
EQUALITY NATIONAL BODY – ROMANIA CASE

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Abstract: For a better application of principle of equal treatment between women and men in the Member States was deemed necessary introduction of national body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination. EU directives only set guidelines and the member states should establish specific responsibilities of national bodies. Article 20 of Directive 2006/54/EC states that Member States shall designate a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex. These bodies may form part of agencies with responsibility at national level for the defence of human rights or the safeguard of individuals' rights.

Keywords: discrimination; equality body; National Council for Combating Discrimination.

EU regulation

Article 20 of Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) states that Member States shall designate a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex. The competences of these bodies shall include:

- (a) providing independent assistance to victims of discrimination in pursuing their complaints about discrimination;
- (b) conducting independent surveys concerning discrimination;
- (c) publishing independent reports and making recommendations on any issue relating to such discrimination;
- (d) at the appropriate level exchanging available information with corresponding European bodies such as any future European Institute for Gender Equality.

The Directive allow that these bodies to form part of agencies with responsibility at national level for the defence of human rights or the safeguard of individuals' rights.

In Romania the national equality body is National Council for Combating Discrimination.

Legal basis

The Council was established by Government Ordinance no. 137 from 31st of August 2000 concerning the prevention and sanction of all forms of discrimination approved through the Law no. 48/2002. Council organization was established by Government Decision no. 1194/2001 on the organization and functioning of the National Council for Combating Discrimination, with further amendments and supplements.

Legal status

Government Ordinance no. 137/2000 provided that the National Council for Combating Discrimination is a specialized body of the central public administration, subordinated to the Government. This status was included in Government Decision no. 1194/2001 on the organization and functioning of the National Council for Combating Discrimination. According to this was specialized body of central public administration subordinated directly to the Government, being organized separately from ministries.

In order to transpose the EU *acquis* and remove critics of international institutions the legal status of the National Council for Combating Discrimination was amended. The Law no. 324/2006 provides that the National Council for Combating Discrimination is the national authority that investigates and sanctions any discrimination acts, autonomous, with legal personality, under parliamentary control. According to Communication from the Commission on Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania the law on preventing and sanctioning all forms of discrimination, amended meet EU standards related to the independence of the National Council for Combating Discrimination¹.

Role

The Council's purpose is to promote the principle of equality between all citizens. The Council is also responsible for the implementation of Government policy in the field of non-discrimination. In the exercise of its functions, the Council carries out its activities independently, without any restriction or influence from other public institutions or authorities.

In e Decision of the Constitutional Court of Romania no. 1.096 of October 15th 2008², the Court state that, among others, that the National Council for Combating Discrimination is an administrative body with jurisdictional attributions, which enjoys the independence necessary for the fulfilment of administrative-jurisdictional act and meets the constitutional disposals. The Council exercises its prerogatives independently, free of any influence of any institution or public authority, with the fulfilment of the disposals of art.1 (4) of the fundamental Law, this consecrates the principle of separation and balance of powers within the constitutional democracy.

The Council is responsible for the application of the Government's policy in the field of anti-discrimination. By law, the Council also monitors the application of equal treatment regarding non-nationals. The Council guarantee compliance and enforcement of non-discrimination principle and aims to implement the principle of equality and to prevent and to combat, acts of discrimination.

Mandate

According to a European Commission study on Equality Bodies there are two categories of equality bodies: predominantly tribunal-type equality bodies and predominantly promotion-type equality bodies. The Romanian National Council for Combating Discrimination can be classified as predominantly tribunal-type.

¹ Communication from the Commission, Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, Brussels, 26/09/2006, COM (2006) 2.1 Political criteria, Protection and integration of minorities; p. 40

² Decision of the Constitutional Court of Romania no. 1.096 of October 15th 2008, published in the Official Gazette no. 795 of November 27th 2008

The set-up of bodies for the promotion of equal treatment of all persons without discrimination on the grounds of sex, race and ethnic origin have change since 2000.

Romania is one of three EU member states (along with Ireland and Sweden) that have not changed the institutional set-up for bodies for the promotion of equal treatment since the adoption of the EC directives in 2000.

In order to combat the discrimination deeds, the National Council for Combating Discrimination carries on its duties in the following fields: prevention of the discriminations deeds, mediation of discrimination deeds, investigation, ascertaining and sanction of discrimination deeds, monitoring of cases of non-discrimination, providing specialty assistance for the victims of discrimination.

Prevention of the discriminations deeds

In Examples of good practices of European Commission against Racism and Intolerance ³

- improving the legislative framework relevant to discrimination by drafting and promoting internal laws based on European standards, as well as harmonising existing laws with the above-mentioned standards;
- drafting and signing protocols on mutual assistance and co-operation with the public authorities, to ensure the prevention, sanctioning and elimination of all forms of discrimination;
- creating and developing partnerships with Romanian civil society representatives with a view to preventing discrimination;
- constantly informing citizens on the activities of the Council, on the possible changes to the legal framework in the field of discrimination and on European expertise in this matter;
- Creating national field offices for combating discrimination.

Mediation of discrimination deeds

Mediation is achieved through presence of representatives of the National Council for Combating Discrimination. National Council for Combating Discrimination aims to reduce and eliminate discrimination acts and not to punish.

According to Council's activity reports in 2003 8 cases of 473 were resolved through mediation. In 2005 the number of cases handled in 2005 was 360 and in 22 cases were solved through mediation. In 2010 only one case was resolved through mediation, the parties before the National Council for Combating Discrimination have reached an agreement.

Investigation, ascertaining and sanction of discrimination deeds

The National Council for Combating Discrimination receives and reviews the petitions and complaints regarding violations of the legal provisions concerning the principle of equality and non-discrimination from individuals and groups of persons, non-governmental organizations active in the field of human rights protection, other legal entities, public institutions, analyses the petitions and complaints, take appropriate measures and answers within the terms provided by law.

The Steering Board of the National Council for Combating Discrimination, exercising its decision-making role, analyses the petitions and complaints received, and adopts, by decisions, the appropriate measures, following investigations carried out by the specialised staff of the Council. Once the decision has been adopted, the Steering Board decides on the fine that is to be paid by the person or by the legal entity, for perpetrating a discriminatory act.

Monitoring of case of discrimination by further supervision of the parties involved.

³ Examples of good practices: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, European Commission against Racism and Intolerance, Strasbourg, 2006, p.95

Providing specialty assistance for the victims of discrimination

For all discrimination cases, the victims are entitled to claim damages, proportional to the act, as well as the restoration of the situation prior to discrimination or to the cessation of the situation created by discrimination, in accordance with common law.

According to Directive 2006/54/EC the equality body should provide independent assistance to victims of discrimination in pursuing their complaints about discrimination. The Romanian Council is competent to provide specialized assistance to victims of discrimination. The Council's legal advisors explain legal concepts to those interested and give legal advice about to how to write complaints and to proceed with the case. In 2010 the Council provided specialized assistance to approximately 2500 people.

Activities

According to the decision on the organization and functioning performs the following functions: ⁴

- Council Proposes the setting up, in the conditions of the law, of affirmative actions or special measures for the protection of persons that are either in a position of inequality compared to the majority of citizens due to the identity differences or confronted with a rejection and marginalization behaviour;
- Proposes draft legal regulations in the field to the Government;
- Endorses the draft legal regulations regarding the exercise of rights and freedoms, in conditions of equality and non-discrimination;
- cooperate with the relevant public authorities in order to bring domestic legislation into line with international regulations on non-discrimination;
- cooperate with public authorities and legal and natural persons (individuals and groups) in order to prevent, sanction and eliminate all forms of discrimination;
- monitors the application and observance of the legal provisions on preventing, sanctioning and eliminating all forms of discrimination by public authorities and legal and natural persons;
- receive petitions and complaints regarding violation of the legal provisions concerning the principle of equality and non-discrimination, from individuals, non-governmental organizations active in the field of human rights protection, other legal entities, public institutions, analyses the petitions and complaints, take appropriate measures and answers within the terms provided by law;
- collaborates with the non-governmental organizations active in the field of human rights protection;
- develops and establishes affirmative policies aimed at preventing acts of discrimination;
- carries out programs and national campaigns in order to fulfil its duties;
- carries out studies, opinion polls, research and analysis on the observance of the principle of equality and non-discrimination, presented to the Government and made public;
- elaborates, publishes and disseminates reports and materials concerning discrimination;
- ascertains and sanctions the contraventions mentioned in the Government's Ordinance no. 137/2000;

⁴ Art.2(1) of Government Decision 1194/2001

- cooperate with similar organizations and with non-governmental organizations in the field of human rights from other states, as well as with international organizations in this field;
- initiates and organizes seminars, discussions, debates, symposiums, training sessions, round tables and other actions on the theme of combating discrimination;
- develops partnership programs with international financial institutions;
- exercises any other attributions established by the Government or Parliament, through normative documents in order to prevent, sanction and eliminate all forms of discrimination.

In order to fulfil the duties set up in the legislation in force, the Council's activity is carried on strands of action like prevention, mediation and sanction.

Grounds

Although EU directives require that the national equality bodies cover only gender or race and ethnic origin, in many cases equality body covers several grounds of discrimination. According to Ordinance 137/2000 the grounds covered by the National Council for Combating Discrimination are race, nationality, ethnicity, language, religion, social status, beliefs, gender, sexual orientation, age, disability, non-contagious chronic disease, HIV infection, belonging to a disfavoured category or any other criterion, aiming at or resulting in the restriction or prevention of equal recognition, use or exercise of human rights and fundamental freedoms. The fields covered are political, economic, social and cultural fields or any other fields of public life.

Romania provide an open list of grounds of discrimination.

Structure

National Council for Combating Discrimination was established as a specialised body of central public administration subordinated to the Government. By amending the Ordinance no.137/2000, the Council became the state authority in the field of discrimination, autonomous, with legal personality, under parliamentary control.

In the exercise of its attributions, the National Council for Combating Discrimination acts as an independent body, without interference or influence from other institutions or public authorities.

The Council is headed by the president who has administrative role. Activity related to acts or deeds of discrimination is carried out by the Steering Board of the National Council for Combating Discrimination.

The Steering Board of the National Council for Combating Discrimination is made up of 9 members, having the rank of secretary of state, appointed in the plenary session by the two Chambers of the Parliament.

According to article 24 of Ordinance no.137/2000 nominations for 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 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. 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. Candidates can be approved by the majority of present deputies and senators.

Reference

- Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)
- Constitution of Romania
- Decisions of the Constitutional Court of Romania
- Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination with modifications and completions
- Law no. 202/2002 on equal opportunities between women and men with modifications and completions
- Government Decision No. 1194/2001 on the organization and functioning of the National Council for Combating Discrimination with modifications and completions
- Examples Of Good Practices: Specialised bodies to combat racism, xenophobia, anti-semitism and intolerance at national level, European Commission against Racism and Intolerance, Strasbourg, 2006, p.95
- Communication from the Commission, Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, Brussels, 26/09/2006, COM (2006) 2.1 Political criteria, Protection and integration of minorities; p. 40