

Equal opportunities in the public and private sector

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Abstract: *Equal opportunities are a goal to achieve in Romania at the legislative and institutional/organizational level. In terms of legislation Romania has made progress, but the institutional mechanisms of the government dealing with gender equality issues are not functioning properly, are not generating a concrete impact on the equal opportunities for women and men. For this reason there is no specific and significant political commitment to the issue of gender equality in Romania. Gender discrimination is addressed both by anti-discrimination and equal opportunity laws. Equality, fairness and non-discrimination in the workplace environment are present as objective requirements of economic, social and ethical behavior that goes beyond the labor market. Theoretically, on the labor market, both public and private sectors do not accept direct or indirect discrimination at the workplace, especially during the process of recruitment, training, development, promotion, establishment, payment of the salary and benefits. In practice, the legislation regarding the equal opportunities and equal treatment it is not respected by the employers all the time.*

Promotion of the policies at the national and organizational level, focused on ensuring equal opportunities, will enhance the social cohesion of the population that will generate economic growth overall.

Key words: equal opportunities, equal treatment, discrimination, labour market, mobbing, policies

1. General legislative overview

During the past years, Romanian laws concerning equal opportunities for women

and men, discrimination and social security have been substantially amended. Some of the changes are meant to fulfill obligations of the Romanian Government to implement

the European Union Directives on equal opportunities and antidiscrimination. Other amendments diminished the former provisions, without being contrary to the EU Directives.

1.1 Protective Measures for Pregnant and Breastfeeding Workers

The main legislative changes are related to the protective measures for pregnant workers and women who have recently given birth or are breastfeeding. Almost all the recommendations made in the first report related to the Council Directive 92/85/EEC of 19 October 1992 on the Introduction of Measures to Encourage Improvements in the Safety and Health at Work of Pregnant Workers and Workers who Have Recently Given Birth or Are Breastfeeding have been incorporated into Romanian law. The legal acts that introduce those provisions are:

-Emergency Government Ordinance No. 96 of 2003 on Maternity Protection at the Working Places¹;

-Law No. 25 of 2004 on Approval of the Emergency Government Ordinance No. 96 of 2003 on Maternity Protection at the Working Places²;

-Methodological Norms of April 7, 2004 for the appliance of the Emergency Government Ordinance No. 96 of 2003 on Maternity Protection at the Working Places³.

¹Emergency Government Ordinance No. 96 of 2003 on Maternity Protection at the Working Places, published in the Official Gazette 750 of October 27, 2003.

²Law No. 25 of 2004 on Approval of the Emergency Government Ordinance No. 96 of 2003 on Maternity Protection at the Working Places, Official Gazette 214 of March 11, 2004.

Thus, the concepts “pregnant worker”, “worker who has given birth” and “breastfeeding

Worker” are now legally defined as follows⁴:

- A “pregnant worker” is a woman who has notified her employer in writing about her physiological condition of pregnancy and attached a medical document from the family doctor or her gynecologist for confirmation of her condition.
- A “worker who has given birth” is a woman who is resuming her active employment after maternity leave, not later than six months from the day she gave birth, and who has asked the employer, in writing, for the applicable legal protection measures, and attached a medical document from the family doctor for confirmation of her medical status.
- A “breastfeeding worker” is a woman who, upon resuming her active employment after maternity leave, is breastfeeding and has revealed to the employer, in writing, the beginning and the estimated end of the breastfeeding period, attaching a medical document from the family doctor for confirmation of her medical status.

At the same time the following procedures were introduced:

³Methodological Norms of April 7, 2004 for the appliance of the Emergency Government Ordinance No. 96 of 2003 on Maternity Protection at the Working Places, Official Gazette 378 of April 29, 2004.

⁴Emergency Government Ordinance on Maternity Protection in the Workplace, Article 2

- the employer's obligation to review and assess the working conditions, as well as to inform pregnant and breastfeeding workers and workers who have recently given birth about those conditions⁵;
- the employer's obligation to grant an exemption from work ("maternity risk leave") if it is not possible to transfer the employee to a different job within the workplace⁶;
- the employer's obligation to allow female employees to attend a medical examination during working hours without a decrease in pay⁷;
- the list of agents, processes and working conditions that physically and/or mentally affect pregnant and breastfeeding employees are to be made public⁸;
- the obligation to take a maternity leave of 42 days after the birth (from the total of 126 days of maternity leave that women are entitled to take before and/or after the birth);
- protection against the dismissal of women taking maternity leave or maternity risk leave, and against the dismissal of men and women who are taking parental leave or special leave to attend to sick children up to seven years or, in the case of disability, up to 18 years⁹.

⁵Ibid., Articles 5 and 6

⁶Ibid., Article 10

⁷Ibid., Article 15

⁸Ibid., Annexes 1 and 2

⁹Ibid., Article 21

1.2 Labor Code

The Labor Code went through a major revision at the beginning of 2003 and it was again amended in 2011. In the new version of the Labor Code, Article 128 stipulates that pregnant women, women who have recently given birth or are breastfeeding cannot be forced to do night work¹⁰.

The Labor Code also mentions other important aspects relevant in the prohibition of gender discrimination:

-Article 272 regulates the reversal of the burden of proof in work conflicts. Although the article does not make direct reference to gender discrimination and is applicable only to work conflicts (excluding the initial phase of job advertising or the process of job selection, e.g. a job interview), the European Commission stated in its 2003 Regular Report on Romania's Progress Towards Accession that "the directive on the burden of proof has been transposed by the Labor Code"¹¹. Nevertheless, although Romanian anti-discrimination legislation has been updated recently, a reference to the reversal of the burden of proof in discrimination cases, including gender discrimination, has yet to be made¹².

¹⁰Law No. 53 of 2003, the Labor Code, amended by the Law No.40 of 2011 published in the Official Gazette 345 of May 18, 2011, Article 128

¹¹European Commission, 2003 Regular Report on Romania's Progress towards Accession (Brussels: European Commission, 2003), p. 76. Available at http://europa.eu.int/comm/enlargement/report_2003/pdf/rr_ro_final.pdf

¹²Iustina Ionescu, "Legal and Institutional Context of Discrimination in Romania," in *Combating Discrimination: Efficiency of the Governmental and Non-Governmental Initiatives* (Bucharest: Agenția de Monitorizare a Presei, 2004), p. 17

- Article 152 gives the right to take a few days of extraordinary paid leave in cases of special family events. These days are not included among the usual leave.

- The Labor Code also regulates part time work. According to Article 103 of the Labor Code a part time work contract allows employers to hire people to work not less than two hours per day, and not less than ten hours per week. Part-time employees have the same rights as the full-time employees.

- Articles 111 to 119 of the Labor Code regulate the application of flexible work programs.

Other rights related to the equal opportunities for women and men were already included in the former Labor Code, thus amendments were not necessary.

1.3. Anti-Discrimination Legislation

Anti-discrimination legislation in Romania includes gender discrimination issues. As a result, gender discrimination is addressed both by anti-discrimination and equal opportunity laws. During the past years, anti-discrimination laws have also been amended by introducing the concepts of 'indirect discrimination', 'harassment', 'victimization' and 'disposition to discriminate'. Moreover, the fines for discriminatory acts have also been increased.

In the process of changing the legislation on anti-discrimination, the National Council for Combating Discrimination proposed the term 'gender' as a criterion for discrimination, replacing the term 'sex'. This proposal has not been accepted by the Parliament.

2. Institutional mechanisms

2.1 Parliamentary Commissions

The Parliament has two bodies that

address issues of gender equality: the Deputy Chamber Commission on Equal Opportunities for Women and Men¹³ and the Senate Commission on Equal Opportunities for Women and Men. Unfortunately, these committees have not been able to fulfill their mandate due to the lack of real political interest in the field of equal opportunities for women and men, as well as a lack of financial resources to sustain their activity.

The Deputy Chamber Commission on Equal Opportunities for Women and Men is officially comprised of 21 deputies (18 women and three men), and has the following domains of activity:

- the elimination of any form of sex-based discrimination and the improvement of women's social status;
- the integration of the principle of equal opportunities for women and men in legal initiatives, policies and programs;
- the monitoring of the application of legal provisions included in international documents signed and ratified by Romania, concerning equal opportunities for women and men.

The Commission's tasks are as follows:

- to promote the application of the principle of equal opportunities for women and men in the national legislation;
- to monitor the integration of the equal opportunities principle within policies and programs, through collaboration with the social partners and public institutions responsible in the field;

¹³For the founding documents of these committees, see the Deputy Chamber Decision No. 24 of 2003 on Setting up the Commission on Equal Opportunities for Women and Men and the Senate Decision No. 10 of 2003 for Completing the Article 56(2) of the Senate's Regulation.

- to give a consultative notification on legal drafts and legislative proposals with an impact on women's and men's status;

- to monitor Romania's progress within the process of harmonizing national legislation with EU standards in the field of equal opportunities for women and men, as well as Romania's progress with regard to international obligations assumed in the field of equal opportunities for women and men;

- to participate in the elaboration of the National Strategy for promoting equal opportunities for women and men, and monitor its application by debating the periodical reports issued by the governmental structures with tasks in the field;

- to consolidate the partnership with civil society, aimed at raising social solidarity through promoting equal opportunities;

- to act for changing the mentality and discriminatory attitudes;

- to support the publication of research, studies, public opinion polls and statistics on the status of women;

- to collaborate with similar structures placed at the EU level and with regional networks active in promoting the equal opportunities principle for women and men.

The Senate Commission on Equal Opportunities for Women and Men placed at the Senate level has 11 senator members (six women and five men), and has the following tasks:

- to examine and discuss legal drafts and legislative initiatives aimed at elaborating reports or notifications on the elimination of any form of sex-based discrimination and the improvement of the status of women in society, as well as on the integration of the equal opportunities for women and men principle in the legislative process, in the

policies and programs targeting women and men;

- to monitor the application of the legal provisions on the principle of equal opportunities for women and men in light of the international documents ratified by Romania;

- to request reports, notices and documentation from the public authorities concerning the activities in its sphere of competence;

- to elaborate notifications on the written amendments set down by the senators or the parliamentary groups;

- to collaborate with similar European structures in the field of equal opportunities for women and men;

- to pursue ongoing collaboration with the national structures in charge of the application of the gender policies with the aim of elaborating legal initiatives in the field of equal opportunities for women and men;

- to perform parliamentary investigations when considered necessary and to present reports to the Permanent Office.

2.2 Government Offices

The institutional mechanisms of the government dealing with gender equality issues are not very functional, but efforts have been made for the specialized structures to work properly. It is difficult to define the domain of their activity due to a significant number of legal changes over the past years. Thus, through the reorganization of the Ministry of Labor, Family Social Protection¹⁴, the former Directorate for Equal Opportunities has been removed from the ministry's structure.

¹⁴Government Decision No. 11 of 2009 on the Reorganization and Functioning of the Ministry of Labor, Family and Social Protection and, published in the Official Gazette 41 of January 23, 2009

The structure that is currently responsible for dealing with gender equality in the governmental sector is the Coordinator of the National Commission on Equal Opportunities for Women and Men, which has taken the tasks and the responsibilities of the former Inter-Ministerial Commission:

- ▶ to disseminate, through the public administration authorities, the concept of gender mainstreaming, in order to incorporate the principle of equal opportunities for women and men and to eliminate the sex based discrimination within the elaboration of the public policies;

- ▶ to evaluate the application and implementation stage concerning the legal framework on equal opportunities for women and men;

- ▶ to promote the exchange of experience and information in the field of equal opportunities for women and men;

- ▶ to elaborate recommendations for supporting the performance of the governmental and non-governmental structures in applying gender mainstreaming policies;

- ▶ to elaborate periodical reports on the status and condition of women in Romania, as well as on the application of the equal opportunities policies in different activity sectors.

The above described governmental mechanisms are based on the legal provisions of the Law No. 202 of 2002 on Equal Opportunities for Women and Men¹⁵ that has already been amended with the aim of incorporating the changes generated by the

¹⁵Law No. 202 of 2002 on Equal Opportunities for Women and Men, adopted on April 19, 2002, republished in the Official Gazette 150 of March 1st, 2007.

Council Directive 2002/73/EC of September 23, 2002, amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

3. Policies, programs and awareness-raising

3.1 Policies and Programs

In line with the above-mentioned legal attributions of the Romanian institutional mechanisms on gender equality, no reference on policies and activities on gender equality can be made. The National Action Plan on Equal Opportunities between Women and Men, provided for in the Government Decision No. 1273 of December 7, 2000¹⁶ did not reach its established objectives in their entire description. The action objectives stipulated for in the mentioned legal norm were not accomplished. Almost four years after the National Action Plan on Equal Opportunities between Women and Men was approved, the Government finally adopted its Decision No. 285 of March 4, 2004 on the application of the National Action Plan¹⁷. The significant delay in the process of adoption revealed a lack of political commitment to the issue of gender equality in Romania.

¹⁶Government Decision No. 1273 of 2000 on the Approval of the National Action Plan on Equal Opportunities between Women and Men, adopted on December 7, 2000, published in the Official Gazette 659 of December 15, 2000

¹⁷Government Decision No. 285 of 2004 on the Application of the National Action Plan on Equal Opportunities between Women and Men, adopted on March 4, 2004, published in the Official Gazette 236 of March 17, 2004

According to the legal provisions of the Government Decision No. 285 of 2004¹⁸, new structures on gender equality were set up. These structures are represented by the “specific structures on equal opportunities for women and men” located within the central public administration authorities and within their public de-concentrated services. As long as they are based on the legal provisions of the Article 4 of the Government Decision No. 285 of 2004, these specific structures are supposed to be set up within the limits of the personnel posts and budgetary allocations already approved it is to be underlined that these structures are functioning only on the paper. In the same way, the information activities and professional training on the legislation regarding gender equality to be carried out by the central public administration authorities shall be assured within the limits of the already approved budgetary allocations, according to the legal provisions of the Article 6 of the Government Decision No. 285 of 2004. Therefore, it is to be emphasized that these activities will not be carried out as long as there are no funds independently secured.

There are no state policies to promote women’s participation in the labor market, such as promoting flexible working arrangements, supporting women to re-enter the labor market after the leave to care for children. There are no state policies or initiatives aiming to reduce gender pay gap, even if in the discourse of the state official representatives this gender pay gap reality is recognized and mentioned. There are no state policies or structures aiming to involve men in sharing family responsibilities. In general, aspects such as reconciling work and family life,

changing attitudes on gender stereotypes, or encouraging men to take greater family responsibilities are absent from the political discourse. Specific programs and initiatives in these fields are still addressed by the non-governmental organizations or other actors of the civil society.

3.2 Awareness-Raising

Although a law on transparency in decision-making has been in force since February 2003, it cannot be said that access to information from state institutions has been improved. The Ministry of Labor, Family and Social Protection (the main institution dealing with gender equality) does not fully comply with the requirements of this law, involving NGOs in debates on gender equality legislation only formally, without taking their point of view into consideration.

4. Key areas of concern and recommendations regarding the domain of equal opportunities in the public sector

4.1 Key Areas of Concern

The activity of the Parliamentary structures is still decorative and does not generate a concrete impact on the equal opportunities for women and men agenda in Romania. The process of establishing proper and specialized institutions is a very important political step in order to recognize the social reality of the obstacles to gender equality in Romania; however, the institutions must be given and guaranteed the financial and human resources to meet their mandate. In the absence of these concrete means, the specialized institutions are going to be another governmental structure that lack national impact in the field of equal opportunities for women and men.

¹⁸Ibid., Article 4

The lack of integrated and consistent state policies on various aspects of gender equality dramatically affects the level of addressing them in practice. The situation is more serious as gender equality policy is promoted only in words, and on very limited occasions. There is no serious and significant political commitment to the issue of gender equality in Romania. Therefore, the legal norms aimed to put in practice gender equality commitments undertaken by the Romanian Government are inadequately structured and lack practical implementation. The monitoring function of the legal commitments assumed by the Romanian state in terms of gender equality is absent.

Civil society is not really involved in the process of decision-making related to gender equality; and there are no campaigns to promote gender equality legislation or public campaigns on gender issues: sexual harassment, sharing family responsibilities.

The gender pay gap still exists; and gender disaggregated data is still lacking, especially data that would give a better picture of the gender situation in the main policy areas (such as the social security scheme, for example). There are no strategic plans for training teachers on gender issues or plans to introduce the gender perspective in educational curricula. The media is not gender sensitive; and there is an enormous need for training media experts on gender issues, and introducing a gender sensitive code of writing.

In addition, there is no detailed information available on gender discrimination cases resolved by the Labor Inspection or the National Council for Combating Discrimination. The procedures (criteria, norms, plans, strategies) through which political parties nominate candidates on the

election list are not sufficiently transparent; and the political parties are not obliged to introduce any measures to encourage the women's participation in politics.

4.2 Recommendations

4.2.1 Legislative Measures

-The Romanian Government should ensure that legal norms aimed to implement gender equality commitments are adequately structured to comply with the relevant EU Directives and they are capable of practical implementation.

-The Romanian Government should ensure that its legal commitments are monitored and their implementation mechanisms are evaluated.

-Civil society should be consulted in a more systematic way in the process of drafting gender equality legislation.

4.2.2 Institutional Mechanisms

-The activity of the Parliamentary structures should cease to be only decorative and should generate a concrete impact on the "equal opportunities for women and men" agenda in Romania.

-The National Agency for Equal Opportunities should be given and guaranteed the financial and human resources to meet its established mandate.

-The National Agency for Equal Opportunities should ensure the equal opportunities mandate is followed as a priority.

4.2.3 Policies and Programs

-Integrated and consistent state policies on various aspects of gender equality should be developed as a matter of priority.

-Specific policies addressing the gender pay gap should be put in place by the Government.

-A gender perspective should be

introduced in educational curricula, and trainings for teachers on gender issues should be initiated by the Ministry of Education and Culture.

-A gender sensitive code of reporting and training programs should be developed for the mass media.

-More transparent procedures should be established regarding the nomination of candidates on the election list.

-Specific measures to encourage women's participation in politics should be introduced (for example, a quota system).

4.2.4 Awareness-Raising

-Detailed information on gender discrimination cases solved by the Labor Inspection and the National Council for Combating Discrimination should be made available to the public, together with a complete report on these institutions' activities.

-Information on the process of drafting gender equality legislation should be made more accessible to the public.

-The government should develop and implement public campaigns on gender equality legislation and on gender issues in order to increase the public awareness on the topic. These campaigns should include simple and effective messages conveyed in an accessible language.

5. Equal opportunities in the public and private sector

In the public and private organizations in Romania, the national legislation requires employers to provide equal employment opportunities and treatment between men and women in the labor relations of any kind, including the introduction of provisions prohibiting discrimination based on gender,

belonging to minority groups, race, religion, disabilities. These elements are listed in the organization and operation regulations and in the internal rules of enterprises.

Internally there is a legal framework for enterprises to ensure operation on a fair, legal and regulatory framework of labor within the company. The main documents regulating the activity of the company staff are: contracts of employment, internal rules of organization, collective agreements at the branch level, legislative regulations in the labor field and the social protection etc.

As in the public sector, the private sector will not accept direct or indirect discrimination in the workplace, especially during the process of recruitment, training, development, promotion, establishment, payment of the salary and benefits.

Direct discrimination is when a person is treated less favorably than another person in a comparable situation.

Discrimination is indirect when, intentionally or not, it is applied a provision that penalizes persons based on race, nationality, sex, sexual orientation, age, religion, marital status or certain disabilities.

To ensure equal opportunities and equal treatment in labor relations the organizations must ensure non-discriminatory access to:

- Employment in all positions or vacancies at all levels of professional hierarchy;
- Equal pay for work of equal value;
- Induction program, qualification, training, specialization and retraining;
- Promotion at any hierarchical and professional level;
- Working conditions that comply with health and safety at work, according to the legislation;
- Any benefits other than salary, security measures and social protection.

To avoid such actions, the employees will be informed permanently, which will include posting in visible places, in spaces reserved for their work, of the rights they have in respect of equal opportunities and treatment between men and women in a labor relationships. The rules of disciplinary sanctions are provided, as provided by law, for the employees who violate the dignity of other employees, committing any discrimination actions.

The employers have the following obligations in order to ensure equal opportunities and equal treatment of employees:

- The employers are required to ensure equal opportunities and equal treatment of the employees, men and women in the labor relations of any kind, including the introduction of provisions prohibiting discrimination based on gender in the organization and operation regulations and in the unit's internal regulations.

- The employers are obliged to keep the employees informed, by displaying in visible places the rights they have in respect of equal opportunities and treatment between men and women in labor relations.

- In addition, motherhood may not provide grounds for discrimination. Any less favorable treatment of a woman related to pregnancy or maternity leave constitutes discrimination. It is forbidden to be required of a candidate for the employment, production of a pregnancy test or to sign an undertaking that the pregnancy will not be accepted during the validity of individual employment contract. Dismissal may be ordered for pregnant women, in maternity leave, prenatal leave, illness on a period which is determined by national legislation. It is also expressly prohibited sexual harassment in the workplace.

A new concept emerged in organizations concerns the promotion of Diversity Management. Diversity refers to all aspects of organizations in which employees differ from one to another. These include a series of visible personal characteristics such as gender, age, ethnicity and also less visible personal characteristics such as skills, needs, and work style.

In general terms, diversity management, including practices for ensuring equal opportunities and affirmative action, focuses more on equality by difference than by similarity, promoting acceptance and use of differences between individuals and groups and recognition of the benefits that diversity can bring in the organization.

The removal of discrimination is aimed to achieve equal opportunities for all individuals and it is a strategy currently adopted by many organizations, even if it's only one component of the diversity management. The latter is something more, namely turning diversity by maximizing employees potential. Currently, management of diversity is a demographic goal as changes are required to switch attention from the perspective of equal opportunities for traditionally disadvantaged groups, to the imperative to attract and maintain employment in the whole variety of population groups¹⁹. Equality, fairness and non-discrimination in the workplace environment are present as objective requirements of economic, social and ethical behavior that goes beyond the labor market. In order to diminish the effects of discrimination there were developed specific measures.

¹⁹Paloş R. (2004), Diversitatea în organizații: tineri, vârstnici, femei, persoane cu nevoi speciale, în Manual de psihologia muncii și organizațională, Editura Polirom, 2004, p.315

There are already consecrated non-discrimination practices (EEO - Equal Employment Opportunities), and the intended favorable (AA - Affirmative Action), of American origin (which have been adopted, sometimes with the same name in many countries and cultures). These practices are often confused with diversity management. Of course, although not identical, their efforts in all three directions are not mutually exclusive, but ideally can support each other. It was showed that while the policy of equal opportunities and affirmative action mainly serve social goals, diversity management is justified in economic purpose therefore differs from the first through objective, approach and character²⁰.

6. Negative practices

In Romania and the EU equality policies rest upon their governments but at the business level the compliance is poor. Negative practices of violation of equality come as various types of discrimination. Among these is appropriate to recall the classical forms of discrimination as well as two new concepts of discrimination investigated and appeared again in the Anglo-Saxon literature: mobbing and bullying the only specific actions the for discrimination in the workplace.

6.1. Classic discrimination

Among the classic forms of discrimination, "by far one of the most widespread is the gender and the age ones. Newer are discriminations based on sexual orientation, potential communicable disease or persons

with disabilities"²¹. Thus, according to the 2009 Activity Report of the NCCD (National Council for Combating the Discrimination), "most cases of discrimination found in 2009 were aimed at ethnic origin, belief, disability persons, followed by gender and pregnancy status". Most of the complaints registered in 2009 NCCD on gender discrimination were the subject of infringement on employer with regards to the raise of the employee's wage. In cases of complaints made by women, interesting is that it records more and more situations where women are discriminated on grounds of "Pregnancy". NCCD has registered claims that women have complained that the employment contracts were terminated due to the fact that they are pregnant or that they the position they occupied were abolished in the period of pregnancy. To underline, that in any case of the discrimination manifested on both public and private employees, the most common way to solve a problem of discrimination consist in changing the workplace. According to a survey on equality between men and women and discrimination at the workplace, only 45% of employees had a direct discussion with the supervisor when they were discriminated, and 10% addressed to the trade union where they were members. When they complained of discrimination, the employees have recognized especially on the salaries violations: 21% of them said that their salary was lower than that of other colleagues who were making the same work, while that 22% said they

²⁰ Pollar O., Gonzales R. (1994), Dynamics and Diversity, Thomson Crisp Learning, USA, p.13

²¹Alexandra Gheondea, Simona Ilie, Mihaela Lambriu, Adina Mihăilescu, Adriana Neaguț, Mariana Stanciu, Cristina Tomescu, Fenomene specifice de discriminare la locul de muncă: Mobbing-ul, Revista CALITATEA VIETII, XXI, nr. 1-2, 2010, p. 113-136

had made additional hours that were not paid. Many of those who have been discriminated have searched for another job to solve the problem.

6.2. New types of discrimination: mobbing and bullying

According to the authors of the study regarding the "Phenomena of discrimination at the workplace"²² - Mobbing is a phenomenon related with discrimination and may be only partially considered as a type of discrimination. It binds exclusively to the workplace and it is related mainly to actions of psychological pressure on an employee by the employer or, especially, by a group of colleagues to determine him to quit the job, given the fact that the dismissal is not possible. There are no reasons in terms of professionalism of the person and / or legislative issues addressed to the employer.

According to Zapf, the term bullying is characterized by aggression of someone in the top/ or managerial position²³. Thus, at times, the two concepts overlap. The difference between the two concepts was described by the authors Whatcot and Bultena²⁴ (op. cit. Gheondea Alexandra and all). As the authors cited above affirm, while while mobbing

targets above average skilled person, in a process of bullying, it is first tested the field, especially with the new employees, to identify the weakest of group. The victims who do not resist the attacks are identified, the so-called "soft targets". In terms of effects, there are identified social and economic effects. Social effects concern the person subjected especially to negative actions, affecting both physical and mental health of the employees and may even lead to social phobia phenomena. From an economic perspective, the uncontrolled phenomenon of mobbing can severely affect labor relations, leading to poor communication, low labor productivity, breaking the team work, leading to a decrease in efficiency and effectiveness of the organization.

7. Conclusions

Mobbing the generally occurs in contexts that do not target a classical discrimination because its actions aims the person on the long term.. Mobbing may occur within the classical discrimination, but the duration, intensity and manifestations constitutes itself as a distinct type of violation of the principle of equal opportunities. While mobbing is the specific labor market discrimination, the classic discrimination can be found in different social spheres. Equal opportunities should be promoted both for equal opportunities between men and women and for other vulnerable groups in the labor market: people with disabilities, ethnic groups, older people seeking employment, young persons. Promotion policies at the institutional level focused on ensuring equal opportunities will enhance the social cohesion of population that will generate economic growth overall.

²²Idem , p. 114

²³Einarsen, S., Hoel, H., Zapf, D., Cooper, C., Bullying and Emotional Abuse in the Workplace. International perspectives in research and practice, Taylor & Francis e-Library, 2004, p. 25

²⁴Bultena, C., Whatcott, R. B., Bushwhacked at work: A Comparative Analysis of Mobbing and Bullying at work, în „Proceedings of ASBBS" (American Society of Business and Behavioral Sciences), vol. 15, pp. 652-666, <http://asbbs.org/files/2008/PDF/B/Bultena.pdf>, 2008

To prevent discrimination acts, both in negotiating collective labor contract at national level and to negotiate collective agreements at the level of organization, the Contracting Parties may introduce clause

prohibiting acts of discrimination and those clauses regarding the proceedings to solve the complaints registered by persons affected by such acts.

Table 1. The difference between BULLYING and MOBBING

Bullying		Mobbing
<i>Author (s)</i>	<i>A person, often holds a higher hierarchical level</i>	<i>Colleagues</i>
<i>Target (targets)</i>	<i>Vulnerable, humble</i>	<i>Higher qualified</i>
<i>Motivation</i>	<i>Getting power</i>	<i>The threat is encouraged by the low power of the victim</i>
<i>Actions arising from</i>	<i>Strengthening his/her position</i>	<i>Envy, jealousy</i>
<i>The situation is triggered by</i>	<i>Author's sense of failure</i>	<i>Organizational conflict</i>
<i>Intended effects</i>	<i>Damage the victim (soft targets)</i>	<i>Elimination of the organization</i>
<i>The methods are</i>	<i>Primary</i>	<i>Complexes</i>
<i>Harassment activities</i>	<i>Interaction obviously abnormal, inappropriate</i>	<i>Disguised as normal or ordinary interactions</i>
<i>The attack is</i>	<i>Directly</i>	<i>Indirectly</i>
<i>The defense is</i>	<i>Rather informal</i>	<i>Rather formal</i>
<i>Frequency</i>	<i>Singular or regular occurrence, with no specific pattern</i>	<i>Appears regularly at least once a week</i>
<i>Duration</i>	<i>Variable duration</i>	<i>Long, at least 6 months</i>
<i>When the victim fails</i>	<i>The victim loses his/her effectiveness</i>	<i>The victim leaves the organization</i>
<i>When the victim resists</i>	<i>Attackers retreat</i>	<i>Attackers flourish</i>
<i>Management</i>	<i>Often collaborating with victim</i>	<i>Often collaborating with attackers</i>
<i>Consequences on the aggressor</i>	<i>Often punished</i>	<i>Often unpunished</i>
<i>Consequences on the victim</i>	<i>Loss of confidence, anger, discomfort, frustration, doubt on mental health, unemployment</i>	
<i>Organizational consequences</i>	<i>Low productivity, low efficiency, creativity, loss of reputation, loss of commitment and key employees</i>	
<i>Social consequences</i>	<i>Unemployment, discontent, involving a court</i>	

Source: Bultena & Whatcott, 2008, p. 661

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