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The Evolution of the *Nondiscrimination* Concept in the European Labor Law

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Abstract: Most states have incorporated all the grounds of discrimination included in the two Directives in their national antidiscrimination legislation. The most pressing issue is the proper application of national anti-discrimination laws and the active enforcement of rights**.** In general, protection against discrimination on any of the grounds of the Directives in the states is not conditional on nationality, citizenship or residence status. In the majority of states, both natural and legal persons are protected against discrimination. The law remains complex and remedies often inadequate. Further work is needed to ensure the credibility and admissibility of methods of proof such as statistical evidence. When a decision is rendered by courts or equality bodies, sanctions are not always observed by respondents, and recommendations are not always followed by public authorities. We think this article is a small step in the disclosure of the problem erased by the nondiscrimination concept.

Keywords: objectives; general duties; positive action; policy measures; national provisions

1. General Aspects

At the international level, the problematic of nondiscrimination was, in time, the object of several regulations which took into account the evolution of this concept.

Thus, according to art. 2 point 1 of the ***Universal Declaration of Human Rights***, reference is made to the right of the person to equality before the law and to protection against any discrimination; and art. 23 para. (2) establishes that *everyone, without any discrimination, has the right to equal pay for equal work*.

The *International Labor Organization* always intended the combating of discrimination and the assurance of the respect of the equality of chances and treatment for all employees. In this sense, *Convention no. 100 (1951)* was elaborated, *regarding remuneration*, which established "equal remuneration for men and women workers" for work of equal value.

According to art. 2 of the same convention, the member states must ensure the application for all

Subsequently was adopted *Convention no. 111 (1958) on discrimination*, which constituted the general framework for combating this phenomenon. Art. 1 of the Convention defines *discrimination* as being:

- on the one hand, *any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;*

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- on the other hand, *such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate b*odies.

At the same time, according to art. 1 point 2 of the Convention, it is stated that cannot be considered discriminatory acts, those distinctions, exclusions or preferences in respect of a particular job based on the inherent requirements thereof.

According to art. 2 of the Convention it is instituted the obligation for the states ratifying the Convention to initiate and apply a national policy regarding the implementation of the equality of chances and treatment in matters of professional training and employment which to target the following objectives:

- co-operation of employers' and workers' organizations and other appropriate bodies in applying the measures for combating discrimination;
- elaboration of regulations that create a favorable framework for the application of the principle of equality of chances and treatment;
- abrogation of the dispositions in the regulations, which are incompatible with the nondiscrimination principle in the matter of work relations.

Another regulation incident in the field is *Convention no. 117 (1962) regarding the objectives and basic norms of the social policy*, which approaches in a distinct title nondiscrimination in the matter of race, color, sex, belief, tribal association or trade union affiliation.

According to art. 14 of this Convention, *it shall be an aim of policy to abolish all discrimination among workers on grounds of race, color, sex, belief, tribal association or trade union affiliation in respect of:*

a) labor legislation and agreements which shall afford equitable economic treatment to all those lawfully resident or working in the country;
b) admission to public or private employment;
c) conditions of engagement and promotion;
d) opportunities for vocational training;
e) conditions of work;
f) health, safety and welfare measures;
g) discipline;
h) participation in the negotiation of collective agreements;
i) wage rates, which shall be fixed according to the principle of equal pay for work of equal value in the same operation and undertaking.

Although it is not an international source of labor law, but of social security law, we mention *Convention no. 118 (1962) regarding equality of treatment in the field of social security*, which regulates the fact that all employees, without any discrimination, must benefit of medical care, benefit for temporary work incapacity or invalidity, maternity benefits, pensions, benefits for work accidents or professional illnesses and unemployment aids.

At the level of the ***Council of Europe,*** the fundamental document elaborated in social matters, the *European Social Charter, revised*[1] establishes in Part I point 20 that *all workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.* In Part II, art. 20 establishes the fact that the assurance of this principle is achieved through the adoption of measures targeting: *access to employment, protection against dismissal and occupational reintegration; vocational guidance, training, retraining and rehabilitation; terms of employment and working conditions, including remuneration; career development, including promotion.*

This article of the Social Charter is in close correlation with other articles, respectively art. 1 regarding the right to work, art. 9 regarding vocational guidance and art. 10 regarding vocational training.

Also according to the European Social Charter, revised *there may be excluded from the scope of this article the occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex. This provision is not to be interpreted as requiring the Parties to embody in laws or regulations a list of occupations which, by reason of their nature or the context in which they are carried out, may be reserved to persons of a particular sex.*

Also, *a differentiation of treatment grounded on an objective and reasonable reason is not considered discrimination*. (Dima, 2012)

At the level of the ***European Union***, art. 16 of the *Community Charter of the Fundamental Social Rights of Workers* establishes that equality of treatment must be ensured between women and men. Also, art. 141 of the Treaty for the establishment of the European Community instituted the principle of equality of treatment.

In view of applying the dispositions with general character comprised in the EEC Treaty (art. 117-128), in time, were elaborated a series of directives aiming at the equality of treatment between men and women in the work field, respectively:

- Directive no. 75/117/EEC which establishes equal pay for equal value work;
- Directive no. 76/207/EEC regarding the equal treatment for men and women during the hiring process;
- Directive no. 79/7/EEC regarding equal treatment in the matter of social security;
- Directive no. 86/378/EEC regarding equal treatment in the system of professional pensions;
- Directive no. 86/613/EEC regarding equal treatment with respect to free-lancers;
- Directive no. 92/85/EEC regarding the need to introduce measures for the encouragement of work health and security for pregnant women and for workers who had recently given birth or who are breastfeeding;
- Commission Decision no. 95/420/EC which amends Commission Decision no. 82/43/EEC with respect to the establishment of a consultative Committee regarding the equal chances between women and men;
- Directive no. 96/34/EC which transposes into practice the Framework-Agreement regarding paternal leave;
- Directive no. 97/80/EC regarding the bringing of proof in cases of discrimination on the basis of sex;
- Directive no. 2000/43/EC for the application of the principle of equal treatment of persons, without distinction on the basis of racial or ethnic origin;

[1] Partially ratified by Romania (17 articles, respectively 65 numbered paragraphs were ratified, among which the one regarding the equality of chances and treatment) through Law no. 74/1999 (published in the Official Gazette no. 193 of May 4th, 1999).

- Directive no. 2000/78/EC regarding the creation of a general framework in favour of equality of treatment in the field of hiring, employment and work;
- Directive no. 2002/73/EC regarding the enforcement of the principle of equality of treatment between men and women in what concerns access to employment, to professional training and promotion, as well as to work conditions;
- *Directive no. 2006/54/CE regarding the enforcement of the principle of equality of chances between men and women in the matter of employment and work conditions.* (Popescu, 2008)

2. European Regulations Concerning Discrimination

This Directive preserves the definitions from Directive no. 2002/73/EC regarding direct, indirect discrimination, harassment and sexual harassment, forbidding, at the same time, any direct or indirect discrimination with respect to all types of guidance, training, professional training, as well as in what concerns remuneration. Thus:

- by *direct discrimination* is understood the situation in which one person is treated less favorably on grounds of sex than another is, has been or would be treated in a comparable situation;
- by *indirect discrimination* is targeted the situation in which an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim;
- by *harassment* is understood that unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;
- by *sexual harassment* is understood that situation in which any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

Also, the Directive establishes the fact that it is considered discrimination, on the one hand, instruction to discriminate against persons on grounds of sex, and on the other hand, any less favorable treatment of a woman related to pregnancy or maternity leave. (Dima, 2012)

Given the high number of regulations (directives) in the matter of nondiscrimination, existent at the EU level, as well as the provisions of the Court of Justice of the European Union, through the adoption of Directive no. 2006/54/EC the main previous regulations were unified, both in the matter of labor law, and those regarding social security and, not lastly, were established distinct norms regarding: the equality of remuneration; equality of treatment upon employment, professional training, with respect to the work conditions; the challenge means and the burden of proof; the promotion of the equality of treatment in the matter of social dialogue[1].

Also, according to the same directive, a worker in maternity leave is entitled, upon return from her leave, to hold the same job previously held or an equivalent job and to benefit of any improvement of the work conditions that she would have been entitled to during her absence. (Voiculescu, 2008)

[1] Also, the directive creates the possibility for the member states to adopt or maintain more favorable dispositions, in the sense of the protection of the principle of the equality of treatment, than the ones established in its text.

3. Concept and Terms

In year 2007 was adopted the **Framework agreement regarding the combating of harassment and violence at work**, by means of which it was intended to offer employers, workers and their representatives a general, action guiding framework in order to identify, prevent and combat the problems related to harassment and violence at work.

According to the Agreement, different forms of harassment and violence at work may:

- be of a physical, psychological and/or sexual nature;
- constitute one-off incidents or more systematic patterns of behavior;
- manifest among colleagues, between superiors and subordinates or even by third parties;
- vary from minor cases of disrespect to more serious acts of harassment or violence, including criminal offences which require the intervention of public authorities.

The agreement objective is:

- to increase the awareness and understanding of employers, workers and their representatives regarding harassment and violence at work;
- to provide an action-oriented framework to identify, prevent and manage problems of harassment and violence at work.

It is considered that harassment occurs when one or more workers or managers are repeatedly and intentionally abused, threatened and/or humiliated in situations related to work, and violence occurs when the same persons are aggressed in the mentioned situations.

In case such acts of harassment or violence at work are noticed, a certain procedure must be followed, thus:

- act with discretion, in order to protect the dignity and private life of all involved;
- no information can be made public to those not involved in the respective case;
- complaints will be analyzed swiftly;
- the parties are entitled to an objective hearing and to equitable treatment; moreover, there is the possibility that the parties have legal assistance during the hearing.

The measures that can be taken in such cases are either of disciplinary nature or of support and adequate assistance for the victims of acts of harassment/violence at work.

4. Internal Regulations Concerning Discrimination

In the legislation in Romania, the Romanian Constitution, in art. 41 establishes that *for equal work, women have a salary equal to men*, disposition in compliance with the international provisions in the matter. (Țiclea, 2012)

Law no. 53/2003, the Labor Code, introduced in art. 5, at the rank of specific principle, the **equality of treatment with respect to all employees and employers within the work relations**. Moreover, dispositions regarding the equality of chances and treatment of employees are found in the entire content of the Labor Code, as follows:

- any employee providing work benefits of work conditions adequate to the activity performed, of social protection, of work security and health, as well as of the observance of his dignity and conscience, without any discrimination [art. 6 para. (1)];
- for equal work or work of equal value it is forbidden any discrimination based on the criterion of sex, with respect to all elements and remuneration conditions [art. 6 para. (3)];

- the request, before employment, of pregnancy tests, shall be prohibited [art. 27 para. (5)];
- An employee shall have the right to hold multiple jobs, on the basis of individual employment contracts, and receive the corresponding wage for each of them [art. 35 para. (1)];
- right to equal opportunities and treatment [art. 39 para. (1) letter d)];
- The dismissal of the employees shall be prohibited based on sex, sexual orientation, genetic characteristics, age, national affiliation, race, color, ethnicity, religion, political option, social origin, disability, family situation or responsibility, trade union affiliation or activity [art. 59 letter a)];
- The dismissal of the employees may not be decided during the maternity leave, during the parental leave for children under 2 years of age or, in the case of a disabled child, up to the age of 3 years, during the pregnancy of the employee, during the parental leave for children under 7 years of age or in the case of a disabled child, for inter-current diseases, up to the age of 18 years [art. 60 letters c)-f)];
- the employees with an individual employment contract of limited duration shall not be treated less favorably than the similar permanent employees, just based on the duration of the individual employment contract [art. 87 para (1)];
- an employee hired under a part-time employment contract shall enjoy the rights of the full-time employees, under the terms of the law [art. 106 para. (1)];
- a home worker shall enjoy all rights recognized by law and collective labor agreements applicable to the employees whose workplace is at employer's headquarters [art. 110 para. (1)];
- the work quotas shall apply to all categories of employees (art. 131);
- the right to paid annual leave shall be guaranteed to every employee [art. 144 para. (1)];
- when setting and providing the wage, any discrimination based on sex, sexual orientation, genetic characteristics, age, national affiliation, race, color, ethnicity, religion, political option, social origin, disability, family situation or responsibility, trade union affiliation or activity shall be prohibited [art. 159 para. (3)];
- an employer shall insure all employees against occupational accident and disease risks (art. 179);
- the access of the employees to the occupational medicine department (art. 186);
- the participation of every employee to vocational training [art. 194 para. (1)];
- the employee participation to the strike shall be free; no employee may be forced to participate or not to a strike [art. 234 alin. (2)];
- the internal regulation comprises at least the following categories of dispositions: the rules regarding the observance of the non-discrimination principle and the elimination of any breach of dignity [art. 242 lit. b)].

In reality, even within legal regulations, no distinction is clearly made between *equality of chances/opportunities* and *equality of treatment*. Thus, the first notion represents, in fact, a desiderate (an ideal) which cannot be reached, practically, through any measures, while the second notion (equality of treatment), through the measures adopted by the lawmaker, can be transposed into practice. (Popescu, 2012)

In fact, the problematic of the equality of chances and treatment in the work relations made the object of special regulations, respectively:

- *Government Ordinance no. 137/2000 regarding the prevention and sanctioning of all forms of discrimination;*
- *Law no. 202/2002 regarding the equality of opportunities between women and men.*

Also, norms regarding the matter of nondiscrimination are found in other regulations, respectively:

- *Art. 4 of Law no. 76/2002* regarding the system of unemployment insurance and the stimulation of the work force establishes: *(1) in the application of the provisions of this law are excluded any kind of discrimination on criteria of politics, race, nationality, ethnic origin, language, religion, social category, beliefs, sex and age. (2) The measures and special rights granted through this law to categories of persons in difficulty do not constitute discrimination in the sense of the provisions of para. (1)*;
- *Art. 27 of Law no. 188/1999* regarding the Civil Service Statute, which regulates the fact that *any discrimination among civil servants for political, union, religion, nationality, sex, wealth, social origin, or any other such reasons is forbidden*;
- in the internal regulations;
- in the collective employment contracts.

The sphere of protection through domestic law normative acts, in the sense of removing privileges and discriminations, is extremely vast, comprising, mainly:

- the right to equal treatment before the courts of law;
- the right to personal security;
- political, respectively, electoral rights, the right to participate to public life;
- civil rights;
- economic, social, cultural and sportive rights;
- the right to access all places and services destined for public use.

Although the nondiscrimination principle is transposed in the domestic legislation, it must be noticed the fact that there are a series of gaps, as follows:

- the conditioning of the dismissal interdiction, for causes of gravidity, on the employer's informing prior to the issuance of the dismissal decision [as indicated in art. 60 para. (1) letter c) Labor Code]; according to JCEU, the dismissal of a female worker for causes of gravidity is forbidden even if the respective worker failed to inform the employer;
- active procedural quality in the matter of discrimination should have, in its own name, any non-governmental organization and not only "in case discrimination manifests in their field of activity and is detrimental to a community or groups of persons" as states art. 28 para. (1) of Government Ordinance no. 137/2000, with limitations;
- although, art. 5 para. (1) Labor Code states the fact that the work relations function on the principle of equality of treatment, in the domestic regulations there is no disposition regarding the protection of the legal entity, should discrimination occur against it; still, Directive no. 2000/43/EEC establishes, *where appropriate and in accordance with their national traditions and practice, protection for legal persons where they suffer discrimination;*
- not lastly, although formally are sanctioned all forms of discrimination (including those based on sex), there are not always the instruments necessary for enforcing the legal dispositions (chapter at which the Romanian state is deficient). (Ștefănescu, 2012)

The notion of discrimination and the criteria considered were introduced, for the first time, in the Romanian legislation, through Government Ordinance no. 137/2000 regarding the prevention and sanctioning of all forms of discrimination, which establishes in art. 2 para. (1): *by discrimination is understood any difference, exclusion, restriction or preference, on the basis of race, nationality, ethnicity, language, religion, social category, beliefs, sex, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection, belonging to a category in difficulty, as well as any other criterion which has as purpose or effect the restriction, removal of recognition or exercise, in*

conditions of equality, of human rights and fundamental liberties or of the rights recognized by the law, in the political, economic, social and cultural field or in any field of public life.

Art. 2 para. (3) of the same regulation states that are discriminatory the *apparently neutral provisions, criteria or practices which disadvantage certain persons, on the basis of the criteria established in para. (1), towards other persons, except for the case when these provisions, criteria or practices are objectively justifies by a legitimate purpose, and the methods for reaching this purpose are adequate and necessary.* This text was declared unconstitutional through a series of Decisions of the Constitutional Court (no. 818/2008, no. 820/2008, no. 821/2008, no. 1012/2008, no. 1075/2008 and no. 1325/2008).

Subsequently, the Labor Code stipulated – in art. 5 para. (2) – that *any direct or indirect discrimination against an employee based on sex, sexual orientation, genetic characteristics, age, national affiliation, race, color, ethnicity, religion, political option, social origin, disability, family situation or responsibility, trade union affiliation or activity shall be prohibited.*

Both the Labor Code and Law no. 202/2002 established and defined the three existing possible forms of discrimination, as follows:

- *The acts and deeds of exclusion, distinction, restriction or preference, based on one or several of the criteria referred to in paragraph (2), which have the purpose or effect of denying, restraining or removing the recognition, enjoyment or exercise of the rights provided for in the labor legislation shall constitute direct discrimination* [art. 5 para. (3) Labor Code]; at the same time, by *direct discrimination* is understood the *situation in which a person is treated less favorably on grounds of sex than was or would have been treated another person in a comparable situation* [art. 4 letter a) of Law no. 202/2002];
- *The acts and deeds apparently based on other criteria than those referred to in paragraph (2), but which effect to a direct discrimination, shall constitute indirect discrimination* [art. 5 para. (4) Labor Code]; also, by *indirect discrimination* is understood the *situation where a provision, criterion or practice, apparently neutral, would particularly disadvantage people of one sex compared with those of the other sex, unless that provision, criterion or this practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary* [art. 4 letter b) of Law no. 202/2002];
- *constitute* positive actions (positive discrimination) *those special actions temporarily taken in order to accelerate the achievement in fact of the equality of chances between women and men and which are not considered discrimination actions* [art. 4 lit. e) of Law no. 202/2002].

It is noticed the fact that, in reality, only two of the three forms of discrimination regulated are forbidden by law, the third representing a manner of materializing the principle of equality of treatment.

Law no. 202/2002 introduces and defines two new notions in the social legislation, respectively:

- *harassment* – situation in which is manifested an unwanted behavior, related to the person's sex, having as object of effect the violation of the dignity of the person in question and the creation of an intimidation, hostile, degrading, humiliating or offensive environment; (art. 4 letter c);
- *sexual harassment* – situation in which is manifested an unwanted behavior with a sexual nature, expressed physically, verbally or nonverbally, having as object of effect the violation of the dignity of a person and, especially, the creation of an intimidation, hostile, degrading, humiliating or offensive environment (art. 4 letter d).

In what concerns the act of sexual harassment, one form, executed within the work (or employment) relations, is regulated in the Criminal Code, as follows: *the act of harassing a person by threat or coercion in order to obtain sexual satisfaction, committed by a person abusing his/her quality or the influence provided by the office held at the workplace, shall be punished by imprisonment from 3 months to 2 years or by fine* (art. 203^1 Criminal Code). It can be noticed that the criminal law sanctions only the act of a person with a superior position than the employee, by means of the position held at the workplace. Although, in practice, it is possible that an employee (clerk) sexually harasses its employer or the hierarchically superior body, in this situation, one cannot speak of the crime of sexual harassment regulated in the Criminal Code, because the employee cannot use the authority or influence conferred by the position held at the workplace, on a person with a higher position. Also, we consider it is not a crime of sexual harassment either when the two persons, the harasser and his/her victim, are employed on similar positions, or, even if not on similar positions, there is no authority or influence conferred by the position held, on the other person.

Another new concept, under terminology aspect, is that of *victimization*, which is defined by art. 2 para. (7) of G.O. no. 137/2000, as follows: *any adverse treatment, coming as a reaction to a complaint or action in justice with respect to the breach of the principle of equal treatment and nondiscrimination.*

The two normative acts that regulate, on the base matter, the institution of nondiscrimination also establish the situations that *do not constitute discrimination*:

- the measures taken by the authorities public or by the legal private law entities in favor of a person, a group of persons or a community, aiming to ensure their natural development and the actual achievement of their equality of opportunities in relation to the other persons or communities;
- the positive measures targeting the protection of groups in difficulty [art. 2 para. (9) of G.O. no. 137/2000];
- the special measures established by law for the protection of maternity, birth and breastfeeding [art. 6 para. (5) letter a) of Law no. 202/2002];
- the positive actions for the protection of certain categories of women or men [art. 6 para. (5) letter b) of Law no. 202/2002];
- a difference of treatment based on a characteristic of sex when, due to the nature of the specific professional activities envisaged or to the framework in which they are performed, constitute an authentic and determining professional requirement, as long as the objective is legitimate and the requirement proportional [art. 6 para. (5) letter c) of Law no. 202/2002].

A single case of domestic regulation is constituted by art. 14 of G.O. no. 21/2007 regarding the institutions and companies of shows or concerts, as well as the performing of the artistic management activity, which establishes that by derogation from the provisions of art. 7 para. (2) of G.O. no. 137/2000, the *conditioning of occupying an artistic specialty position in criteria of age, sex or physical qualities in the institutions of shows or concerts is done according to the specific and interests of the institution and does not constitute contravention*, respectively is not a discriminatory act.

In practice, it is noticed that it is very difficult to establish (and, at the same time, to prove) the discriminatory behavior of an employer, respectively which are the limits of the measures he can establish without breaching the legal provisions. (Popescu, 2008)

Thus, by G. O. no. 137/2000, in art. 9, was stipulated the fact that: *the provisions regarding the interdiction of discrimination cannot be interpreted in the sense of restraining the employer's right to refuse employment to a person who does not correspond to the occupational requirements in the field, as long as the refusal does not constitute an act of discrimination, and these measures are justified by a legitimate purpose and the methods for reaching this purpose are adequate and necessary.*

In addition, Law no. 202/2002 also states the fact that the selection of candidates for employment cannot be considered discrimination when:

- due to the particular conditions of performing the work, the sex particularities are authentic and determining [art. 9 para. (2)];
- due to the particular nature or conditions of performing the work, the employment of pregnant women, of women who have recently given birth or who are breastfeeding is forbidden.

In what concerns nondiscrimination, at the moment of employment, between women and men, art. 10 para. (3) of Law no. 202/2002, indicates that it is forbidden to ask a candidate:

- to present a pregnancy test;
- to sign a commitment that she will not get pregnant or that she will not give birth during the individual employment contract term.

Also, according to art. 9 of Law no. 202/2002, is forbidden the discrimination by the use by the employer of practices that disadvantage persons of a certain sex, in relation to the working conditions, referring to:

- *the announcement, organization of the competition or exams and the selection of candidates for the occupying of the vacant jobs in the public or private sector;*
- *the conclusion, suspension, modification and/or termination of the work or labour legal relation;*
- *the establishment or modification of duties in the job description;*
- *the establishment of remuneration;*
- *benefits, other than those of a salary nature, as well as social security;*
- *information and professional counseling, initiation, qualification, training, specialization and professional reconversion programs;*
- *the assessment of individual professional performances;*
- *professional promotion;*
- *application of disciplinary measures;*
- *the right to join a trade union and access to the facilities granted by it;*
- *any other conditions for performing the work, according to the legislation in effect.*

5. Solution Approach

In order to prevent any discriminatory behavior grounded on the criterion of sex, the employer has the following obligations:

- to establish disciplinary sanctions in the internal regulations of the units, in the conditions established by law, for the employees that violate the personal dignity of other employees by means of creating degrading, intimidation, hostile, humiliating or offensive environments, by discrimination actions;
- to ensure the informing of all employees with respect to the forbidding of harassment and sexual harassment at work, by displaying in visible locations the provisions of the internal regulations of the units, in order to prevent any discrimination act grounded on the criterion of sex;
- to inform, immediately after being notified, the public authorities entrusted with the application and control of the application of the legislation regarding the equality of opportunities and treatment between men and women.

Still, in case the committing of a discriminatory act is established, Law no. 202/2002 institutes *a special procedure*, which presupposes the going through the following stages:

First of all, the employees are entitled, in case they consider themselves discriminated on grounds of sex, to formulate notifications/complaints towards the employer or against it, if it is directly involved, and to request the support of the trade union organizations or of the employees' representatives in the unit, in order to solve the situation at the workplace.

In case this notification/complaint was not settled at the employer's level, by mediation, the employed person who presents factual elements that lead to the presumption of the existence of a direct or indirect discrimination based on sex, in the field of work, on the grounds of the provisions of this law, is entitled to notify the competent institution, respectively the Ministry of Labor, Family and Social Protection, as well as to introduce a petition to the competent court of law in whose territorial circumscription he/she has his/her domicile or residence or workplace, respectively with the labor conflicts and social security rights section/panel within the Tribunal or, as the case may be, the administrative contentious court, but not later than one year after the committing of the act[1].

The court of law competent according to the law will order that the guilty person pays damages to the person discriminated on the grounds of sex, in an amount that correspondently reflects the damage suffered [art. 42 para. (1)]; in addition, the exact value of the compensations is established by the court.

Not lastly, the employer who reintegrates a person in the unit or workplace, on the grounds of a court order remained final, on the basis of this law, must pay the remuneration lost due to the unilateral modification of the work relations or conditions, as well as all payment burdens to the state budget and the state social security budget, due both to the employer and the employee; in case the reintegration in the unit or workplace of the person for whom the court of law decided the employer had, unilaterally and without justification, modified the work relations or conditions is not possible, the employer will pay the employee a compensation equal to the real damage suffered by the employee. (Popescu, 2012)

[1] These petitions addressed to the courts of law with the object of discrimination on the grounds of sex are exempted from the stamp fee.

6. Conclusion

In my opinion, the insertion of instruction in the definition of discrimination does add significantly to the existing body of rights, and for that reason has not to be interpreted not only as confirming the rule that the employer is responsible for discriminatory labor condition. The extension of the definition with an instruction to discriminate forbids the instruction, even if it has not been followed. The rules of proof, specific to discrimination law, are also applicable in the case where the instruction is not followed.

Also, in Romania, liability is individual. According to the case law of the national equality body, employers can be held liable for actions of their employees if there is joint responsibility, but not for actions of third parties. Trade unions and other trade or professional organizations are usually not liable for the discriminatory actions of their members.

Awareness is low not only among the public but among the members of the legal professions, although for the latter change has slowly started due to training organized on national level. Our country have made some slight progress regarding positive action and dissemination o f information on anti-discrimination laws, but much more remains to be done to increase dialogue among the government, civil society and the social partners across all grounds.

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