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Some Theoretical and Practical Aspects Concerning the Violation of the Principle of Non-Discrimination in the Field of Employment Relations

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Abstract: *Non-discrimination is an important principle that should guide both the employment activity and the development of employment relations. Sometimes, in practice, there are cases of its violation, taking the form of discrimination. The debate in this article focuses on the presentation of the domestic legal framework applicable to the principle of non-discrimination, the role of the main competent body in notifying and resolving petitions, as well as the evolution and presentation of petitions registered in the period 2008-2023, in the field of access to employment and profession, with the aim of identifying the most frequent criteria allegedly violated in the analyzed field.*

Keywords: *discrimination,discrimination criteria, employment and profession, petitions.*

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The domestic legal framework applicable to non-discrimination

Regarding the internal legal framework that regulates non-discrimination in general but also in the field of employment and profession, this is ensured primarily by *Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination* (Government of Romania, 2000). This represents the basic internal regulation on non-discrimination. "This normative act incorporates into the national legislative system norms identified within Directives no. 2000/43/EC, which aim to promote the principle of equal treatment between persons, without differentiation based on race or ethnic origin, as well as in no. 2000/78/EC, which guarantees equal treatment in the field of employment and occupation"(Athanasiu & Vlăsceanu, 2017).

Discrimination is explained by the Romanian legislator as "any distinction, exclusion, restriction or preference based on the criteria provided by the legislation in force" and the legal criteria are according to art.2 paragraph 1 of GEO 137/2000: "race, nationality, ethnicity, language, religion, social category, beliefs, sex, sexual orientation, age, disability, chronic non-contagious disease, HIV infection, membership of a disadvantaged category, as well as any other criterion that has as its purpose or effect the restriction, removal of the recognition, use or exercise, under conditions of equality, of human rights and fundamental freedoms or of rights recognized by law, in the political, economic, social and cultural fields or in any other fields of public life" (Romanian Government, 2000).

Government Ordinance No. 137/2000 protects, in Articles 6-9, precisely equality in employment and access to the profession, stating that it constitutes discrimination to refuse employment or to condition a position on the fulfillment of a criterion mentioned in the normative act. Also, persons who mediate employment are obliged to ensure equal access to all persons seeking employment.

The principle of non-discrimination will be applied in the workplace, so that employers are obliged not to apply discriminatory criteria when concluding and during the performance of the employment contract. (Art. 8-9)

Another applicable domestic normative act is *Law No. 202 of April 19, 2002 on equal opportunities and treatment between women and men* (Romanian Parliament, 2002) which aimed to apply the principle of equality in the content of art.7-art.13, implicitly in the field of employment and access to the profession for women and men.

Regarding non-discrimination in the workplace, the most important domestic normative act is *Law no. 53/2003* in *the Labor Code* which in art. 5 paragraph 2 expressly stipulates the prohibition of discrimination: "direct or

indirect discrimination against an employee, discrimination by association, harassment or act of victimization, based on the criteria of race, citizenship, ethnicity, color, language, religion, social origin, genetic traits, sex, sexual orientation, age, disability, chronic non-contagious disease, HIV infection, political option, family situation or responsibility, union membership or activity, membership in a disadvantaged category is prohibited" (Romanian Parliament, 2003).

Thus, we note that the legislator explains the two forms of direct-indirect discrimination that are based on one or more of the listed criteria. If indirect discrimination is any practice of the employer that is apparently neutral but indirectly disadvantages a person or a group of people, in the case of direct discrimination the act or distinction/exclusion/preference has as its direct purpose - advantage or disadvantage on one or more criteria - art. 5 paragraph 3.

Harassment and victimization are behaviors also regulated in the Labor Code - Law no. 53/2003 (Romanian Parliament, 2003) and which is defined by the legislator as behavior that creates intimidation, hostility, and degradation on one or more of the aforementioned criteria.

Victimization is recently introduced in the Labor Code (art. 5, paragraph 7) and represents adverse treatment that occurred as a result of the formulation of a complaint or legal action or to the competent institutions formulated by an employee or group of employees.

National Council for Combating Discrimination–guarantor of respect for the right to non-discrimination

Cases of discrimination, based on the criteria listed above and provided for by domestic and European legislation, are analyzed and resolved by the main state body in this field – the National Council for Combating Discrimination (NCCD), whose activity is regulated by H.G.no.1194/2001 (Romanian Government, 2001) and which in art.1, paragraph 5 states that it "watches over the application of non-discriminatory treatment". According to art.2 letter g and letter k of this normative act, NCCD "receives petitions and notifications regarding the violation of normative provisions regarding the principle of equality and non-discrimination, from individuals, non-governmental organizations whose purpose is to protect human rights, other legal entities, public institutions, analyzes them, adopts appropriate measures and communicates the response within the deadline provided for by law". The same legal provision states that this body "establishes and sanctions the contraventions provided for by Government Ordinance no. 137/2000" (Romanian

Government, 2000). From the analysis of these two normative acts it results that people who apply for a job or already have employment relationships and feel discriminated against on one or more of the legal criteria can report these facts to the NCCD with the aim of removing the damage caused.

The role of this state body is schematically presented in Fig. no. 1; we note that first of all it has the role of preventing acts of discrimination. It also mediates cases of discrimination between the petitioner and the respondent but also provides assistance to persons injured by discrimination through explanations given on the applicable legislation, through guidance in submitting petitions but also during their investigation.

The main task of the National Council for Combating Discrimination is to investigate and sanction cases of violation of non-discrimination legislation (by issuing warnings or fines). Last but not least, this body monitors, after the investigation, those cases of discrimination with which it has been invested by the petitioner/petitioners in the sense that it subsequently supervises the parties involved.

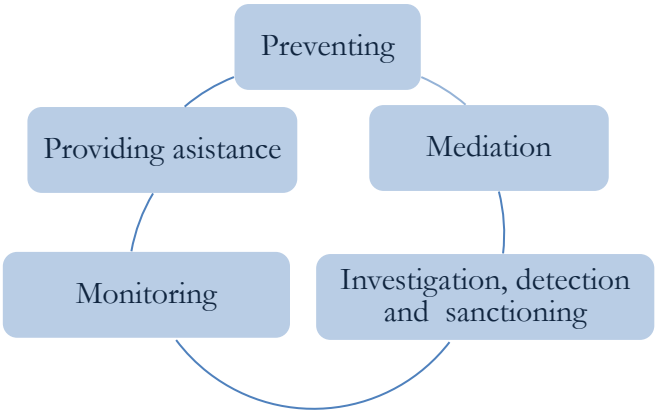


Fig. 1 – The role of the National Council for Combating Discrimination
Source: adapted from information presented at https://www.cncd.ro/despre-cncd-prezentare-generala/

If we refer to the procedure for notifying the NCCD of an act alleged by the petitioner to be discrimination, this involves going through some legal stages. The first stage consists of submitting a petition to the National Council for Combating Discrimination either in person, by post, email or the online service, respecting the substantive and formal conditions of drafting the petition, provided that it is submitted no later than 1 year from the date of the commission of the act of discrimination or from the date on which the petitioner became aware of this act according to Government Ordinance no. 137/2000 (Romanian Government, 2001).

The petition resolution process involves the NCCD going through several stages, namely:

- **Verification whether there are** legal grounds for investigating the case reported;
- **The petitioner(s) and the respondent(s) in the petition will be summoned;**
- On the date of the invitation for the hearing, the parties will have the opportunity to present their own defenders and points of view.
- Hearing and analysis of the evidence submitted by the two parties. At this stage, additional information or the hearing of witnesses, expert opinions, etc. may be requested.
- The last stage is the final decision of the NCCD Board, which issues a decision by which sanctions will be applied (warning, fine), recommendations will be given to remedy the situation complained of or the case will be closed. The decision can be appealed to the administrative court within the legal term.

Analysis of the evolution of petitions addressed to the National Council for Combating Discrimination in the field of employment and profession, during the period 2011-2023

The analysis of the evolution of the number of petitions addressed to the National Council for Combating Discrimination in the field of "access to employment and profession" is carried out with the aim of illustrating the evolution of the phenomenon of discrimination in this field but also on the legally regulated criteria: "age, nationality, gender, disability, language, social category, ethnicity, religion, beliefs, sexual orientation, HIV, chronic non-contagious disease".

The research methodology consisted of collecting and analyzing data contained in the Annual Reports of the National Council for Combating Discrimination and which can be found on its official website. The recorded data and the increased number of petitions filed with this body, during the analyzed period, is proof that the phenomenon of discrimination is present in labor relations in Romania. From the information presented in the Annual Reports of this body regarding the number of petitions (National Council for Combating Discrimination,2022), we find that the phenomenon of discrimination is at the highest rates in the field of "access to employment and profession" for all the years analyzed, compared to other fields such as: "access to housing, access to public places, access to education, dignity, access to public services".

In Table no. 1 and Chart no. 2 we present the evolution by years of the number of petitions formulated only in the field of "access to employment and profession". We note that in 2013 the most petitions were registered (459) followed by 2019 (432). The other years registered under 400 petitions: 2021 (397 petitions), 2023 (389 petitions), 2014 (369 petitions), 2017 (273 petitions), 2020 -297 petitions. The lowest number of petitions registered was in 2012 (209 petitions) and 2011 (211 petitions).

Therefore, we observe that in the analyzed time interval (2011-2023), starting with 2013 the number of petitions filed with the NCCD begins to increase compared to 2011 and 2012 with slight fluctuations. If in 2011 and 2012 the number of petitions registered was just over 200, starting with the following years they are around 300-400 petitions, which shows that the phenomenon of discrimination on the labor market has gained momentum.

Table no.1 Total number of petitions filed in the field of "Access to employment and profession" 2011-2023

Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Number of petitions	211	209	459	369	362	357	273	365	432	297	397	362	389

Source: own processing based on data provided by NCCD https://www.cncd.ro/rapoarte/

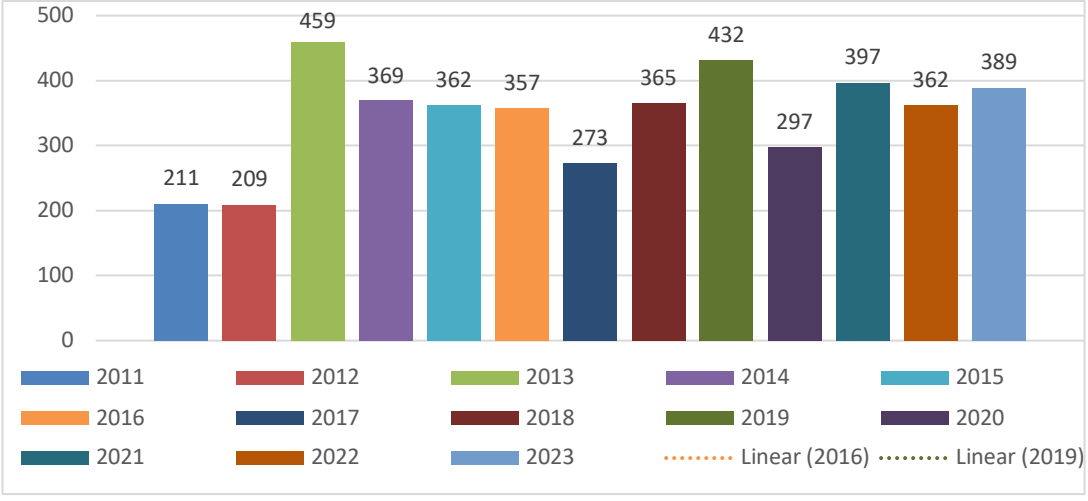


Chart no.2 Total number of petitions filed in the field of "Access to employment and profession" 2011-2023
Source: own processing based on data provided by NCCD https://www.cncd.ro/rapoarte/

In Chart no. 3, which refers to the number of petitions formulated on criteria in the field of employment and profession, it is observed that between 2011 and 2023 most petitions had as a discrimination criterion *"social category"* in all reference years 2018-2023, this criterion being the most complained about among all criteria (a total of 1503 petitions in the 6 years analyzed). In 2019 there were 360 petitions on the criterion "social category", in 2023 a number of 280 petitions and in 2018 (277 petitions).

Table no. 2 Total number of petitions filed on criteria, in the field "Access to employment and profession" 2011-2023

Year	Disease	Sexual Orientation	HIV	Language	Beliefs	Religion	Disadvanced category	Age	Gender	Nationality	Dizabilitity	Ethnicity	Other	Social category	Race
2018	5	0	1	1	4	2	0	15	0	6	12	8	9	277	0
2019	5	0	1	0	5	1	0	16	15	7	11	4	7	360	0
2020	5	1	1	0	10	2	1	16	15	7	10	4	13	212	0
2021	10	0	1	9	5	2	2	9	2	9	4	2	7	137	22
2022	9	2	2	4	4	3		16	30	1	13	5	35	237	1
2023	3	2	1	2	7	2	0	12	14	12	8	4	42	280	0
Total	**37**	**5**	**7**	**16**	**35**	**12**	**3**	**84**	**76**	**42**	**58**	**27**	**113**	**1503**	**23**

Source: own processing based on data provided by NCCD https://www.cncd.ro/rapoarte/

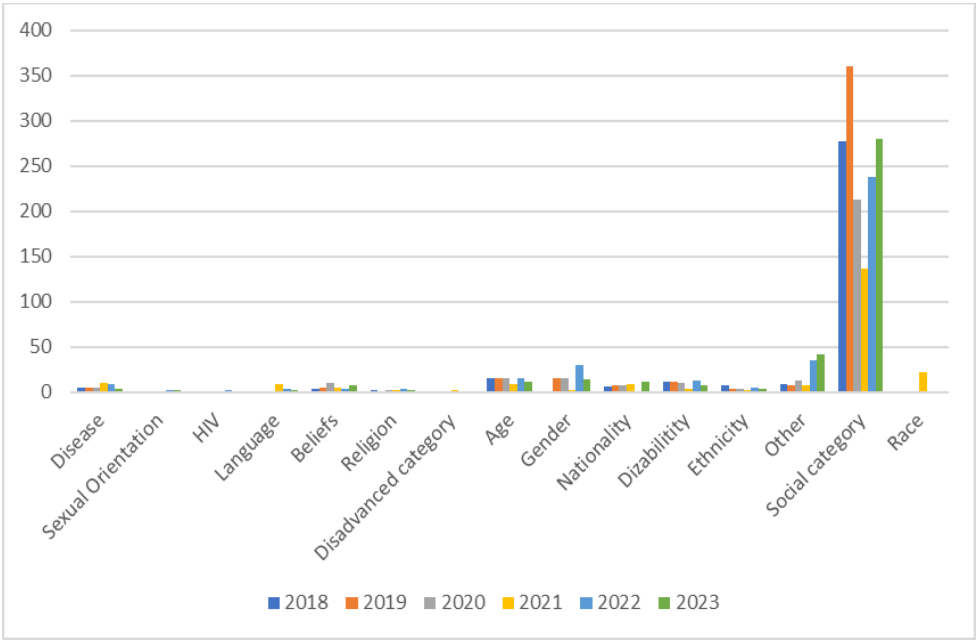


Chart no.3 Total number of petitions filed on criteria, in the field "Access to employment and profession", 2011-2023
Source: own processing based on data provided by NCCD https://www.cncd.ro/rapoarte/

In second place in the complained criterion is that of *age*, with a number of 84 petitions, followed by the *gender* criterion with a total of 76 petitions, in all 6 years (2018-2023).

Disability is the criterion in fourth place in the total number of petitions (most petitions being formulated in 2022-13 petitions). The *nationality* criterion follows with a total number of 42 petitions in the 6 years analyzed. The fewest complained criteria are: the *"disadvantaged category"* criterion (total 3 petitions), *sexual orientation* (total 5 petitions), *HIV* (7 petitions) and *religion* (12 petitions) - Table no. 2 and Chart no. 3.

Examples of complaints filed with the National Council for Combating Discrimination in the field "access to employment and profession"

The database of the National Council for Combating Discrimination publishes decisions issued by this body, for example I will list a series of examples of facts complained about by the petitioners.

- in a case complained about by an employee of the Ministry of Internal Affairs, the subject matter was discrimination, moral harassment and victimization by not granting vacation leave, the petitioner already having a court action against the Galaţi County Police Inspectorate (NCCD, 2024);

- an employee within an office of a guardianship authority within a territorial administrative unit complained about harassment by the incorrect distribution of work duties with a shorter completion period than comparable colleagues (National Council for Combating Discrimination, 2024);

- the opening of a competition in 2022 for a cashier position within a county directorate, a position for which the condition "female sex" was displayed, invoking Law no. 202 of 2002, on equal opportunities and treatment between women and men and GEO 137/2000. In this case, the NCCD Board of Directors decides that the constitutive elements of an act of direct discrimination are met, according to art. 2 paragraph 1 and art. 10 letter h. of GEO 137/2000 (National Council for Combating Discrimination, 2023);

- the petitioner - a person of Roma ethnicity, with 5 children in care, claims in his petition that he was forced to resign from the commercial company where he worked and was also fired by the supervisor, justifying that he is "ugly, unpleasant, old and gypsy". Analyzing the petition, the NCCD Board decided that the elements of discrimination were not established.

- non-employment in a commercial company for a "customer relations" position for people with disabilities. Due to her disability (blind with a severe degree of disability with an assistant) and after a telephone conversation with the company representatives, she presented her disability

and was told: "we think this job would not suit you" and was not invited to an interview. Analyzing the petition, the NCCD Board issued a decision establishing that the elements of discrimination were not met because the reason why the company considered that the applicant was not suitable was not the disability criterion, but the fact that, following the telephone conversation, the person who was in charge of recruitment considered (based on the CV and the telephone conversation), that the applicant did not have the necessary qualities to occupy the customer relations position (National Council for Combating Discrimination, 2023).

- the petitioner, employed as a manager of a company whose object of activity is the fuel trade, informed the employing company, from the moment of employment, that he is a member of the Seventh-day Adventist Church and that according to religious customs, the weekly day of rest is Saturday, a period during which he is prohibited from carrying out any activity. The petitioner considers that the company is acting in bad faith by scheduling work shifts on Saturdays, which is sufficiently obvious considering that for 19 years he has never been scheduled to work a shift on any Saturday (the exception being only urgent and unpredictable causes). The NCCD Board, analyzing and investigating the petition, is of the opinion that, from the evidence submitted to the file, it emerges that, through the passive attitude of the employer, a hostile and degrading environment was created on the basis of religion. Thus, it decides that the issues notified fall under the provisions of the O.G. no. 137/2000 representing acts of discrimination, the company being sanctioned with a fine of 2000 lei (National Council for Combating Discrimination, 2003).

Conclusions

Any person applying for a job or who has the status of an employee has the right to benefit from adequate and non-discriminatory working conditions. In practice, however, as we have noted in the previous pages, the phenomenon of discrimination is frequently encountered in Romania and takes various forms. We have observed that in the field of access to employment and profession, the most frequent cases of alleged acts reported as discrimination are in the field of access to housing, access to public places, access to education, dignity, access to public services.

Although the internal regulations of employers expressly provide for the principle of non-discrimination, a series of trainings organized with the participation of employees and management on the topics of conflict management, diversity, inclusion and combating discrimination can help promote a work climate of respect and equal treatment.

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