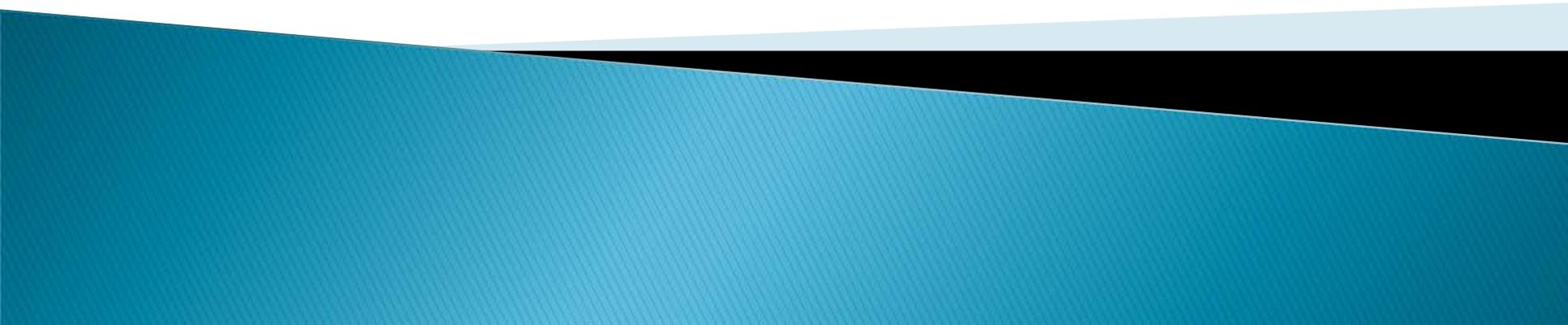


**Enforcement of Regulation no. 492/2011:
Non-discrimination on the basis of nationality
Study case: Romania**

**Annual Conference on Free Movement of Workers
Bucharest, 3-4 November 2011**



Prohibition of discrimination on the grounds of nationality applied in practice

▶ Legal provisions:

- the **Constitution of Romania from 1991**, amended and supplemented by **Law no. 429/2003 on revising the Constitution of Romania**, forbids any discrimination based on race, nationality, ethnic origin, language, religion, sex, opinion, political allegiance, wealth or social background - **Art. 16, Para. 1**;
- the **GEO no. 102/2005 on the free movement of citizens of the MS of the EU, EEA and Swiss Confederation on the Romanian territory**, states that the EU citizens and their family members who exert the right of free movement and residence on Romanian territory shall benefit of equal treatment with Romanian citizens according to EU treaties field of application, under the provisions of these treaties and subsequently provisions adopted within their application - **Art. 3**;

- according to the **Law no. 53/2003 - Labour Code, subsequently modified and completed**, equal rights for all employees, regardless of gender, age, nationality, race, colour, origin, political or religious orientation, union membership are guaranteed; also, any direct or indirect discrimination to an employee, based on sex, sexual orientation, genetic characteristics, age, national origin, race, colour of the skin, ethnic origin, religion, political options, social origin, disability, family conditions or responsibilities, union membership or activity, shall be strictly prohibited;
- the **GO no. 137/2000, on the prevention and punishment of all forms of discrimination, as republished**, prohibits all forms of discrimination and provides for equal rights in a wide range of areas such as employment, access to public services, health care, education, residence and the right to personal dignity. Meanwhile, it establishes the Romanian National Council for Combating Discrimination, an authority subordinated to the Romanian Government which is responsible for applying Romanian and European Union anti-discrimination laws and managing the National Anti-Discrimination Plan;
- the **Criminal Code, subsequently modified and completed**, contains specific provisions on this issue. The offence of “incitement to discrimination” (any incitement to hatred on the grounds of race, nationality, ethnic origin, language, religion, gender, sexual orientation, opinion, political membership, beliefs, possession, social origin, age, disability, chronic - infectious or HIV infection) is punishable by a term of imprisonment or by fine.

The prohibition of discrimination on grounds of nationality is applying in cases such as:

▶ Access to employment

- equal rights for all employees, regardless of gender, age, nationality, race, colour, origin, political or religious orientation, union membership are guaranteed by the **Law no. 53/2003 - Labour Code, with subsequent modifications**. By way of consequence, equal treatment principle operates for all employees and employers in Romania. Also, any direct or indirect discrimination to an employee, based on sex, sexual orientation, genetic characteristics, age, national origin, race, colour of the skin, ethnic origin, religion, political options, social origin, disability, family conditions or responsibilities, union membership or activity, shall be strictly prohibited;
- in Romania, **direct discrimination** shall be represented by actions and facts of exclusion, differentiation, restriction, or preference, based on one or several of the criteria stipulated on the above paragraph, the purpose or effect of which is the failure to grant, the restriction or rejection of the recognition, use, or exercise of the rights stipulated in the labour legislation;
- **indirect discrimination** shall be represented by actions and facts apparently based on other criteria than the mentioned ones, but which cause the effects of a direct discrimination to take place;

- as regards the **persons having the citizenship of a EU Member State**, the Labour Code is applicable to their individual labour contracts if they are working on the Romanian territory and for a Romanian employer;
- according to **Art. 18** of the **Romanian Constitution** „foreign citizens and stateless persons that live in Romania shall enjoy general protection of person and assets, as guaranteed by the Constitution and other laws”. **Art. 41**, regarding the work and social protection of work, stipulates that the right to work cannot be restricted, due to the right to freely choose the profession or occupation, as well as the work place. Although, the employees have the right to social protection measures, regarding employees security and health, women and youth work regime, establishment of a minimum national gross wage, weekly rest, paid leave, working under special or particular conditions, professional training, as well as other specific situations provided by law. It contains, also, the gender equality within the work relations, „for equal work, men and women have similar wages”.

▶ Access to social integration

- the **GO no. 44/2004 on the social integration of foreigners who were granted a form of protection or a right of residence in Romania, as well as citizens of the EU and EEA, subsequently modified and completed**, aims to facilitate the social integration, among other categories of persons, of the citizens of the Member States of the European Union and European Economic Area, through specific activities of the cultural accommodation and learning Romanian language;
- social integration programs for the citizens of the European Union and European Economic Area, as well as activities to facilitate their social integration are developed and implemented based on needs of the beneficiaries, without discrimination and with respect to their cultural specificity.

▶ **Access to social security**

- according to **Law no. 76/2002 on the unemployment insurance system and employment stimulation**, with subsequent modifications, in Romania, each person has a guaranteed right to freely choose its profession and work place, as well as the right to unemployment insurance and there are excluded any kind of discrimination on political criteria, race, citizenship, ethnic origin, language, religion, social category, beliefs, gender and age, of these provisions benefiting foreign citizens and stateless persons employed or income generating in Romania, as provided by the above mentioned law;
- according to **Law no. 263/2010 on unified public pension system**, the right to social security is guaranteed by the state and is exercised, under the present law, through the public pension system and other social insurance rights. In the public system, according to law, natural persons being Romanian citizens, other states or stateless persons are ensured, during the period, they have the domicile or residence in Romania; they also have the obligation to contribute to the social insurance budget and the right to benefit of social insurance allowances.

▶ Access to health services

- according to **Art. 211** of the **Law no. 95/2006 on health reform, subsequently modified and completed**, Romanian citizens residing in the country, as well as foreign and stateless persons that applied for and obtained the extension of the right for temporary stay or domicile in Romania and prove the payment of their contributions to the fund, are ensured. Corresponding to **Art. 214**, "ensured persons from countries that Romania concluded international agreements on health with, benefit of medical services and other benefits granted on the Romanian territory, under conditions foreseen in the respective international documents";
- thus, EU mobile workers and foreign workers legally residing in Romania have the right to access the health services under condition of being legally employed and to contribute to the health insurance fund, otherwise, if they resort to services provided by medical services providers will have to pay for the provided services. Main categories exempted from paying these contributions include students/pupils and children.

▶ Access to professional training

- in Romania, in accordance with **Art. 2 of GO no. 129/2000 on adult training, as republished**, adults have equal access to training, without discrimination based on age, sex, race, ethnic origin, political affiliation or religion;
- the **Law no. 279/2005 on apprenticeship in the workplace, as republished**, at **Art. 5, paragraphs (1) and (3)** states that can be employed as apprentices [...] citizens of the EU Member States, the signatory states of the EEA and their family members who have reached the age of 16 years but not more than 25 years, and have no qualification for apprenticeship occupation and the above mentioned apprenticeship is organized at work;
- under the provisions of the **GD no. 508/2001 on access to compulsory education in Romania for children of migrant workers from EU Member States**, the beneficiary of provisions of this normative act is the child who meets the requirements to be under the age of 18 and is dependent of migrant workers, citizen of a European Union Member State which was granted the right to stay in Romania, is domiciled or resident in Romania and carried out an activity on the Romanian territory, under an individual employment contract or in another legal form governed by Romanian law.

Access to trade unions

- ▶ according to the **Law no. 62/2011 on the social dialogue, Art. 3(I)**, persons employed by means of labour contracts and civil servants with a special status according to law, cooperative members and farmers that took up employment have the right to form trade unions and join them, without any restriction or prior authorization;
- ▶ however, according to the same normative act, no person may be compelled to do or not to participate, to withdraw or not a trade union.

Who deals with the support, protection and information on EU migrant workers' rights derived from Regulation no. 492/2011

- ▶ the **Ministry of Labour, Family and Social Protection**, by means of the institutions under its subordination or coordination, carried out information activities addressed to mobile workers, coming from EU Member States, regarding the rights they are entitled as employees at a Romanian employer;
- ▶ the **National Agency for Employment**, which is the Romanian public employment service and the national EURES provide web pages dealing specifically with free movement of workers, on a wide variety of matters, such as living and working conditions in Romania;
 - in this regard, the information published on the EURES national website mentions that to the citizens coming from European Union and EEA Member States the same treatment as Romanian citizens in terms of national labour market access and working conditions will be applied.
- ▶ on the website of the **Romanian Office for Immigration**, a specialized body of central public administration, with legal personality, subordinated to the Ministry of Administration and Interior, information addressed to all citizens of EU/EEA and their family members is available, in respect of: entry in Romania, registration of the residence in Romania, permanent residence, as well as limitations and restrictions of the right of residence.

- ▶ the **Labour Inspectorate** is a specialised body of the central public administration subordinated to the Ministry of Labour, Family and Social Protection, which verifies, among others, the implementation of the labour law provisions, and can order that a violation should be remedied immediately or within a definite period of time. The refusal of the employer to take the compulsory measures imposed by the Labour Inspector constitutes a violation and is punishable by a fine, and employers or legal entities may be deleted from the National Trade Register if repeated serious violations of the provisions of the labour legislation are discovered;
- ▶ the **National Council for Combating Discrimination - NCCD** is the autonomous body under parliamentary control, which activates in the field of discrimination. Is the guarantor of the observance and application of the principle of non-discrimination, in accordance with international law in force and with international documents to which Romania is party to;
- ▶ the national mechanism for promoting equal opportunities is enlarged through the creation, within the Romanian Parliament, of the **Sub-Commission for Equal Opportunities within the Joint Parliamentary Commission for European Integration**;
- ▶ the **Office of the Ombudsman** also has a department working on protection of the family, children and women.

Sanctions on the forms of discrimination

- ▶ according to the provisions of the Romanian Constitution, **every person is entitled to bring a case before a court to defend their rights, liberties and interests;**
- ▶ under the **Law No. 53/2003 - Labour Code, with subsequent modifications**, any direct or indirect discrimination against an employee based on national affiliation, race, colour, ethnicity, shall be prohibited. Also, according the same normative act, is possible to seek legal redress in any litigation connected with the conclusion, execution or modification of individual employment contracts;
- ▶ the **GO no. 137/2000 on preventing and sanctioning all forms of discrimination, as republished**, provides for all discrimination cases that the victim is entitled to seek damages in court proportionate to the harm suffered, as well as to the re-establishment of the situation prior to discrimination, or the termination of the situation created by the discrimination, in accordance with the law;
- ▶ in accordance with **GO no. 137/2000** provisions, **discrimination against a natural person, a group of persons owing to their affiliation to a certain race, nationality, ethnic origin, religion, social category or to a deprived category, of such persons through the refusal to grant the public administrative and judicial services shall be a regarded as contravention, according to this normative act, unless the fact falls under the criminal law;**
- ▶ in Romania a special body dealing with the discrimination cases was created - the **National Council for Combating Discrimination** - an autonomous and independent body without restrictions or subject to the influence of other public institutions or authorities, whose purpose is to receive complaints and punish violations of anti-discrimination principles and provisions.