

PAY ATTENTION!
DISCRIMINATION IS NOT A JOKE

FIND OUT WHAT DISCRIMINATION IS!

Discrimination represents any distinction, exclusion, restriction or preference based on the following criteria:

- race,
- nationality,
- ethnic origin,
- language,
- religion,
- social category,
- beliefs,
- gender,
- sexual orientation,
- age,
- disability
- chronic non-infectious disease,
- HIV infection,
- being part of a disfavoured category,
- as well as any other criterion aiming to or resulting in impairing or nullifying the recognition, enjoyment or exercise, in conditions of equality, of human rights and fundamental freedoms or of rights granted by law in the political, economic, social, cultural or any other field of public life.

Discrimination presumes differentiation or different treatment of two persons or two situations for whom there is no relevant distinctions or it consists in the application of the same treatment for different situations.

WHICH ARE THE FORMS OF DISCRIMINATION?

DIRECT DISCRIMINATION emerges when one person is treated less favourable than another one which was, is or might be in a similar situation, based on any discrimination criterion foreseen by current legislation.

In practice, in order to identify direct discrimination, it is difficult to establish the similar situation. It is necessary to identify a person with a similar situation, comparable with the one assuming to be discriminated.

Example: the refusal to employ a person because he/she is aged or it's conditioned by a certain age required by the employer.

INDIRECT DISCRIMINATION emerges when a provision, criterion and practice apparently neutral place a person in a disadvantaged position, on the basis of any of the criteria provided under law, unless these provisions, criteria and practices are objectively justified by a legitimate aim and the means of achieving that aim are adequate and necessary. At the same time, indirect discrimination represents any active or passive behaviour that generates effects liable to favour or disadvantage in an unjustified manner or subjects to an unjust or degrading treatment a person, a group of persons or a community, in relation to other persons, groups of persons or communities.

Example 1: an announcement placed at the entrance of a discotheque: **“Access forbidden to all people who are wearing long coloured skirts and coins in their hair”**, with indirect reference to people of Roma background.

Example 2: the lack of involvement in a discrimination case of a person or institution, even if they had that quality/obligation, in order to prevent the discrimination act.

MULTIPLE DISCRIMINATION emerges when a person or a group of persons are treated differently, in a similar situation, based on two or more discrimination criteria.

Example: The refusal from a doctor to treat a person of Roma background and with a different sexual orientation.

HARRASSMENT is any behaviour aiming to create an intimidating, hostile, degrading or offending environment, based on race, nationality, ethnic origin, language, religion, social category, beliefs, gender, sexual orientation, age, disability, chronic non-infectious disease, HIV infection, being part of a disfavoured category, statute of refugee or asylum seeker or any other criterion.

Example: Employer is addressing offensive words to the opposite sex employee.

VICTIMIZATION is any adverse treatment, which came as a reaction to a complaint addressed to a competent institution or for filing a legal suit regarding an infringement of the principles of equal treatment and non-discrimination.

Example : The dismissal of an employee as a result of his complaint about the employer's discriminatory acts.

THE ORDER TO DISCRIMINATE is also considered to be a form of discrimination and it is seen as an order received by a person or a group of persons from another person or group of persons in order to discriminate.

Example: The owner of a discotheque orders its employees not to allow the access for people of Roma background.

TAKE ATTITUDE!

If you are dealing with a discriminative behaviour from a person or a group of persons, physical or juridical, if you have knowledge of an act of discrimination, that you or another person are facing, **notice us in writing**, come in person or send it by fax, e-mail or post! You should know that personal data are confidential. You can also notice the discrimination acts directly to the law courts.

Contact:

Address: 1-3 Valter Mărăcineanu Square , district 1, Bucharest

E-mail: cncd@cncd.org.ro , **website:** www.cncd.org.ro

Telephone/fax 312.65.78/79/85

The petition/complaint must contain the following compulsory data:

- **your last and first name** (of the person who notices us);
- **the address** you wish to receive our answer at, the address at which we can contact you for additional information in order to solve your case;
- **telephone number**, so we can contact you for additional information;
- **the content of your complaint**, where you will describe in detail the facts you consider to be discriminatory. You must write as detailed and present as many arguments as you can in favour of your case, in order to proof the discrimination act, the circumstances in where it took place, the present witnesses;
- **the identification data for the person you accuse of discrimination (address, telephone number etc)**, necessary for our colleges in order to contact him, with a view to his/her hearing by the NCCD's Steering Board or for additional investigation.

We will analyse your case and then we will give you an answer!

Following the receiving of your petition, it will be registered and forwarded to the Steering Board, in order to be solved. You can notice us within one year from the date the discrimination took place or the date you took cognizance of its commission. It is important to send us the petition as soon as the discrimination took place because the proofs and the evidences get lost as time passes on. You or the discriminated person may demand the annulment of the discrimination facts' consequences and the re-establishment of the situation that existed before the discrimination deed.. The term for solving your petition is of 90 days. The Steering Board will ascertain the existence of the discrimination deed by compulsory summoning of the parts, that is realized by any means that ensures the confirmation of receive. The absence of parts involved at the hearings does not affect the petition's solving. In order to take a proper decision, we can

perform additional investigation, or we can call the parts involved (you and the person you accuse of discrimination) at our headquarter for hearings .

You have the obligation to prove the existence of facts from which it may be presumed that there has been a discrimination and the person you accuse has to prove that these deeds do not constitute discrimination.

The solution (The Decision of the Steering Board) is transmitted in writing to you and the person you accuse of discrimination within 15 days from its adoption in the Steering Board meeting . In another 15 days' time from the receiving of the Steering Board Decision, the parts (you and the one you accuse) can dispute it in instance if they are not pleased with the solution of the case. The judicial stamp value is free for both parts.

With a view to combat all forms of discrimination, The National Council for Combating Discrimination performs tasks in the following domains :

- a) **prevention of discrimination deeds** through information and awareness campaigns regarding human rights, discrimination effects, the principle of equality, formation and informing courses, projects and programmes at local, regional and national level, studies realization, reports etc
- b) **the mediation of discrimination acts is the way to solve the discrimination deeds on friendly terms** of the parts implicated in the discrimination case, in the presence of the National Council for Combating Discrimination representatives. The National Council for Combating Discrimination aims to reduce and eliminate the discrimination acts and by no means to penalize.
- c) **the investigation, ascertainment and sanction of discrimination acts.** For the proper analyse of the cases and decision making about petitions received or internally generated complaints, the Steering Board has means at its disposal in order to investigate the cases, from which it establishes the existence of any discrimination act and penalizes it accordingly.
- d) **the monitoring of discrimination cases** as a result of the ascertainment of discrimination cases by NCCD, through subsequent supervision of the involved parts.

- e) **granting specialized assistance to the victims of discrimination.** The NCCD juridical advisers explain the legislation to those interested through assisted guidance regarding the activity of filing a petition and additional information that results from this.

Discrimination deeds are contraventional sanctioned!

With penalty from:

400 lei to 4 000 lei if the discrimination affects a person

600 lei to 8 000 lei if the discrimination affects a group of persons

DOCUMENTATION CENTRE:

In the framework of the PHARE Twinning Project entitled *Institutional building in the field of anti-discrimination*, implemented in partnership with Netherlands Ministry of Justice, a Documentation Centre of the National Council for Combating Discrimination has been founded. This can be accessed by the Council's employees and by the persons interested in the non-discrimination issue, at present being used only internally, by consulting the publications at the institutions headquarter. In the future, will be taken in consideration the setting up of a loaning service.

The data base contains at present 300 titles (in Romanian and other international languages) covering human rights and discrimination field: published works, booklets, periodical reports, documents regarding human rights, legislation, community acquis, minorities, policies etc. The data base is electronic and can be directly accessed on our website in order to search for the title/author/domain of the available documents.

The NCCD employees and the persons interested in the non-discrimination issues may consult the published works available in the data base of the Documentation Centre at the NCCD headquarter after they fill in a form.

The printed form is necessary for the conducting of studies, statistics and intern analyses by the Programmes and International Relations Directorate.

The printed form will contain following identification data:

- name and forename of the applicant person
- age
- profession
- occupation
- city/district/sector where the applicant person has the residence

- purpose of the consulting of materials

For the improvement of the activity of the Documentation Centre, at the time of returning of the demanded materials, the persons who have consulted the published works will have the possibility to express their point of view, their recommendations and suggestions relating to the studied materials, or materials that they would like to find in the future within the Centre.

The programm of the Documentation Centre is from Monday to Thursday 8:00 – 16:30 and Friday 8:00 – 14:00

NATIONAL COUNCIL FOR COMBATING DISCRIMINATION

The National Council for Combating Discrimination (NCCD) is the autonomous state authority, under parliamentary control, which performs its activity in the field of discrimination.

The National Council for Combating Discrimination was established pursuant to the adoption of Government Ordinance no. 137/2000 and Government Decision no. 1194/2001 on organization and function of NCCD. These legal acts represented the transposition of the community legislation in the field at national level. At European level there are institutions assigned to human rights protection and combating discrimination but NCCD is unique, its activity combining 14 discrimination criteria, no other institution having such a vast sphere of action, including sanctioning.

The National Council for Combating Discrimination started its activity in August 2002, once the Prime-Minister appointed the members of the Steering Board (based on the proposals from the Ministry of Public Information, Ministry of Labour and Social Solidarity, Ministry of Justice, Ministry of Health and Family, Ministry of Public Administration, Ministry of Education and Research and the Ministry of Internal Affairs) and then the President of The National Council for Combating Discrimination, among the members of the Steering Board. During its activity, NCCD had to face a lot of difficulties and limits of the legislative framework, problems that lead to the situation of an incomplete functionality of the institution and on the other hand some needs were identified that derived from vulnerable groups and from groups that faced with problems

related to discrimination. Taking all these into account, NCCD modified the legislation several times, according to the identified needs. Thus, the legal framework in the field of combating and preventing discrimination consisted of: *Ordinance no. 137 from August 31, 2000 on preventing and sanctioning of all forms of discrimination*, *Romanian Government Decision no. 1194 from November 27, 2001 regarding the organization and function of the National Council for Combating Discrimination*, *Law no. 48 from January 16, 2002 for the approval of the Ordinance no. 137 from August 31, 2000 on preventing and sanctioning of all forms of discrimination*, *Romanian Government Decision no. 1514 from December 18, 2002 for amending and supplementing the Government Decision no. 1194/2001 on organization and function of the National Council for Combating Discrimination*, *Ordinance no. 77 from August 28, 2003 for amending and supplementing the Ordinance no. 137 from August 31, 2000 on preventing and sanctioning of all forms of discrimination*, *Romanian Government Decision no. 1279 from October 4, 2003 for amending and supplementing the Government Decision 1194/2001 on organization and function of the National Council for Combating Discrimination*, *Law no. 27 from March 5, 2004 regarding the approval of the Ordinance no. 77 from August 28, 2003 for amending and supplementing the Ordinance no. 137 from August 31, 2000 on preventing and sanctioning of all forms of discrimination*, *Romanian Government Decision no. 1258 from August 13, 2004 regarding the approval of the National Plan of Action for the combating discrimination*.

Last modifications of the legal framework were accomplished by the Law no. 324 from July 14, 2006 for the amending and supplementing of the Government Ordinance no.137/2000 on preventing and sanctioning of all forms of discrimination and subsequently by the republished Government Ordinance no. 137/2000. The most important elements that suffered amendments were **the independence of the National Council for Combating Discrimination, the structure and its tasks**, through:

- reorganization of the National Council for Combating Discrimination and its definition as autonomous institution under parliamentary control, guarantor of public interest and of persons in the field of non-discrimination principle observance;
- changing the structure of the Steering Board, by increasing their number from 7 to 9 and introducing a new procedure of appointment, by the two Chambers of Parliament, modifying of the conditions of appointment, dismissal and revoking, the election of a Vice-president among the Steering Board members;
- precise definition of the status and competencies of the Steering Board members;

- establishing regional bureaus of the Council and supplementing the number of employees, in order to enhance efficiency of its activity at national and local level;
- completing the legal proceeding applied by the Council with the provisions of the rules of civil proceedings, as well as the introduction of a special resolution term of petitions in the case of the procedures applied by the institution, introduction of the legal term in which a complaint can be filed at the Council, specification of the elements from the Steering Board's Decisions and the adoption terms, time period of communication to the parts;
- insertion of the mediation term, in the exercise of the Councils duties, filling in some regulation lacks existing in the legislation in force
- introducing important elements such as multiple discrimination, victimization, harassment, order to discriminate, aggravating circumstances, and, especially, the procedure of burden of proof in the cases of discrimination;
- the situation of access to law courts is at the same time clarified, no matter if there is filed or not a complaint in front of the Council;
- also, the discrimination criteria area extends, aiming to prevent the apparition of some cases in practice uncovered from the point of view of regulation;
- the increase of minimum and maximum quantum of fines for the commitment of discrimination acts;
- supplementing with missing community legal provisions in the field that were requested through country reports, respective the institution's independence, burden of proof reversal, strengthening institutional capacity and the acknowledgement of free access to justice.

CASE LAW OF THE NATIONAL COUNCIL FOR COMBATING DISCRIMINATION

Age criteria

Mrs. D.N noticed the National Council For Combating Discrimination regarding the fact that being 53 years old and having 20 years in the law field, she applied for a judge position, without competitive examination, at the headquarter of the Superior Council of Magistracy (SCM), in line with the regulations of the magistrate status (Law 303/2004) which provides (art.33 paragraph 7) that "lawyers with at least 10 years of

service can be appointed, without competition, at the trial courts or prosecution departments attached to these”. Afterwards, the Decision no.665/2006 was posted on the SCM site, where there is stated a reason for the refusal of the complainant’s request, referring to the art. 41 of the 19/2000 Law regarding the Public Employee Retirement Systems and other Social Insurance Rights and namely because Mrs. P.N. has 6 years and 9 months until the retirement age.

For this purpose, Mrs. P.N claims to be discriminated based on the age criteria.

The National Council For Combating Discrimination conducted investigations, requested additional information and a point of view from the Superior Council of Magistracy. SCM justifies that Mrs.’s P.N. request was declined based on the clauses from the art. 33 Law 303/2004 regarding the magistrates’ status and makes reference to the art. 41 Law no. 19/2000.

Analyzing all these elements as well as the file existing evidences, the Steering Board of NCCD ascertained the discrimination deed, by applying a different, discriminatory treatment, according to the provisions of the art. 2 paragraph 1, art. 6 letter a) from the G.O. no. 137/2000 on preventing and sanctioning the discrimination deeds.

At the same time, NCCD suggested SCM, on the ground of art. 19 from G.O. no. 137/2000, to change the Decision 665/2006, in order to remove the discriminatory treatment applied to Mrs. P.N. toward the other candidates appointed in a judge position.

Sex criterion

The National Agency for Equal Opportunities between Women and Men noticed the National Council for Combating Discrimination regarding the fact that on Sfinții Voievozi street, district 1, Bucharest, at the Grivița Public Bath, found under the administration of the Bucharest City Hall, through the General Council of Bucharest Municipality – Department of Lakes, Parks and Recreation Administration is located a panel with the programme of the institution. It results from the programme that men have access 5 days a week (Monday, Tuesday, Wednesday, Friday and Saturday) and women just one (Thursday). National Agency for Equal Opportunities between Women and Men considers that this represents a discriminatory treatment, motivating its position

on the provisions of Law no. 202/2002 on equal opportunities between women and men, republished, with the subsequent amendments and supplements.

During the hearings held at the NCCD headquarter, The National Agency for Equal Opportunities between Women and Men claimed that this represents a discrimination deed, because the repartition of the days for the access at the public bath, depending on sex, is unequal. The General Council Of Bucharest Municipality - Department of Lakes, Parks and Recreation Administration, after changing the access programme for women (Tuesday and Thursday), allowing them two days a week access, sustained the contrary, justifying that choosing the access programme was based on the annual statistics results, according to which most of the users of the public bath were men. The case was finally solved through mediation.

Sexual Orientation Criterion

The National Council for Combating Discrimination analysed the petition that had as object the treatment applied to B. R employed at G.Z.O. from 25.03.1997 by A. V., the manager of G. Z. O and M. I., Chief Personnel Officer at G.Z.O, different treatment that has at its origins his sexual orientation.

According to the petition, M.I. asked B. R. to resign because he is homosexual.

Later on, A.V. and M.I. began procedures against B.R., regarding the work discipline referring to the incidents that took place in the past. Attempts of solving the conflict amiably were denied. When B.R. asked for the assistance of an attorney in connection with the possible work conflict, he was penalized with a warning for a work incident that took place at 08.04.2006 and implied his responsibility too. After this event, B.R. was dismissed from his position for disciplinary reasons, even though in that event he was penalized for, there were other colleagues that received no penalization.

Taking into consideration the legal provisions in force as well as the circumstances in which these facts took place, the statements of A.V. and M.I. as well as the victimization of B.R. after his petition was sent to NCCD, victimization that consisted in B.R.'s transfer from his work place, facts that had at origins his sexual orientation, after investigating the complainant's notice and incident dispositions, NCCD ascertained that facts constitute discrimination, deciding:

1. The presented fact is a discrimination deed, according to the art. 2 paragraph (1) from the G.O. no. 137/2000 on preventing and sanctioning of all forms

of discrimination, republished, and the solution being transmitted to the parties;

2. Penalization of Mr. M.I. with a fine of 400 lei for committing discrimination according to art. 2 paragraph 1 and art 15 from G. O. no. 137/2000 on preventing and sanctioning of all forms of discrimination, republished;
3. Sanctioning of Mr. A.V. with a fine of 1000 RON for committing discrimination deeds according to art.2 paragraph 1 and art 15 from G. O. no. 137/2000 on sanctioning and preventing of all forms of discrimination, republished;
4. Penalization of Market, Recreation and Salubrity Autonomous State-owned Company with a contraventional warning for committing discrimination facts according to art. 2 paragraph 5 and art. 15 from G.O. no. 137/2000 on sanctioning and preventing of all forms of discrimination, republished, the solution being transmitted to the parties.

Ethnic Criterion

The National Council for Combating Discrimination analysed the complaint regarding the refusal of W. N. Club representative from Bucharest to hire Mr. G. as guard agent justifying that he spoils the club's image, being of Roma ethnicity. This fact led to an prejudice image for Mr. G.O.

The complainant, Mr. G.O., is employee of the SC S. G. P. SRL security company in his status as guard agent. On 14.09.2006, he was sent from the company to work at W. N. Club from Bucharest to carry out guard and protection services, according to the services contract no. 90/04.08.2006, concluded between SC S.G.P. SRL and SC G.E. SRL. On 20.09.2009, the complainant was invited at the company headquarter where he is employed because the beneficiary asked to be relocated from his position, the reason invoked by the beneficiary, Mrs. D. M., being that the complainant is too „dark-haired” and he „spoils the company's image”.

During a discussion held with the investigation team of the National Council for Combating Discrimination, Ms. M. admitted that the reason she didn't want Mr. G. for the job anymore is that he is a person of the Roma ethnicity and he spoils the image of

the club. Mrs. M. also stated that she doesn't want to see in her company any „coloured, blackish, gipsy” because they bring troubles.

The Steering Board of the National Council for Combating Discrimination analyzed the case from the point of view of definition of the discrimination as well as the meaning established by the legislator related to the order to discriminate, according to art. 2 paragraph 2 from G.O. no.137/2000 on preventing and sanctioning of all forms of discrimination, republished.

The Steering Board ascertained that Mrs.'s M. preference, based on the fact that she considered the complainant to be a person of the Roma ethnicity, had as effect the restriction of the complainant's right to dignity.

Analyzing all these facts as well as the existing evidences, the Steering Board of the National Council for Combating Discrimination established that all facts prove the existence of discrimination, according to art. 2 paragraph 1, 2, 4 and art 15 from G.O. no. 137/2000 on preventing and sanctioning of all forms of discrimination, republished and decided to sanction SC G.E. SRL with 1.500 lei the solution being transmitted to the parties.

Disability criterion

National Council for Combating Discrimination analysed the complaint regarding a taxi driver from S.T. company refusal to drive Mrs. P.E. on 12 April 2006, from a dental clinic situated in Moșilor Quarter. The refusal of the taxi driver, Mr. B. M. V., was based on the locomotor disability the petitioner suffered from. (she is immobilized in a wheelchair).

When he saw the petitioner's physical condition, Mr. B. M. V. said he couldn't take her because he couldn't open the trunk, in order to put it in the wheelchair.

Regarding the noticed aspects, points of view from the witnesses of the event (employees of the dental clinic) and from the taxi driver as well were requested.

Both the assistant of the dental clinic, Mrs. P. C. and the director of the clinic R. D., dr. R. A. V., confirmed the things reported by the petitioner. The defendant, Mr. B. M. V., during the audiences at the National Council for Combating Discrimination headquarter stated that his attitude was determined by the fact that, because of the rain, the wheelchair of the complainant was dirty and because of this his bench got dirty. He doesn't admit the discriminatory attitude he is accused of.

Taking into consideration the reasons presented, the Steering Board, on the ground of art. 20 from G.O. no.137/2000 on preventing and sanctioning of all forms of discrimination, republished, by unanimous vote of the present members, decided that the noticed aspects represent an act of discrimination according to art. 15 from G.O. no.137/2000 on preventing and sanctioning of all forms of discrimination, republished, and applies the contraventional sanction of a “warning” to Mr. B.M.V., the solution being transmitted to the parties.

Religion Criterion

Mrs. V.M., judge at Vâlcea Trial Court, noticed the National Council for Combating Discrimination regarding the organization of the examination for the promotion of judges and prosecutors on executive positions on a day of Saturday at Trial Courts and Court of Appeal, during 12-21 November 2005 and asked a reschedule of the written test of the exam organized by the Superior Council of Magistracy on a day other than Saturday allowing so participation at the contest for the Romanian members of the Seventh-day Adventist Church, the religious cult of the petitioner.

The Superior Council of Magistracy answered the request of the Steering Board of the National Council for Combating Discrimination showing that they declined the petitioner’s request because changing the date of the written exam would have led to the postponing of the contest with almost 60 days, taking into consideration that, according to the law, this time period would have been necessary to bring the conditions and the way of organizing the contest to all the interested persons’ knowledge. Also, The Superior Council of Magistracy specifies that Mrs. V.M. was the only person who requested rescheduling of the written contest, fact that would led to the identification of her paper work, creating in this way suspicions about its evaluation.

At the same time, S.C.M. considers public interest to be above personal interest of individuals and, under the circumstances the all other candidates approved to sustain the contest on a non-working day so they won’t disturb the activity of the Court. Thus, it can not be considered as a situation of discrimination or a disadvantage addressed to the petitioner as she asserted by arguing that the former Superior Council of Magistracy, now The High Court of Cassation and Justice recognized the right to respect the Sabbath for the members of this cult and, correlatively, the duty of the Ministry of Education to organize another session in any other day excepting Saturday.

Analyzing the things written above, the Steering Board of the National Council for Combating Discrimination decided that the facts represent a discriminatory treatment from the view of equality and non-discrimination principle and in accordance with art. 2 paragraph (1) from G.O.137/2000 republished – regarding prevention and sanction of all forms of discrimination, and recommended to the Superior Council of Magistracy to organize the exams and the professional promotion by taking into consideration the observance of the right to freedom of thought, conscience and religion.

ORDINANCE No 137/2000
ON PREVENTION AND SANCTIONING OF ALL FORMS OF
DISCRIMINATION
- republished-

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 privileges 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;
 - (x) the right to file a petition.
- e) economic, social and cultural rights, in particular:
 - i) the right to work, to freely choose an 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) The exercise of the rights provided by present article regards the persons found in comparable situations.

(4) Any natural and legal entity shall be under the obligation to comply with the principles provided under paragraph (2).

Art. 2. - (1) In accordance with the ordinance herein, discrimination encompasses any difference, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social category, beliefs, sex or sexual orientation, age, handicap, non contagious chronic disease, HIV infection, belonging to a disfavoured category, as well as any other criterion aiming to or resulting in impairing or nullifying the recognition, enjoyment or exercise, in conditions of equality, of human rights and fundamental freedoms or of rights granted by law in the political, economic, social, cultural or any other field of public life.

(2) The order to discriminate a person on any ground provided by paragraph (1) is considered to be discrimination in accordance with the ordinance herein.

(3) In accordance with the ordinance herein, the provisions, criteria and practices apparently neutral that disadvantages certain persons toward other persons, on the ground of criteria provided under paragraph (1) are considered to be discriminatory, excepting the case when these provisions, criteria and practices are objectively justified by a legitimate aim and the ways of reaching that aim are adequately and necessary.

(4) 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.

(5) Any behaviour that on the ground of race, nationality, ethnicity, language, religion, social category, beliefs, sex or sexual orientation, belonging to a disfavoured category, age, handicap, refugee or asylum seeker status any other criterion aiming to create a humiliating, hostile, degrading or offending atmosphere constitute harassment and it's contraventionally sanctioned.

(6) Any difference, exclusion, restriction or preference based on two or more criteria provided under the paragraph (1) constitutes aggravating circumstance to the establishment of the contraventional liability unless one or more of its components does not fall under the incidence of criminal law.

(7) In accordance with the ordinance herein, any adverse treatment as a reaction to a petition or an action in court regarding the infringement of non-discrimination and equal treatment principle constitutes harassment and it's contraventionally sanctioned.

(8) The provisions of the present ordinance can not be interpreted as a restraint of the right to freedom of expression and opinion and the right to information.

(9) 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.

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

a) prevention of any discrimination deeds, by the establishment of special measures, including positive measures, aiming to protect disfavoured persons when they do not enjoy equal opportunities;

b) mediation, by solving on amiable terms the conflicts resulting from the commitment of a discrimination act/deed;

c) sanction of the discriminatory behaviour provided under paragraphs (1)-(7).

(11) The discriminatory behaviour provided under the paragraphs (1)-(7) shall trigger contraventional, civil or penal liability according to the law in force.

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, formation and improvement;

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;
- g) any other domains of the social life.

Art. 4. - In the sense of the ordinance herein, “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 is facing rejection and marginalization.

CHAPTER II

Special Provisions

Section I

Equality in the economic activity, in terms of employment and profession

Art. 5. - In accordance with the ordinance herein, conditioning the participation of a person in an economic activity or his free choice and exercise of a profession on his belonging to a race, nationality, ethnicity, religion, social category, on his beliefs, sex or sexual orientation, age or his belonging to a disfavoured category shall constitute contravention.

Art. 6. – In accordance with the ordinance herein, discrimination of a person on account of race, nationality, ethnicity, religion, social or disfavoured category respectively on account of beliefs, sex or sexual orientation of that person in a labour and social protection relation, except for the cases provided by law, with respect to:

- a) the conclusion, suspension, modification or cease 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, improvement, 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, ethnicity, religion, social or disfavoured category, beliefs, sex or sexual orientation shall constitute contravention, excepting for the cases provided by law.

(2) In accordance with the ordinance herein, conditioning the filling in of a position in any job advertisement or contest by the employer or employer's representative, on account of the applicant's race, nationality, ethnicity, religion, social or disfavoured age, sex or sexual orientation or beliefs, shall constitute contravention, except for the situation provided under Art. 2 paragraph (9).

(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, ethnicity 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 granted on account of the employees' belonging to a race, nationality, ethnic group, religion, social or disfavoured category, age, sex or sexual orientation or beliefs shall constitute contravention.

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 and the measures are objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

Section II

Access to legal, administrative and health public services, to other services, goods and facilities

Art. 10. - In accordance with the ordinance herein, discrimination of a natural person, a group of persons or a legal entity, on account of their belonging or the belonging of their management to a race, nationality, ethnic group, religion, social or disfavoured category, on account of their beliefs, sex or sexual orientation, shall constitute contravention, if the deed does not fall under the incidence of criminal law, by means of:

- a) refusal to grant administrative and juridical public services;

b) denying the access of a person or group of persons to health public services – choice of a family doctor, medical assistance, health insurance, first aid or other health services;

c) refusal to sell or rent a plot of land or building for housing purposes, excepting the situation when this restraint is objectively justified by a legitimate aim and the ways of reaching it are adequately and necessary;

d) refusal to grant a bank credit or to conclude any kind of contract excepting the situation when this restraint is objectively justified by a legitimate aim and the ways of reaching it are adequately and necessary;

e) denying the access of a person or group of persons to the services provided by theatres, cinemas, libraries, museums and exhibitions, excepting the situation when this restraint is objectively justified by a legitimate aim and the ways of reaching it are adequately and necessary;

f) denying the access of a person or group of persons to the services provided by shops, hotels, restaurants, bars, discotheques or any other service providers, whether they are in public or private property, excepting the situation when this restraint is objectively justified by a legitimate aim and the ways of reaching it are adequately and necessary;

g) denying the access of a person or group of persons to the services provided by public transportation companies – by plane, ship, train, subway, bus, trolley-bus, tram car, taxi or by any other means of transport- excepting the situation when this restraint is objectively justified by a legitimate aim and the ways of reaching it are adequately and necessary;

h) the refusal to grant a person or group of persons certain rights or facilities.

Section III

Access to education

Art. 11. - (1) In accordance with the ordinance herein, denying the access of a person or a group of persons to the public or private education system of any kind, degree or level, on account of their belonging to a race, nationality, ethnic group, religion, social category or to a disfavoured category, on account of their beliefs, age, sex or sexual orientation, shall constitute contravention.

(2) The provisions of the above paragraph 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) In accordance with the ordinance herein, requiring a declaration to prove a person's or a group's belonging to an ethnic group as a condition for access to education in their mother tongue shall constitute contravention. The exception to the rule is the situation of the candidates applying in the secondary and higher education system for places allotted specifically to a certain minority, in which case they must prove their belonging to that minority by means of a document issued by a legally established organization 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 belonging to a race, nationality, ethnic group, religion, social category or to a disfavoured 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 a religious education institutions that train worship personnel to deny the application of a person whose religious status does not meet the requirements established for access to the respective institution.

(6) In accordance with the ordinance herein, any restrictions occurring during establishment or licensing of education institutions set up in accordance with the legal framework in force, based on race, nationality, ethnicity, religion, social category or to a disfavoured category shall constitute contravention.

Section IV

Freedom of movement, choice of residence and access to public places

Art. 12. - (1) In accordance with the ordinance herein any threats, constraints, use of force or any other means of assimilation, colonization 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 contravention.

(2) In accordance with the ordinance herein, any behaviour consisting in forcing a person or a group of persons belonging to a race, nationality, ethnic group or religion, or

a community to unwillingly leave their residence, deportation or lowering their living standards with a view to determine them to leave their traditional residence shall constitute contravention. Forcing a group of persons belonging to a national minority to leave the locality, area or regions where they live as well as 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. 13. - (1) Any behaviour aiming to determine a persons or a group of persons to move or chase away from a building or neighbourhood on account of their belonging 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 contravention.

(2) The provision of the above paragraph 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, and the measure is not determined by the person's or group's belonging to a race, nationality, ethnic group, religion, social category or to a disfavoured category, by their beliefs, sex or sexual orientation.

Art. 14. - In accordance with the ordinance herein, denying the access of a person or of a group of persons to public places on account of their belonging to a race, nationality, ethnic group, religion, social category or to a disfavoured category, to their beliefs, sex or sexual orientation shall constitute contravention.

Section V

The right to personal dignity

Art. 15. - Under the ordinance herein, 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 belonging to a disfavoured category, on account of beliefs, sex or sexual orientation shall constitute contravention, unless the deed falls under the incidence of criminal law.

Section VI

National Council For Combating Discrimination

Art. 16. - The National Council for Combating Discrimination, hereinafter referred to as “the Council”, is the public authority of the state that rules in matters of discrimination, is autonomous, has legal entity status, under Parliamentary control and at the same time it is the guarantor of enforcement and substantiating the observance of the principle of non-discrimination, in accordance with the national legislation in force and with international covenants to which Romania is a party.

Art. 17. – The National Council for Combating Discrimination performs its duties independently, without any restraint or influence from other public institutions or authorities..

Art. 18. - (1) The Council is responsible for applying and respecting the provisions of the present law in its field of activity, as well as the harmonization of provisions from normative and administrative acts which are infringing the principle of non-discrimination.

(2) The Council is responsible for preparing and enforcing public policies in matters of non-discrimination. For that purpose, the Council will hold advisory meetings with the public authorities, NGOs, trades union and other legal entities whose purpose is to protect human rights and which have a legitimate interest to combat discrimination.

Art. 19. - (1) As regards the combating of discrimination deeds, the National Council for Combating Discrimination is exercising its duties in the following fields:

- a) prevention of all forms of discrimination;
- b) mediation of discrimination deeds;
- c) investigation, ascertaining and sanctioning of discrimination deeds;
- d) monitoring the discriminatory cases;
- e) providing specialized assistance to victims of discrimination.

(2) The National Council for Combating Discrimination exercises its legal authority based on petitions and complaints from natural or legal person or takes action *ex officio*.

Art. 20. - (1) The person, who under the terms of this law consider himself/herself discriminated, may file a complaint at the National Council for Combating Discrimination not later than one year from the commitment of such act or from the data on which the victim takes cognizance of its commission.

(2) The National Council for Combating Discrimination is solving the petition through the Steering Board Decision provided by the article 23, paragraph 1.

(3) By the complaint introduced under the circumstances of paragraph (1), the discriminated persons have the right to claim damages prorated against the harm they suffered and to terminate the situation created by discrimination .

(4) The Steering Board of the National Council for Combating Discrimination adopts proper measures concerning the existence of discrimination, with the obligatory summons of the parts. The summons could be done through any means which ensures the acknowledgement. The absence of the parts involved does not affect the petition's solving.

(5) The investigation made by the Steering Board takes place at the institution's headquarters or in any other place settled by the institution.

(6) The interested person has the obligation to prove the existence of facts from which it may be presumed that there has been direct or indirect discrimination and it shall be for the respondent to prove that the facts does not constitute discrimination. In front of the Steering Board any proof can be pleaded, inclusively the video and audio evidence or statistical data.

(7) The Steering Board's decision regarding the solving of a petition is adopted within 90 days from noticing the petition and must include the following: the full names of the members of the Steering Board who adopted that particular decision, parties names, residence or domicile, object of the complaint and arguments of the parties, description of the discrimination deed, references to the piece of legislation whereby the contravention is ascertained and punished which represent the basis of the Steering Board Decision, methods of payment of the fine, if any, the way to appeal and the deadline in which the appeal can be filed.

(8) The decision shall be transmitted to parties within 15 days from its adoption and will become effective on the day of communication.

(9) The Decision of the Steering Board may be appealed at the Administrative Courts, under law.

(10) The decisions adopted according to provisions of paragraph (2) and which are not appealed within 15 days represent writ of execution.

Art. 21. - The provisions are enforced adequately in any case in which NCCD is investigating deeds or acts of discrimination *ex officio*.

Art. 22. - (1) NCCD is headed by a president having the rank of Secretary of State, elected by members of the Steering Board, for a five-year mandate. The President is the

main chief accountant. In his/her activity the President is helped by a vice-president, elected by the Steering Board for a mandate of two years and a half.

(2) The activity of the NCCD is analyzed by the Parliament, by debating the annual report. The annual activity report of NCCD is debated and adopted by the Parliament. The annual activity report shall be submitted to Standing Bureaus of the Chamber of Deputies and Senate, by April the 15th of the next year.

Art. 23. - (1) The Steering Board of the NCCD is a collective and deliberative body that takes responsibility for the tasks provided by law.

(2) The Steering Board is formed of 9 members having the rank of secretary of state, appointed in the plenary session by the two Chambers of the Parliament.

(3) Any Romanian citizen who complies with all conditions bellow cumulatively could be appointed as a member of the Steering Board:

- a) has full capacity to exercise rights;
- b) has higher education degree with diploma;
- c) has no criminal record and a good reputation;
- d) his/her background in protection of human rights and combating discrimination activities is recognized;
- e) has not been involved in “political police” activities ;
- f) did not collaborate with Communist regime intelligence service.

(4) When members are appointed to the Steering Board, shall be taken into consideration the fact that at least 6 of them should have a law degree.

(5) Members of the Steering Board may be dismissed only in the following circumstances:

- a) resignation;
- b) end of the mandate;
- c) unable to work ,according to law;
- d) if they ever been convicted for a deed provided by criminal law;
- e) if they don't fulfil the conditions provided by the paragraph (3);
- f) on the based proposal of at least two thirds of the Steering Board members;

(6) In the event that a criminal action starts against a member of the Steering Board, such member shall be suspended as of right until the time when the judgment becomes final. If the court decision found that member not guilty, his/her suspension shall be terminated and all of the rights that the member had before being suspended shall be

restored to him or her and the remuneration due yet unpaid during the suspension time shall be paid to such member.

(7) In the circumstances described under the paragraph (5), subparagraph (d), the membership of the Steering Board shall cease as of right upon the date when the conviction judgment becomes final.

Art. 24. - (1) Nominees to assign members into the Steering Board shall be filed at the Standing Bureaus of Chambers of Deputies and Senate, within 30 days of the date when the mandates become vacant. The nominees shall have attached: curriculum vitae, criminal record, and statements of the candidates from which results that they don't fall under the provisions of the art.19⁸, paragraph (3), subparagraphs (e) and (f).

(2) The Standing Bureaus of the two Chambers of the Parliament shall publish the list of candidates on their websites and submit their nominees to the standing specialty committees so that candidates can be interviewed in a joint session. Within 15 days of the date when the list of candidates is published, well-substantiated objections against candidates can be filed in writing.

(3) Once candidates have been interviewed, the standing specialty committees shall prepare a joint report that will be read in a joint session of the Chamber of Deputies and the Senate.

(4) Candidates can be approved by the majority of present deputies and senators

Art. 25. - (1) Members of the Steering Board are guarantors of the public interest.

(2) The mandate of the Steering Board members is five years and their assignment is done on phased basis, as soon as one mandate expires.

(3) In the event that a position in the Steering Board becomes vacant before the mandate expires, that particular vacancy shall be filled by a person who will be appointed according to the provisions of the present ordinance, for the remaining period of the mandate.

(4) The Steering Board members' activity during mandate's duration is considered length of service in the field.

(5) When solving discrimination cases, members of the Steering Board act as an ascertained agent who applies the sanctions regarding the contraventions settled by the present ordinance. They can delegate their statute as an ascertained agent to other members of the Council staff.

(6) At the President request, members of the Steering Board, holding a law degree, can act for the Council in the law courts as discrimination acts are concerned.

CHAPTER III

Sanctions

Art. 26. - (1) The contraventions provided under articles 2 paragraph (5) and (7), 5-8, 10, 11 paragraphs (1), (3) and (6), 12, 13 paragraph (1), 14 and 15 of the ordinance herein shall be sanctioned with a 400 to 4000 RON fine if perpetrated against a natural entity or with a 600 to 8000 RON fine if perpetrated against a group of persons or a community.

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

(3) At the request of the ascertained agents, legal representatives of the public authorities and institutions and economic agents, as well as the natural persons have, under the law terms, the following duties:

- a) provide any document that could help agents clarify the issue under inspection;
- b) provide information and explanations verbally and in writing ,as the case may be, about issues under inspection;
- c) provide copies of the requested documents;
- d) provide support and conditions so that the inspection proceeds smoothly and help so that all findings can be clarified.

(4) Failure to comply with the obligations provided under paragraph (3) constitutes a contravention and offenders shall be subject to a contravention fine ranging between 200 RON and 1000 RON.

Art. 27. - (1) 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. The claim for damages shall be exempted from judicial taxes and is not conditioned by Council's observation.

(2) The period for submitting the damage claim is 3 years from the commission of the act of discrimination or from the data on which the victim takes cognizance of its commission.

(3) The judgment of the case takes place with the compulsory summon of the Council.

(4) The interested person has the obligation to prove the existence of facts from which it may be presumed that there has been direct or indirect discrimination and it shall be for the respondent to prove that the facts does not constitute discrimination. In

front of the Court of Law any proof can be pleaded, inclusively the video and audio evidence or statistical data.

(5) Upon request, the court can order that the competent authorities withdraw the license 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.

(6) The decision of the Court shall be transmitted to the Council.

Art. 28. - (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. 29. - (1) The organizational structure as well as other functional tasks of the Council and the Steering Board shall be established by the order of the President.

(2) In order to exercise its tasks, the Council shall create territorial inspection and monitoring structures.

Art. 30. - (1) The Council's budget is covered from the state budget. The draft budget is drawn up by the Council with Public Finance Ministry approval.

(2) The salaries of civil servants and personnel hired under a contract are paid accordingly to the others autonomous public authorities under the Parliament control, according to annex I of the Government Ordinance no. 2/2006 regarding the settlement of salary rights and other rights of the public servants for the 2006, respectively to the annex no. I of the Government Ordinance no. 24/2004 regarding the system of basic salaries for the personnel from the budgetary sector, with the subsequent amendments and supplementary provisions..

(3) For preserving confidentiality in relation to facts, data or documents that they are aware of in the exercise of their functions, the staff of the Council shall receive

confidentiality allowance of up to 15% of their salaries. The category of personnel benefiting from this allowance shall be established by order of the President.

Art. 31. - The present ordinance comes into force within 60 days from the date of its publication in the Official Journal of Romania, Part I.

Art. 32. - At the date when the present ordinance is coming into force any other contrary provisions are abrogated.

„NOTE:

We are further reproducing the provisions of the art. II and III, as well as the mention regarding the transpose of the community laws into the domestic rule by Law no. 324/2006 regarding the amending and supplementing of the G.O. no. 137/ 2000 on preventing and sanctioning all forms of discrimination, published in the Official Journal of Romania, Part I, no. 626 of 20 July 2006:

Art. II. – The Steering Board shall be completed according to the procedure stipulated in the present law. The President of the Council shall stay in position until his/her mandate is over.

Art. III – (1) Within 60 days from the date the present law comes into force, the Council shall draw up *The internal procedure for solving petitions and complaints.*

(2) Within 3 months from the date the present law comes into force, the Council will draw up *The National Strategy for implementation of the measures for preventing and combating discrimination.*

(3) The documents provided by the paragraph (1) and (2) shall be adopted by the Steering Board, approved by the order of the President and published in the Official Journal of Romania, Part I.

“The present law transposes the provisions of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, published in the Official Journal of European Communities (JOCE) no. L180 of 19 July 2000, as well as the provisions of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, published in the Official Journal of European Communities (JOCE) no. L303 of 2 December 2000.”

Material prepared by Andreea Banu

Translation by: Denisa Tudor, Laura Niculescu

Translation coordination: Adrian Bunoaica