

# LEGISLATIVE AND INSTITUTIONAL FRAMEWORK IN THE FIELD OF DISCRIMINATION IN ROMANIA

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**Abstract:** *This article analyses the legislative and institutional framework involved in the fight against discrimination in Romania. The conclusion of the analysis show how the legislative framework in Romania is in agreement with CE directives in the field of non-discrimination, even exceeding the provisions of these directives in some places. However, the institutional practices and real accessibility of the system are not at the level of its potential. The laws and the problem solving mechanisms are insufficiently known by the population, while the administrative apparatus is insufficiently well developed in the territory, which is why most of the cases judged by the courts of law or by NCDC come from the area of the capital and from the large urban centres. The state institutions assigned to monitor and sanction the acts of discrimination, particularly in the field of the work relations only notice facts and collect general data; they don't actually investigate the cases of law infringement in the field of non-discrimination. Although the related legislative framework is solid and sufficiently comprehensive, and the framework law (O.G. 137/2000) is mandatory for the litigations, some laws and provisions allow or provide a cover/justification/explanation for some behaviours which would be included in mobbing, by transferring the "problem" to the sphere of the legitimacy of the economic interest of the employer, by using the language of the personal efficiency and competency, by defining a legitimate area of manoeuvre for the employer or its representatives and by creating some contexts which deter the solidarity or cooperation between the employees.*

**Keywords:** *legislation, institutional framework, discrimination, National Council for Discrimination Control, legislative and institutional efficiency.*

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## 1. Legislative framework

### Overview

Discrimination<sup>1</sup> is regulated by several laws and provisions which allow the processual approach of this phenomenon both the by the civil and by the penal courts of law (particularly through the National Council for Discrimination Control). If a person feels discriminated it can forward a complaint to CNDC (the result may be a fine for the person guilty of discrimination or rectification of the situation), or it may sue (and demand compensations) or it may do both things. In all cases, the basic law which interprets the facts and makes decisions is the framework law for discrimination. Government Ordinance 137/31 August 2000 regarding the prevention and sanctioning of all forms of discrimination (published in the Official Monitor 431/2 September 2000), which became law and which was modified by Law 48/16 January 2002 (published in the Official Monitor 69/31 January 2002). The other laws and provisions (except for the Constitution and Penal Code) have largely declarative value, assuming a public commitment by the Government to prevent and control discrimination in the narrower fields which they regard, the law of reference remaining O.G. 137/2000.

### Penal Code<sup>2</sup>

The Penal Code sanctions behaviours and situations in which discrimination has serious consequences. Thus, it sanctions:

- As aggravating circumstance, committing offenses on grounds of race, ethnic group, gender and other criteria (closed list)<sup>3</sup>;
- Instigation to discrimination<sup>4</sup>;
- When a public official causes physical or psychic sufferance to a person on grounds of a criterion of discrimination;<sup>5</sup> obstructing a right or establishment of a situation of inferiority on the same criteria, by a public official<sup>1</sup>;

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<sup>2</sup> Modified and completed by the Emergency Ordinance 148/2008, Law 268/2009, approved with modifications by Law nr. 93/2010

<sup>3</sup> Art. 7, letter c) from the Penal Code

<sup>4</sup> Art. 317 from the Penal Code

<sup>5</sup> Art. 282 par. 1 letter c) from the Penal Code Penal

-Inciting the public to hate or discrimination<sup>2</sup>;

The Penal Code has two provisions which can be used for protection against discrimination (even mobbing) at the workplace. Thus, it punishes:

-Obstruction of the free exercise of a religion or forced participation in activities which are against the religion of a person<sup>3</sup>.

-Sexual harassment, only if the victim files a complaint; sexual harassment is defined as: "repeated demand of sexual favours within a work framework or similar relation, if the victim has been intimidated or put into a humiliating position"<sup>4</sup>;

### **O.G. 137/2000 for the prevention and sanctioning of all forms of discrimination**

This framework law sets primarily the right not to be discriminated in several areas of life and activity as fundamental human right and delineates, as remedy, three ways: institute measures for the protection of the natural development of the persons belonging to disfavoured groups (by positive measures); amiable mediation of the conflicts and sanctioning (fine or penal) the acts of discrimination<sup>5</sup>. The law establishes the main institution monitoring and sanctioning the acts of discrimination, the National Council for Discrimination Control<sup>6</sup>, to be discussed in the section approaching the institutional framework.

### **Definitions and general considerations regarding discrimination:**

-Discrimination is defined broadly, by enumerating criteria as examples and including the syntagm "any other criterion":

*"...by discrimination we understand any difference, exclusion, restriction or preference, on grounds of race, nationality, ethnic group, language, religion, social category, convictions, gender, sexual preferences, age, handicap, non-contagious chronic disease, HIV infection, inclusion in a disfavoured category, or any other criterion whose purpose is to obstruct, eliminate the acknowledgement, utilisation or exertion, under condition of equality, of the human rights and of the fundamental liberties or rights acknowledged by the law, in the politic, economic, social and*

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<sup>1</sup> Art. 297 par. 2 from the Penal Code

<sup>2</sup> Art. 369 from the Penal Code

<sup>3</sup> Art. 381 from the Penal Code

<sup>4</sup> Art. 223 from the Penal Code

<sup>5</sup> Art. 2 par. (10) from O.G. 137/2000 regarding the prevention and sanctioning all forms of discrimination, modified and republished.

<sup>6</sup> Section VI from O.G. 137/2000.

*cultural field or in any other field of the public life.*"<sup>1</sup>

- The law considers both the direct discrimination and the indirect discrimination<sup>2</sup> (resulting from behaviours or dispositions which are seemingly neutral, but whose effect is discrimination);
- It constitutes an act of discrimination:
  - The disposition to discriminate<sup>3</sup>
  - Harassment, also defined as behaviour which "leads to the establishment of an intimidating, hostile, degrading or aggressive environment"<sup>4</sup>.
  - Multiple discrimination (aggravating circumstance)<sup>5</sup>
- Victimization is also sanctioned, understood as "any adverse treatment, which results as reaction to a complaint or action un justice regarding the infringement of the equal treatment and of non-discrimination"<sup>6</sup>.
- The affirmative, positive measures taken by the authorities to provide the equal opportunity or the protection of disfavoured groups are not acts of discrimination<sup>7</sup>.
- Both sides must bring evidence both in the case of a penal suit and in the case of administrative actions<sup>8</sup>;
- Sanctioning entails both passive and active actions, as well as their effects<sup>9</sup>, which are easier to document than the intentions.
- The language yields the possibility of exceptions and allows, potentially, discriminatory behaviours "when these provisions, criteria or practices are justified objectively by a legitimate purpose, and the methods to attain the purpose are adequate and necessary"<sup>10</sup>.

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<sup>1</sup> Art. 2 par. (1) from O.G. 137/2000

<sup>2</sup> Art. 2 par. (3) from O.G. 137/2000

<sup>3</sup> Art. 2 par. (2) from O.G. 137/2000

<sup>4</sup> Art. 2 par. (5) from O.G. 137/2000

<sup>5</sup> Art. 2 par. (6) from O.G. 137/2000

<sup>6</sup> Art. 2 par. (7) from O.G. 137/2000

<sup>7</sup> Art. 2 par. (9) from O.G. 137/2000

<sup>8</sup> Art. 20 par. (6) and art. 27 par. (4) from O.G. 137/2000

<sup>9</sup> Art. 2 par. (4) from O.G. 137/2000

<sup>10</sup> Art. 2 par. (3) from O.G. 137/2000

### **Discrimination at work:**

O.G 137/2000 has explicit stipulations for discrimination at work, professional training and development<sup>1</sup>. A whole section (section I, Chapter II) is dedicated to the economic field and to work ("Equality in the economic activity, in employment and profession") and sets what discrimination means in this field and which are the consequences of such actions (fines). The set framework is rather comprehensive and may serve as solid base for the actual prevention and control of discrimination at work.

The law sanctions:

- Discrimination not just in the conditions of employment, but also in entrepreneurship, starting a business or freelance work<sup>2</sup>;
- "Discrimination of a person (...) at work or in a situation of social protection, except for the cases stipulated by the law, displayed in the following areas:
  - a) Conclusion, suspension, modification or termination of the work relations;
  - b) Setting and modifying the work tasks, the place of work and the wage;
  - c) Granting other social rights than the wage;
  - d) Professional formation, improvement, reconversion and promotion;
  - e) Apply disciplinary measures;
  - f) The right to join a union and the access to the facilities granted by it;
  - g) Any other conditions of work, according to the laws in force."<sup>3</sup>
- Discrimination at employment, in the advertisement's and competitions for employment, in job seeking and in providing social services<sup>4</sup>.

However, one of the articles (Art.9) leaves open the possibility not to sanction some discriminatory acts: "*The provisions of art. 5-8 cannot be interpreted with the meaning of obstructing the right of the employer to refuse the employment of a person which doesn't qualify for that field, as long as the refusal is not an act of discrimination in the meaning of this ordinance, and these measures are justified objectively by a legitimate purpose and the methods used to attain the purpose are adequate and necessary.*"<sup>5</sup>

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<sup>1</sup> Art. 1 par. (2) d). (i) and (v), Art. 3 a). and b). and Chapter II Section I from O.G. 137/2000

<sup>2</sup> Art. 5 from O.G. 137/2000

<sup>3</sup> Art. 6 from O.G. 137/2000

<sup>4</sup> Art. 7 and art. 8 from O.G. 137/2000

<sup>5</sup> Art. 9 from O.G. 137/2000

### **Relevance for the prevention and control of mobbing:**

According with Tomescu, C., Cace, S. (2010, pp. 11) „Mobbing at the job is a form of psychical aggression exerted for a period of several months by one or more fellow workers against another worker, through a series of actions aiming to isolate the targeted person. Practically the role of the employee in the firm and its professional capacities are undervalued willingly using various types of discrediting, humiliation, rumours, with the purpose to remove that person. Mobbing victims usually resign because they no longer can cope with the pressures and atmosphere. The repercussions are psycho-social and on the health; lower trust in own professional competency, stress, deterioration of the family relations on the background of stress, depression, health problems.” The most useful points in the approach of mobbing behaviour are those regarding sexual harassment and protection of human dignity. Section V “The right to personal dignity” makes reference to behaviours whose “purpose is to affect the dignity or to create an atmosphere of intimidation, hostile, degrading, humiliating or offending”<sup>1</sup> and provide a basis for the formulation and acceptance of complaints for the mobbing victims. The section regarding the work relations includes some points which might be interpreted as protection against more subtle actions of discrimination and violence at the workplace, including mobbing actions to modify discriminatorily the work tasks, the place of work and wage, discriminatory use of disciplinary measures; the la leaves the list open<sup>2</sup>. The legal language that defines discrimination is sufficiently broad as to comprehend, at least theoretically, indirect discrimination and actions that might be considered mobbing, by making reference to the active and passive behaviour and to effects<sup>3</sup> (more easily to prove in court that the intentions). In addition to anti-discrimination legislation (Government Ordinance 137/2000 on preventing and sanctioning all forms of discrimination), in Romania, in 2001 was founded National Councilfor Combating Discrimination, with specific responsibilities in preventing acts ofdiscrimination, mediation parties involved in the conduct of discrimination, investigation,detection and punishment of acts of discrimination, discrimination and monitoring activities providing specialized assistance to victims of discrimination. (Gheonea, A.; Ilie, S.; Lambru, M.; Mihăilescu, A.; Negut, A.; Stanciu, M.; Tomescu, C. (2010, p. 125)

### **Law 202/2002 regarding the equal opportunity of men and women**

The law that regulates especially the equal opportunity of the men and women and which sanctions gender discrimination is Law 202/2002 (republished in the Official

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<sup>1</sup> Art. 15 from O.G. 137/2000

<sup>2</sup> Art. 6 from O.G. 137/2000

<sup>3</sup> Art. 2 par. (2) and (3) from O.G. 137/2000

Monitor no. 135 of 14 February 2005), which was modified in time, sometimes quite a lot (see the fate of the National Agency for Equal Opportunity). The text condemns and bans different forms of gender discrimination and includes a section dedicated to the work relations (Chapter II – Equal opportunity and treatment of the men and women in the field of work). This section develops the ideas from the similar section of Ordinance 137/2000, adding however, provisions which create obligations within the operation and organisation regulations and within the internal order regulations of the economic units<sup>1</sup>.

Some points enlarge the definition of the discriminatory behaviour, strengthening similar provisions from O.G. 137/2000. These points might be useful in approaching the mobbing phenomenon:

- Both the direct and indirect discrimination are mentioned<sup>2</sup>;
- References to “less favourable” treatment or to “disadvantages” resulting from seemingly neutral behaviours, not just dramatic effects resulting from explicitly ill will behaviours<sup>3</sup>;
- Inclusion of harassment in the definition of discrimination and its explicit condemnation<sup>4</sup>: “it appears with the purpose or has the effect of damaging the dignity of the person and of creating a degrading environment of intimidation, hostility, humiliation or offending”<sup>5</sup>;
- Explicit and separate mentioning of the sexual harassment, which is defined as “any unwanted sexual behaviour - verbal, nonverbal or physical – whose purpose or effect is to damage the dignity of the person and/or establishment of a degrading environment of intimidation, hostility, humiliation or offending”<sup>6</sup>
- Failing to make equal and equitable use of the work due to gender issues also is discrimination<sup>7</sup>;
- Protection of maternity, which cannot become reason for discrimination<sup>8</sup>;
- Detailing workplace behaviours which might contain discriminating actions, setting and modifying the individual job assignments<sup>9</sup>.

However, the text of the law is equivocal sometimes and restates the “objective” reality of the gender differences and of different competencies/possibilities/ aspirations for the

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<sup>1</sup> Art. 12 from Law 202/2002

<sup>2</sup> Art. 4 lit. a) and b) from Law 202/2002

<sup>3</sup> Ibid.

<sup>4</sup> Art. 11 from Law 202/2002

<sup>5</sup> Art. 4 lit. c) and d). from Law 202/2002

<sup>6</sup> Art. 4 lit. d) from Law 202/2002

<sup>7</sup> Art. 4 lit. f) and art. 11 from Law 202/2002

<sup>8</sup> Art. 10 from Law 202/2002

<sup>9</sup> Art. 9 from Law 202/2002

two categories<sup>1</sup>, which can lead the ultimate justification of discriminating behaviours. Furthermore, the law includes more exceptions than O.G. 137/2000, allowing the possibility not to sanction potentially discriminating behaviours<sup>2</sup>.

Law 202/2002 also established the National Agency for Equal opportunity of the Men and Women (ANES) (Art. 24-30), meant to promote the equal opportunity and to integrate these principles within the national programs and policies. It was financed from the state budget, through the Ministry of Labour, Social Solidarity and Family. In 2010, the Emergency Ordinance 68/30 June, abrogates articles 24-30, cancels ANES, whose functions and attributions are assumed mysteriously by the Ministry of Labour and its territorial structures. The organisational chart of the Ministry doesn't show clearly the new location of these attributions and functions.

The law assigns some institutions with the implementation and control of abiding by these provisions. The National Employment Agency, the National House of Pensions and other Social Insurance Rights, the Labour Inspectorate (assigned to control the implementation of the provisions), the National Council for Professional Formation of the Adult People, the Ministry of Health etc.<sup>3</sup>

The person who feels discriminated can file a complaint with the employer and if it is not satisfactorily solved it may notify ANES or the competent administrative bodies<sup>4</sup>.

#### **Law 448/2006 regarding the protection and promotion of the rights of the handicapped people**

The law states the commitment of the Government for the protection, encouragement and integration of the handicapped people and defines more precisely several terms and expressions used in the provisions regarding the handicapped people<sup>5</sup>. Non-discrimination is not the focal point of the law; rather, the law delineates several concrete measures for the protection and social integration of these people.

According to the law, the underlying principles of the protection and promotion of the handicapped include<sup>6</sup>:

-“observance of the fundamental human rights and liberties”

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<sup>1</sup> Art. 1 alin. (2) and art.6 alin. (2) letter c) from Law 202/2002

<sup>2</sup> Art. 4 lit. b), art. 6 alin. (2) letter c), art. 9 alin. (2) from Law 202/2002

<sup>3</sup> For the provided examples, art. 34, 36 and 38 from Law 202/2002

<sup>4</sup> Art. 43 from Law 202/2002

<sup>5</sup> Art. 5 from Law 448/2006 regarding the protection and promotion of the handicapped persons

<sup>6</sup> Art. 3 from Law 448/2006



- “prevention and control of discrimination”
- “equal opportunities”
- “equal treatment in employment”
- “adaptation of the society to the handicapped person”

These principles have a direct impact on the establishment of a non-discriminating environment and on the equal opportunities at work. The reference law remains, however, O.G. 137/2000.

Chapter 5 of the law, “Professional orientation, formation, employment” includes particularly positive measures which allow the access to and protection on the labour market and the professional development of the handicapped people. Discrimination is not treated explicitly. The chapter guarantees an equitable work environment and encourages or even empowers sometimes the employment of handicapped people.

### **Labour Code**

The Labour Code (adopted by Law 53 of 24 January 2003, published in the Official Monitor 72/5 February 2003) is the reference law for the regulation of the work relations and work jurisprudence. The la includes provisions impacting on the possibility of discriminatory behaviours, even mobbing. Thus:

- Both the direct and indirect discrimination are banned;
- The list of criteria is more comprehensive (closed in one of the paragraphs), extended using the syntagma “other criteria” in another paragraph;
- The end purpose is the free access to the rights from the labour legislation;
- Emphasis on the equal treatment of all employees;<sup>1</sup>
- Expressly forbidden the gender discrimination and the discriminating payment;
- Defends the respect of dignity and consciousness of any employee<sup>2</sup>.

Since the purpose of the Labour Code is to regulate the relations between the employer and the employees, to provide a balance between the interests of the members belonging to the two categories, the balance of protection and permissibility leans one way or the other. Thus, there are stipulations expanding the manoeuvre space of the employer, giving it the possibility to modify, unilaterally, elements pertaining to employee’s work (for instance, the place of work by delegation

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<sup>1</sup> Art. 5 of the updated Labour Code

<sup>2</sup> Art. 6 of the updated Labour Code

or temporary displacement<sup>1</sup>), but most provisions grant protection for the employee in front of the employer and its representatives (such as the working and resting time, Title III). Part of this protection is mediated by the existence of the unions and by the affiliation to them, shifting attention from the singular, sporadic actions directed towards an individual towards collective actions (for instance, section V, Work health and security). Title XII (Work jurisdiction) defines the framework solving the work conflicts, particularly those regarding the work contracts. Although the Labour Code guarantees several rights of the employees and promises to prevent and sanction the abuses and discriminations, the precise and narrow language limits the possibilities to monitor incidents of discrimination/abuse and leaves enough room for problematic behaviours which are not covered by the language and logic of the law (cannot be considered contractual relations or don't have collective significance).

The proposition for the new Labour Code increases these possibilities by narrowing employee protection, by obstructing their situation upon employment (thus opening the possibility of toleration of the discriminatory and abusive behaviours) and, therefore, by creating a consciousness of opposite interests between the (different categories of) employees.

#### **The unique national collective work contract for 2011-2014**

A second important document which regulates the working relations (and impacting on discrimination) is the Collective work contract, in which the language of protection is more explicit and comprehensive. The forbidden forms of discrimination are described in Art. 2, paragraph (3), while paragraph (4) states clearly the principle of the equal pay for equal work and bans any gender based differences. Some of the provisions follow the pattern of the provisions from the Labour Code (for instance the time of work, measures of health and security), but there also are other provisions which clarify the relations between the employer and the employee and which limit, in a way, the manoeuvring possibility of the employer, such as the articles regulating the working norms and the duties and assignments of the employee, particularly the section devoted to the individual labour contract (Chapter 6). This chapter defines the ways of solving the possible work conflicts by procedures which are to the advantage of the employee (for instance the procedures of laying off or sanctioning disciplinary deviations are rather laborious and deter their abusive use). Article 96 makes reference to the individual work conflicts and to solving them "amiably" using the mediation of the unions and union commissions, if they cannot be solved in some other way (which raises the problem of the economic enterprises whose employees

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<sup>1</sup> Art. 42-48 of the updated Labour Code

are not affiliated to a union). The same article states that the “sides undertake to promote a normal working climate in the enterprises”, including to deter and sanction sexual harassment. The labour conflicts specified clearly in the text are not those individual which might result from mobbing-type behaviours, rather the collective ones, which pertain to union activity. The collective work contract also has provisions protecting the pregnant women or those who gave birth recently.

## **2. Institutional framework**

In Romania there are specialised institutions assigned with monitoring the compliance with the legal provisions in the field of non-discrimination, with solving the conflicts arising from discrimination, with applying administrative and financial sanctions if needed, and with promoting non-discrimination in the public life. Although several institutions have special attributions in narrower fields (work relations, protection of disfavoured groups, equal opportunity etc.), the reference institution remains the National Council for Discrimination Control.

### **The National Council for Discrimination Control (NCDC)**

NCDC was established by O.G. 137/2000 regarding the prevention and sanctioning of all forms of discrimination and it is the “state authority in the field of discrimination; it is an autonomous legal person under Parliamentary control; it guarantees the compliance with and application of the principle of non-discrimination”<sup>1</sup>. The Council has attributions in the following fields:

- Preventing the discrimination acts;
- Mediating the discrimination acts;
- Investigating, noticing and sanctioning the discrimination acts;
- Monitoring the discrimination cases;
- Providing assistance to the victims of discrimination.<sup>2</sup>

Furthermore, the Council contributes to the development of public policies in the field of non-discrimination<sup>3</sup>.

Both the natural persons who feel being discriminated and the non-governmental organisations acting in the field of human rights or the organisations who have a

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<sup>1</sup> Art. 16 from O.G. 137/2000

<sup>2</sup> Art. 19 from O.G. 137/2000

<sup>3</sup> Art. 18 par. (2) from O.G. 137/2000

legitimate interest in fighting discrimination, if discrimination occurred in their field of activity and it harms a group of people, communities or even a natural person (upon it demand to participate in the case), have processual quality<sup>1</sup>.

The people feeling discriminated can file a complaint with the Council and can demand the discontinuation of the consequences of discrimination and restoration of the previous situation. Both sides (the plaintiff and the person accused on discrimination) must bring evidences (that he/she has been discriminated and that those acts were not cases of discrimination, according to the acting laws, respectively). The decision can be contested in court, through legal administrative procedures<sup>2</sup>.

If NCDC decides that the facts are cases of discrimination, the defendant can be fined between 400-4000 lei if the discrimination targeted a natural person and between 600-8000 if the discrimination targeted a group of persons or a community<sup>3</sup>.

NCDC cannot rule for compensations, but the discriminated person can sue, separately, in civil courts, and the decision of the Council can have consultative character<sup>4</sup>.

In 2009, NCDC recorded 528 complaints, fewer than in 2008 (837), most complaints being related to the criteria of “social/professional category” (42.04%), “others” (18.18%), “ethnic group” (11.47%), “handicap (disability)” (9.28%), and “nationality” (5.30%). The object of the complaints was, mostly, the access to employment and profession (46.7%), the access to public services (25.56%) and personal dignity (12.12%). Of these complaints, 49 have been admitted (8% of the cases), by criteria and with objects rather proportional with the filed complaints (National Council for Discrimination Control, 2009).

Table 1

*Number of cases of discrimination admitted for the object “access to employment and profession” (work relations) in 2009, National Council for Discrimination Control, 2009*

<b>Criterion</b>	<b>Number of admitted cases of discrimination</b>
Race/nationality	1
Handicap (disability)	4
HIV infection	0

<sup>1</sup> Art. 28 from O.G. 137/2000

<sup>2</sup> Art. 20 from O.G. 137/2000

<sup>3</sup> Art. 26 par.(1) from O.G. 137/2000

<sup>4</sup> Art. 27 from O.G. 137/2000

Criterion	Number of admitted cases of discrimination
Social and socio-professional category	2
Sex/gender	1
Pregnancy	2
Religion or convictions	3
Language	1
Sexual orientation	0
Any other criteria	3
<b>Total</b>	<b>17</b>

Most cases came from the urban area (87% in 2009) and from Bucharest/ Ilfov (56% in 2009 and 54% in 2008) (National Council for Discrimination Control, 2008, 2009), which shows that from various reasons, the Council and its mechanisms have a limited accessibility.

NCDC importance resides particularly in its public profile and in the fact that it sanctioned several public personalities for committing acts of discrimination and harming the personal dignity. However, because the Council cannot give compensations, the civil court suit is a more desirable option for the cases of natural people, and which are not of strategic importance.

### **National Agency for Equal Opportunity for Men and Women (ANES)**

Currently cancelled, ANES was established by Law 202/2002 in order to promote the equal opportunity of women and men and to integrate the legal provisions in the national programs and policies and in normative papers which it might propose to the government. The Agency had territorial commissions subordinated to the Ministry of Labour, Social Solidarity and Family. ANES also monitored the compliance with Law 202/2002 via other institutions under its subordination or subordinated to the ministry.

In 2010, articles 24-30 of Law 202/2002 - regarding ANES - were abrogated, the institution was cancelled, and its staff passed to the Ministry of Labour.

### **Work Inspection and Territorial Work Inspectorates**

Work inspection is a state institution subordinated to the Ministry of Labour, Social Solidarity and Family, established by Law 108/1999 which regulated the establishment and organisation of Work Inspection. It has duties in the field of work relations establishment, work health and security, it verifies compliance with the legal regulations, informs the competent authorities about the situations breaching the

laws or about the deficiencies of law enforcement, it supplies related information, provides assistance to the employers and employees and initiates actions to improve the existing legislation in its field of activity<sup>1</sup>. The territorial activity is conducted through the Territorial Work Inspectorates.

Concretely, WI activity focuses less on the control of compliance with the legal provisions regarding non-discrimination at work. The only laws which it monitors are Law 202/2002 regarding the equal opportunity of men and women and OUG 96/2003 regarding maternity protection at work. Thus, in 2009, 33,434 employers were verified according to Law 202/2002 and 3,327 were fine a total of 6000 lei. In 2008, there were 2,551 employers fined with a total of 309,500 lei. The sanctions regarded the fail to include concrete rules of compliance with the principle of no-discrimination, with the equal opportunity of men and women and observation of human dignity in the specific regulations of operation of the surveyed units (Work Inspection. "Activity Report 2009").

Unfortunately, although WI is the main institution controlling the work relation, having the practical capacity to monitor and sanction the acts of discrimination at work, its capacity is limited to the incomplete monitoring of gender and disability discrimination (Georgiana Pascu and Delia Niță, coord., 2010). It functions slowly and mechanically and doesn't have the flexibility and vitality necessary to address a phenomenon such as mobbing.

### **Final considerations**

In Romania, the legislative framework guarantees, at least in written, the equal opportunity on the labour market and sanctions discrimination at work. Most of this legislative framework is in agreement with Council of Europe directives in the field of non-discrimination (CE directives 2000/43/CE and 2000/78/CE), and, in some points even exceed the requirements of these directives. Thus, both in the case of civil court litigations and in the situations to have administrative ruling, sides, the plaintiff and defendant must bring evidence in support of their case<sup>2</sup>. Furthermore, discrimination is defined more broadly than demanded by CE directives, by a more comprehensive list of criteria and by including the syntagm "any other criterion".<sup>3</sup>

However,

(1) At the level of institutional practices and real accessibility of the system, this guarantee is not up to its potential written on paper:

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<sup>1</sup> Art. 5 and 6 from Law 108/1999

<sup>2</sup> Art. 20 par. (6) and art. 27 par. (4) from O.G. 137/2000

<sup>3</sup> Art. 2 par. (1) from O.G. 137/2000

-The laws and mechanisms solving the cases of discriminations are insufficiently known by the population<sup>1</sup>, and the administrative apparatus is insufficiently well developed in the territory, which is why most cases which end in court or in front of NCDC are from the region of the capital and the large urban centres (National Council for Discrimination Control, 2008, 2009);

-The state institutions assigned with monitoring and sanctioning the acts of discrimination, particularly in the field of work relations (Territorial Work Inspectorates, ANOFM, etc.) only notice and collect general data, without actually dealing with the cases of non-discrimination infringement (Georgiana Pascu and Delia Niță, coord., 2010);

(2) The legislative and institutional framework serves to prevent, detect and sanction or rectify the obvious, flagrant cases of discrimination (operational and rendered visible/recognisable in the language of the law or institutions), not subtle forms of discrimination and emotional, psychological and even physical aggression at work; mobbing, harassment, are understood rather broadly and most times outside work (see NCDC decisions of the recent years, National Council for Discrimination Control 2008, 2009), and the definitions from the different laws and provisions which mention discrimination are not uniform or in agreement with EU directives (Iordache R., 2009); furthermore, the risk of victimization (although victimisation is forbidden by law<sup>2</sup>), deters many people discriminated at work to file complaints, particularly if form of discrimination was not obvious;

(3) There are enough provisions for exceptions from considering discrimination a potentially discriminating behaviour, both in the public life in general, and at work<sup>3</sup>. The language of exception is more as powerful as it refers to the indirect discrimination, which causes problems with actually catching or sanctioning the mobbing.

(4) Although the related legislative framework is solid and sufficiently comprehensive, and the framework law (O.G. 137/2000) is fundamental for the litigations, some laws and provisions allow or provide cover/justification/explanation for some behaviours

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<sup>1</sup> According to a study from 2008, the awareness regarding the support and remedial mechanisms is rather low, the most worrying proportions being noticed among the vulnerable populations: more than half of the women, 60% of the old people and 56% of the Roma didn't know of the existence of these mechanisms (Society for Feminist Analyses Ana and the National Research Institute in Work and Social Protection. 2008)

<sup>2</sup> Art. 2 par. (7) from O.G. 137/2000 for the prevention and sanctioning of all forms of discrimination, modified and republished. Victimization is understood rather narrowly, "as reaction at a complaint or court action following the breach of the equal opportunity and non-discrimination principle". The witnesses or the plaintiffs are not protected.

<sup>3</sup> Art. 2 par. (3) and art. 9 from O.G. 137/2000; Law 202/2002 Art. 4 letter b)

which would be included in mobbing, by transferring the “problem” to the sphere of the legitimacy of the economic interest of the employer, by using the language of personal efficiency and competency, by defining a legitimate space of manoeuvre for the employer or its representatives and by creating contexts which deter solidarity or cooperation between the employees, who are encouraged to perceive each other as having completely opposed interests/conditions.

(5) The changes brought by the open and profound application of the economic liberalism (particularly in the field of work), by the politicization of the related institutions and by the economic crisis which may deepen these possibilities:

- The National Agency for Equal Opportunity for Men and Women (ANES) was cancelled in 2010 and its functions were absorbed and dissipated within the Ministry of Labour, Social Solidarity and Family;
- In 2009, part of the directing board of NCDC were appointed by negotiations and upon political criteria, which weakened the vitality of the institution (Romanița Iordache, 2009); at the same time, the budget of the institution was cut by one third that year (National Council for Discrimination Control, 2008, 2009);
- The new Labour Code debated by the Romanian Parliament promises an even more precarious situation for the employees and may deter even more filing complaints in the cases of discrimination;
- The public debates on the new Labour Code and on workforce “flexibilization” established a context in which it is possible to discontinue the national collective work contract, affecting directly employees’ power of negotiation.

(6) The uneven and incomplete system of data collection on the cases of discrimination noticed in different institutions and within different contexts narrows the level of actual knowledge of the phenomenon;

(7) For an efficient control of mobbing and moral violence at work in general, mobbing will have to be regulated explicitly and distinctly, and the competencies of the work inspectors should be enlarged (Bogdan C., 2008).

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#### **Laws and legal provisions:**

Labour Code

Penal Code

National collective work contract, 2011-2014

Law 108/1999 regarding the establishment of the Work Inspection

Law 202/2002 regarding the equal opportunity of men and women

Law 53 of 24 January 2003

Law 448/2006 regarding the protection and promotion of the rights of the people with disabilities

Government Ordinance 137/2000 for the prevention and sanctioning of all forms of discrimination, modified and republished O.U.G. 96/2003 regarding maternity protection at work

**Annex 1**  
**Criteria, definitions and typologies used by the**  
**legislation regarding discrimination in Romania**

Table 1  
*Criteria used by the legal provisions sanctioning discrimination, which impact on the work relations*

Legal provision	Articled	Context	Used criteria
Penal Code	Art 77	Definition of the aggravating circumstances in committing a crime (if it has the following reasons)	race, nationality, ethnic group, language, religion, gender, sexual orientation, political opinion or affiliation, wealth, social origin, age, disability, non-contagious disease or HIV/AIDS infection, or for similar circumstances which the defendant considers are causes of inferiority of a person in relation with the other persons.
	Art. 297	Limiting a right by a public official	Race, nationality, ethnic group, language, religion, gender, sexual orientation, political opinion or affiliation, wealth, social origin, age, disability, non-contagious disease or HIV/AIDS infection .
O.G. 137/2000	Art. 2 par. (1)	Definition of discrimination	race, nationality, ethnic group, language, religion, social category, convictions, gender of sexual preferences, inclusion in a disfavoured category or any other criterion
	Art. 2. par. (5)	Definition of harassment	race, nationality, ethnic group, language, religion, social category, convictions, gender or sexual preferences, inclusion in a disfavoured category, age, handicap, status of refugee or any other criterion which leads to the establishment of an intimidating, hostile, degrading or offensive framework
	Art. 5	Participation in economic activity or freelance profession	Race, nationality, ethnic group, language, religion, social category, convictions, gender or sexual preferences, inclusion in a disfavoured category, age.
	Art. 6	Work and social protection relations	race, nationality, ethnic group, language, religion, social category, convictions, gender or sexual preferences
	Art. 7 par. (1)	Employment	race, nationality, ethnic group, language, religion, social category, convictions, gender or sexual preferences, age
	Art. 7 par. (2)	Take a job, announcement or competition for a job	race, nationality, ethnic group, religion, social category, inclusion in a disfavoured category, age, gender or sexual preferences, convictions

Legal provision	Articled	Context	Used criteria			
	Art. 8	Social services	race, nationality, language, ethnic group, religion, social category, inclusion in a disfavoured category, age, gender or sexual preferences, convictions			
	Art. 19	Harm to human dignity, establishment of a hostile, intimidating environment	race, nationality, language, ethnic group, religion, social category, inclusion in a disfavoured category, convictions, gender or sexual preferences			
Law 202/2002		Equal opportunity in several fields, including at work	gender			
Law 448/2006		Equal opportunity, social protection and integration	handicap			
Labour code	Art. 5	Definition of discrimination (at work)	gender, sexual preferences sex, genetic characteristics, age, ethnic group, religion, social origin, handicap, family situation or responsibility, union affiliation or activity, other criteria			
	Art. 59	Layoff	gender, sexual preferences sex, genetic characteristics, age, race, ethnic group, colour, religion, political option, social origin, handicap, family situation or responsibility, union affiliation or activity			
	Art. 154 par. 3	Wage negotiation and payment	gender, sexual preferences sex, genetic characteristics, age, race, ethnic group, colour, religion, political option, social origin, handicap, family situation or responsibility, union affiliation or activity			
Collective work contract	Art. 2	Principle of equal treatment of all employees	gender, sexual preferences sex, genetic characteristics, age, race, ethnic group, colour, religion, political option, social origin, handicap, family situation or responsibility, union affiliation or activity			
<table border="1"> <tbody> <tr> <td>The National Council for Discrimination Control collects and organises the data according to the following criteria of discrimination (Activity Report, 2009)</td> <td>Race ethnic group nationality language social category Religion Convictions Gender Sexual preferences Non-contagious disease HIV infection /AIDS Disfavoured category age Handicap (disability) other</td> <td>Race/nationality/ethnic group Handicap HIV infection Social and socio-professional category Gender Pregnancy Religion or convictions Language Sexual preferences Any other criterion</td> </tr> </tbody> </table>				The National Council for Discrimination Control collects and organises the data according to the following criteria of discrimination (Activity Report, 2009)	Race ethnic group nationality language social category Religion Convictions Gender Sexual preferences Non-contagious disease HIV infection /AIDS Disfavoured category age Handicap (disability) other	Race/nationality/ethnic group Handicap HIV infection Social and socio-professional category Gender Pregnancy Religion or convictions Language Sexual preferences Any other criterion
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**Table 2**  
*Definitions and terms regarding discrimination used in legal acts*

	<b>Legal act</b>	<b>Definition</b>
<b>Discrimination</b>	O.G.137/2000 Art.2 par. (1)	Discrimination means any differentiation, exclusion, restriction or preference based on grounds of race, nationality, ethnic group, language, religion, social category, convictions, gender, sexual preferences, age, disability, non-contagious chronic disease, HIV infection, inclusion in a disfavoured category, as well as any other criterion whose purpose is to limit, cancel recognition, use or exercise under equal conditions of the fundamental human rights and liberties acknowledged by law, in the politic, economic, social and cultural field, or in any other field of the public life.
<b>Direct discrimination</b>	L 202/2002 Art. 4 lit. a)	Direct discrimination means the less favourable treatment of a person according to its gender, than another person, in a comparable situation;
	Labour Code Art. 5 par. (3)	Direct discrimination acts are the exclusion, differentiation, restriction or preference based on one or several criteria mentioned at par. (2), whose purpose is to deprive, limit or deny recognition of the use or exercise of the rights stipulate in the labour laws.
<b>Indirect discrimination</b>	O.G. 137/2000 Art.2 (3)	The apparently neutral stipulations, criteria or practices which disadvantage some persons, on the basis of the criteria mentioned at par. (1), compared to other persons, except for the situation in which these stipulations, criteria or practices are justified by a legitimate purpose, and the methods of achieving that purpose are adequate and necessary
	L. 202/2002 Art. 4 letter b)	Indirect discrimination is the situation in which some apparently neutral stipulations, criteria or practices would put some persons of a specific gender in disadvantage compared to people of the opposed gender, except for the situation in which these stipulations, criteria or practices are justified by a legitimate purpose, and the methods of achieving that purpose are adequate and necessary;
	Labour Code Art. 5 par. (4)	Indirect discrimination represents the acts apparently grounded in other criteria than those stipulated at par. (2), but which produce the effects of direct discrimination.
<b>Multiple discrimination</b>	O.G. 137/2002 Art. 2 par. (6)	Any exclusion, differentiation, restriction or preference based on two or more criteria stipulated at par. (1) are aggravating circumstances for the administrative punishment if one or more components do not fall under the incidence of the penal law.
<b>Disposition to discriminate</b>	O.G. 137/2000 Art. 2 par.(2)	The disposition to discriminate people based on any grounds stipulated at par. (1) is considered discrimination

	<b>Legal act</b>	<b>Definition</b>
<b>Harassment</b>	O.G. 137/2000 Art. 2 par. (5)	It is harassment and it is sanctioned administratively any behaviour based on a criterion of race, nationality, ethnic group, language, religion, social category, convictions, gender, sexual preferences, inclusion in a disfavoured category, age, handicap, status of refugee or asylum seeker, or any other criterion that might lead to the establishment of an intimidating, hostile, degrading or offensive environment.
	L. 202/2002 Art. 4 letter c)	Harassment is any unwanted behaviour in relation with a person of a particular gender, which appears with the purpose or which has as effect damage to human dignity and the establishment of an intimidating, hostile, degrading or offensive environment.
<b>Sexual harassment</b>	L. 202/2002 Art. 4 letter d)	Sexual harassment is the unwanted sexual behaviour – verbal, nonverbal or physical – whose purpose or effect is to harm human dignity and/or establishment of an intimidating, hostile, degrading or offensive environment
	L. 202/2002 Art. 11 par. (2)	Any behaviour defined as harassment or sexual harassment is gender discrimination if it is done with the purpose to: a) to establish at work an intimidating, hostile, degrading or offensive environment for the affected person; b) to influence adversely the situation of the employer in regard with its professional promotion, remuneration or incomes of any kind or the access to professional formation of improvement, in the situation when it refuses to accept an unwanted sexual behaviour.
	Penal Code Art. 223 par. (1)	Asking, repeatedly, sexual favours at work or in a similar situation, if by this act the victim has been intimidated or put into a humiliating situation,
	Collective Work Contract Art. 96 par. (3)	The definition of sexual harassment is that regulated by the law.
<b>Victimization</b>	O.G. 137/2000 Art. 2 par. (7)	It is victimization and it sanctioned with fine, according to the provisions of this ordinance, any adverse treatment in response to a complaint or action in court regarding the breach of the principle of equal opportunity and non-discrimination.
<b>Disfavoured category</b>	O.G. 137/2000 Art. 4	Disfavoured category is that category of persons which either is on an unequal position in relation with most of the citizens due to the identity differences, or which is confronted with behaviour of rejection and marginalization.
<b>Affirmative measures</b>	O.G. 137/2000 Art. 2 par. (9)	The measures taken by the public authorities or juridical persons of private right in favour of a group or people or community, with the purpose to ensure their natural development and achievement of the actual equal opportunity in relation with other people, groups or

	<b>Legal act</b>	<b>Definition</b>
		people or communities, as well as the positive measures aiming the protection of the disfavoured groups, are not discrimination.
	L. 202/2002 Art. 4 letter e)	The stimulating measures or the positive discrimination consist of those special measures adopted temporarily in order to speed up the actual achievement of the equal opportunity of the men and women and which are not considered actions of discrimination
<b>Equal pay for equal work</b>	L. 202/2002 Art. 4. letter f)	Equal value work means the paid activity which compared using the same indicators and measuring units, with another activity, reflects the use of similar or equal knowledge and professional skills and a similar amount of work or intellectual/physical effort.
	Collective work contract Art. 2 par. (4)	The principle of equal pay for equal work implies, for the same work or for a work of similar value, the elimination of any gender discrimination in all elements and conditions of payment.