OBSERVANCE OF THE PRINCIPLE OF NONDISCRIMINATION ON GROUNDS OF ETHNICITY ON THE LABOUR MARKET

Maria-Cristina BĂLĂNEASA

DOI: https://doi.org/10.18662/eljpa/2015.0203.01

European Journal of Law and Public Administration, 2015, Volume 2, Issue 3, pp. 5-16

Published by:

Lumen Publishing House

On behalf of:

Stefan cel Mare University from Suceava, Faculty of Economics and Public Administration, Department of Law and Public Administration
Abstract
This paper aims to approach the problem of discrimination against the Roma people on the labor market in Romania. We will achieve above all a comparative presentation between the two legal concepts: discrimination-nondiscrimination, then we will make a brief presentation of European and national normative acts that regulate and promote the nondiscrimination principle in general and in particular, the nondiscrimination on grounds of ethnicity. The last part of the paper deals strictly with the situation of Roma people on the labor market in Romania, during the years 1992-2015, without neglecting for this period the degree of training and qualification which has serious implications on the possibility of their employment in Romania, and also the measures taken by the Government to integrate Roma people into the labor market.

Keywords:
discrimination- nondiscrimination, labour market, Roma, governmental strategies.

Classification JEL: J51, J52, J 53
I. DISCRIMINATION VERSUS NONDISCRIMINATION

To define the concept of discrimination is necessary to present first the concept of discrimination.

According to the Explanatory Dictionary of the Romanian Language, the term discrimination means' the act of discriminating and its outcome."

Some specialized authors define discrimination as unequal treatment exercised by favoring some individuals compared to other people, that takes on the personality of each member of society in hand and the personal beliefs of each person. The issue of discrimination could be linked to the notion of bias since this also requires an attitude of establishing a barrier across certain people, the difference being, however, that discrimination is consumed by deeds, while prejudices are limited, usually at the emotional and cognitive level.[1]

Discrimination includes a set of behaviors and actions, or only attitudes that lead to not allowing basic rights and opportunities for certain individuals and groups. The condition of discrimination as not granting the rights and opportunities mentioned above takes place while other individuals and other groups within the same company benefit from them. So discrimination is, above all, prohibition and restriction of fundamental human rights and freedoms.

Based on multiple explanations given on discrimination, we can define non discrimination as that set of fair and just behaviors and actions, deeds that do not impair the fundamental human rights and freedoms.

If we look at international and national documents, we find between the general principles of law the principle of non discrimination, as specified in Article 1 of the Universal Declaration of Human Rights "All human beings are born free and equal in dignity and rights" and Article 23 that expressly refers to non discrimination at work: "Everyone has the right to work, to free choice of employment, to equitable and satisfactory conditions of work".

The European Union has adopted directives designed to prevent or eliminate completely discrimination at work. Thus we mention Directive 43/2009 of the Council of Europe which aims to combat discrimination on racial or ethnic origin and therefore a broad promoting of the principle of equal treatment. Another directive prepared for the non discrimination is Directive 2000/78 of the Council of Europe which refers to the removal of
discrimination based on religion, sexual orientation or disability. [7] Is also relevant the Directive no. 98/59/CE concerning job losses [14].

Romania has accepted and implemented these directives given that Community law prevails in relation to the national law as long as it is more favorable because if the internal law of a State should include provisions more effective than EU regulations, it would not be necessary to provide supplements to given rules of Community. We mention in this respect Article 16 of the Constitution which stipulates equal treatment for all citizens, thus enshrining the principle of non discrimination: "All citizens are equal before the law and public authorities, without privileges and without discrimination". However, the text of the law comes with exemptions, introducing the term „discrimination” ahead of the idea that nobody can be subjected to special treatment [9-10].

Law no.202 / 2002 and GO no. 137/2000, on preventing and sanctioning all forms of discrimination, republished, approved by Law no. 189/2013.

This normative act transposes into the national legislation Directive 2000/43 / COE for implementing the principle of equal treatment, irrespective of racial or ethnic origin, and aims obviously fighting discrimination both in the labor relations and in other human relations.

II. FORMS OF DISCRIMINATION ON THE LABOR MARKET

It has been found, in carrying out the researches and from the legal texts [9], the existence of several types of discrimination, as follows: direct, indirect, intentional, unintentional, formalized, situational, affirmative and negative discrimination.

Universal Declaration of Human Rights and the internal Labour Code prohibit discrimination in work relations, explaining both direct discrimination and indirect discrimination in the exercise of the rights provided by labor legislation.

Universal Declaration of Human Rights enshrines in Article 2 non discrimination according to the criteria that everyone is entitled to all their rights and freedoms set forth without any distinction as, for example, the difference of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In addition, there will be no differentiation based on political, jurisdictional or international status of the country or territory to which a person belongs, whether this
country or territory is independent, trust, non-self-governing or under any other limitation of sovereignty.

"Any direct or indirect discrimination against an employee based on gender, sexual orientation, genetic characteristics, age, nationality, race, color, religion, political opinion, social origin, disability, family status or responsibilities, membership or trade union activity is prohibited "[11].

Direct discrimination is explained by the Labour Code as the acts and deeds of exclusion, distinction, restriction or preference (based on one or more of the criteria: race, religion, sex, sexual orientation, etc.) that have purpose or the effect of not granting, the restriction or elimination of recognition, enjoyment or exercise of rights under the labor law. The same Code explains indirect discrimination as represented by acts and deeds apparently based on other criteria than those listed above, that produce the effects of direct discrimination.

Direct discrimination in work relations refers to generate willfully, intentionally a differentiated treatment such as, for example, different wages for two individuals that have the same level of training, and this based on reasons of religion, sex or ethnicity. Indirect discrimination is based on a previous unfairly decision, so producing differentiated treatment. Referring us to the same example, it is considered that a person has been discriminated indirectly if that person was paid differently from another person on the grounds that it was engaged in a different post although had the same qualification [1]. Moreover, it is clear that when a person is paid differently than another colleague who fulfilled the same tasks, that payment violates the person’s right to dignity, being undervalued or feeling inferior to the other person. [3] As for discrimination officialised, it involves specifying it expressly into official acts while institutionalized discrimination is encouraged indirectly, although it is not expressly provided in certain documents. Depending on how each individual perceives to relate to another individual, to develop relations with it or communicate in some circumstances, we meet the situational discrimination.

It is possible, however, to encounter situations in which a certain category of people is discriminated by providing them legally institutional benefits. For example, employment opportunities may arise for certain categories of people who have not benefited from this. It could be included here jobs for people over a certain age, for people with disabilities or people who are part of an ethnic discrimination. Here we speak about positive discrimination because it concerns disadvantaged people and it is expressed through some affirmative actions that tend to improve the situation in which
the individuals are. This type of discrimination creates a disadvantage to other people who are unemployed, for example. Thus, negative discrimination also arises.

Discrimination may be practiced by individuals, groups or institutions known as racism, as in the case of our country, namely, the discrimination of Roma people.

III. DISCRIMINATION OF ROMA PEOPLE ON ROMANIAN LABOR MARKET

In Romania but also in Europe, in general, ethnicity that occupies a leading position regards matters of discrimination is Roma. We can also formulate this conclusion from the multiple reactions of citizens and employees in Europe, manifested in the media that have identified Roma people as being at the lower limit of the community. From the information contained in the governmental strategies results the same conclusion: Roma are vulnerable people in Romania. [18].

The stigmatization of the Roma is primarily due to prejudices about them, the Roma are considered traditional and difficult to integrate. [13] It has been found that the main causes that determine discrimination of Roma are: the [3] lack of education, poor living standards of these, such as poverty, either spontaneously or as a result of their misconduct. It seems that these issues, among others of personal nature such as the preconception of a person on other ethnicities than belonging, led gradually to shape a rejection of Roma from society, a phenomenon that has also attracted some positive aspects meaning that certain programs and projects have been conducted to educate Roma children and integrate them into society.

Ethnic discrimination as a criterion reached at some point alarming levels, which caused addressing the issue in various studies and books.

In 2010, within European Union were 12 million Roma, in the census conducted in 2002 from Romania, only 535,000 people identified themselves as Roma / Gypsies people but some Roma leaders estimated a much larger number [2].

According to the last census conducted in Romania in 2011, the Roma minority is the second population in Romania, after the Hungarians, and it had about 621,573 people, or 3% of the total population. The largest number of Roma is in Calarasi County, with a share of about 8.8%, the opposite being Botosani County with a rate of only 1.1% from the total of Roma people set in Romania [19].
In 2012-2013, however, 1.85 million Roma were included in the category of vulnerable people. Given the likelihood that many of the Roma respondents do not report ethnicity they belong in national censuses, alternative estimates of some experts are used. According the Romanian Government Strategy for Roma Inclusion 2012-2020, estimates range from 535,140 (2002 Census) at 730,000-970,000 (study commissioned by the Government / World Bank entitled "Social Map of Roma communities", since 2005) to 619,000 (2011 census) and up to 1.85 million (European Commission, An EU Framework for national Roma integration strategies up to 2020, based on data from the Council of Europe) [18].

III.1. Organizations and entities specialized in non discrimination of Roma people

-National Council for Combating Discrimination is an autonomous public authority under parliamentary control, which operates in the field of discrimination, offers advice to those who represent victims of discrimination, and guidance to claim the abuse suffered. Roma citizens can also address this body, which happened according to the data in Table 1 where are recorded the complaints made by citizens of Roma origin.

Table no. 1: Complaints formulated and solved by NCCD from 2008 to 2010

<table>
<thead>
<tr>
<th>Criterion</th>
<th>Complaint stage</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>RELIGION</td>
<td>Solved</td>
<td>10</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Pending</td>
<td>5</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>15</td>
<td>10</td>
<td>3</td>
</tr>
<tr>
<td>SEXUAL ORIENTATION</td>
<td>Solved</td>
<td>0</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Pending</td>
<td>2</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>2</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>ETHNICITY</td>
<td>Solved</td>
<td>5</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Pending</td>
<td>3</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>8</td>
<td>14</td>
<td>12</td>
</tr>
<tr>
<td>Total on each year</td>
<td></td>
<td>25</td>
<td>28</td>
<td>21</td>
</tr>
</tbody>
</table>

Source: www.cncl.ro

It is noted that there were relatively few complaints. The criterion of ethnicity ranks second in number of complaints made in 2008 and first in 2009 and 2010, which shows either the Roma people facing fear to claim discrimination or increasing from year to year of discrimination cases.
- **National Roma Agency**, body that represents the Roma at the national level, it was established by GO No. 78/ October 7, 2004 and intends to monitor the implementation and evaluation of the measures related to social intervention and improvement of Roma by implementing programs and projects in this matter. [17] Change the vision over Roma people was also a political criterion which meant Romania's accession to the European Union. The positive aspects seem to contrast with the negative ones; Roma people were labeled "population at risk of poverty and social exclusion" [2], which is the most important problem to fix: social exclusion, taking into account programs to include Roma in education and therefore their insertion into the labor market, hesitant now and perhaps more pronounced in the future.

- **Roma Center for Social Intervention and Studies (CRISS)** is an association established in April, 1993 on the rights of all Roma as individuals and as existing minority in Romania. In addition, Roma Center for Social Intervention and Studies monitors and even apply various programs to help Roma to improve their situation. [15] This association operates in areas such as health, education, civic mobilization, legal assistance and, last but not the least it is involved in promoting ethnic identity. This is a body set up to support the Roma people that even encourages them to report any case of discrimination experienced in every area of social life.

**III.2. Measures taken by the Romanian Government to integrate Roma on the labor market**

It is undeniable that the main cause of the low level of employability is the lack of education of Roma people; according to the international law, "no person shall be denied the right to education" [6]. The state has the duty to support parents in providing education and teaching. Accession to the European Union meant also emphasizing the attempts to improve the situation of Roma people from Romania and to facilitate their access to education and economic life of the country.

Unfortunately, Roma children are in a critical situation in terms of education, many are even illiterate. 48% of non-Roma families have children aged 0-6 who do not attend nursery or kindergarten, compared with 80% of Roma families from Romania who are in the same situation. From children aged 7-11, 19% go to school compared to 2% for non-Roma subjects. 39% of children over 11 years of Roma families do not attend school while only 9% of non-Roma children [4] are in the same situation. The percentage of Roma who have not benefited at all of school education (2002 census) is 34.2% compared to 5.5% percentage corresponding to the majority...
population. [5] The same study shows that 29% of Roma attend high school compared to 64% of the majority population.

In 2007, 14.6% of children aged 7-13 have never been to school [19], resulting in a significant and worrying percentage.

All these data have significantly contributed to the exclusion of Roma from the labor market, however, the Roma have managed lately to integrate both the education system and labor market.

"Together", the project implemented by the Community Development Agency in partnership with the National Agency for Employment in 2003, entitled "Facilitating market access of Roma" can be considered as one of the basis of Roma integration in the labor market. It has proposed measures on social security provided in GO no. 430/2001 on the approval of the Governmental Strategy for Improving the Roma and qualification of Roma people in view of accessing a profession. The project started with multiple information campaigns and later was followed by instruction and training. Also, for traditional occupations, it has been proposed the issuance of diplomas and certificates.

Thus, the partnership with The National Agency for Employment managed to issue certificates of qualification for approximately 220 Roma people, in order to facilitate their access on the labor market. Also, 170 Roma have been registered with the National Agency for Employment as interested persons seeking employment. It was noted at one point that Romanian society has a tendency to increase ethnic tolerance. It also showed, however, that discrimination is still not the main obstacle to Roma access to the labor market, the main obstacle is obviously very low standard of living and even more: their poverty.

Certainly, the low rate of education among Roma still makes impossible for employers to accept such people.

Regarding their qualification, the census conducted in 1992 showed a critical situation of the Roma people (Table no.2)

Table no. 2: Qualifications situation of Roma people in 1992

<table>
<thead>
<tr>
<th>Total number of Roma people in 1992: of which:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Without qualification</td>
<td>79,4%</td>
</tr>
<tr>
<td>2. Unemployed</td>
<td>45,2%</td>
</tr>
<tr>
<td>3. Skilled in a traditional occupation</td>
<td>3,9%</td>
</tr>
<tr>
<td>4. Skilled in a modern occupation</td>
<td>16,1%</td>
</tr>
<tr>
<td>5. Owing their own business</td>
<td>16,9%</td>
</tr>
</tbody>
</table>

Data source: National Institute of Statistics
According to these data we note that the situation was serious because 79.4% of Roma had absolutely no qualifications and less than half of them were unemployed. However, according to the table no.2, 16.9% of Roma started their own businesses and 16.1% had qualifications in a modern profession.

As for specialized jobs, in 2003 were recorded the following occupations that do not require formal training, but were learned from generation to generation: fiddlers, coppersmiths, blacksmiths, brickmakers, and tin workers. Their modern professions were in the construction industry (masons, tailors, painters).

34% of Roma had no qualification, (14%) were cultivators and 5% were day workers. Regarding gender qualifications, Roma men are skilled in a higher proportion than women; the number of unemployed women (37%) is significantly higher than the number of unemployed men (15%) [2].

In 2011, studies showed that 27% of registered Roma had a job. One of the studies, carried out in 2011, was conducted by Resource Center for Roma Communities and underlined that about two thirds of Roma people able to work were working under appropriate conditions with papers in order. The same study noted many Roma people declared households but working occasionally.

Currently, a World Bank survey reveals that only 50% of Roma people from Romania work, so we see that the situation does not improve significantly despite Roma inclusion programs on the labor market. In other words, although the years have passed, the situation of Roma has not evolved as well, the percentage explains all: unemployed Roma people in 1992: 45.2% versus unemployed Roma people in 2015: 50%.

A national strategy is running nowadays, promising for the future situation of the Roma, namely the National Strategy of Social Inclusion and Poverty Reduction 2015 - 2020 which, although not exclusive to Roma, aims to promote disadvantaged groups, Roma people being as I noticed one of the most vulnerable groups. Thus, among the main goals pursued by the Romanian Government we find the implementation of this strategy, facilitating Roma people’s insertion in the labor market, starting right from ensuring minimum living standards of education. The strategy aims, more specifically, to provide a minimum standard of living including the implementation of projects to ensure education that will lead to higher employability in the future.
III.3. Practical examples of Roma integration in the labor market

One of the projects implemented by The National Agency for Roma is "Together on the labor market" which was implemented in order to adapt Roma people to the demands of the labor market, ensuring them a minimum educational and professional knowledge. The project was financed by the European Social Fund through Sectoral Operational Program named "Human Resources Development", the priority being Roma people’s social inclusion. In other words, this project attempted an insertion of the Roma into the labor market, which has functioned through the result achieved, namely a total of 854 Roma were employed and have a job and 1,103 were skilled having the opportunity to find a job in the future.

Table no. 3: The number of beneficiaries of "Together on the labor market" project

<table>
<thead>
<tr>
<th>7,477 Roma people included in the database of which:</th>
</tr>
</thead>
<tbody>
<tr>
<td>➢ 854 have been employed</td>
</tr>
<tr>
<td>➢ 1,103 have received career counseling and professional training</td>
</tr>
<tr>
<td>➢ 1,329 have obtained qualifications</td>
</tr>
<tr>
<td>➢ 1,015 children aged 14-18 have been included in programs to boost school attendance and combat school drop out</td>
</tr>
<tr>
<td>The remaining 3,176 people received information and have been included into the project.</td>
</tr>
</tbody>
</table>

Data source: National Agency for Roma people

If we look at the data in Table no.3 the project had an impact on 7,477 Roma people aged over 14, a percentage of 1.52% of members of the target group found a job through this project. It is an example of initiative and involvement of the state and the European Union in general to remove the exclusion of Roma in the labor market.

CONCLUSIONS

The most important consequence of the discrimination is the unbalance of the harmony between people and society in general.

As noted throughout this document, the number of complaints made by Roma National Council for Combating Discrimination is still growing, which means that discrimination on grounds of ethnic is frequently in Romania, even in 2015, being a phenomenon that tried and still try to be
mitigated through strategies formulated by the Government of Romania including the 2015-2020 strategy.

We can’t say the same thing about the complaints in Courts, because the number of trials is small.[15]

As for discrimination on the labor market, we believe that this is rather a consequence of the high level of lack of training and qualification of Roma people. Roma were unemployed in 1992, as I stated above, in a percentage of 45, 2%, consequently 54, 8% of Roma people had a job. Compared with 1992, 50% of Roma people had a job in 2015, which means 4.8% less people. In this respect we are confident that the proposed government strategy for the years 2015-2020 will resolve in a significant extent the level of training and the degree of employability in the workplace.

REFERENCES

5. Raportul de monitorizare, Acces egal la educație de calitate pentru romi, 2007, OpenSociety Institute, România, p. 42.
6. Convenția Europeană a Drepturilor Omului.
12. Liana Teodora PASCARIU, Examen de jurisprudență în domeniul conflictelor de muncă din administrația publică locală de pe raza Curții de apel Suceava, capitol in E. HLACIUC, Alunicia V. Morariu, (Coordonatori) et. al., Eficientizarea administrației publice locale prin