

# The principles of non-discrimination and equality of chances in the Romanian and European law

Lecturer **Ileana VOICA**<sup>1</sup>

## **Abstract**

*The work starts from the legislative framework of the principles of non-discrimination and equality of chances between men and women in our country, presenting, at the same time, synthetically, the public authorities authorized with the application and control of the application of the law regarding the equality of chances. Given the obligation imposed by the European Directives of the E.U. member states, to modify or update the law so that all the European citizens would benefit of the same protection against discrimination, it is also presented a famous case study regarding the ethnic or religious discrimination – The Decision of the Paris Appeal Court of 19<sup>th</sup> June 2003. This cause demonstrates the good application by a French civil jurisdiction of the dispositions regarding the civil sanctions of the discriminations based on religious beliefs. However, at the level of the E.U. member states, in certain cases and fields, the legislative framework is not always enough to ensure the equality of chances, being necessary changes of mentality and behavior, as well as firm and varied political actions, in order to sensitize the involved public and institutions regarding the significance of the insurance of the application of the principles of non-discrimination and equality of chances.*

**Keywords:** *Non-discrimination, equality of chances, the ethnic and religious discrimination, diversity, conciliation of the professional and private life.*

**JEL Classification:** K10, K33

Romania's adhering to the European Union on 1<sup>st</sup> of January 2007 has supposed a harmonization of the Romanian law with the regulations of the European law<sup>2</sup>. The legislative framework of the two principles existed in our country before the adhering. The law in cause promoted equality of chances between men and women and non-discrimination.

---

<sup>1</sup> Ileana Voica, Law Department, Bucharest University of Economic Studies, Romania, ileana\_voica@yahoo.com

<sup>2</sup> Octavian Manolache, *Drept comunitar (Community law)*, All Beck Publishing House, Bucharest, 2001, p. 7,8.

## **1. The regulation of the measures for the promotion of the equality of chances between men and women and for the elimination of the direct and indirect discrimination according to the sex criterion, in all the public life's spheres of Romania<sup>3</sup>**

Through equality of chances between women and men, it is understood taking into account the different capacities, needs and aspirations of the male and respectively, female persons and their equal treatment<sup>4</sup>. The measures for the promotion of the equality of chances between women and men and for the elimination of the direct and indirect discrimination according to the sex criterion, apply in the field of work, education, health, culture and information, decision participation, as well as in other fields, regulated through specific laws<sup>5</sup>.

Through **equality of chances and treatment between women and men in the work field**, it is understood the non-discriminating access to: free choice and performance of a job or activity; employment on all free positions or work places and on all levels of the professional hierarchy; equal incomes for work of equal value; professional information and counseling, initiation, qualification, perfection, specialization and professional re-qualification programs; promotion on any hierarchical and professional level; labor conditions that respect the health and work security norms, according to the provisions of the law in force; benefits, others than the ones of salary nature and protection measurements and social insurances.

### **1.1 The equality of chances and treatment regarding the access to education, health, culture and information**

The Ministry of National education ensures, through specific means, the training and education in the spirit of equality of changes between genders and it promotes those school books, academic courses, guides for the application of the analytical programs, that do not comprise aspects of discrimination between genders as well as the negative behavior stereotypes and models regarding the women and men role in the public and family life.

The county public health Directorates and those of Bucharest Municipality, create conditions for the application of the measures respecting the equality of chances and treatment between women and men in the health field, regarding the

---

<sup>3</sup> See Law no. 202 of 19<sup>th</sup> April 2002 regarding the equality of chances and treatment between women and men, issued by the Romanian Parliament, published in the Official Monitory no. 150 of 1<sup>st</sup> March 2007, with the ulterior modifications.

<sup>4</sup> Regarding the principle of "equality of chances and treatment" see Ioana Nely Militaru, *Dreptul Uniunii Europene (European Union Law)*, Universul Juridic Publishing House, Bucharest, 2011, p. 112.

<sup>5</sup> Emanuela Ignatou-Sora, *Egalitate si nondiscriminare in jurisprudenta Curtii Europene de Justitie (Equality and non-discrimination in the jurisprudence of the European Court of Justice)*, C.H.Beck Publishing House, Bucharest 2008, pp. 15-20.

access to the medical services and their quality as well as the health at the work place.

The culture public institutions as well as any other structures or formations that promote the cultural action in any form, have the obligation to create conditions for the access of all persons to the cultural productions, without discrimination regarding the sex criterion.

The public institutions as well as the governmental and non-governmental organizations, allow the access to the information from their activity spheres, in the law's limits, to the requesters, women or men, without discrimination.

The information distributed through mass-media will respect the equality of chances and treatment between women and men and they will not contain, promote or provoke any discrimination form based on the sex criterion.

### **1.2 The equality of chances between women and men regarding the participation in decision-making**

This is promoted and sustained by the public, central and local authorities, the economical and social units as well as the political parties and other non-profit entities that develop their activity based on some own statutes.

In order to speed up the actual establishment of equality of chances between women and men, the central and local public authorities will adopt stimulating measures of equitable and balanced representation of women and men, in the decision authorities of the social partners, respecting the competence criteria.

## **2. The regulation of the prevention and sanction of all discrimination forms<sup>6</sup>**

Through discrimination it is understood any differentiation, exclusion, restriction or preference, based on race, nationality, ethnicity, language, religion, social category, convictions, sex or sexual orientation, allegiance to a disadvantaged category or any other criterion that has as purpose or effect the restriction or elimination of the recognition, use or performance, in equality conditions, of the human rights and of the fundamental liberties or rights recognized by the law, in the political, economic, social and cultural field or in other fields of the public life.

---

<sup>6</sup> See Law no. 48/2002 of 16.01.2002 published in the Official Monitor, Part I no. 69 of 31.01.2002, for the approval of the Government Ordinance no. 137/2000 regarding the prevention and sanction of all discrimination forms, with the ulterior modifications.

### **3. The public authorities authorized with the application and control of the law's application regarding the equality of chances and treatment between women and men**

The Ministry of Labor and Social Justice is the public authority responsible with the application and control of the regulations of this law fulfillment in its activity field. This ensures the fulfillment and performs its control over the application of the provisions of this law in its activity field, through the institutions coordinated or subordinated that have as responsibility the application of measures of promotion of the equality of chances and treatment between women and men and elimination of the direct and indirect discrimination regarding the sex criterion, as it follows: The Employment National Agency, The National Pensions House and Other Rights of Social Insurances, Labor Inspection, National Council of Adults' Professional Training.

The Labor Inspection performs the control of the application of the provisions of this law, both in the public sector as well as the private one, through the work territory inspectorates.

The Ministry of National Education, through the school territory inspectorates, performs the control regarding the inclusion in the curriculum and other curricular instrument as well as in the current activity of the education units, the measures regarding the fulfillment of the principle of equality of chances and treatment between women and men.

The Ministry of Health, through the county public health directorates and those of Bucharest Municipality, performs its control of the application of the measurements regarding the fulfillment of the equality of chances and treatment between women and men in the health field, regarding the access to the medical services and their quality as well as the health at the work place.

The People's Lawyer collaborates with the Ministry of Labor and Social Solidarity for the solution of the complaints regarding the equality of chances and treatment between women and men, for the elimination of the discrimination based on gender, in the fields regulated by this law.

The Economic and Social Council, through the Commission for the equality of chances and treatment, according to its attributions, supports the integration of the principle of equality of chances and treatment between women and men in the normative documents with implications in the economic – social life.

The National Council for the Discrimination Elimination is the national authority that contraveniently investigates and sanctions the discrimination actions or facts provided in this ordinance. It is responsible with the application and control of the fulfillment of the provisions of this ordinance in its activity field as well as regarding the harmonization of the dispositions from the normative or administrative documents that contravene the principle of non-discrimination. it performs its attributions in the following field: prevention of the discrimination

actions; monitoring of the discrimination cases; granting specialty assistance to the discrimination victims.

#### **4. Case study regarding the principle of equality and non-discrimination**

*The ethnical and religious discrimination: a typical case of the French paradox of the law and rights<sup>7</sup> concepts: File MELLE THARI against the Company TELEPERFORMANCE: Decision of the Paris Appeal Court of 19<sup>th</sup> June 2003.*

This cause is about an employee, Melle Thari, dismissed by the employer, the Company Teleperformance, through a decision of 16<sup>th</sup> July 2002, motivated by not respecting its imposed interdiction, that of wearing an Islamic veil at the work place, once with her moving in the head office.

Through the ordinance of 17<sup>th</sup> December 2002, the first court, notified through the pesedential ordinance, has considered that this dismissal constitutes a discriminatory measure in the application of art. L122-45, from the Labor Code, because it is not justified by an objective element, foreign to any discrimination, consequently it has ascertained the nullity of the dismissal and it has ordered the reintegration of the employee in the enterprise, under the constraint of the payment of 150 euro for each day delayed by the employer, the decision being enforceable without the passing of a term.

The Company Teleperformance has formulated appeal against this decision, requesting the Appeal Court to ascertain the groundlessness of the decision of the first court, because there is no illicit behavior that would determine the nullity of Mrs. Melle Thari's dismissal or a discrimination against her, the dismissal being determined by the breach of Melle Thari of the clear instructions related to the work attire at the new work place.

Through the decision of 19<sup>th</sup> June 2003, Paris Appeal Court, confirming the decision of the first court, retakes a solution that had already been adopted through a previous decision and admits that a restriction of the religion freedom can be imposed to an employee if the employer justifies the fact that wearing a scarf risks to attract problems in the relations with the clients. Apparently there wasn't the case, in law.

We will retain that the court of the labor law has pronounced itself both regarding the religious freedom as well as the freedom to dress. Instead, taking into account the motivation of the dismissal decision, the Appeal Court retains only the prejudice brought to the religious freedom.

The dismissal of an employee, because of her refusal to comply with the imposed interdiction that of wearing an Islamic veil, on moving in the head office,

---

<sup>7</sup> "The situation from France regarding the ethnical and religious discrimination: a typical example of the French paradox of the law and rights' concepts", Karima Zouaoui, Judge, Ministry of Justice, Paris, France.

obviously breaches the article L122-45 from the Labor Code, at the same time regarding the religious convictions and the physical look of the employee, this last element also sending the attention to her physiognomy, her physical constitution and her attire.

This measure is discriminatory in the sense of the above mentioned text and therefore constitutes an illicit behavior, being the task of the presidential ordinance's judge to end this behavior, ascertaining the nullity of the dismissal and ordering the reintegration of the employee at the work place, since the employer does not provide any foreign element to this discrimination in justifying his decision.

The Appeal Court, establishing the notification's limits to the reasons of the dismissal's decision, has retained:

"Article L122-45 from the Labor Code prohibits any dismissal because of the religious convictions of the employee, moreover ascertaining that the article 9 from the European Convention of the Human Rights consecrates the freedom of manifesting your religion and convictions, providing that this freedom cannot be the object of any other restrictions aside from the ones provided by law.

Since the dismissal decision expressly refers to the employee's refusal to give up her religious convictions, the dismissal presents the characteristics of a measure prohibited through article L122-45, above mentioned, the employer having to prove that his decision has been justified through objective elements, foreign to any discrimination. In law, there is no such situation, since the employer reproaches to an employee that she is wearing an Islamic veil and this attire is not a special problem in the relations with the clients".

Through this decision, the French appeal jurisdiction demonstrates the desire to clearly and firmly apply the dispositions of the Labor Code, sanctioning any dismissal determined by the employee's religious convictions and is willingly removed from any debate regarding the freedom to dress, because in this case it is not about a simple attire choice, different from any religious manifestation".

From the documents of the file it is truly shown that in the moment of the different previous employments, made by the same employer, it has not been formulated any objection regarding the veil that she wore and the company has not ascertained at the moment the contradiction between its legitimate interests and the physical appearance of the employee, that is part of her religious convictions.

The court has therefore reminded the limits that the law imposes to a judiciary debate over the litigation brought in front of the jurisdiction.

During the debates (that have had as a consequence, in 2004, the issuance of the law regarding the interdiction to wear religious signs at school), Paris Appeal Court has not submitted to the temptation of analysis of the Islamic veil wearing, independently from the concrete time, place and work frame circumstances in which it is observed, as prejudicing a public order that the employer can prevail in any hypothesis and situation.

On the contrary, in the current state of the French law, as it is established by the constitutional principles and dispositions, the international Conventions

integrated in this law system lead to an absolute conception that would lead to the exclusion of the veil wearing as an Islamic practice that collides with the republican legality.

Moreover, in front of a public formed from agents fulfilling a public function, there is the case to show that the debate terms, in examining this cause, have limited to the sphere of the private law reports and have led to a solution determined by the consideration of the employment's conditions for this employee and the clauses from her labor agreement.

The debate terms are not identical to those of other debates with jurisdictional character, where, firstly, there is raised the problem of the reports of public law between a person and a public institution, having the task to ensure the fulfillment of the specific rules (neutrality of the public service).

This cause therefore demonstrates the good application by a French civil jurisdiction of the dispositions regarding the civil sanctions of the discriminations based on religious convictions.

There is not happening the same thing regarding the penal treatment of the discriminations based on ethnical origins.

## 5. Conclusions

The European Directives<sup>8</sup> oblige the European Union member states to introduce in the law or to update the law so that all European citizens benefit from the same protection against discrimination. Adopting a legislative frame is not always enough to ensure that each persons really benefits of equal chances. There are necessary mentality and behavior changes. There must also be taken measures to prevent the multitudes of inequalities from which there are suffering certain European groups and communities, examining the causes that are at the problems' origin. Taking into account that the wealth of the European society is exactly the diversity of the origins and cultures of its citizens, in order to fully benefit from the multitude of competences, specificities, talents and ideas, there is essential a serious involvement in creating, monitoring the application and assessment of the policies of inclusion and equality of chances, for all's benefit, measures also promoted by the European Union.

The social partners have an important role both in promoting the principles of equality of chances and diversity, as well as in defining and applying the actions in the field of equality of gender at European, national, regional, sector level and at the companies' level. The European Union member states are requested that together with the social partners and with the civil company, to surpass the

---

<sup>8</sup> Ioana Nely Militaru, *Directiva – principalul instrument legislativ de implementare a dreptului Uniunii (The Directive – the main legislative instrument of transposition/implementation of the union law)* in „Revista de Drept Comercial” (Commercial Law Magazine), no. 7-8/2010, pp. 22-28; Georgiana Tudor, Dragos Calin, *Jurisprudenta CJCE. Principiile dreptului comunitar. CJCE - Curtea de Justitie a Comunitatilor Europene (CJCE Jurisprudence. Principles of the community law. CJCE – The Justice Court of the European Communities)*, C.H. Beck Publishing House, Bucharest, 2006, p. 12.

challenges generated by the obtention of equality of chances, granting special attention to: the integration of gender in all the work quality dimensions, creating more and better work places in the new cycle of the European strategy for increase and work places, offer and quality of the services that allow the conciliation of the professional life with the private one for women and men in equal measure, elimination of the education stereotypes, occupation and mass-media, development of instruments for the assessment of the policies impact from gender perspective.

Even if until the present time there have been registered progresses regarding the insurance of an effective equality of chances at least from quantitative point of view, regarding the qualitative aspect, there are still a lot to do. In continuation, there are expected firm and varied political actions to sensitize the public and the involved institutions, regarding the importance of ensuring an authentic equality of chances and diversity for the fulfillment of the individual competences and potential, in a *space of freedom, security and justice*, in which there are promoted the good relations between all society's members.

### Bibliography

1. Emanuela Ignatou-Sora, *Egalitate si nondiscriminare in jurisprudenta Curtii Europene de Justitie (Equality and non-discrimination in the jurisprudence of the European Court of Justice)*, C.H.Beck Publishing House, Bucharest 2008;
2. Georgiana Tudor, Dragos Calin, *Jurisprudenta CJCE. Principiile dreptului comunitar. CJCE -Curtea de Justitie a Comunitatilor Europene (CJCE Jurisprudence. Principles of the community law. CJCE – The Justice Court of the European Communities)*, C.H. Beck Publishing House, Bucharest 2006;
3. Ioana Nely Militaru, *Directiva – principalul instrument legislativ de implementare a dreptului Uniunii (The Directive – the main legislative instrument of transposition/implementation of the union law)* in „Revista de Drept Comercial” (Commercial law magazine), no. 7-8/2010;
4. Ioana Nely Militaru, *Dreptul Uniunii Europene (European Union Law)*, Universul Juridic Publishing House, Bucharest, 2011;
5. Octavian Manolache, *Drept comunitar (Community law)*, All Beck Publishing House, Bucharest, 2001;
6. The Romanian Constitution, published in the Official Monitory, Part I, no.767 of 31<sup>st</sup> December 2003;
7. Law No. 202 of 19<sup>th</sup> April 2002, regarding the equality of chances and treatment between women and men, issued by the Romanian Parliament, published in the Official Monitory no. 150 of 1<sup>st</sup> March 2007;
8. Law no. 48/2002 of 16/01/2002 published in the Official Monitory, Part I no. 69 of 31/01/2002 for the approval of the Government Ordinance no. 137/2000 regarding the prevention and sanction of all discrimination forms.