

## **ROMANIAN Ordinance**

### **On Preventing and Punishing All Forms of Discrimination**

The Romanian Government adopts the following Ordinance:

#### **Chapter I – Principles and Definitions**

Art. 1 - (1) In Romania, as a democratic and social state governed by the rule of law, human dignity, citizens' rights and freedoms, free development of human personality represent supreme values and shall be guaranteed.

(2) The principle of equality among citizens, the elimination of all privilege and discrimination shall be guaranteed, in particular with regard to the exercise of the following rights:

- a) the right to equal treatment before courts and any other jurisdictional bodies;
- b) the right to personal security and to be granted state protection against violence and mistreatment perpetrated by any individual, group or institution;
- c) political rights, namely electoral rights, the right to take part in public life and the right to access to public positions;
- d) other civil rights, in particular:
  - i) the right to freedom of movement and of choosing one's residence;
  - ii) the right to leave and return to one's country;
  - iii) the right to obtain the Romanian citizenship;
  - iv) the right to marry and to choose one's partner;
  - v) the right to property;
  - vi) the right to inheritance;
  - vii) the right to freedom of thought, conscience and religion;
  - viii) the right to freedom of expression and opinion;
  - ix) the right to freedom of peaceful meeting and association;
- e) economic, social and cultural rights, in particular:
  - i) the right to work, to choose freely one's occupation, to fair and satisfactory working conditions, to protection against unemployment, to equal pay for equal work, to fair and satisfactory wages;
  - ii) the right to establish and to join trade unions;
  - iii) the right to housing;
  - iv) the right to health, medical assistance, social security and social services;
  - v) the right to education and to professional training;
  - vi) the right to take part in cultural activities in conditions of equality;
- f) the right of access to all public places and services.

(3) Any natural or legal entity shall be under the obligation to comply with the principles of equality and non-discrimination.

Art. 2 - (1) According to the ordinance herein, the term 'discrimination' shall encompass any difference, exclusion, restriction or preference based on race, nationality, ethnic appurtenance, language, religion, social status, beliefs, sex or sexual orientation, appurtenance to a disfavoured

category or any other criterion, aiming to or resulting in a restriction or prevention of the equal recognition, use or exercise of human rights and fundamental freedoms in the political, economic, social and cultural field or in any other fields of public life.

(2) Any active or passive behaviour that generates effects liable to favour or disadvantage, in an unjustified manner, a person, a group of persons or a community, or that subjects them to an unjust or degrading treatment, in comparison to other persons, groups of persons or communities, shall trigger contraventional liability, unless it falls under the incidence of criminal law.

(3) Regulations or orders issued by a natural or legal entity, that generates the effects listed in paragraph (2), shall trigger the contraventional liability of the natural or legal entity, unless it fall under the incidence of criminal law.

(4) Measures taken by public authorities or by legal entities under private law in favour of a person, a group of persons or a community, aiming to ensure their natural development and the effective achievement of their right to equal opportunities as opposed to other persons, groups of persons or communities, as well as positive measures aiming to protect disfavoured groups, shall not be regarded as discrimination under the ordinance herein.

(5) In accordance with the ordinance herein, the elimination of all forms of discrimination shall be achieved by means of:

- a) affirmative action in favour of persons and groups of persons belonging to national minorities, of the communities of national minorities, when they do not enjoy equal opportunities;
- b) sanctions instituted against the discriminatory behaviour provided under paragraphs (2) and (3) of the article herein.

Art. 3.- The provisions of the ordinance herein shall be applicable to all public and private natural or legal entities as well as to public institutions with competencies in the following fields:

- a) employment conditions, conditions and criteria of recruitment and selection, criteria for promotion, access to all forms and levels of professional orientation, professional training, and refresher courses;
- b) social protection and social security;
- c) public services or other services, access to goods and facilities;
- d) the education system;
- e) enforcement of public peace and order.

Art. 4.- In the sense of the ordinance herein, the term 'disfavoured category' is the category of persons that is either placed in a position of inequality as opposed to the majority of citizens due to their social origin or to a handicap or is faced with rejection and marginalisation due to specific circumstances, such as a chronic non-infectious disease, HIV infection or the status of refugee or asylum-seeker.

## **Chapter II – Special Provisions**

### ***Section I. Equality in the economic activity, in terms of employment and profession***

Art. 5 – According to the ordinance herein, conditioning the participation of a person in an

economic activity or one's free choice and exercise of a profession on one's appurtenance to a race, nationality, ethnic group, religion, social status, on one's beliefs, sex or sexual orientation, respectively, or on one's appurtenance to a disfavoured category shall constitute an offence.

Art. 6 – The following shall constitute offences: discrimination on account of the race, nationality, ethnic group, social status, disfavoured category one belongs to, respectively on account of one's beliefs, sex or sexual orientation in a labour and social protection relation, with respect to:

- a) The conclusion, suspension, modification or conclusion of the labour relation;
- b) The establishment and modification of job-related duties, of the work place or of the wages;
- c) The granting of social rights other than the wages;
- d) The professional training, refreshment, conversion or promotion;
- e) The enforcement of disciplinary measures;
- f) The right to join a trade union and to access to the facilities it ensures;
- g) Any other conditions related to the carry out of a job, in accordance with the law in force.

Art. 7 - (1) In accordance with the ordinance herein, the refusal of any legal or natural entity to hire a person on account of the applicant's race, nationality, ethnic appurtenance, religion, social status, beliefs, sex or sexual orientation shall constitute an offence.

(2) If, in any job advertisement or interview, the employer or employer's representative set conditions related to the appurtenance to a race, nationality, ethnic group, religion, sex or sexual orientation, social status or disfavoured category or the applicant's beliefs for filling in a position, except for the situation provided under Art. 2 paragraph 4, this deed shall constitute an offence.

(3) Natural or legal entities involved in mediating and distributing work places shall ensure the equal treatment of all applicants, their free and equal access to opportunities to consult the supply and demand of the labour market, to consulting on opportunities to obtain a job or a qualification, and shall refuse to support the employers' discriminatory requirements. All information related to the race, nationality, ethnic appurtenance, sex or sexual orientation of applicants for a job or any other private information shall be confidential.

Art. 8 - Discrimination committed by employers against their employees with regard to the social facilities they grant their employees on account of the employees' appurtenance to a race, nationality, mother tongue, ethnic background, religion, sex, social status, sexual orientation or beliefs shall constitute an offence.

Art. 9 - None of the provisions of articles 5-8 shall be interpreted as a restriction of the employer's right to refuse to hire a person that does not comply with the usual requirements and standards in the field, as long as the refusal does not constitute an act of discrimination under the ordinance herein.

## ***Section II. Access to legal, administrative and health public services, to other services, goods and facilities***

Art. 10 - Under the ordinance herein, the refusal to ensure legal and administrative public services to a natural entity, a group of persons or a legal entity, on account of their appurtenance or to the appurtenance of the management to a race, nationality, ethnic group, religion, social category or disfavoured category, on account of their beliefs, sex or sexual orientation, if the deed does not fall under the incidence of criminal law, shall constitute an offence.

Art. 11 - Under the ordinance herein, denying the access of a person or of a group of persons to

public health services (choice of a family doctor, medical assistance, health insurance, first aid and rescue services or other health services) on account of their appurtenance to a race, nationality, ethnic group, religion, social category or to a disfavoured category, on account of their beliefs, sex or sexual orientation, shall constitute an offence.

Art. 12 - Under the ordinance herein, the refusal to sell or rent a plot of land or building for housing purposes, to grant a bank credit or to conclude any other kind of contract with a person or group of persons on account of their appurtenance to a race, nationality, ethnic group, social category or to a disfavoured category, on account of their beliefs, sex or sexual orientation, shall constitute an offence.

Art. 13 - Under the ordinance herein, denying the access of a person or group of persons to the services provided by hotels, theatres, cinemas, libraries, shops, restaurants, bars, discotheques or any other service providers, whether they are public or private property, or by public transportation companies (by plane, ship, train, subway, bus, trolley-bus, tram car, taxi or by any other means of transport) on account of their appurtenance to a race, nationality, ethnic group, religion, social category or to a disadvantaged category, on account of their beliefs, sex or sexual orientation, shall constitute an offence.

Art. 14 - Under the ordinance herein, the refusal to grant a person certain rights or facilities, on account of their appurtenance to a race, nationality, ethnic group, religion, social category or to a disadvantaged category, on account of their beliefs, sex or sexual orientation shall constitute an offence.

### ***Section III. Access to education***

Art. 15 - (1) Under the ordinance herein, denying the access of a person or of a group of persons to the state-owned or private education system of any kind, degree or level, on account of their appurtenance to a race, nationality, ethnic group, religion, social category or to a disadvantaged category, on account of their beliefs, sex or sexual orientation, shall constitute an offence.

(2) The provisions of the paragraph above shall be applicable to all stages and levels of education, including admission or enrolment in education institutions and the assessment and examination of students' knowledge.

(3) Under the ordinance herein, requiring a declaration to prove a person's or group's appurtenance to an ethnic group as a condition for access to education in their mother tongue shall constitute an offence. The exception to the rule is the situation when the candidates apply in the secondary and higher education system for places allotted specifically to a certain minority, in which case they must prove their appurtenance to that minority by means of a document issued by a legally established organisation of the respective minority.

(4) The provisions under paragraphs (1), (2) and (3) shall not be interpreted as a restriction of the right of an education institution to deny the application of a person whose knowledge and/or prior results do not meet the required admission standards of that institution, as long as the refusal is not determined by the person's appurtenance to a race, ethnic group, nationality, religion, social category or to a disadvantaged category, by his/her beliefs, sex or sexual orientation.

(5) The provisions under paragraphs (1) and (2) shall not be interpreted as a restriction of the right of education institutions that train personnel employed in worship places to deny the application of a person whose religious status does not meet the requirements established for access to the respective institution.

(6) According to the ordinance herein, any restrictions based on appurtenance to a race,

nationality, ethnic group, religion, social category or to a disadvantaged category in the establishment and licensing of education institutions set up in accordance with the legal framework in force shall constitute an offence.

#### ***Section IV. Freedom of movement, choice of residence and access to public places***

Art. 16 - (1) Any threats, constraints, use of force or any other means of assimilation, colonisation or forced movement of persons with a view to modify the ethnic, racial or social composition of a region or of a locality shall constitute an offence.

(2) According to the ordinance herein, any behaviour consisting in forcing a person belonging to a race, nationality, ethnic group or religion, or a community, respectively, to unwillingly leave their residence, deportation or lowering their living standards with a view to determine them to leave their traditional residence shall constitute an offence. Forcing a group of persons belonging to a national minority to leave the area or regions where they live or a group belonging to the majority population to settle in areas or regions inhabited by a population belonging to national minorities shall both represent violations of the ordinance herein.

Art. 17 - (1) Any behaviour aiming to determine a persons or group of persons to move away from a building or neighbourhood or aiming to chase them away on account of their appurtenance to a race, nationality, ethnic group, religion, social category or to a disadvantaged category, on account of their beliefs, sex or sexual orientation, shall constitute an offence.

(2) The provision above shall not be interpreted as a restriction of the authorities' right to enforce urbanism plans, as long as the movement is effected under the law, with fair compensation, and the measure is not determined by the person's or group's appurtenance to a race, nationality, ethnic group, religion, social category or to a disadvantaged category, by their beliefs, sex or sexual orientation.

Art. 18 - Under the ordinance herein, denying the access of a person or of a group of persons to public places on account of their appurtenance to a race, nationality, ethnic group, religion, social category or to a disadvantaged category, to their beliefs, sex or sexual orientation shall constitute an offence.

#### ***Section V. The right to personal dignity***

Art. 197 - Under the ordinance herein, any offending public behaviour, any public behaviour with a nationalistic-chauvinist character, any incitement to racial or national hatred, or any behaviour aiming to prejudice a person's dignity or to create a hostile, degrading, humiliating or offending atmosphere, perpetrated against a person, a group of persons or a community on account of race, nationality, ethnic group, religion, social category or appurtenance to a disadvantaged category, on account of beliefs, sex or sexual orientation shall constitute an offence, unless the deed falls under the incidence of criminal law.

#### **Chapter III. Sanctions**

Art. 20 - (1) The offences provided under articles 5-8, 10-14, 15 paragraphs (1), (2), (3), (6), 16, 17 paragraph (1), 18 and 19 of the ordinance herein shall be sanctioned with a lei 500,000 to lei 10,000,000 fine if perpetrated against a natural entity or with a lei 1,000,000 to lei 20,000,000 fine if perpetrated against a group of persons or a community.

(2) The sanctions shall also be applicable to legal entities.

(3) The offences provided under Chapter II shall be found and sanctioned by the members of the National Council for the Prevention of Discrimination. The provisions of Law 32/1968 on

Establishing and Sanctioning Offences, with its subsequent modifications and completions, shall be enforced accordingly.

(4) The fines provided in the ordinance herein shall be updated in accordance with the provisions of article 7<sup>1</sup> of Law 32/1968 on Establishing and Sanctioning Offences, with its subsequent modifications and completions.

Art. 21 - (1) In all cases of discrimination provided by the ordinance herein, the persons discriminated against shall be entitled to claim damages, proportionally with the prejudice, as well as to the re-establishment of the situation prior to the discrimination or to the annulment of the situation created by discrimination, in accordance with common law.

(2) The claim for damages shall be exempted from judicial taxes.

(3) Upon request, the court can order that the competent authorities withdraw the licence of legal entities that significantly prejudice the society by means of a discriminatory action or, although have caused a minor prejudice, repeatedly violate the provisions of the law herein.

Art. 22 - (1) Human rights non-governmental organisations can appear in court as parties in cases involving discriminations pertaining to their field of activity and which that prejudice a community or a group of persons.

(2) The organisations provided in the above paragraph can also appear in court as parties in cases involving discrimination that prejudice a natural entity, if the latter delegates the organisation to that effect.

#### **Chapter IV - Final Provisions**

Art. 23.-(1) The National Council for the Prevention of Discrimination shall be established as a specialised body of central public administration subordinated to the Government within 60 days since the publication of the ordinance herein in the Romanian Official Gazette.

Art. 24 - The law herein shall come into force within 60 days since its publication in the Romanian Official Gazette.

PRIME MINISTER,

MUGUR CONSTANTIN ISARESCU

Law No. 48/2002 (16/1/2002) On the Prevention and Sanction of All Forms of Discrimination –(Ordinance amendments n. 431/2000)

This Act, which adopts and substantially amends a previous Government Ordinance, proclaims the principle of equality between all citizens and the prohibition of all discrimination, notably those based on gender (art.1 and art. 2). Article 1 provides that the principle of equality between citizens is guaranteed in a certain number of fields, among which is included the right to be protected against any violence or abuse, the right to inherit, and the right to an equal pay for an equal work

Gender discrimination is defined as any differentiation, exclusion restriction or preference based on sex (art. 2(1).). Article 2(4) however adds that the following do not constitute discrimination:

a. measures taken by public authorities or private persons in favour of a person, a group of persons or of a community, and aiming to ensure their natural development and the effective achievement of their right to equal opportunities, as opposed to other persons, groups of persons or communities;

b. positive measures aiming to protect disfavoured groups.

Article 2(5) states that the elimination of all forms of discriminations is realized through the adoption of special measures of protection for those who do not enjoy equal opportunities, and through sanctions against discriminatory behaviours enumerated in the Act.

The Act applies, according to Article 3, to all natural and legal persons, public or private, and its scope includes:

- a. employment conditions;
- b. recruitment and promotion criteria;
- c. access to all levels of professional orientation, refresher courses and professional training;
- d. social protection and social security;
- e. public services or other services, access to good and facilities;
- f. education system; and,
- g. enforcement of public peace and order.

Act No. 48/2002 also gives a list of fields where gender discrimination is prohibited:

- a. Equal employment opportunities: exercise of an economic activity or of a profession (Art. 5); work relations and social care (Art. 6); hiring conditions (in this respect, employment agencies shall ensure free and equal access to all job advertisements, Art. 7); right to social security benefits (Art. 8).

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b. Access to administrative, legal, health, and other public services, to goods and facilities (Art. 10).

c. Access to education (Art. 15)

d. Freedom to choose one's residence (Art. 17)

e. Access to public places (Art. 18)

f. Lastly, art. 19 prohibits behaviours which offend the dignity or create an intimidating, hostile, degrading or offending atmosphere on the basis of one's gender.

Infractions of Act No. 48/2002 are punishable by fines ranging from 1 million lei to 10 million lei if the discrimination affects a natural person; from 2 million lei to 20 million lei, if the discrimination affects a group of persons. In addition, discrimination victims are entitled to an indemnity proportionate to the damage sustained, as well as to the restoration of the status quo ante or the annulment of the situation created by the discrimination (Art. 20).

According to Article 22, NGOs operating in the Human Rights field can institute proceedings where discrimination against a community or group of persons is alleged in their field of activity. They can also represent a natural person who is the victim of discrimination.

## **Romania's Anti- Discrimination Law Amended**

18 May 2007

On 14 July 2006, the Romanian government adopted a law amending Ordinance No. 137/ 2000; the Romanian Government Ordinance on Preventing and Punishing All Forms of Discrimination.

The recent amendments bring long awaited revision to antidiscrimination legislation in Romania. With the amendment, Romanian lawmakers have removed the National Council for Combating Discrimination (NCCD), long noted for lacking the independence required to be effective, from the supervision of the Government, placing it under parliamentary supervision. The amendment also extended the deadline for filing a complaint before Council from six months to one year from the date of cause of the action. Under the amended law, a victim of discrimination no longer has to go to the NCCD before going to courts. The NCCD was also obliged under the amended law to elaborate an internal procedure for investigating complaints of discrimination and a national strategy for the implementation of measures aimed at preventing and combating discrimination within sixty days from the date of entering into force of the new law.