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THE DISCRIMINATION IN RELATION TO STAFF: DIMENSIONS AND PREVENTION/COMBAT TOOLS

Alunica MORARIU¹

Abstract:

Through this approach we aim to highlight a particular issue that concerns the specialists in the field of human resources, namely certain aspects related to the discrimination in relation to the staff: European/national dimensions and the tools used to prevent/combat it. For this, we resort to the specialized literature, as well as to various reports issued by prestigious institutions, to which we also refer. Following a brief overlook at the institutional framework applicable to the Romanian labour market, we refer to the direct and indirect discrimination against the employee, including some definitions and interdictions derived from the legislation. Through our findings and remarks, we hope that our work will represent a useful contribution to the research on this specific topic, meeting, to a great extent, the views of those interested in the issue in question. In fact, in the final part, we refer to some solutions to fight gender discrimination in the labour market, besides indicating the adoption of the good practices from abroad.

Keywords:

labour legislation, discrimination against employees, European / national anti-discrimination legislation, labour market, fighting gender discrimination

1. SUMMARY OVERVIEW OF THE INSTITUTIONAL FRAMEWORK APPLICABLE TO THE ROMANIAN LABOUR MARKET

The evolution of the labour market in Romania after 1990 led to the reconsideration of various existing normative acts and to the adoption of new ones, having to do with a process of liberalization and restructuring of this market. The specific normative come to regulate the wage scale, the

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social security of the unemployed and the employment contracts, creating new labour market institutions [3], [2], which had to take into account the increasing complexity of the interconnections that take place on this specific market (Figure 1). For example, Law no. 1/1991 on the social protection of the unemployed and their professional reintegration [12] introduces social security measures addressed to the labour force. The measures as such are of a passive type (financial benefits - financial aid for those affected by collective layoff, support allowance, professional integration aid and unemployment benefit), but they have been associated with much more effective ones in the long run - of active type, namely the financial stimulation (financial loans, subsidies, tax cuts, etc.) of the agents to employ graduates or unemployed persons. Relatively late (in 1999), the Law on the Ratification of the Revised European Social Charter [13] was adopted, aiming to guarantee the right of individuals to free association in national or international organizations for the protection of their economic and social interests, the right to collective negotiation, as well as the right to fair working conditions, according to the European standards.

Figure 1. Labour market connections

Source: Ileana Gabriela Niculescu-Aron, *Analiza statistică a pieței muncii în România*, Teză de doctorat, Academia de Studii Economice (Coord. Al. Isac-Maniu), București, 2005, p. 74.

The legislative and institutional framework of the labour market has also been marked by the establishment of the international labour force circulation regime, mentioning here the Law on Work Permits [14], which establishes the employment conditions of foreigners on the territory of Romania, as well as the Law on the Protection of Romanian Citizens Working Abroad [15]. Aiming to achieve the flexibility of the social protection programs for the persons searching for jobs and the intensification of their implementation, the social dialogue has been institutionalized, and the Economic and Social Council (ECOSOC) emerged [9] as an autonomous tripartite body with a consultative role in establishing the economic and social policies, as well as mediating conflicts between social partners [11]. Today it is recognized that this body has adopted and applies the standard promoted by ECOSOC [9], which ultimately leads to the emergence and development of the bipartite social dialogue framework as a result of the gradual withdrawal of government representation due to the strengthening of the role of the trade union and employers. Since 1999, there is a National Council for Adult Vocational Training [4], which functions in a tripartite system and has consultative role, representing a public institution of national interest. Guarantees for the fair development are provided by the National Agency for Occupation and Vocational Training [17], an autonomous public institution that ensures the de-monopolization of decision-making on professional placement and retraining programs and in order to check the legality of labour relations, safety and health in labour, social security, protection of employees working in special conditions, the Labour Inspection is established [11]. Obviously, in our brief legislative journey, we recall that in our sphere operates the Labour Code (Law 53/2003), referring to which, more than five years after its adoption, it is still stated that “it did not constitute an incentive for the development of the national economy because it created certain rigidity in the working relations, which had negative repercussions on the performance of the business environment and on its ability to grow through investments” [18]. Then, even worse, 14 years after the adoption of the normative text as such, “in the exercise of control activity, labour inspectors have identified numerous undeclared work situations that could not be classified as such and could not be sanctioned, as the Labour Code does not regulate a definition of the undeclared work and that the normative act provides for a sanction only for the deed of receiving a person's work without the written agreement of the individual labour contract before the commencement of the activity, not for the partially undeclared work as well” [19]. Situations of this type as well as others have led to multiple changes to the regulatory framework in the field,

which has often been said to lack the stability desired by the employers and employees.

2. DIRECT AND INDIRECT DISCRIMINATION AGAINST THE EMPLOYEE. DEFINITIONS AND INTERDICTIONS DERIVED FROM LEGISLATION

The Treaty of Amsterdam of the European Union indicates the areas in which the EU can act to prevent discrimination. Today, discrimination in all Member States of the European Union based on gender, age, disability, ethnic or racial origin, religion, belief, or sexual orientation is illegal. Under Community Labour Law, we find various European regulation aiming to ensure the equal and fair treatment for women and men at the workplace, “covering a multitude of areas, including equal treatment in matters of job opportunity, equal treatment at work, protection of pregnant employees and nursing mothers and the right to maternity and paternal leave” [7]. Practice has also shown several more complex issues, discrimination being linked to the fact that a person is single / married, resides in a certain area or has a certain income, etc. An actual picture of discrimination at the workplace in EU countries can be made by observing the gender pay gap for the same position, evaluated, on average, at 16.4% (Figure 2).

Figure 2. The statistics of the pay gap men-women in the EU (2015)

Source: <http://cursdeguvernare.ro/comisia-europeana-a-cuantificat-discriminarea-salariala-dintre-femei-si-barbati-164.html>

Obviously, among the causes of these salary differences is the discrimination at the workplace, along with the underestimation of the work and skills of women, the fact that they tend to work part time because they have “mother responsibilities” or they decline management positions, etc.

[1]. In the case of Romania, we recall that the basic normative act - the updated Labour Code [20], stipulates in Article 5 (1) that “the principle of equal treatment for all employees and employers shall operate within the framework of the employment relationships” and (2) “any direct or indirect discrimination against an employee based on sex, sexual orientation, genetic characteristics, age, national affiliation, race, colour, ethnicity, religion, political option, social origin, disability, family situation or responsibility, trade union affiliation or activity shall be prohibited”.

Table 1. Types of discrimination against employees

Direct discrimination	Indirect discrimination
<i>The acts and deeds of exclusion, distinction, restriction or preference, based on one or several of the criteria of sex, sexual orientation, genetic characteristics, age, national affiliation, race, colour, ethnicity, religion, political option, social origin, disability, family situation or responsibility, trade union affiliation or activity, which have the purpose or effect of denying, restraining or removing the recognition, enjoyment or exercise of the rights provided for in the labour legislation.</i>	<i>The acts and deeds apparently based on other criteria than those of sex, sexual orientation, genetic characteristics, age, national affiliation, race, colour, ethnicity, religion, political option, social origin, disability, family situation or responsibility, trade union affiliation or activity but which effect to a direct discrimination.</i>

Source: <https://www.codulmuncii.eu>

Article 6 (1) expressly states that “An employee engaged in an occupation shall enjoy working conditions adequate to the activity carried out, social protection, health and safety at work, and respect of his/her dignity and conscience, without discrimination” and “(3) any discrimination based on sex shall, as regards all elements and conditions of compensation, be prohibited for equal work or work of equal value”. In addition, according to Article 159 (3), “when setting and providing the wage, any discrimination based on sex, sexual orientation, genetic characteristics, age, national affiliation, race, colour, ethnicity, religion, political option, social origin, disability, family situation or responsibility, trade union affiliation or activity shall be prohibited”. According to the anti-discrimination regulation [21], sanctions are stipulated for acts such as “harassment, victimization, conditioning the participation of a person in an economic activity or interfering with the free choice or exercise of a profession and employee discrimination by employers related to granting the social benefits, based on the belonging of the person or employee to a particular race, nationality, ethnic group, religion, social category or a disadvantaged category or based on age, gender (...)” [8]. The state authority in the field of discrimination, with autonomy and legal personality, controlled by the parliamentary and the

guarantor of observing and applying the principle of non-discrimination, is the National Council for Combating Discrimination. The subsequent amendments to the normative framework were justified by the transposition into the national legislation of the European norms [5], [6], currently being considered that Romania owns the appropriate legal instruments in this field [10]. However, when it comes to gender discrimination and equal opportunities on the labour market in Romania, some studies [22] indicate the fact that the phenomenon still has a magnitude which requires actions of limitation in the future. For example, at the level of four development regions (Bucharest-Ilfov, Centre, North-East and South-Muntenia), gender discrimination on the labour market is present (Figure 3), its causes being graphically represented in Figure 4.

Figure 3. The evolution of the phenomenon of gender discrimination
(Source: STEP-2-SUCCESS, 2015)

Figure 4. The main cause of the phenomenon of gender discrimination
(Source: [22])

We find in Figure 5 the areas of activity prone to gender discrimination, including engineering and construction, heavy industry, and trade.

Figure 5. Areas of activity prone to gender discrimination
(Source: [22])

The solutions identified as a result of the above-mentioned study on fighting gender discrimination in the labour market, besides indicating the adoption of the good practices examples from abroad, also refer to other ways of action. Among them: a better promotion / awareness of the phenomenon, the self-education, respectively the access to equal opportunities, the employment based on equal and fair principles, the review and improvement of the legislation. Obviously, there could not be overlooked, as recommendations, the increase of the fines for non-compliance, the expansion of the involvement of NGOs, the development of the communication between the employers and the employees, the establishment of activities dedicated to women and the reopening of the factories - tailoring, various manufactures related to traditional crafts, handicraft, etc.

3. Conclusions

As it represents an important issue, the discrimination against staff, in terms of European / national dimensions and prevention / countermeasures, further research in the field is necessary to be conducted

in the future. This is all the more so since, from one stage to the next, in this field things evolve with a specific dynamics. Just under the aspect that we were interested in, we suggested a better promotion / awareness of the phenomenon, the self-education and the access to equal opportunities, the employment based on equal and fair principles and the review and improvement of the legislation. Obviously, we add that it is equally important to adopt the examples of good practices applied in other countries.

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