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Romania
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B-1049 Brussels*

Country report

Non-discrimination

Transposition and implementation at national level of
Council Directives 2000/43 and 2000/78

Romania

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Reporting period 1 January 2022 – 1 January 2023

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EXECUTIVE SUMMARY

1. Introduction

The Romanian Anti-discrimination Law, Governmental Ordinance 137/2000, was adopted in 2000 as delegated legislation. The last significant rounds of amendments in 2013 were made in the context of the proceedings before the CJEU in case C-81/12, *ACCEPT v. CNCD*.¹ In 2020, GO 137/2000 was further amended in relation to the duration of the mandate of steering board members as well as in order to introduce new concepts such as 'moral harassment' in work relations. The 2000 discussions on the two European equality directives influenced the wording of the Romanian law, the provisions of which, in many ways, went beyond the *acquis*. A significant number of the cases before the national equality body – the National Council for Combating Discrimination (NCCD, or CNCD in Romanian) – relate to infringements of the right to dignity, a distinct feature of the law.

Twenty years after adopting the Anti-discrimination Law, Romania remains tainted by discrimination which is in contradiction with the diversity of Romanian society. The Roma minority, for which official statistics are contested,² faces discrimination in access to employment, healthcare, goods and services, housing, including public housing, and education. The revival of extreme nationalist discourse, characterised by incidents of arson and mob violence against Roma communities in the early 1990s, still permeates the public sphere.

Although sexual orientation is explicitly protected by the Anti-discrimination Law,³ the LGBT community remains the group most under attack, being the subject of legislative proposals with the aim of restricting LGBT rights and the target of acts of aggression during NGO-organised events. These attacks remain uninvestigated and have attracted no sanctions, suggesting that the authorities are liable for 'resultant indifference (which) would be tantamount to official acquiescence to, or even connivance with, hate crimes.'⁴ The Civil Code, in force since 2011, includes a specific prohibition of same-sex partnership and marriage, including the denial of recognition for partnerships and marriages legally registered abroad (even if contracted between foreigners). A decision of the Constitutional Court issued following the judgment by the European Court of Justice in *Coman and Others* underlined the importance of the gradual recognition of the family life of same-sex families but it has not been transposed into law or applied by the domestic courts.⁵

Specific programmes and special measures targeting persons with disabilities or persons living with HIV/AIDS are scarce and still do not cover the wide range of problems encountered. A new national strategy on HIV/AIDS was adopted in December 2022 after a delay of 15 years.⁶ Romania signed the UN Convention on the Rights of Persons with

¹ Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (*Ordonanța de Guvern 137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare*) (Anti-discrimination Law), 31 August 2000.

² The Romanian Government's Strategy for the inclusion of Romanian citizens belonging to the Roma minority for the period 2022-2027 mentioned that the number of Roma is estimated to be between 1.5 and 2 million persons. However, the results of the 2022 census indicate 621 573 persons who self-identified as Roma, representing 3.4 % of the population. *Hotnews*, Dan Popa, '[Primele rezultate ale Recensământului 2022](#)' (First results of the census), 30 December 2022.

³ Government Ordinance 137/2000 specifically mentions sexual orientation as a protected ground. Although gender identity and gender expression are not mentioned in the law, the national equality body and the courts would protect trans and intersex persons, given the open list of grounds provided for in Article 2, as indicated by the case law. This report uses the term 'LGBT' to reflect existing legal protection and 'LGBTIQ' when mentioning the diversity of the community.

⁴ ECtHR, *M.C. and A.C. v. Romania*, application No. 12060/12 of 12 April 2016, Paragraph 124.

⁵ Romanian Constitutional Court, Decision 534, 18 July 2018; CJEU, C-673/16, *Relu Adrian Coman and Others v. Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne*, 5 June 2018, ECLI:EU:C:2018:385.

⁶ The failure to adopt a national strategy on HIV/AIDS disproportionately affected men who have sex with men and has been criticised by NGOs as being caused by homophobia. The new National Strategy for the supervision, control and prevention of infection with HIV/AIDS for 2022-2030 was adopted as Governmental

Disabilities in September 2007, but only ratified it in November 2010. The mechanism for monitoring the implementation of the CRPD is weak. Romanian legislation still uses the concept of 'handicap', rather than 'person with disability', thus taking a medicalised approach to disability.

2. Main legislation

The Romanian Constitution guarantees equal treatment of all citizens in Article 4(2), providing for citizenship without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin. Article 16 provides for equality of all citizens before the law and public authorities, without any privilege or discrimination. Article 30(7) prohibits 'any instigation ... to national, racial, class or religious hatred, any incitement to discrimination'.⁷

Romania has signed and ratified all major European and international human rights instruments except the Additional Protocol to the European Social Charter. Many of the complaints mechanisms have been signed but not ratified, for example the CRPD Optional Protocol.⁸ The Constitution asserts that constitutional provisions concerning the rights of citizens must be interpreted and enforced in conformity with the Universal Declaration on Human Rights, the covenants and other treaties to which Romania is a party. Furthermore, Article 20 of the Constitution also provides for the primacy of international regulations where any inconsistencies exist between treaties on fundamental human rights and national laws, unless the national laws are more favourable. The Constitution, however, is not self-executing.

Besides the Anti-discrimination Law, the Civil Code allows for torts claims for damages (including damages generated by discrimination) and the Criminal Code includes provisions on aggravating circumstances when criminal intention is triggered by any of the grounds protected by anti-discrimination legislation. The ECRIS database (the national application aggregating statistical data produced by all courts), does not record the number of complaints or decisions on discrimination invoking the Anti-discrimination Law.⁹ Consequently, it is impossible to assess the use or the enforcement of these provisions.

The Criminal Code, which entered into force in February 2014, includes protection against incitement to discriminate, hate crimes and abuse with a discriminatory intent in the exercise of an official function. These provisions were amended in 2022, ensuring compliance with the Framework Decision, after a lengthy and convoluted legislative process which entailed two constitutional reviews. These are, however, norms with limited applicability, as proved by the statistics published by the Prosecutor General.

Decision 1440/2022 and published without a budget to support its implementation. Government Decision 1440 for the approval of the national strategy 'For the supervision, control and prevention of HIV/AIDS infection 2022-2030' (*Hotărârea de Guvern 1440 din 29 noiembrie 2022 pentru aprobarea Strategiei naționale pentru supravegherea, controlul și prevenirea cazurilor de infecție cu HIV/SIDA*) 29 November 2022, (*Monitorul Oficial*, 15 December 2022).

⁷ The text of the Constitution does not provide for explicit protection against discrimination on grounds of disability, age or sexual orientation, as stated in Directive 2000/78/EC. As Article 20 of the Romanian Constitution gives priority to international human rights treaties, in a 1993 decision, the Constitutional Court extended the list of protected grounds to incorporate grounds listed by Article 26 of the International Covenant on Civil and Political Rights (ICCPR). Given this early precedent in the case law, the court may also build in Article 14 of the European Convention on Human Rights, as well as Protocol 12 considerations, thus ensuring effective protection against discrimination on grounds of age, disability or sexual orientation.

⁸ A list of treaties which Romania has signed and ratified is available on the Ministry of Foreign Affairs website in Romanian at: <https://www.mae.ro/node/1384> or in English in the UN Treaty Body database at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=143&Lang=en. Notable human rights mechanisms not adhered to include: the Optional Protocol to the International Covenant on Economic and Social Rights, the International Convention for the Rights of Migrant Workers, the Optional Protocol to the Convention on the Rights of Persons with Disabilities, the collective complaints mechanism for the European Social Charter with the Committee on Economic and Social Rights, and the Optional Protocol to the Convention on the Rights of the Child.

⁹ Superior Council of Magistracy (*Consiliul Superior al Magistraturii*), response 5/27805 to a public information request, 17 December 2015.

The Labour Code, as amended in 2011, includes general prohibitions of discrimination in employment.

A law defining and criminalising anti-Gypsyism¹⁰ was adopted in 2021, but there are no reports on its application by the law enforcement agencies.

3. Main principles and definitions

The Anti-discrimination Law introduces a broad, comprehensive definition of direct discrimination, going beyond the substance and coverage of Directives 43/2000/EC and 78/2000/EC.¹¹ The list of protected grounds is generous and includes grounds outside those mentioned by the directives. However, the catch-all phrase 'any other criterion' creates the possibility for the courts or for the NCCD to apply the law to a wide list of categories going beyond the mere experience of discrimination and turning the anti-discrimination norm into a wider equality principle.

Since 2006, the Anti-discrimination Law has included a definition of indirect discrimination¹² as well as harassment.¹³ Harassment is also punished in the Equal Opportunities Law¹⁴ and in the Criminal Code, but none of the definitions fully complies with the definition set out in the directives. In 2020, GO 137/2000 was amended to define 'moral harassment'.¹⁵

Victimisation is defined as any adverse treatment triggered by a complaint submitted to the NCCD or with the courts on infringement of the principle of equal treatment and non-discrimination. An instruction to discriminate is defined as an 'order' to discriminate, leaving room for further clarification. Multiple discrimination is defined and is an aggravating circumstance, although enforcement in the jurisprudence of the NCCD is scant and suggests a limited understanding of the concept. Intersectional discrimination is not defined or recognised in the caselaw.

The Anti-discrimination Law was amended in 2013 to include a definition of genuine and determining occupational requirements, which still need interpretation. The Anti-discrimination Law does not mention reasonable accommodation. It includes a definition

¹⁰ Law 2/2021 of 4 January 2021 regarding certain measures for preventing and combating anti-Gypsyism (*Legea nr. 2/2021 privind unele măsuri pentru prevenirea și combaterea antițigănistului*).

¹¹ Article 2 of the Anti-discrimination Law (GO 137/2000) prohibits 'any difference, exclusion, restriction or preference based on race, nationality, ethnic origin, language, religion, social status, beliefs, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV positive status, belonging to a disadvantaged group or any other criterion, aiming to or resulting in a restriction or prevention of the equal recognition, use or exercise of human rights and fundamental freedoms in the political, economic, social and cultural field or in any other fields of public life.'

¹² Indirect discrimination is defined in Article 2(3) as 'any provisions, criteria or practices apparently neutral which disadvantage certain persons on grounds of one of the protected groups, excepting the cases when these practices, criteria and provisions have an objective justification based on a legitimate purpose and the methods used to reach that purpose are adequate and necessary.'

¹³ Harassment is defined and punished in Article 2(5) as 'any behaviour on grounds of race, nationality, ethnic origin, language, religion, social status, beliefs, gender, sexual orientation, belonging to a disadvantaged group, age, handicap, refugee or asylum seeker status or any other criterion, which leads to the establishment of an intimidating, hostile, degrading or offensive environment.'

¹⁴ Law 340/2006 for the amendment and approval of Law 202/2002 regarding equal opportunities between women and men, 25 July 2006.

¹⁵ Law 167 of 7 August 2020, amending Governmental Ordinance 137/2000, defined 'moral harassment' in its new Art. 5[^]1 as 'any conduct committed against an employee by another employee who is his/her superior, by a subordinate and/or by a comparable employee from a hierarchical point of view, in relation to employment relationships, which have as purpose or effect a deterioration of working conditions by infringing the rights or dignity of the employee, by affecting his/her physical or mental health or by compromising his/her professional future, [or] behaviour manifested in any of the following forms: (a) hostile or unwanted conduct; (b) verbal comments; (c) actions or gestures'. In Art. 5[^]2, the amendment further adds that 'Moral harassment in the workplace is any behaviour that, by its systematic nature, can harm the dignity, physical or mental integrity of an employee or group of employees, endangering their work or degrading the work environment. For the purposes of this law, stress and physical exhaustion are subject to moral harassment at work.'

of positive measures. Reasonable accommodation is defined in the legislation on the rights of persons with disabilities as a facility for the employee, not as a duty of the employer.¹⁶

The concepts set out in the ECRI General Policy Recommendation No. 7 are not articulated in Romanian law, although some of them have been incorporated by the NCCD in its jurisprudence, specifically: segregation in education; discrimination by association; announced intention to discriminate; instructing another to discriminate; inciting to discriminate; aiding another to discriminate. Discrimination based on presumption is not expressly prohibited.

4. Material scope

The material scope of the Anti-discrimination Law (GO 137/2000) encompasses the areas protected by both Directive 2000/43/EC and Directive 2000/78/EC. The law goes beyond these areas, by also providing for protection in relation to freedom of movement, as well as protection of the right to dignity. The latter has led to rich jurisprudence from the NCCD, promoting an anti-stereotyping approach in relation to all protected grounds.¹⁷ Both public and private actors are obliged to observe the Anti-discrimination Law.

Following the decisions issued by the Romanian Constitutional Court in 2008 and reconfirmed in 2009, the provisions of the Anti-discrimination Law are not applicable in cases of discrimination triggered by discriminatory legislative norms (laws or delegated legislation), and the courts and the NCCD do not have the authority to nullify or to refuse the application of legal norms when they find that such norms are discriminatory. During court proceedings, any party can ask for the case to be brought before the Constitutional Court to assess the unconstitutionality of legal provisions, but this option is not available in proceedings before the NCCD, which does not have constitutional standing.

5. Enforcing the law

The Anti-discrimination Law creates a dual system of remedies: the claimant can choose between filing a petition with the NCCD on the administrative track and/or lodging a civil complaint for damages with the civil courts (the cases are exempt from court fees for both options). Victims can also choose to use both options simultaneously, which creates difficulties in practice and overstretches the scarce resources of the NCCD, as it is required by law to participate as an expert in all civil proceedings. Another challenge is the risk of obtaining conflicting judgments in the administrative and civil courts.

Any individual or any legal person with an interest in a case, including human rights NGOs and minority groups or trade unions, can file a complaint with the NCCD within one year of the occurrence of the alleged discrimination. The NCCD can also start a case ex officio. The NCCD has 90 days to investigate the case, organise hearings and rule on whether anti-discrimination provisions were breached. When the NCCD finds that discrimination took place, it can issue an administrative sanction (warning or fine). The NCCD rulings can be appealed before the administrative courts. If the victim is an individual, the fine is within the range of EUR 250-7 500 (RON 1 000-30 000), whereas if the victims are a group or a community, the fine is within the range of EUR 500-25 000 (RON 2 000-100 000).

The NCCD has developed the practice of issuing opinions (recommendations/*recomandări*) carrying no financial or administrative penalties, particularly in cases against public authorities. The impact of this practice, however, has been to call into question the

¹⁶ Law 448/2006 on the protection and promotion of the rights of persons with a handicap, 6 December 2006.

¹⁷ For further information regarding this anti-stereotyping approach used by the National Council for Combating Discrimination in the application of the protection of the right to dignity as provided in the Romanian Anti-discrimination Law: Haller, I., Iordache, R. and Kádár, A. (2016), 'Using anti-discrimination remedies for discriminatory speech – the Hungarian and Romanian experiences', in *European equality law review*, 2/2016, pp. 1-21.

effectiveness, proportionality and dissuasiveness of the remedies provided in cases of discrimination. In the 2015 decision of the High Court of Cassation and Justice in the case providing the basis for the referral in C-81/12,¹⁸ the domestic courts did not address the guidance issued by the CJEU regarding symbolic sanctions and maintained that the mere warning issued by the NCCD when finding discrimination can be considered a dissuasive, proportionate and adequate remedy.¹⁹

Victims seeking to claim compensation for discrimination have to lodge complaints before civil courts - a decision from the NCCD is not required, but it may play an important role in ascertaining whether discrimination took place and in establishing the amount of the damages. The NCCD is called in as an expert entity. In the case of a civil complaint for damages, the complainant can request injunctive relief measures, pecuniary and moral damages and other types of sanctions (e.g. withdrawal or suspension of the licences of private entities providing services). The courts can rule that public authorities withdraw or suspend the authorisation to operate of legal persons who cause significant damage as a result of discriminatory action or who are repeat offenders.

Victims of discrimination can choose to contact a human rights NGO and seek representation or can start the case *in nome proprio*. In NCCD procedures victims can choose to communicate with the NCCD confidentially in order to avoid media attention. The same request for confidentiality can be filed with the courts. The 2006 amendment to the Anti-discrimination Law specifically allowed for any type of evidence to be used in cases of discrimination, including audio and video recordings as well as statistical data, and the NCCD uses statistics as evidence.

The 2013 amendment to the Anti-discrimination Law redefined the burden of proof.²⁰ The case law of the NCCD interpreted provisions on the burden of proof along the lines of the directives in some cases but not consistently, leaving the onus of proof on the complainants in a number of cases. The ambiguous understanding of the burden of proof by the NCCD and the courts alike is confirmed by the decisions of the Bucharest Court of Appeal and of the High Court of Cassation and Justice in the case following up on C-81/12. Both courts upheld the NCCD decision, denying the appeal filed by ACCEPT Romania and finding the homophobic and exclusionary statements of George Becali, the person publicly known as the owner of Steaua Bucureşti Football Club, as not amounting to discrimination in employment on grounds of sexual orientation.²¹

¹⁸ CJEU, C-81/12, *Asociația Accept v. Consiliul Național pentru Combaterea Discriminării*, 25 April 2013, EU:C:2013:275.

¹⁹ High Court of Cassation and Justice (*Inalta Curte de Casație și Justiție*), Decision 2224/2014, 29 May 2015. The High Court stated: 'contrary to the statements of the complainant (ACCEPT), warning (as sanction) is not incompatible with Art. 17 of Directive 2000/78/EC and cannot be considered *de plano* as a purely symbolic sanction [emphasis used by the Court]. In applying this sanction, the NCCD has a margin of appreciation under which it is assessing multiple elements, among which the context in which the deed was perpetrated, the effects or the outcome and the person of the perpetrator played an important role. Not least, the publicity generated by the decision to punish the author of the deed of discrimination who excessively exercised his freedom of expression played a dissuasive part in the society.' The decision also states that 'the High Court also concludes that the complainant association cannot justify the infringement of a legitimate public interest, under the meaning of Art. 2(1)(r) of Law 554/2004 (*Legea Contenciosului Administrativ*), given the fact that the NCCD issued a warning for George Becali and not an administrative fine.'

²⁰ The wording on the burden of proof in Articles 20(6) and 27(4) provides that 'the interested person will present facts based on which it can be presumed that direct or indirect discrimination exists, and the person against whom the complaint was filed has the duty to prove that no infringement of the principle of equal treatment occurred. Before the Steering Board (the courts) any means of proof can be brought, observing the constitutional regime of fundamental rights, including audio and video recordings and statistical data.'

²¹ High Court of Cassation and Justice (*Inalta Curte de Casație și Justiție*), Decision 2224/2014, 29 May 2015. The High Court uses the conclusions of the Court of Appeal by stating that 'it was correctly concluded by the first instance that there are no elements which would allow to find that the Football Club initiated any step, of any type, to contract the sporting services of the player I.I.' The High Court follows: 'In reality, the entire procedure had been launched based on purely speculative statements (of Mr Becali) even if the author of the statement is a person who cannot be dissociated in the public perception from the Football Club Steaua Bucureşti, from this unique occurrence the conclusion cannot be drawn that the complainant is laying its

NGOs have legal standing and can file cases either on behalf of or in support of victims of discrimination. However, the remedies provided in such cases are limited, as personal damages are required for the courts to order compensation and in *actio popularis* cases the courts are not willing to grant damages.

There is no clear picture or assessment of the sanctions issued by courts in cases of discrimination. Given the limited number of cases that are publicly available, drawing on anecdotal evidence it can be concluded that the courts have established a ceiling of a maximum of EUR 10 000 for moral damages – this being the highest amount granted in a number of cases. Pecuniary damages need to be proved on the basis of civil procedure norms on torts.

In spite of the failure to ensure the online publication of all court and NCCD decisions and the lack of adequate monitoring of the enforcement of these decisions, publicly available information regarding repeat offenders may indicate that the remedies are increasingly effective, although the practice is not yet uniform. The 2013 amendments to the Anti-discrimination Law allow the NCCD and the courts to order offenders to publish summaries of decisions at their own expense.

6. Equality bodies

The establishment of the national equality body, the National Council on Combating Discrimination (NCCD) (*Consiliul Național pentru Combaterea Discriminării*) was provided for in 2000, in the Anti-discrimination Law, but the NCCD was effectively established in the autumn of 2002. The NCCD started opening regional offices in 2007 and it currently has two such offices. The NCCD is an autonomous public authority under the control of the Parliament, whose independence is established in the Anti-discrimination Law. In June 2022, the Law was amended to increase the number of the members of the steering board from nine to eleven.²² The NCCD is the victim of increased politicisation, due to the appointment process. Two appointments made by the Parliament in December 2022 breached the legal requirements and the decision of the Parliament was challenged before the Constitutional Court, which revoked it. The rationale of the Court was similar to the one adopted in 2018.²³

The mandate of the NCCD encompasses: providing support for victims of discrimination through independent assistance; preventing discrimination through awareness-raising and conducting studies and research; compilation of relevant data; independent surveys and independent reports; mediating between parties; investigating and sanctioning discrimination; and initiating legislative bills to ensure harmonisation of legal provisions with the equality principle. In practice, the main function of the NCCD is as a quasi-judicial body, which can find that certain acts amount to discrimination and can subsequently issue administrative sanctions (warnings or fines). The mandate of the NCCD was extended in 2017 by Law 106/2017.²⁴

account for (bets), particularly given that during the entire procedure the Football Club Steaua București denied any connection with the statements and the lack of basic facts.’ There was no follow-up after this case.

²² Flash report, 057-RO-ND-20222-NCCD 11 members from 2 August 2022 available at: <https://www.equalitylaw.eu/downloads/5669-romania-anti-discrimination-law-amended-to-increase-the-membership-of-the-steering-board-of-the-nccd-97-kb>.

²³ Romanian Constitutional Court, Decision 434/2018 on the unconstitutionality of the Decision of the Parliament 21/2018 regarding the appointment of a member of the NCCD steering board from 21 June 2018.

²⁴ Law 106/2017 on measures to improve the exercise of rights in the context of freedom of movement in EU (*Legea nr. 106/2017 privind unele măsuri pentru îmbunătățirea exercitării pe teritoriul României a drepturilor conferite în contextul liberei circulații a lucrătorilor în cadrul Uniunii Europene*), 22 May 2017. Article 4 provided for the monitoring of the rights of EU citizens exercising their freedom of movement in Romania and acting as national focal point under Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union.

The visibility of the NCCD has increased gradually, following a series of cases involving key Romanian politicians, as well as cases that generated a lot of media attention (e.g. the decision on the presence of religious symbols in public classrooms, school segregation cases, decisions against various sports clubs) and public positions taken against racist, homophobic and populist conduct. The institution gradually became a proactive body, engaged in a multitude of projects, and has established itself as a serious voice in the sphere of combating discrimination, in spite of its limited resources. Concerns regarding the politicisation of the steering board taint this generally commendable image.

7. Key issues

1. Failure to ensure adequate sanctions which are dissuasive, proportionate and effective

The NCCD practice of punishing some cases of discrimination only with administrative warnings or recommendations and not issuing administrative fines in all cases where it has found discrimination erodes the effective, proportionate and dissuasive character of its remedies. Warnings do not carry financial penalties and there is no policy on monitoring the decisions to secure enforcement and prevent further discrimination.

2. The NCCD and the courts cannot find and sanction discrimination in cases of discriminatory norms (de jure discrimination)

The limitation of the Anti-discrimination Law by the Romanian Constitutional Court in a series of decisions issued in 2008 and 2009, which restricted both the mandate of the NCCD²⁵ and of the civil courts on discrimination generated by legislative provisions,²⁶ created a gap in the effective protection against discrimination. The NCCD does not have constitutional standing to bring cases before the Constitutional Court when identifying discriminatory norms and the Ombuds has repeatedly failed to act in such cases.

3. Legal concepts still needing clarification and interpretation

The Romanian Anti-discrimination Law uses the word 'order' instead of 'instruction' in Article 2(2), which might lead to a restrictive interpretation of the instruction to discriminate, limiting the prohibition to the context of hierarchical relations.

The concept of reasonable accommodation for persons with disabilities is not included in the Romanian Anti-discrimination Law and it is currently defined only in the special legislation on the promotion and protection of the rights of persons with disabilities as a facility in the workplace for the employee, but without including any provision for penalties for employers who fail to ensure reasonable accommodation.

Intersectional discrimination is not defined or understood in the Romanian legal context.

4. Institutional limitations of the national equality body

The NCCD has not so far developed an operational mechanism to monitor infringements of the legislation or to monitor compliance with its decisions, hence it is difficult to assess the effectiveness of its mandate and the remedies it provides.

²⁵ Romanian Constitutional Court, Decision 997, 7 September 2008, finding Art. 20(3) of the Anti-discrimination Law (GO 137/2000), defining the mandate of the NCCD in relation to discrimination triggered by legislative provisions, to be unconstitutional.

²⁶ Romanian Constitutional Court, Decisions 818, 819 and 820, 3 July 2008. The Constitutional Court concluded that the dispositions of Art. 1(2)(e) and of Art. 27 of the Anti-discrimination Law (GO 137/2000) are unconstitutional, to the extent that they are understood as implying that the courts of law have the authority to nullify or to refuse the application of legal norms when considering that such norms are discriminatory.

The appointment of NCCD steering board members by the Parliament, as a guarantee of institutional independence, has in practice proved to be an obstacle. In July 2018 the Constitutional Court revoked one member. Seven new appointments were made in July 2020, some of them being equally criticised as politicised. The 2022 appointments were again made ignoring the legal requirements. Politicisation of the steering board is visible in several areas: controversial decisions in cases involving politicians or in cases stirring up religious sensibilities or deemed by conservative religious leaders as an alleged attack against the traditional values they espouse; the demise of effective remedies in favour of recommendations lacking any legal power; the decreasing quality of legal reasoning; and a decrease in the number of NCCD decisions upheld by the courts after being appealed.

According to the NCCD's annual reports, no new staff members have been recruited due to budgetary cuts and to a general ban on recruitment in the public sector, the main challenge being that the institution has worked for too many years with a staff significantly smaller than the number of positions approved or budgeted for. In addition, some of the activities of the NCCD (e.g. investigations or awareness campaigns) have been affected by the lack of funds or delays in making funds available.

5. Lack of equality data

Misinterpretation of the legislation on the protection of private data leads to a general lack of equality data that could be used to facilitate the development of public policies responding to the needs of different vulnerable groups, to allow adequate monitoring of special measures, or that could be used in courts or before the NCCD.

6. Failure to adopt a national strategy for equality

Based on an external assessment of the NCCD's 2007-2013 national strategy, which was commissioned by the NCCD with the support of the Council of Europe, and also based on regional and national debates and roundtables, in December 2015, the NCCD prepared a new draft strategy, which was intended to be a national equality strategy, rather than just an institutional strategy. The draft was submitted for public debate and Government coordination. At the time of the writing, a national or institutional equality strategy had still not been adopted.

INTRODUCTION

The national legal system

The Romanian Constitution provides for equality and non-discrimination in broad terms as general principles applicable to all citizens, irrespective of 'race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin'.²⁷ These provisions are implemented in practice by specific anti-discrimination legislation adopted in August 2000 through delegated legislation, Government Ordinance 137/2000 – hereafter generally referred to as the Anti-discrimination Law.²⁸ Government Ordinance 137/2000 was amended in 2002, 2003, 2004, 2006 and three times in 2013, as well as in 2020. The Anti-discrimination Law introduces a mixed system of remedies, both civil and administrative (minor offences), which can be pursued separately or simultaneously.

The Anti-discrimination Law provides for the establishment of the National Council for Combating Discrimination (NCCD) (*Consiliul Național pentru Combaterea Discriminării*), which has a broad quasi-judicial and promotional mandate.²⁹ The Anti-discrimination Law can be also enforced by civil courts if the complainant seeks only civil remedies under general torts procedures. Civil complaints on the basis of the Anti-discrimination Law are exempt from court fees, and the locus standi and burden of proof are prescribed by law.

The grounds of unlawful discrimination as well as the material scope of the protection of the Romanian Anti-discrimination Law go beyond the requirements of the directives. In addition, the prohibition of discrimination on all grounds applies to employment as well as education, access to goods and services, including health services or public services and housing.

The Anti-discrimination Law is enforceable nationwide and is complemented by relevant provisions found in ground-specific legislation, such as legislation regarding the rights of persons with disabilities (defined by Romanian legislation as 'persons with handicap')³⁰ or in legislation regulating particular areas such as the Criminal Code³¹ and the Labour Code.³² Where there are conflicting provisions in different relevant pieces of legislation, the Anti-discrimination Law would prevail as *lex specialis*.

Romania has signed and ratified most relevant international human rights documents except the Additional Protocol to the European Social Charter, providing for a system of collective complaints. Although they are not directly applicable in the national legal order, international human rights standards prevail if they are in conflict with domestic legislation. Although the UN Convention on the Rights of Persons with Disabilities was ratified, the special legislation has not yet been harmonised and the official Romanian translation includes major errors in relation to key concepts. Furthermore, the monitoring mechanism that has been established is weak.

²⁷ See Section 1 of this report for more detail.

²⁸ Ordinance 137/2000 was adopted by the Government based on a constitutional procedure that allows the Parliament to delegate limited legislative powers to the Government during the parliamentary recess in accordance with Articles 114 and 107(1) and (3) of the Constitution. The ordinances (statutory orders) must be submitted to the Parliament for approval, though in the interval between their adoption by the Government and the moment of their adoption (or rejection or amendment) by the Parliament, they are binding and generate legal consequences.

²⁹ Romanian National Council for Combating Discrimination (NCCD) (*Consiliul Național pentru Combaterea Discriminării*). The official website of the institution is available at: <http://www.cncd.org.ro>.

³⁰ Law 448/2006 on the protection and promotion of the rights of persons with a handicap, 6 December 2006. English translation available at: <http://www.equalrightstrust.org/ertdocumentbank/LEGE%20448%20engleza.pdf>.

³¹ Criminal Code, Law 278/2006, 4 July 2006.

³² Labour Code, Law 53/2003 (*Codul Muncii*), 24 January 2003, most recently amended on 24 December 2020.

List of main legislation transposing and implementing the directives

<p>Official title of the law: Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination Name used in this report: Anti-discrimination Law Abbreviation: GO 137/2000 (Anti-discrimination Law) Date of adoption: 31 August 2000 Entry into force: 30 October 2000 Latest relevant amendments: 7 August 2020 Web link: http://cncd.org.ro/?language=en Grounds protected: race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV positive status, belonging to a disadvantaged group or any other criterion Civil/administrative Material scope: employment access to goods or services (including housing and health), social protection, social advantages, education, right to dignity Principal content: prohibition of direct, indirect and multiple discrimination, harassment, instruction to discriminate and victimisation. Establishing the specialised body, the National Council on Combating Discrimination</p>
<p>Official title of the law: Law on the protection and promotion of the rights of persons with a handicap Name used in this report: Law 448/2006 Abbreviation: Law 448/2006 Date of adoption: 06 December 2006 Latest relevant amendments: 1 November 2012 Entry into force: 1 January 2008 Web link: N/A Grounds covered: disability Administrative Material scope: any field Principal content: rights and duties of persons with disabilities. Obligations in relation to the accommodation of the needs of persons with disabilities. Establishing the National Authority for Persons with a Handicap</p>
<p>Official title of the law: Labour Code Name used in this report: Labour Code Abbreviation: Labour Code Date of adoption: 24 January 2003 Latest relevant amendments: 23 July 2020 Entry into force: 1 March 2003 Web link: N/A Grounds covered: gender, sexual orientation, genetic characteristics, age, national belonging, race, colour, ethnicity, religion, political option, social origin, disability, family situation or responsibility, trade union membership or activity Administrative Material scope: employment Principal content: direct and indirect discrimination</p>

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

Articles 1(3), 4(2), 6, 16 and 30(7) of the Romanian Constitution address issues relevant for equality and the prohibition of discrimination.³³

'Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed.' (Article 1(3))

'Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin.' (Article 4(2))

'(1) The State recognises and guarantees the right of persons belonging to national minorities to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity.

(2) The protection measures taken by the Romanian State for the preservation, development and expression of identity of the persons belonging to national minorities shall conform to the principles of equality and non-discrimination in relation to the other Romanian citizens.' (Article 6)

'(1) Citizens are equal before the law and public authorities, without any privilege or discrimination.

(2) No one is above the law.

(3) Access to public, civil, or military positions or dignities may be granted, according to the law, to persons whose citizenship is Romanian and whose domicile is in Romania. The Romanian State shall guarantee equal opportunities for men and women to occupy such positions and dignities.

(4) After Romania's accession to the European Union, the Union's citizens who comply with the requirements of the organic law have the right to elect and be elected to the local public administration bodies.' (Article 16)

'Any defamation of the country and the nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination ... shall be prohibited by law.' (Article 30(7))³⁴

The text of the Constitution does not provide for explicit protection against discrimination on grounds of disability, age or sexual orientation, as stated in Directive 2000/78/EC; however, it mentions protection against discrimination on the grounds of language, opinion, political adherence, property and social origin. In a 1993 decision, the Constitutional Court established the principle of interpreting the protected grounds against discrimination by giving priority to international human rights treaties as per Article 20 of the Romanian Constitution, thus bringing in the protected grounds listed by Article 26 of the ICCPR.³⁵ Given this early precedent, the court has the opportunity to build in Article 14 of the European Convention on Human Rights, as well as Protocol 12 considerations, thus ensuring effective protection against discrimination on grounds of age, disability or sexual

³³ The Constitution of Romania of 1991 was amended by Law 429/2003 on the revision of the Constitution of Romania, 29 October 2003, available at <http://www.cdep.ro/pls/dic/site.page?id=371>.

³⁴ Constitution of Romania of 1991, as amended.

³⁵ Romanian Constitutional Court, Decision 6 of 25 February 1993.

orientation, should the Convention be invoked.³⁶ None of these categories is further defined by constitutional provisions. Only disability is defined by implementing legislation.³⁷

Constitutional provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives. They are not directly applicable and adoption of specific legislation is needed in order to move from theoretical to actual protection. These provisions cannot be enforced against private individuals (but they can be invoked against the state).

³⁶ For example, in its Decision 601 of 16 July 2020, the Constitutional Court found the provisions of the Civil Code regarding Article 164(1) on the procedures for the deprivation of legal capacity of persons lacking the required discernment to take care of their own interests to be unconstitutional, based on Articles 1(3) and 16 of the Romanian Constitution.

³⁷ Law 448/2006 on the protection and promotion of the rights of persons with a handicap, 6 December 2006. English translation available at: <http://www.equalrightstrust.org/ertdocumentbank/LEGE%20448%20engleza.pdf>.

2 THE DEFINITION OF DISCRIMINATION

2.1 Definition of the grounds of unlawful discrimination within the directives

The Romanian Anti-discrimination Law does not define the content of the protected grounds. The legislation does not include any definition of ethnicity or race, religion, age, sexual orientation and disability and there have been no attempts to define these concepts through judicial interpretation.

Article 4 of the Anti-discrimination Law defines 'disadvantaged group' as 'the category of persons that is either placed in a position of inequality as opposed to the majority of citizens due to personal (identity) differences or is faced with rejection and marginalisation'. Prior to the 2006 amendment, the text included as exemplification 'non-contagious chronic disease, HIV infection or the status of refugee or asylum-seeker' but this exemplifying list was deleted by the Parliament in 2006, thus leaving interpretation of the meaning of the concept of 'disadvantaged group' to the national equality body (NCCD) or to the courts. Currently, 'disadvantaged group' is used to cover all these categories, also including social status, property or education status, which might in themselves be defined as protected grounds given that the Romanian list of grounds is open. The case law of the NCCD suggests that the national equality body is prone to use belonging to a disadvantaged group as an isolated ground, rather than using it together with other grounds.

Racial or ethnic origin

A definition of national minority as an 'ethnicity which is represented in the Council of National Minorities' is included, without further details, in the electoral legislation.³⁸ When ratifying the European Charter for Regional or Minority Languages, the Parliament chose not to define minority languages but to list them.³⁹ There is no legislation on national minorities. The manual for those carrying out the survey for the 2011 census defined ethnicity as 'the option (self-determination) of a person to belong to a human group with common elements of civilization and culture, through one or more characteristics regarding language, religion, common traditions and customs, lifestyle and other specific characteristics.'⁴⁰ None of these elements is further legally defined or interpreted. In the same guidelines, 'mother tongue' is defined as: 'the first language used regularly in the family of the person interviewed, during his or her early childhood.'⁴¹

Religion or belief

No legal definition of the protected ground of religion or belief is provided in the Anti-discrimination Law. The 2011 census manual defined religion as 'the creed or the religious

³⁸ Law 35/2008 on the election of the Chamber of Deputies and of the Senate and for the amendment of Law 67/2004 on the election of local public administration authorities, of Law 215/2001 on local public administration and of Law 393/2004 on the Statute of officials elected in local elections (*Lege pentru alegerea Camerei Deputaților și a Senatului și pentru modificarea și completarea Legii nr. 67/2004 pentru alegerea autorităților administrației publice locale, a Legii administrației publice locale nr. 215/2001 și a Legii nr. 393/2004 privind Statutul aleșilor locali*), 13 March 2008, Art. 2(29). The legislation lists the 19 organisations deemed to be representative of the 19 national minorities in Romania.

³⁹ Law 282/2007 for the ratification of the European Charter of Regional and Minority Languages (*Lege 282/2007 pentru ratificarea Cartei europene a limbilor regionale sau minoritare*), 6 November 2007. Article 2 of the law lists the following minority languages: Albanian, Armenian, Bulgarian, Czech, Croatian, German, Greek, Italian, Hebrew, Hungarian, Macedonian, Polish, Romani, Russian, Ruthenian, Serbian, Slovak, Tatar, Turkish and Ukrainian.

⁴⁰ Institutul Național de Statistică (2011), *Recensământul populației și al locuințelor 2011, Instrumentar*. Manual available in Romanian on the website of the 2011 census, in Part 3: <http://www.recensamantromania.ro/instrumentar/>. Definition available on page 73.

⁴¹ Institutul Național de Statistică (2011), *Recensământul populației și al locuințelor 2011, Instrumentar*. Manual available in Romanian on the website of the 2011 census, in Part 3: <http://www.recensamantromania.ro/instrumentar/>. Definition available on page 73.

or spiritual option, regardless whether this is manifested or not through affiliation to a permanent religious community.⁴²

Disability

Article 2 of Law 448/2006, which is the framework legislation for the protection and promotion of the rights of persons with disabilities, uses the following legal definition of disability (which is also used in the context of non-discrimination cases, given the lack of a different, specific definition):

'disabled persons shall be those persons who, due to a physical, mental or sensorial impairment, do not have the abilities for normally performing the day to-day activities, requiring protection measures in support of their social recovery, integration and inclusion.'⁴³

In a 2012 decision, the NCCD discussed the meanings of the two concepts 'handicap' and 'disability' used in Romanian legislation, mentioning its preference for using the term 'disability in an inclusive manner' even if the terminology used in both GO 137/2000 and Law 448/2006 is 'handicap'. The NCCD proceeded to clarify that 'to the extent that an illness is not a non-contagious chronic disease (meaning a protected criterion), it becomes a disability depending on the duration, nature or severity of the disease' without, however, taking into consideration the environmental element.⁴⁴ This approach might be interpreted as being partially in line with the definition provided subsequently by the CJEU in joined cases C-335/11 and C-337/11 *Skouboe Werge and Ring*.⁴⁵

The national strategy 'A Society without Barriers for Persons with Disabilities 2016-2020' included further definitions⁴⁶ and a similar approach is followed in the 2022-2027 national strategy 'An Equitable Romania'.⁴⁷ The 2016 strategy introduced the recognition of the social model of disability and defined disability as:

'a generic term for deficiencies/impairments, limitations of the activity and restrictions in participation. The concept reflects the negative aspects of the interaction between the individual, who has a health problem, and environment and personal factors the person is living in.'

⁴² Institutul Național de Statistică (2011), *Recensământul populației și al locuințelor 2011, Instrumentar*. Manual available in Romanian on the website of the 2011 census, in Part 3: <http://www.recensamantromania.ro/instrumentar/>. Definition available on page 73.

⁴³ Law 448/2006 on the protection and promotion of the rights of persons with a handicap, 6 December 2006, Art. 5(4). An unofficial translation of the law is available at: <http://www.equalrightstrust.org/ertdocumentbank/LEGE%20448%20engleza.pdf>.

⁴⁴ National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării*) (NCCD), Decision 509, case No. 433/2012, *FEDRA v. SC SECOM SRL*, 26 November 2012.

⁴⁵ Court of Justice of the European Union (CJEU), joined Cases C-335/11 and C-337/11, *Ring and Skouboe Werge*, judgment of 11 April 2013, EU:C:2013:222.

⁴⁶ Government Decision 655 for the approval of the national strategy, 'A Society without Barriers for Persons with Disabilities 2016-2020' and the operational plan for the implementation of the strategy (*Hotărârea de Guvern 655 pentru aprobarea Strategiei naționale „O societate fără bariere pentru persoanele cu dizabilități” 2016-2020 și Planul operațional privind implementarea strategiei naționale O societate fără bariere pentru persoanele cu dizabilități” 2016-2020*) 14 September 2016, (*Monitorul Oficial*, 737, 22 September 2016).

⁴⁷ Government Decision 490 for the approval of the national strategy 'n Equitable Romania 2022-2030' (*Hotărârea de Guvern 490 din 6 aprilie 2022 pentru aprobarea Strategiei naționale privind drepturile persoanelor cu dizabilități "O Românie echitabilă" 2022-2027*) 6 April 2022, (*Monitorul Oficial*, 375, 15 April 2022) available in English at: <http://anpd.gov.ro/strategia2022-2027/#/>.

Persons with disabilities are defined as:

'persons with physical, mental, intellectual or sensorial deficiencies which are long lasting, deficiencies which, in interaction with various barriers, might limit full and effective participation of the persons in the society, in equal conditions with others.'⁴⁸

Age

There is no definition of age in the Anti-discrimination Law. In the case law of the NCCD and courts, the term has been applied to cover both younger and older persons.

Sexual orientation

There is no definition of sexual orientation in the Anti-discrimination Law and no relevant case law defining sexual orientation, so the courts and the national equality body use the concept as it is invoked by the parties.

2.2 Multiple and intersectional discrimination

In Romania, multiple discrimination is prohibited in the Anti-Discrimination Law as an aggravating circumstance in cases of discrimination and is punished as a minor offence. However, if any of the elements of a case of multiple discrimination is covered by the provisions of the Criminal Code, the case will be tried as a criminal offence. Article 2(6) of the Anti-discrimination Law reads as follows:

'Any distinction, exclusion, restriction or preference based on two or more of the criteria foreseen in para. 1 shall constitute an aggravating circumstance in establishing the contraventional responsibility, unless one or more of its components is not subject to criminal law.'⁴⁹

In Romania, intersectional discrimination is not prohibited by law.

Romanian data on cases of multiple discrimination are contradictory and their accuracy cannot be verified, as there is no public access to the databases of the NCCD or courts, and the ECRIS database (the national statistical application aggregating data introduced by all courts) does not record the number of complaints or decisions on discrimination filed in application of the Romanian Anti-discrimination Law.⁵⁰ NCCD activity reports published after 2011 do not mention multiple and/or intersectional discrimination. Based on the cases publicly available so far, it seems that most multiple discrimination cases include a gender dimension.

2.3 Assumed and associated discrimination

a) Discrimination by assumption

In Romania, discrimination based on a perception or assumption of a person's characteristics is not prohibited in national law although the case law developed by the NCCD proves that discrimination by assumption or by association is penalised in practice. The NCCD discussed the concept in cases of discrimination on grounds of association with

⁴⁸ Government Decision 655 for the approval of the National Strategy 'A Society without Barriers for Persons with Disabilities 2016-2020' and the operational plan for the implementation of the strategy (*Hotărârea de Guvern 655 pentru aprobarea Strategiei naționale „O societate fără bariere pentru persoanele cu dizabilități” 2016-2020 și Planul operațional privind implementarea strategiei naționale O societate fără bariere pentru persoanele cu dizabilități” 2016-2020*) 14 September 2016, (*Monitorul Oficial*, 737, 22 September 2016).

⁴⁹ Law 324/2006 for the amendment of Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, Art. 2(6).

⁵⁰ Superior Council of Magistracy (*Consiliul Superior al Magistraturii*), response 5/27805 to public information request, 17 December 2015.

a particular group or assumption of belonging to a protected group (mostly in cases involving sexual orientation),⁵¹ but did not develop this in its reasoning.⁵² It is still up to the courts to decide whether a prohibition of assumed discrimination can be inferred from the general definition of direct discrimination included in the Anti-discrimination Law, as applied by the NCCD.

b) Discrimination by association

In Romania, discrimination based on association with persons with particular characteristics is not prohibited in the national law, although the definition of discrimination provided by Article 2 is broad/open enough to allow for enforcement in line with *Coleman v. Attridge Law and Steve Law*.⁵³ However, the practice of the courts is not consistent.

2.4 Direct discrimination (Article 2(2)(a))

a) Prohibition and definition of direct discrimination

In Romania, direct discrimination is prohibited in national law. It is defined in Article 2(1) of the Anti-discrimination Law as:

'any difference, exclusion, restriction or preference based on race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV-positive status, belonging to a disadvantaged group or any other criterion, aiming to or resulting in a restriction or prevention of the equal recognition, use or exercise of human rights and fundamental freedoms in the political, economic, social and cultural field or in any other fields of public life.'⁵⁴

b) Justification for direct discrimination

With the exception of genuine and determining occupational requirements, the Anti-discrimination Law does not permit justification of direct discrimination in general, or in relation to particular grounds, including age. Researchers and victims have criticised the practice of the NCCD in asking perpetrators to provide justifications even in cases of direct discrimination.

2.5 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

In Romania, indirect discrimination is prohibited in national law. It is defined in Article 2(3) of the Anti-discrimination Law, which prohibits:

'any provisions, criteria or practices apparently neutral which disadvantage certain persons on grounds of one of the protected grounds from para. (1), unless these practices, criteria and provisions are objectively justified by a legitimate aim and the methods used to reach that purpose are appropriate and necessary.'⁵⁵

⁵¹ For example, in the case *D.Z. v. Distrigaz Sud*, first instance court Decision 4222 of 1 August 2007 mentioned below.

⁵² National Council for Combating Discrimination, Decision 92, 23 May 2007 in *Romani CRISS v. Traian Băsescu*. The NCCD considered the assumption made by the President when calling a journalist 'filthy Gypsy' as being discriminatory to the Roma community in general.

⁵³ Court of Justice of the European Union (CJEU), Case C-303/06 *Coleman v. Attridge Law and Steve Law*, judgment of 17 July 2008, EU:C:2008:415.

⁵⁴ Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, 30 August 2000, Art. 2(1).

⁵⁵ Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, 30 August 2000, Art. 2(3).

Although the legal definition complies with those in the directives, in practice, enforcement of the prohibition of indirect discrimination is problematic. In its report assessing the implementation of the Racial Equality Directive, the NCCD mentions that between 2002 and 2010 it sanctioned nine cases of indirect discrimination.⁵⁶ However, not all the cases presented as indirect discrimination are clear-cut. The jurisprudence of the NCCD also blurs the lines between direct and indirect discrimination.

In a 2010 decision regarding denial of access to public places (a club) to Roma, based on absence of club membership cards, the NCCD found that the situation amounted to indirect discrimination: 'even if an apparently neutral criterion had been invoked, in practice this led to disadvantaging two Roma as compared to other persons (non-Roma), without an objective justification, also the means for achieving the objective were not adequate.'⁵⁷

b) Justification test for indirect discrimination

In its case law, the NCCD extensively relies on ECtHR and CJEU jurisprudence when discussing indirect discrimination and assessing legitimate aims, appropriate and necessary measures, or objective justification. In a 2006 case filed by Romani CRISS against the Dumbrăveni Theoretical High School, the NCCD sanctioned indirect discrimination and in its legal reasoning assessed the legitimate aims as well as the measures taken in order to pursue the declared aims.⁵⁸ In its decision, issued on 11 June 2008, the NCCD referred to the ECtHR decision in *D.H. and Others v. the Czech Republic* of 13 November 2007,⁵⁹ assessed the adverse effect of incentives granted in support of children with disabilities (benefits in food, transportation, financial support etc.) and concluded that even if the procedure for transferring children to the special school observed the legal requirements, in practice it led to discriminatory outcomes. The NCCD decided that the case amounted to indirect discrimination and recommended the Ministry of Education take all 'measures necessary in order to ensure implementation of the principle of equal opportunities in schools, and to redress the discriminatory treatment of Roma pupils who had been transferred from regular schools to special schools based on socio-economic needs' (and not based on disability).

⁵⁶ National Council for Combating Discrimination (2011), *Raportul privind implementarea Directivei rasiale în România pentru perioada 2003-2010* (Report on the implementation of the Race Directive in Romania for the period 2003-2010), Bucharest, available at: https://www.cncd.ro/wp-content/uploads/2020/12/Raport_D43_2000_CNCD.pdf.

⁵⁷ National Council for Combating Discrimination, Decision 67 of 19 May 2010. The four complainants were denied access due to a lack of membership cards, while these were not requested from other (non-Roma) persons. In order to apply for a membership card, potential clients were requested to supply a copy of their ID, a copy of the employment registry entry (official record of employment relations), the original of their criminal record document and a scan of their fingerprints. In its Decision 67 of 19 May 2010, the NCCD stated that while requesting a membership card for access to a club is justified by a legitimate scope such as ensuring order and protecting property, the conditions imposed do not differentiate and disproportionately affect persons convicted for minor offences or persons who work as freelancers and do not have an employment registry entry. 'Lacking objective criteria regarding the requirements, the granting of the membership card becomes, in practice, arbitrary... if the different treatment is caused by arbitrary requirements, it cannot be decided that it is objectively justified and is reasonable from the perspective of the principle of equality.'

⁵⁸ National Council for Combating Discrimination, Decision 733 of 11 June 2008. The claimant, a Roma NGO, complained about the practice of transferring Roma pupils from the theoretical high school to a special school, leading to a situation where almost 90 % of the pupils attending the special school were Roma. The high school instituted a procedure for transferring to the special school pupils who failed to attain the grades required to pass a class for more than two or three years in succession and who were evaluated for transfer by a special commission established by law at the level of the local general directorate for the protection of the child and for social assistance. The special commission decided whether the pupils had intellectual disabilities and whether they needed special education.

⁵⁹ European Court of Human Rights (ECtHR), *D.H. and Others v. the Czech Republic*, [GC] No. 57325/00, 13 November 2007.

2.5.1 Statistical evidence

Section 2.5.1 has not been updated for 2022. Regarding the legal framework and practice, please see Country report Non-discrimination Romania 2022, Transposition and implementation at national level of Council Directives 2000/43 and 2000/78, reporting period 01.01.2021–01.01.2022.

2.6 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Romania, harassment is prohibited in national law and is defined in Article 2(5) of the Anti-discrimination Law. In Romania, harassment explicitly constitutes a form of discrimination, although the list of protected grounds for harassment differs from those mentioned in Article 2(1). The different wording is caused by the lack of consistency in the various rounds of amendments. However, harassment was interpreted as being applicable to the main list of protected criteria, in spite of its definition as:

'any behaviour on grounds of race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, belonging to a disadvantaged group, age, handicap, refugee or asylum seeker status or any other criterion, which leads to establishing an intimidating, hostile, degrading or offensive environment.'

In 2020, in spite of protests from the NCCD, which criticised the quality of the proposed amendment and the lack of coherence with existing provisions, an additional form of harassment was included in the Anti-discrimination Law as moral harassment, which is defined in a new Article 5¹ as:

'any conduct committed against an employee by another employee who is his/her superior, by a subordinate and/or by a comparable employee from a hierarchical point of view, in relation to employment relationships, which have as purpose or effect a deterioration of working conditions by infringing the rights or dignity of the employee, by affecting his/her physical or mental health or by compromising his/her professional future, [or] behaviour manifested in any of the following forms: (a) hostile or unwanted conduct; (b) verbal comments; or (c) actions or gestures'.

In Article 5², the amendment further adds that:

'Moral harassment in the workplace is any behaviour that, by its systematic nature, can harm the dignity, physical or mental integrity of an employee or group of employees, endangering their work or degrading the work environment. For the purposes of this law, stress and physical exhaustion are subject to moral harassment at work'.⁶⁰

The amendments to Articles 26(1) and 26(2) spell out the types of sanctions for moral harassment, which are significantly different from the sanctions provided in the Anti-discrimination Law thus far for other forms of discrimination, including for findings of harassment.⁶¹

None of the definitions provided are in complete compliance with the definition of harassment set out in the directives, as they fail to penalise unwanted conduct related to any of the grounds in connection with the *purpose* of such actions, not just on the basis of the *effect* of violating the dignity of a person and of creating an intimidating, hostile,

⁶⁰ Law 167 of 7 August 2020, amending Governmental Ordinance 137/2000.

⁶¹ For further information regarding sanctions provided under this amendment for moral harassment, see section 6.5 below.

degrading, humiliating or offensive environment. Thus, they are in need of judicial interpretation.

There are cases in which harassment was used as a catch-all concept to prohibit forms of discrimination not otherwise provided for in the Anti-discrimination Law. Given that there is no specific prohibition of residential segregation in the Anti-discrimination Law, in 2011, the NCCD defined as harassment the erection of a concrete wall 1.8-2 metres high and approximately 100 metres long between a Roma neighbourhood and the main road in the northern Romanian city of Baia Mare. In its Decision 439 of 15 November 2011, the NCCD discusses the impact of segregation on a community and condemns it as harassment provided for by Article 2(5) of the Anti-discrimination Law together with Article 15 on the infringement of human dignity.⁶² The Cluj Court of Appeal decision, which differs from that of the High Court, indicates once more that judicial interpretation is required to confirm the compliance of Article 2(5) of the Anti-discrimination Law with the EU non-discrimination directives, given that the definition is not identical and only the actual outcome or effect, and not the purpose, is covered by the law. In response to a new complaint filed by the NGO Living Colours, following the failure of the local authorities to demolish the wall, the NCCD issued a new decision finding discrimination under Article 2(1) and Article 15 (right to dignity).⁶³

Findings regarding potential harassment are sometimes limited due to the use of two types of justification: invoking freedom of expression or presenting harassment as a violation of the right to dignity provided for in Article 15 of the Anti-discrimination Law which has, however, been interpreted by the NCCD as entailing the requirement to prove the intention to generate humiliation. In regard to the first limitation, Article 2(8) of the Romanian Anti-discrimination Law states that its provisions cannot be interpreted so as to limit freedom of expression, freedom of opinion and the right to information. Although the NCCD usually invokes the case law of the ECtHR on the limitations of freedom of expression, the practice of the NCCD and of the courts is not unified, and there are cases of discriminatory speeches made by politicians which remain unsanctioned on the basis of this justification and that have not been censured as abuse of the freedom of expression, while similar or less discriminatory messages made by opposition political actors or journalists, or comments on themes triggering religious sensitivities, have been punished as discrimination. As to the requirement to establish intention to discriminate in order to find an infringement of the right to human dignity, this interpretation has also been developed by the NCCD in relation to cases involving politicians and has been confirmed by the courts.⁶⁴

⁶² The NCCD decided that the erection of a concrete wall separating an area of social housing predominantly occupied by Roma from the rest of the neighbourhood 'is a very serious deed which negatively affects the life of the entire Roma community'. Subsequently, the NCCD decided to impose a fine of approximately EUR 1 500 (RON 6 000) and to recommend the demolition of the concrete wall. The NCCD decision was challenged by the Mayor of Baia Mare before the Cluj Court of Appeal, which decided that the aim invoked by Mayor Cherecheş (protection of public safety due to alleged traffic accidents in the area) was legitimate. The Court of Appeal underlined the proportionality of the measure, but failed to share the burden of proof and request evidence from the local authorities to support their justifications and it failed to interpret harassment correctly as unwanted conduct with the purpose or effect of creating an intimidating, hostile, degrading and humiliating environment by correlating the Romanian (incomplete) provision with the definition in Article 2(3) of Directive 43/2000/EC. The NCCD appealed the decision of the Cluj Court of Appeal before the High Court of Cassation and Justice as the final court. The High Court decided to modify the judgment of the Cluj Court of Appeal by rejecting the challenge filed by the mayor of Baia Mare, upheld the decision of the NCCD that discrimination had occurred and ruled that the mayor should pay a fine. The decision of the High Court is final. High Court of Cassation and Justice, Decision 640, case No. 1741/33/2011, 27 September 2013. The summary of the decision of the court is available in Romanian at: <http://www.sci.ro/>.

⁶³ National Council for Combating Discrimination, Decision 89 of 29 January 2020. A fine of RON 7 000 (approximately EUR 1 300) was issued against the Baia Mare Territorial Administrative Unit. The high level of the fine was justified by the NCCD on the basis that the discrimination affected a community, the defendant is a public institution and it was previously fined for the same action but did not change its conduct.

⁶⁴ For example, in the case of the allegedly discriminatory statements made by Prime Minister Victor Ponta on 20 March 2013 in relation to the Roma community, the NCCD found that no discrimination had occurred, given that the defendant was exercising his right to free speech as provided for in Article 2(8) and that the

b) Scope of liability for harassment

In Romania, when harassment is perpetrated by an employee, both the employer and the employee are liable. There is no specific provision in the Anti-discrimination Law and the general torts provisions apply. However, the NCCD and the courts have consistently found that employers can be held liable together with their employees if discrimination occurs within an employment relationship but are not liable for the actions of third parties (tenants, customers etc.) over whom they have no control. The liability can be both individual (the harasser) and joint (both the employer and the harasser). In order for the liability to be joint (solidary), a specific link between the employer and the harasser needs to be justified, evidencing the rights and duties of the employer or service provider in relation to the harasser. The 2020 amending legislation, under Article 5⁴ of the Anti-discrimination Law, includes the type of liability incumbent on the perpetrators of moral harassment.⁶⁵

2.7 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Romania, instructions to discriminate are not explicitly prohibited in national law. Instructions to discriminate do not explicitly constitute a form of discrimination and are not defined. Article 2(2) of the Anti-discrimination Law prohibits 'orders' to discriminate: 'The order to discriminate against persons on any ground mentioned in para. (1) is considered discrimination.' It should be noted that the terminology might generate confusion as the wording used in Romanian is 'order', hence implying a hierarchical position, and not 'instruction', which has a wider application. Although the law provides for the prohibition of an order to discriminate, it fails to define this further, so that judicial interpretation is required in order to assess compliance with the definitions in the directives. The prohibition of orders to discriminate is applicable both to individuals and legal persons, as provided in Article 3 of the Anti-discrimination Law, in spite of specific provisions on the liability of legal persons. In practice, the NCCD and the courts assess the liability of the individual discriminator and of the legal person together.

There have been no ground-breaking cases before the courts to interpret this prohibition. The members of the steering board of the NCCD acknowledge difficulties in investigating cases of alleged orders to discriminate due to the challenges raised by the need to prove the existence of such orders (particularly in regard to access to pubs or clubs when door security guards invoke an instruction from owners or from management).⁶⁶

The Criminal Code, which was adopted in 2009 and entered into force in February 2014, rephrased the definition of incitement to hatred or discrimination in Article 369 by deleting

claimants did not prove the intention of the defendant to violate human dignity. National Council for Combating Discrimination, Decision 170, case No. 320/2013 and case No. 333/2013, 9 April 2013. The Court of Appeal upheld the NCCD decision, finding that the claimant did not have the scope or intention to discriminate. Bucharest Court of Appeal (*Curtea de Apel București*), case No. 3123/2/2013, 9 October 2013. The High Court of Cassation and Justice upheld this judgment as final in its decision of 12 March 2015. High Court of Cassation and Justice, Decision 735, 19 February 2015, case No. 3123/2/2013, 19 February 2015. The summary with the decision of the court is available in Romanian at: <http://www.scj.ro/1094/Detaliidosar?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=20000000304053>.

⁶⁵ Under Art. 5⁴, employees who commit acts of moral harassment at work are subject to disciplinary action, in accordance with the law and the internal regulations of the employer. Disciplinary liability does not remove the employee's misdemeanour or criminal liability for those acts.

⁶⁶ For example, in Decision 180 of 18 February 2008, the NCCD censured an instruction to discriminate leading to the denial of access to goods and services to a Roma person. The complainant (H.C.) raised a complaint against an announcement posted at the entrance of an internet café stating: 'Beginning from [date] Roma are not allowed in this internet café because we had a lot of problems with them, they are quarrelling and fighting every evening.' The sanction issued both for direct discrimination and for the order to discriminate was a fine of approximately EUR 150 (RON 600). National Council for Combating Discrimination, Decision 180 of 18 February 2008.

the list of protected grounds and introducing the following wording: 'Inciting the public, using any means, to hatred or discrimination against a category of individuals shall be punishable by no less than six months and no more than three years of imprisonment or by a fine.'⁶⁷ This wording raised European Commission concerns which led to the commencement of pre-infringement proceedings by the European Commission on 30 October 2020, because the article did not criminalise hate speech directed against an individual member of a protected group, only incitement to hatred, violence or discrimination directed against a group.⁶⁸ A new version of Article 369 entered into force in 2022, 'Incitement to hatred, violence or discrimination', after a long process of amendments that started in 2021 and entailed two Constitutional Court reviews.⁶⁹ This amendment expanded the criminal offence to cover incitement against an individual belonging to a protected group and to cover incitement to violence along with incitement to hatred or discrimination.

b) Scope of liability for instructions to discriminate

In Romania, the person issuing the order to discriminate and the discriminator are both liable. The Anti-discrimination Law does not include specific provisions on the scope of the liability. Liability is individual and in order to find discrimination, the NCCD identifies the agents of discrimination and their responsibility. The case law of the NCCD indicates that employers can be held liable for the actions of their employees if there is joint responsibility. The NCCD uses personal liability in determining the degree of responsibility for each party. Employers have not been held liable for actions of third parties. Trade unions or professional associations cannot be held liable for the actions of their members unless the discriminatory conduct represents the policy of the organisation or is carried out from a position of leadership, representing the policies of the entity.

The courts have imposed vicarious liability upon employers for the actions of their employees.⁷⁰ A person who discriminates in accordance with an instruction to discriminate would be held liable together with the person who issued the instruction to discriminate.

Article 219 of the Civil Code (Law 287/2009) sets out the regime of liability for legal acts:

'Lawful or unlawful acts perpetrated by the bodies of a legal entity create an obligation for the legal entity itself, but only if such acts relate to the powers or with the scope of the responsibilities assigned.

(2) Unlawful acts generate both the personal and joint liability of those who perpetrated them, both in relation to the legal entity itself and in relation to third persons.'

Article 220 on the liability of members of the bodies of the legal entity provides that 'the decision-making body can decide, with the legally required majority, if it will take action against administrators, censors, directors and other persons who acted as members of the bodies of the legal entity, for damages caused by such persons when infringing their duties as assigned.'

⁶⁷ Law 286/2009 on the Criminal Code, 17 July 2009. Official translation available at: <http://www.legislationline.org/documents/section/criminal-codes/country/8>.

⁶⁸ European Commission (2020) [Infringement decisions of 30 October 2020](#).

⁶⁹ Romania, Law No. 170/2022 on the amendment of Article 369 of the Law No. 286/2009 on the Criminal Code, 3 June 2022, published in the Official Journal No.548 of 6 June 2022. See also, Romania, Chamber of Representatives, [PL-x no.134/2021, Bill to amend Article 369 of the Law no.286/2009 on the Criminal Code \(PL-x nr. 134/2021 Proiect de Lege pentru modificarea art.369 din Legea nr.286/2009 privind Codul penal\)](#). The entire legislative process is [available online](#).

⁷⁰ Bihor County Tribunal (*Tribunalul Bihor*) Civil Judgement (*Sentinta Civila*) No. 620/L.M./2007, case No. 6094/111/2006, B. R. v. A. V. [administrator of the Oradea Zoo], M. I., [human resources manager] Regia Autonomă de Piețe, Agrement și Salubritate Oradea [employer], 1 October 2007.

2.8 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

- a) Implementation of the duty to provide reasonable accommodation for persons with disabilities in the area of employment

In Romania, the duty on employers to provide reasonable accommodation is not included in the Anti-discrimination Law. The special legislation on the promotion and protection of the rights of persons with disabilities (Law 448/2006) provides for reasonable accommodation in the workplace as a facility for the employee, but it does not establish any duty on the employer, which is not in line with the approach of Directive 2000/78. Law 448/2006 mentions in general terms duties to facilitate accessibility to various public and private services and facilities. Law 448/2006, as amended in 2020, defines reasonable accommodation in the workplace as:

'all the changes undertaken by the employer in order to facilitate the exercising of the right to work of the person having a handicap [disability]; this entails adjusting and/or adapting the work schedule according to the functional potential of the person with handicap, buying assistive equipment, devices and technologies related to the disability and other similar measures.'⁷¹

Article 78 (1[^]1) as modified by Law 145/2020, establishes that 'in order to integrate persons with disabilities into employment, employers shall ensure that they have access to employment adapted, as appropriate, in accordance with their functional potential and adaptability.' Furthermore, equal opportunities and accessibility of the workplace as well as adaptation of the tasks are guaranteed for persons with disabilities.⁷²

According to Article 83 of Law 448/2006, reasonable accommodation in the workplace is ensured both for persons with disabilities seeking a job and for those already employed, no matter the disability type. However, the law does not specify this as an obligation and it does not establish the duty bearer. Reasonable accommodation is presented as a 'benefit' for the person with disabilities. There is no provision for any limitation or restriction regarding persons entitled to claim reasonable accommodation, or guidance as to how the disability will be assessed and what tests for reasonableness/undue burden are to be applied. The availability (or lack) of financial assistance from the state is not taken into account in assessing whether there is a disproportionate burden.

Law 448/2006 introduces certain benefits for employers of persons with disabilities, including tax allowances for the costs of the adaptation of the workplace and equipment and for devices bought to accommodate persons with disabilities.⁷³ In addition, Law 448/2006 establishes a duty to provide adequate technical support in the area of education (Article 18), for access to public buildings (Article 63) and for access to transportation services (Article 64).

The authority responsible for identifying and sanctioning cases of failure in ensuring reasonable accommodation is the National Authority for Persons with Disabilities (NAPD) (*Autoritatea Națională pentru Persoanele cu Dizabilități*).⁷⁴ However, the NAPD has been reorganised and incorporated as a department within the Ministry of Labour as part of changes to institutional policies in response to the financial crisis, including the downsizing of social assistance services. Even prior to this, the NAPD was sanctioned by the NCCD for

⁷¹ Law 145/2020 of 22 July 2020, amending Art. 5(4) of Law 448/2006.

⁷² New Article 78 (1[^]2) of Law 448/2006, as amended by Law 145/2020.

⁷³ Law 448/2006 on the protection and promotion of the rights of persons with a handicap, 6 December 2006, Art. 84.

⁷⁴ Law 448/2006 on the protection and promotion of the rights of persons with a handicap, 6 December 2006, Art. 100.

its failure to provide reasonable accommodation and to supervise the observance of the legal provisions in this regard.⁷⁵

Law 448/2006 provides no sanction to be imposed where there is failure to comply with the provisions regarding reasonable accommodation, but the general anti-discrimination provisions might be applied. Failure to provide reasonable accommodation as required in Article 83 of Law 448/2006 is mentioned among other arguments in a limited number of cases of the NCCD, which read the general prohibition of direct discrimination in conjunction with the legal provision in Article 83 to entail a duty to ensure reasonable accommodation.⁷⁶ The NCCD consequently found that discrimination occurred and issued sanctions.

In the specific area of employment, a similar decision would be also issued subject to the caveat of Article 4¹ of the Anti-discrimination Law as amended in 2013, which allows 'difference of treatment based on one of the criteria provided for in Article 2 ... when due to the nature of the occupational activities or of the context in which it takes place, such a characteristic amounts to genuine and determining occupational requirements, under the requirement that the measures are objectively justified by a legitimate aim and the methods pursued are adequate and necessary'. Article 4¹ follows the wording of Article 4 of Directive 2000/78/EC and repeals the former Article 9 of the Anti-discrimination Law. Currently, there is no legal wording to suggest a duty to consider whether making reasonable accommodation would enable a person to comply with the requirements provided in Article 4¹.

b) Case law

Existing NCCD and court jurisprudence does not allow an assessment of whether, when punishing a failure to provide reasonable accommodation, the restrictive definition of disability in Law 448/2006 or the more comprehensive, broad approach to disability used so far by the NCCD would be applied. However, the NCCD approach is yet to be confirmed, as the body has so far been reluctant to clearly identify and consistently sanction failure to ensure reasonable accommodation, given that the legislation on the rights of persons with disabilities provides for other institutions to ensure its implementation, such as the National Authority for Persons with Disabilities (NAPD) (*Autoritatea Națională pentru Persoanele cu Dizabilități*).

The phrase 'disproportionate burden' is not used in the legislation. There is no legal provision or legal interpretation of what is 'reasonable' and what constitutes a 'disproportionate burden', neither in the practice of the NCCD nor of the National Authority for Persons with Disabilities. In view of the lack of specific legal provisions or consistent jurisprudence, it is impossible to assess whether there is any limit on the obligation to provide reasonable accommodation and how such a limit would be defined.

The NCCD does not look into the specifics of what measures were required to comply with the duty of ensuring reasonable accommodation. For example in a 2009 case, the decision just mentioned that due to the prior employment relationship, it operated on the assumption that these requirements had already been met.⁷⁷

⁷⁵ National Council for Combating Discrimination, Decision 596, case No. 441/2008, 13 November 2008.

⁷⁶ National Council for Combating Discrimination, Decision 463, case No. 210/2009, in petition No. 4918 of 12 May, *Complainant v. Respondent* [former employer], 2 September 2009.

⁷⁷ For example, in a 2009 case regarding a person with disabilities who was refused a renewal of his employment contract using the justification of a no-hiring policy and a lack of vacant positions with working conditions appropriate for a person with a accentuated degree of disability, the NCCD rejected the arguments made by the defendant, which mentioned, among other things, the duty to provide reasonable accommodation as specified in the law and emphasised that, given that the complainant had worked for a long time in that specific position, it was reasonable to believe that there was no need for further accommodation. National Council for Combating Discrimination, Decision 77, case No. 260/2008, *Complainant v. ANIF R.A., Sucursala Teritorială Timiș*, 3 February 2009.

c) Definition of disability and non-discrimination protection

There is no definition of disability in the Anti-discrimination Law. The NCCD uses the legal definitions provided by the special legislation on the rights of persons with disabilities (Law 448/2006 and subsequent legislation). Article 2 of Law 448/2006 provides the legal definition of persons with disabilities as 'those persons who, due to a physical, mental or sensorial impairment, do not have the abilities for normally performing the day-to-day activities, requiring protection measures in support of their social recovery, integration and inclusion.'⁷⁸

Government Decision 655 on the approval of the national strategy 'A Society without Barriers for Persons with Disabilities 2016-2020' and the operational plan for the implementation of the strategy from 14 September 2016 defined persons with disabilities in line with the UNCRPD approach as 'persons with physical, mental, intellectual or sensorial deficiencies which are long lasting, deficiencies which, in interaction with various barriers, might limit full and effective participation of the persons in the society, in equal conditions with others.'⁷⁹ A similar approach is followed in the 2022-2027 national strategy 'An Equitable Romania'.⁸⁰ When claiming reasonable accommodation, the general definition of disability as understood by the NCCD based on Law 448/2006 would apply.

d) Failure to meet the duty of reasonable accommodation for persons with disabilities

In Romania, failure to meet the duty of reasonable accommodation is not mentioned as discrimination in the legal provisions but is penalised as such by the NCCD and by the courts. Law 448/2006 on the protection and promotion of the rights of persons with a handicap does not include specific sanctions for a failure to ensure reasonable accommodation in the workplace and does not define such failure as discrimination. Nevertheless, NCCD interpretation so far suggests that the failure to ensure reasonable accommodation would be judged as discrimination. The Anti-discrimination Law has so far been applied accordingly (Articles 5-8). However, Article 4¹ of the Anti-discrimination Law, as introduced in 2013, allows for justifications in cases of differential treatment in employment when the measures are objectively justified by a legitimate aim and the methods pursued are adequate and necessary. There is no jurisprudence from the courts or the national equality body so far, but in theory the exemption in Article 4¹ could be invoked in order to justify failure to secure reasonable accommodation if all the conditions of the test introduced in Article 4¹ are met.⁸¹ Potential sanctions issued by the NCCD after the 2013 amendments to the Anti-discrimination Law are fines in the range of EUR 250-7 500 (RON 1 000-30 000) if the victim is an individual and EUR 500-25 000 (RON 2 000-100 000) if the victims are a group or a community.

In 2015, the Bucharest Court of Appeal asserted the duty of taxi companies to ensure means of transportation for persons using wheelchairs that cannot be stowed in the

⁷⁸ An unofficial translation of the disability law is available at:

<http://www.equalrightstrust.org/ertdocumentbank/LEGE%20448%20engleza.pdf>.

⁷⁹ Government Decision 655 on the approval of the national strategy 'A Society without Barriers for Persons with Disabilities 2016-2020' and the operational plan for the implementation of the strategy (*Hotărârea de Guvern 655 pentru aprobarea Strategiei naționale „O societate fără bariere pentru persoanele cu dizabilități” 2016-2020 și Planul operațional privind implementarea strategiei naționale O societate fără bariere pentru persoanele cu dizabilități” 2016-2020*) 14 September 2016, *Monitorul Oficial*, 737, 22 September 2016.

⁸⁰ Government Decision 490 for the approval of the national strategy 'An Equitable Romania 2022-2030' (*Hotărârea de Guvern 490 din 6 aprilie 2022 pentru aprobarea Strategiei naționale privind drepturile persoanelor cu dizabilități "O Românie echitabilă" 2022-2027*) 6 April 2022, *Monitorul Oficial*, 375, 15 April 2022 available in English at <http://anpd.gov.ro/strategia2022-2027/#/>.

⁸¹ Art. 4¹ as adopted in 2013 defines occupational requirements as reflected by Art. 4 of Directive 2000/78/EC and repealed Art. 9, which previously dealt with this topic in a rather unclear manner, as it stated that 'the provisions of Arts. 5-8 (prohibition of discrimination in employment relations), cannot be interpreted as restricting the right of the employer to refuse to employ a person who does not correspond to determining occupational requirements in that particular field, as long as the refusal does not amount to an act of discrimination under the understanding of this Ordinance, and the measures are objectively justified by a legitimate aim and the methods used are adequate and necessary.'

luggage compartment of a car, which was discussed from the perspective of accessibility, as it clearly introduces the argument that failure to pre-emptively take all measures amounts to discrimination in access to public services.⁸² The Court of Appeal interpreted the prohibition of refusal of access to public transportation services as including the failure to ensure accessibility, thus expanding the interpretation of the Anti-discrimination Law.

Cases of failure to ensure reasonable accommodation in work-related contexts can be also brought before the Local Labour Inspectorates (*Inspectorat Teritorial de Muncă*) on grounds of the Labour Code and Article 83 of Law 448/2006. A study produced for the NAPD and published in 2023 does not provide information on the role and the activity of the institution in this regard. Instead it finds that no campaign has been conducted by the NCCD and that there is no evidence of thematic inspections conducted by the Labour Inspectorates.⁸³

e) Duties to provide reasonable accommodation in areas other than employment for persons with disabilities

There is no duty in the Romanian Anti-discrimination Law to provide reasonable accommodation for persons with disabilities outside the employment field. However, Law 448/2006 includes the duty to provide adequate technical support in the area of education (Article 18), for access to public buildings (Article 63) and for access to transportation services (Article 64).

For example, Article 18 of Law 448/2006 mentions the duty to provide technical equipment, adapt furniture to the needs of pupils with disabilities, and to ensure the availability of special textbooks and software applications. Failure to comply with these obligations is punishable by a fine in the range of approximately EUR 750-2 250 (RON 3 000-9 000). The authority responsible for identifying and penalising such cases is the NAPD.⁸⁴

In a notable case from 2008, the NCCD found against the General Directorate for Social Assistance and Child Protection, the Ministry of Labour, Family and Equal Opportunities and the National Authority for Persons with a Disability for failure to ensure reasonable accommodation for a person with disabilities and for not providing adequate material support for persons with disabilities and their assistants.⁸⁵ The NCCD found that not

⁸² In its decision, Decision 126 of 25 February 2015, the NCCD found that no discrimination had occurred in the failure of two taxi companies to ensure reasonable accommodation in access to services and ruled that the behaviour of the cab driver did not amount to discrimination as the claimants did not specify the need for an adapted car when making the initial call and the cab driver's refusal was justified by the physical impossibility of fitting the wheelchair in the car boot. The claimants challenged the NCCD decision before the Bucharest Court of Appeal, seeking an annulment of the NCCD decision. The court upheld the NCCD decision in regard to the cab driver on the initial facts presented by the claimant but looked at the systemic challenge of accessibility and quashed the NCCD decision. By extending the scope of the petition, the Court of Appeal found that the refusal of the two taxi companies amounts to discrimination under Article 10(g) of the Anti-discrimination Law, which provides for the prohibition of refusal of access to public transportation services, and issued a fine of approximately EUR 2 250 (RON 10 000) to each of the two companies. The Court of Appeal also ordered the two companies to redress the situation of discrimination by owning at least one specially adapted car to be used exclusively for persons with disabilities who use electric wheelchairs that cannot be stowed. The court also ordered Bucharest municipality, the General Directorate for Social Assistance and the Agency for Payments and Social Inspection of Bucharest to redress the situation of discrimination by taking all administrative measures provided by the legislation to oblige all companies authorised for taxi services to have at least one vehicle adapted for persons with disabilities who use electric wheelchairs that cannot be stowed. Bucharest Court of Appeal, Decision 2547, 12 October 2015.

⁸³ Ministerul Muncii și Protecției Sociale, ANDPDCA, [Diagnoza situației persoanelor cu dizabilități în România \(Assessment of the situation of people with disabilities in Romania\)](#), POCA, 2023.

⁸⁴ Law 448/2006 on the protection and promotion of the rights of persons with a handicap, 6 December 2006, Art. 100.

⁸⁵ National Council for Combating Discrimination, Decision 596, case No. 441/2008, 13 November 2008. The case was initiated by H. A., the mother of a visually impaired child, who complained about the lack of software needed for educational purposes and the absence of posts with audio signals at road crossings, and that the amount of money for disability benefits and personal assistant support is insufficient to ensure normal living conditions for two persons. The NCCD emphasised that the defendants have a duty to check observance of the relevant legal provisions and that they failed to prove that such checks took place.

ensuring provision of reasonable accommodation in the form of appropriate educational software amounts to discrimination, as does any failure to supervise the observance of legal provisions, which leads to discriminatory effects. The NCCD issued a recommendation to the NAPD, without imposing any monetary sanction.

Most of the NCCD cases which could be relevant from the perspective of imposing sanctions for failing to secure reasonable accommodation in areas outside employment do not specifically mention reasonable accommodation. This might be because it was easier for the NCCD to look at the specific provision on denial of access to services or because reasonable accommodation and accessibility are not defined in the Anti-discrimination Law. A notable exception is a 2008 decision in which the NCCD found that the NAPD was responsible for the failure to ensure reasonable accommodation for a person with disabilities in meeting his educational demands and for not providing adequate material support for persons with disabilities and their assistants. The NCCD issued a recommendation carrying no pecuniary penalty to the NAPD.⁸⁶

f) Duties to provide reasonable accommodation in respect of other grounds

Section 2.8.f has not been updated for 2022. Please see Country report Non-discrimination Romania 2022 Transposition and implementation at national level of Council Directives 2000/43 and 2000/78, reporting period 01.01.2021–01.01.2022.

⁸⁶ National Council for Combating Discrimination, Decision 596, case No. 441/2008, 13 November 2008.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)

In Romania, there are no residence, citizenship, or nationality requirements for protection under the relevant national laws transposing the directives. Article 1(2) of the Anti-discrimination Law guarantees the principle of equality among citizens and provides for the prohibition of discrimination in the same context. A limitation is triggered by the constraints of Article 1(3) of the Romanian Constitution, which guarantees fundamental rights in relation to citizens only. However, the comprehensive definition of discrimination provided in Article 2(1) of the Anti-discrimination Law does not include any residence, citizenship or nationality requirements to qualify for protection, as confirmed by the case law of the NCCD.⁸⁷ Persons with irregular status would benefit from the protection of the legal provisions.

3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)

a) Protection against discrimination

In Romania, the personal scope of the Anti-discrimination Law covers natural and legal persons for the purpose of protection against discrimination.⁸⁸

b) Liability for discrimination

In Romania, the personal scope of the Anti-discrimination Law covers natural and legal persons for the purpose of liability for discrimination. Article 3 specifies that all public and private natural or legal persons have an obligation to observe the principles of Article 1(2), including legal persons with mandates regarding:

- (a) conditions of hiring, criteria and conditions for recruitment, selection and promotion, access to all forms and levels of orientation, training and professional development;
- (b) social protection and security;
- (c) public services and other services, access to goods and facilities;
- (d) the education system;
- (e) ensuring freedom of movement;
- (f) ensuring public order;
- (g) other fields of social life.

Article 26(2) provides that sanctions can also be enforced against legal persons. Furthermore, Article 26(3) of the Anti-discrimination Law establishes an obligation for

'legal representatives of authorities and public institutions and of the economic agents under investigation, as well as natural persons to:

- a) provide any document that might help in clarifying the objectives of the investigation;
- b) provide information and explanations verbally or in writing, in relation to the issue under investigation;
- c) provide copies of the documents requested;
- d) provide support and ensure adequate conditions for carrying out the control and help out in view of clarifications.'

⁸⁷ National Council for Combating Discrimination, case No. 221, D. v. N. and Șofronea swimming pool, 21 September 2005, in which the victim of discrimination was an Egyptian national.

⁸⁸ Article 3 and Article 26 of the Anti-Discrimination Law.

Failure to observe these requirements can be sanctioned with a fine of approximately EUR 50 to EUR 250 (RON 200 to RON 1 000).

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

In Romania, the personal scope of national law covers the private and public sectors, including public bodies, for the purpose of protection against discrimination according to Article 3 of the Anti-discrimination Law. Article 26 of the law provides for differentiated sanctions depending on whether the victim is a group or an individual.⁸⁹

b) Liability for discrimination

In Romania, the personal scope of the Anti-discrimination Law covers private and public sectors, including public bodies, for the purpose of liability for discrimination (under Articles 3 and 26).

3.2 Material scope

3.2.1 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

In Romania, national legislation prohibits discrimination in relation to: conditions for access to employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds, and in both private and public sectors, as described in the directives. In Article 5, the Labour Code prohibits any type of discrimination 'against an employee based on criteria of sex, sexual orientation, genetic characteristics, age, national affiliation, race, colour, ethnicity, religion, political choice, social origin, handicap, family situation or responsibility,⁹⁰ membership or union activity.'⁹¹ The Labour Code further defines direct and indirect discrimination in similar terms to those of the Anti-discrimination Law.

Article 5 of the Anti-discrimination Law prohibits discrimination in relation to employment of any type and on grounds of race, nationality, ethnic group, religion, social status, beliefs, sex or sexual orientation, age and belonging to a disadvantaged group, including in selection criteria, recruitment conditions, treatment during employment relationships and promotion or professional training or other benefits, as well as in terminating employment relationships. Though gender identity/expression or sex characteristics are not expressly mentioned in the national legislation, the open list in the general prohibition of discrimination from Article 2 would allow protection against discrimination on these grounds. Articles 5 to 8 do not specifically mention self-employment, although the wording is general enough to allow the NCCD and the courts to interpret the concept of 'work relationship' as including 'self-employment'. Nevertheless, judicial clarification is needed.

Conditions for access to employment and criteria for various professional activities in the public sector are mostly determined by law. This means that following decisions of the Romanian Constitutional Court that declared that the courts are not mandated to repeal

⁸⁹ According to Article 26 of the Anti-Discrimination Law, the amount of the fine as modified in 2013 is within the range of approximately EUR 250-7 500 (RON 1 000-30 000) if the victim is an individual and within the range of EUR 500-25 000 (RON 2 000-100 000) if the victims are a group or a community.

⁹⁰ 'Family situation' as a protected ground was included to cover marital, divorced, non-marital status, caring responsibilities and single-parent families in the interpretation produced by the NCCD case law. There is no definition or explanation of what this concept means.

⁹¹ Labour Code, Law 53/2003 (*Codul Muncii*), 24 January 2003, most recently amended on 24 December 2020.

legal provisions when deemed as conducive to discrimination (Decisions 818, 819 and 820 of 2008 on *de jure* discrimination) and decisions finding that the mandate of the national equality body is unconstitutional in cases of petitions filed in relation to discrimination triggered or embedded in legislative norms (Decision 997/2008), there is a *de facto* difference between the public and the private sectors in relation to the justiciability of discrimination in conditions for access to employment. In addition, following this line of jurisprudence, the national equality body (NCCD), faced with legal provisions incompatible with the anti-discrimination principle, does not have a mechanism allowing it to decline to apply that particular legal provision, as provided by the Court of Justice of the European Union (CJEU) in C-555/07 *Kücükdeveci*,⁹² while national courts cannot repeal the discriminatory norm but can still bring an exception of unconstitutionality before the Constitutional Court.

3.2.2 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In Romania, national legislation prohibits discrimination in the following areas: working conditions, including pay and dismissal, for all five grounds protected by the directives and for both private and public employment, as specifically mentioned by the Anti-discrimination Law in Articles 5 to 8.

The lists of grounds from Articles 5, 6 and 7 should be read as including all grounds protected by Romanian legislation in Article 2, including disability, gender identity/expression or sex characteristics which are not specifically mentioned but can be interpreted as being covered in the open list. The NCCD and the courts have confirmed this interpretation in relation to disability.

3.2.3 Access to all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

In Romania, national legislation prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities. Although it does not use the wording of Article 3(1)(b) of Directive 2000/43/EC, the Anti-discrimination Law mentions specific prohibitions against discrimination in access to vocational guidance, professional training, continuing professional training and practical work, both in the section on access to work in Article 6 and in the section on access to education in Article 11, which does not distinguish between the different forms, types, stages or levels of education. The relevant articles state:

'(1) Under the ordinance herein, denying the access of a person or of a group of persons to the state-owned or private education system of any kind, degree or level, on account of their belonging to a race, nationality, ethnic group, religion, social category or to a disadvantaged category, on account of their beliefs, age, gender or sexual orientation, shall constitute a contravention.

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

...

'(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

⁹² Court of Justice of the European Union (CJEU), C-555/07, *Seda Küçükdeveci v. Swedex GmbH & Co. KG.*, 19 January 2010, EU:C:2010:21.

to a race, nationality, ethnic group, religion, social category or to a disadvantaged category, by his/her beliefs, age, gender or sexual orientation.'

...

'(6) According to the ordinance herein, any restrictions based on belonging to a race, nationality, ethnic group, religion, social category or to a disadvantaged category in the establishment and licensing of education institutions set up in accordance with the legal framework in force shall constitute a contravention.'

Although it is specifically provided for, training is not defined in the law and it is for future judicial interpretation to establish the meaning of the concept.

The lists of grounds in Article 6 and Article 11 should be read as including all grounds protected by Romanian legislation, including disability, gender identity/expression or sex characteristics, although they are not specifically mentioned, given the correlation with Article 2(1) of the Anti-discrimination Law, which includes an open list that would allow protection against discrimination on these grounds as well.

3.2.4 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

In Romania, national legislation prohibits discrimination in relation to membership of and involvement in workers' or employers' organisations, as formulated in the directives, for all five grounds protected in the directives and for both private and public employment. Article 6(f) of the Anti-discrimination Law mentions the right to join a trade union and to access the facilities it offers.

The lists of grounds in Article 6 should be read as including all grounds protected by Romanian legislation, including disability, gender identity/expression or sex characteristics which are not specifically mentioned, given the correlation with Article 2(1) of the Anti-discrimination Law, which includes an open list that would allow protection against discrimination on these grounds as well. Further protection was ensured in the 2011 legislation on social dialogue⁹³ and in the Labour Code, both of which clearly spell out the prohibition of dismissal of employees due to their exercise of the right to strike and of their rights related to their trade union activities.⁹⁴

3.2.5 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In Romania, national legislation prohibits discrimination in social protection, including social security and healthcare, as formulated in the Racial Equality Directive. Protection against discrimination in social protection is provided for, both in connection to employment relationships and in general in relation to all grounds, including in relation to social housing. Article 6 of the Anti-discrimination Law prohibiting discrimination mentions 'granting of social rights other than the wages' and 'any other conditions related to the carry out [sic] of a job, in accordance with the law in force'. Article 8 states:

'Discrimination committed by employers against their employees with regard to the social facilities they grant their employees on account of the employees' belonging to a race, nationality, ethnic origin, religion, social status or disadvantaged group, age, gender, sexual orientation or beliefs shall constitute a contravention.'

⁹³ Law 54 /2003 Trade Unions Law, 24 January 2004, was repealed and replaced by Article 224 of Law 62/2011 on social dialogue, 10 May 2011.

⁹⁴ Law 40/2011 for amending and completing Law 53/2003, the Labour Code (*Legea nr. 40/2011 pentru modificarea si completarea Legii nr. 53/2003 Codul Muncii*), 31 March 2011, Article 59(b).

More specific provisions on the prohibition of discrimination in social services and healthcare services are listed in Article 10(a) of the Anti-discrimination Law, which states:

'Under the ordinance herein, the following deeds shall constitute a contravention, if the deed does not fall under the incidence of criminal law, when perpetrated against a person or a group on account of their belonging or to the belonging of the management to a race, nationality, ethnic group, religion, social category or disadvantaged group, on account of their beliefs, age, gender or sexual orientation:

- a) the refusal to ensure legal and administrative public services.
- b) denying the access of a person or of a group of persons to public health services (choice of a family doctor, medical assistance, health insurance, first aid and rescue services or other health services).
- ...
- h) the refusal to ensure rights and benefits to a person or to a group of persons.'

The lists of grounds in Articles 6, 7 and 8 should be read as including all grounds protected by Romanian legislation, including disability, gender identity/expression or sex characteristics, although this is not specifically mentioned, given the correlation with Article 2(1) of the Anti-discrimination Law, which includes an open list that would allow protection against discrimination on these grounds as well. Judicial interpretation confirms the inclusive approach of the NCCD, which treats disability as a protected ground under Articles 6-8.⁹⁵ Though not specifically mentioned, denial of social housing would be understood as prohibited under Article 10(h).

- a) Article 3(3) exception (Directive 2000/78)

Romanian legislation does not include any exemptions for payments of any kind made by state schemes or similar, including state social security or social protection schemes, relying on the exception allowed in Article 3(3) of Directive 2000/78/EC.

3.2.6 Social advantages (Article 3(1)(f) Directive 2000/43)

In Romania, national legislation prohibits discrimination in social advantages as formulated in the Racial Equality Directive. The Anti-discrimination Law prohibits discrimination in granting social advantages in Article 6 and in Article 8, without distinguishing between the different types of benefits and social advantages private or public actors might grant to their employees. It includes the 'granting of social rights other than the wages' and 'any other conditions related to the carry out of a job, in accordance with the law in force'. Article 8 states:

'Discrimination committed by employers against their employees with regard to the social facilities they grant their employees on account of the employees' belonging to a race, nationality, ethnic origin, religion, social status or disadvantaged group, age, gender, sexual orientation or beliefs shall constitute a contravention.'

A general prohibition of discrimination in the context of access to public services of an administrative and legal nature, health and other services, goods and facilities is set out in Article 10(h) of the Anti-discrimination Law:

'Under the ordinance herein, the following deeds shall constitute a contravention, if the deed does not fall under the incidence of criminal law, when perpetrated against a person or a group on account of their belonging or to the belonging of the management to a race, nationality, ethnic group, religion, social category or disadvantaged group, on account of their beliefs, age, gender or sexual orientation:

⁹⁵ National Council for Combating Discrimination, Decision 94 of 5 February 2014.

e) refusal to grant the rights or benefits to a person or a group of persons.’

Although not specifically mentioned, disability, gender identity/expression or sex characteristics should also be a protected ground in regard to access to services, interpreted under the general concept of ‘disadvantaged group’ and in light of the general definition of discrimination in Article 2(1), which lists disability as a protected ground and includes an open list.⁹⁶ Judicial interpretation is required from the High Court of Cassation and Justice to confirm this inclusive approach.

In Romania, the lack of definition of social advantages in the Anti-discrimination Law does not raise problems, as confirmed by the practice of the NCCD.

3.2.7 Education (Article 3(1)(g) Directive 2000/43)

In Romania, national legislation prohibits discrimination in education as formulated in the Racial Equality Directive. Article 11 of the Anti-discrimination Law substantiates the prohibition of discrimination in education, at all levels and in all forms, both private and public:

‘(1) Under the ordinance herein, denying the access of a person or of a group of persons to the state-owned or private education system of any kind, degree or level, on account of their belonging to a race, nationality, ethnic group, religion, social category or to a disadvantaged group, on account of their beliefs, age, gender or sexual orientation, shall constitute a contravention.

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

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

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

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

(6) According to the ordinance herein, any restrictions based on belonging to a race, nationality, ethnic group, religion, social category or to a disadvantaged group in the establishment and licensing of education institutions set up in accordance with the legal framework in force shall constitute a contravention.’

Disability and age, gender identity/expression and sex characteristics are not specifically mentioned in Article 11, but are also protected, although judicial interpretation is required to confirm this inclusive approach, which the NCCD has so far adopted in relation to disability.

⁹⁶ National Council for Combating Discrimination, Decision 94 of 5 February 2014 against the Mayor of Galați for delays in responding to a request to build a ramp.

The requirement in Article 11(3) has been interpreted as a letter issued by a legally established non-governmental organisation of the respective minority or by a body containing in its statutes a declaration of interest in working on behalf of a particular minority group.

The NCCD has applied the provisions of Article 11 in the context of segregation and denial of access to education cases, particularly in regard to Roma children and children and young people living with HIV/AIDS.

The National Education Law (Law 1/2011), provides in Article 2(4) that the state 'grants equal rights of access to all levels and forms of pre-university and higher education, as well as lifelong learning, for all citizens of Romania, without any form of discrimination'.⁹⁷ Thus, the previous prohibition of discrimination regardless of 'race, nationality, ethnicity, language, religion, social category, beliefs, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV status, belonging to a vulnerable group category as well as any other criterion' mentioned in Article 9 of the previous draft was replaced by a more vague principle of equity defined as absence of discrimination in general in access to education. Only discrimination in tertiary education is expressly prohibited, in Article 118 and in Article 202.

Although the previous Education Law of 1995⁹⁸ defined segregation in education in Articles 5(48) and 8, these definitions were omitted from the current law.⁹⁹ In Article 3, the National Education Law provides as a defining principle 'the recognition and the guarantee of rights of persons belonging to national minorities, the right to preserve, develop and express ethnic, cultural, linguistic and religious identity' as well as the principle of 'ensuring equal opportunities'. Notably, Article 50 provides that 'abusive diagnostic assessment of children based on criteria of race, nationality, ethnicity, language, belonging to a disadvantaged category, or any other criterion, which leads to their inclusion in special education needs groups, shall be punished'. However, there are no specific sanctions included in the law.

In Romania, the general approach to education for pupils with disabilities gives rise to problems, as the inclusive legal framework is not matched by effective measures to ensure inclusive education for pupils with disabilities. Article 15 of Law 448/2006 on special protection for persons with disabilities guarantees the right to education for children with disabilities (without distinguishing between different types or degrees of disability) in the form chosen by the child, or the child's parents or guardians.¹⁰⁰ Article 15(2) guarantees the right to lifelong learning and continuing education for persons with disabilities.

⁹⁷ Law 1/2011 on National Education (*Legea Educației Naționale*), 10 January 2011.

⁹⁸ Education Law 84 of 1995, published as amended by Law 151/1999, republished in *Monitorul Oficial*, No. 370/3, August 1999.

⁹⁹ The draft 2009 Education Code, which was declared unconstitutional for procedural flaws, defined segregation in education in Art. 5(48) as 'a serious type of discrimination consisting in physical separation, with or without intention, of minority children and youth from the rest of the children and youth, in groups, classes, buildings, educational institutions and other accommodation facilities used for education, so that the percentage of minority children and youth out of the total of children/youth in that particular educational institution/ classroom/ group is disproportionate when compared to the percentage of minority children and youth of that particular age out of the total population of the same age in that particular administrative-territorial unit (village or city).' The Code added in Art. 8 that 'the organizing, functioning and content of education cannot be structured based on exclusivist, segregationist and discriminatory criteria on grounds of ideology, politics, religion or ethnicity' and in Art. 8(6) specifically prohibited segregation without providing for a specific sanction. 'Organizing the educational process so that to allow teaching of mother tongue and/or other/all courses in mother tongue, as well as similar cases expressly provided in the law, are not considered as segregation'.

¹⁰⁰ Law 448/2006 on the protection and promotion of the rights of persons with a handicap, 6 December 2006, Art. 17.

According to Article 16, education can be accessed in one of the following forms:

1. special educational units;
2. individual integration in regular educational institutions;
3. special groups or classes within regular educational institutions;
4. educational services through visiting teachers;
5. home schooling up to the end of high school studies but not later than the age of 26 years;
6. education in hospital, during hospitalisation;
7. educational alternatives.

The 2011 National Education Law establishes provisions for special and integrated education in Articles 48-56. Special education can be organised in special schools and in mainstream schools that integrate special groups or individual students into mainstream groups. Article 50 of the law provides that 'Abusive diagnostic assessment of children based on criteria of race, nationality, ethnicity, language, belonging to a disadvantaged category, or any other criterion, which leads to their inclusion in special education needs groups, shall be punished.' However, no specific sanctions are provided.

The National Education Law does not provide for sanctions for schools or school inspectorates that refuse to create appropriate schooling solutions for children.

Integration and equal opportunities in social life are recognised as critical needs in relevant legislation. Thus, the Law on the protection and promotion of the rights of the child establishes an 'obligation for central and local public authorities to initiate projects and provide the funding to develop services targeted to satisfy the needs of children with disabilities in conditions observing their dignity, autonomy and active participation in the life of the community.'¹⁰¹ There is no subsequent legislation further defining this obligation and the mechanism for its implementation. The case law and the NGO reports indicate that the problem remains the implementation of the legal framework in order to ensure inclusive education in practice.¹⁰²

Law 272/2004 on the protection of the rights of the child states that 'the child with disabilities has the right to education, recuperation, compensation, rehabilitation and integration, adapted to the own possibilities, in view of his or her personality.'¹⁰³ Law 272/2004 fails to provide any implementation mechanism that would allow its enforceability or any sanction in case of failure to observe these rights.

In the particular case of children living with HIV/AIDS, their right to education is provided for in Article 3 of Law 584/2002, the framework law for the protection of persons living with HIV/AIDS, which states that 'persons infected with HIV or living with AIDS are entitled to social protection and non-discriminatory treatment in regard of their right to education.'¹⁰⁴ Law 584/2002 does not include any enforcement mechanism or sanctions.

Although it also lacks the methodology that would allow enforcement, Framework Order 6234/2016 defines an inclusive school as 'a friendly and democratic school, which values the socio-ethnic-cultural diversity, a school in which all children are respected and integrated without discrimination and without exclusion triggered by their ethnic origin,

¹⁰¹ Law 272/2004 on the protection and promotion of the rights of the child, 21 June 2004, Art. 46 4.

¹⁰² European Centre for the Rights of Children with Disabilities, July 2012, report available at: <http://www.cedcd.ro/despre-noi/rapoarte/150,raportul-anual-de-activitate-al-cedcd-2012/>.

¹⁰³ Law 272/2004 on the protection and promotion of the rights of the child, 21 June 2004, Art. 46 2.

¹⁰⁴ Law No. 584/2002 on measures to prevent the spread of AIDS in Romania and to protect persons infected with HIV or suffering from AIDS (*Legea nr. 584/2002 privind masurile de prevenire a raspandirii maladii SIDA in Romania si de protectie a persoanelor infectate cu HIV sau bolnave de SIDA*), 29 September 2002, Art. 3.

mother tongue, disability and/or special educational needs, socio-economic status of their families, residential environment or educational achievement of the beneficiaries.¹⁰⁵

Following NCCD Decision 202 of 26 February 2020, in which the National Council for Combating Discrimination found that the methodology used by the Ministry of Education for organising and carrying out admission exams in high schools and vocational education amounted to discrimination, and in which the NCCD recommended that the Ministry adopt special measures to ensure access to education for children with special educational needs, the Ministry consulted with the NCCD and with the National Authority for the Rights of Persons with Disabilities, Children and Adoptions and introduced special procedures. The procedures adopted in June 2020 aim to ensure equal opportunities for children with disabilities and with special educational needs during the national evaluation exams to be taken in grades VIII and XII/XIII.¹⁰⁶

a) Trends and patterns regarding Roma pupils

In Romania, there are specific trends and patterns (legal and societal) in education regarding Roma pupils, such as segregation. Another challenge is poorer quality education for Roma children.

Segregation of Roma pupils remains a problem. In a 2022 report published by the National Council of the Pupils (*Consiliul Național al Elevilor*) on the situation of pupils in Romania in 2021-2022, 28 % of the interviewees stated that they witnessed cases of discrimination and 35 % noticed that race, ethnicity and age were the main grounds triggering discrimination, with 12.4 % considering that sexual orientation was the protected ground leading to discrimination.¹⁰⁷

In regard to segregation in education, the Romanian Ministry of Education adopted Order No. 1540/2007 on banning school segregation of Roma children and on approving the methodology for preventing and eliminating school segregation of Roma children. Order No. 1540/2007 is intended to prevent, ban and eliminate segregation, seen as a severe form of discrimination with negative consequences for the equal access of children to quality education. It includes penalties for those who do not observe its provisions.

In 2010, the Ministry of Education issued Notification 28463 regarding segregation of Roma in education, which regulates the prevention and elimination of segregation of Roma pre-school and primary and secondary school pupils in the educational system. This notification is an internal norm intended for school inspectorates, kindergarten and school head teachers, as well as teachers, to specifically deal with the prevention and elimination of segregation of Roma pre-school and primary and secondary school pupils in the education system. The notification also includes some measures regarding education in minority languages.

¹⁰⁵ Ministry of National Education and Scientific Research, Framework Order No. 6134 prohibiting school segregation in primary and secondary education, 22 December 2016, Article 1(2). Available at: <http://edu.ro/politici-publice-%C3%AEn-educa%C8%9Bie-pentru-prevenirea-combaterea-%C8%99i-interzicerea-segreq%C4%83rii-%C8%99colare>.

¹⁰⁶ Text of the procedures available in Romanian at: <http://andpdca.gov.ro/w/procedura-de-asigurare-a-egalitatii-de-sanse-pentru-elevii-cu-dizabilitati-si-ces-la-evaluarile-nationale/>. Specific provisions adapting examination procedures are provided regarding children with visual or hearing impairments, children on the autistic spectrum and with learning impairments who want to take the graduation exams for grade VIII in order to go to high school or a vocational school or those in grade XII/XIII who want to go to university. Similar to the request for adapted curricula, in order to qualify for the adapted procedures, the pupils need a disability certificate and have to file a request and specify their preferred options before their mock exams.

¹⁰⁷ National Council of Pupils (*Consiliul Național al Elevilor*), Report on the implementation of the Statute of the Pupil at national level ([Raportul privind implementaera Statutului Elevului la nivel național 2021-2022](#), 27 November 2022).

Notification 28463/2010 was triggered by complaints received by the Ministry of Education regarding tendencies to segregate Roma pupils or attempts to interrupt education in minority languages. This notification includes very specific recommendations regarding the registration of Roma pupils in the education system, reconfiguration of classes to avoid segregation of Roma pupils, maintenance of education in the mother tongue of pupils or of classes teaching their mother tongue as well as classes on the history and traditions of minorities, maintenance of the positions of school mediators who are engaged to support Roma pupils, and mandatory inclusion of all children aged between 6 and 16 years in the education system, including through alternative forms of education.

Notification 28463/2010 does not mention specific sanctions for non-observance of the recommendations; the Labour Code provisions would, however, be applicable. The notification states that compliance with its requirements will be monitored on a permanent basis by school inspectors in charge of the educational affairs of Roma/minorities, together with the school inspectors responsible for pre-school, primary school and secondary school education. There is no official information regarding the actual monitoring and evaluation of the enforcement of the notification. Furthermore, in the more recent cases of segregation in education in which the NCCD found discrimination and issued fines against the schools and the school inspectorates, it turned out that segregation was perpetuated in spite of annual desegregation plans and that the school inspectorates failed to adequately monitor segregation.¹⁰⁸

On 22 December 2016, the Ministry of National Education and Scientific Research issued two orders: Order No. 6158 adopting the action plan on school desegregation, and Framework Order No. 6134 for prohibiting school segregation in primary and secondary education. Both orders aim to establish public policy regarding segregation in education in Romania in relation to the following criteria listed as protected grounds: ethnic origin, mother tongue, disability and/or special educational needs, socio-economic status of the families, residential environment or educational achievement of the beneficiaries.¹⁰⁹ Despite introducing needed and valuable clarifications, the two standards are still not enforced as no implementation mechanism was adopted.

Segregation in education on the ground of ethnic origin is defined in Article 4 of Framework Order No. 6134/2016 as:

'Physical separation of kindergarten children, pre-schoolers or pupils (in primary and secondary education) belonging to an ethnic group in the educational unit / group / classroom / building / last two rows / other facilities, so that the percentage of the kindergarten children, pre-schoolers or pupils belonging to the ethnic group from the total of the pupils in the educational unit / group / classroom/ building / last two rows / other facilities, is disproportionate when compared to the percentage of the children

¹⁰⁸ National Council for Combating Discrimination, Decision 769 of 7 December 2016 in the case of *Centrul de Advocacy și Drepturile Omului v. Școala Gimnazială Bogdan Petriceicu Hașdeu (Iași) and Inspectoratul Școlar Județean Iași*. The NCCD found that there had been discrimination against Roma children, who had been disproportionately placed in one building of the school (Building C) for primary education (grades 0-4). In the NCCD decision, the building is described as having reduced educational resources and being in a poor condition (with rain coming in through the roof), with only one qualified teacher and providing an overall poorer educational experience compared with that provided for Romanian children studying in the other buildings of the same school. The school was fined RON 3 000 (approx. EUR 667), and the Iași school inspectorate was fined RON 5 000 (approx. EUR 1 111). Furthermore, both defendants were asked to produce a desegregation plan. The NCCD decision was appealed by the school and the school inspectorate and the Iași Court of Appeal annulled the NCCD decision in its judgment 90/2017. The Court of Appeal's judgment was challenged before the High Court of Cassation and Justice, which overturned the Court of Appeal's ruling and reinstated the NCCD's decision in its decision of 20 February 2020, which is final. See [Flash report 018-RO-ND-2020- High Court quashes prior judgment and maintains decision finding segregation in education of the NCCD](#).

¹⁰⁹ Ministry of National Education and Scientific Research, Order No. 6158 adopting the action plan on school desegregation, and Framework Order No. 6134 for prohibiting school segregation in primary and secondary education, 22 December 2016. Available at: <http://edu.ro/politici-publice-%C3%AEn-educa%C8%99Bie-pentru-prevenirea-combaterea-%C8%99i-interzicerea-segreg%C4%83rii-%C8%99colare>.

belonging to that ethnic group in the total population of that specific age in the educational cycle in that specific administrative-territorial unit.'

Segregation that occurs in accordance with the definition can be challenged before the NCCD or the courts. As an exception from the prohibition of ethnic segregation, Framework Order No. 6134 allows for groups, classes, educational units (schools) enrolling 'mostly or only kindergarten children, pre-schoolers or pupils belonging to an ethnic group, with the purpose of teaching in the mother tongue of that group or in a bilingual system.'

Article 6 of Framework Order 6234/2016 defines in similar terms segregation on the grounds of disability and/or special educational needs (allowing as an exception the establishment and functioning of special education units and groups or classes within a regular school). Article 7 of the order allows for segregation on the ground of 'a certain level of academic achievement' and Article 8 provides for segregation on the ground of the residential environment of the pupils. The methodology for the implementation of the action plan was not developed and the National Commission for Desegregation and Educational Inclusion, which was supposed to oversee and enforce the standards, was not convened.

The Ministry of Education and Research published an order for approving the methodology for monitoring school segregation in pre-university education, to apply from 31 December 2019.¹¹⁰ The order builds on the prior 2016 order prohibiting segregation in education, and it was the first document to be produced by the National Commission for Desegregation and Inclusive Education, which was established in early 2019. The methodology is based on the *Index for Inclusion: A Guide to School Development Led by Inclusive Values* and was developed with the support of UNICEF. The monitoring methodology was supposed to be piloted in the first phase in a limited number of primary and secondary schools in three counties in 2019/2020, but it was suspended. The target is to end the segregation of children of Roma ethnicity, children with disabilities and children with special needs, as defined in the 2016 Order of the Ministry of Education.

The NCCD case law on segregation is rather diverse, including cases of placing Roma children in different schools or within schools by establishing buildings or classes with a disproportionate number of Roma and with significantly lower educational conditions, or through the transfer of Roma children into classes or schools for children with special needs, such as Cehei (2003), Glina (2007), Atid, Special School Dumbrăveni (2008), Lucafarul School (2012) and Ionita Asan (2012). Even if segregation is not specifically defined in GO 137/2000, the NCCD issued decisions against the schools, initially finding indirect discrimination and later on (increasingly) finding direct discrimination under Article 2(1) combined with Article 11.

¹¹⁰ Ministry of Education, Order 5633/2019 for approving the Methodology to monitor school segregation in pre-university education, 23 December 2019 (*Ordinul nr. 5633/2019 pentru aprobarea Metodologiei de monitorizare a segregării școlare în învățământul preuniversitar*), https://lege5.ro/Gratuit/gm2tmnbqg42q/ordinul-nr-5633-2019-pentru-aprobarea-metodologiei-de-monitorizare-a-segregarii-scolare-in-invatamantul-preuniversitar?fbclid=IwAR3HG_w1fVd5iGVelrs1kSRNce1tUVX2Yhf1TiOt_br6zjrortJhRfqCo3c. Romani CRISS filed a complaint with the NCCD on 25 January 2007 regarding the differential treatment applied to Roma pupils in Dumbrăveni by separating them from the majority pupils in grades 1 to 8 and moving them from the local Theoretical High School to a special school. According to Romani CRISS, over 90 % of the students in the special school were Roma, and they were transferred to special schools because they failed to obtain pass grades in the mainstream school, not because they had special needs. Roma parents claimed that their children failed because they were seated at the back of the classroom and the teachers did not pay due attention to them. In a similar case, on 7 February 2007, Romani CRISS filed a complaint with the NCCD reporting on discrimination against Roma children in the 3rd, 4th and 6th grades in School No. 17 and the 1st, 3rd and 4th grades in School No. 19, both in Craiova, Dolj County. These children were allegedly segregated from the majority of students because their parents enrolled them late. Roma parents stated that the teachers physically abused their children and the educational provision was of poorer quality than that received by the majority students in the same school. The NCCD issued a decision stating that discrimination occurred in these schools and urging the school to initiate a desegregation process.

In 2020, the High Court of Cassation and Justice had the opportunity to reverse a decision of the Iași Court of Appeal, which had quashed an earlier NCCD finding of segregation, sanctioning both a school and the local county school inspectorate. The case was initiated in 2016 by an NGO, the Centre for Advocacy and Human Rights (*Centrul de Advocacy și Drepturile Omului*) (CADO), which, during its monitoring work, identified a case of school segregation in the city of Iași and filed a complaint with the national equality body.¹¹¹

The Iași Court of Appeal annulled the NCCD's decision in a controversial ruling that was further challenged by both the complainant and the NCCD before the High Court.¹¹² The High Court of Justice and Cassation (*Inalta Curte de Justitie si Casatie*) issued Decision 1015/2020 on case No. 1067/45/2016 on 20 February 2020, quashing the judgment of the Iași Court of Appeal and rejecting the arguments of the school and of the school inspectorate, reinstating the NCCD decision and ordering the defendants to pay legal costs to CADO.¹¹³ First, the Court found that the provisions of the Anti-discrimination Law applied in segregation cases in corroboration with secondary legislation issued by the Ministry of Education on desegregation (originally Ministry of Education Order No. 1540/2007). Secondly, the Court found that it was irrelevant that pupils did not self-identify as being Roma, since it was well known that the pupils studying in that particular school building were Roma. Thirdly, the Court found the geographical proximity criterion for allocating children to certain school buildings to be an unacceptable justification and the very definition of an act of ethnic segregation, based on Ministry of Education Order No. 1540/2007, which was applicable in the case.

In the context of the COVID crisis, as early as in April 2020, the National Agency for Roma (*Agenția Națională pentru Romi*) issued a warning regarding the impact of the measures taken during the state of emergency and the state of alert in Roma communities.¹¹⁴

¹¹¹ Based on the complaint and on its own investigation work, the NCCD issued Decision 769 of 7 December 2016, in which it found discrimination against Roma children who were disproportionately placed in one building of the school (Building C) for primary education (grades 0-4). In the NCCD decision, the building was described as having reduced educational resources and being in a poor condition (with rain coming in through the roof), with only one qualified teacher and providing an overall poorer educational experience compared with that provided for Romanian children studying in the other buildings of the same school. The NCCD made its decision on the grounds of Article 2(1) (direct discrimination), Article 2(4) (indirect discrimination), Article 11 (general prohibition of discrimination in education) and Article 15 (right to dignity under GO 137/2000). The school was issued a fine of RON 3 000 (approximately EUR 667), and the Iași school inspectorate was issued a fine of RON 5 000 (approximately EUR 1 111). Furthermore, both defendants were asked to produce a different desegregation plan from the one that had been produced and presented by the school each year. This decision was challenged before the Iași Court of Appeal by both the school and the county school inspectorate.

¹¹² In its Decision 90/2017, the Iași Court of Appeal found that the school and the school inspectorate 'provided the reasonable and objective justification ... [for] the way in which they managed the situation of primary education in Building C of the school, the margin of appreciation which the state has in such situations being, in this specific case, a reasonable one and able to guarantee the right of children not to be discriminated against and to have access to education'. The Court of Appeal also discussed hetero-identification carried out by the school during the registration process, with the support of the Roma educational mediator, to enrol Roma children in Building C (a former Roma school attached to the elite school through reorganisation). Despite previously providing information on the ethnicity of the pupils through public information requests, the school argued before the NCCD that it did not have any information on the ethnicity of the children. The Iași county school inspectorate argued in its defence that there was no clear proof that the children in the school were Roma or declared themselves as Roma, while CADO argued that around 50 % of the children in Building C were Roma. The Court of Appeal mentioned in its reasoning that self-identification is the only scientific and relevant criterion and desegregation cannot be achieved as long as there is no official data on the ethnicity of the pupils. The best interests of the child was used as justification for the differential treatment leading to the segregation of children, with the argument that the residential proximity and the custom of sending Roma children to this school served their best interests. The custom referred to was that, in the case of some families, the parents had also studied in Building C and some of them allegedly even asked for their children to be enrolled in the same school. The school and the school inspectorate denied that any ethnic segregation had occurred, but both of them agreed – both during the NCCD proceedings and before the Iași Court of Appeal – that segregation on grounds of socio-economic status might occur, given the poverty of the community in the neighbourhood.

¹¹³ High Court of Justice and Cassation (*Inalta Curte de Justitie si Casatie*), Decision 1015/2020 of 20 February 2020, case No. 1067/45/2016.

¹¹⁴ National Agency for Roma (*Agenția Națională pentru Romi*), *Raport al Agenției Naționale pentru Romi cu privire la necesitatea intervenției autorităților competente în beneficiul membrilor comunităților vulnerabile*

Experts,¹¹⁵ UNICEF¹¹⁶ and NGOs¹¹⁷ repeatedly warned against both the immediate and the long-term impact on children from socio-economically disadvantaged backgrounds, in particular Roma children.

In 2021, the National Council for Combating Discrimination together with the NGO Institute for Public Policies published the results of a survey of perceptions and attitudes regarding discrimination in schools.¹¹⁸ The survey found that discrimination in education is a reality that the respondents have acknowledged, with many respondents stating that they had witnessed cases of discrimination in schools: 49 % of teachers interviewed declared that discrimination is a problem in their school and 39 % remember witnessing cases of discrimination perpetrated by other teachers in their school, while one in three teachers stated that they intervene only when there is a critical situation and not to prevent or combat such incidents. The survey reflects very high rates of intolerance, especially among parents, regarding certain minority groups such as Roma, homosexuals and immigrants, and lower but significant levels of intolerance among teachers (for example 46 % of parents, compared to 23 % of teachers, agree or partially agree with the statement that 'the majority of Roma break the law'). Verbal abuse from other pupils is the main form of discrimination identified by the respondents, but they also identified discrimination inflicted by teachers, such as lowering grades, ignoring pupils and verbal abuse.

In July 2021, the NGO Centre for Legal Resources (*Centrul de Resurse Juridice*) published a briefing paper proposing some public policies in the field of education to combat discrimination and stigmatisation of young Roma, especially young Roma who are LGBTQ, and to prevent the internalisation of stigma by this social group. The measures proposed by the NGO, based on a series of five personal stories of young people who identify at the intersection of gender identity, sexual orientation and belonging to an ethnic minority which was also published,¹¹⁹ include: committing publicly to zero tolerance of discrimination, collecting data about discrimination, collaborating with civil society, providing information about intersectional discrimination, providing psychological counselling services to pupils and their parents, introducing information in school books about the contribution of discriminated groups to the nation's history, improving existing public policies to combat discrimination and bullying in schools, introducing the study of historic transgenerational trauma and remedies into the academic curriculum, making sure that the anti-bullying action group to be established in each school has one member or one periodic guest member who is a non-discrimination expert and one representative of the Roma and LGBTQ communities.¹²⁰

cu romi în contextul implementării măsurilor de prevenire a răspândirii virusului COVID 19 (Report of the National Agency for Roma on the need for intervention by the competent authorities for the benefit of members of vulnerable Roma communities in the context of the implementation of measures to prevent the spread of the COVID 19 virus), 16 April 2020, p. 3.

¹¹⁵ Florian, B. and Țoc, S. (2020), [Educația în timpul pandemiei. Răspunsuri la criza nesfârșită a sistemului educațional românesc](#) (Education during the pandemic. Responses to the never-ending crisis in the Romanian education system), Bucharest, National School for Political and Administrative Sciences (SNSPA).

¹¹⁶ UNICEF Romania (2020), [Evaluarea rapidă a situației copiilor și familiilor, cu accent pe categoriile vulnerabile, în contextul epidemiei de Covid-19 din România](#) (Rapid assessment of the situation of children and families, focusing on vulnerable groups, in the context of the Covid-19 epidemic in Romania), 29 April 2020.

¹¹⁷ Centre for Legal Resources (CRJ) (2020), '[Ministerul elevilor nimanui](#)', 28 April 2020.

¹¹⁸ National Council for Combating Discrimination and Institute for Public Policies (2021) [Sondaj Percepții și atitudini privind discriminarea în școli](#) ('Survey of perceptions and attitudes regarding discrimination in schools'), 24 September 2021. The survey took place during May-June 2021, through telephone and online interviews with parents (611 interviews), teachers (689 interviews) and representatives of the county school inspectorates (131 interviews), having a margin of error of 4 % with a 95 % confidence level. The survey was carried out as part of a project funded by the European Commission that includes organising training on anti-discrimination for 200 teachers by June 2022 and drafting a practical guide to combating discrimination in the classroom with more information provided by Institute for Public Policies (2020) 'Profesori împotriva discriminării – o prezentare', available at <http://www.ipp.ro/profsagainstdiscrimination/>.

¹¹⁹ Centre for Legal Resources (2021), [Viața la intersecția dintre etnie, orientare sexuală și identitate de gen](#) (Intersect, Lives at intersection of ethnicity, sexual orientation and gender identity), 30 July 2021.

¹²⁰ Centre for Legal Resources (2021), [Discriminare, stigmat și sistemul educațional din România: propuneri de intervenție privind situația tinerilor romi și a tinerilor romi LGBTQ](#) (Intersect, Discrimination,

3.2.8 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)

In Romania, national legislation prohibits discrimination in access to and the supply of goods and services as formulated in the Racial Equality Directive. Article 10 of the Anti-discrimination Law lists the different types of goods and services. The law does not distinguish between goods and services available to the public and those that are only available privately. Article 3 of the Anti-discrimination Law specifies that its provisions apply to natural and legal persons, both public and private, as well as to public institutions, including in the field of services in general, and access to goods and services (Article 3(c)).

The 2013 amendments repealed the initial exceptions from the prohibition of discrimination, which departed from the directives. The general prohibition is now provided for without exceptions:

'Under the ordinance herein, the following deeds shall constitute a contravention, if the deed does not fall under the incidence of criminal law, when perpetrated against a person or a group on account of their belonging or to the belonging of the management to a race, nationality, ethnic group, religion, social category or disadvantaged group, on account of their beliefs, age, gender or sexual orientation:

- refusal to ensure legal and administrative public services;
 - denial of access of a person or of a group of persons to public health services (choice of a family doctor, medical assistance, health insurance, first aid and rescue services or other health services);
 - ...
 - refusal to grant a bank credit or to conclude any other kind of contract;
 - denial of access for a person or a group to services offered by theatres, cinemas, libraries, museums, exhibitions;
 - denial of access for a person or a group to services offered by shops, hotels, restaurants, pubs, discos or any kind of service provider, whether private or public;
 - denial of access for a person or a group to services provided by public transportation companies – plane, ship, train, underground railway, bus, trolleybus, tram, cab, or any other means of transportation;
 - refusal to grant the rights or benefits to a person or a group of persons.'
- (Article 10)

Although disability, gender identity/expression or sex characteristics are not specifically listed as protected grounds in Article 10, they should be granted protection based on the general list of protected criteria in Article 2(1) and as covered by the general term 'disadvantaged group'. Judicial interpretation is required to confirm this inclusive approach, which has already been endorsed by the NCCD.

a) Distinction between goods and services available publicly or privately

In Romania, national law does not distinguish between goods and services available to the public (e.g. in shops, restaurants and banks) and those only available privately (e.g. those restricted to members of a private association).

3.2.9 Housing (Article 3(1)(h) Directive 2000/43)

In Romania, national legislation prohibits discrimination in the area of housing as formulated in the Racial Equality Directive. The Anti-discrimination Law covers selling as well as renting a plot of land or a building for housing purposes, as well as illegal forced

self-respect and the education system in Romania: intervention proposals regarding the situation of young Roma and young LGBTQ Roma).

evictions, internal displacement and deportations on any of the grounds protected. However, the Anti-discrimination Law does not specifically prohibit segregation, as proved by a 2011 NCCD case, which attracted a lot of media attention. In condemning the erection of a wall segregating Roma social housing from the rest of the city of Baia Mare, the NCCD had to rely on the prohibition of harassment and on the right to dignity as protected by the Anti-discrimination Law, an interpretation that was subsequently endorsed by the courts when reviewing the case.¹²¹

The Anti-discrimination Law currently provides, under Article 10:

'Under the ordinance herein, the following deeds shall constitute a contravention, if the deed does not fall under the incidence of criminal law, when perpetrated against a person or a group on account of their belonging or to the belonging of the management to a race, nationality, ethnic group, religion, social category or disadvantaged group, on account of their beliefs, age, gender or sexual orientation:

...

(c) the refusal to sell or rent a plot of land or building for housing purposes.'

Article 12 of the law states:

'(1) Any threats, pressure, constraints, use of force or any other means of assimilation, deportation or colonisation of persons with the purpose to modify the ethnic, racial or social composition of a region or of a locality shall constitute a contravention.

(2) According to the ordinance herein, any behaviour consisting in forcing a person belonging to a race, nationality, ethnic group or religion, or a community, respectively, to unwillingly leave their residence, deportation or lowering their living standards with a view to determine them to leave their traditional residence shall constitute a contravention. Forcing a group of persons belonging to a minority to leave the area or regions where they live or forcing 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.'

In addition, Article 13 states:

'(1) Any behaviour aiming to force a person or group of persons to move away from a building or neighbourhood or aiming to chase them away on account of their belonging to a race, nationality, ethnic group, religion, social category or to a disadvantaged category, on account of their beliefs, age, gender or sexual orientation, shall constitute a contravention.'

The Anti-discrimination Law does not provide explicitly for disability, gender identity/expression or sex characteristics as protected grounds in relation to housing. As the NCCD approach to the list of protected grounds has so far been inclusive, interpreting disability as a protected ground, this approach needs to be confirmed through judicial interpretation. The same rationale should apply to gender identity/expression or sex characteristics.

Law 448/2006 on the rights of persons with disabilities provides for preferential access to public housing for persons with disabilities in Article 20 and, according to Article 20(2), persons certified with a serious disability can receive an additional room and pay a minimal rent when allocated public housing. However, no data are available to assess the level of implementation of these provisions. In 2009, the Parliament adopted a law providing for

¹²¹ National Council for Combating Discrimination, Decision 439 on case No. 4A/2011, *ex officio v. Cătălin Cherecheș*, 15 November 2011.

exemptions from paying rent for public housing or housing provided by county authorities to persons with a serious disability.¹²²

Article 6 of the Ordinance on the social integration of foreigners notes that foreigners granted a form of state protection can have access to housing under the same terms as Romanian citizens.¹²³

a) Trends and patterns regarding housing segregation for Roma

In Romania, there are patterns of housing segregation and discrimination against Roma because the high levels of urban private rents and the shortage of social housing, as well as the high cost of utilities, disproportionately affect Roma. The main cases of housing discrimination (evictions, demolitions and spatial segregation) are concentrated in Roma communities.

The Housing Law (Law 114/1996) does not mention any explicit prohibition of discrimination in the area of housing.¹²⁴ Roma are not expressly mentioned as one of the social groups entitled to social housing provided for in Articles 42-43 of the Housing Law. This raises concerns of indirect discrimination, given the dire situation of the large number of Roma who have housing needs that are systematically ignored and that the secondary norms developing the criteria for allocating public housing often include criteria, such as educational level or work, which are discriminatory.¹²⁵

The 2002 National Action Plan on Social Inclusion¹²⁶ and the 2022 National Strategy on Social Inclusion and Poverty Reduction¹²⁷ mention housing as one of the priorities and include Roma as a particularly vulnerable group, without providing for any effective follow-up. Roma are not explicitly mentioned as a vulnerable group in the Law for preventing and combating social marginalisation.¹²⁸

The 2022 Strategy of inclusion of Romanian citizens belonging to Roma minority for 2022-2027 mentions housing and infrastructure among its objectives and a working group on the right to housing is supposed to assess and develop policies in this regard.¹²⁹ There are no official statistics on racist incidents and discrimination in housing against Roma. The media and NGOs report cases of institutional violence against and assaults on Roma, such as police raids and forced evictions in Roma communities without provision for alternative

¹²² Law 359/2009 providing for exemptions for paying rent for public housing or housing provided by county authorities which are used by persons with a serious disability, 20 November 2009.

¹²³ Ordinance 44/2004 on the social integration of foreigners who were granted a form of protection or residence status in Romania, and of EU citizens and citizens of the European Economic Area, 2004, available on the website of the national authority for immigration at: <https://legislatie.just.ro/Public/DetaliuDocument/49507>.

¹²⁴ Housing Law, Law 114/1996, republished, 11 October 1996.

¹²⁵ Article 43 of the Housing Law provides for the beneficiaries as decided by local authorities according to annually established criteria, and in the order of priority as established by the law they can be: persons and families evicted, or who are to be evicted, from houses returned to former owners, young people up to 35 years old, young people leaving social protection institutions who have turned 18, people with physical disabilities of degree I and II, 'handicapped' persons, pensioners, war veterans and widows, the beneficiaries of Law 341/2004 for the recognition of martyr-heroes and fighters who have contributed to the victory of the Romanian revolution from December 1989 as well as persons who have sacrificed their life and have suffered as a consequence of the workers' anti-Communist revolt of Brasov 1987 and of Law 118/1990 (persons who have suffered for political reasons during Communism), and other persons or families who might be entitled to the right to housing.

¹²⁶ Government Decision for the approval of the National Plan against Poverty and for Promoting Social Inclusion, 31 July 2002.

¹²⁷ Romania (2022) *Strategia națională privind incluziunea socială și reducerea sărăciei pentru perioada 2022–2027* ([National strategy on social inclusion and poverty reduction for the period 2022–2027](#)).

¹²⁸ Law 116/2002, Law for preventing and combating social marginalisation, 21 March 2002.

¹²⁹ Romania (2022) *Strategia Guvernului României de incluziune a cetățenilor români aparținând minorității rome pentru perioada 2022-2027* ([Government of Romania's strategy of inclusion of Romanian citizens belonging to Roma minority for the period 2022-2027](#)), approved by Government Decision 560 of 28 April 2022, published in the Official Journal No. 450bis of 5 May 2022.

accommodation. The Roma minority in Romania lacks legal protection from forced evictions, and Roma families are often left in substandard housing conditions with no chance of redress.¹³⁰

In 2016, the NCCD initiated an ex officio investigation against several mayors and county councils regarding the criteria they had established for social housing. The NCCD found that the criteria de facto limited the access of vulnerable categories of people in need of social housing, leading to indirect discrimination of Roma.¹³¹ The NCCD fined the municipality RON 2 000 (approximately EUR 400) and ordered it to publish a summary of the decision on its website.¹³² Reghin municipality challenged the NCCD decision before Târgu Mureş Court of Appeal, claiming that a combination of the three criteria used (level of income, number of children and level of education) read together lead to an affirmative measure.¹³³ The Court of Appeal rejected the appeal against the NCCD and concluded that the 'criterion level of education limits access to social housing for persons with a lower level of education.' The court stated: 'based on the statistical data of the Romanian census regarding the level of education of the different ethnic communities, granting an increasing number of points proportionally with the higher level of education leads to negative consequences in relation to the Roma community, amounting to indirect discrimination.' The court concluded that, while for other types of public housing, prioritising higher levels of education is useful as this might encourage education, for social housing, such a criterion is not objectively justified. It concluded that:

'Eligibility criteria established by local authorities in relation to the level of education of the residents disadvantage poor and vulnerable persons who usually do not have higher education and often lack the registration documents required.'

The court stated that 'the right of appreciation of the public authorities does not entail the possibility of acting in an abusive, arbitrary manner, without legal justifications and escaping any control, the exercise of such powers being under the principle of proportionality.'

The decision of the Court of Appeal was challenged before the High Court of Cassation and Justice, which decided on 20 February 2020 that there were no legal arguments to support the challenge raised by the Reghin authorities.¹³⁴

The same rationale was proposed by the Cluj Court of Appeal and was upheld by the High Court of Cassation and Justice when the municipality of Cluj challenged the NCCD's decision after being fined RON 3 000 (approximately EUR 600) by the NCCD in 2016 for social housing conditions that were found to amount to indirect discrimination.¹³⁵ The criteria for

¹³⁰ Amnesty International (2011), *Romania: Mind the legal gap: Roma and the right to housing in Romania*, London, Amnesty International, 23 June 2011. Report available at: <https://www.amnesty.org/en/documents/eur39/004/2011/en/>.

¹³¹ The mechanism granted one point for those who had graduated primary school, two points for vocational school, three points for those with high school studies and five points to those with higher education. The NCCD noted that a local administration did not meet its own duties under the burden of proof by failing to provide a justification for the differential criteria under which housing points were awarded in proportion to the level of education. In the Reghin municipality, the NCCD found that the number of points awarded for the level of education was not proportionate with the goal pursued and that it caused the exclusion of persons with a low level of education, which led to indirect discrimination against Roma.

¹³² NCCD, Decision 511 of 20 July 2016.

¹³³ Târgu Mureş Court of Appeal, Decision 30/2017 of 17 March 2017, communicated in January 2018. Reghin municipality stated that the criterion 'level of education' pursued the purpose of 'stimulating social inclusion and professional inclusion.' Also, it was argued that deciding on the priority criteria for social housing falls within 'the margin of appreciation and the discretionary powers' of the local authorities. Târgu Mureş Court of Appeal took into consideration statistical data provided by the NCCD showing that more than 50 % of the Roma population did not graduate, compared to Romanians or Hungarians (15 %), but also statistical data on the living conditions of Roma – more than 50 % live in spaces with less than 4 sqm per person, as compared to 10 % for other ethnic groups living in similar conditions.

¹³⁴ High Court of Cassation and Justice, civil Decision 996/2020, issued on 20 February 2020.

¹³⁵ NCCD Decision 531 of 27 September 2017 on case No. 692/2016, Cluj Court of Appeal Decision 86/2018 of 3 April 2018 and High Court of Cassation and Justice Decision 6273 of 25 November 2020.

allocating public housing adopted by local public administrations are still based on the list sanctioned by the NCCD.

The NCCD has become proactive in cases of evictions against Roma, as evidenced by a case finalised by Bucharest Court of Appeal in 2020 and communicated to the parties in 2021.¹³⁶ The case was initiated in November 2017, based on a complaint filed with the NCCD by the association Partida Romilor Pro Europa against the Alba Iulia local council and the administrative territorial unit Alba Iulia for their decision to evict approximately 200 Roma from a building belonging to the respondents.¹³⁷

The local authorities challenged the NCCD decision before Alba Iulia Court of Appeal, alleging that the decision of the NCCD is illegal on both procedural and substantive grounds.

By looking at the protected group, the court underlined the 'special situation in which they are, being vulnerable persons due to their inequality when compared to the majority citizens given the identity-related differences as compared to the majority, and the fact that they are confronted with a behaviour of rejection and social marginalisation'. The Court of Appeal concluded that 'the situation of those belonging to an ethnic minority (Roma) is special and different and triggered a differential treatment which entailed that eviction by force required to be prefaced by some special, positive and affirmative measures by the local administrative authorities, meaning special and effective care for the vulnerable condition of those of Roma ethnicity, an obligation which was not fulfilled by the defendant'.¹³⁸

A 2021 study published by the NGO Centre for Legal Resources provides an assessment of the national legislation, local regulations, practices and case law in the field of social housing with an impact on Roma families.¹³⁹ The conclusions and recommendations include recommendations for the authorities to respect and apply the fundamental scope of social housing, that is ensuring social protection. In the view of the authors, this principle should be translated into clear and transparent criteria for allocating social housing that are non-discriminatory, do not involve excessive bureaucracy and involve social workers who help persons in need of housing to put together their application, along with implementing a simplified process of proving permanent residence for obtaining identification documents

¹³⁶ The decision is not made public; the judgment is communicated to the parties which can challenge it in court.

¹³⁷ NCCD Decision 454 of 19 November 2018 on case No. 6059/2017, *Asociația Partida Romilor Pro Europa v. Consiliul local al Municipiului Alba Iulia, UAT Municipiul Alba Iulia*. The eviction took place on 10 October 2017. The NCCD found through its decision No. 454 of 19 November 2018 that 'the eviction of a large number of persons (about 200), who belong to a disadvantaged category, without taking into consideration measures adapted to their needs, without taking the necessary measures to relocate these persons to dwellings which would ensure the minimum standard of living, infringes Art. 2(1) corroborated with Art. 10 letter h) of the GO 137/2000' and issued fines of approximately EUR 1 000 (RON 5 000) for each respondent.

¹³⁸ Bucharest Court of Appeal Civil Decision 1293 on case No 4/57/2019 ECLI:RO:CAB:2020:177.001.001293, of 25 November 2020, *Consiliul local al Municipiului Alba Iulia, UAT Municipiul Alba Iulia v. CNCD și Asociația Partida Romilor Pro Europa*. Among other things, the respondents also challenged the decision as unfounded, claiming that there was no proof or justification that the 200 persons who were allegedly discriminated against were Roma, hence no discrimination on the ground of belonging to the Roma ethnicity could be found. Furthermore, the respondents presented the eviction of the 200 persons as merely the execution of a court decision against those living illegally in a building belonging to the administrative territorial unit and alleged that the NCCD decision would go against the eviction orders issued by the courts following legal procedures, and that there is no comparable group mentioned in the NCCD decision in order to justify the differential treatment. In responding to the allegation that the NCCD decision was unfounded, the court explained the content of the principle of equality and underlined that the NCCD decision did not look into the legality of the judicial decisions leading to the eviction, but at the context of the eviction itself. The court further responded to the claims by highlighting that the respondents had a duty to present before the NCCD their arguments, including the justifications regarding the fact that the persons evicted were not Roma and that the failure to present such proof before the NCCD, during the proceedings, entails a confirmation of the discrimination.

¹³⁹ Centre for Legal Resources (2021), [Accesul la locuințe sociale și nediscriminarea](#) (Access to social housing and non-discrimination), July 2021.

and ensuring the involvement of the authorities who are responsible for guaranteeing the respect of human rights – the county prefect and the Ombuds.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4 Directive 2000/43, Article 4(1) Directive 2000/78)

In Romania, national legislation provides for an exception for genuine and determining occupational requirements. The 2013 amendments to the Anti-discrimination Law introduced a new Article 4¹, which states:

'The difference in treatment based on a characteristic which is linked to the criteria provided for in Article 2(1) does not amount to discrimination when, based on the nature of the occupational activities or of the context in which they take place, such a characteristic amounts to a genuine and determining occupational requirement, under the condition that the objective is legitimate, and the requirement is proportionate.'

As the grounds covered by the Romanian Anti-discrimination Law are broader than the protected grounds of the two directives, the differences in treatment in cases of determining occupational requirements apply not only for the five grounds mentioned in the directives, but for all protected grounds.

4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

In Romania, the national Anti-discrimination Law does not provide for an exception for employers with an ethos based on religion or belief. Lacking relevant jurisprudence developed either by the courts or by the NCCD in the application of genuine occupational requirements as exceptions for ethos- or religion-based associations, it is still too early to assess the tests used in analysing the conditions under which these exceptions will be accepted.

- Conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination

In Romania, there are no specific provisions and/or case law relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination in the context of employment. Law 489/2006 on religious freedom and the general status of religious denominations includes provisions on employment relations within state-recognised religious denominations (*culte*).¹⁴⁰ Law 489/2006 established a three-tier system with traditional religious denominations being granted the status of state-recognised religious denominations (*culte*) under very strict requirements, religious associations (*asociații religioase*)¹⁴¹ and religious groups (*grupuri religioase*), which do not meet the strict criteria established by the law or choose not to register as legal persons.¹⁴²

According to Articles 23-26 of Law 489/2006, state-recognised religious denominations have the right to select, appoint, employ and discipline their own employees, a practice already in force in 2000 when the Anti-discrimination Law was adopted. Also, Article 32 of Law 489/2006 provides for the right of state-recognised religious denominations (*culte*) to approve and dismiss teachers who teach religion classes in public schools. Issues of internal discipline are resolved in accordance with bylaws and internal provisions by the religious

¹⁴⁰ The 2006 Law on religious freedom and the general status of religious denominations recognises the same 18 religions that were recognised prior to its adoption.

¹⁴¹ Law 489/2006 on religious freedom and the general status of religious denominations (*Legea nr. 489/2006 privind libertatea religioasă și regimul general al cultelor*), 28 December 2007. Art. 40 of Law 489/2006 provides that entities seeking registration as religious associations have to reach a higher threshold than other types of association (at least 300 members who are Romanian citizens or residents in Romania, while secular not-for-profit associations only need at least three members).

¹⁴² Law 489/2006 on religious freedom and the general status of religious denominations, 28 December 2007.

courts of each denomination. Theoretically, the legal regime established in this chapter in relation only to religious personnel of recognised denominations could be extended to religious personnel of other entities, the ethos of which is based on religion or belief (such as registered religious associations), in accordance with the legal principle that where the reason behind a normative provision is the same, the norm applied should accordingly be the same. There is no reported jurisprudence developed in this field so far to allow any assessment of whether the provisions are interpreted in accordance with Article 4(2) of Directive 2000/78.

In Romania, religious institutions are permitted to select people (on the basis of their religion) to be hired for or dismissed from a job when that job is in a state entity or, in specific circumstances, when the job is in an entity financed by the state. The 2011 National Education Law¹⁴³ states that religion is a subject for primary and secondary and vocational education in the case of the 18 state-recognised religions and is guaranteed irrespective of the number of pupils willing to take the subject.

Only the 18 state-recognised religious denominations can sign partnerships with the Ministry of Education to secure teaching of religious instruction classes as requested by pupils, a mechanism which has been contested in the past.¹⁴⁴ The 2011 National Education Law does not include provisions on the right of a state-recognised religious denomination to select, appoint or dismiss teachers of religion. However, the Law on religious freedom and the general status of religious denominations provides that state-recognised denominations have wide powers in training, selecting, approving and dismissing the teaching personnel for religion classes.¹⁴⁵

The Law on the status of educational personnel, Law 128/1997, in Article 136 provides the conditions for employment of teachers of religion, on the basis of agreements between the Ministry of Education and the 18 state-recognised religions (no other religious denominations). The wide competency of state-recognised denominations in selecting, approving or dismissing educational personnel teaching religion classes conflicts with the principles established by the Labour Code and by Law 128/1997 on the status of educational personnel and arbitrarily places the educational personnel teaching religion classes in a difficult situation. So far, neither the NCCD nor the courts have reported any cases of complaints from teachers of religion dismissed from their positions in public schools after not being deemed acceptable due to an infringement of doctrinal requirements (such as divorce in the case of Catholic education, single mothers or people living in consensual relations or homosexuality in the case of Orthodox education, or women not willing to wear the hijab in the case of those teaching about Islam).

Such agreements concluded under domestic law provide for the structure of religious education, including the requirements for teachers of religion. The law allows for religious personnel who have graduated from higher religious education or theology seminaries and have work experience of at least five years in the field to teach religion for primary and secondary education classes. Such staff are paid by the Ministry of Education as teachers, subject to the requirement to pass an examination, as established by the National Education Law.

¹⁴³ Law 1/2011 on national education (*Legea Educației Naționale*), 10 January 2011.

¹⁴⁴ Enache, S. (ed.) (2007), *Promovarea interesului superior al copilului în educația religioasă. Monitorizarea educației religioase în școlile publice din România* (Promoting the best interests of the child in religious education. Monitoring religious education in public schools in Romania), Târgu-Mureș, Editura Pro Europa, available at http://www.proeuropa.ro/norme_si_practici.html#juridic.

¹⁴⁵ Law 489/2006 on religious freedom and the general status of religious denominations, 28 December 2007 provides in Article 32(2)-(4) that (1) the staff teaching religious instruction in public schools shall be appointed in agreement with the denomination they represent, under the law; (2) where a teacher commits serious violations of a denomination's doctrine or morals, that denomination can withdraw its agreement that the teacher may teach religion, which will lead to termination of that person's employment contract; (3) on request, in a situation where a school cannot provide teachers of religion who are members of the same denomination as the students to be taught, such students can produce evidence of studies in their respective religion, provided by the denomination of which they are members.

4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19, Directive 2000/78)

In Romania, national legislation does not provide for an explicit exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78/EC). However, the genuine occupational requirements introduced in Article 4¹ in 2013 can be invoked in relation to age and disability requirements for the armed forces, police, prison or emergency services:

'The difference in treatment based on a characteristic which is linked to the criteria provided for in Article 2(1) does not amount to discrimination when, based on the nature of the occupational activities or of the context in which they take place, such a characteristic amounts to a genuine and determining occupational requirement, under the condition that the objective is legitimate and the requirement is proportionate.'

Article 36 of Law 80/1995 on the status of military personnel includes an age limit for those who qualify to become active officers: 'e) active military sub-officers (non-commissioned officers, NCOs), licensed graduates of higher tertiary education with a similar profile to the military units, who are a maximum of 35 years old.'¹⁴⁶

According to Article 78(4) of Law 448/2006, national defence and public order institutions are exempt from the obligation for all authorities and public institutions and public or private legal persons with at least 50 employees to employ persons with disabilities at a level of at least 4 % of the total number of employees. An absolute exemption such as that introduced by Article 78(4) is unjustified and might be challenged as unconstitutional.

Order 665 of the Ministry of Interior of 28 November 2008, regarding human resources management in the units of the Ministry of Interior, notes as a general condition only that the applicants must be at least 18 years of age and be declared 'able' by a special commission which examines medical, physical and psychological conditions (Article 20). The maximum age for those participating in the application competition for initial police officer training is 42 years and for those applying to participate in professional training for the army it is 28 years (Article 21). The order also provides for height-related criteria with, for example, a minimum height of 1.70 metres for men and 1.65 metres for women (Article 21(d)). Order 665 also specifies that, depending on the specifics of a professional activity, particular recruitment criteria may be established.

Law 360/2002 on the status of the police provides in Article 10 that for the entrance examinations for the educational units of the Ministry of Interior or in the case of direct employment of specialists, any person who complies with the general requirements for civil servants and with other specific requirements listed in the law 'has access, irrespective of race, nationality, gender, religion, wealth or social origin'.¹⁴⁷ Specific requirements listed in Article 10 include being declared 'medically, physically and psychologically able/fit'. Age is not mentioned in the list.

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Romania, national law does not include exceptions relating to difference in treatment based on nationality.

In Romania, nationality (in the sense of citizenship) is explicitly mentioned as a protected ground in Article 2 of the Anti-discrimination Law. The Anti-discrimination Law establishes

¹⁴⁶ Law 80/1995 on the status of military personnel (*Lege privind Statutul cadrelor militare*), 11 July 1995.

¹⁴⁷ Law 360/2002 on the status of the police (*Lege privind Statutul poliștilor*), 6 June 2002.

the right to freedom from discrimination on grounds of nationality in general, without further defining the concept of 'nationality' or listing exemptions.

Relationship between 'nationality' and 'racial or ethnic origin'

As the Anti-discrimination Law and the case law do not provide any definition of 'nationality' or 'race or ethnic origin', it is difficult to assess how the NCCD uses these concepts. In practice, for its own data-gathering purposes, the NCCD informally categorises under 'ethnic origin' all cases regarding Roma. The NCCD files under 'nationality' cases submitted by any of the 18 national minorities recognised under Romanian legislation as well as by other minorities or foreign citizens. Cases lodged by persons of African or Asian descent, are filed by the NCCD under 'race', thus avoiding potential overlap.

4.5 Health and safety at work (Article 7(2) Directive 2000/78)

In Romania, there are no specific exceptions provided for in relation to disability and health and safety at work (Article 7(2), Directive 2000/78/EC). However, the genuine occupational requirement allowed by Article 4¹ might be applicable.

4.6 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)

4.6.1 Direct discrimination

a) Exceptions to the prohibition of direct discrimination on grounds of age

In Romania, national law does not provide for specific exceptions for direct discrimination on the ground of age. However, age discrimination may be justified under Article 4¹ if it corresponds to a determining occupational requirement. The wording of the test is compliant with the test provided by Article 6 of Directive 2000/78/EC, although its interpretation still needs confirmation from the courts.

In its Decision 42 of 9 January 2008 in case No. 498/2007, *F.K v. Ministerul Educației, Cercetării și Tineretului* [Ministry of Education], *Inspectoratul Școlar Județean M.* [M. County School Inspectorate], the NCCD noted that the refusal to allow the complainant to participate in a competition for the position of school director because he had less than four years left before reaching the pensionable age amounts to discrimination. The refusal was based on an Order of the Ministry of Education,¹⁴⁸ which provided that 'at the date of the competition, candidates should have an age at least four years less than the standard pensionable age'. The NCCD considered that the refusal to allow the complainant to participate in the competition for the position of school director was discriminatory and recommended that the Ministry of Education modify the criteria for competitions for the position of school director.¹⁴⁹

In a 2006 decision, *I.N. v. Administrația Națională a Penitenciarelor* [National Administration of Prisons], the NCCD found that the upper age limit of 35 years for taking the examination to become a prison officer was discriminatory and recommended to the Ministry of Justice and the National Administration of Prisons that they modify this requirement, in spite of claims from the authorities that a lower age was required in order to secure 'dynamism, flexibility and optimism'.¹⁵⁰

¹⁴⁸ Order of the Ministry of Education (*Ordinul Ministrului Educației și Cercetării*) No. 5617, 14 November 2006.

¹⁴⁹ National Council for Combating Discrimination, Decision 42, case No. 498/2007, *F.K. v. Ministerul Educației, Cercetării și Tineretului* [Ministry of Education], *Inspectoratul Școlar Județean M.* [M. county school inspectorate], 9 January 2008.

¹⁵⁰ National Council for Combating Discrimination, Decision *I.N. v. Administrația Națională a Penitenciarelor* [National Administration of Prisons], 11 May 2006.

b) Justification of direct discrimination on the ground of age

In Romania, national law does not provide for justifications for direct discrimination on the ground of age, although such a justification would be accepted according to Article 4¹ of the Anti-discrimination Law if it qualifies as a determining occupational requirement. No cases have been identified in this regard.

c) Permitted differences of treatment based on age

In Romania, national law does not permit differences of treatment based on age for any activities within the material scope of Directive 2000/78/EC. However, under Article 4¹ of the Anti-discrimination Law, difference in treatment could be justified if it is based on age and corresponds to a determining occupational requirement. The Labour Code provides for specific protective measures in relation to employees under 18 years of age, who must have a work programme of no more than six hours/day and 30 hours/week (former Article 109, renumbered as Article 112); cannot work supplementary hours (Article 121, renumbered as Article 124) or during night shifts (Article 125, renumbered as Article 128); must have a lunch break of at least 30 minutes (Article 130, renumbered as Article 133); and must have a supplementary holiday entitlement of three days (Article 142, renumbered as Article 147(2)).¹⁵¹

d) Fixing of ages for admission to occupational pension schemes

In Romania, national law allows occupational pension schemes to fix ages for admission to a scheme, taking up the possibility provided for in Article 6(2). Law 411/2004 on private pensions makes participation in private pension schemes mandatory for people under 35 years of age.

4.6.2 Special conditions for younger or older workers

In Romania, there are no special conditions set by law for older or younger workers in order to promote their vocational integration. The Labour Code provides instead for specific protective measures in relation to employees under 18 years of age who must have a work programme of no more than six hours/day and 30 hours/week (former Article 109, renumbered as Article 112); cannot work supplementary hours (Article 121, renumbered as Article 124) or during night shifts (Article 125, renumbered as Article 128); must have a lunch break of at least 30 minutes (Article 130, renumbered as Article 133); and must have a supplementary holiday entitlement of three days (Article 142, renumbered as Article 147(2)).¹⁵²

Employers may benefit from fiscal advantages if they hire students during their vacations or recent graduates, according to Law 76/2002.¹⁵³ Article 80 of Law 76/2002 provides that employers who hire young graduates for at least 3 years are exempt for 12 months from paying contributions to the public unemployment fund in respect of the graduates they employ, and receive a monthly contribution from the state, which can be the minimum average income or higher, depending on the education of the employee.

According to Article 85 of Law 76/2002, employers hiring unemployed people who are over 45 years of age, or unemployed persons who have caring responsibilities (sole parents), receive similar advantages. The employers are under an obligation to maintain the employment relationship for at least two years.

¹⁵¹ Law 40/2011 for amending and completing Law 53/2003, the Labour Code (*Legea nr. 40/2011 pentru modificarea si completarea Legii nr. 53/2003 Codul Muncii*), 31 March 2011.

¹⁵² Law 40/2011 for amending and completing Law 53/2003, the Labour Code, 31 March 2011.

¹⁵³ Law 76/2002 on the system of funds for unemployment and encouraging occupation (*Legea șomajului*) 7 February 2002.

The Labour Code provides for an exception from the general prohibition against individual fixed-term employment contracts and allows such contracts in Article 81(d) (renumbered as Article 83(e)) in the case of a person who is seeking employment and who will reach the standard pensionable age within five years.¹⁵⁴

4.6.3 Minimum and maximum age requirements

In Romania, there are few exceptions permitting minimum and/or maximum age requirements in relation to access to employment and training. Article 13 of the Labour Code establishes the minimum age for access to employment as 16 years, or 15 years with the approval of the parents or guardians of the person, 'if the health, and professional development are not jeopardised'. Employment of children under 15 years of age is prohibited.¹⁵⁵ Article 13(5) also provides that employment in difficult, damaging and dangerous conditions (as established in a government decision) can only be carried out by persons over 18 years of age. However, special legislation establishes specific limitations which are not always justified – for example, only persons between 18 and 65 years of age can act as tourist guides, according to Annex 1 of Order 637 of 1 April 2004 on approving the methodological norms for the conditions and criteria for selecting, educating, certifying and utilising tourist guides, issued by the Ministry of Transport, Construction and Tourism. Law 22/1969 on employing treasurers (paying tellers) provides that paying tellers must be at least 21 years of age.¹⁵⁶ The conformity of such provisions with the anti-discrimination legislation and with Directive 2000/78 is questionable.

Law 333/2003 on the defence of objectives, goods, values and protection of persons mentions a minimum age of 18 years for persons seeking employment as security guards.

4.6.4 Retirement

a) State pension age

In Romania there is a set state pension age at which individuals must collect their state pension. Law 263/2010 on the unitary system of pensions was adopted on 16 December 2010 and entered into force in 2011.¹⁵⁷ In Article 53, it introduced a new pension age of 63 years for women and 65 years for men.¹⁵⁸ In force since 1 January 2011, the law was passed after heated legal debates regarding the different retirement ages for men and women.¹⁵⁹ Prior to this, the retirement age for women was significantly lower, so the law introduced a formula to gradually increase the retirement age. By the end of 2020, a woman could retire upon reaching the age of 63 years and a man upon reaching the age of 65, on the condition of having made a minimum of 15 years of contributions.

¹⁵⁴ Law 40/2011 for amending and completing Law 53/2003, the Labour Code, 31 March 2011.

¹⁵⁵ Law 40/2011 for amending and completing Law 53/2003, the Labour Code, 31 March 2011.

¹⁵⁶ Law 22/1969 on employing treasurers (paying tellers), (*Lege nr. 22 din 18 noiembrie 1969 privind angajarea gestionarilor, constituirea de garanții și răspunderea în legătura cu gestionarea bunurilor organizațiilor socialiste*), 18 November 1969.

¹⁵⁷ Law 263/2010 on the unitary system of pensions, 16 December 2010.

¹⁵⁸ Law 263/2010 on the unitary system of pensions, 16 December 2010.

¹⁵⁹ The initial draft of this law was brought before the Constitutional Court because of its provision in Article 53(1), introducing an equal retirement age for men and women of 65 years. The Constitutional Court upheld the draft in its decision of 6 October 2010 by stating that equalising the retirement age of men and women does not infringe the constitutional provisions on equality and that opposing such equalisation would be tantamount to opposition to an international trend. However, the Romanian President later refused to sign the law and sent it back to the Parliament, stating that he could not agree with the equal retirement age of 65 years for both men and women. The President requested the Parliament to consider introducing a differentiated retirement age of 63 years for women and 65 years for men, due to the socio-economic realities entailing a more difficult situation for women. The Constitutional Court was approached once again by a group of parliamentarians who alleged potential discrimination between men and women due to the lack of a differentiated system of contributions to the retirement scheme, leading to lower net pensions for women. On 15 December 2010, the Constitutional Court considered the constitutional complaints and decided to uphold the Law on the unitary pensions system in its current form, including the differentiated retirement age for women and men, as proposed by the President, without a mechanism addressing the disparate impact of the different contribution periods.

Law 263/2010 introduces some exceptions falling within the scope of Article 6(2) of the Employment Equality Directive, such as military personnel, police officers and public servants working in prisons, national defence, public order and public safety, for whom the standard retirement age is 60 years, for both men and women, with a minimum contribution period of 20 years and a full contribution period of 30 years. Different standard retirement ages are provided for persons who were persecuted for political reasons during the dictatorship established in 1945, and for those deported abroad, persons working for at least 15 years in a first-degree radiation zone, personnel working in mining who spent at least 50 % of their working time underground, artists and civil aviation flight personnel.

If an individual wishes to work beyond the state pension age, the pension can be deferred. An individual can collect a pension and continue to work, with effect from 19 October 2014, when Law 134/2014 entered into force. The Law defines particular types of incomes which can be cumulated with the different categories of pensions.

The mechanism developed in Law 19/2000 and maintained by Law 263/2010 provides that pensions are calculated on a confirmed formula, based on points and taking into account the employee's contribution and the contribution period; one pension point is equal to 45 % of the average gross salary paid in Romania; the pay-as-you-go (PAYG) system became a combined one, which includes defined benefits for minimum stages of contribution and specified contributions for the rest.¹⁶⁰

Persons who reach the standard pensionable age but want to work longer may continue their activities if their employers agree. After retiring, pensioners can work under an individual work contract or under a civil convention (a contract ruled by civil law provisions and not by the Labour Code, which has as its objective providing services).

Persons who retire for medical reasons before reaching the statutory pensionable age with type 1 or type 2 invalidity pensions can earn revenues from independent work but not from salaries while collecting the pension.

b) Occupational pension schemes

In Romania there is a normal standard age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. In addition to the public PAYG pension scheme, a mandatory personal accounts system was introduced at the beginning of 2007. A system of voluntary pension schemes also started operating in 2007. Participation in pension schemes (*pensii private*) has been compulsory for employees since 2007, in accordance with Law 411/2004 on private (universal) pension schemes.¹⁶¹ Law 411/2004 and the subsequent amendments do not provide information on whether payments from such occupational pension schemes can be deferred if an individual wishes to work longer after reaching the retirement age, or whether the individual can collect a pension and continue to work.

¹⁶⁰ The pension is calculated using a points system: the employee receives a maximum of three credit points per full year of earnings at or above the average economy-wide wage. The pension points are calculated as the ratio of the person's monthly gross wages and other compensation to the national average monthly gross wage for that year. The employee's pension is determined by multiplying the pension points with the pension point value, which is laid down in the social security budget law every year. The system aims to ensure a pension of 45 % of the average wage in the year of retirement for an employee with a full working career. By 2015, the full old age pension was payable to men aged 65 years with 35 years of service and women aged 60 years with 30 years of service. Early retirement up to five years before the pension age is reached is possible if the full-service period has been completed. See OECD Report: Romania, <http://www.oecd.org/countries/romania/3>.

¹⁶¹ Any worker under the age of 35 years has to become a contributor to a private pension fund. The contributions are optional for active workers between the ages of 36 and 45 years. The retirement age is the same as for the state social security pension, with the law providing for the possibility of requesting retirement five years earlier if the participant has completed the full contribution period.

A voluntary system of contributions was established in 2006 under Law 204, on optional pension schemes,¹⁶² according to which occupational pension schemes are considered facultative / optional pension schemes offered either by employers or by employers and trade unions. Employees and the self-employed may participate in voluntary schemes. Participation is voluntary for employees. Employees can participate in as many occupational schemes as they wish and cumulate pension rights and benefits. The contributions can be shared between employer and employee in accordance with the scheme regulations or a collective agreement. Employees may at any time change the level of contributions or cease paying contributions altogether but must notify the employer and the pension scheme administrator. Participants can retire when they reach the age of 60 years (both men and women), subject to the condition of having made contributions for a period of at least 90 months.

c) State-imposed mandatory retirement ages

In Romania, there are state-imposed mandatory retirement ages. Law 263/2010 established a new retirement age of 63 years for women and 65 years for men in Article 53 and a mandatory contribution period of 35 years applicable to both men and women.¹⁶³ However, there are exceptions to the state-imposed mandatory retirement age, as persons of pensionable age who want to carry on their activities can do so, if their employers agree. Other exceptions were established through special legislation in relation to judges, prosecutors, police officers, military personnel, members of the intelligence services, gendarmerie personnel and members of the Parliament, who have lower retirement ages (40-45 for police officers and military personnel, 60 years for judges and prosecutors).

The Labour Code establishes the possibility in Article 61(e) (renumbered as Article 56(c)) for an employer to ask for termination of the employment relationship when an employee reaches the standard pensionable age and has contributed for the required number of years to the state contribution schemes, even if the employee does not file a request for retirement.

The law does not specify whether the opposition of the employee to retirement has any effect. In practice, if the legal conditions are met, the request of the employer is followed by termination of the contract.

Special laws provide for limitations in certain sectors, such as education. For example, Article 128 of Law 128/1997 on the status of educational personnel establishes that non-graduate teaching personnel who prove extraordinary professional competence can retain their tenure for up to three years after reaching the retirement age, with the approval of the council of teachers of the relevant educational body. Academics who have a PhD degree can continue their activity until they are 65 years of age. In the case of persons with exceptional professional competence, upon request the faculty senate can approve continuation of their work annually until they are 70 years of age (Article 129). Article 289 of the National Education Law provides that teaching and research personnel retire at 65 years of age.

Law 95/2006 regarding the reform of the health system provides in Article 385 that medical doctors retire at 65 years of age, irrespective of gender; upon request, medical doctors who are members of the Romanian Academy can continue their medical activity until they are 70 years of age. Nurses, midwives and medical support staff retire at 65 years of age, irrespective of gender, in accordance with Article 22 of Emergency Ordinance 144/2008.

Judges, prosecutors and assistant judges of the High Court, as well as the specialist legal personnel of the Ministry of Justice, Public Ministry, Superior Council of Magistracy, National Institute of Criminology, National Institute of Forensics and the National Institute of

¹⁶² Law 204/2006 on optional pension schemes, 22 May 2006.

¹⁶³ Law 263/2010 on the unitary system of pensions, 16 December 2010.

Magistracy, can be maintained in their position after they reach the legal retirement age until they are 70 years of age. Magistrates can choose to stay in office until they are 65 years of age; after this age, an annual opinion from the Superior Council of Magistracy is needed, in accordance with Article 83 of Law 303/2004 on the statute of judges and prosecutors.

Emergency Ordinance 221/2004 regarding pensions and other social-insurance-related rights for lawyers mentions in Article 8 that the standard retirement age for lawyers is 60 years for women and 65 years for men.

In a change from previous legislation,¹⁶⁴ Law 62/2011 on social dialogue does not provide that employees in certain sectors (difficult working conditions, dangerous, toxic or degrading conditions) could benefit from reductions of the pensionable age, in accordance with special laws and special collective contracts concluded at the level of each sector of the economy.¹⁶⁵

d) Retirement ages imposed by employers

In Romania, national law permits employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining and/or unilaterally.

The standard pensionable age cannot be increased, as Article 38 of the Labour Code provides that 'employees cannot give up the rights recognised by law. Any transaction having as its purpose the renunciation of rights provided for employees in the law is null and void'.

If discriminatory retirement ages were to be established as a result of collective bargaining or individual contracts, the NCCD would find these as discriminatory treatment. An analogy can be drawn with the NCCD decision in the case *Uniunea Sindicatelor Libere din Învățământul Preuniversitar* [the Undergraduate Education Trade Union] v. *Ministerul Educației și Cercetării* [the Ministry of Education] of 16 April 2007, case No. 78/2007, in which the NCCD issued sanctions due to the fact that teaching and auxiliary educational personnel received a minimum gross salary lower than the minimum gross salary provided for at national level in the National Collective Agreement for 2007-2010. The NCCD recommended the Ministry of Labour, Social Solidarity and Family make the relevant changes to ensure that the minimum gross salary – as a social protection measure – is the same for all categories of employees.¹⁶⁶

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, even if they remain in employment after attaining pensionable age or any other age. According to Article 61(e) (renumbered as Article 56(c)) of the Labour Code, if an employee reaches the standard pensionable age and has contributed for the required number of years to the state contribution schemes, the employer can ask for termination of the employment relationship, even if the employee has not filed a request for retirement or opposes termination of the employment relationship.

¹⁶⁴ National Collective Agreement for 2007-2010, signed in accordance with Art. 10 of Law 130/1996, 29 January 2007.

¹⁶⁵ Law 62/2011 on social dialogue, 10 May 2011.

¹⁶⁶ National Council for Combating Discrimination, Decision on case No. 78/2007, *Uniunea Sindicatelor Libere din Învățământul Preuniversitar* [Undergraduate Education Trade Union] v. *Ministerul Educației și Cercetării* [Ministry of Education], 16 April 2007.

f) Compliance of national law with CJEU case law

In Romania, national legislation is in line with the CJEU case law on age regarding mandatory retirement. Although the Anti-discrimination Law does not include wording similar to that of Article 6(1) of Directive 2000/78, in limited conditions the genuine occupational requirements clause provided for in Article 4¹ of the Anti-discrimination Law can be interpreted as allowing the option to derogate from the principle of prohibiting discrimination on grounds of age in respect of measures justified by legitimate social policy objectives specific to the occupation in question, in conformity with the jurisprudence of the Court of Justice of the European Union (CJEU), such as *C-388/07 Age Concern England v. Secretary of State for Business, Enterprise and Regulatory Reform*, 2009.¹⁶⁷

The provisions on compulsory retirement in Article 53 of the Law on the unitary system of pensions are problematic, from the perspective of the justifications allowed by Article 6 of Directive 2000/78, as well as in relation to gender, given that the same period of contribution is required for men and women, although the retirement age is different and the work experiences of the two groups might be significantly different.

4.6.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Romania, national law indirectly allows for age or seniority to be taken into account in selecting workers for redundancy. For example, Article 81 of the National Collective Agreement 2007-2010 introduced the concept of pensionable age, to the extent that 'after the filling of vacancies, selection for redundancies is to be carried out in the following descending order of priority:

1. individual work contracts of those having two or more positions as well as of those collecting both a pension and a salary;
2. individual work contracts of those who fulfil the standard requirements of age and period of contribution for retirement but who have not applied to retire;
3. individual work contracts of those who fulfil the standard requirements of age and period of contribution for retirement, upon their request.'

These differentiations were not maintained by the 2011 Law on social dialogue, which abrogated the national collective agreement.¹⁶⁸ More recent collective agreements change the order of priority – for example, in Article 172 on collective redundancies, the National Collective Agreement on Automobile Constructions for 2016-2017 lists, first, persons of pensionable age and, secondly, persons who have an additional job or who draw a pension as well as a salary.¹⁶⁹

b) Age taken into account for redundancy compensation

In Romania, national law does not provide for age to be taken into account in establishing redundancy compensation.

¹⁶⁷ Court of Justice of the European Union (CJEU), *C-388/07, The Incorporated Trustees of the National Council on Ageing (Age Concern England) v. Secretary of State for Business, Enterprise and Regulatory Reform*, judgment of 5 March 2009, EU:C:2009:128.

¹⁶⁸ Law 62/2011 on social dialogue, 10 May 2011.

¹⁶⁹ Collective Agreement No. 1 for machine constructors and steel constructions 2016-2017, 22 December 2015.

4.7 Further exceptions necessary in a democratic society: Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

In Romania, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive in relation to public security, public order, criminal offences, protection of health, and protection of the rights and freedoms of others.

4.8 Any other exceptions

In Romania, the only exception to the prohibition of discrimination (on any ground) provided in national law is freedom of expression and the right to access to information, specifically mentioned in Article 2(8) of the Anti-discrimination Law, which states that its provisions cannot be interpreted so as to limit these rights. Guidelines on balancing freedom of expression and the right not to be discriminated against are absent, the case law of the NCCD and of the courts is not coherent and cases have been reported in which misinterpretation of this exception has led to harassment not being penalised.

5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) Scope for positive action measures

In Romania, positive action is permitted in national law in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation as well as all other protected grounds. Article 2(9) of the Anti-discrimination Law defines positive action as an exemption from the prohibition against discrimination, stated as:

'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 disadvantaged groups, shall not be regarded as discrimination under the ordinance herein.'

Since 2007, positive action measures came under attack from extreme-right groups, such as Noua Dreaptă (New Right),¹⁷⁰ which filed petitions with the NCCD, all of which were rejected. The NCCD stated in a case alleging denial of access to special places that:

'The measures adopted by the Romanian authorities, in particular the Ministry of Education, in relation to Roma pupils had the purpose of ensuring equality of opportunities, resulting in the implementation of affirmative measures. Such affirmative measures, by their own nature, had as their purpose progressive equalisation of the situation of Roma children from the perspective of opportunities in education, in order to bring them into a position similar or analogous with the situation of other pupils.'¹⁷¹

In its assessment of an alleged case of positive action, the NCCD stated:

'Employment of persons belonging to minority communities implies an affirmative measure in relation to that particular community. Such a measure can be maintained only until the objectives are reached and not afterwards. When the percentage of employees from a community in a particular institution corresponds with the percentage of the respective community in the area of its location, affirmative measures cannot be maintained because they would in themselves create a situation of inequality.'¹⁷²

A July 2021 decision issued by the NCCD reflects its inclusive approach to discrimination in education on grounds of disability in relation to positive action measures.¹⁷³ The case

¹⁷⁰ Noua Dreaptă (New Right) is a non-governmental organisation registered in Romania. It acknowledges its descent from the interwar Romanian fascist movement called Legionari, whose head, Corneliu Zelea Codreanu, was executed by the Romanian authorities in 1938. See more information on the organisation's website <https://nouadreapta.org/>.

¹⁷¹ National Council for Combating Discrimination, Decision 433, case No. 448/2007, *C.E v. C.*, 5 November 2007. The complainant claimed that her son was not accepted for a special place for Roma students in the institution of his choice, as the application filed for her son under a particular procedure was set aside by his teachers and replaced with a fake application on his behalf. The NCCD found that the complainant did not observe the special requirements in filing the application to qualify for special places for Roma students. The NCCD decided that discrimination took place as alleged by the complainant.

¹⁷² National Council for Combating Discrimination, Decision 43, case No. 353/2007, *A.M. v. Direcția Generală a Finanțelor Publice a județului Harghita* [Harghita county Public Finances General Inspectorate] 9 January 2008.

¹⁷³ National Council for Combating Discrimination, Decision 561 on case No. 1037/2020, *Zane Andrei v. the Bucharest University and the Ministry of Education*, 21 July 2021. A student with special needs claimed that he was discriminated against because no special places for students with disabilities were made available by the university on the course that he wanted to study and because he was not able to be transferred to the same department as his brother. The NCCD rejected the complaint in relation to the claim regarding the transfer but found that there is an obligation of the state to adopt special measures in college admissions in relation to people with special educational needs/disabilities. Currently, the Education Law provides for

concerned twin brothers, one of whom has special needs and who claimed to be discriminated against when following the admission procedure, as they were put in different departments within the same faculty given they had different scores. The NCCD recommended the Ministry of Education to establish places that are specifically available for students with special educational needs as a socially disadvantaged and marginalised group.

b) Quotas in employment for persons with disabilities

In Romania, national law provides for a quota for the employment of persons with disabilities.

Article 78(2) of Law 448/2006 on the protection and promotion of the rights of persons with a handicap introduced the obligation for all authorities and public institutions, public or private legal persons with at least 50 employees to employ persons with disabilities at a level of at least 4 % of the total number of employees.¹⁷⁴ However, there are no official data available regarding the number of persons employed following this provision or the number of employers complying with the requirement. Employers who fail to employ persons with disabilities in accordance with the law can choose between:

- a. making a monthly payment of an amount representing 50 % of the minimum average salary for each position they were supposed to make available for a person with disabilities but failed to;
- b. using products and services from authorised sheltered units on the basis of a partnership, to the level of the amount owed to the state budget.

However, funds collected in this way are not earmarked for activities in this area but are incorporated into the general state budget.

special measures that can be taken in relation to Roma students and graduates of high schools from rural areas or from cities with fewer than 10 000 inhabitants. The NCCD considered that this list should not be interpreted as exhaustive.

¹⁷⁴ The percentage of employed persons with disabilities is calculated on the basis of data drawn from the medical certificates that are part of all hiring procedures.

6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

a) Available procedures for enforcing the principle of equal treatment

In Romania, the following procedures exist for enforcing the principle of equal treatment under the Anti-discrimination Law: judicial proceedings before civil courts; administrative proceedings before the national equality body (NCCD); and alternative dispute resolution, such as mediation, before both the courts and the NCCD. In specific fields, such as employment or education, the relevant authorities might receive and investigate complaints of discrimination, although the NCCD reports that in practice these entities usually redirect complainants to the equality body.

The Romanian anti-discrimination system provides for a mixed system of forums: contraventional (administrative), civil and criminal. In cases of an alleged act of discrimination, the victim of discrimination or any interested person can choose between filing a complaint with the NCCD and/or filing a civil complaint for civil damages with the courts of law, unless the act is criminal and the Criminal Code provisions apply. Both before the NCCD and the courts, the parties can reach a friendly agreement at any time.

In a November 2009 decision, the Constitutional Court concluded that the NCCD is not an extraordinary court and confirmed the constitutionality of the mandate of the national equality body as an administrative-jurisdictional entity. The Court noted that the NCCD is not a mandatory forum and that victims may choose between the two forums (courts and NCCD) to enforce their rights.¹⁷⁵ The possibility of dual, even simultaneous, venues as an exception to the principle that once a venue is chosen there is no recourse to another, was confirmed by the High Court of Justice and Cassation, which emphasised that using one forum, the NCCD (in the case concerned, an administrative complaint before the NCCD under Article 20 was followed by an administrative appeal challenging its decision), does not have any impact on the admissibility of a petition filed before the civil court under Article 27.¹⁷⁶

The fact that the two forums (NCCD and civil court) are not mutually exclusive and the complainant can choose to use only one or to use both simultaneously creates problems in practice for the parties, the NCCD and the judiciary. In addition, action before the NCCD does not have a suspensive effect in regard to the prescription of the administrative or civil action. The complaint with the NCCD might result in an administrative sanction (administrative warning or fine), while the civil case, judged under general torts provisions, results in civil damages payable to the victim of discrimination, re-establishing the status quo ante, the situation as it was before the act of discrimination occurred, or nullifying the situation established as a result of the discrimination, in accordance with civil law provisions on torts. Following the 2013 amendments to the Anti-discrimination Law, both the NCCD and the courts can oblige the perpetrator to publish a brief summary of the decision in the media.

In a series of decisions issued in 2008, the Romanian Constitutional Court (*Curtea Constituțională*) limited the mandates of both the NCCD¹⁷⁷ and the civil courts in relation to discrimination generated by legislative norms.¹⁷⁸ Subsequently, protection against

¹⁷⁵ Romanian Constitutional Court, Decision 1470, 10 November 2009.

¹⁷⁶ High Court of Justice and Cassation, Decision 5211, 7 December 2012, available in Romanian at: <http://www.scj.ro/>.

¹⁷⁷ Romanian Constitutional Court, Decision 997, 7 October 2008, finding that Article 20(3) of the Anti-discrimination Law (GO 137/2000), defining the mandate of the NCCD in relation to discrimination triggered by legislative provisions, is unconstitutional.

¹⁷⁸ Romanian Constitutional Court, Decisions 818, 819, 820, 3 July 2008. The Constitutional Court concluded that the dispositions of Article 1(2)e and of Article 27 of the Anti-discrimination Law are unconstitutional, to

discrimination in cases where the discrimination is triggered by legislative norms is limited and depends on the willingness of the People's Advocate to bring a case before the Constitutional Court, which can declare discriminatory norms unconstitutional. In cases where a legal provision is incompatible with the anti-discrimination principle, thus falling outside the scope of European Union law, the national equality body (NCCD) does not have a mechanism allowing it to decline to apply that particular legal provision, as provided by the CJEU in *C-555/07 Seda Küçükdeveci v. Swedex GmbH & Co. K.G.*¹⁷⁹

b) Barriers and other deterrents faced by litigants seeking redress

While there is no need for a lawyer when bringing a claim before the NCCD, before the courts it is preferable for claimants to instruct a lawyer or be represented by an NGO. A deterrent to seeking redress is the informal practice developed by the NCCD of issuing only an administrative warning or a recommendation, neither of which carry any financial penalty.

Another deterrent is the limited publicity given to the decisions in discrimination cases: the NCCD does not publish its decisions and only a number of old decisions are available on its website. Since the 2013 amendments, the NCCD and the courts have been able to order a defendant to publish a summary of the decision concerned. The courts publish information regarding their decisions, but the reasoning of the decision is available only to the parties to the case and only after considerable delay. Furthermore, neither the few search engines that compile jurisprudence, nor ECRIS, the database used by the courts, include the provisions of the Anti-discrimination Law as a search category.

Individuals bringing cases before the courts might be discouraged by the prohibitive costs of legal services and by the length of judicial proceedings. While a claim before the NCCD or before the civil court is exempted from judicial taxes, a tax must be paid when challenging a decision of the NCCD before administrative courts.

c) Number of discrimination cases brought to justice

In Romania, statistics on the number of cases related to discrimination brought to justice are not available. The Ministry of Justice and the Superior Council of Magistracy do not provide information on statistical data regarding the cases related to discrimination brought to justice, as ECRIS does not currently record relevant search items on the use of the Anti-discrimination Law.

In its annual reports, the NCCD provides information regarding the number of petitions received and decisions issued each year, including the number of decisions issued by the NCCD and subsequently challenged before the courts; it also includes information regarding the number of cases in which, on the basis of Article 27 of the Anti-discrimination Law, the civil courts asked the national equality body to join the proceedings as an expert. In some years, the reports include brief summaries of some of the key cases decided by the institution. The workload of the courts in discrimination cases seems to be continuously increasing. For example, the number of cases in 2020 approximately equals the number of similar complaints brought in 2019 and 2018 combined. The number of complaints filed before the courts in 2021 is almost double the 2020 total.

the extent that they are understood as implying that the courts of law have the authority to nullify or to refuse the application of legal norms when considering that such norms are discriminatory.

¹⁷⁹ Court of Justice of the European Union (CJEU), *C-555/07, Seda Küçükdeveci v. Swedex GmbH & Co. K.G.*, 19 January 2010, EU:C:2010:21.

d) Registration of national court decisions on discrimination cases

In Romania, court decisions on discrimination cases are not registered as such by the national courts. Only the NCCD registers cases by ground and field and makes the data available to the public each year in its activity report.

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

a) Engaging in proceedings on behalf of victims of discrimination (representing them)

In Romania, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination. Article 28 of the Romanian Anti-discrimination Law defines two different types of legal standing before the NCCD and the courts for NGOs with an interest in combating discrimination:

'(1) Human rights non-governmental organisations can appear in court as parties in cases involving discriminations pertaining to their field of activity and which 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 person, if the latter delegates the organisation to that effect.'

When a petition regarding the unconstitutionality of the provision granting legal standing to NGOs was brought before the Romanian Constitutional Court, in Decision 285 of 1 July 2004, the RCC rejected the argument of the petitioners, who claimed that recognising legal standing for NGOs led to 'a situation of inequity and discrimination for the parties which did not put themselves under the protection of an NGO of this kind'.¹⁸⁰ In practice, NGOs working on behalf of various vulnerable groups extensively use the legal possibility of filing a petition before the NCCD.

The proof that the victim delegated the NGO to ensure support during NCCD or court proceedings can take the form of a contract establishing the power of the NGO to act on behalf of the victim.

b) Engaging in proceedings in support of victims of discrimination (joining existing proceedings)

In Romania, associations, organisations and trade unions are entitled to act in support of victims of discrimination. Besides being able to initiate proceedings *in nome proprio* as provided by Article 28(1) of the Anti-discrimination Law in cases involving discrimination pertaining to their field of activity and which prejudice a community or a group of persons, NGOs can also support victims of discrimination and act on their behalf, as provided by Article 28(2) subject to obtaining a mandate from the victims.

When they have an interest in making a particular legal argument, NGOs can ask the courts to join already pending procedures as interested parties under ordinary civil procedure provisions. Similarly, although not mentioned specifically by the law, but accepted in the practice of the NCCD, associations may be allowed to submit *amicus curiae* briefs in support of a complainant. The internal procedures of the NCCD mention the possibility of *amicus curiae* from NGOs with expertise in a particular field.¹⁸¹

¹⁸⁰ Romanian Constitutional Court, Decision 285, 1 July 2004.

¹⁸¹ National Council for Combating Discrimination, Order approving the internal procedure in resolving petitions, 11 April 2008.

c) *Actio popularis*

In Romania, national law allows associations, organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*). According to Article 28(1) of the Anti-discrimination Law, associations with protection of human rights as their mandate can file complaints on their own behalf, both with the NCCD and with the courts, when the target of discrimination is a group or a community. The same rules of procedure apply, the only additional requirement being that the NGOs must provide their statutes in order to show that their declared statutory objective is protecting human rights or combating discrimination.

The provisions of Article 28(1) of GO 137/2000 are duplicated by Article 37 of the Civil Procedure Code, which provides that:

'In the cases and conditions specifically provided for by the law, complaints can be filed or defences can be submitted by persons, organisations, institutions or authorities which, without justifying a personal interest, act for the defence of rights and legitimate interests of persons who find themselves in special situations or, as necessary, with the purpose of protecting a group or a general interest.'¹⁸²

There are no specific provisions regarding remedies sought or special rules, including on the burden of proof. However, the remedies that can be obtained in *actio popularis* cases are limited, given that, irrespective of the legal standing recognised, a direct, personal and actual interest and effective damages (harm suffered, material damages) must be proved before the civil courts. As NGOs have difficulties in providing the courts with evidence regarding quantifiable damages, the NCCD remains the main available forum for such cases.

In 2015, when proceedings in the dispute *ACCEPT v. Consiliul Național pentru Combaterea Discriminării (CNCD)* reopened before the national courts, it became apparent that there are significant limitations in the understanding of the NCCD and of the courts regarding the standing of NGOs and of their 'interest'. In its final decision in the proceedings reopened after the CJEU decision in case C-81/12,¹⁸³ the High Court of Cassation and Justice concludes that 'the complainant association (ACCEPT) cannot justify the infringement of a legitimate public interest, under the meaning of Article 2(1)(r) of Law 554/2004 (*Legea Contenciosului Administrativ*), given the fact that the NCCD issued a warning to George Becali and not an administrative fine.'¹⁸⁴

d) Class action

In Romania, national law does not allow associations, organisations and trade unions to act in the interest of more than one individual victim (class action) for claims arising from the same event. Class actions are not allowed under civil procedure in Romanian law nor are they specifically mentioned in the Anti-discrimination Law. However, in the case of the NCCD, though not defined as class action, aggregate claims by more than one individual victim arising from the same event would be annexed as one file both before the NCCD and the courts as provided by Article 66 of the NCCD internal procedures. The individual victim may request or oppose such an aggregation of the complaints. If NGOs represent more than one victim, as provided by Article 28, declarations issued by each individual victim must be included. The procedures and remedies remain the same.

¹⁸² Law 134/2010 Civil Procedure Code, 1 July 2010.

¹⁸³ Court of Justice of the European Union (CJEU), C-81/12, *ACCEPT v. Consiliul Național pentru Combaterea Discriminării [i.e. NCCD]*, 25 April 2013, EU:C:2013:275. Request for a preliminary ruling under Article 267 TFEU from the Curtea de Apel București (Romania), judgment of 25.04.2013, available at: <http://curia.europa.eu/juris/liste.jsf?language=fr&num=C-81/12>.

¹⁸⁴ High Court of Cassation and Justice, Decision 224 of 29 May 2015, case No. 12562/2/2010. See *Romania - High Court confirms rejection of the action of ACCEPT in the case based on CJEU C-81/12*, available at: <http://www.equalitylaw.eu/country/romania>.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

In Romania, national law provides for a shift of the burden of proof from the complainant to the respondent. The 2013 amendments to the Anti-discrimination Law further clarified the language in Article 20 and Article 27, stating that:

‘The interested person will present facts based on which it can be presumed that direct or indirect discrimination exists, and the person against whom the complaint was filed has the duty to prove that no infringement of the principle of equal treatment occurred. Before the Steering Board (the courts) any means of proof can be brought, observing the constitutional regime of fundamental rights, including audio and video recordings and statistical data.’

While the NCCD’s interpretation of this provision complies with the directives in most cases, judicial interpretation has varied and some courts have interpreted this as placing an unreasonable burden on the victim, in contradiction of the directives. However, not even the case law of the NCCD is fully compliant with the *acquis*. The understanding of the burden of proof as entailing a preliminary obligation of the complainant to provide all facts indicating that discrimination occurred (as opposed to allowing a presumption that it did), coupled with the failure of the NCCD to engage proactively in investigations (as mandated by Article 19(c) of the Anti-discrimination Law as amended and consolidated in 2006), led to decisions of the NCCD in which it concluded that no discrimination occurred, while the same case, tried before a court of law had the opposite result, discrimination was found and damages were awarded accordingly.

In a 2009 decision,¹⁸⁵ the NCCD extensively discussed the theoretical aspects of the burden of proof, referring to previous leading cases in which the NCCD stated that ‘the defined procedure for the shift in the burden of proof is more nuanced than the wording would suggest and, in practice, the principle implies dividing the onus of the evidence and a transfer to the defendant of those elements related to him, in relation to the facts of the case.’¹⁸⁶ The NCCD added that ‘it cannot be interpreted that this is an absolute exemption from the procedural rules of *onus probandi incumbit actori*, reversing the burden of proof completely, as the very legal provision from Article 20(6) specifies the duties of the parties by sharing the burden of proof between the complainant and the defendant.’

In spite of the very detailed guidance offered by the Court of Justice of the European Union in C-81/12 (the *ACCEPT* case), the interpretation proposed by the NCCD and endorsed by the Bucharest Court of Appeal and by the High Court of Cassation and Justice in 2015 reflects a rather limited approach to the burden of proof.¹⁸⁷ The High Court uses the conclusions of the Court of Appeal in the reasoning: ‘it was correctly concluded by the first instance (Bucharest Court of Appeal) that there are no elements which would allow us to find that the Football Club initiated any step, of any type, to contract the sportive services of the player I.I.’ The reasoning of the High Court underlines that:

‘In reality, the entire procedure had been launched based on purely speculative statements (by Mr Becali) ... even if the author of the statement is a person which cannot be dissociated in the public perception from the Football Club Steaua București, from this unique occurrence it cannot be drawn the conclusion that the complainant is laying its account for (bets), particularly given that during the entire procedure the Football Club Steaua București denied any connection with the statements and the lack of basic facts.’

¹⁸⁵ National Council for Combating Discrimination, Decision 77, 3 February 2009.

¹⁸⁶ National Council for Combating Discrimination, Decision 180, *Romani CRISS v. C.P.T.*, 17 July 2007.

¹⁸⁷ High Court of Cassation and Justice, Decision 224, case No. 12562/2/2010, 29 May 2015. See *Romania - High Court confirms rejection of the action of ACCEPT in the case based on CJEU C-81/12*, available at: <http://www.equalitylaw.eu/country/romania>.

In its decision, which is final, the High Court decided that there are no elements suggesting that Steaua Football Club is liable for discrimination in employment on grounds of sexual orientation. This judicial interpretation creates the risk that discriminatory statements will not be effectively punished, a line of reasoning replicated in other cases and contrary to the CJEU in C-81/12.

The Labour Code, as modified and consolidated by Law 40/2011, mentions the burden of proof in employment-related disputes in Articles 272-273,¹⁸⁸ noting in Article 272 *on the burden of proof* that the 'burden of proof in labour disputes is on the employer, which shall submit the evidence for its defence by the first day of appearance' and in Article 273 *on the administration of evidence* that the 'evidence shall be administered under the emergency procedure, and the court shall have the right to reject the right to submit evidence to the party groundlessly delaying its administration' (unofficial translation).

The provision in the Labour Code introduces an automatic shift in the burden of proof in cases of discrimination in employment relationships, with an obligation for the employer to submit the evidence before the first hearings. The provision seems to be in compliance with the phrasing of the burden of proof in the directives. No relevant case law allowing assessment of the implementation has so far been reported.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

In Romania, there are legal measures for protection against victimisation, which have been actively used both before the courts and before the NCCD. Article 2(7) of the Anti-discrimination Law defines as victimisation 'any adverse treatment triggered by a complaint in general or by a case lodged with the courts of law regarding the infringement of the principle of equal treatment and non-discrimination'. Protection against victimisation is not limited by Romanian law to the complainant but also extends to the witnesses. As the law does not distinguish, victimisation is prohibited not only in relation to complaints filed with the NCCD but also in relation to those filed with any other public or private institution (labour inspectorate, consumer protection office etc). No provision regarding the burden of proof in cases of victimisation is included in the law.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) Applicable sanctions in cases of discrimination – in law and in practice

When it finds that discrimination has occurred, the NCCD can issue administrative sanctions: administrative warnings and fines. A negative aspect of NCCD practice is that when the perpetrators are central or local government agencies or public sector actors, the NCCD has informally developed the practice of penalising them with administrative warnings or of issuing recommendations carrying no financial penalties. The NCCD explains this approach as exercising a proactive mandate in preventing discrimination. However, issuing recommendations when finding that discrimination occurred dilutes the meaning of effective remedies in cases of discrimination and increasingly the courts of law, faced with appeals against such decisions, decide to return the files to the NCCD with instructions to issue an adequate remedy if discrimination is found.

The amount of the fines increased after the 2013 amendments: where the victim is an individual, the amount of the fine is within the range of EUR 250-7 500 (RON 1 000-30 000); where the victims are a group or a community, the fine is within the range of EUR 500-25 000 (RON 2 000-100 000).¹⁸⁹

¹⁸⁸ Law 40/2011 for amending and completing Law 53/2003, the Labour Code, 31 March 2011.

¹⁸⁹ Prior to the March 2013 amendments, where the victim was only one person, the amount of the fine was within the range of EUR 100-1 000 (RON 400-4 000) and where the victims were a group or a community, the fine was within the range of EUR 150-2 000 (RON 600-8 000).

In 2020, Article 26(4) of GO 137/2000, which set statutory limitations for applying sanctions issued by the Council when finding discrimination, was repealed when the contested provisions regarding moral harassment were adopted.¹⁹⁰ The amendments to Articles 26(1) and 26(2) spell out the types of sanctions for moral harassment, which are significantly greater than the sanctions already set out in the Anti-discrimination Law for other forms of discrimination, including for findings of harassment. Thus, Article 26(1)^1 provides for fines for moral harassment of between RON 10 000 and 15 000 (approximately EUR 2 068-3 102), with fines for employers who fail to observe the duties under Article 2(5)^5 ranging between RON 30 000 and 50 000 (approximately EUR 6 204-10 340) and those for employers failing to comply with the provisions of Article 2(5)^6 ranging from RON 50 000 to 200 000 (approximately EUR 10 340-41 360).¹⁹¹

Article 26(2) provides for different measures which can be ordered by the courts when finding moral harassment, including an order to stop, reinstatement and compensation – including for moral damages. The NCCD, on the other hand, can only order the employer to take all necessary measures to stop any acts of moral harassment at work regarding the employee in question, and it can order the employer to pay the employee the amount required to cover the psychological counselling that the employee needs over a reasonable period, as established by a doctor of occupational medicine.¹⁹² Any failure of the employer to observe orders issued by the NCCD upon a finding of moral harassment is in itself defined as a misdemeanour, punishable by a fine ranging from EUR 20 680 to 41 360.¹⁹³

In *ACCEPT v. CNCD [i.e. NCCD]* (the Becali case), both the Bucharest Court of Appeal and the High Court of Cassation and Justice decided that ‘there are no elements suggesting that the Football Club Steaua Bucureşti is liable for discrimination in employment on grounds of sexual orientation.’ When discussing the warning applied to Mr Becali as a sanction in the first instance, which was challenged by the complainant as not being ‘dissuasive, proportionate and adequate enough for a case of discrimination’, the High Court stated that:

‘Contrary to the statements of the complainant, warning (as sanction) is not incompatible with Article 17 of Directive 2000/78/EC and cannot be considered *de plano* as a *purely symbolic* sanction [original emphases]. In applying this sanction, the NCCD has a margin of appreciation under which it is assessing multiple elements, among which the context in which the deed was perpetrated, the effects or the outcome and the person of the perpetrator played an important role. Not lastly, the publicity generated by the decision to sanction the author of the deed of

¹⁹⁰ The former Art. 26(4) provided that ‘The enforcement of the misdemeanour sanctions provided in para. (1) shall be prescribed within 6 months from the date when the NCCD issues a decision regarding the complaint’.

¹⁹¹ Art. 26(1)^1 states that ‘The moral harassment at work committed by an employee, by infringing the rights or dignity of another employee, is a misdemeanour and it is punishable by a fine from RON 10 000 to 15 000’. Paragraph (1 ^ 2) states: ‘It constitutes a contravention and is sanctioned with a fine: a) from RON 30 000 to 50 000 for the non-fulfilment by the employer of the obligations provided in Art. 2 para.5^5; b) from RON 50 000 to 200 000 for non-compliance by the employer with the provisions of Art. 2.5^6’.

¹⁹² Art. 26(2)^1 states: ‘Whenever it finds the commission of an act of moral harassment at the workplace, the court may, in accordance with the law: a) order the employer to take all necessary measures to stop any acts of moral harassment at work regarding the employee; b) order the reintegration at work of the employee in question; c) order the employer to pay to the employee a compensation in an amount equal to the equivalent of the salary rights they were deprived of; d) order the employer to pay to the employee compensatory and moral damages; e) order the employer to pay to the employee the amount necessary for the psychological counselling that the employee needs, for a reasonable period established by a doctor of occupational medicine; f) order the employer to modify the employee’s disciplinary records’. Art. 26(2)^2 states: ‘Whenever it finds the perpetration of an act of moral harassment at the workplace, the Council shall apply, in accordance with the law, any of the measures provided in Art.26.2^1) a) and e)’.

¹⁹³ Art. 26(2)^3 states: ‘It constitutes a contravention and is sanctioned with a fine from RON 100 000 to 200 000 for the non-compliance by the employer to fulfil the measures ordered by the Council. The payment of the fine does not exonerate the employer from fulfilling the obligations provided in Art.26.2^1’.

discrimination who excessively exercised his freedom of expression played a dissuasive part in the society.¹⁹⁴

This statement contradicts the very specific guidance offered by the Court of Justice of the European Union when discussing this case, which states that: 'In any event, a purely symbolic sanction cannot be regarded as being compatible with the correct and effective implementation of Directive 2000/78.'¹⁹⁵

In the case of a civil complaint for damages, the complainant can request pecuniary and moral damages and other types of penalty (injunctive relief, withdrawal or suspension of licence for private entities providing services). The courts of law can decide that the public authorities must withdraw or suspend the authorisation to operate of legal persons who cause significant damages as a result of discriminatory action or who repeatedly infringe the provisions of the anti-discrimination legislation as provided in Article 27 of the Anti-discrimination Law. This provision is not supported by reported jurisprudence. Both the NCCD and the courts can oblige the defendant to publish their decisions in the media.¹⁹⁶

The remedies provided for by the courts might be different, however, as proof of direct and effective damage incurred needs to be provided under torts provisions. In a 2006 case, *D.Z. v. Distrigaz Sud*, the complainant – an employee of an NGO working in the field of LGBT rights who was harassed because of his association with the NGO – sought civil damages and asked the court to order the defendant to take institutional measures to preclude discriminatory behaviour in the future, to include in its internal norms a specific prohibition of discrimination on all grounds and to train its employees on anti-discrimination provisions. The court defined 'interest' in conjunction with 'the practical gain obtained' and stated that 'interest must exist, be personal, real and actual and legal.' The court also discussed the issue of systemic remedies, such as institutional measures on combating discrimination and diversity management policies, or the training requested by the complainant as a possible remedy and decided not to grant such remedies. It considered that there was no 'actual interest' for the complainant in being granted such general remedies, and also recognised that by the time of the decision the defendant had already adopted internal regulations, including non-discriminatory provisions.¹⁹⁷

In work-related disputes brought before the labour courts (sections within the civil courts specialising in labour law), the complainants can also request moral damages, including on grounds of discrimination. The Labour Code was amended in 2007 to include 'moral liability', a specific obligation on the employer to pay both moral and material damages to the employee, to compensate the employee for loss, injury or any harm suffered during employment, or in connection with work activities.¹⁹⁸

b) Compensation – maximum and average amounts

Compensation can be awarded solely by the courts of law. There are no ceilings established for the amount of compensation awarded in a civil case for damages on grounds of discrimination, but the courts are rather reluctant to award moral damages as a result of a long legal tradition prior to 1989 of describing moral damages as unjust enrichment. A

¹⁹⁴ High Court of Cassation and Justice, Decision 224, case No. 12562/2/2010, 29 May 2015. See *Romania - High Court confirms rejection of the action of ACCEPT in the case based on CJEU C-81/12*, available at: <http://www.equalitylaw.eu/country/romania>.

¹⁹⁵ Court of Justice of the European Union (CJEU), C-81/12, *ACCEPT v. Consiliul Național pentru Combaterea Discriminării*, 25 April 2013, EU:C:2013:275. Request for a preliminary ruling under Article 267 TFEU from the Curtea de Apel București (Romania), judgment of 25.04.2013, available at: <http://curia.europa.eu/juris/liste.jsf?language=fr&num=C-81/12>.

¹⁹⁶ Law 189/2013 for the ratification of Emergency Ordinance 19/2013 for the amendment of Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, 25 June 2013.

¹⁹⁷ Bucharest Court of first instance No. 4 (*Judecătoria sectorului 4 București*), Decision 4222, case No. 710/4/2006, 10 August 2007.

¹⁹⁸ Law 237/2007, amending the Labour Code, 12 July 2007.

trend of awarding higher moral damages in cases of discrimination became apparent in 2010, when the Craiova Court of Appeal increased the damages awarded in a case of discrimination in the education of a Roma pupil to EUR 10 000.¹⁹⁹ Subsequent cases have confirmed EUR 10 000 as an informal ceiling.

c) Assessment of the sanctions

The NCCD has informally developed a practice of adopting recommendations initially carrying no pecuniary damages when the perpetrators are central government agencies or public actors such as politicians (e.g. where discrimination is triggered by a Government minister’s orders or the internal regulations of central public administration) or when the conditions established by the law are not fully met (for example, prior to 2013, in many cases, due to the statute of limitations, no administrative sanction could be applied – as was the case in the situation leading to the CJEU decision in C-81/12).²⁰⁰

The law does not specifically mention recommendations as remedies. The NCCD argues that they fall under its preventive mandate and are future-oriented. NGOs criticise this practice, arguing that they fail to provide effective remedies for cases of discrimination, contrary to Article 17 of Directive 2000/78/EC and Article 15 of Directive 2000/43/EC.

The more recent practice of the NCCD reflects a growing interest in issuing both recommendations and fines and in increasing the amount of the fines.

The table below includes a compilation showing the evolution of the number of petitions and findings based on the information provided by the NCCD in its annual reports.

Year	Total number of petitions received	Findings of discrimination	Warning	Recommendation	Other sanctions	Fines issued	Total amount of fines issued in EUR
2015	752	102	68	30	- ordered 26 perpetrators to publish the NCCD decision - started one monitoring exercise	63	44 000
2016	842	112	53	44	- started eight monitoring exercises - ordered 63 perpetrators to publish a summary of the NCCD decision	111	152 800
2017	-	117	51	47	- 3 decisions to continue monitoring the situation - 40 perpetrators	65	44 000

¹⁹⁹ Craiova Court of Appeal (Curtea de Apel Craiova), judicial decision, case No. 8011/101/2009, 19 May 2010.

²⁰⁰ National Council for Combating Discrimination, Decision 260, *ACCEPT v. the Ministry of Health*, 29 August 2007.

					were ordered to publish summaries of the NCCD decision in the media		
2018	822	97	56	41	- 7 decisions to continue monitoring of the situation - in 46 cases the perpetrators were ordered to publish summaries of the NCCD decision in the media	86	100 000
2019	904	-	104	80	- 5 monitoring decisions - in 19 cases the NCCD issued an order for the defendant to publish a short summary of the decision	111	83 000
2020	1 039	-	96	72	- 13 orders to publish a summary of the decision - 7 decisions to impose monitoring	109	80 000
2021	1 048	153	92	41	- 17 orders to publish a summary of the decision - 7 decisions to continue monitoring	77	51 000
2022	988	128	65	30	- 13 orders to publish the summary of the decision - 9 monitoring decisions	62	85 000

In 2021, the number of petitions received by the NCCD reached a new record, with 1 048 complaints; most petitions were filed on grounds of access to employment (397), right to dignity (263) and access to public services (248).²⁰¹ Discrimination was found in

²⁰¹ National Council for Combating Discrimination (2022), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2021* (2021 annual report), available in Romanian at: <https://www.cncd.ro/wp-content/uploads/2022/04/Raport-de-activitate-CNCD-2021-.pdf>.

153 cases (17 %). This led to 92 warnings, 77 fines, 41 recommendations, 17 orders to publish a summary and 7 decisions to continue monitoring. For the 77 fines issued, the total amount was approximately EUR 51 000 (RON 254 000).²⁰² The 2022 activity reports mentions 988 petitions received, with 362 petitions on access to employment, 239 on the right to dignity, 56 on discrimination in education. The NCCD initiated ex officio investigations in 23 other cases. This led to 844 files being solved: 351 cases of not finding discrimination, 348 cases solved through exceptions, 128 cases of finding discrimination 65 warnings, 62 fines, 30 recommendations, 13 orders to publish a summary of the case and 9 decisions to continue monitoring. For the 62 fines issued, the total amount was approximately EUR 85 000 (RON 428 000)²⁰³

Although Article 19(d) of the Anti-discrimination Law mentions monitoring of acts of discrimination among the functions of the NCCD, in practice there is no mechanism that would allow adequate monitoring of compliance with the decisions issued, and the NCCD is less active in relation to this part of its mandate. In practice, monitoring of enforcement of sanctions or recommendations depends on the interest taken by the member of the NCCD steering board responsible for each file. In theory, the person fined by the NCCD or by the courts has a duty to send proof of paying the fine (copy of the receipt). However, there is no information available as to whether such communication occurs regularly and whether the NCCD compiles this type of information.²⁰⁴ In 2021, the NCCD annual report mentions that in seven cases the steering board decided to continue monitoring.²⁰⁵

The lack of consistent and adequate monitoring of enforcement of the sanctions issued by the NCCD detracts from the effectiveness and dissuasive and educational impact such sanctions are supposed to have.

There is no clear picture and no assessment of the sanctions issued by courts in cases of discrimination. Given the limited number of cases publicly available, it can be concluded that the courts established a ceiling for moral damages of a maximum of EUR 10 000 – this was awarded in a limited number of cases. Pecuniary damages need to be proved based on the regular civil procedure on torts.

²⁰² National Council for Combating Discrimination (2022), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2021* (2021 annual report), available in Romanian at: <https://www.cncd.ro/wp-content/uploads/2022/04/Raport-de-activitate-CNCD-2021-.pdf>.

²⁰³ National Council for Combating Discrimination (2023), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2022*, (2022 annual report), available in Romanian at: <https://www.cncd.ro/wp-content/uploads/2023/04/Raport-de-activitate-CNCD-2022.pdf>.

²⁰⁴ National Council for Combating Discrimination, Official communication No. 6082, 22 April 2008, and communication sent on 25 February 2009 as a response to request for information No. 1216 of 30 January 2009.

²⁰⁵ National Council for Combating Discrimination (2022), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2021* (2021 annual report), available in Romanian at: <https://www.cncd.ro/wp-content/uploads/2022/04/Raport-de-activitate-CNCD-2021-.pdf>.

7 BODY FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

7.1 Body designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

The National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării*, NCCD) is the specialised national equality body with a duty to monitor and combat all forms of discrimination. The mandate of the NCCD goes beyond the required powers established by Article 13 of Directive 2000/43/EC. The institution is an all-grounds equality body with administrative-jurisdictional powers and its decisions are binding. The Romanian Anti-discrimination Law provides for an open list of grounds which the NCCD covers.

The NCCD was established in 2002, two years after the adoption of the Anti-discrimination Law. Since September 2006, the NCCD has been an autonomous public authority under the control of the Parliament. The NCCD is independent in carrying out its mandate, which includes:

'(1) The Council is responsible for enforcing and controlling the observance of the provisions of this law, in its line of work, as well as for harmonising the provisions from normative or administrative act infringing the principle of non-discrimination.
(2) The Council develops and enforces public policies in the field of anti-discrimination. With this purpose, the Council will consult with public authorities, non-governmental organisations, trade unions and other legal entities with a mission in protecting human rights or with a legitimate interest in combating discrimination.'
(Article 18 of the Anti-discrimination Law)

'With the purpose of combating discrimination, the Council will exercise its mandate in the following areas:

- a) preventing cases of discrimination;
 - b) mediating in cases of discrimination;
 - c) investigating, finding and punishing cases of discrimination;
 - d) monitoring cases of discrimination;
 - e) providing specialised assistance to victims of discrimination.
- (2) The Council exercises its mandate upon request from an individual or a legal person or ex officio.' (Article 19 of the Anti-discrimination Law)

Different departments within the NCCD handle investigations, mediation and assistance for victims as well as raising awareness. The NCCD has two regional offices. The NCCD is a quasi-judicial body featuring both tribunal and promotional type attributes. The steering board of the NCCD is responsible for assessing petitions and issuing decisions under the misdemeanour procedure of the Anti-discrimination Law. Its decisions can be challenged in administrative courts.

In 2008, the Romanian Constitutional Court, when asked to review the constitutionality of the NCCD, found that 'the NCCD is an administrative agency with jurisdictional mandate, which enjoys the required independence in order to carry out administrative-jurisdictional activities and complies with the constitutional provisions from Article 124 on administration of justice and Article 126(5) prohibiting the establishment of extraordinary courts of law.'²⁰⁶

²⁰⁶ Constitutional Court, Decision 1096, 15 October 2008. The court maintained the constitutionality of Articles 16-25 of the Anti-discrimination Law regarding the quasi-judicial nature of the national equality body.

In a 2009 case, the Constitutional Court reaffirmed the role of the national equality body as an autonomous specialised public administrative body with a mandate to combat discrimination.²⁰⁷

The services of the NCCD are accessible on an equal basis for all, without costs, and the NCCD tries to provide reasonable accommodation where necessary to persons with disabilities in spite of the problematic condition of its premises.

Other public institutions with mandates to protect the rights of specific groups, such as persons with disabilities (National Authority for Persons with Disabilities), women (National Agency for Equal Opportunities) and children (National Authority for the Protection of the Rights of Children) do not have any role in addressing discrimination based on these specific grounds and have all been subsumed as departments within the Ministry of Labour following institutional restructuring in 2010-2011 caused by financial constraints.²⁰⁸ The institution of the People's Advocate (*Avocatul Poporului*), while entrusted by law with a general mandate covering equality and protection against discrimination, and having a significantly larger budget than the NCCD, including 14 regional offices, does not report any significant activities in support of vulnerable groups.²⁰⁹

7.2 Political, economic and social context of the designated body

The political elite does not necessarily favour the NCCD, given the previous and continuing experiences of politicians being issued with sanctions for discriminatory speech. The appointment procedure usually follows a political algorithm for the distribution of the positions of members of the NCCD steering board, based on political support. This system of appointment, as well as the fact that the appointments often do not observe the legal requirements, has been criticised by NGOs for leading to the politicisation of the institution. There have been, however, some members of the steering board who were indeed experts and who worked to maintain and foster the independence and expertise of the NCCD.

Attempts to adopt amendments to GO 137/2000 in order to dilute the legal standards of protection or to limit the institutional mandate are periodically submitted by parliamentarians who have been subject to sanction by the NCCD. Such retaliatory amendments are usually rejected by the parliamentary committees and the plenum.

In surveys on population attitudes, the national equality body features as one of the most well-known state institutions. This visibility and brand recognition is due to the large number of cases involving politicians. Although there is no evidence that the popular debate is either supportive of or hostile to equality and diversity in general and the NCCD specific mandate in particular, the number of groups asking for a limitation of the mandate of the national equality body or for its abolition is increasing.

²⁰⁷ Constitutional Court, Decision 444, 31 March 2009. A petitioner who challenged a decision of the NCCD before the court of appeal used this opportunity to take his challenge to the Constitutional Court. He based his complaint on Art. 20, Paras.(1) and (2) on international treaties and human rights, Art. 75, Paras. (1), (4) and (5) on the legislative procedures in adopting legislation, Art. 117(3) on establishment of autonomous administrative authorities, Art. 140(1) on the Court of Audit and Art. 126(5) on the prohibition to establish extraordinary courts of law and the conditions for establishing specialised courts, maintaining that the national equality body is an extraordinary court established by means of delegated legislation and that the fact that the Ministry of Finances issues an advisory opinion on the budget of the NCCD infringes the independence of this institution as a pre-requirement for a quasi-judicial body. The Constitutional Court found that the complaint against Art. 2 was not a constitutional challenge but merely a complaint as to the interpretation of the law; that the challenge against Art. 16 was ill-founded, as was the complaint against Art. 20(8)-(10). Consequently, the Constitutional Court rejected the objection on the constitutionality of the provisions of the Anti-discrimination Law regarding the quasi-judicial mandate of the national equality body.

²⁰⁸ Government Decision 728/2010.

²⁰⁹ People's Advocate (*Avocatul Poporului*) (2017), *Raport anual de activitate* (Annual activity report for 2016) available at: http://avp.ro/index.php?option=com_content&view=article&id=50&Itemid=174&lang=ro-ro.

In the last three years, it appears that the workload of the staff has increased significantly, many employees have left to move to other institutions offering a better pay-grade and the recruitment process is failing to attract suitable candidates. This depletion of human resources, coupled with the deprofessionalisation of the appointed members of the steering board, is also reflected in the delays in responding to petitions and the outreach work the NCCD should do but does not have the resources to do anymore.

7.3 Institutional architecture

In Romania, the designated body forms part of a body with multiple mandates in which the equality and non-discrimination mandate is core, with additional responsibilities being added over time. The NCCD was established as a national equality body with a mandate targeting all forms of discrimination and covering an open list of grounds. The institution was highly involved in reporting before the UN (UPR, CERD and HRC). Beginning in 2017, the mandate of the NCCD was defined in Article 4 of Law 106/2017 as including monitoring of the rights of EU citizens exercising their freedom of movement in Romania and as a national focal point under Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union.²¹⁰

The visibility of the NCCD increased exponentially from 2006 onwards due to the way in which the NCCD understood and carried out its mandate to raise awareness and a number of cases which were widely discussed in the media.²¹¹ The NCCD issued exemplary decisions against prominent politicians (e.g. President Traian Băsescu, President Klaus Iohannis, former Prime Minister Călin Popescu Țăriceanu, former Minister of Foreign Affairs Adrian Cioroianu, former Minister of Foreign Affairs Theodor Baconschi, head of the România Mare party Corneliu Vadim Tudor, former Prime Minister Victor Ponta and former Prime Minister Mihai Tudose) and in a number of sensitive cases (the display of religious symbols in classrooms in public education, blood safety in regard to LGBT donors, discriminatory statements made by journalists or politicians, segregation in education of Roma children or children and young people living with HIV/AIDS, and discriminatory incidents during football matches). Since 2018, the NCCD has been criticised for showing bias in the decisions it has issued in cases involving politicians.²¹²

7.4 Status of the designated body – general independence and resources

a) Status of the body

– Separate or other legal status or personality
The NCCD is a separate legal body.

– Selection of governing body

The NCCD is governed by a steering board of 11, ranked as secretaries of state, and it is managed by a President elected by the members of the steering board (Article 22 of the Anti-discrimination Law). On 28 June 2022, the Parliament amended the Anti-discrimination Law to increase the number of members of the NCCD steering board from 9 to 11, and to stipulate that one member should be a representative of the Parliamentary

²¹⁰ Law 106/2017 on measures to improve the exercise of rights in the context of freedom of movement in the EU (*Legea nr. 106/2017 privind unele măsuri pentru îmbunătățirea exercitării pe teritoriul României a drepturilor conferite în contextul liberei circulații a lucrătorilor în cadrul Uniunii Europene*) (22 May 2017).

²¹¹ Gallup Organization-Romania (2008), *Percepții și atitudini ale populației României față de fenomenul de discriminare* (Perceptions and attitudes towards discrimination), Bucharest, National Council for Combating Discrimination, available at <http://www.cri.ro/userfiles/phphqFQ72.pdf>. See also National Council for Combating Discrimination, Department for International Relations, European Integration, Affirmative Policies, Studies and Monitoring (*Directia Relatii Internationale, Integrare Europeană, Politici Afirmative, Studii si Monitorizare*) (2006), 'Analiza de imagine a Consiliului Național pentru Combaterea Discriminării pentru primul semestru al lui 2006', available on request from the NCCD.

²¹² United States, Department of State (2019), *Country Reports on Human Rights Practices, Romania 2018*, 13 March 2019, available at: <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/romania/>.

Group of National Minorities from the Chamber of Representatives of the Romanian Parliament.²¹³ The justification for increasing the number of members and including a representative of national minorities was that ‘racism, xenophobia and antisemitism are a reality affecting several ethnic minorities in Romania’, along with the rise of antisemitic incidents, while the role and importance of the National Council for Combating Discrimination in preventing and combating all forms of discrimination is key.²¹⁴

Its steering board is comprised of 11 members elected by the Parliament. Any Romanian citizen can be appointed as a member of the steering board under the following conditions:

- has full legal capacity;
- graduated from university education with a diploma (*licența*);
- does not have a criminal record and has a good reputation;
- their activity in the field of protecting human rights and combating discrimination is well known;
- did not collaborate with the Communist political police;
- did not collaborate with the secret service.

The steering board is a collegial body, responsible for enforcing the legal mandate of the NCCD (Article 23 of the Anti-discrimination Law). The members of the steering board are proposed and appointed in a joint session of the Parliament by the two chambers of the Parliament (Article 23(2) of the Anti-discrimination Law) with the requirement that at least two-thirds of the members are law graduates. The 2015 and 2018 appointments were criticised for failing to observe the legal procedures, lacking transparency and introducing additional hearings to privilege a politically supported candidate, as well as for being in violation of Article 23 of the Anti-discrimination Law.

The 2018 appointments were also criticised for not observing legal requirements and, following a request filed by the Liberal Party, the Constitutional Court revoked the mandate of one of the members of the steering board, finding that her appointment did not respect the legal requirement of Article 23 of the Anti-discrimination Law that a minimum of two-thirds of the board’s members must be law graduates (as four of the nine members did not have a legal background).²¹⁵ No further appointment was made by Parliament after the revocation, and the NCCD steering board functioned with eight members from 2019 until July 2020, when seven new members were appointed by the Parliament without public hearings or hearings of the candidates. The two appointments made by the Parliament in December 2022 breached the same legal provision and the decision of the Parliament was challenged before the Constitutional Court by an opposition party.

Article 24 of the Anti-discrimination Law establishes the procedures for the appointment of the members of the steering board. The process is supposed to start 60 days before the positions are vacated.²¹⁶ The permanent bureaux of the Parliament publish information on proposals for candidates on their websites and send the proposals to six specialised parliamentary committees to organise hearings in a joint session. The law provides for a period of 10 days from the date of publication of this information when anybody can register written objections in relation to the candidates. After hearing the candidates, the special parliamentary committees issue a joint opinion, which is presented to the parliamentary chambers convened in a joint session. Candidates are approved by a

²¹³ Romania, Law 193/2022 on the amendment of Art. 23 (2) of Government Ordinance No.137/2000 on preventing and combating all forms of discrimination (*Legea 193/2022 pentru modificarea art. 23 alin. (2) din Ordonanța Guvernului nr. 137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare*), 28 June 2022, published in the Official Journal No. 643 of 29 June 2022.

²¹⁴ Romanian Parliament, [Statement of reasons](#) of [PL-x no.187/2022](#) of 13 April 2022.

²¹⁵ Romanian Constitutional Court, Decision 434/2018 on the unconstitutionality of the Decision of the Parliament 21/2018 regarding the appointment of a member of the NCCD Steering Board from 21 June 2018.

²¹⁶ Law 61/2013, amending Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, 21 March 2013.

majority of votes of the deputies and senators present. The mandate of the members is for a period of five years and is renewable (Article 25 of the Anti-discrimination Law). Although designed to secure the independence of the institution, this appointment procedure has often been criticised for leading to its politicisation, given the use of the political algorithm in the selection of the candidates.

– Sources of funding

The NCCD is an equality body featuring both tribunal-type and promotional-type elements as a specialised body mandated to deal with all forms of discrimination on every ground, including race or ethnic origin, nationality, religion (including religious or non-religious belief), disability, age, sexual orientation and gender. Since September 2006, the NCCD has been an autonomous public authority, supported with funding from the state budget, under the control of the Parliament.

– Powers to recruit and manage staff

The President of the NCCD is elected by the steering board. The President of the institution is in charge of recruiting and managing the staff of the institution under the constraints of the budgetary limitations proposed by the Government and approved by the Parliament.

– Accountability

In terms of accountability, the NCCD presents its annual activity report to the two chambers of the Parliament for deliberation and approval, in accordance with Article 22(2) of the Anti-discrimination Law.

b) Independence of the body

The Anti-discrimination Law specifically provides that the NCCD is independent in carrying out its mandate:

‘In exercising its mandate, the NCCD carries out its activity independently, without being hindered or influenced by other institutions or public authorities.’ (Article 17)

Following irregularities in the selection procedures and controversial appointments in 2007, 2010, 2012, 2015, 2017 and 2018, as well as those in the summer of 2020 and in 2022, the NCCD was criticised by NGOs active in the field for being politicised at the expense of the independence and professionalism of the institution. De facto the NCCD depends on the Government and on Parliament for the approval of its budget and the possibility of recruiting the staff needed to fulfil its mandate.

c) Resources

- Annual budget of the body for 2022: approximately EUR 1 954 000.
- The share of the annual budget dedicated to the equality body mandate (if applicable) N/A.
- Total number of staff of the body in 2022: 99 approved, 76 occupied positions.
- Number of staff dedicated to the equality body mandate (if applicable) N/A.

The funding of the NCCD is secured from the state budget with some additional funding being attracted through different external projects when possible. The total figures for the budget vary in different official responses and reports and the amounts are approximate. The budget of the NCCD in 2002, its first year of operation, was initially less than EUR 200 000 (RON 223 000). The budget gradually increased until it reached a peak of EUR 1.7 million (RON 6 303 000) in 2008, when a significant decline began, with annual budgets ranging around EUR 1 million. Another peak was in 2015 when the NCCD had an allocated budget of approximately EUR 3 011 000 (RON 13 720 000) and an annual

executed budget of approximately EUR 2 528 000 (RON 11 518 000).²¹⁷ Subsequent budgets have ranged between EUR 1.1 and 1.2 million.

Figure 1: Budget and staff of the NCCD by year, 2015-2022

	Budget allocated	Budget executed	Staff positions budgeted out of the 89 needed for 2015-2017 and 96 positions needed in 2018-2020 and 97 approved in 2021 and 99 approved for 2022	Staff positions occupied out of the 89 needed for 2015-2017 and the 96 positions needed in 2018-2022 and 99 approved for 2022
2015	RON 13 720 000 (approximately EUR 3 011 000)	RON 11 518 000 (approximately EUR 2 528 000)	70	62
2016	RON 5 318 000 (approximately EUR 1 175 000)	RON 4 999 000 (approximately EUR 1 105 000)	70	63
2017	RON 5 856 000 (approximately EUR 1.3 million)	RON 5 424 000 (approximately EUR 1 205 000)	70	67
2018	RON 5 704 000 (approximately EUR 1.2 million)	RON 5 424 000 (approximately EUR 1 140 000)	70	64
2019	RON 7 686 000 (approximately EUR 1.7 million)	RON 7 491 000 (approximately EUR 1.7 million)	75	64
2020	RON 8 609 000 (approximately EUR 1.72 million)	RON 8 124 000 (approximately EUR 1 624 800)	72	68
2021	RON 9 731 000 (approximately EUR 1 946 000)	RON 8 999 000 (approximately EUR 1 799 000)	73	71
2022	RON 9 769 (approximately EUR 1 954 000)	RON 9 496 000 (approximately EUR 1 899 000)	99 approved	76 occupied

The annual reports indicate that the institution has to function with less than the number of employees needed. For example, the information for 2021 indicates 73 positions budgeted and 71 positions actually hired out of an approved institutional structure of 97 positions,²¹⁸ while the 2022 report mentions 99 positions approved for 2022, out of which 76 were budgeted.²¹⁹

7.5 Grounds covered by the designated body

The Romanian equality body (NCCD) deals with all grounds provided for in Article 2 of the Anti-discrimination Law: race, nationality, ethnic origin, language, religion, social status,

²¹⁷ National Council for Combating Discrimination (2016), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2015* (2015 annual report).

²¹⁸ National Council for Combating Discrimination (2022), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2021* (2021 annual report), available in Romanian at: <https://www.cncd.ro/wp-content/uploads/2022/04/Raport-de-activitate-CNCD-2021-.pdf>.

²¹⁹ National Council for Combating Discrimination (2023), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2022*, (2022 annual report), available in Romanian at: <https://www.cncd.ro/wp-content/uploads/2023/04/Raport-de-activitate-CNCD-2022.pdf>.

beliefs, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV-positive status, belonging to a disadvantaged group and any other criterion.

There are no priorities in the level of attention given to particular grounds, although in its awareness-raising work the NCCD appears to emphasise the grounds that seem to be more vulnerable, based on the number of petitions received and the statistical analysis of the surveys carried out each year regarding the attitudes and perceptions of the population.

7.6 Competences of the designated body – and their independent exercise

a) Independent assistance to victims

The NCCD has the competence to provide independent assistance to victims according to Article 19(1)(e) of GO 137/2000. Assistance to potential victims interested in filing a complaint is provided by a specialised department within the NCCD. The civil servants working in this department interact with those seeking help when planning to file a complaint before the NCCD. Investigation and review of the complaints is done by other departments and the steering board deliberates on complaints and issues sanctions.

No independent assistance is provided to victims of discrimination interested in pursuing the alternative route of filing torts claims before the civil courts rather than with the NCCD. Instead, under the Anti-discrimination Law, the courts are obliged to invite the NCCD as an expert/intervening party in all such cases.

There is no official assessment of the effectiveness of assistance provided to victims of discrimination. No specific information is available assessing the level and quality of resources, staff and financial resources available for independent assistance provided to the victims at the level of the national equality body.

b) Independent surveys and reports

The national equality body has the competence to conduct independent surveys and publish independent reports according to Article 2(1)(i) and (j) of Government Decision 1194/2001.²²⁰ Depending on the resources available, almost every year the NCCD produces surveys on perceptions and attitudes of the population regarding discrimination. These surveys are often the only comprehensive information on trends and attitudes in Romanian society in relation to discrimination. The NCCD acts independently in choosing topics or methodologies for the reports and surveys.

An annual activity report is published by the NCCD and presented to the Parliament according to Article 22(2) of the Anti-discrimination Law (GO 137/2000).

There is no statutory duty for the NCCD to engage in strategic planning. In the past, the NCCD adopted strategies. The last strategy expired in 2013 and in 2015 the NCCD prepared a new draft strategy, which was intended to be a national equality strategy, rather than just an institutional strategy. The draft was submitted for public debate and Government coordination. At the time of the writing, a national or institutional equality strategy had still not been adopted.

c) Recommendations

In Romania, the national equality body has the competence to issue both opinions and recommendations on discrimination issues as part of its mandate of preventing discrimination, provided for in Article 19(1)(a) of the Anti-discrimination Law.

²²⁰ Government Decision 1194/2001 on the organisation and functioning of the NCCD, 12 December 2001.

When issuing recommendations, the NCCD acts independently. There is no assessment of the effectiveness or the impact of the recommendations issued by the NCCD.

d) Prevention, promotion and awareness-raising

The NCCD has competence to engage in the prevention of discrimination and in the promotion of equal treatment. Though there is no specific statutory duty, the NCCD can adopt a strategy defining how it will engage in public dialogue, communicate with individuals and groups at risk of discrimination, provide training and guidance, and promote equality duties, equality mainstreaming and positive action among public and private entities.²²¹ The effectiveness of the prevention, promotion and awareness-raising work of the NCCD is limited due to the limited resources. The solution found by the NCCD in order to carry out these competences has included building partnerships with civil society organisations, including through seeking funding as partnerships in European and international projects.

e) Other competences

The mandate of the NCCD as defined by Article 19 of the Anti-discrimination Law and further detailed by Article 2 of Government Decision 1194/2001 includes preventing discrimination on all grounds via awareness-raising and education campaigns, mediating between the parties concerned, investigating and issuing sanctions against discrimination, including ex officio, monitoring discrimination, as well as initiating drafts to ensure the harmonisation of legal provisions with the equality principle.²²² All these competences are exercised independently.

In 2017, the mandate of the NCCD was extended to cover monitoring of the rights of EU citizens exercising their freedom of movement in Romania based on Article 4 of Law 106/2017. The law defined the NCCD as the national focal point under Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union.²²³

7.7 Legal standing of the designated body

In Romania, the designated body does not have legal standing to:

- bring discrimination complaints (on behalf of identified victim(s)) before civil courts in legal cases concerning discrimination;
- bring discrimination complaints (on behalf of non-identified victims) to court;
- bring discrimination complaints ex officio to court.

However, the courts have interpreted the obligation of the courts provided in Article 27(3) of the Anti-discrimination Law to subpoena the NCCD as having a legal duty to present its expert opinion and intervene in legal cases concerning discrimination filed before the civil courts. Given the limited resources of the institution and the increasing number of civil cases, this puts serious pressure on the NCCD. So far, the NCCD does not have a set of criteria or a mechanism for prioritising cases to be supported in court.

According to Article 19(2) and Article 21 of the Anti-discrimination Law, the NCCD can exercise its mandate upon request from an individual or a legal person or ex officio within its own procedure

²²¹ Government Decision 1194/2001 on the organisation and functioning of the NCCD, 12 December 2001.

²²² National Council for Combating Discrimination (2007), *Strategia națională de implementare a măsurilor de prevenire și combatere a discriminării (2007-2013)* (National Strategy for the Implementation of Measures for Preventing and Combating Discrimination (2007-2013)).

²²³ Law 106/2017 on measures to improve the exercise of rights in the context of freedom of movement in the EU (*Legea nr. 106/2017 privind unele măsuri pentru îmbunătățirea exercitării pe teritoriul României a drepturilor conferite în contextul liberei circulații a lucrătorilor în cadrul Uniunii Europene*), 22 May 2017.

Following the 2006 changes to the Anti-discrimination Law, the NCCD must be subpoenaed as an intervening party/expert in all cases on grounds of the Anti-discrimination Law filed directly with the civil courts. This competence to provide informed opinions to the courts, which can be seen as an *amicus curiae* duty set out in imperative terms in Article 27(3) of the Anti-discrimination Law, has positive aspects in informing and educating judges and ensuring uniformity in discrimination cases. However, it has also contributed to a further strain on the already limited resources of the NCCD and has generated a serious backlog, as the NCCD has not only had to deal with complaints received *in nome proprio* within its own procedures, but also to issue opinions in all civil cases filed before the courts.

In exercising the duty to provide independent opinions in civil cases that have been filed based on GO 137/2000, the NCCD took the opportunity to advocate in support of the principle of equality and non-discrimination in ground-breaking cases before the Constitutional Court and the Court of Justice of the European Union.²²⁴

A 2008 decision of the Constitutional Court, in which the Court declared unconstitutional the power of the NCCD to find that a legislative provision triggered discrimination and to suspend it, raised the subsequent question of the ability of the NCCD to intervene in such cases. As the NCCD cannot currently bring a case before the Constitutional Court, the mandate of the NCCD might only be extended to include legal standing by legislative amendments. The possibility of automatically bringing before the Constitutional Court cases of discrimination triggered by laws or ordinances is currently provided, in accordance with Article 146(d) of the Constitution, to the People's Advocate (*Avocatul Poporului*).

7.8 Dispute resolution

a) Quasi-judicial functions

In Romania, the NCCD is a quasi-judicial institution. The NCCD can issue binding enforceable decisions. The 2006 amendments to the Anti-discrimination Law incorporated enhanced guarantees of independence by specifically stating that the NCCD is an autonomous public authority under the control of the Parliament, which maintains its independence in carrying out its mandate.

The NCCD is a specialised body and its role as a quasi-judicial institution under Articles 16-25 of the Anti-discrimination Law was recognised by the Romanian Constitutional Court in its Decision 1096 of 15 October 2008, in which it ruled in favour of the NCCD.²²⁵ The Constitutional Court repeatedly affirmed the legality of the NCCD and its status of special administrative jurisdiction, an optional forum in addressing cases of discrimination, and confirmed that proceedings before the NCCD under Article 21(4) of the Anti-discrimination Law are constitutional. The Court found that the NCCD is an administrative body with a jurisdictional mandate, which features the elements of independence required for administrative-judicial activities and which observes the provisions of Articles 124 and 126(5) of the Constitution on the prohibition of establishing extraordinary tribunals.

Victims of discrimination and NGOs can choose between filing a complaint with the NCCD or with the courts. A procedure before the NCCD does not have a suspensive effect as to the time limit to file a complaint before the civil courts.

²²⁴ CJEU, Case C-673/16, *Relu Adrian Coman, Robert Clabourn Hamilton, Asociația ACCEPT v. Inspectoratul General pentru Imigrări, Ministerul Afacerilor Interne, Consiliul Național pentru Combaterea Discriminării* (Request for a preliminary ruling from the Curtea Constituțională a României (Constitutional Court, Romania)), 5 June 2018, EU:C:2018:385.

²²⁵ Romanian Constitutional Court, Decision 1096 of 15 October 2008.

Power to impose sanctions

The NCCD has the power to impose administrative sanctions.

Nature and level of sanctions that can be imposed

The administrative sanctions issued in the NCCD decisions are fines or warnings. If the victim is an individual, the fine is within the range of EUR 250-7 500 (RON 1 000-30 000), whereas if the victims are a group or a community, the fine is within the range of EUR 500-25 000 (RON 2 000-100 000). Besides, the NCCD also extensively issues opinions (also called recommendations) instead of financial sanctions in cases of discrimination involving public authorities or public figures. This practice has often been criticised by NGOs as eroding the overall effectiveness of the mechanism and the adequate, proportionate and dissuasive character of the remedies. The NCCD explains this approach as exercising a proactive prevention function. However, in contrast to general recommendations, issuing such opinions/individual recommendations in relation to specific cases, when finding that discrimination has occurred dilutes the meaning of effective remedies in such cases. Consequently, when faced with appeals against such decisions, the courts of law have increasingly decided to return the files to the NCCD with instructions to issue an adequate remedy when discrimination is found.

Possibility to appeal (to the body itself or to courts)

The administrative sanctions (fines or warnings) issued by NCCD can be appealed before the courts of law under administrative law provisions.

Enforcement of binding decisions

In the absence of a mechanism for monitoring compliance with NCCD decisions, it is impossible to assess the impact of these decisions. In particular cases the NCCD established an internal informal mechanism of monitoring the implementation of its recommendations and revisited the defendants as a follow-up measure. For example, in 2016, the NCCD started an ex officio monitoring exercise based on prior decisions from 2014 and 2015 on the failure of local authorities to ensure conditions for local transportation for persons with mobility disabilities and, in one single decision against the Ministry of Labour, the National Agency for Payments and Social Inspection and 34 city mayors, the NCCD ordered cumulative fines to a total of EUR 69 000 (RON 314 000), which is higher than the total amount of all fines issued in 2015.²²⁶

b) Amicable settlements

The NCCD has the competence to offer the parties to a discrimination complaint the possibility to seek an amicable resolution to their dispute. The process is led by the equality body personnel and is concluded with a decision noting the friendly agreement of the parties.

7.9 Procedural safeguards

The NCCD is entrusted with multiple powers, including assistance for victims, amicable settlement, litigation, investigations and binding decision-making, and the safeguards embedded in the Anti-discrimination law include the possibility of appealing all NCCD decisions before a court of law. Additionally, an internal institutional safeguard has been established, given that different departments have different mandates.

²²⁶ National Council for Combating Discrimination, Decision 357 of 11 May 2016.

7.10 Data collection by the designated body

a) Registration of complaints and decisions

In Romania, the NCCD registers the number of complaints and decisions (by ground, field, type of discrimination, etc). These data are made available to the public in its annual activity reports and are broken down by protected ground and the fields in which the alleged act of discrimination took place.²²⁷

In 2021, with regard to the protected grounds invoked, the highest number of petitions were filed on grounds of social category (301), beliefs (98), nationality (75), disability (73) and ethnicity (49). Out of all the ex officio investigations started by the members of the NCCD steering board, 3 were on gender, 6 on nationality, 3 on ethnicity, one case on race, one case on beliefs and 4 on other grounds. Out of the 153 cases in which the NCCD found discrimination in 2021, 3 were on the ground of religion, 3 on sexual orientation, 9 on language, 7 on beliefs, 9 on age, 13 on gender, 22 on nationality, 21 on disability, 17 on ethnicity and 28 on social category.²²⁸

The data for 2022 reveals that the highest number of petitions were filed on grounds of religion and beliefs (25), nationality (92) and language (26), disability (110), ethnicity (71) and sexual orientation (13). The ex officio investigations concerned nationality (Jewish) in one case, disability in 2 cases, ethnicity in 9 cases and sexual orientation in one case.²²⁹

The annual activity reports also provide information regarding the cases in which NCCD decisions had been challenged before the courts according to Article 20(9-10) of the Anti-discrimination Law. In 2016, the NCCD report claims a judicial success rate of 86 %.²³⁰ In 2017, the success rate indicated by the annual report is 80 %.²³¹ In 2018 the success rate remained 80 %.²³² In 2019, the success rate for NCCD decisions being upheld in court was 82 % and in 2020, 80 % were upheld.²³³ The 2021 annual report states that out of the 475 NCCD decisions challenged in courts, 394 cases were still pending. Out of those that have been finalised, approximately 80 % of the NCCD decisions were upheld.²³⁴ In 2022, the NCCD was called to defend its decisions in 595 cases with 201 decisions in favour of the NCCD and 69 cases issued against the NCCD. The success rate before the courts decreased to approximately 75 %.²³⁵

²²⁷ National Council for Combating Discrimination (2017), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2016* (2016 annual report), available in English at <http://cncd.org.ro/2017-04-20-raportul-de-activitate-al-cncd-anul-2016>.

²²⁸ National Council for Combating Discrimination (2022), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2021* (2021 annual report), available in Romanian at: https://www.cncd.ro/wp-content/uploads/2020/12/Raport_de_activitate_CNCD_2016.pdf.

²²⁹ National Council for Combating Discrimination (2023), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2022*, (2022 annual report), available in Romanian at: <https://www.cncd.ro/wp-content/uploads/2023/04/Raport-de-activitate-CNCD-2022.pdf>.

²³⁰ National Council for Combating Discrimination (2017), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2016* (2016 annual report).

²³¹ National Council for Combating Discrimination (2018), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2017* (2017 annual report).

²³² National Council for Combating Discrimination (2019), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2018* (2018 annual report).

²³³ National Council for Combating Discrimination (2021), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2020* (2020 annual report), available in Romanian at: <https://www.cncd.ro/wp-content/uploads/2021/04/Raport-de-activitate-CNCD-2020.pdf>.

²³⁴ National Council for Combating Discrimination (2022), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2021* (2021 annual report), available in Romanian at: <https://www.cncd.ro/wp-content/uploads/2022/04/Raport-de-activitate-CNCD-2021-.pdf>.

²³⁵ National Council for Combating Discrimination (2023), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2022*, (2022 annual report), available in Romanian at: <https://www.cncd.ro/wp-content/uploads/2023/04/Raport-de-activitate-CNCD-2022.pdf>.

In 2015, the NCCD was called to participate in 680 civil cases²³⁶ and in 750 cases in 2016.²³⁷ In its 2017 annual report, the NCCD states that in 2017 its presence as an expert in court cases was required in 723 civil cases on moral damages and 712 cases filed under other claims (work conflicts).²³⁸ In 2018, the institution reported that it participated in 862 cases.²³⁹ In 2019 the NCCD was asked to provide its expertise in 763 cases, and did so in 1 533 cases in 2020, double the typical number of previous years, thus indicating an increase in the use of anti-discrimination legislation.²⁴⁰ In 2021, the NCCD provided expert opinions in 3 019 cases, thus continuing the trend of an annual increase of almost 100 % for the second year.²⁴¹ In 2022, the NCCD participated as 'specialised expert' in 4 392 cases, out of which 4 758 cases related to pecuniary rights and 1 734 to other requests (labour conflicts, contracts, administrative conflicts). Of the cases in which it was involved in 2022 through the Legal Department, the NCCD noted that 2 696 cases were admitted by the courts and 3 619 were rejected.²⁴²

b) Equality data collection

In Romania, the NCCD does not collect general equality data. No other state institution collects equality data.

7.11 Roma and Travellers

The National Strategy for the Implementation of Measures for Preventing and Combating Discrimination (2007-2013) (*Strategia Națională de Implementare a Măsurilor de Prevenire și Combatere a Discriminării* (2007-2013)), which was published in October 2007, set out the main principles, priorities and areas of intervention of the NCCD for 2007-2013, and mentioned Roma-related objectives without making Roma-related themes a priority of the NCCD's work.²⁴³

The official position of the NCCD dating from 2008 but still relevant in 2022 in relation to Roma is that:

'From the NCCD statistics it is clear that Roma are the most frequent victims of discrimination in all areas of social life: access to education (cases of segregation), equality in the labour market (refusal to employ Roma), access to services and public places (refusal to provide certain services, to allow access to public places such as clubs, pubs, restaurants and internet cafes) and the right to dignity (public statements and hostile and degrading media articles).'

²³⁶ National Council for Combating Discrimination (2016), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2015* (2015 annual report).

²³⁷ National Council for Combating Discrimination (2017), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2016* (2016 annual report).

²³⁸ National Council for Combating Discrimination, (2018), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2017* (2017 annual report).

²³⁹ National Council for Combating Discrimination (2019), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2018* (2018 annual report).

²⁴⁰ National Council for Combating Discrimination (2021), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2020* (2020 annual report), available in Romanian at: <https://www.cncd.ro/wp-content/uploads/2021/04/Raport-de-activitate-CNCD-2020.pdf>.

²⁴¹ National Council for Combating Discrimination (2022), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2021* (2021 annual report), available in Romanian at: <https://www.cncd.ro/wp-content/uploads/2022/04/Raport-de-activitate-CNCD-2021-.pdf>

²⁴² National Council for Combating Discrimination (2023), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2022*, (2022 annual report), available in Romanian at: <https://www.cncd.ro/wp-content/uploads/2023/04/Raport-de-activitate-CNCD-2022.pdf>.

²⁴³ National Council for Combating Discrimination (2007), National Strategy for the Implementation of Measures for Preventing and Combating Discrimination (2007-2013) (*Strategia națională de implementare a măsurilor de prevenire și combatere a discriminării* (2007-2013)).

Consequently, the NCCD launched anti-racism campaigns and offered special training for relevant professions, such as civil servants, teachers, police officers and magistrates, as well as for persons who can provide support to the victims of discrimination.²⁴⁴

In May 2022, after a significant delay, the *Strategy of inclusion of Romanian citizens belonging to Roma minority for 2022-2027*²⁴⁵ entered into force. The strategy acknowledges that persistent discrimination and hate crimes against people belonging to the Roma minority in Romania continue to be an obstacle for their inclusion. The strategy outlines themes such as housing, infrastructure, education, employment and health and establishes a horizontal objective: 'Improving the existing legislative and normative framework in the field of combating discrimination, and anti-Gypsy attitudes and discourse leading to hate speech and hate crimes'.²⁴⁶ A working group on discrimination is supposed to be convened. The strategy is supported by an action plan which provides for activities such as monitoring the application of criminal law provisions penalising incitement to hatred and hate crime against Roma and the public discourse that consists of incitement to racial hatred, organising awareness-raising campaigns on the danger of online hate speech, and analysing the case law to assess the dissuasiveness of the punishments applied.²⁴⁷ The action plan also focuses on continuing education of law enforcement to understand the phenomenon of anti-Gypsyism and of civil servants and employers on combating discrimination and anti-Gypsyism.²⁴⁸

²⁴⁴ NCCD official position communicated on 8 May 2008.

²⁴⁵ Romania (2022) [Government of Romania's strategy of inclusion of Romanian citizens belonging to Roma minority for the period 2022-2027](#) (*Strategia Guvernului României de incluziune a cetătenilor români aparținând minorității rome pentru perioada 2022-2027*), approved by Government Decision No. 560 of 28 April 2022, published in the Official Journal No. 450bis of 5 May 2022.

²⁴⁶ Romania (2022) [Government of Romania's strategy of inclusion of Romanian citizens belonging to Roma minority for the period 2022-2027](#), approved by Government Decision No. 560 of 28 April 2022, published in the Official Journal No. 450bis of 5 May 2022, p.29.

²⁴⁷ Romania (2022) [Government of Romania's strategy of inclusion of Romanian citizens belonging to Roma minority for the period 2022-2027](#), approved by Government Decision No. 560 of 28 April 2022, published in the Official Journal No. 450bis of 5 May 2022, Annex 6.

²⁴⁸ Romania (2022) [Government of Romania's strategy of inclusion of Romanian citizens belonging to Roma minority for the period 2022-2027](#), approved by Government Decision No. 560 of 28 April 2022, published in the Official Journal No. 450bis of 5 May 2022, Annex 6.

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

In spite of a serious lack of human, financial and material resources and lack of solid institutional support from the political sphere or from the Government, the visibility of the NCCD increased significantly after 2006 due to the way in which the NCCD understood and carried out its mandate to raise awareness.²⁴⁹ The NCCD conducted national awareness-raising campaigns, organised cultural events, summer schools, courses and training, round tables discussing public policies and affirmative measures targeting children, students, teachers, civil servants, police officers, riot police, judges, lawyers, NGO representatives, medical doctors and medical personnel.²⁵⁰

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

The NCCD works closely with NGOs representing various vulnerable groups, carries out joint projects and consults with major NGOs in developing its programmes in relevant areas. However, NGOs have criticised its failure to engage in dialogue on amending the Anti-discrimination Law in 2013. Criticisms have also been made regarding the failure to adopt a new national strategy for equality.

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice and workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

Government institutions do not have the objective of promoting dialogue with social partners to give effect to the principle of equal treatment within the workplace. Codes of practice, codes of conduct, measures to ensure workforce monitoring and diversity management are not common in the Romanian context and the NCCD has so far not assumed an active role in promoting these themes.

- d) Addressing the situation of Roma and Travellers

The National Agency for Roma is responsible for addressing Roma issues at national level. The impact of projects carried out with European funds, including the ESF, has not been assessed.

8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

- a) Compliance of national legislation (Articles 14(a) and 16(a))

As the principle of equality is clearly guaranteed in the Constitution, any contrary provisions would be unconstitutional and illegal under the Anti-discrimination Law as *lex specialis*. However, due to the limitations established by the Constitutional Court, neither the

²⁴⁹ Gallup Organization-Romania (2008), *Percepții și atitudini ale populației României față de fenomenul de discriminare* (Perceptions and attitudes towards discrimination), Bucharest, National Council for Combating Discrimination, available at <http://www.crj.ro/userfiles/phphqFQ72.pdf>. See also National Council for Combating Discrimination, Department for International Relations, European Integration, Affirmative Policies, Studies and Monitoring (2006), *Analiza de imagine a Consiliului Național pentru Combaterea Discriminării pentru primul semestru al lui 2006*, available on request from the NCCD.

²⁵⁰ Response from the NCCD, 4 March 2009. See also NCCD annual reports for 2006, 2007, 2008, 2009 and 2010.

NCCD²⁵¹ nor the courts²⁵² can set aside discriminatory legal provisions. Laws, regulations and administrative provisions contrary to the principle of equal treatment can be abolished only if legislative amendments are adopted by the Parliament or if the Constitutional Court declares them unconstitutional during the constitutionality review. No inventory of norms contrary to the principle of equal treatment has been carried out.

Following the decisions of the Romanian Constitutional Court that limited both the mandate of the NCCD²⁵³ and that of the civil courts in relation to discrimination generated by legislative norms,²⁵⁴ only the Constitutional Court may review discriminatory norms containing provisions contrary to the principle of equality. As legal standing before the Constitutional Court is limited by the Constitution to specified categories (courts of law during proceedings or the People's Advocate), the Romanian legal framework currently has a *de facto* gap in protection against *de jure* discrimination provisions that fall outside the scope of the EU *acquis* on anti-discrimination.

In the past, the NCCD found that particular norms were contrary to the principle of equality and issued recommendations to the relevant authorities that they amend the legislation, but without any adequate follow-up. Relevant cases reported in the media included:

- Two cases regarding restrictions applied to homosexual men in relation to donating blood. The measures proposed by the Ministry of Health (permanent exclusion of gay men from donating blood) were considered both inadequate and unnecessary, but as the initial decisions and recommendations were not observed, a second petition was necessary and the issue was tabled again even after a second decision.²⁵⁵ The latest decision of the NCCD is still not being complied with and current practices do not follow the judgment in CJEU, *Léger*.²⁵⁶
- NCCD Decision 323 of 21 November 2006, initiated *ex officio* by the institution following an open letter of a coalition of NGOs, issued a recommendation to the Ministry of Education that it draft a set of regulations to: ensure the exercise of the right to education in equal conditions for all pupils; observe the right of parents and guardians to ensure the religious education of their children as they choose; observe the secular character of the state and the autonomy of religious denominations; ensure freedom of religion and beliefs for all children equally; and allow for the display of religious symbols only during religious instruction classes or in places devoted to religious education. The decision was partially appealed and the NCCD recommendations were upheld by the Court of Appeal. Nevertheless, on 11 June 2008, the High Court of Cassation and Justice accepted the final appeal submitted by the Ministry of Education and a coalition of religious associations and quashed the decision of the Court of Appeal. As the initial appeal regarded only some parts of Decision 323, the decision of the High Court of Cassation and Justice makes void only the relevant recommendations and the Ministry of Education is still supposed to enforce the remaining recommendations. However, the Ministry refuses to do so, invoking the High Court decision.
- The NCCD position regarding the three-tier recognition system for religious denominations established by the Law on religious freedom and the general status of

²⁵¹ Romanian Constitutional Court, Decision 997, 7 October 2008, finding that Article 20(3) of the Anti-discrimination Law (GO 137/2000), defining the mandate of the NCCD in relation to discrimination triggered by legislative provisions, is unconstitutional.

²⁵² Romanian Constitutional Court, Decision 818, 3 July 2008.

²⁵³ Romanian Constitutional Court, Decision 997, 7 October 2008, finding that Article 20(3) of the Anti-discrimination Law (GO 137/2000), defining the mandate of the NCCD in relation to discrimination triggered by legislative provisions, is unconstitutional.

²⁵⁴ Romanian Constitutional Court, Decision 818, 3 July 2008.

²⁵⁵ National Council for Combating Discrimination, Decision 337, *ACCEPT v. the Ministry of Health for the National Institute of Haematology*, 21 November 2005, and Decision 260, *ACCEPT v. the Ministry of Health*, 29 August 2007. A second case was necessary because the Ministry of Health did not comply with the recommendation of the NCCD in its first decision.

²⁵⁶ CJEU, C-528/13, *Geoffrey Léger v. Ministre des Affaires sociales, de la Santé et des Droits des femmes and Etablissement français du sang*, judgment of 29 April 2015, EU:C:2015:288.

religions, which was deemed as discriminating against smaller or newer religious minorities.²⁵⁷

In its decision of 14 March 2006 on case No. 9165/22.12.2005, the NCCD found that the provisions of Article 30(1)(c) of Law 248/2005 regarding the free movement of Romanian citizens abroad discriminates on grounds of marital status against the parents of minors whose parents are divorced in relation to the right of a parent granted custody of a child to remove the child from Romanian territory without the consent of the other parent. After finding that the legal provision leads to discrimination, the NCCD recommended that the Ministry of Interior take the measures necessary to remedy this. The legal provision was not amended and there was no follow-up.²⁵⁸

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

The constitutional provisions and the framework established by the Anti-discrimination Law prevail in relation to any clauses included in any contracts, collective agreements adopted as laws or as secondary legislation, internal rules of businesses and the rules governing independent occupations, professions, workers' associations or employers' associations. Such norms contrary to the principle of equal treatment would be declared null and void based on the principle '*lex specialis derogat legi generali*' (special rules prevail over general rules).

²⁵⁷ Law 489/200 on religious freedom and the general status of religions, 8 January 2007.

²⁵⁸ National Council for Combating Discrimination, Decision, *RR petition against Law 248/2005*, 14 March 2006.

9 COORDINATION AT NATIONAL LEVEL

By law, the NCCD is responsible for all matters in regard to anti-discrimination in Romania, although most of its visibility comes from reviewing petitions in alleged cases of discrimination. However, conflicts of competence have occurred, with the courts deciding against the NCCD in cases regarding discriminatory language used in the media. Therefore, the National Audiovisual Council (*Consiliul Național al Audiovizualului*) is competent to decide whether an advertising clip or statements during a TV show are discriminatory or not and to impose appropriate sanctions on TV stations and media hosts in accordance with the Audiovisual Law, which is considered *lex specialis* in relation to the Anti-discrimination Law.²⁵⁹

Emergency Ordinance 83/2012, adopted in December 2012 and aimed at amending the legislation on equal opportunities to bring it in line with European standards, introduced further confusion in its Article 23, as it creates overlapping competences with the NCCD when it mandated the Ministry of Labour, Family and Social Protection to:

- a. receive complaints regarding infringement of legal provisions on the principle of equal opportunities and treatment between women and men and of non-discrimination on the ground of sex, by individuals, legal entities, public and private institutions, and convey them to the institutions responsible for resolving them and for applying sanctions and ensuring counselling for victims under legal requirements;
- b. prepare reports, studies, analyses and make prognoses regarding enforcement of the principle of equality of opportunities and treatment between women and men in all fields of activity;
- c. ensure exchange of information with the European bodies in the field of equal opportunities between men and women.²⁶⁰

In spite of the confusion, the ministry has not replaced the NCCD as equality body, as it has a duty to transfer complaints to the NCCD. The same Emergency Ordinance 83/2012 introduces different definitions of discrimination, indirect discrimination, harassment, the burden of proof and different ranges for the fines applicable in cases of discrimination on grounds of gender, although it mentions the NCCD as the responsible entity in Article 46.

In 2016, the Parliament adopted Law 8 of 18 January 2016 on the establishment of the mechanisms provided by the Convention on the Rights of Persons with Disabilities (*Legea nr. 8 din 18 ianuarie 2016 privind înființarea mecanismelor prevăzute de Convenția privind drepturile persoanelor cu dizabilități*),²⁶¹ which aimed to establish the monitoring mechanism under Article 33(2) of the UNCRPD. The media has reported numerous challenges in establishing the Monitoring Council, including the resignation of the first director of the council²⁶² as well as criticisms regarding its more recent work.²⁶³ There are

²⁵⁹ Bucharest Court of Appeal (*Curtea de Apel București, Secția a VIII Contencios Administrativ și Fiscal*), case No. 34845/2/2005, 18 January 2006.

²⁶⁰ Emergency Ordinance EO 83/2012 on modifying Law 202/2002 on equal opportunities and treatment between women and men, 13 December 2012.

²⁶¹ Law No. 8 of 18 January 2016 on the establishment of the mechanisms provided by the Convention on the Rights of Persons with Disabilities (*Legea nr. 8 din 18 ianuarie 2016 privind înființarea mecanismelor prevăzute de Convenția privind drepturile persoanelor cu dizabilități*).

²⁶² Elena Georgiana Pascu, Resignation request filed with the Romanian Senate, registered as No. I1760, 18 July 2016, available at: <http://www.activewatch.ro/Assets/Upload/files/georgiana%20pascu%20Cerere%20de%20eliberare%20din%20functie%20CM.pdf>.

²⁶³ Submissions of the Centre for Legal Resources in the dialogue on the enforcement of the judgment *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, ECtHR No. 47848/08, 17 July 2014, <https://www.escr-net.org/caselaw/2015/centre-legal-resources-behalf-valentin-campeanu-v-romania-application-no-4784808>. Newsweek Romania (2019), 'Consiliul de Monitorizare, o palmă peste obrazul oamenilor cu dizabilități' (The Monitoring Council, a slap in the face for persons with disabilities), 1 March 2019 available at: <https://newsweek.ro/social/consiliul-de-monitorizare-o-palma-pest-obrazul-oamenilor-cu-dizabilitati>.

no reports on the effectiveness of the Monitoring Council or suggesting any coordination with the NCCD so far.

The National Authority for Persons with Disabilities (NAPD) (*Autoritatea Națională pentru Persoanele cu Dizabilități*), which is the independent authority designated to carry out the obligations set out in the UN CRPD under Article 33(1), was repeatedly restructured in 2019, 2020 and 2021. In 2019 the Ministry of Labour and Social Protection established the National Authority for the Rights of Persons with Disabilities, Children and Adoptions (*Autoritatea Națională pentru Drepturile Persoanelor cu Dizabilități, Copii și Adopții, ANDPDCA*), which would take over the activities, powers and structures of the previous NAPD and of the National Authority for the Protection of the Rights of the Child and Adoptions.²⁶⁴

There is no national action plan or strategy on discrimination, nor an action plan on LGBTIQ equality.

In 2021, the National Strategy on the prevention and combating of antisemitism, xenophobia, radicalisation and hate speech, for 2021-2023, and its action plan were adopted.²⁶⁵ On 28 February 2022, the Prime Minister issued a decision²⁶⁶ establishing a committee formed of representatives of various ministries,²⁶⁷ under the coordination of a state secretary within the Chancellery of the Prime Minister, that will monitor the implementation of the strategy. The strategy focuses on combating antisemitism, xenophobia, radicalisation and hate speech and the target groups are pupils, students, teachers, employees of public institutions, including police officers and police agents, and civil society in general. The main interventions described in the strategy include: improving data collection; the assessment of the efficiency of the existing legislation; evaluating and updating the training programmes, including those for law enforcement and judges and prosecutors; evaluating and updating school curricula; developing pilot cultural programmes; and strengthening the efforts of Romania at the international level.²⁶⁸ A first annual report on the progress of these actions was published in May 2022.²⁶⁹

²⁶⁴ Ministry of Labour and Social Protection (*Ministerul Muncii și Protecției Sociale*) (2019), 'Hotărârea privind organizarea și funcționarea Autorității Naționale pentru Drepturile Persoanelor cu Dizabilități, Copii și Adopții, prin care se elimină bariere instituționale și se reduc cheltuieli, în dezbatere publică', press release, 28 November 2019.

²⁶⁵ Romania (2021) [National strategy on the prevention and combating of antisemitism, xenophobia, radicalisation and hate speech, for the period 2021-2023](#), and its plan of action, adopted by Government Decision No. 539/2021 (*Hotărârea Guvernului nr. 539/2021 privind aprobarea Strategiei naționale pentru prevenirea și combaterea antisemitismului, xenofobiei, radicalizării și discursului instigator la ură, aferentă perioadei 2021-2023 și a Planului de acțiune al Strategiei naționale pentru prevenirea și combaterea antisemitismului, xenofobiei, radicalizării și discursului instigator la ură, aferentă perioadei 2021-2023*), of 13 May 2021, published in the Official Journal No. 517 of 19 May 2021.

²⁶⁶ Prime Minister, Decision 173/2022 on establishing the Interministerial Committee for the monitoring of the implementation of the National strategy on the prevention and combating of antisemitism, xenophobia, radicalisation and hate speech, 2021-23 (*Decizia nr. 173/2022 privind înființarea Comitetului interministerial pentru monitorizarea implementării Strategiei naționale pentru prevenirea și combaterea antisemitismului, xenofobiei, radicalizării și discursului instigator la ură, aferentă perioadei 2021-2023*), of 28 February 2022, published in the Official Journal No. 198 of 28 February 2022.

²⁶⁷ Chancellery of the Prime Minister, Ministry of Foreign Affairs, Ministry of Internal Affairs, Ministry of Justice, Ministry of Education, Ministry of Culture, Ministry of National Defense, Ministry of Sport, General Secretariat of the Government, the Elie Wiesel National Institute for the Study of Holocaust in Romania, National Agency for Roma. See Prime Minister, Decision 173/2022 on establishing the Interministerial Committee for the monitoring of the implementation of the National strategy on the prevention and combating of antisemitism, xenophobia, radicalisation and hate speech, 2021-23 of 28 February 2022, Annex, published in the Official Journal No. 198 of 28 February 2022.

²⁶⁸ Romania (2021) [National strategy on the prevention and combating of antisemitism, xenophobia, radicalisation and hate speech, for the period 2021-2023](#), and its plan of action, adopted by Government Decision No. 539/2021 of 13 May 2021, published in the Official Journal No. 517 of 19 May 2021.

²⁶⁹ Romanian Government (2022) [Annual Report on the progress in the implementation of the National strategy on the prevention and combating of antisemitism, xenophobia, radicalisation and hate speech, for the period 2021-2023](#) (*Raportul anual cu privire la progresul înregistrat în implementarea Strategiei naționale pentru prevenirea și combaterea antisemitismului, xenofobiei, radicalizării și discursului instigator la ură, aferentă perioadei 2021-2023*), May 2022.

CSOs have not been engaged in the design of the strategy and its implementation, except for two Jewish community NGOs (*Federației Comunităților Evreiești din România – Cultul Mozaic* (FCER) and *Forumul B'nai B'rith „Dr. Moses Rosen” România*), who contributed to the drafting of the strategy. These two NGOs and the NGO *Centrul pentru Monitorizarea și Combaterea Antisemitismului (MCA)* are represented at the meetings of the committee as permanent guests but no other NGOs supporting victims of hate crimes on other protected grounds were invited.²⁷⁰

The National Strategy on the rights of persons with disabilities: 'An equitable Romania' 2022-2027,²⁷¹ and its operational plan, were adopted in April 2022.²⁷² The strategy highlights eight priority areas: accessibility and mobility; effective protection of the rights of persons with disabilities; employment; social protection; independent living and integration in the community, including access to public services; education; health; and political and public participation. Civil society organisations and the NCCD were involved in the design of the strategy.

After a delay of 15 years, which entailed serious challenges for persons living with HIV/AIDS, a national strategy on HIV/AIDS was adopted in December 2022.²⁷³

Also with a significant delay, in May 2022 the Government adopted the *Strategy of inclusion of Romanian citizens belonging to Roma minority for 2022-2027*.²⁷⁴ The strategy acknowledges that persistent discrimination and hate crimes against people belonging to the Roma minority in Romania continue to be an obstacle for their inclusion. The strategy establishes an horizontal objective: 'Improving the existing legislative and normative framework in the field of combating discrimination, and anti-Gypsy attitudes and discourse leading to hate speech and hate crimes'.²⁷⁵ A working group on discrimination is supposed to be convened.

The 2022 National Strategy on Social Inclusion and Poverty Reduction mentioned the principle of nondiscrimination in intervening in favour of persons at risk of poverty or social exclusion and mentions as a specific objective the elimination of discrimination against vulnerable groups (specific objective 3.3.4).²⁷⁶

²⁷⁰ Romanian Government, *Raportul anual cu privire la progresul înregistrat în implementarea Strategiei naționale pentru prevenirea și combaterea antisemitismului, xenofobiei, radicalizării și discursului instigator la ură, aferentă perioadei 2021-2023* ([Annual Report on the progress in the implementation of the National Strategy on the prevention and combating of antisemitism, xenophobia, radicalization and hate speech, for the period 2021-2023](#)), May 2022, p.8.

²⁷¹ Romania (2022) [The National strategy on the rights of persons with disabilities: 'An equitable Romania', 2022-2027](#).

²⁷² Romania, Government Decision No. 490/2022, of 6 April 2022, for the approval of the National Strategy on the Rights of Persons with Disabilities '[An equitable Romania' 2022-2027](#).

²⁷³ The National Strategy for the supervision, control and prevention of infection with HIV/AIDS for 2022-2030 was adopted as Governmental Decision 1440/2022 and published without a budget to support its implementation. Government Decision 1440 for the approval of the national strategy 'For the supervision, control and prevention of HIV/AIDS infection 2022-2030' (*Hotărârea de Guvern 1440 din 29 noiembrie 2022 pentru aprobarea Strategiei naționale pentru supravegherea, controlul și prevenirea cazurilor de infecție cu HIV/SIDA*) 29 November 2022, (*Monitorul Oficial*, 15 December 2022).

²⁷⁴ Romania (2022) [Government of Romania's strategy of inclusion of Romanian citizens belonging to Roma minority for the period 2022-2027](#) (*Strategia Guvernului României de incluziune a cetățenilor români aparținând minorității rome pentru perioada 2022-2027*), approved by Government Decision No. 560 of 28 April 2022, published in the Official Journal No. 450bis of 5 May 2022.

²⁷⁵ Romania (2022) [Government of Romania's strategy of inclusion of Romanian citizens belonging to Roma minority for the period 2022-2027](#), approved by Government Decision No. 560 of 28 April 2022, published in the Official Journal No. 450bis of 5 May 2022, p.29.

²⁷⁶ Romania (2022) [The National strategy on social inclusion and poverty reduction for the period 2022–2027](#) (*Strategia națională privind incluziunea socială și reducerea sărăciei pentru perioada 2022–2027*) approved by Government Decision 440/2022.

10 CURRENT BEST PRACTICES

At national level there are no assessments of Government policies or initiatives that could be qualified as promising or as best practice. Of the initiatives of the NCCD that can be commended, its role in the litigation before the Constitutional Court and the Court of Justice of the European Union in case C-673/16 and its subsequent engagement in drafting and supporting a bill on civil partnerships are notable.

The last positive practice identified consisted of the proactive recommendation of positive action measures, resulting from the recommendation issued by the NCCD in 2021 to the Ministry of Education following an individual complaint.²⁷⁷ The NCCD rejected the individual complaint, but found that there is an obligation on the state to adopt special measures in college admissions in relation to people with special educational needs/disabilities. Currently, the Education Law provides for special measures that can be taken in relation to Roma students and graduates of high schools from rural areas or from cities with fewer than 10 000 inhabitants. The NCCD considered that this list should not be interpreted as exhaustive and recommended the Ministry of Education establish places that are specifically available for students with special educational needs, as a socially disadvantaged and marginalised group.

No practices in relation to artificial intelligence have been developed in Romania.

²⁷⁷ National Council for Combating Discrimination, Decision 561 in case No. 1037/2020, *Zane Andrei v. the Bucharest University and the Ministry of Education*, 21 July 2021.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives at the national level

1. None of the definitions of harassment from the various relevant norms (Anti-discrimination Law, Equal Opportunities Law, Criminal Code) are in full compliance with the definition of harassment set out in Article 2(3) of the directives, as the Romanian provisions fail to punish as harassment unwanted conduct with the *purpose* of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment and punish only harassment having the *effect* of violating the dignity of a person. The 2020 amendment introducing the concept of 'moral harassment', with a distinct sanction, further adds to the confusion.

2. The use of the word 'order' instead of 'instruction' in Romanian might lead to a restrictive interpretation of instructions to discriminate, limiting the prohibition to hierarchical relations. While the NCCD interpretation complies with the meaning of the directives, interpreting the terminology extensively, the courts still have to determine the understanding of Article 2(2) and its limitations.

3. The concept of reasonable accommodation for persons with disabilities is not included in the Romanian Anti-discrimination Law but is currently defined in special legislation on the promotion and protection of the rights of persons with disabilities but without provision for any sanction. The jurisprudence of the NCCD and of the courts is not unitary. Although the UN Convention on the Rights of Persons with Disabilities has been signed and ratified by Romania, the official translation includes major errors on key concepts, such as 'legal capacity', which was translated as 'legal assistance', and there have been no attempts to further harmonise the legislation with the Convention.

11.2 Other issues of concern

Disability, age and sexual orientation are not explicitly established as protected grounds in Article 16 of the Romanian Constitution. Notably, disability is not specifically mentioned as a protected ground in the special clauses in the Anti-discrimination Law defining prohibition of discrimination in employment (Articles 5-8), access to public services – social protection, advantages, goods and services, housing (Article 10), education (Article 11), forced displacement (Article 13), and access to public places (Article 14). This is an omission in the law that is, however, rectified in practice by the NCCD and by the courts by interpreting these articles in conjunction with the general definitions of discrimination, including the full list of protected grounds in Article 2 of the Anti-discrimination Law.

An Emergency Ordinance adopted in December 2012, amending the Equal Opportunities Law, introduced different definitions of discrimination on the ground of gender, creating different legal regimes and generating confusion.

Romanian anti-discrimination legislation applies to an open-ended list of criteria of protection going beyond those provided by the directives and the scope of the Anti-discrimination Law is applicable to areas beyond those set out in the directives. The open list of protected grounds also gives rise to some disadvantages, as the ever-expanding and tailored list of criteria deemed as being in need of protection turns the anti-discrimination principle into a general equality and fairness principle.

The most worrying concern in relation to the enforcement of the prohibition of discrimination in Romanian legislation is the limitation of the Anti-discrimination Law by the Romanian Constitutional Court in a series of decisions issued in 2008 and 2009, which

limited both the mandate of the NCCD²⁷⁸ and that of the civil courts in relation to discrimination generated by legislative provisions,²⁷⁹ creating a gap in the effective protection against discrimination.²⁸⁰ As the Constitution provides for limited standing and specific conditions for constitutional review and the Constitutional Court is the only entity able to assess and decide when a legal provision conflicts with the equality principle enshrined in the Constitution, the mandate of the NCCD should be adequately amended to include the potential for the national equality body to automatically bring before the Constitutional Court cases of *de jure* discrimination, which is currently only provided, in accordance with Article 146(d) of the Constitution, to the People's Advocate (*Avocatul Poporului*). Without this power, the national equality body (NCCD), faced with a legal provision falling within the scope of European Union law which is incompatible with the constitutional anti-discrimination principle, does not have a mechanism, as indicated by the Court of Justice of the European Union (CJEU) in C-555/07 *Seda Küçükdeveci v. Swedex GmbH & Co. KG*, allowing it to decline to apply that particular legal provision.

The courts as well as the NCCD have interpreted the legal provision on the court tax exemption for filing a discrimination complaint as applying solely to complaints before the NCCD or the civil courts. The courts and NCCD interpretation is that the benefit of being exempted from the court tax that is meant to encourage victims of discrimination to use existing procedures does not apply to cases when NCCD decisions are challenged before the administrative courts. This is a deterrent.

Although compliance is mentioned in the Anti-discrimination Law, the NCCD has not so far developed an operational mechanism to monitor infringements of the legislation or to continuously monitor compliance with its decisions, hence it is difficult to assess the effectiveness of its mandate and the effective, proportional and dissuasive character of the sanctions issued.

In spite of the adoption by the Ministry of Education of three different sets of regulations regarding desegregation in education, with a clear definition of segregation that could be enforceable, the failure to apply these provisions and to establish a functional implementation mechanism with clear procedures has led to further cases of segregation being reported.

The Civil Code, adopted in 2009,²⁸¹ which entered into force in 2011, includes in Article 277 an express prohibition of same-sex partnership and marriage and also includes a prohibition of the recognition of partnerships and same-sex marriages registered in other countries, even if they were legally registered.²⁸² This provision was declared in part

²⁷⁸ Romanian Constitutional Court, Decision 997, 7 September 2008, which found that Art. 20(3) of the Anti-discrimination Law (GO 137/2000), defining the mandate of the NCCD in relation to discrimination triggered by legislative provisions, is unconstitutional.

²⁷⁹ Romanian Constitutional Court, Decisions 818, 819 and 820, 3 July 2008. The Constitutional Court has concluded that the dispositions of Art. 1(2)e) and of Art. 27 of the Anti-discrimination Law (GO 137/2000) are unconstitutional, to the extent that they are understood as implying that the courts of law have the authority to nullify or to refuse the application of legal norms where they consider that such norms are discriminatory.

²⁸⁰ In theory, when confronted with *de jure* discrimination, the Romanian courts could proceed with a review of compatibility with EU law on grounds of Article 148(2) of the Constitution, which asserts the priority of EU legislation and could, eventually, disapply the discriminatory norm. This has never happened in practice, the tendency instead being to refer potential cases to the Constitutional Court for a constitutional review in light of the equality and non-discrimination provisions in the Constitution. This practice might be explained by the very clear wording of the Romanian Constitutional Court in its decisions in 2008 (Decisions 818, 819 and 820) and in 2009 (Decision 997), when the courts and the NCCD decided to disapply discriminatory norms. This was treated as an issue of the separation of powers, with a need to prevent the courts from being perceived as negative legislators.

²⁸¹ Law 289/2009 on the Civil Code (*Lege 289/2009 privind Codul Civil*), 17 July 2009.

²⁸² Law 289/2009 on the Civil Code, 17 July 2009, Art. 277. '[S]ame-sex marriages performed abroad, by Romanian citizens or by foreigners are not to be recognised in Romania.' Similarly, the Civil Code mentions that same-sex or opposite-sex civil partnerships registered or contracted abroad by Romanian citizens or foreigners are not recognised in Romania.

unconstitutional in the *Coman, Hamilton, ACCEPT* case,²⁸³ but continues to be applied in practice by the authorities.²⁸⁴

The Civil Code also states that the legal provisions on the freedom of movement in Romania of EU/EEA citizens remain in force. These include Ordinance 30/2006, which provides a definition of partnership for citizens of EU Member States for the purposes of free movement and residence in Romania, which defers to the legislation of the country of origin.²⁸⁵ In 2016, a citizens' initiative to amend Article 48 of the Romanian Constitution²⁸⁶ was allowed by the Constitutional Court.²⁸⁷ The proposed amendment defined 'the family' as being based on the 'freely entered into union between a man and a woman, the equality between them and the right and the obligation of the parents to ensure the upbringing, education and instruction of children'.²⁸⁸ The referendum, conceived as a de facto constitutional ban on same-sex marriages, was held on 6-7 October 2018 and failed due to the low turnout generated by a comprehensive boycott campaign carried out by civic NGOs.

Between 2008 and 2020, six different draft bills on same-sex partnerships have been shelved or rejected by the Parliament. The most recent bills, initiated in November 2018 by the national equality body and ACCEPT and supported by various Members of Parliament, are still pending in the Chamber of Deputies after being rejected by the Senate. Currently, 21 families are awaiting a decision from the European Court of Human Rights, following the refusal of the authorities to recognise their family life.²⁸⁹

The fact that Romanian legal provisions go beyond the minimum requirements of the directives and, most importantly, place emphasis on 'the right to dignity' in combating discrimination, increases the effectiveness of the anti-discrimination mechanisms and helps to increase the visibility of the NCCD and awareness of the provisions of the Anti-discrimination Law. The 'right to dignity' has been invoked in cases where the legal provisions were not fully sufficient, as was the case in regard to the dividing wall segregating the Roma community in Baia Mare.²⁹⁰ However, in relation to the right to dignity, a worrying practice is being developed by the NCCD and by the courts, requiring claimants to produce evidence that defendants actually had an intention to discriminate.

The NCCD practice in attempting to find a balance between protection of the principle of equality and non-discrimination and freedom of expression is not coherent, and contradictory results are often reached in similar cases. The Anti-discrimination Law provides in Article 2(8) that its provisions cannot be interpreted so as to limit freedom of expression, freedom of opinion and the right to information. However, although the NCCD usually invokes the case law of the ECtHR in understanding the limitations of freedom of expression, the practice of the NCCD and of the courts is not consistent and many discriminatory statements, in particular those made by mainstream politicians, have continued not to attract sanctions and are not recognised as an abuse of rights. The overall politicisation of the institution when assessing cases regarding discriminatory statements represents the opposite practice to issuing harsh and disproportionate fines for statements made by opposition politicians, which are not assessed by the NCCD as falling under the exercise of freedom of expression.

²⁸³ Romanian Constitutional Court, Decision 534, 18 July 2018.

²⁸⁴ The legal conflict in C-81/12 was not settled satisfactorily in the domestic courts and it is currently pending before the European Court of Human Rights as application 2663/21, *Coman and others v. Romania*.

²⁸⁵ Law 500/2006 on amending and approving Ordinance 30/2006, 28 December 2006.

²⁸⁶ Citizens' initiative published in *Monitorul Oficial*, 883/1, 25 November 2015.

²⁸⁷ Romanian Constitutional Court, Decision 580, 20 July 2016.

²⁸⁸ Unofficial translation of the proposed constitutional referendum as stated in the citizens' initiative, published in *Monitorul Oficial*, 883/1, 25 November 2015.

²⁸⁹ ECtHR, pending case of *Buhuceanu and Ciobotaru v. Romania* (application No. 20081/19 and 12 other applications against Romania).

²⁹⁰ National Council for Combating Discrimination, Decision 439, case No. 4A/2011, *Ex officio v. Chereches*, 15 November 2011.

The politicisation of the steering board of the NCCD was visible in several areas: controversial decisions in cases involving politicians; the demise of effective remedies in favour of recommendations lacking any legal power; the limited quality of legal reasoning; and the decrease in the number of NCCD decisions upheld by the courts after being appealed. The NCCD practice of not issuing an administrative fine and issuing only administrative warnings or recommendations in some of its cases erodes the effective, proportionate and dissuasive character of the remedies, contrary to Article 15 of Directive 2000/43 and Article 17 of Directive 2000/78 and erodes the credibility of the institution. NCCD warnings do not carry financial penalties.

The budget of the NCCD is not stable enough to allow the consolidation and development of the institution. The annual budgetary allocations are limited and only the institutional efforts to attract external funding allow the body to carry out certain activities.²⁹¹

A worrying trend widely reported in the media, but which was not framed as a legal complaint so far, is the increasing number of cases of denial of access to medical services, such as legal abortions or contraceptives, by obstetricians and gynaecologists, pharmacists or even entire medical institutions, who invoke religious objections. Religious ethos is claimed to de facto deny access to public services for women who cannot afford to pay for those services in private hospitals.²⁹² A draft law meant to secure access to medical services at county level and to prevent the widespread practice of some doctors invoking religious objections in public hospitals while performing abortions in private clinics was rejected in the Parliament.²⁹³

The COVID-19 pandemic gave rise to concerns regarding the disparate impact on Roma communities of the measures taken during the emergency and the state of alert. Such concerns were raised by national NGOs,²⁹⁴ international NGOs,²⁹⁵ UNICEF²⁹⁶ and independent experts,²⁹⁷ as well as by the National Agency for Roma,²⁹⁸ but they remained largely unaddressed.

In a global context of increased awareness regarding the impact of artificial intelligence, it is worrying that, so far, there have been no debates or policies adopted in Romania regarding the potential discriminatory impact of the use of artificial intelligence. So far, there are no positive practices to be reported.

²⁹¹ See Section 7(d) above for an overview of the NCCD's budget.

²⁹² In 2018, the media reported that 12 hospitals refused to perform abortion services during religious holidays, but in December 2019 there were 51 hospitals that refused to provide abortions on a permanent basis and another 36 hospitals that refused to perform abortions during religious holidays (Easter and Christmas fasting periods). Information available at: <https://www.digi24.ro/stiri/actualitate/sanatare/51-de-spitale-din-romania-refuza-sa-faca-intreruperi-de-sarcina-cifrele-care-provoaca-ingrijorare-1152627>.

²⁹³ Information available at: <https://www.digi24.ro/stiri/actualitate/politica/discurs-halucinant-al-unui-senator-aur-despre-dreptul-la-avort-femeile-se-razbuna-pe-barbatii-negravizi-vor-detronarea-barbatilor-2354671>.

²⁹⁴ Human Catalyst (2020), *USER sau LOSER în vremea pandemiei POLICY BRIEF*, 19 April 2020.

²⁹⁵ Open Society Foundations (2020), *Roma in the COVID-19 Crisis: An early warning from six EU Member States*, 30 April 2020.

²⁹⁶ UNICEF Romania (2020), <https://www.unicef.org/romania/media/2196/file/EVALUAREA%20RAPID%C4%82%20A%20SITUA%C8%9A%20COPIILOR%20C5%9E%20FAMILIILOR,%20CU%20ACCENT%20PE%20CATEGORIILE%20VULNERABILE,%20C3%8E%20CONTEXTUL%20EPIDEMIEI%20DE%20COVID-19%20DIN%20ROM%C3%82NIA.pdf>, 29 April 2020.

²⁹⁷ Research Institute for the Quality of Life (2020), *Pandemia și standardul de viață. Politici de protecție socială (The pandemic and living standards. Social protection policies)*, 25 April 2020. See also Florian, B. and Țoc, S. (2020), *Educația în timpul pandemiei. Răspunsuri la criza nesfârșită a sistemului educațional românesc (Education during the pandemic. Responses to the never-ending crisis in the Romanian education system)*, Bucharest, National School for Political and Administrative Sciences (SNSPA).

²⁹⁸ National Agency for Roma (Agenția Națională pentru Romi), *Raport al Agenției Naționale pentru Romi cu privire la necesitatea intervenției autorităților competente în beneficiul membrilor comunităților vulnerabile cu romi în contextul implementării măsurilor de prevenire a răspândirii virusului COVID 19*, 16 April 2020.

12 LATEST DEVELOPMENTS IN 2022

12.1 Legislative amendments

The Parliament adopted an amendment to the Anti-discrimination Law on 28 June 2022, increasing the number of members of the steering board of the National Council for Combating Discrimination from 9 to 11.²⁹⁹ The amendment also provides that one member of the steering board should be a representative of the Parliamentary Group of National Minorities from the Chamber of Representatives of the Romanian Parliament. The justification for increasing the number of members and for explicitly including a representative of national minorities was that 'racism, xenophobia and antisemitism are a reality affecting several ethnic minorities in Romania', along with the rise of antisemitic incidents, while the role and importance of the National Council for Combating Discrimination in preventing and combating all forms of discrimination is key.³⁰⁰ At the time of the adoption of the bill, among the nine members, there were two Roma and one Hungarian. As the December 2022 appointments of two more members were made with the infringement of the legal requirements, the decision of the Parliament was challenged before the Constitutional Court by an opposition party.

After the European Commission initiated pre-infringement proceedings on 30 October 2020, because the provisions in the Criminal Code did not criminalise hate crimes directed against an individual member of a protected group, only incitement to hatred, violence or discrimination directed against a group,³⁰¹ the Government proposed an amendment to the text, which was adopted by the Parliament on 30 June 2021.³⁰² This amendment was declared unconstitutional by the Constitutional Court, upon a request for a constitutional review submitted by the President of Romania.³⁰³ The President complained that the proposed amendment did not explicitly enumerate the protected criteria against hate speech, which left room for arbitrariness and legal uncertainty, and instead used the ambiguous phrase, 'belonging to a certain category of persons'. Further, the President submitted that the amendment was not in compliance with the Framework Decision, which aims to ease judicial cooperation among the Member States, making sure that there is incrimination for the same facts across the European Union, and clearly underlining the motive of the criminal offence, at least by explicitly mentioning racist and xenophobic motives.

On 15 September 2021, the Constitutional Court decided unanimously that the amendment to Article 369 of the Criminal Code was unconstitutional, because it breached the principle of clarity and predictability of criminal law.³⁰⁴ According to the Constitutional Court, the general way in which the criminal provisions under review were drafted led to a high degree of unpredictability, raising concerns under Article 7 of the European Convention on Human Rights, as well as other fundamental requirements of the rule of law, because such language opens the way to 'arbitrary/aleatory interpretations and applications'.³⁰⁵ The Parliament revised the text and adopted a second version of Article 367 'Incitement to

²⁹⁹ Romania, Law No. 193/2022 on the amendment of Art. 23 (2) of Government Ordinance No.137/2000 on preventing and combating all forms of discrimination (*Legea 193/2022 pentru modificarea art. 23 alin. (2) din Ordonanța Guvernului nr. 137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare*), 28 June 2022, published in the Official Journal No. 643 of 29.06.2022.

³⁰⁰ Romanian Parliament, [Statement of reasons](#) of [PL-x no.187/2022](#) of 13 April 2022.

³⁰¹ European Commission (2020) [Infringement decisions of 30 October 2020](#).

³⁰² Romanian Government, [Decision no.E13/18.02.2021](#), and the [bill L33/2021](#).

³⁰³ Romanian President, [Complaint of unconstitutionality](#) regarding the Law for the amendment of Article 369 of the Law No. 286/2009 on the Criminal Code (*Sesizare de neconstituționalitate asupra Legii pentru modificarea art. 369 din Legea nr. 286/2009 privind Codul penal*).

³⁰⁴ Constitutional Court of Romania, [Decision 561/2021](#) of 15 September 2021, published in the Official Journal No. 1076 of 10 November 2021.

³⁰⁵ Constitutional Court of Romania, [Decision 561/2021](#) of 15 September 2021, para. 34, published in the Official Journal No. 1076 of 10 November 2021.

hatred, violence or discrimination’, which is currently in force, having passed a second constitutional review in 2022.³⁰⁶

A second request for constitutional review was filed by the People’s Advocate, who complained that by including ‘political opinion and affiliation’ among the criteria explicitly enumerated at Article 369 of the Criminal Code to identify the categories of persons protected against incitement to violence, hatred or discrimination, the provision violated freedom of expression.³⁰⁷ The Constitutional Court rejected the complaint, after balancing freedom of expression against non-discrimination and pluralism (applied to the field of political activities, due to the topic of the request). The version currently in force addresses the European Commission’s concerns mentioned in the pre-infringement proceedings, expanding the criminal offence to cover incitement against an individual belonging to the protected group and to cover incitement to violence along with incitement to hatred or discrimination.

Romania adopted Law 232 of 19 July 2022 regarding the accessibility requirements applicable to products and services in order to ensure compliance with Directive(EU)2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services.³⁰⁸ The law was adopted on 19 July 2022 and will enter into force on 28 June 2025. Accessibility meanwhile remains broadly regulated by the general Law 448/2006 on the protection and promotion of the rights of persons with handicap.³⁰⁹ Article 5 of Law 448/2006 defines in general terms unrestricted access for persons with disabilities without limitations or restrictions to the physical, informational and communicative environment.

12.2 Case law

Relevant discrimination ground(s): Disability

Name of the court: National Council for Combating Discrimination

Date of decision: 23 November 2022

Name of the parties: *x v. Police Colelege Vasile Lascăr-Câmpina, Ministry of National Defence, Ministry of Internal Affairs, Ministry of Justice, Romanian Intelligence Service, External Intelligence Service, Special Telecommunications Service, Protection and Guardianship Service*

Reference number: Decision 716 on case No. 1014/2021, petition No. 9487/ 16.12.2021

Link: *Decision available upon request*

Brief summary: The claimant was rejected at the admission competition organised by the Vasile Lascăr Police Training College for the September-October 2021 session, due to their diagnosis of a non-contagious chronic disease – autoimmune thyroid disease. The joint Order M55-107-2587/C-10357-210-496-831 from 30 April 2014 on the approval of the medical requirements for the medical examination for admission to units/ institutions of military education, information services, public order and national security education, in order to become a soldier or a professional officer, as well as for candidates to be recalled to active military / police service and public servants with a special status from the penitentiary system mentions autoimmune thyroid disease in Annex 1. The claimant challenged the rejection as discriminatory and argued that the inclusion of autoimmune

³⁰⁶ Romania, Law No. 170/2022 on the amendment of Article 369 of the Law No. 286/2009 on the Criminal Code, 3 June 2022, published in the Official Journal No. 548 of 6 June 2022. See also, Romania, Chamber of Representatives, [PL-x no.134/2021, Bill to amend Article 369 of the Law no.286/2009 on the Penal Code \(PL-x nr. 134/2021 Proiect de Lege pentru modificarea art.369 din Legea nr.286/2009 privind Codul penal\)](#). The entire legislative process is [available online](#).

³⁰⁷ Constitutional Court of Romania, [Decision 228/2022](#) of 28 April 2022, paras. 44-45, published in the Official Journal No. 532 of 31 May 2022.

³⁰⁸ Romania, Law No. 232/2022 on the accessibility requirements for goods and services, 19 July 2022, published in the Official Journal 743 of 25 July 2022 ([Lege 232/2022 privind cerintele de accesibilitate aplicabile produselor si serviciilor](#)).

³⁰⁹ Romania, Law No. 448/2006 on the protection and promotion of the rights of persons with disabilities, republished in the Official Gazette of Romania, Part I, No. 1 of 3 January 2008, as subsequently amended and supplemented.

thyroid disease in the annex is not justified. The Police Training College argued that the rejection of persons affected by autoimmune thyroid disease from the admission competition is based on the fact that the candidates 'must be in optimum health to cope with all the demands of the challenging work which is carried out in hazardous conditions, day after day, in order to protect public order and safety'. Other defendants also argued that the limitation is 'objectively justified given a legitimate objective and the methods used are adequate and necessary'. Some of the defendants also invoked the exception of the lack of material competence of the NCCD, given the fact that the limitation is introduced by means of the Order which is a secondary norm.

In its decision the NCCD used an opinion issued by the Ministry of Health stating that autoimmune thyroid disease with normal thyroid function does not affect work capacity, regardless of the type of activity. The NCCD also noted that the Order rejects from the admission competitions persons affected by autoimmune thyroid disease, but the personnel already hired by these institutions affected by autoimmune thyroid disease would not be declared unable or unfit. The NCCD noted that the defendants failed to meet the burden of proof and provide objective justifications for the limitation. The NCCD found discrimination and issued a warning. The NCCD also recommended that the criterion of autoimmune thyroid disease be removed from the list of requirements in admission/recruitment/hiring processes for military and public order units.

In justifying its choice to issue a warning, the NCCD noted:

'as regards the sanctioning of acts of discrimination, the steering board took into account the provisions of the European Union directives in this field, which require the Member States of the European Union to apply effective, proportionate and dissuasive sanctions. Proportionality can be ensured by the gradual imposition of fines, depending on the seriousness of the offence, within the limits set by law. The steering board underlines in this respect that it must be clearly understood that the purpose of penalising acts which infringe rights and principles, such as the right to non-discrimination and equal treatment in employment and occupation, is to correct such acts and prevent them from being committed in the future and not necessarily to apply a punitive measure such as an administrative fine.'

The decision of the NCCD was challenged in court and appeal procedures are pending.

ANNEX 1: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Romania
Date: 1 January 2023

Instrument	Date of signature	Date of ratification	Derogations/reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	07.10.1993	20.06.1994	No.	Yes.	Slow process of recognition of the relevant case law of the ECHR by the courts and legal profession.
Protocol 12, ECHR	04.11.2000	17.07.2006	No.	N/A	Not relevant
Revised European Social Charter	14.05.1997	07.05.1999	No.	Ratified collective complaints protocol? No.	Not relevant
International Covenant on Civil and Political Rights	27.06.1968	09.12.1974	Yes.	Yes. No interstate complaints (Article 41).	Not relevant
Framework Convention for the Protection of National Minorities	01.02.1995	11.05.1995	No.	N/A	Not relevant
International Covenant on Economic, Social and Cultural Rights	27.06.1968	09.12.1974	Yes.	N/A	Not relevant
Convention on the Elimination of All Forms of Racial Discrimination	N/A	15.09.1970	Yes.	Yes.	Not relevant
ILO Convention No. 111 on Discrimination	N/A	11.05.1973	No.	N/A	Not relevant

Instrument	Date of signature	Date of ratification	Derogations/reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Convention on the Rights of the Child	26.01.1990	28.09.1990	No.	N/A	Not relevant
Convention on the Rights of Persons with Disabilities	26.09.2007	11.11.2010	No.	N/A	Not relevant

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