> This is a possibility for trade unions, not a right of employees. This exception from the confidentiality rule applies in strict cases if two cumulative conditions are met: the request of information is in strict connection with the employees' interests and the request is made in the framework of the direct relationship between the trade union or employees' representative and the employer.<sup>120</sup>

#### 4.2.11 Implementation of the transparency measures set out by European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women

The measures set out by the European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency have not been implemented in Romania.

#### 4.2.12 Other measures, tools or procedures

No measures, tools or procedures have been developed so as to enhance pay transparency and the closure of the equal pay gap (e.g. audit or certification systems, supporting information and testing tools).

### 4.3 Access to work, working conditions and dismissal

#### 4.3.1 Definition of the personal scope (Article 14 of Recast Directive 2006/54)

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

#### 4.3.2 Definition of the material scope (Article 14(1) of Recast Directive 2006/54)

The material scope in relation to (access to) employment, vocational training, working conditions etc. is defined in national law. 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/EC. 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 legal requirements on health and safety in the workplace, including conditions of dismissal, benefits other than the salary

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<sup>118</sup> Labour Code, Article 163.

<sup>119</sup> Labour Code, Article 163.

<sup>120</sup> Labour Code, Article 163.

as well as public and private social security systems, employers' organisations, trade unions and professional organisations, as well as benefits provided by these organisations, and social services and assistance, according to the law.

#### 4.3.3 Implementation of the exception on occupational activities (Article 14(2) of Recast Directive 2006/54)

The exception on occupational activities has been implemented in national law. Article 9(2) of the Gender Equality Law contains an exception for occupational activities which are understood to be jobs that require a characteristic related to one sex as a genuine and determining occupational requirement by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out. This exception applies subject to the condition that its objective is legitimate and the requirement is proportionate. There has been no assessment of this issue by Romania.

In Romanian case law, there are different interpretations regarding whether sex can be accepted *de plano* as an occupational requirement or not in the case of higher education for military forces.

On the one hand, in 2014, the National Council for Combating Discrimination (CNCD) found sex segregation in recruitment for military professions to be a determining occupational requirement, irrespective of the profession or the field of activity, but subjected it to a proportionality test. In 2014, the CNCD decided that sanctioning discrimination or not depended on whether or not the measure is considered to be disproportionate. 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 0 % for some specialties) was disproportionate.<sup>121</sup> Meanwhile, in another case the measure was considered to be proportionate, given that approximately 30 % of the higher education places for future intelligence service professionals were available for women, despite the fact that in this instance the sex segregation was for IT and psychology specialties, fields of activity in which the authorities did not even prove gender-related occupational requirements.<sup>122</sup>

On the other hand, 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,<sup>123</sup> a judgment upheld by the High Court of Cassation and Justice on 01 February 2019.<sup>124</sup> 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 place them in 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.<sup>125</sup> 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, arguing that this did not demonstrate any actual difference between the sexes because they are common for men and women working in marine forces.<sup>126</sup>

In the case of the civil service, the CNCD is more straightforward, dismissing as direct sex discrimination the exclusive recruitment of men for the Police Academy and for the profession of air pilot, while avoiding addressing the same issue in the case of firefighters.<sup>127</sup> Recently, the internal affairs authorities changed their recruitment policies

<sup>121</sup> National Council for Combating Discrimination, Decision No. 568 of 8.10.2014.

<sup>122</sup> CNCD (2014), Decision No. 577 of 13.10.2014, available at: [http://nediscriminare.ro/uploads\\_ro/docManager/715/hotarare\\_577-14.pdf](http://nediscriminare.ro/uploads_ro/docManager/715/hotarare_577-14.pdf).

<sup>123</sup> Bucharest Court of Appeal (*Curtea de Apel București*) (2016), Decision No.1090 of 1.4.2016.

<sup>124</sup> High Court of Justice and Cassation (*Înalta Curte de Casație și Justiție*) (2019), Decision of 1.2.2019 (not available yet).

<sup>125</sup> Bucharest Court of Appeal (*Curtea de Apel București*) (2016), Decision No. 1090 of 1.4.2016.

<sup>126</sup> Bucharest Court of Appeal (*Curtea de Apel București*) (2016), Decision No. 1090 of 1.4.2016.

<sup>127</sup> CNCD (2018), Decision No. 470 of 5.12.2018.

– they no longer explicitly exclude women, but they impose on women the same physical standards that apply to men. In 2019, the CNCD differentiated between operational and non-operational positions within the emergency interventions police (*Inspectoratul pentru Situații de Urgență (ISU)*). Only operational positions justify the imposition of special occupational requirements.<sup>128</sup> In the other cases, the CNCD found direct sex discrimination.<sup>129</sup>

#### 4.3.4 Protection against the non-hiring, non-renewal of a fixed-term contract, non-continuation of a contract and dismissal of women connected to their state of pregnancy and/or maternity

National law provides for sufficient protection against the non-hiring, non-prolongation of contracts and dismissal of women, connected to their state of pregnancy and/or maternity. However, it is difficult to prove the connection between the employer's decision not to hire or not to renew or continue a contract and the state of pregnancy and/or maternity, as opposed to cases of dismissals where there are additional legal protections in case of pregnancy and maternity.

#### 4.3.5 Implementation of the exception on the protection for women in relation to pregnancy and maternity (Article 28(1) of Recast Directive 2006/54)

The exception on protection for women, in particular as regards pregnancy and maternity, has been implemented in national law. 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.

#### 4.3.6 Particular difficulties

There are no particular difficulties to report.

#### 4.3.7 Positive action measures (Article 3 of Recast Directive 2006/54)

Romania has not made use of the ability to maintain or adopt positive action measures within the meaning of Article 157(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life (Article 3 of the Recast Directive).

### 4.4 Evaluation of implementation

The national law that implements the EU law topics discussed in this chapter is unsatisfactory. There are no regulations to encourage wage transparency, on the contrary, the principle of salary confidentiality and individual negotiations are embedded in the labour legislation, which explains to some extent the absence of case law regarding equal pay. As regards access to work, working conditions and dismissal, the national law is satisfactory.

### 4.5 Remaining issues

There are no remaining issues regarding national law on equal pay and/or equal treatment at work that have not been discussed so far.

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<sup>128</sup> CNCD (2019), Decision No. 516 of 5.9.2019.

<sup>129</sup> CNCD (2019), Decision No. 487 of 21.9.2019.



## **5 Pregnancy, maternity, and leave related to work-life balance for workers (Directive 92/85, relevant provisions of Directives 2006/54, 2010/18 and 2019/1158)<sup>130</sup>**

### **5.1 General (legal) context**

#### **5.1.1 Surveys and reports on the practical difficulties linked to work-life balance**

No surveys and/or reports have been published in Romania over the last five years which provide insights into difficulties that workers face in practice in relation to work-life balance issues.

#### **5.1.2 Other issues**

Only one in three children under the age of four attends childcare facilities in urban Romania, according to a 2018 study by the National Institute of Statistics (*Institutul Național de Statistică (INS)*), while the situation is probably more dramatic in rural areas.<sup>131</sup> The study does not assess the reasons why parents choose to raise their small children at home, it only suggests that cultural concepts and the distance to childcare facilities could be significant reasons, in addition to insufficient childcare facilities.<sup>132</sup> However, the author of this report points to the statistics that show a dramatic decrease in the number of childcare facilities over the last 20 years, which have fallen much faster than birth rates.<sup>133</sup> Therefore, it is rather the infrastructure and economic conditions that are influencing cultural choices, women taking parental leave to raise their children at home being a cultural choice.

#### **5.1.3 Overview of national acts on work-life balance issues**

The laws that define the main concepts of work-life balance are OUG No.96/2003 on the protection of maternity in the workplace and OUG 111/2010 regarding parental leave and the monthly allowance for parental leave. In addition, OUG No. 158/2005 on leaves and allowances from social health insurance complements the legal framework with general provisions regarding leave and the Gender Equality Law stipulates the main guarantees against discrimination for leave-takers.

#### **5.1.4 Political and societal debate and pending legislative proposals**

The political and societal debates in this field focus on the level of the monthly allowance for parental care leave, in particular whether or not there should be an upper limit to the 85 % of income rate. On the one hand, there are women's groups which point to middle-class women who feel discouraged from having children because they will see a significant decrease in their income during parental leave. On the other hand, the Government

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<sup>130</sup> See Masselot, A. (2018) *Family leave: enforcement of the protection against dismissal and unfavourable treatment*, European network of legal experts in gender equality and non-discrimination, available at: [www.equalitylaw.eu/downloads/4808-family-leave-enforcement-of-the-protection-against-dismissal-and-unfavourable-treatment-pdf-962-kb](http://www.equalitylaw.eu/downloads/4808-family-leave-enforcement-of-the-protection-against-dismissal-and-unfavourable-treatment-pdf-962-kb) and McColgan, A. (2015) *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway*, European network of legal experts in gender equality and non-discrimination, available at: [www.equalitylaw.eu/downloads/3631-reconciliation](http://www.equalitylaw.eu/downloads/3631-reconciliation).

<sup>131</sup> National Institute of Statistics (*Institutul Național de Statistică (INS)*), 2018 Urban Audit, p. 26, available at: [https://media.hotnews.ro/media\\_server1/document-2018-09-10-22694071-0-audit-urban-2018.pdf](https://media.hotnews.ro/media_server1/document-2018-09-10-22694071-0-audit-urban-2018.pdf).

<sup>132</sup> National Institute of Statistics (*Institutul Național de Statistică (INS)*), 2018 Urban Audit, p. 26, available at: [https://media.hotnews.ro/media\\_server1/document-2018-09-10-22694071-0-audit-urban-2018.pdf](https://media.hotnews.ro/media_server1/document-2018-09-10-22694071-0-audit-urban-2018.pdf).

<sup>133</sup> Pascari, M. (2016) 'Numărul de grădinițe din România a scăzut de zece ori în ultimii 20 de ani. Scăderea ratei natalității și depopularea unor regiuni au pus lacătul pe mii de grădinițe' (The number of kindergartens in Romania has decreased 10 times in the last 20 years. The drop in the birth rate and the depopulation of certain regions has caused thousands of kindergartens to close) in *Ziarul Financiar*, 10.12.16, available at: [www.zf.ro/profesii/numarul-de-gradinite-din-romania-a-scazut-de-zece-ori-in-ultimii-20-de-ani-scaderea-ratei-natalitatii-si-depopularea-unor-regiuni-au-pus-lacatul-pe-mii-de-gradinite-16015100](http://www.zf.ro/profesii/numarul-de-gradinite-din-romania-a-scazut-de-zece-ori-in-ultimii-20-de-ani-scaderea-ratei-natalitatii-si-depopularea-unor-regiuni-au-pus-lacatul-pe-mii-de-gradinite-16015100).

highlights the few very visible cases of people who end up with very high monthly allowances for parental leave.<sup>134</sup>

## 5.2 Pregnancy and maternity protection

### 5.2.1 Definition in national law

The national law defines a pregnant worker, a worker who has recently given birth and a worker who is breastfeeding. Article 2(c) of OUG No. 96/2003 on the protection of maternity in 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. Article 2(d) of OUG 96/2003 defines a woman who has recently given birth as a woman who returns to work after maternity leave within six months of giving birth and who asks the employer in writing to ensure protection measures stipulated by law; she also attaches a medical certificate from her GP. Article 2(e) of the OUG 96/2003 defines a woman who is breastfeeding as a woman who returns to work following maternity leave after giving birth, who is breastfeeding her child and informs her employers in writing about the anticipated beginning and end of the breastfeeding period, attaching a medical certificate from her GP in this regard.

### 5.2.2 Obligation to inform employer

A pregnant worker has to inform her employer of her condition in written form and attach a medical certificate from her GP or a gynaecologist confirming her status, according to Article 2(c) of OUG 96/2003.

### 5.2.3 Case law on the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding

There is no case law at the national level (including opinions of equality bodies and other quasi-judicial bodies) on the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding. Because the law is mostly clear about these concepts, they have not been challenged in court.

### 5.2.4 Implementation of protective measures (Article 4-6 of Directive 92/85)

The protective measures mentioned in Articles 4-6 of Directive 92/85/EEC are implemented in national law by Articles 4-14 of OUG No.96/2003 on the protection of maternity at the workplace. In June 2015, the Parliament adopted new amendments to bring the law into compliance with this directive.<sup>135</sup> Article 5 of the OUG 96/2003 stipulates the obligation of the employer to assess the risk of exposure to agents, processes or working conditions that could endanger workers' health or safety and have any possible effect on the pregnancies or breastfeeding of workers. After doing this, the employer must inform any 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

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<sup>134</sup> Hot News (2017) 'Lia Olguta Vasilescu, dupa plafonarea indemnizatiei de crestere a copilului: Puteam sa nu o mai dam deloc' (Lia Olguta Vasilescu, after establishing a maximum limit of the allowance for parental leave: We could have not given anything at all), in *Hot News*, 05.09.2017, available at: [www.hotnews.ro/stiri-esential-21987622-lia-olguta-vasilescu-dupa-plafonarea-indemnizatiei-crestere-copilului-puteam-nu-mai-dam-deloc.htm](http://www.hotnews.ro/stiri-esential-21987622-lia-olguta-vasilescu-dupa-plafonarea-indemnizatiei-crestere-copilului-puteam-nu-mai-dam-deloc.htm).

<sup>135</sup> Law No. 154 of 18.06.2015 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*).

of the worker concerned so that the risk of exposing that worker to such risks is avoided.<sup>136</sup> 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 must take the necessary measures to transfer the worker concerned to another job.<sup>137</sup> 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 risk for the whole of the period necessary to protect her health or safety before giving birth and during breastfeeding.<sup>138</sup>

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

#### 5.2.5 Case law on issues addressed in Article 4 and 5 of Directive 92/85

In 2017, the CNCD found indirect discrimination in the case of an employer who refused to reduce the working time of a part-time worker due to their pregnancy. According to legislation on protecting maternity in the workplace, a pregnant employee who has a recommendation from her general practitioner has the right to a reduced working time, by 25 %; the law does not distinguish between types of work contracts.<sup>139</sup> The CNCD found lack of intent in the actions of the employer, in that they were not clear whether the legal obligation to reduce working time in the event of pregnancy applied only to full-time workers, or also to part-time workers. In consequence, the CNCD found indirect discrimination based on pregnancy and not direct sex discrimination and issued a warning instead of an administrative fine.

#### 5.2.6 Prohibition of night work

Article 19 of OUG 96/2003 protects against night work by workers during pregnancy, within six months of giving birth and during breastfeeding. The law stipulates that the employer cannot oblige such workers to perform night work. If their health is affected by night work the employer should transfer these categories of women to daytime work or provide health-risk leave if daytime work is not available, upon the provision of a medical certificate by the worker. In the author's view, these legal provisions are a correct implementation of Article 7 of Directive 92/85/EEC.

#### 5.2.7 Case law on the prohibition of night work

The author could not find any national case law in relation to the issues addressed in Articles 4 and 5 of Directive 92/85/EEC.

#### 5.2.8 Prohibition of dismissal

Dismissal is prohibited in national law from the beginning of the pregnancy until the end of the maternity leave. Article 21 of the OUG 96/2003 stipulates that dismissal is prohibited in the case of pregnant women, women who are on maternity leave and women who are breastfeeding. According to Article 21.(3) of the OUG 96/2003, dismissal is permitted in exceptional cases, related to bankruptcy, judicial re-organisation or legal dissolution of the legal entity of the employer.

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<sup>136</sup> 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*), published in the Official Journal No.750 of 27.10.2003, Article 9(1) (hereafter 'OUG 96/2003').

<sup>137</sup> OUG 96/2003, Article 9 (2).

<sup>138</sup> OUG 96/2003, Article 10.

<sup>139</sup> OUG 96/2003.

### 5.2.9 Redundancy and payment during maternity leave

If an employee is made redundant during her maternity leave, the payment for maternity leave does not cease, it is paid by the State, from the National Fund of Social Health Insurance (*Fondul național unic de asigurări sociale de sănătate*), according to Article 32(1) of the OUG 158/2005.

### 5.2.10 Employer's obligation to substantiate a dismissal

In case of dismissal between the beginning of pregnancy and the end of maternity leave, the employer is obliged to indicate substantiated grounds for the dismissal in writing, similar to any case of dismissal, according to Article 76.(a) of the Labour Code.

### 5.2.11 Case law on the protection against dismissal

In a case from 2019, the CNCD appeared to implement the protection against dismissal in a strict manner.<sup>140</sup> The law only stipulates that dismissal on the ground of pregnancy is not allowed.<sup>141</sup> Therefore, if the employer claims the dismissal is for reasons unrelated to pregnancy, the dismissal is lawful. The employer should be required to bring evidence in this regard. However, during the probation period (the first 90 days of the work contract), the employer does not have to give any reasons for dismissal.<sup>142</sup> The CNCD applied these legal provisions together and did not ask the employer to prove objective reasons for the dismissal of a pregnant woman during the probation period, an approach that appears disproportionate to the pregnancy protections mentioned above.<sup>143</sup>

When the work contract ends by agreement of the two parties, this is an absolute presumption of legality, despite any later allegations by the employee of having been dismissed due to any protected ground. This was applied by the CNCD in a similar case, concerning parental leave, during which an employee is also protected by law against dismissal, along with the period of six months after their return from parental leave.<sup>144</sup>

## 5.3 Maternity leave

### 5.3.1 Length

Maternity leave lasts for 126 days, according to Articles 23-24 of the OUG No. 158/2005.<sup>145</sup>

### 5.3.2 Obligatory maternity leave

There is an obligatory period of maternity leave of 42 days after the birth, according to Article 24(2) of the OUG 158/2005.

### 5.3.3 Legal protection of employment rights (Article 5, 6 and 7 of Directive 92/85)

Article 27 of Governmental Emergency Ordinance No. 96/2003 lays down administrative sanctions (fines) for employers who do not fulfil their legal obligations in the cases referred to in Articles 5, 6 and 7 of Directive 92/85/EEC. The fines range between RON 2 500 (EUR 530) and RON 10 000 (EUR 2 120). The Labour Inspectorate or the Health Inspectorate may apply the fines.

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<sup>140</sup> CNCD (2019) Decision No. 701 of 16.10.2019.

<sup>141</sup> OUG 96/2003, Article 2(c), corroborated with Article 21(1)(a).

<sup>142</sup> Labour Code, Article 31(3).

<sup>143</sup> CNCD (2019) Decision No. 701 of 16.10.2019.

<sup>144</sup> CNCD (2019) Decision No. 710 of 16.10.2019.

<sup>145</sup> OUG No. 158/2005 on social health insurance leave and benefits (*Ordonanța de Urgență nr.158/2005 privind concediile și indemnizațiile de asigurări sociale de sănătate*), Articles 23-24, published in Official Journal No. 1.074 of 29.11.2005.

#### 5.3.4 Legal protection of rights ensuing from the employment contract

According to Articles 25(1) and 31 of Government Emergency Ordinance No. 158/2005 women on maternity are entitled to a percentage of their salary paid by the employer from the monthly contribution that goes to the public health insurance fund.

#### 5.3.5 Level of pay or allowance

The monthly allowance for maternal health-risk leave is 75 % and for maternity leave it is 85 % of the average monthly income for the last six months of the 12 months of mandatory contribution prior to requesting maternity leave, and equivalent to no more than 12 minimum salaries.<sup>146</sup> In 2019, the minimum gross monthly salary was RON 2 080 (EUR 437).

#### 5.3.6 Additional statutory maternity benefits

Employers do not supplement statutory maternity benefits up to the level of normal remuneration. Such supplements cannot be justified according to the law.

#### 5.3.7 Conditions for eligibility (Article 11(4) of Directive 92/85)

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 signed with the public health insurance as a self-employed person. Moreover, women who have lost their insurance eligibility may still benefit from maternity leave if they give birth during the following nine months after losing their status as an insured person.

#### 5.3.8 Right to return to the same or an equivalent job (Article 15 of Directive 2006/54)

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

#### 5.3.9 Legal right to share maternity leave

The national law does not provide a legal right to share (part of) maternity leave.

#### 5.3.10 Case law

There is no relevant case law to report.

### 5.4 Adoption leave

#### 5.4.1 Existence of adoption leave in national law

In April 2016, a new leave was introduced for adoptive parents, called accommodation leave (*'concediu de acomodare'*).<sup>147</sup> Either of the adoptive parents, if they are insured, may apply for accommodation leave, according to Article 46<sup>1</sup> of Law 273/2004 as amended. The leave lasts for one year and involves the payment of an allowance of approximately RON 1 700 (EUR 370).

<sup>146</sup> Government Emergency Ordinance No. 158/2005 on social health insurance leave and benefits, Articles 10 and 25.

<sup>147</sup> Law 57/2016 on the amendment of Law No. 273/2004 on the adoption procedure and other legal acts (*Legea 57/2016 pentru modificarea și completarea Legii nr. 273/2004 privind procedura adopției, precum și a altor acte normative*), published in Official Journal No. 283 of 14.4.2016.

At the same time, until the adopted child is two years old, the adoptive parents qualify for parental leave, according to Article 8(2) of OUG No. 111/2010, subject to the same conditions as for natural parents.

#### 5.4.2 Protection against dismissal (Article 16 of Directive 2006/54)

Article 91<sup>1</sup> of Law 273/2004 forbids dismissal of an employee during accommodation leave. The protections against dismissal applicable to parental leave also apply to adoptive parents who take parental leave.

#### 5.4.3 Case law

The author could not find any national case law in relation to adoption leave, regarding employment rights and/or return after adoption leave.

### **5.5 Parental leave**

#### 5.5.1 Implementation of Directive 2010/18

Directive 2010/18/EU was explicitly implemented in national legislation by OUG No. 111/2010 regarding parental leave and the monthly allowance for parental leave.

#### 5.5.2 Applicability to public and private sectors (Clause 1 of Directive 2010/18)

OUG No.111/2010 is applicable to both the public and the private sectors.

#### 5.5.3 Scope of the transposing legislation

OUG No. 111/2010 applies to all contracts of employment, including employment relationships with an agency for temporary work, as long as the criteria for qualifying for this type of leave are fulfilled.

#### 5.5.4 Length of parental leave

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 either of the parents who qualify for parental leave, one parent at a time, up until the child is two years old.

#### 5.5.5 Age limits

Workers are entitled to parental leave until the child is two years old.

#### 5.5.6 Individual nature of the right to parental leave

The right to parental leave is individual for each of the parents and can be taken by one parent at a time.

#### 5.5.7 Transferability of the right to parental leave

There is no possibility for one parent to transfer part of their parental leave to the other parent; it is an individual right. The parent who applies for parental leave must qualify themselves.

#### 5.5.8 Form of parental leave

Only full-time parental leave is available.

#### 5.5.9 Work and/or length of service requirements (Clause 3(b) of Directive 2010/18)

A person must have contributed to the social insurance fund for at least 12 months in the last two years prior to the birth of the child, according to Article 2(1) of the OUG 111/2010. The 12 months may be composed of periods from successive fixed-term contracts with the same employer or different employers.

#### 5.5.10 Notice period

No notice period is stipulated by law.

#### 5.5.11 Postponement of parental leave (Clause 3(c) of Directive 2010/18)

There are no circumstances defined by law in which the employer is allowed to postpone the granting of parental leave for justifiable reasons related to the operation of the organisation.

#### 5.5.12 Special arrangements for small firms (Clause 3(d) of Directive 2010/18)

There are no special arrangements for small firms stipulated by law.

#### 5.5.13 Special rules and exceptional conditions for parents of children with a disability or long-term illness (Clause 3(3) of Directive 2010/18)

The only special provision for parents of children with a disability is that they may take parental leave for up to three years, according to Article 2(1)(a) of the OUG No. 111/2010).

#### 5.5.14 Measures addressing the specific needs of adoptive parents (Clause 4 of Directive 2010/18)

The Government has not taken measures to address the specific needs of adoptive parents in addition to the measures described in Section 5.4 on Adoption leave.

#### 5.5.15 Provisions protecting workers against less favourable treatment or dismissal (Clause 5(4) of Directive 2010/18)

There are provisions to protect workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave. Article 10(3) of the Gender Equality Law protects women or men against discrimination on the ground of parental leave.

#### 5.5.16 Right to return to the same or an equivalent job (Clause 5(1) of Directive 2010/18)

Workers benefitting from parental leave have the right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with their employment contract or relationship. Article 10(8) of the Gender Equality Law lays down this right.

#### 5.5.17 Maintenance of rights acquired or in the process of being acquired by the worker (Clause 5(2) of Directive 2010/18)

Rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are maintained as they stand until the end of the parental leave. Article 10(8) of the Gender Equality Law 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.<sup>148</sup>

#### 5.5.18 Status of the employment contract or relationship during parental leave

The employment contract is suspended during parental leave, according to Article 51(1)(a) of the Labour Code.

#### 5.5.19 Continuity of entitlement to social security benefits

There is continuity of the entitlements to social security cover under the different schemes, in particular healthcare, during the period of parental leave, according to Article 22 of the OUG 111/2010.

#### 5.5.20 Remuneration

Parental leave is not remunerated by the employer.

#### 5.5.21 Social security allowance

The social security system in Romania provides for a monthly allowance during parental leave in all sectors, except for lawyers who contribute to a private social security fund. Starting on 1 January 2018, the amount of the monthly allowance is 85 % of the average income of the employee during the last 12 months of the two years prior to the birth of the child, capped at a minimum of RON 1 250 (EUR 260) and a maximum of RON 8 500 (EUR 1 790), according to Article 2(2) of the OUG 111/2010.

#### 5.5.22 More favourable provisions (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. Moreover, according to Article 25(3) of the OUG 111/2010, the protection against dismissal upon return from parental leave extends to six months after this date.

#### 5.5.23 Case law

In the past, the CNCD and the Court of Appeal of Bucharest had different interpretations of dismissal of women immediately after returning from parental leave, concerning whether or not it constitutes discrimination on the ground of sex.<sup>149</sup> This was settled by the High Court of Cassation and Justice in Decision No. 4671 of 4 December 2014. First, the High Court found that the CNCD is competent to examine complaints in the field of dismissals of women after returning from parental care leave by invoking their rights under OUG 111/2010 on parental leave, along with the Anti-discrimination Law. Secondly, the Court found that Article 25(3) of OUG 111/2010 establishes a positive action to protect women, who predominantly take parental leave, and a breach of the above-mentioned more favourable treatment constitutes indirect sex discrimination, invoking the ECtHR jurisprudence *Thlimmenos v Greece* (judgment of 6 April 2000).<sup>150</sup> Since then, the CNCD and the courts, including the Court of Appeal of Bucharest, have developed extended jurisprudence in this respect, finding direct discrimination on the ground of

<sup>148</sup> CNCD (2016), Decision No. 125 of 10.2.2016.

<sup>149</sup> Court of Appeal of Bucharest (*Curtea de Apel București*) (2013), judgment Nos. 3918 of 9.12.2013 and 1712 of 27.5.2013 confirmed CNCD decisions finding sex discrimination in this matter, while Court of Appeal of Bucharest judgment No. 4585 of 24.7.2012 refuted the CNCD decision.

<sup>150</sup> High Court of Cassation and Justice (*Înalta Curte de Casație și Justiție*) (2014), Decision No. 4671 of 4.12.2014.



sex/maternity.<sup>151</sup> The case law invokes ECJ jurisprudence such as *C-177/88 Dekker*, *C-394/96 Brown* and *C-179/88 Handels- og Kontorfunktionærernes Forbund*, in order to argue that discrimination based on pregnancy or maternity (under which Romanian courts include parental leave) constitutes discrimination on the ground of sex.<sup>152</sup>

The CNCD reports using *C-136/95 Thibault* in its cases dealing with discrimination against women who are refused promotion because they cannot fulfil all the conditions for promotion due to maternity or child care leave. For example, the CNCD found direct discrimination in the case of a local authority in the field of finance which refused the participation by a woman in an internal competition for promotion because it excluded the time spent on childcare leave in evaluating her seniority, despite the law prescribing the opposite.<sup>153</sup> The employer argued that there is a difference between seniority at work (acknowledged by the law) and seniority in an employee's respective position (practising the skills corresponding to the employee's position). The CNCD found the alleged difference to be against the principle established in *C-136/95 Thibault*, that a woman who was absent from work due to maternity leave should not be disadvantaged when qualifying for a promotion.<sup>154</sup> The Court of Appeal of Galați, which considered the appeal in this case, confirmed the CNCD's decision.<sup>155</sup> The case is currently pending before the High Court of Cassation and Justice. The CNCD has continued this jurisprudence in 2019.<sup>156</sup>

## 5.6 Paternity leave

### 5.6.1 Existence of paternity leave in national law

The national legislation provides for paternity leave. 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 completes a parenting class, he has the right to an extra ten days of leave, also paid in full. This is a short course provided by hospitals or private education providers which teaches expectant parents the basics about taking care of a new-born baby.

### 5.6.2 Protection against unfavourable treatment and/or dismissal (Article 16 of Directive 2006/54)

The national legislation does not provide for protection against unfavourable treatment and/or dismissal of workers who take paternity leave and it does not specify their rights after the end of paternity leave.

### 5.6.3 Case law

The author could not find any relevant case law (including opinions of equality bodies and other quasi-judicial bodies) in relation to unfavourable treatment (including pay and working conditions) and/or dismissal related to (the taking up of) paternity leave.

## 5.7 Time off for *force majeure*

national legislation does not entitle workers to time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident. Article 152 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 if this is stipulated in the internal regulations or a collective agreement. In addition, the Labour Code provides for the possibility for an employer to offer both male and female employees unpaid leave to

<sup>151</sup> Court of Appeal of Bucharest (*Curtea de Apel București*) (2016), Judgment No. 2253 of 28.6.2016; Court of Appeal of Bucharest (*Curtea de Apel București*) (2015), Judgment No. 720 of 13.3.2015

<sup>152</sup> E.g. Court of Appeal of Bucharest (*Curtea de Apel București*) (2016), Judgment No. 2253 of 28.6.2016.

<sup>153</sup> CNCD (2017), Decision No. 431 of 12.7.2017.

<sup>154</sup> CNCD (2017), Decision No. 431 of 12.7.2017.

<sup>155</sup> Court of Appeal of Galați (*Curtea de Apel Galați*) (2018), Judgment No.4/2018 of 16.1.2018.

<sup>156</sup> CNCD (2019), Decision No. 864 of 27.11.2019.

resolve personal matters if this is stipulated in the internal regulations or a collective agreement (Article 153).

By Government Decision No. 250, state employees are entitled to: 5 days off for marriage, 3 days off for the birth or marriage of the employee's child and 3 days off for the death of a spouse or a close relative.<sup>157</sup>

The few collective agreements in force in certain sectors only make reference to the rights stipulated in the above-mentioned laws regarding the rights of breastfeeding mothers, without any additional provisions.<sup>158</sup> There are collective agreements that expand the scope of the rights on flexible working arrangements to other categories of employees in need of work-life balance: employees who return earlier from parental leave may reduce their working time by two hours per day without any change in pay, until their child is two years old or three years old if the child has a disability or another medical condition;<sup>159</sup> employees who are raising children under the age of six or seven may, on their doctor's recommendation, choose to work part time.<sup>160</sup>

The national level Collective Agreement has not been in force for several years, but employers have often copied into their internal regulations provisions from collective agreements, granting days off for special family events such as those mentioned above.

#### 5.7.1 Case law

None to report.

### 5.8 Care leave

#### 5.8.1 Existence of care (or carers') leave in national law

There is no legal provision on care (or carers') leave in Romanian law.

#### 5.8.2 Case law

The author could not find any relevant case law (including opinions of equality bodies and other quasi-judicial bodies) in relation to unfavourable treatment (including pay and working conditions) and/or dismissal related to (the taking up of) time off/care leave.

<sup>157</sup> Government Decision No. 250/1992 on leave and other leaves of the employees working in public administration, State companies and State institutions (*Hotărârea nr. 250/1992 privind concediul de odihnă și alte concedii ale salariaților din administrația publică, din regiile autonome cu specific deosebit și din unitățile bugetare*), republished in the Official Journal No.118 of 13.6.1995.

<sup>158</sup> E.g. Collective Agreement No. 11 of 15.1.2015 at the level of the group of units within the Ministry of Internal Affairs (*Contract colectiv de muncă nr. 11 din 15 ianuarie 2015 la nivel de grup de unități din Ministerul Afacerilor Interne*), published in the Official Journal, Part V, No.1 of 19.3.2015, Article 13; Collective Agreement No. 1376 of 22.10.2014 at the level of the group of units of social assistance, for the years 2014-2015 (*Contract colectiv de muncă nr. 1.376 din 22 octombrie 2014 la Nivel de Grup de Unități Asistență Socială pe anii 2014-2015*), published in the Official Journal, Part V, No. 4 of 6.11.2014, Article 107.(2).

<sup>159</sup> E.g. Collective Agreement No. 1482 of 13.11.2014 at the level of the group of units within the 'Higher education and research' sector (*Contract colectiv de muncă nr. 1.482 din 13 noiembrie 2014 la Nivel de Grup de Unități din Sectorul de Activitate "Învățământ Superior și Cercetare"*), published in the Official Journal, Part V, No. 6 of 26.11.2014, Article 22; Collective Agreement No. 1768 of 9.12.2013 at the level of the group of public services operators of water supply and sewerage, for the years 2014-2015 (*Contract colectiv de muncă unic nr. 1.768 din 9 decembrie 2013 la nivelul grupului de operatori din serviciile publice de alimentare cu apă și de canalizare pe anii 2014-2015*), published in the Official Journal, Part V, No. 1 of 10.1.2014, Article 82.

<sup>160</sup> Collective Agreement No. 1482 of 13.11.2014 at the level of the group of units within the 'Higher education and research' sector, Article 23; Collective Agreement No. 1768 of 9.12.2013 at the level of the group of public services operators of water supply and sewerage, for the years 2014-2015, Article 82; Collective Agreement No. 1483 of 13.11.2014 at the level of the school education sector (*Contract colectiv de muncă unic nr. 1.483 din 13 noiembrie 2014 la Nivel de Sector de Activitate Învățământ Preuniversitar*), published in the Official Journal, Part V, No. 5 of 26.11.2014, Article 25.

## **5.9 Leave in relation to surrogacy**

There are no legal provisions or case law addressing whether parental leave or other leave (e.g. adoption leave, time off) is available in case of surrogacy.

## **5.10 Flexible working time arrangements**

### **5.10.1 Right to reduce or extend working time**

The national law does not provide workers with a legal right (temporarily or otherwise) to reduce or extend working time on request. This is the case for workers returning from parental leave, too.

### **5.10.2 Right to adjust working time patterns**

The national law does not provide workers with a legal right to adjust working time patterns (temporarily or otherwise) on request. This is the case for workers coming from parental leave, too.

### **5.10.3 Right to work from home or remotely**

The national law does not provide workers with a legal right to work from home or remotely (temporarily or otherwise) on request.

### **5.10.4 Other legal rights to flexible working arrangements**

There are no other legal rights to flexible working arrangements, such as arrangements by which workers can 'bank' hours to take time off in the future.

### **5.10.5 Case law**

The author could not find any relevant case law (including opinions of equality bodies and other quasi-judicial bodies) in relation to workers' requests for flexible working arrangements (on adjusting working patterns, flexible working schedules, flexible working hours, remote working etc).

## **5.11 Evaluation of implementation**

The author considers the national law that implements the EU law topics discussed in this chapter satisfactory, except for the lack of regulation on time off/care leave and flexible working time arrangements.

## **5.12 Remaining issues**

There are no remaining issues to report on.

## **6 Occupational social security schemes (Chapter 2 of Directive 2006/54)**

### **6.1 General (legal) context**

#### **6.1.1 Surveys and reports on the practical difficulties linked to occupational and/or statutory social security issues**

No surveys and/or reports have been published in Romania over the last five years which provide insights into the difficulties workers face in practice in relation to social security issues, both occupational and/or statutory.

#### **6.1.2 Other issues related to gender equality and social security**

There are no other issues related to gender equality and social security to report.

#### **6.1.3 Political and societal debate and pending legislative proposals**

There has been no political and societal debate or pending legislative proposals related to gender equality and social security.

### **6.2 Direct and indirect discrimination**

There is no explicit legal provision prohibiting direct and indirect discrimination in occupational social security schemes in Romania, only implicit provisions. Article 6(5) of Law 411/2004 concerning pension funds managed by private entities establishes that all beneficiaries should be treated without discrimination. Moreover, Articles 2(1), 6(1) and 7(g) of the Gender Equality Law forbid direct and indirect sex discrimination in all areas of public life, including non-discriminatory access to occupational and social security schemes. Together these legal provisions lead to the conclusion that direct and indirect discrimination are prohibited in occupational social security schemes.

### **6.3 Personal scope**

The personal scope of national law relating to occupational social security schemes is the same as specified in Article 6 of Directive 2006/54/EC. There is no relevant case law in the field.

### **6.4 Material scope**

The material scope of national law relating to occupational social security schemes is the same as specified in Article 7 of Directive 2006/54/EC. There is no relevant case law in the field.

### **6.5 Exclusions**

The national law did not apply the exclusions from the material scope as specified in Article 8 of Directive 2006/54/EC

### **6.6 Laws and case law falling under the examples of sex discrimination mentioned in Article 9 of Directive 2006/54**

The author is not aware of any law or case law in the field of occupational social security schemes falling under the examples of sex discrimination mentioned in Article 9 Directive 2006/54/EC.

### **6.7 Actuarial factors**

Sex and gender-based actuarial factors are not applied in Romania.

### **6.8 Difficulties**

The author is not aware of specific difficulties in Romania in relation to occupational social security schemes.

### **6.9 Evaluation of implementation**

Due to a lack of explicit prohibition of direct and indirect discrimination in the field of occupational social security schemes, the author evaluates that the Romanian legislation is unsatisfactory in implementing EU law.

### **6.10 Remaining issues**

There are no remaining issues regarding occupational social security that have not been discussed so far.

## **7 Statutory schemes of social security (Directive 79/7)**

### **7.1 General (legal) context**

#### **7.1.1 Surveys and reports on the practical difficulties linked to statutory schemes of social security (Directive 79/7)**

No surveys and/or reports have been published in Romania over the last five years which provide insights into the difficulties workers face in practice in relation to social security schemes in general.

#### **7.1.2 Other relevant issues**

There are no other issues to report on.

#### **7.1.3 Overview of national acts**

The social security system in Romania does not make a distinction between occupational and statutory social security schemes. Since the beginning of 2008, the pension system in Romania has consisted of three pillars. The first pillar is the universal social security fund, a 'pay as you go' type, which is mandatory for people in an employment relationship and for self-employed people. 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 to which people contribute on a voluntary basis.

Law No. 263/2010 regarding the unified public pensions system regulates the social security system. Law No. 411/2004 concerning pension funds managed by private entities regulates voluntary supplementary pension schemes. Law 76/2002 on the social security system for unemployment and stimulating employment stipulates that the measures taken in the field should promote equal opportunities on the labour market.

#### **7.1.4 Political and societal debate and pending legislative proposals**

There has been no political and/or societal debate nor any pending legislative proposals on this topic.

### **7.2 Implementation of the principle of equal treatment for men and women in matters of social security**

Article 2(d) of Law No.263/2010 on the social security system,<sup>161</sup> together with the general prohibition of all forms of discrimination in all areas of the life of society, according to Articles 2(1), 6(1) and 7(g) of the Gender Equality Law, lead to the conclusion that direct and indirect discrimination are prohibited in occupational social security schemes. Article 2(d) of Law 263/2010 stipulates the principle of equality as being at the basis of the social security system: non-discrimination is guaranteed to all participants in the social security system, in relation to people who are in the same legal situation with regard to their rights and obligations prescribed by law.

Moreover, Article 3(d) of Law 76/2002 on the social system for unemployment and stimulating employment stipulates the principle of equal opportunities.

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<sup>161</sup> Law No.263/2010 on the social security system (*Legea 263/2010 privind sistemul unitar de pensii publice*), published in Official Journal No.852 of 20.12.2010.

### **7.3 Personal scope**

The personal scope of national law relating to social security schemes mentioned above is the same as specified in Article 2 of Directive 79/7/EEC.

### **7.4 Material scope**

The material scope of national law relating to social security schemes is the same as specified in Article 3 paragraphs 1 and 2 of Directive 79/7/EEC.

### **7.5 Exclusions**

Romanian legislation introduced different pensionable ages for men (65 years old) and women (63 years old) (Article 53.(1) of Law 263/2010). This led to employers dismissing women by the force of the law when they reached pensionable age, according to Article 56(1)(c) of the Labour Code. On 5 June 2018, the Constitutional Court of Romania (CCR) found that the provision of Law 263/2010 establishing different pensionable ages for men and women is constitutional. At the same time, the CCR found that the dismissal of a woman upon reaching the pensionable age is not constitutional, the female employee should be provided with the possibility of extending her work contract to the age of 65 – the age at which her male colleagues reach the general and mandatory pensionable age. Article 56(1)(c) of the Labour Code should be interpreted accordingly.<sup>162</sup>

The CNCD applied the jurisprudence mentioned above by finding direct sex discrimination in several cases of dismissal on this ground.<sup>163</sup>

### **7.6 Actuarial factors**

Sex and gender-based actuarial factors are not applied in Romania.

### **7.7 Difficulties**

The author is not aware of any specific difficulties in Romania in relation to implementing Directive 79/7/EEC.

### **7.8 Evaluation of implementation**

Due to a lack of explicit prohibition of direct and indirect discrimination in the field of social security schemes, the author evaluates that the Romanian legislation is unsatisfactory in implementing EU law.

### **7.9 Remaining issues**

There are no remaining issues to report.

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<sup>162</sup> Constitutional Court of Romania (*Curtea Constituțională a României*) (2018), Decision No. 387/2018 of 5.6.2018, published in the Official Journal No. 642 of 24.7.2018.

<sup>163</sup> E.g. CNCD (2016, 2018), Decision No. 762 of 29.11.2016, Decision No. 344 of 19.9.2018.

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

### **8.1 General (legal) context**

#### **8.1.1 Surveys and reports on the specific difficulties of self-employed workers**

No surveys and/or reports have been published in Romania over the last five years which provide insights into the specific difficulties faced by self-employed workers.

#### **8.1.2 Other issues**

There is no specific research on self-employed people in Romania. Therefore, there is no assessment of the problems with which self-employed people (in particular women) are confronted.

#### **8.1.3 Overview of national acts**

In April 2013, the Government extended the Gender Equality Law to apply to self-employed workers and their spouses.<sup>164</sup> However, it was not until January 2014 that the law actually introduced the concept of spouses of self-employed workers and extended the possibility of contracting insurance for social protection to registered spouses.<sup>165</sup>

#### **8.1.4 Political and societal debate and pending legislative proposals**

There has been no political and/or societal debate nor any pending legislative proposals on this topic.

### **8.2 Implementation of Directive 2010/41/EU**

Directive 2010/41/EU has been explicitly implemented in national law in the Gender Equality Law, in particular to expand the scope of the law in order to apply to self-employed workers and their spouses.

### **8.3 Personal scope**

#### **8.3.1 Scope**

Government Emergency Ordinance No. 83/2012, approved with amendments by Law No. 115/2013, 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/EU by establishing certain rights for the spouse of a self-employed person who works with that person without being employed.

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<sup>164</sup> Law 113/2013 on the approval of the Government Emergency Ordinance 83/2012 for the amendment of Law 202/2002 on equal opportunities and equal treatment between women and men (*Lege nr. 115 din 24 aprilie 2013 privind aprobarea Ordonanței de urgență a Guvernului nr. 83/2012 pentru modificarea și completarea Legii nr. 202/2002 privind egalitatea de șanse și de tratament între femei și bărbați*), published in Official Journal No.240 of 25.4.2013.

<sup>165</sup> Law 4/2014 on amendment of the 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*).



### 8.3.2 Definitions

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

However, 'self-employed work' is defined in the Tax Code (*Codul Fiscal*) as being any activity that is not a dependent activity (employment relations) and is carried out regularly by a person.<sup>166</sup> The norms for the application of the Tax Code reinforce that self-employed people must not be subordinated and detail the essential elements contained in the contractual relations of the self-employed person with the beneficiary.<sup>167</sup> According to the Tax Code, self-employed work must fulfil at least four of the following criteria: the self-employed worker has the freedom to choose the activity that is carried out; the self-employed worker is free to establish the work programme and workplace; the risks involved in the activity are taken by the self-employed worker; the activity is carried out for several clients; the activity can be carried out not only directly by the self-employed worker, but also by employees hired by him or her according to the law; the self-employed worker uses his or her own material resources and mental or physical capacities to carry out the activity; and the self-employed worker is a member of a professional association which represents, regulates and supervises the activities in the respective profession.<sup>168</sup> Given this wide understanding of self-employed work, we consider there is no risk that some people such as 'small entrepreneurs' or 'business people' will not to be covered.

In 2016, the CNCD found direct sex discrimination in a case when, during procedures for the public procurement of veterinary services, the organiser 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 her pregnancy and the treatment to be discriminatory.<sup>169</sup> 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.<sup>170</sup>

### 8.3.3 Categorisation and coverage

The Code enumerates categories of income which are subjected to tax as income from self-employed work: commercial activities, including providing services and practising a profession, freelance activities (such as the medical profession and the professions of lawyer, notary, financial auditor, tax consultant, expert accountant, authorised accountant, broker, architect and other professions regulated by law which are carried out independently) and intellectual activities that generate intellectual property.<sup>171</sup>

Agricultural workers are treated separately by the Tax Code;<sup>172</sup> agricultural work, including forestry and fishing, is not included in the category of self-employed work. Nevertheless,

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<sup>166</sup> Law 227/2015 Tax Code (*Legea 277/2015 Codul fiscal*), Article 7, published in Official Journal No. 688 of 10.9.2015.

<sup>167</sup> Methodological Norms for the application of Law 277/2015 Tax Code (*Normelor metodologice de aplicare a Legii nr. 277/2015 Codul fiscal*), published in Official Journal No.22 of 13.1.2016, Chapter 1, Section 1.

<sup>168</sup> Methodological Norms for the application of Law 277/2015 Tax Code, Chapter 1, Section 1.

<sup>169</sup> CNCD (2016), Decision No. 657 of 26.10.2016.

<sup>170</sup> Court of Appeal of Timișoara (*Curtea de Apel Timișoara*) (2016, 2017), Civil Judgment Nos. 723 of 10.3.2016 and 165 of 29.5.2017.

<sup>171</sup> Law 227/2015 Tax Code, Article 7, published in Official Journal No. 688 of 10.9. 2015, Article 67(1).

<sup>172</sup> Law 227/2015 Tax Code, Article 7, published in Official Journal No. 688 of 10.9.2015, Article 103 and the following.

the rights and benefits in the field of pregnancy and maternity apply similarly as for the rest of self-employed workers.

#### 8.3.4 Recognition of life partners

National legislation in Romania does not recognise life partners. The provisions transposing Directive 2010/41/EU are limited to the married spouses of self-employed workers.<sup>173</sup>

On 27.09. 2018, the Constitutional Court of Romania admitted the constitutional challenge and issued an interpretative decision on Article 277(2) and (4) of the Civil Code so that it is in compliance with the Constitution.<sup>174</sup> The legal provision forbids the recognition of marriages between same-sex couples concluded abroad. The Court found that same-sex couples and different-sex couples are in comparable situations when it comes to legal protection of the right to private and family life guaranteed by Article 7 of the Charter and Article 26 of the Romanian Constitution. The Court also found that same-sex couples in stable relationships should benefit from legal recognition by law and judicial recognition. This is suggesting indirectly that the Parliament should adopt specific legislation to grant a form of legal protection for these couples, a measure that has been delayed despite several bills being debated in the Parliament. The Court found that, for the purposes of freedom of movement, these spouses should be considered as such by the authorities, an aspect which is applicable in the field of the rights of self-employed life partners of EU citizens who exercise their freedom of movement in Romania.

### 8.4 Material scope

#### 8.4.1 Implementation of Article 4 of 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'.<sup>175</sup>

#### 8.4.2 Material scope

The material scope of national law relating to equal treatment in self-employment is the same as specified in Article 4 of Directive 2010/41/EU.

### 8.5 Positive action

In 2015, the Ministry of Energy, Small and Medium-Sized Enterprises and the Business Environment (*Ministerul Energiei, Întreprinderilor Mici și Mijlocii și Mediului de Afaceri*) carried out several programmes to support small and medium-sized businesses (SMEs) with financial aid from the state budget. The target group was people starting businesses for the first time, young people, craftspeople 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 a programme entitled 'The Woman Manager' was that at least one of the shareholders had to be a woman holding 50 % of the company or

<sup>173</sup> Gender Equality Law, Article 7(2).

<sup>174</sup> Constitutional Court of Romania (*Curtea Constituțională a României*) (2018), Decision No. 534 of 27.9.2018.

<sup>175</sup> Gender Equality Law, Article 2(1)(a).

a self-employed woman.<sup>176</sup> 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 work-life balance 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.<sup>177</sup>

## 8.6 Social protection

There is a system to offer social protection to self-employed workers. By registering as an authorised individual, an individual enterprise or family business, an authorised professional (e.g. a lawyer or an accountant) or by declaring income as another category of self-employed person (e.g. an author or an inventor), these self-employed people 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 enter into an insurance contract covering unemployment.<sup>178</sup>

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 people who want to enter into contracts for 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 a self-employed person who works with that person without being employed has the right to enter into insurance contracts for a public pension, public healthcare and unemployment support, similar to any taxpayer who earns an income.<sup>179</sup> This insurance system is voluntary for spouses. Nevertheless, self-employed people are obliged to declare a spouse who works with him/her without being employed.<sup>180</sup>

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

## 8.7 Maternity benefits

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's contribution to the public health insurance fund in the last 12 months.<sup>181</sup> The total duration of maternity leave is 126 days, of which 42 days

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<sup>176</sup> More information about the programme 'The Woman Manager' is available at: <https://www.ccina.ro/servicii/consultanta-dezvoltarea-afacerii-inovare/surse-de-finantare/fonduri-nationale/dezvoltarea-culturii-antreprenoriale-in-randul-femeilor>.

<sup>177</sup> CNCD (2016), Decision No. 179 of 2.3.2016.

<sup>178</sup> 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 6.2.2002.

<sup>179</sup> 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.

<sup>180</sup> 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.

<sup>181</sup> Emergency Ordinance No. 158/2005 on health insurance leave and benefits (*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 29.11.2005.

after giving birth are mandatory for the woman.<sup>182</sup> The criterion used for the maternity allowance is that contained in Article 8(3)(a) of Directive 2010/41/EU, i.e. the allowance is deemed sufficient 'if it guarantees an income at least equivalent to the allowance which the person concerned would receive in the event of a break in her activities on grounds connected with her state of health'. The allowance is similar to the case of other insured women (see above, Section 5.3.5).<sup>183</sup>

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/EU.

## **8.8 Occupational social security**

### **8.8.1 Implementation of provisions regarding occupational social security**

The author is not aware of any occupational social security schemes for self-employed people which are contrary to the principle of equal treatment. There is no explicit legal provision prohibiting direct and indirect discrimination in occupational social security schemes in Romania, only implicit provisions - Article 6(5) of Law 411/2004 concerning pension funds managed by private entities and Articles 2(1), 6(1) and 7(g) of the Gender Equality Law. The Romanian legislature should include explicit prohibitions of direct and indirect discrimination in the occupational social security schemes (see above, Section 6.1).

### **8.8.2 Application of exceptions for self-employed persons regarding matters of occupational social security (Article 11 of Recast Directive 2006/54)**

The national law has not made use of the exceptions for self-employed people regarding matters of occupational social security as mentioned in Article 11 of Recast Directive 2006/54/EC.

## **8.9 Prohibition of discrimination**

Article 14(1)(a) of Recast Directive 2006/54/EC is implemented in national law as regards self-employment. 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)).

## **8.10 Evaluation of implementation**

The national law which implements the EU law topics discussed in this chapter is not satisfactory because it does not cover life partners and the public pension scheme and the public health insurance scheme are not mandatory for the spouses of self-employed people.

## **8.11 Remaining issues**

There are no remaining issues to report on.

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<sup>182</sup> Emergency Ordinance No. 158/2005 on health insurance leave and benefits Article 24.

<sup>183</sup> Emergency Ordinance No. 158/2005 on health insurance leave and benefits, Articles 10 and 25.

## **9 Goods and services (Directive 2004/113)<sup>184</sup>**

### **9.1 General (legal) context**

#### **9.1.1 Surveys and reports about the difficulties linked to equal access to and supply of goods and services**

No surveys and/or reports have been published in Romania over the last five years which provide insights into the difficulties men and women may face in terms of equal access to and supply of goods and services. There are no known complaints either.

#### **9.1.2 Specific problems of discrimination in the online environment/digital market/collaborative economy**

The author has not witnessed the emergence of any specific problems of discrimination concerning access to and supply of goods and services in the online environment/digital market/collaborative economy.

#### **9.1.3 Political and societal debate**

There has been no political and/or societal debate on this topic.

### **9.2 Prohibition of direct and indirect discrimination**

The national law prohibits direct and indirect discrimination on grounds of sex in access to, and the supply of, goods and services. The Anti-discrimination Law<sup>185</sup> and the Gender Equality Law<sup>186</sup> have a wider personal scope than the field of employment. Other grounds than sex are also covered in relation to equal access to goods and services. However, the Romanian Government decided to adopt a separate piece of legislation exclusively transposing Directive 2004/113/EC.<sup>187</sup> 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. This is problematic because it creates fragmentation of legal provisions in the field of gender equality.

### **9.3 Material scope**

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

### **9.4 Exceptions**

The national law has applied the exceptions from the material scope as specified in Article 3(3) of Directive 2004/113/EC, regarding the content of media, advertising and education. 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

<sup>184</sup> See e.g. Caracciolo di Torella, E. and McLellan, B. (2018) *Gender equality and the collaborative economy*, European network of legal experts in gender equality and non-discrimination, available at: [www.equalitylaw.eu/downloads/4573-gender-equality-and-the-collaborative-economy-pdf-721-kb](http://www.equalitylaw.eu/downloads/4573-gender-equality-and-the-collaborative-economy-pdf-721-kb).

<sup>185</sup> 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 7.3.2014.

<sup>186</sup> Law 202/2002 regarding equal opportunities for 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 5.6.2013.

<sup>187</sup> Government Emergency Ordinance No.61/2008 on the implementation of the principle of equal treatment between women and men regarding access to 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*).

and employment, including self-employment. Such legal limitations are inconsistent with the rest of Romanian legislation, which exceeds the requirements of Directive 2004/113/EC and was in place even before the Goods and Services Law was adopted. First, the Anti-discrimination Law does not allow for any exceptions in the field of public goods and services.<sup>188</sup> Secondly, 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 advertising companies must not use gender stereotypes in their productions. This situation suggests that the Government has rather bluntly performed a copy-and-paste exercise to reproduce the Goods and Services Directive by adopting this new law, whilst simultaneously ignoring existing rules.

In practice, the CNCD applies the Anti-discrimination Law. For example, in a case concerning an advertisement for a climbing centre in Bucharest, the CNCD opened a case *ex officio* and found direct discrimination on the ground of sex.<sup>189</sup> The advertisement consisted of a banner with an illustration of a woman with her legs spread out wide and the slogan: 'Always open.' In another case, the CNCD sanctioned a football association for refusing to organise football competitions for women despite internal regulations stating they must organise such competitions if there are requests from their member organisations. In this case, the CNCD imposed three administrative fines: on the legal entity, its president and its general secretary, totalling EUR 1 473 (RON 7 000).<sup>190</sup>

## 9.5 Justification of differences in treatment

The author could not identify any regulations or case law where differences in treatment in the provision of goods and services have been justified in national law (see Article 4(5) of Directive 2004/113/EC).

## 9.6 Actuarial factors

The national law ensures that the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services does not result in differences in the premiums and benefits of individuals (see Article 5(1) of Directive 2004/113/EC). On 30 April 2013, the 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) of the Goods and Services Law).<sup>191</sup> Moreover, on 11 September 2013, the Commission for the Surveillance of Insurance (*Comisia de Supraveghere a Asigurărilor*) adopted norms for the regulation of unisex premiums and benefits.<sup>192</sup> 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 an obligation to draft and apply internal

<sup>188</sup> Anti-discrimination Law, Article 10.

<sup>189</sup> CNCD (2019), Decision No. 332 of 10.6.2019.

<sup>190</sup> CNCD (2019), Decision No. 842 of 20.11.2019.

<sup>191</sup> 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 30.4.2013.

<sup>192</sup> 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 20.9.2013.

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).

### **9.7 Interpretation of exception contained in Article 5(2) of Directive 2004/113**

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.<sup>193</sup> 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.<sup>194</sup>

### **9.8 Positive action measures (Article 6 of Directive 2004/113)**

Romania has not adopted any positive action measures in relation to access to and the supply of goods and services.

### **9.9 Specific problems related to pregnancy, maternity or parenthood**

The author could not identify any specific problems of discrimination on the grounds of pregnancy, maternity or parenthood in Romania in relation to access to and the supply of goods and services.

### **9.10 Evaluation of implementation**

The national law which implements the EU law topics discussed in this chapter is satisfactory.

### **9.11 Remaining issues**

There are no remaining issues to report on.

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<sup>193</sup> 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 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*), Article I.

<sup>194</sup> 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, Article II.

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

### **10.1 General (legal) context**

#### **10.1.1 Surveys and reports on issues of violence against women and domestic violence**

A report published in July 2017 on protection orders between 2012 and 2016 found in the field of gender equality that victims of domestic violence are mostly women and victims of sexual violence within the family are mostly girls.<sup>195</sup> Moreover, according to the study, female applicants benefit from a higher percentage of protection orders issued after shorter periods of trial and shorter lengths of appeal, if needed. Even if the differences are small, it remains an important aspect that can correlate with the types of violence by which women are most affected: physical and sexual violence. The study also found that the protection order does not cover the first 10 to 14 days after the victim decides to leave the violent relationship, the period with the highest risk of recidivism (repeated violent behaviour by the aggressor in more serious forms). Sources of data on domestic violence are not harmonised. Institutions such as the Public Ministry (*Ministerul Public*) or the Ministry of Health (*Ministerul Sănătății*) may not collect detailed and disaggregated data on this issue. Therefore, in order to respond to certain items in the GREVIO (the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence) questionnaire, it is necessary to compare the data from different sources. It will be necessary to standardise the data collection criteria.

#### **10.1.2 Overview of national acts on violence against women, domestic violence and issues related to the Istanbul Convention**

The main law on domestic violence is Law No. 217/2003 regarding preventing and combating violence in the family. It contains the definitions of gender-based violence, the mandate of various institutions involved and civil measures to protect the victims of violence, such as the protection order. After the ratification of the Istanbul Convention the above-mentioned law was significantly improved, including by introducing the temporary protection order. At the same time, the Criminal Code contains the traditional definitions of criminal offences such as rape and violence against a family member.

#### **10.1.3 National provisions on online violence and online harassment**

There is no explicit regulation of online violence and online harassment of women and girls. The criminal offence of harassment has a less serious penalty applicable when the communication causing fear to any person, not only to women, takes place through electronic means of communication (Article 208(2) of the Criminal Code). Online violence does not exist as a concept in criminal law in Romania.

#### **10.1.4 Political and societal debate**

The societal debate taking place on this topic focuses on the prevalence of domestic violence in Romania and the ineffectiveness of the state's measures of protection for victims of domestic violence. This is especially in cases where the authorities know about the history of violence against women who are later killed by their aggressors.<sup>196</sup> For

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<sup>195</sup> Rețeaua pentru prevenirea și combaterea violenței împotriva femeilor (Network for preventing and combating violence against women) (2017), *Exploratory study on the implementation of the protection order and the domestic violence provisions of the Criminal Code of Romania in 2012 – 2016*, available at: <http://transcena.ro/wp-content/uploads/Study-Network-VAW-RO-2017.pdf>.

<sup>196</sup> DOR, Sandu, O. (2019) *Soluții împotriva violenței: ordinul de protecție* (Solutions against violence: protection order'), 16.3.2019, available at: [www.decatorevista.ro/solutii-impotriva-violentei-ordinul-de-protectie/](http://www.decatorevista.ro/solutii-impotriva-violentei-ordinul-de-protectie/).



example, only at the end of December 2018 did the authorities introduce a risk assessment form to be filled in by the first responders in cases of domestic violence.<sup>197</sup>

## 10.2 Ratification of the Istanbul Convention

Romania ratified the Istanbul Convention. On 25 March 2016, the law ratifying the Istanbul Convention was published in the Official Journal.<sup>198</sup> 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.<sup>199</sup>

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 (regarding the obligation to provide adequate State compensation to victims when it is not covered by other sources such as the perpetrator, insurance or State-funded health and social provisions); Article 44, paragraph 1.e (regarding the State's obligation to take measures to establish jurisdiction when the offence is committed by a person who has her or his habitual residence in their territory); paragraph 3 (the State's obligation to prosecute irrespective of the condition that the acts are criminalised in the territory where they were committed) and paragraph 4 (the State's obligation to prosecute a national irrespective of the condition of reporting by the victim or the provision of information by the State of the place where the offence was committed); Article 55, paragraph 1 (the State's obligation to continue investigations into or prosecution of offences irrespective of the condition that the victim files a report or complaint and even if the victim withdraws her or his statement or complaint); in respect of Article 35 (physical violence) regarding minor offences; and Article 59 (autonomous residence status to victims). Secondly, Romania reserves the right to provide for non-criminal sanctions, instead of criminal sanctions, for the behaviours referred to in Articles 33 (psychological violence) and 34 (stalking).<sup>200</sup> The period of validity of the reservations is from 1 September 2016 to 1 September 2021, subject to renewal according to Article 79 of the Convention.

The pre-existing legal framework in the country was only in part in compliance with the obligations under the Convention. For example, not until the ratification of the Convention did Romania adopt legislation on temporary protection orders which can be issued directly by the police officer who intervenes at the home of the victim. The Parliament adopted this legal provision in July 2018, together with other amendments addressing problematic areas such as: introducing a comprehensive definition of domestic violence; explicitly excluding any reason to justify domestic violence such as custom, culture, religion, tradition or honour; a legal mandate for authorities to collect data on domestic violence; detailing the legal framework for establishing services for victims of domestic violence; detailed competence of police officers to collect evidence of domestic violence; and the mandate of the social services team that carries out an emergency intervention in a case of domestic violence.<sup>201</sup>

<sup>197</sup> Order No. 146/2578/2018 on the means of handling cases of domestic violence by the police (*Ordinul nr. 146/2578/2018 privind modalitatea de gestionare a cazurilor de violență domestică de către polițiști*).

<sup>198</sup> Law No. 30 of 17.3.2016 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 11.5.2011 (*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*).

<sup>199</sup> 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 11.5.2011 (*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*).

<sup>200</sup> 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: [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/declarations?p\\_auth=5HiR6pap](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/declarations?p_auth=5HiR6pap).

<sup>201</sup> Law No.174/2018 on the amendment of Law No. 217/2003 regarding the prevention and combating violence in the family (*Legea nr. 174/2018 privind modificarea și completarea Legii nr. 217/2003 pentru prevenirea și combaterea violenței în familie*).

Nevertheless, the temporary protection order only became enforceable at the end of 2018, when the Ministry of Internal Affairs (*Ministerul de Interne*) and the Ministry of Labour and Social Justice (*Ministerul Muncii și Justiției Sociale*) adopted a joint order establishing the details of the procedure for intervening in a case of domestic violence and cooperating with other competent authorities, evaluating the risks, gathering evidence, issuing a temporary protection order and implementing the temporary protection order.<sup>202</sup>

At the same time, Order No. 146/2578/2018 contains very few provisions about the enforcement of the temporary protection order, despite having this amongst its areas of regulation. Indeed, the Order stipulates the procedure for evicting the aggressor, taking away fire arms and ammunition and reintegrating the victim and her children. However, except for informing the aggressor about the consequences of the breach of a temporary protection order, there are no practical measures that police officers should take to make sure that the temporary protection order is respected (such as periodic contact with the victim and the aggressor or electronic surveillance systems). Without such measures, the effectiveness of the legal protection of victims of domestic violence is still problematic in Romania. For example, Order No. 146/2578/2018 does not mention the electronic surveillance system in the list of measures that can be issued in the temporary protection order, despite this being stipulated by Law No. 217/2003 regarding the prevention and combating of violence in the family, Article 22<sup>4</sup>(d); such surveillance systems have not been implemented in Romania yet.

In 2018, the Government adopted the 2018-2021 national strategy to promote equal opportunities between women and men and to prevent and combat domestic violence and the operational plan for the implementation of the strategy.<sup>203</sup> One of the priorities is the development of adequate measures to support and protect victims of domestic violence. The results promised include: expanding by 20 houses the network of protected houses for victims of domestic violence; drafting a methodology and procedure for working on cases of domestic violence; establishing a network of 8 crisis centres for rape victims; training different categories of professionals to work on cases of domestic violence; and strengthening the institutional capacity of central and local administrations to handle domestic violence.<sup>204</sup>

ANES reports preparing two draft Government decisions to improve support services for victims of domestic violence: one on the approval of the national plan for the protection of victims of domestic violence and the methodology for the organisation and functioning of the national network of integrated protected houses allocated to victims of domestic violence and another on the approval of minimum standards of costs for social services in the field of domestic violence.<sup>205</sup> The Government has not yet approved those decisions.

Romania is under enhanced supervision by the Department for the Execution of Judgments of the European Court of Human Rights with respect to the protection of women victims

<sup>202</sup> Order No. 146/2578/2018 on the means of handling cases of domestic violence by the police (*Ordinul nr. 146/2578/2018 privind modalitatea de gestionare a cazurilor de violență domestică de către polițiști*).

<sup>203</sup> Government Decision No. 365/2018 on the approval of the National Strategy to promote equal opportunities between women and men and to prevent and combat domestic violence for the years 2018-2021 and the Operational Plan for the implementation of the National Strategy to promote equal opportunities between women and man and to prevent and combat domestic violence for the years 2018-2021 (*HG 365/2018 privind aprobarea Strategiei naționale privind promovarea egalității de șanse între femei și bărbați și prevenirea și combaterea violenței domestice pentru perioada 2018-2021 și a Planului operațional pentru implementarea Strategiei naționale privind promovarea egalității de șanse și de tratament între femei și bărbați și prevenirea și combaterea violenței domestice pentru perioada 2018-2021*), published in the Official Journal No. 465 of 6.6.2018.

<sup>204</sup> Government Decision no. 365/2018 on the approval of the National Strategy to promote equal opportunities between women and man and to prevent and combat domestic violence for the years 2018-2021 and the Operational Plan for the implementation of the National Strategy to promote equal opportunities between women and man and to prevent and combat domestic violence for the years 2018-2021.

<sup>205</sup> National Agency for Equal Opportunities for Women and Men (*Agenția Națională pentru Egalitatea de Șanse pentru Bărbați și Femei* (ANES)) (2020), Response No. 1168/MC/DPCVD/27.03.2020.

of domestic violence, following the case of *Bălșan v. Romania*.<sup>206</sup> At the last review meeting in June 2018, the Committee of Ministers of the Council of Europe welcomed the on-going legislative process to give effect to the commitments undertaken under the Istanbul Convention and encouraged the authorities to complete it rapidly with a view, in particular, to reinforcing the system of preventive/protective measures and to developing a network and range of social services available to victims of domestic violence.<sup>207</sup>

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<sup>206</sup> ECtHR, *Bălșan v. Romania*, no. 49645/09, 23.5.2017.

<sup>207</sup> Council of Europe, Committee of Ministers, 1318th Meeting, June 2018, [DH-DD\(2018\)348-rev.](#)

## **11 Compliance and enforcement aspects (horizontal provisions of all directives)**

### **11.1 General (legal) context**

#### **11.1.1 Surveys and reports about the particular difficulties related to obtaining legal redress**

No surveys and/or reports have been published in Romania over the last five years which provide insights into the particular difficulties that victims of gender discrimination face in practice in obtaining legal redress

#### **11.1.2 Other issues related to the pursuit of a discrimination claim**

The very limited trust in the justice system and public institutions, supported by the bureaucratic and long procedures for obtaining remedies against discrimination, represent a significant deterrent for victims to pursuing a discrimination claim.

#### **11.1.3 Political and societal debate and pending legislative proposals**

There has been no political and/or societal debate or pending legislative proposals on this.

### **11.2 Victimisation**

The directives' provisions on victimisation are implemented in national legislation. 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 and CJEU case law.

### **11.3 Access to courts**

#### **11.3.1 Difficulties and barriers related to access to courts**

Access to courts is sufficiently safeguarded for alleged victims of sex discrimination. Administrative complaints and court actions against sex discrimination are exempt from tax. At the same time, 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.<sup>208</sup> The Government did not give any rationale for this legal provision; it could be connected to the general provisions of civil procedure that are stricter with respect to legal representation. Nonetheless, the Anti-discrimination Law prescribes that all groups exposed to discrimination may benefit from such support in both administrative procedures and court proceedings.<sup>209</sup> In principle, the Gender Equality Law should prevail as the special law in the field of gender equality. In this particular case, this entails creating a disadvantage for victims of sex discrimination compared to other victims of discrimination.

When sex discrimination takes place in employment relations, it is less probable that the employees will file a case because they fear losing their income or the costs of the action are too high compared to the potential remedies available at the end of the process. In this context, the lack of support from women's rights groups which could share the burden

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<sup>208</sup> Gender Equality Law, Article 44, introduced by Emergency Government Ordinance 83/2012 for the amendment of Law No. 202/2002 regarding equal opportunities and treatment between women and men (*Ordonanta de Urgenta a Guvernului 83/2012 pentru modificarea si completarea Legii nr. 202/2002 privind egalitatea de sanse si de tratament intre femei si barbati*).

<sup>209</sup> Anti-discrimination Law, Article 28.

of taking a sex discrimination case further contributes to the low number of complaints. Dedicated women who are willing to fight for justice need to hire private lawyers to represent their cases and these lawyers are not necessarily acquainted with the particularities of sex discrimination cases.

#### 11.3.2 Availability of legal aid

Legal aid is not readily available to victims of gender discrimination. As in any civil case, legal aid is available only to people who are in a very difficult financial situation, upon the approval of the court.

### 11.4 Horizontal effect of the applicable law

#### 11.4.1 Horizontal effect of relevant gender equality law

The question of the horizontal effect of the applicable gender equality law – or rather the lack thereof – does not pose any particular problem in ensuring compliance with and in enforcing gender equality law in Romania. Articles 7(3) and 8 of the Gender Equality Law and Article 3 of the Anti-discrimination Law apply to all persons, both public and private legal entities and individuals.

#### 11.4.2 Impact of horizontal direct effects of the charter after *Bauer*

The recognition of horizontal direct effects of the Charter provisions (in the *Bauer* ruling of the CJEU)<sup>210</sup> has no specific relevance for better enforcement of gender equality law in Romania because the country already had legal provisions in place explicitly providing that the law applies to all persons, both public and private legal entities and individuals.

### 11.5 Burden of proof

The national legislation and case law provide for a shift of the burden of proof in sex discrimination cases in accordance with the rules set out in Article 19 of Directive 2006/54/EC. The burden of proof has three different definitions in the three laws in this area.<sup>211</sup> Article 31 of the Gender Equality Law only establishes the burden of proof of the complainant: ‘the person who presents elements of fact that lead to the presumption of the existence of direct or indirect discrimination on the ground of sex, in other areas than employment, has the right to complain to the competent authority or file a case before a court, according to ordinary law’.

Article 12 of the Goods and Services Law establishes that, ‘the person who is harmed by the breach of the principle of equal treatment in the field of access to and provision of goods and services must prove in front of a court or a competent authority facts on which the alleged discrimination is grounded, and the person against which the complaint/report is filed has the burden of proving that the facts do not constitute discrimination’. This definition is unclear because the wording does not pertain to the legal sphere and it does not mention the legal presumption of discrimination.

Only the 2013 amended provisions regarding the burden of proof in the Anti-discrimination Law are in compliance with the Directives: ‘the interested person will present facts from which can be presumed the existence of direct or indirect discrimination, and the person against which the complaint was filed has the burden of proving that no breach of the

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<sup>210</sup> Judgment of 6.11.2018, *Stadt Wuppertal v Maria Elisabeth Bauer and Volker Willmeroth v Martina Broßonn*, Joined Cases C-569/16 and C-570/16, EU:C:2018:871.

<sup>211</sup> Anti-discrimination Law, Articles 20(6) and 27(4), Gender Equality Law, Article 31, and Goods and Services Law, Article 12.

principle of equal treatment occurred'.<sup>212</sup> 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, the 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).<sup>213</sup>

## **11.6 Remedies and sanctions**

### **11.6.1 Types of remedies and sanctions**

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.<sup>214</sup> 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.<sup>215</sup>

In August 2018, the Parliament lowered the administrative sanctions by 90 %, now they vary between RON 3 000 (EUR 631) and RON 10 000 (EUR 2 105), except for cases that occur in the field of access to and the supply of goods and services, where the administrative fine ranges from RON 1 500 (EUR 340) to RON 15 000 (EUR 3 400). These ranges are significantly lower compared to administrative fines applied for discrimination on other grounds. According to Article 26 of the Anti-discrimination Law, the fines range between RON 1 000 (EUR 210) and RON 30 000 (EUR 6 310) for discrimination against an individual and RON 2 000 (EUR 420) and RON 100 000 (EUR 21 052) for discrimination against a group or a community. The Parliament did not give a rationale for lowering the administrative sanctions. There is no assessment of the effect of this amendment.

### **11.6.2 Effectiveness, proportionality and dissuasiveness**

In the author's opinion, the remedies and sanctions do not meet the EU law standards of being effective, proportionate and dissuasive. In practice, administrative fines imposed by the CNCD are nearer the minimum range; moreover, the CNCD often issues written warnings and recommendations instead of fines. Sometimes this approach is justified by the CNCD based on the balance between the freedom of expression and the right not to be discriminated against. Yet this is not justified in all cases. 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.

## **11.7 Equality body**

Law 229 of 6 October 2015 amending the Gender Equality Law reinstated the National Agency for Equal Opportunities for Women and Men (*Agencia Națională pentru Egalitate*

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<sup>212</sup> 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 și sancționarea tuturor formelor de discriminare*).

<sup>213</sup> Labour Code, Chapter V, Sections 4 and 5. See also CNCD, Decision No. 719 of 4.12.2013 and Decision No. 510 of 4.9.2013.

<sup>214</sup> Gender Equality Law, Article 39.

<sup>215</sup> Goods and Services Law, Article 9.

de Șanse între Femei și Bărbați (ANES)) as the national gender equality body.<sup>216</sup> ANES was closed down in 2010 due to budgetary cuts. In the intervening period the ANES mandate was in part carried out by the Department for Equal Opportunities for Women and Men (*Departamentul pentru Egalitate de Șanse între Femei și Bărbați*), within the Ministry of Labour, Family, Social Protection and the Elderly (*Ministerului Muncii, Familiei, Protecției Sociale și Persoanelor Vârstnice*).<sup>217</sup>

ANES is currently the specialised administrative body under the auspices of the Ministry of Labour, Family, Social Protection and the Elderly (*Ministerului Muncii, Familiei, Protecției Sociale și Persoanelor Vârstnice*) and has the legal mandate to promote the principle of equal opportunities for and equal treatment of 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.<sup>218</sup> ANES also has the mandate to receive complaints in the field of equal opportunities for 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 Inspectorate (*Inspekția Muncii*), which oversees employers' compliance with the Labour Code and other legislation applicable to employment relations (including the Gender Equality Law). It also provides counselling to victims of discrimination.<sup>219</sup>

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

### 11.8 Social partners

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.<sup>220</sup>

Although they are legally binding, collective agreements are not widespread and they are not used as a specific means to implement gender equality. The last general collective agreement at the national level was in force between 2007 and 2010.

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<sup>216</sup> Law No.229 of 6.10.2015 for the amendment of Law No. 202/2002 regarding equal opportunities for women and men, Article I(9)-(11).

<sup>217</sup> Government Decision No.250/2014 on the organising and functioning of the Department for Equal Opportunities for Women and Men (*Hotărârea de Guvern nr. 250/2014 privind organizarea și funcționarea Departamentului pentru Egalitate de Șanse între Femei și Bărbați*).

<sup>218</sup> Law No.229 of 6.10.2015 for the amendment of Law No. 202/2002 regarding equal opportunities for women and men, Article I(10).

<sup>219</sup> Law No.229 of 6.10.2015 for the amendment of Law No. 202/2002 regarding equal opportunities for women and men, Article I(10).(5).

<sup>220</sup> 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*).

### **11.9 Other relevant bodies**

There are no other relevant agencies or bodies (e.g. gender equality interest groups) in Romania which are engaged in the enforcement of gender equality law, e.g. through strategic litigation.

### **11.10 Evaluation of implementation**

The author considers that the national law is satisfactory from the point of view of implementing the EU law topics discussed in this chapter. The mandate of the authorities involved and the range of sanctions and remedies are satisfactory. However, in practice, the very low levels of sanctions and remedies actually applied render the system of protection against discrimination ineffective.

### **11.11 Remaining issues**

There are no remaining issues to report.



## 12 Overall assessment

The following transposition problems were mentioned in this report:

1. Lack of explicit protection against discrimination for transgender, intersex and non-binary persons, in the context of an insufficient legal framework of legal gender recognition procedures, which allows for arbitrary decisions by the authorities.
2. Inconsistent case law of the national equality body applying the definition of indirect discrimination, by using intent and a causality link between the behaviour and the ground of discrimination as a way to differentiate indirect discrimination from direct discrimination.
3. Lack of measures or pending proposals to improve the gender balance on company boards, given that existing legal provisions are general and unspecific, which renders them ineffective.
4. There are two absolute legal limitations of the material scope of the Gender Equality Law: religious denominations, private life of individuals
5. National law and case law do not lay down parameters for establishing the equal value of work performed.
6. The measures set out by EC Recommendation of 7.3.2014 on strengthening the principle of equality between men and women through transparency have not been implemented and existing labour legislation embeds the principles of salary confidentiality and individual negotiations.
7. The national legislation does not entitle workers to time off from work on grounds of *force majeure* for urgent family reasons in case of sickness or accident, and only provides for the possibility of employers offering such benefits.
8. There is no legal provision on care or carers' leave.
9. The national legislation does not provide workers with a legal right to reduce or extend working time on request.
10. There are no explicit legal provisions prohibiting direct and indirect discrimination in occupational social security schemes, only implicit provisions.
11. National legislation does not recognise life partners, only married spouses in the context of the Directive 2010/41/EU with respect to public pensions and the public health insurance schemes.

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 CNCD. When examining cases of discrimination, the CNCD does not usually invoke the Gender Equality Law, only the Anti-discrimination Law. While ensuring legal protection, this approach does not allow for the development of case law under the Gender Equality Law, rendering this piece of legislation theoretical and illusory. 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 fragmentation, overlap and lack of clarity and inconsistencies which 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 and benefit all groups protected against discrimination equally.

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 people exposed to discrimination do not feel motivated to bring complaints or take further legal action. The lack of legal aid available in these cases and lack of resources for NGOs working on women's issues to develop legal expertise in this field has led to scarce development of case law on gender discrimination, in relatively

marginal areas such as occupational requirements in predominantly male professions, or repetitive cases in the area of parental care leave.

ANES is predominantly a decorative institution, with little capacity and vision to advance the implementation of public policies in the field of gender equality by competent institutions from all areas of public life and all sectors of activity.

After Romania ratified the Istanbul Convention in 2016, the legislation in the field of domestic violence improved significantly, proof that the ratification played an important political role in moving the conversation forward after more than 10 years of stagnation. The adoption of the temporary protection orders, the surveillance system and the risk assessment evaluation are measures that, if implemented in practice by the police, will enhance the protection of victims of domestic violence. These improvements are threatened by vocal opposition from religious-based groups and theologians who have opposed the Istanbul Convention for promoting what they call 'gender ideology' among children, outcries which have a disabling effect on certain public authorities.

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