

## **SOME CONSIDERATIONS REGARDING THE PRINCIPLE OF EQUAL OPPORTUNITIES FOR WOMEN AND MEN IN LABOUR LAW**

**Lecturer PHD Ada Hurbean, Law and Social Sciences Faculty, „1 Decembrie 1918” University of Alba Iulia**

*Key words labour law, gender segregation, equal treatment and opportunities*

*This paper approaches the principle of equal opportunities for women and men in labour law, in fact, in labour contracts in terms of internal and EU's laws.*

*The promotion of this principle represents a priority of the EU's social policy, which is highlighted by the European Commission Report for 2009 regarding this matter. The equality between women and men is more important than ever in the current economic context, because the present crisis has great consequences regarding the growth and the employment, and the women are the most vulnerable social category in present time.*

*So, this paper presents some considerations regarding both women's labor market relative to men and the causes to this unequal distribution and, then, the framework bill in that field of Law. 202/2002 and finally, the Community legislation and the implementation and promoting measures of this principle.*

Principle of equality between men and women has its source in Article 16 para. 1 of the Constitution of Romania which stipulates that "Citizens are equal before the law and public authorities without privilege or discrimination". Also, Art. 5. 1 of the Labor Code provides that "the relationship is working principle of equal treatment of all employees and employers". These regulations contain, in fact, the principle of equal treatment and prohibiting discrimination in employment relationships, but this principle has multiple meanings<sup>1</sup> and one of these meanings is about the employer obligation to refrain from any direct or indirect discrimination against the employee based on sex, sexual orientation, genetic characteristics, age, ethnic affiliation, race, color, religion, political option, social origin, disability, position or responsibility family membership or union activities to employees. This obligation is resumed and developed by the Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination and the Law. 202/2002 on equal opportunities between women and men.

Article 141 TCE (the former article 119) represents the bases of the Community law on equality between men and women in employment relationships. Also, this principle was enshrined in access to employment, vocational training and promotion and working conditions in Directive 76/207/EEC, and on social security measures in Directive 79/7/EEC of 19 December 1978, Directive 86 / 378/CEE of July 24, 1986, Directive 96/34/EC of 3 June 1996 and Directive 86/613 of December 11, 1986. Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements

---

<sup>1</sup> Al. Țiclea, *Tratat de dreptul muncii*, second edition, Ed. Universul Juridic, București, 2007, p.53

in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding is relevant in this area, also.

As of August 15, 2009, Directives 75/117/EEC, 86/378/EEC and 97/80/EC is repealed by art. 34 of Directive 2006/54/EEC of the European Parliament and the Council of 5 July 2006 on the principle of equal opportunities and equal treatment of men and women in matters of employment and working conditions.

Law no. 202/2002 reprinted regulates the measure to promote the principle of equal chances and treatment between women and men in order to eliminate all the forms of discrimination based on sex from the public relationship and especially from employment relationship, in internal law.

Consequently, article 7 of this law specifies the meaning and the scope of the principle of equal opportunities between women and men in labor law, in fact, the undiscrimination access to: a). choice or free exercise of a profession or activity; b) employment in all positions and job vacancies and at all levels of professional hierarchy; c) equal incomes for work of equal value; d) information and professional advice, program initiation, qualification, training, specialization and retraining; e) promotion of any level of profession; f) labor conditions which respects the health and labor security regulations; g) benefits other than salaries and income from private and public social security systems; h) employer organizations, trade unions and professional bodies, and the benefits provided by these; i) benefits and social services provided in accordance with legislation in force. We have to say that the stipulations of Law no. 202/2002 are applicable to all workers, employees, including self-employed persons, and workers in agriculture, civil servants and contractual staff of public and private sectors, including public institutions.

According to article 9 para 1 of Law no.202/2002 is forbidden the discrimination by the employer using practices which disadvantages people of a particular sex, in connection with labor relations regarding: announcement, the organization of competitions or examinations and selection of candidates to fill vacancies in the private or public sector, completion, suspension, modification and/or termination of employment or labor contract, the establishment or change of job duties, determining pay, benefits other than such wage and social security, information and professional advice, program initiation, qualification, training, specialization and retraining; individual professional performance evaluation, promotion, disciplinary measures, right to join a union and access to facilities it; any other conditions of work performance, according to the laws in force. Also, maternity can not be a reason to discrimination, therefore, any less favorable treatment applied to a woman related to pregnancy or maternity leave constitutes discrimination within the meaning of Law no. 202/2002.

It is forbidden to request to a candidate to present a pregnancy test before employment and/or to sign a commitment that she will not get pregnant or she will not give birth as long as the labour contract last, except the jobs forbidden for the pregnant women and/or nursing women, because of the nature or the particular conditions of supply of labour<sup>2</sup>. Dismissal can not be order during woman employee is pregnant or is on maternity leave or employee was the leave and childcare increase in age up to 2 years, 3 years that if a disabled child. Is exempt from the application of these provisions dismissal on grounds occur as a result of judicial reorganization or bankruptcy of the employer, under the law.

The employee is entitled to return to the last job or an equivalent job, with equivalent working conditions and also to benefit from any improvement in working conditions that would have been entitled during absence, upon termination of maternity leave or leave and childcare increase in age up to 2 years, 3 years that if a disabled child.

---

<sup>2</sup> see, L. Uță, F. Rotaru, S. Cristescu, *Codul muncii adnotat*, vol. I, Ed. Hamagiu, București, 2009, p.53-54

Still, the Law defines the notion of discrimination based on sex as any unwanted conduct, regarded as harassment or sexual harassment<sup>3</sup>, having the purpose or effect to create the work atmosphere of intimidation, hostility or discouragement for the person affected or negatively influence the situation of the person engaged in the promotion, salary or income of any nature or access to training and further training in case of its refusal to accept an unwanted conduct pertaining to sexual life.

Correspondingly, and for ensuring that the principle of equal treatment and opportunities between women and men employees, the employers has the obligation to introduce, in the internal regulation of the firm, dispositions for prohibiting the discrimination based on sex and they are compelled to inform the employees about their rights regarding the respecting of this principle.

If the employee consider that the employer discriminate him a n individual labour conflict is born which is going to be solve amicable, through mediation, but if it's not possible , will be solve by court. Under article. 269 Labor Code or liability offenses under Ordinance no. 137/2000, republished<sup>4</sup>, on preventing and sanctioning all forms of discrimination committing acts of discrimination attract disciplinary responsibility of the author deed of discrimination, pecuniary liability of the employer.

In the same context, employees have the right to ask to restore the previous situation to claim discrimination or annulment of the situation created by discrimination. If the employer refuses to employ based on one or more discrimination criteria restore the previous situation involves, necessarily, and cancellation by the court to form practiced by the employer prior verification of training and professional skills. So, the employer will be obliged to organize a new competition or examination involving the person discriminated against before.

In other cases the employer will be bind to pay residual salary, to determine duties appropriate function held by the person discriminated against, the application of disciplinary sanctions commensurate with the degree of guilt, s.o<sup>5</sup>.

The person who is considering himself discriminate may refer the National Council for Combating Discrimination within one year after the crime was committed or the date when it could take note of committing them, but referral to court is not subject to prior notification by Council.

According to article. 24 of law no. 202/2002 institutional body which promotes the principle of equal opportunity and treatment between men and women and ensure the active integration of gender perspective in all policies and programs is the National Agency for Equal Opportunities between Women and Men (ANES), the body specialized central public administration, with legal status under the Ministry of Labor, Social Solidarity and Family. Also, under the same law, was born the National Commission on equality of opportunity between women and men (CONES) whose activity is coordinated by the President of the Agency who is also its president. The Commission has taken, from the legal establishment, the Consultative Commission ministerial duties in the field of equality between women and men.

Need to promote the principle of equality between men and women as a priority of national and EU social policy is outlined in the Rapport of Commission to the Council, European Parliament, the Economic and Social Committee and the COR for the year 2009, annual report assessing progress in

---

<sup>3</sup> Harassment means a situation in which manifest undesirable behavior, related to the sex of the person, with the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive and sexual harassment means a situation where an unwanted conduct manifests a sexual, expressed physical, verbal or nonverbal, with the purpose or effect of violating the dignity of a person and, in particular when creating an intimidating, hostile, degrading, humiliating or offensive (article 4 para 1, letter c and d from Law no. 202/2002).

<sup>4</sup> Published in Oficial Monitor Publicată no. 99 from februarie 8, 2007.

<sup>5</sup> Al. Țiclea, op. cit., p. 525-526.

this area at EU level. As indicated by this report, the year 2008 was the mid-term implementation for equality between women and men, which confirms the Commission to encourage equal opportunities between women and men. Member States have embraced this commitment by the European Pact for equality between women and men. Joint efforts have produced positive results, particularly as regards the employment of women, but general trends are still too slow in most areas, and equality between women and men is far from being achieved. Specifically, it stated that:

1. The number of women employed is increasing, but remains lower than the number of men employed, even if most students and university graduates are women. The high level of education of women (in 2006, they received 58.9% in total EU university degrees, compared to 54.7% in 2004) is not, however, directly reflected in the positions they occupy in the market work, because working in sectors and occupations as "feminised", with lower-class jobs, with fewer opportunities to access to leadership positions.

2. Women continue to earn, on average 17.4% less than men for each hour worked, and this figure remains stable. The explanation for this situation is that women are concentrated in jobs and positions valued less than men. Also, there are more chances that women to work part time and to end her career for family reasons<sup>6</sup> (percentage of female employees working part-time were 31.2% in 2007, four times higher than men), the women are subject to risks negative about remuneration, career advancement and accumulation of pension rights.

3. Women are still underrepresented in positions of political and economic decision, although in the last decade, a growing number of those who occupy such posts. The number of women manager from the EU remained stable in recent years, with an average of 30% and the figures are lower in most Member States. The proportion of women directors in the boards of companies listed best is 3% in the EU, while one in ten members of the board is female. There are no female governors of national central banks in the EU, women constitute only 16% of staff-level decision-making of these institutions. It is a paradox, because the number of female students in business, government and law than the number of male students. In politics, in most EU countries have been positive developments over the past decade, but progress is slow and the overall numbers remain low. Average share of women among members of national parliaments has increased from 16% to 24% between 1997 and 2008, but national figures are between 9% and 46%. Eleven Member States have a share of over 30%, considered to be the minimum necessary for women to exert meaningful influence on policy. The national government, one of four ministers is a woman, but the differences between Member States are between 0% and 60% women ministers. The European institutions have shown some progress but women are still underrepresented at senior levels. Only three of ten members of Parliament are female. In the related socio-economic realities and economic recession in employment, poverty risk is higher for women than men. On the one hand, women are more at risk in times of increasing unemployment, as workers, broadly based on a fixed term contracts in greater proportion than men (15% vs. 13, 9%), and the second exposure to the risk of poverty rate of single parents who, in the vast majority are women is 32% and women older than 65% is 21% (5 points higher than men)<sup>7</sup>.

In conclusion, even if developments were observed over previous periods, the differences between men and women, especially in the labor market continues. Despite the existing legal framework in Romania in this field, according to a study ANES, women in our country are less well

---

<sup>6</sup> Over 6 million women between 25 and 49 years old are compelled to work only part time or to do not work at all, as a result of a family obligations.

<sup>7</sup> From the Committee Rapport to the Council, European Parliament, the Economic and Social Committee and the COR for the year 2009.

represented in political structures and decision than the European average. Thus, if the European average, among the ministers of national governments, shows that the proportion of men compared with women is about three to one (25% women, 75% men), in Romania only 19% of ministers are women. Compared to the average of the parliaments of EU countries (24%) and the percentage in the European Parliament in legislature 2004-2009 (31%), Romania has a parliamentary representation of women only 9.76%, as the results of parliamentary elections in 2008. The representative of women was acquainted a significant increase in the European Parliament, from 31% in the previous mandate to 35% in 2009-2014 mandate. Romania has in the current European Parliament 36 % women (12 women MEPs from the total of 33 MEPs).

Moreover, there is a perpetuation to under-representation of women in the Romanian Parliament elected in 2008; in Senate situation is even worse showing than the previous legislature - from 137 senators, only 8 are women (5.8%) and in Chamber of Deputies from 334 deputies, only 38 are women (11.3%)<sup>8</sup>.

Therefore, we consider that one of the biggest obstacles in achieving full equality between women and men are the fighting of deep-rooted gender stereotypes that define the roles of women and men in society and influence the gender imbalances in terms of paid work and unpaid. Are needed, not only legislative initiatives designed to correct from legal point of view, these imbalances, but an integrated approach that includes strategies to eliminate the segregation of women and men and measures to improve the balance between work and private life. And because male and female stereotypes are social and cultural attitudes to what are considered traditional roles and functions to be "male" or "female" and may influence the choices of women and men on studies and jobs, we have to fight starting from school, discriminatory practices and attitudes should be removed from materials and educational methods of teaching and career guidance<sup>9</sup>.

---

<sup>8</sup> ANES study is published on <http://www.anes.ro/>.

<sup>9</sup> Results of study on gender perspectives in education, published by the Institute of Education Sciences, Bucharest, reflects the following aspects: educational content promotes a static model of gender relations, there is a tendency to essentiality of gender relations, school activities are segregated on gender and performance expectations are different for men and women.