
- the transposition into Romanian legislation of the provisions of Articles 1, 2 and 6 -
- the free movement of workers / rights -

DIRECTIVE 2014/54/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers

“[...]

Article 1
Subject matter
This Directive lays down provisions which facilitate the uniform application and enforcement in practice of the rights conferred by Article 45 TFEU and by Articles 1 to 10 of Regulation (EU) No 492/2011. This Directive applies to Union citizens exercising those rights and to members of their family ('Union workers and members of their family').

Article 2
Scope
1. This Directive applies to the following matters, as referred to in Articles 1 to 10 of Regulation (EU) No 492/2011, in the area of freedom of movement for workers:
   (a) access to employment;
   (b) conditions of employment and work, in particular as regards remuneration, dismissal, health and safety at work, and, if Union workers become unemployed, reinstatement or re-employment;
   (c) access to social and tax advantages;
   (d) membership of trade unions and eligibility for workers' representative bodies;
   (e) access to training;
   (f) access to housing;
   (g) access to education, apprenticeship and vocational training for the children of Union workers;
   (h) assistance afforded by the employment offices.

2. The scope of this Directive is identical to that of Regulation (EU) No 492/2011.
Article 6

Access to and dissemination of information

1. Member States shall ensure that the provisions adopted pursuant to this Directive and to Articles 1 to 10 of Regulation (EU) No 492/2011, are brought to the attention of the persons concerned throughout their territory, in particular Union workers and employers, by all appropriate means.

2. Member States shall provide, in more than one official language of the institutions of the Union, information on the rights conferred by Union law concerning the free movement of workers that is clear, free of charge, easily accessible, comprehensive and up-to-date. This information should also be easily accessible through Your Europe and EURES.

[...]”

The prohibition of discrimination on the grounds of nationality applied in practice

Under Romanian legislation, the citizens of the Member States of the European Union [and the European Economic Area] and their family members who exert the right of free movement and residence on Romanian territory shall benefit, from the right of having unlimited access to the Romanian labour market, and they are allowed to carry on other economic activities, according to the law applicable to the Romanian citizens.

The Constitution of Romania from 1991, amended and supplemented by Law no. 429/2003 on revising the Constitution of Romania, forbids any discrimination based on race, nationality, ethnic origin, language, religion, sex, opinion, political allegiance, wealth or social background.

The Romanian Constitution states the principle of equality among citizens, without any discrimination based on race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin. It also states that citizens are equal before the law and public authorities, without any privilege and discrimination, according to Art. 16, para. 1.

The Government Emergency Ordinance no. 102/2005 on the free movement of citizens of the Member States of the European Union, European Economic Area and Swiss Confederation on the Romanian territory, states on Article 3 (1) that "European Union citizens and their family members exercising their right of residence in Romania enjoy equal treatment with the Romanian citizens in the scope of the EU treaties, subject to the provisions of this Treaty and the measures taken in their application."

The equal rights for all employees, regardless of gender, age, nationality, race, colour, origin, political or religious orientation, union membership are guaranteed by the Law no.53/2003 - Labour Code, with subsequent modifications.
Thus, according to provisions under the Law no.53/2003 - Labour Code, as republished, with subsequent modifications, equal treatment principle operates for all employees and employers in Romania. Also, any direct or indirect discrimination to an employee, based on sex, sexual orientation, genetic characteristics, age, national origin, race, colour of the skin, ethnic origin, religion, political options, social origin, disability, family conditions or responsibilities, union membership or activity, shall be strictly prohibited.

As regards the persons having the citizenship of a European Union Member State, the Law no.53/2003 - Labour Code, with subsequent modifications, is applicable to their individual employment contracts if they are working on the Romanian territory and for a Romanian employer.

In Romania, direct discrimination shall be represented by actions and facts of exclusion, differentiation, restriction, or preference, based on one or several of the criteria stipulated on the above paragraph, the purpose or effect of which is the failure to grant, the restriction or rejection of the recognition, use, or exercise of the rights stipulated in the labour legislation.

Indirect discrimination shall be represented by actions and facts apparently based on other criteria than the mentioned ones, but which cause the effects of a direct discrimination to take place.

Further anti-discrimination regulations have been introduced by the Government Ordinance No.137/2000 on preventing and sanctioning all forms of discrimination, as republished, that prohibits all forms of discrimination and establishes the Romanian Council for Combating Discrimination, an authority subordinated to the Romanian Government which is responsible for applying Romanian and European Union anti-discrimination laws and managing the National Anti-Discrimination Plan.

The Criminal Law/Code contains specific provisions on this matter. The offence “incitement to discrimination” (any incitement to hatred on the grounds of race, nationality, ethnic origin, language, religion, gender, sexual orientation, opinion, political membership, beliefs, possession, social origin, age, disability, chronic-infectious or HIV infection) is punishable by a term of imprisonment or by fine.

The prohibition of discrimination on the grounds of nationality apply to all the issues covered by Regulation 492/2011 (access to employment, working conditions, social and tax advantages, access to training, membership of trade unions, housing, access to education for children).

According to legal regulations in Romania, European Union citizens and their family members have unrestricted access to the labour market in Romania, in accordance with the laws applicable to Romanian citizens, they are granted the same rights and same obligations as the incumbent Romanian citizens in work relations arising from the law, applicable collective agreement and individual employment contracts, benefit from social protection measures, under the same conditions as Romanian citizens and have unrestricted access to educational and training activities within the system national education.
According to **Art. 18** of the **Romanian Constitution** „foreign citizens and stateless persons that live in Romania shall enjoy general protection of person and assets, as guaranteed by the Constitution and other laws”. **Art. 41**, regarding the work and social protection of work, stipulates that the right to work cannot be restricted, due to the right to freely choose the profession or occupation, as well as the work place. Although, the employees have the right to social protection measures, regarding employees security and health, women and youth work regime, establishment of a minimum national gross wage, weekly rest, paid leave, working under special or particular conditions, professional training, as well as other specific situations provided by law. It contains, also, the gender equality within the work relations, „for equal work, men and women have similar wages”.

**As we already mentioned on one of the above paragraphs, Government Emergency Ordinance no. 102/2005 on the free movement of citizens of the Member States of the European Union and the European Economic Area on the Romanian territory, with subsequent modifications, foresees that EU citizens, as well as their families members, exercising their right of free movement and residence on the Romanian territory, have unrestricted access on the labour force market from Romania, under the condition of applying transitional measures foreseen within the RO-EU Accession Treaty, as well as for carrying out other economic activities according to the legislation applicable to Romanian citizens. At the same time, EU citizens, as well as their families members can establish their residence or, if case, the domicile anywhere on the Romanian territory.**

**The Law no. 53/2003 - Labour Code, as republished, with subsequent modifications., regulates the general work relations framework. Art. 39 foresees the main employees rights, such as the right to wage for the work done, the right to daily and weekly rest, right to yearly paid leave, right to equal treatment and opportunities, right to work dignity, right to security and health for work, right for access to professional training, right for information and advice, right to take part in determining and improving the work conditions and environment, right to protection in case of dismissal, right to collective and individual negotiation, right to participate at collective actions and to constitute or adhere to a trade union;**

**The Government Ordinance no. 44/2004 on the social integration of foreigners who were granted a form of protection or a right of residence in Romania, as well as citizens of the European Union and European Economic Area, with subsequent modifications, aims to facilitate the social integration, among other categories of persons, of the citizens of the Member States of the European Union and European Economic Area, through specific activities of the cultural accommodation and learning Romanian language.**

Integration programs for the citizens of the European Union and European Economic Area, as well as activities to facilitate their social integration are developed and implemented based on needs of the beneficiaries, without discrimination and with respect for their cultural specificity.

**The Government Emergency Ordinance no. 194/2002 on foreigners’ regime in Romania, republished, subsequently modified and completed. As regards the equal treatment with the Romanian citizens, the owners of a permanent stay right on the Romanian territory,**
according to Art. 74, benefit of “access on the labour market, inclusively employment and work conditions, to individual economic activities and professional activities, [...] under condition that the carried out activity would not represent, even occasionally, public authority prerogatives exercise” and of the “freedom to association, affiliation and membership to a trade union or professional organisation”;

According to Law no. 76/2002 on the unemployment insurance system and employment stimulation, with subsequent modifications, in Romania, each person has a guaranteed right to freely choose its profession and work place, as well as the right to unemployment insurance and there are excluded any kind of discrimination on political criteria, race, citizenship, ethnic origin, language, religion, social category, beliefs, gender and age, of these provisions benefiting foreign citizens and stateless persons employed or income generating in Romania, according to law;

According to the Law no. 263/2010 on unified public pension system, the right to social security is guaranteed by the state and is exercised, under the present law, through the public pension system and other social insurance rights. In the public system, according to law, natural persons being Romanian citizens, other states or stateless persons are ensured, during the period, they have the domicile or residence in Romania; they also have the obligation to contribute to the social insurance budget and the right to benefit of social insurance allowances.

According to Art. 211 from Law No. 95/2006 on health reform, as republished, Romanian citizens residing in the country, as well as foreign and stateless persons that applied for and obtained the extension of the right for temporary stay or domicile in Romania and prove the payment of their contributions to the fund, are ensured. Corresponding to Art. 214, “ensured persons from countries that Romania concluded international documents on health with, benefit of medical services and other benefits granted on the Romanian territory, under conditions foreseen in the respective international documents”.

- Thus, EU mobile workers and foreign workers legally residing in Romania have the right to access the health services under condition of being legally employed and to contribute to the health insurance fund, otherwise, if they resort to services provided by medical services providers will have to pay for the provided services. Main categories exempted from paying these contributions include students/pupils and children.

In Romania, in accordance with art. 2 of Government Ordinance no. 129/2000 on adult training, as republished, with subsequent modifications, adults have equal access to training, without discrimination based on age, sex, race, ethnic origin, political affiliation or religion.

The Law no. 279/2005 on apprenticeship in the workplace, as republished, with subsequent modifications, the Article 5, paragraphs (1) and (3) states that can be employed as apprentices [...] citizens of the EU Member States, the signatory states of the European Economic Area Agreement and their family members who have reached the age of 16 years but not more than 25 years, and have no qualification for apprenticeship occupation and the above mentioned apprenticeship is organized at work.
Under the provisions of the Government Decision no. 508/2001 on access to compulsory education in Romania for children of migrant workers from EU Member States, the beneficiary of provisions of this normative act is the child who meets the requirements to be under the age of 18 and is dependent of migrant workers, citizen of a European Union Member State which was granted the right to stay in Romania, is domiciled or resident in Romania and carried out an activity on the Romanian territory, under an individual employment contract or in another legal form governed by Romanian law.

Schooling during the general compulsory education of persons [fulfilling the conditions of art. 1 paragraph (2) and (3) of the Government Decision no. 508/2001] is free, in accordance with the provisions of the Law on Education no. 84/1995, republished, as subsequently amended and supplemented.

The Law no. 62/2011 - the Law on Social Dialogue, as republished, with subsequent modifications, is the most important regulation of the collective labour relations.

According to the Law no. 62/2011 - Law on Social Dialogue, as republished, with subsequent modifications, the persons employed with individual employment contract, the public servants and the public servants with special statute in the conditions of the law, the cooperative members and the agricultural workers employed are entitled, without any restraint or prior authorization, to establish and/or to adhere to a trade union. Those persons engaged in a trade or in an independent profession, cooperative members, farmers and people being engaged in a professional training program are entitled, without restriction or prior authorization, to join a trade union, without distinction of nationality/citizenship.

However, according to the same normative act cited in the paragraph above, no person may be compelled to participate or not to participate, to withdraw or not a trade union.

What kind of protection against discrimination on the grounds of nationality is offered to EU workers in Romania

As regards the personnel covered by the provisions of the Regulation 492/2011, the protection is guaranteed by the Romanian legislation through laws which prohibit manifestations of discriminatory employment practices and cover the conditions governing the principle of the equal treatment with national workers regarding working conditions, trade union membership and enjoyment of the benefits of collective bargaining, accommodation, social security, employment taxes.

Also, the Romanian legislation covers the areas protected by both Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and the Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation: employment and labour-related issues, including social benefits and social protection, access to goods and services, housing, education, access to health, freedom of movement, the protection of the right to dignity.

THUS:
The Law no.53/2003 - Labour Code, as republished, with subsequent modifications, is applicable to their individual employment contracts if they are working on the Romanian territory and for a Romanian employer.

The Law no.53/2003 Labour Code, as republished, with subsequent modifications, emphasizes the principle of equal payment for equal work, providing that persons employed in the same position, performing the same work should earn the same base salary.

According to the Art no. 5-6, Law no. 53/2003, as republished, with subsequent modifications, within the work relationships, the principle of the equal treatment for all employees and employers shall apply and any employee who performs work shall benefit from adequate work conditions for the activity carried out, social protection, labour safety and health, as well as the observance of his/her dignity and conscience, with no discrimination. Also, all employees providing labour are entitled to collective negotiations, protection or personal data, as well as protection against illegal dismissal.

The Government Ordinance no. 137/2000 on preventing and punishing all forms of discrimination, as republished, regulates the prevention and sanctioning of all forms of discrimination. The GO implements the Directive no. 2000/43/CE implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, as well as the Directive no. 2000/78/CE establishing a general framework for equal treatment in employment and occupation.

The Government Ordinance no. 137/2000, as republished, forbids discrimination and provides for equal rights in a wide range of areas such as employment, access to public services, health care, education, residence and the right to personal dignity.

Specific measures undertaken at national/regional/local level by public authorities, public and private employers, public and private employment agencies and trade unions in order to inform EU migrant workers about the rights derived from Regulation 492/2011.

- information available in languages other than Romanian

Ministry of Labour and Social Justice, through the institutions that are under its subordination or under its coordination, carried out information activities addressed to mobile workers, coming from European Union Member States, regarding the rights they are entitled as employees at a Romanian employer:

The National Agency for Employment, which is the Romanian public employment service and the national EURES have web pages dealing specifically with free movement of workers, about a wide variety of matters, such as living and working conditions in Romania.

On this issue, the information published on the EURES national website mentions that to the citizens coming from European Union and EEA Member States the same treatment as Romanian citizens in terms of national labour market access and working conditions is applied.
Also, the citizens from the EU/EEA Member States can contact the 43 EURES advisers within each county agency for employment. On the EURES national website can be found the list with all the vacancies received from EU employers and the contact details of the Romanian EURES Advisers.

The EURES network of the public employment services, also offers its services through the European Job Mobility Portal.

- the EU/EEA citizens can find information on this portal regarding vacancies and on living and working in Romania, as well as information about the Romanian labour market.

Web addresses of the institutions mentioned on the above paragraphs:

- National Agency for Employment: http://www.anofm.ro/
- Romanian EURES website: - http://eures.anofm.ro/  
- http://eures.anofm.ro/index_en.html

On the website of the General Inspectorate for Immigration, a specialized body of central public administration, with legal personality, subordinated to the Ministry of Internal Affairs, information addressed to all citizens of EU/EEA and their family members can be found, in respect of: entry in Romania, registration of the residence in Romania, permanent residence, limitations and restraints of the right of residence.

Romanian Office for Immigration website - http://igi.mai.gov.ro/

The remedies that exist in Romania in order to challenge a decision taken by public authorities or by employers regarding rights conferred by Regulation 492/2011 (e.g. a refusal to grant the worker a social advantage, a decision by an employer not to engage a worker on the grounds of nationality, etc)

In accordance with the provisions of the Romanian Constitution, every person is entitled to bring a case before a court to defend their rights, liberties and interests.

Under the Law No. 53/2003 - Labour Code, as republished, with subsequent modifications, any direct or indirect discrimination against an employee based on national affiliation, race, colour, ethnicity, shall be prohibited. Also, according the same normative act, is possible to seek legal redress in any litigation connected with the conclusion, execution or modification of individual employment contracts.

Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination, as republished, provides for all discrimination cases that the victim is entitled to seek damages in court proportionate to the harm suffered, as well as to the re-establishment of the situation prior to discrimination, or the termination of the situation created by the discrimination, in accordance with the law.

In accordance with Government Ordinance no. 137/2000 provisions, discrimination against a natural person, a group of persons owing to their affiliation to a certain race, nationality, ethnic origin, religion, social category or to a deprived category, of such persons through the refusal to grant the public administrative and judicial services
shall be a regarded as contravention, according to this ordinance, unless the fact falls under the criminal law.

The trade unions and/or other organisations with a legitimate interest take action on behalf of EU mobile workers in Romania, in particular in cases of discrimination on the basis of nationality

The EU mobile workers considering they are victims of discrimination acts in the employment relations can contact NGO’s acting in the field of human rights and seek representation or can start the case on their own.

Regarding the attributions of the trade union organizations, Law no. 62/2011, as republished, with subsequent modifications, Law of social dialogue, on art. 28 - 29, states that with a view to achieving the purpose for which they have been set up, the trade union organisations shall defend the rights of their members, deriving from the labour legislation, the statutes of the public servants, the collective labour contracts and the individual labour contracts, as well as from the agreements regarding the labour relations of the public servants, before the courts, the jurisdiction bodies, other state institutions and authorities, by their own defenders or the ones elected.

In exercising the attributions provided in the above paragraph, the trade union organisations shall have the right to undertake any action provided by law, inclusively to bring an action to the court on behalf of their members, with an express mandate from the persons concerned. The action may not be brought or continued by the trade union organisation if the person concerned opposes or renounces to the trial.

The trade union organisations may address to the competent public authorities, according the Constitution, proposals for the legislation in the fields of trade union interest.

As shown in the text of the law, cited above, there is no distinction between the workers, based on of their nationality, as trade union members.

Romania possesses a special body for hearing discrimination cases - The National Council For Combating Discrimination - which is the national competent authority in the field of discrimination. The National Council For Combating Discrimination guarantees the compliance with and the enforcement of the non-discrimination principle, in accordance with the national and international legislation.

The National Council for Combating Discrimination is an autonomous and independent body without restrictions or subject to the influence of other public institutions or authorities, whose purpose is to receive complaints and punish violations of anti-discrimination principles and provisions.

Contact points, coordinators, administrative bodies, independent bodies, etc. whose responsibilities are to help migrant workers realise their rights, to disseminate information about migrant workers' rights or to promote uniform application of the provisions of Regulation 492/2011
The Ministry of Labour and Social Justice, through the institutions that are under its subordination or under its coordination, carried out information activities addressed to mobile workers, coming from European Union Member States, regarding the rights they are entitled as employees at a Romanian employer:


The National Agency for Employment, which is the Romanian public employment service and the national EURES have web pages dealing specifically with free movement of workers, about a wide variety of matters, such as living and working conditions in Romania.

- National Agency for Employment website: http://www.anofm.ro/

http://www.eures.anofm.ro/legislatie.html

The Labour Inspectorate is a specialised body of the central public administration subordinated to the Ministry of Labour and Social Justice, which verifies, among others, the implementation of the labour law provisions, and can order that a violation should be remedied immediately or within a definite period of time. The refusal of the employer to take the compulsory measures imposed by the Labour Inspector constitutes a violation and is punishable by a fine, and employers or legal entities may be deleted from the National Trade Register if repeated serious violations of the provisions of the labour legislation are discovered.

- The Labour Inspectorate website: https://www.inspectiamuncii.ro/

National Council for Combating Discrimination - NCCD is the autonomous body under parliamentary control, which activates in the field of discrimination. Is the guarantor of the observance and application of the principle of non-discrimination, in accordance with international law in force and with international documents to which Romania is party.

The National Council for Combating Discrimination shall exercise its powers in the following areas:

- Preventing acts of discrimination by carrying out information campaigns, awareness on human rights, the effects of discrimination, the principle of equality, training, information, projects and programs at local, regional and national studies, reports, etc.;
- Mediation acts of discrimination against parties involved in the case of discrimination, in the presence of representatives of the National Council to Combat Discrimination. The National Council for Combating Discrimination aims to reduce and eliminate acts of discrimination and not to apply fines;
• Investigation, finding and sanctioning acts of discrimination. For more accurate analysis of cases and decisions in the case of petitions received, or self, the College Director has measures to investigate cases, after which it established the existence or not of the crime of discrimination and if necessary, sanctioning it;

• Monitoring of cases of discrimination after finding cases of discrimination by the National Council for Combating Discrimination, by the further supervision of the involved parties;

• Provide specialized assistance to victims of discrimination by explaining the law/legal frame to those interested by the legal advisers of the National Council for Combating Discrimination, supported by the guidance regarding the activity of filling a petition and additional information resulting from this procedure.

The National Council for Combating Discrimination website:
- http://www.cncd.org.ro/

Sanctions foreseen for employers that discriminate migrant workers on the grounds of nationality

The provisions of the Government Ordinance no. 137/2000 on the prevention and punishment of all forms of discrimination, as republished, Section I - Equality in the economic activity and in matters of employment and profession:

“ART. 5

When the participation in an economic activity of a person or to the election or free exercise of a profession becomes conditional on its affiliation to a certain race, nationality, ethnic origin, religion, social status, respectively on the beliefs, sex or sexual orientation, age or its affiliation to a deprived category shall be regarded as contravention, according to this emergency ordinance.

ART. 6

Discrimination of a person for the reason that it belongs to a certain race, nationality, ethnic origin, religion, social category or to a deprived category, respectively on the beliefs, sex or sexual orientation, age or its affiliation to a deprived category in a labour and social protection relation shall be a contravention, according to this emergency ordinance, except for the cases stipulated by the law, manifested in the following fields:

a) conclusion, suspension, amendment or termination of the employment relation;

b) establishing and changing the job duties, the job or the employee;

c) granting other social rights other than the salary;

d) professional training, improvement, reconversion and promotion;

e) applying disciplinary measures;
f) the right to adhere to a trade union or access to the facilities granted by it;
g) any other conditions to perform work, according to the legislation in force.

ART. 7

(1) The refusal of a natural or legal person to hire a person for the only reason that he belongs to a certain race, nationality, ethnic origin, religion, social categories or any deprived category or because of his beliefs, age, sex or sexual orientation, except for the cases provided by law, shall be regarded as contravention, according to this emergency ordinance.

(2) When the filling of a position as a result of notice or contest, set on by the employer or by its representative, is conditional on the affiliation to a certain race, nationality, ethnic origin, religion, social status or deprived category, age, sex or sexual orientation, respectively on the beliefs, it shall be regarded as contravention, according to this emergency ordinance, except for the case provided in Article 2 (4).

(3) The natural and legal persons with powers in the labour mediation and distribution shall apply an equal treatment to all those seeking for a job, shall ensure to all job-seekers free and equal access to consult the supply and demand on the labour market, to receive consulting services with regard to the possibilities of filling a job and of obtaining a qualification and they shall refuse to support the discriminating requests of the employees. The employers shall ensure confidentiality of data referring to race, nationality, ethnic origin, sex, sexual orientation or of other private data that concern the job-seekers.

ART. 8

Discrimination of employees by the employers, in relation to the social services granted, owing to the affiliation of the employees to a certain race, nationality, ethnic origin, religion, social status or deprived category, or based on age, sex or sexual orientation, respectively on the beliefs promoted by them, shall be regarded as contravention, according to this emergency ordinance.

ART. 9

The provisions of Article 5 - 8 may not be interpreted as being restrictive on the right of the employer to refuse the hiring of a person that is not suitable to the occupational requirements in such field, as long as the refusal is not an act of discrimination for the purpose of this ordinance, and such measures are objectively justified by a legitimate purpose and the methods of reaching this objective are adequate and necessary.”

In accordance with Art. 26 (1) of the Government Ordinance no. 137/2000, republished, the contraventions provided in Article 5 - 8, shall be punished with a fine ranging from RON 400 to RON 4 000, if the discrimination is aimed at a natural person, or
respectively with a fine from RON 600 to RON 8 000, if the discrimination is aimed at a group of persons or a community.

The Criminal Law/Code contains specific provisions on this matter. The offence “incitement to discrimination” (any incitement to hatred on the grounds of race, nationality, ethnic origin, language, religion, gender, sexual orientation, opinion, political membership, beliefs, possession, social origin, age, disability, chronic- infectious or HIV infection) is punishable by a term of imprisonment or by fine.