

# THE RIGHT OF WORK OF DISABLED PERSONS. COMPARATIVE APPROACH BETWEEN THE SITUATION OF ROMANIA AND THAT OF THE REPUBLIC OF MOLDOVA

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## **Abstract**

*The data presented in this study were collected using the content analysis as a research method, starting from the theoretical and practical concepts of the socio-professional insertion of persons with disabilities as well as from the legislative regulations adopted by the Romanian state and the Republic of Moldova in protection and promotion of the rights of people with disabilities. The status of people with disabilities, as well as their fundamental rights and freedoms, are among the most debated topics at European level, which are constantly reviewed and complemented in order to establish a universally valid normative framework that will contribute to combating discrimination at a general level and implicitly in the sphere of socio-professional insertion of people with disabilities in order to homogenize and equalize the discrepancies existing in the society. Regarding the contribution of Moldovan authorities in the socio- professional integration of people with disabilities, in recent years we note the constant interest of the central authorities to support the social inclusion of this social category by starting studies and collaborations with the Romanian authorities. In order to reduce the economic fluctuations impact on people with handicap, the Romanian state is meeting the international requirements and actively promotes social policies aimed at guaranteeing the careers of the people living in the community and preventing the emergence of social barriers restricts the implication of the defaulted profession to the social life. Following the Romanian example, in recent years, the Republic of Moldova is taking steps in this direction as well.*

**Keywords:** *people with disabilities, labor law, discrimination, socio-professional insertion, equality.*

**JEL Classification:** K23, K31

## **1. Introduction**

Given the scale of the social inequality phenomenon in the contemporary world, European social exclusion is intended to combat social discrimination so that E.U. member states and not only adopt permanent policies to eliminate all forms of discrimination at society level. Although the discrimination phenomenon has multiple valences, in this paper we will restrict the research area to the practice of discrimination in the labor law field as regards persons with disabilities.

Against the backdrop of urban development both in Romania and in the Republic of Moldova, labor law has witnessed a significant evolution, with the frequent changes of the cases between the employers and the employees, most of them being in the hands of the employees. Analyzing this, we can think that as the social structures develop, the people with disabilities category, neglected by the rest of society, could not keep up with the diversification of social processes.

Economic changes as well as social changes in the two countries during the last years have shown a significant impact on the population, especially among people with disabilities. In order to reduce the impact of economic fluctuations on people with handicap, the Romanian state meets the international requirements and actively promotes social policies aimed at guaranteeing the careers of living people in the community and in preventing the emergence of social problems to hinder the implication of this defaulted profession in social life.

Regarding the Moldovan political blanket, it was noted by collaborating with the Romanian state in order to support and promote the rights of persons belonging to disadvantaged social categories, as well as through the social policies promotion or by providing employers with facilities to ensure the socio-professional insertion of people with disabilities. The implication of the Romanian state in the socio-professional insertion of defaulted persons can be considered as a preventive form of social protection which is aimed at avoiding social managing and avoiding the

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complete disruption of social relations between societies and persons with disabilities.

## 2. Content

The social measures promoted by the two countries studied in view of the socio-professional insertion of persons with disabilities, on which I will present them in this paper, prove to be extremely useful to the societies, as we will remark.

By means of these measures, the societal and professional situation of the affected persons is improved, on the one hand, and the potential of the social enterprise is appreciated in the interest of the community. In order to achieve the above-mentioned objective, the Romanian state established by Ordinance no. 14 of 2003, the National Authority for Persons with Handicaps. Among the principal attributions of A.N.P.H. there are elbows and the application of national strategies for the specific protection of the people with handicap as well as the elaboration of the normative necessities useful for the strategy development and application.

## 3. Measures adopted by the Romanian State and the Republic of Moldova on the protection and promotion of the rights of persons with disabilities

Starting from the disability concept, we tend to refer to it in medical terms, interpreting disability as a strictly medical condition. Nonetheless, disability has become a much more complex process that includes within its sphere policies of social, professional, educational, special care, cohabitation and, last but not least, anti-discrimination, that as a result of social interactions between people with disabilities and society. In view of these aspects, we will discover here how to perceive disability from the Romanian and Bessarabian researchers point of view, as well as the directions of disability study considered primordial and pregnant by them.

The idea that the state must attach particular importance to the promotion and protection of the rights of persons with disabilities is supported by Țiclea A. Thus, its labor law treaty is a reference point for the labor law of disabled persons. In addition to the state's obligations and the special measures it has to take for the socio-professional insertion of persons with disabilities identified by researchers in the field of labor and social protection, the author considers that the state should:

- "- promote an open and accessible work environment for people with disabilities, regardless of the medical condition they suffer;
- provide support for the organization of a product market for these people, in view of the insufficient labor use in relation to the hindering of interactions with the environment;
- provide material and psychological and professional counseling for people with disabilities as well as for their families;
- develop assisted employment policies to facilitate engagement with the employer;
- launch thematic awareness and information campaigns for employers on the skills and abilities of disabled people."<sup>2</sup>

As we can see, A. Țiclea places great emphasis on state intervention in the process of people with disabilities insertion. Surprising in its recommendations is the encouragement for the development of assisted employment. We believe that this employment procedure would be particularly useful for employees with disabilities who interact for the first time with professional tasks and responsibilities as well as for employers who have no knowledge of how to interact with people with disabilities.

Moreover, an idea of similar purpose is also found in Moldovan authorities that offer employers the opportunity to benefit from the services of an internal guide to facilitate their interaction with people with disabilities. In this way, assisted employment would certainly facilitate the socio-professional integration of people with disabilities from their first contact with the labor

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<sup>2</sup>Țiclea, Alexandru, *Tratat de dreptul muncii*, Universul Juridic Publishing House, Bucharest, 2015, p. 229.

market.

Law no. 448/2006 promulgated by the Romanian state for the protection and promotion of the persons with disabilities rights was a prerequisite for investigating the status of persons with disabilities on the labor market for both us and Ștefănescu T. The author makes a clear distinction between the provisions of Law no. 448 and C.J.U.E, highlighting the fact that in the sense of C.J.U.E the disability implies the impossibility of persons with disabilities to participate in long-term socio- professional life as a result of the medical disability. Therefore, the author does not deny the usefulness of C.J.U.E. provisions regarding the persons with disabilities status on the labor market, but considers the persons affected by the provisions of Law no. 448/2006.

In support of our statement, we consider the following to be relevant: "In terms of causes, the concept in Law no. 448/2006 is broader than the one that stopped C.J.U.E because it also refers to sensory deficiencies. In terms of the effects it produces over time, the same law does not require them to occur for a long period as specified by the C.J.E.U. In any event, the national court has a duty to determine whether the criteria/conditions are met above being obliged to comply with the the C.J.E.U notion in terms of the effects of the disability in time, but without removing from application the more favorable regulation of Law no. 448/2006 (causal, the fact that "sensory impairments" are also disabilities). In the judgments, it must be taken into account that "Member States must provide employers with the obligation to take effective and practical measures (room fitting, equipment adaptation, working pace or burden sharing) taking into account each individual situation."<sup>3</sup>

Therefore, according to the provisions of Law no. 448/2006 and those of labor law, persons with disabilities have the right to perform professional activities and to register income. We underline here that this disadvantaged social category can exercise its right to work according to the work capacity and professional training attested by the handicap certificate issued by the county evaluation commissions subordinated to the General Directions for Social Assistance and Child Protection located at the local level.

As outlined in the above, the present law is one of the most important legal bases in the field of social protection of persons with disabilities and regulates the people with stable handicap rights and obligations for the purpose of integration and social inclusion of the ancestor.

The above-mentioned law refers to the category of persons with disabilities as "those persons who, due to physical, mental or sensory disorders, lack the ability to carry out daily activities normally requiring protection measures in support for social recovery, integration and inclusion."<sup>4</sup>

In order to take the necessary measures to promote and respect the rights of people with handicaps, the Romanian legislator formulated in Law no. 448 of 6 December 2006 principles such as:

- "a) respect for human rights and fundamental freedoms;
- b) preventing and combating discrimination;
- c) equalizing opportunities;
- d) equal treatment in employment;
- e) social solidarity;
- f) community empowerment;
- g) subsidiarity;
- h) adapting society to the person with disabilities;
- i) the interest of the disabled person;
- j) the integrated approach;
- k) partnership;
- l) freedom of choice and control or decision on their own life, services and forms of support

<sup>3</sup> Ștefănescu, Traian, *Tratat teoretic și practic de drept al muncii*, 2<sup>nd</sup> ed., Universul Juridic Publishing House, Bucharest, 2012, p. 781.

<sup>4</sup> Government of Romania, Law no. 448 of 6 December 2006 on the protection and promotion of the rights of persons with disabilities in Romania, the Official Gazette, Part I, no. 1006 of December 18, 2006.

they enjoy;

- m) person-centered approach to service delivery;
- n) protection against neglect and abuse;
- o) choosing the least restrictive alternative in determining the necessary support and assistance;
- p) integration and social inclusion of people with disabilities, with equal rights and obligations as all other members of society.<sup>5</sup>

It is important to highlight in this context that both Law no. 448 of December 6, 2006, the Labor Code, republished and updated and implicitly Labor Law, envisage common provisions regarding the rights of persons with disabilities in the labor relations as follows:

"(1) Persons with disabilities have the right to create all the conditions to choose and exercise the profession, the job or the occupation, in order to acquire and maintain a job, as well as to promote professionally.

(2) In realizing the rights stipulated in paragraph (1), public authorities are required to take the following specific measures:

- a) to promote the concept that the disabled person is employed is an added value for society and, in particular, for the community belongs;
- b) Promote an inclusive, inclusive and accessible work environment for people with disabled;
- c) create the necessary conditions and services for the disabled person to be able to choose the form of conversion/ retraining and work in accordance with its functional potential;
- d) Establish and support complex services consisting of authorized protected units and sheltered housing;
- e) to initiate and develop forms of incentives for employers to employ and the retention of people with disabilities;
- f) to provide support for the organization of a product market the disabled person;
- g) to diversify and support various social services, namely counseling for disabled person and his/ her family, information for employers, assisted employment and others likewise;
- h) to promote the mediation services on the labor market of people with disabilities;
- i) to permanently create/ update the database, in order to highlight the offer of work of the disabled people;
- j) to develop collaborations with the mass- media in order to increase the awareness raising of the community regarding the potential, abilities and contribution people with disabilities in the labor market;
- k) to carry out, in collaboration or partnership with legal entities, public or private, programs and projects to increase employment;
- l) initiate and support awareness raising and awareness campaigns for employers on the skills of people with disabilities;
- m) to initiate specific programs that stimulate increased participation in the labor market labor force amongst groups at high risk of social exclusion."<sup>6</sup>

Moreover, the people with disabilities rights require support and confirmation from local authorities, with the legal and moral obligation to take action to help people with disabilities, such as adapting public buildings with access ramps and supports, to adapt the means of public transport to accessibility routes for disabled people, to personalize the pedestrian crossings according to the needs and accessibility of the affected persons, to create specific parking spaces and to adapt the communication ways so that they can also be used by people with disabilities.

As noted, the legislator imposed a series of measures and rights for the protection of disabled people. Hence, unlike the Labor Code where the rights and obligations of handicaps are presented in a generic way, Law no. 448/2006 is proving to be more complex with respect to the

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<sup>5</sup> *Idem.*

<sup>6</sup> *Idem.*

regulation of workplaces for people with handicaps.

Of course, the policies adopted by the central authorities of the two studied countries do not always prove to please the citizens, so their effectiveness sometimes becomes uncertain. Referring here to the Romanian society, but the perception of the Moldovan society is not much different, we can certainly appreciate the fact that the two perceive disability through traditional hostile stereotypes, making the integration and access of persons with disabilities in the socio-professionally as a result of the "sedentary" traditional and historical socialist residuals. Traditionalist thinking also resides in the contemporary period as a result of the increased incidence of disability compared to the situation in the past centuries when disability was not so common.

I think this traditionalist type of thinking is practically a "self-defense" mechanism developed by people, who subconsciously refuses to accept the evolution and the increased frequency of medical conditions that generate disability.

#### **4. Equal opportunities for employment and combating forms of discrimination in the people with disabilities work**

Taking into account the above-mentioned aspects, we conclude that any form of unjustified behavior that disfavours a person belonging to disadvantaged social backgrounds as the main subject of our work, namely, persons with disabilities is a contravention and is sanctioned as such, according to Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, as follows:

"Art. 5. It is a contravention under this Ordinance that the participation in a person's economic activity or the choice or exercise of a profession of his or her membership of a certain race, nationality, ethnicity, religion, social category or beliefs of sex or sexual orientation, age or belonging to a disadvantaged category.

Art. 6. Discrimination of a person on the grounds that it belongs to a particular race, nationality, ethnicity, religion, social category in a disadvantaged way, according to the present ordinance, is a contravention, in a relation of work and social protection, except in the cases provided by law, manifested in the following areas: the conclusion, suspension, modification or termination of the employment relationship; the establishment and modification of job, job or salary duties; training, retraining, reconversion and professional promotion; any other conditions of work, according to the legislation in force"<sup>7</sup>.

As a follow-up to the forms of discrimination suffered, the person who considers himself to be discriminated against has the possibility to make a written request, accompanied by evidence certifying discrimination at the request of the court, to the local court for the purpose of obtaining redress and to restore the situation and socio-professional status before being a victim of discrimination.

It is important to note in this situation that the application may be submitted to the court within 3 years from the date on which the discrimination was committed.

#### **5. Social policies promoted by the two reference countries as regards the socio-professional inclusion of people with disabilities**

Turning to the guarantee of the right to work for people with disabilities at national level, the Romanian state contributes significantly to the socio-professional inclusion of persons with disabilities, providing additional to the legal support and the financial support necessary for the provision of professional activities by this social philosophy. Regarding the contribution of the Republic of Moldova in the socio-professional integration of people with disabilities, in recent years we note the constant interest of the state to support the social inclusion of this social category by

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<sup>7</sup> Government of Romania, Ordinance no. 137 of 31 August 2000 on the prevention and punishment of all forms of discrimination, Official Gazette no. 99 of 8 February 2007.

starting studies and collaborations with the Romanian authorities.

The Romanian Constitution contains provisions on the special protection of persons with disabilities, while guaranteeing through Article 50 the fact that "the State ensures the implementation of a national policy of equal opportunities, prevention and treatment of disability, with a view to the effective participation of persons with disabilities. disability in community life."<sup>8</sup>

Moreover, the implication of the Romanian state as well as of the Republic of Moldova in the socio-professional insertion of the defaulted persons can be considered as a preventive form of social protection which is aimed at avoiding social engineering and the complete interruption of the social relations between the societies and the persons with disabilities.

Following the Romanian model, the authorities from Chisinau mobilized to support the affected persons by signing in 2015 a collaboration protocol with the National Authority for Disabled People, also called A.N.P.D. Romania with objectives set for the next four years. By signing this pact, the two countries are committed to exchanging information on how to implement legislation on people with disabilities, to support their implementation, and to work together to initiate single and joint projects for the two states.

In this respect, the working visits of the representatives of the two states can prove to be particularly effective in discovering and improving social issues regarding the social status of people with disabilities.

This pact has as its starting point the cooperation protocol between the Ministry of Labor, Family, Social Protection and the Elderly of Romania and the Ministry of Labor, Social Protection and Family of the Republic of Moldova signed on March 3, 2012. Therefore, we note that the foundations of collaboration between the two countries as well as their interest in the socio-professional inclusion of people with disabilities has a well-founded root since 2012.

For the protection and promotion of the rights of the deprived persons, the Romanian state was set up by the Government Ordinance no. 14/2003 the National Authority for People with Handicaps. Among the principal attributions of A.N.P.H., then A.N.P.D., there are the elbows and the application of the national strategies for the special protection of the people with handicap, as well as the creating of normative acts necessary for the strategy development and application.

The first protection strategy for people with disabilities was funded by A.N.P.H. in 2003 and included in its content a national action plan for the 2003-2006 timeframe. Through its action plan, with long- term objectives, it was proposed reforms of the protection system for people with disabilities, focusing on the evacuation and individualization of intervention, restructuring of residential institutions, alternative services creation, strengthening the partnership between public and private institutions and increasing the competences of local authorities. The main objective of national strategy was the creation of a system of continuous and integrated protection and support for people with disabilities, through the reform of the central institution's institutional reform and the institutional reform of the field in view of the growth of the quest for the life of the predecessor."<sup>9</sup>

The focus on the development of strategies for the people with handicaps protection has also been demonstrated in recent years under the national strategy "A barrier-free society for people with disabilities in the period 2015-2020". Thus, through the admission of its predecessors, the Romanian state is obliged to mobilize all the available resources, financial, social, legislative etc., in order to prevent the distraction, discrimination and violation of the persons with disabilities rights.

Previously, the National Council for Determining Disability was established in the Republic of Moldova and was subordinated to the Ministry of Labor, Social Protection and Family, with similar attributions in this field. The Chisinau authorities have laid the foundations for a national social inclusion program for people with disabilities, referring to the time frame 2017-2022, a timeframe in which it proposes to defend the rights of people with disabilities as well as their socio-professional integration.

<sup>8</sup> Romanian Parliament, Romanian Constitution updated 2017, Article 50, Official Gazette, Bucharest, 1991, p. 14.

<sup>9</sup> Government of Romania, *National Strategy "A barrier-free society for people with disabilities in the period 2015-2020"*, Official Gazette, Bucharest, p. 962.

For a broader understanding of the disability phenomenon, I think it is necessary to give the following definition to people with disabilities in the U.N Convention, namely "... those persons who have long-lasting physical, mental, intellectual or sensory impairments, in interaction with various barriers, can limit the full and effective participation of people in society, on an equal footing with others."<sup>10</sup>

Starting from this definition, I point out that one of the most important and comprehensive normative acts adopted at international level to protect the persons with disabilities rights and dignity is the "Convention on the Rights of Persons with Disabilities", which was signed in March in 2007, at United Nations Headquarters, and will enter into force as of 2008. The adoption of the Convention on the Rights of Persons with Disabilities has had a significant impact on changing the legal status of people with disabilities. More specifically, until the adoption of the convention, people with disabilities were perceived from the traditionalist and philanthropic view of aid as financially supported by social assistance due to medical conditions that made them incapable of standardized living. Through the provisions of the Convention on the Rights of Persons with Disabilities, society has begun to perceive disability from the human rights point of view, thus giving people with disabilities the necessary support to recognize and enforce universal human rights. Moreover, the Convention is the cornerstone of policies to combat discrimination against people with disabilities at international level.

The provisions of this Convention have been adopted by all U.E member states, including the Romanian state through Law no. 221/2010 and, last but not least, by the authorities of the Republic of Moldova by maintaining cooperation with the European states in order to protect the persons with disabilities rights as well as by Law no. 166/2010.

I believe it is necessary to reproduce here the main rights promoted by the Convention on the Rights of Persons with Disabilities to highlight the involvement of E.U. Member States in guaranteeing the rights of persons with disabilities:

- Equality without any form of discrimination before the law (Article 5);
- The right to life, liberty and personal security (Articles 10, 14);
- Recognition on equal terms to the law (Art. 12);
- The right not to be exploited and abused as a result of disability (Article 16);
- The Right to Mental and Physical Integrity (Article 17);
- The right to free expression and opinion (Art. 21);
- The right to education (Article 24);
- The right to security and health services (Article 25);
- The right to work (Article 27);

They are therefore the key reference rights for policies to combat discrimination and protect the rights of people with disabilities that the two countries concerned are considering. We therefore notice that the right to work for people with disabilities that is the subject of our study is one of the main rights guaranteed by the Convention on the Rights of Persons with Disabilities.

O.N.U. member states actively promote equal rights to persons with disabilities. In order to accomplish this goal, O.N.U. adopted at New York, Law no. 221 of 11 November 2010 for the ratification of the Convention on the Persons with Disabilities Rights, this Convention being signed and promulgated by the Romanian State on 26 September 2007.

Through the present law, the parties are bound to respect human dignity as well as equal rights with primordial charisma inalienable to human beings guided by the principles of human freedom and human justice, without any form of discrimination at international and national level.

In Art. 27 of the Law no. 221/2010 recognizes the equal opportunities for integrating on the labor market of people with disabilities in relation to the non- disabled population as well as the right to ensure a means of living by providing an unlimited activity on the labor market through an accessible and person-friendly working environment with deficiencies.

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<sup>10</sup> The United Nations, *the United Nations Charter. United Nations Convention on the Rights of Persons with Disabilities*, Official Gazette of Romania, f.e, f. 1, 2007, p. 6.

These measures are applied both to people with disabilities before engaging in professional activity and to persons who become disabled during exercise of work places in the form of work accidents.

To confirm my hypothesis, the content of Law no. 221 states that "The purpose of this Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and freedoms by all persons with disabilities and to promote respect for their intrinsic dignity. Persons with disabilities include people with long- lasting physical, mental, intellectual or sensory impairments, which, in interaction with various barriers, can limit the full and effective participation of people in society on an equal footing with others."<sup>11</sup>

## 6. Conclusions

The human rights interdiction, including the restriction of the right to work in relation to persons with disabilities, has bilateral effects. On the one hand, the two reference societies are experiencing an aging of the working-age population, so that the provision of professional activities appropriate to the type of disability held by disabled people would prove to be a very useful solution to remediate this problem. On the other hand, people with disabilities lose the main means of subsistence, making it difficult for them to receive income assimilated to the salary. Moreover, the work concept is directly related to human life, as we know well, and this is defined by the authors who studied the aspects of social life as "specific human activity through which people use physical and intellectual abilities in order to produce the goods required by the sacrifice of their needs."<sup>12</sup>

In the work titled "Theoretical and Practical Treaty of Labor Law", Traian Ștefănescu defines work as "a condition of life. A suspension, be it part of the work, paralyzes the social body and jeopardizes the lives of individuals, and its total cessation, even for a week, would be a huge catastrophe, similar to what the novelists invented to describe the end of the world. Inactivity is clearly synonymous with death."<sup>13</sup>

We therefore observe the direct correlation between work and the human species survival, and therefore the surprising importance of work in people's everyday life. Work is perceived as a condition of human life because all the goods people use is the direct result of their work. As noted, the work process definition does not entail any application restrictions, so that it can be defrauded by any person without discrimination: men, women, elderly persons, persons with disabilities, representatives of other religions or nationalities, under the conditions they certify that they are physically and/or mentally fit for their activities.

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<sup>11</sup> *Idem*, p. 2.

<sup>12</sup> Ștefănescu, Traian, *Dreptul muncii. Curs universitar*, Lumina Lex Publishing House, Bucharest, 2000, p. 15.

<sup>13</sup> Ștefănescu, Traian, *op. cit.*, 2012, p. 15.