

The impact of the Racial Equality Directive:
a survey of trade unions and employers
in the Member States of the European Union

Romania

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1. Demographic background

According to the most recent *Statistical Yearbook 2007* of the Romanian National Statistical Office, on July 1st 2006, the population of the country is nearly 21.5 million. In the last decade a considerable number of Romanians migrated for work purposes mostly to Southern European countries that in some field led to shortage in labour. The larger ethnic or minority groups of the country include: Hungarians (6.6%) and Roma (2.5%) but also Ukrainians (0.3%), Germans (0.3%), Russians (0.2%), and Turks (0.2%). These communities, generally, represent national or ethnic groups that lived for generations in the country. The Hungarian minority is concentrated in the Transylvanian region of the country, and in some counties the Hungarian population constitutes the majority of the population. There is a well-articulated Hungarian language education institutional system, which enhances labour market access, and overall Hungarians are well integrated in the Romanian labour market. In contrast, the Romany population is geographically dispersed and living in rural areas and the outskirts of urban areas and, despite considerable efforts of integration, remains the main group exposed to discrimination in the labour market.

2. Industrial relations background

The Romanian Economic and Social Council (*CES*), the main tripartite public institution, was set up in accordance of the Law number 109 from year 1997 and its Rules of procedure. Its main aim is to contribute to the achievement of social dialogue between employers, trade unions and the Government. The Council has 45 members in equal proportions from nationally represented employer organisations, trade union confederations, national representatives and the Government.

In Romania there are four major trade union confederations, grouped along sectors and political lines, and all of them are engaged in the CES. According to the respondents each confederation has a large industry federation membership, e.g. The National Trade Union Confederation 'Cartel ALFA' has 38 professional federations affiliated. However, there is also some competition among different unions in different industries that highlights the politics of representation. Despite declining trade union membership, according to Fulton (2007) in 2006 labour union density was still 30% to 35%, which can be considered relatively high compared to other European countries¹.

As many as fourteen employer organizations had national representation. However, recently considerable efforts have been made to form new alliances, which led to setting up of the Alliance of Employer Confederations in Romania in 2006, and in 2007, the Union of Employer Confederations in Romania was created. The competition between these two structures led to the blocking of the Economic and Social Council's activities for nine months during the second part of 2006 and the first quarter of 2007.

One important development in the Romanian anti-discrimination legislation – according to the provisions of the Law no. 340 from year 2006 (*replacing Law no.*

¹ Fulton, L. (2007): Worker representation in Europe. *Labour Research Department and ETUI-REHS*, available at www.etui.org, accessed [April 12, 2009]

202 from 2002) – is that civil society organisations (*including trade unions*) have now been granted active legal status, implying that they can put forward and represent cases discrimination in the field of work.

3. Trade union and Employer awareness

With the exception of one trade union respondent all the other unions have participated in various consultations related to the transposition and implementation of the anti-discrimination legislation in Romania. Furthermore, different forms of engagement were identified by respondents. Thus, while some of the interviewees emphasised their participation in the drafting of the national anti-discrimination legislation, others highlighted the engagement in the tripartite discussions, especially around the negotiations of the collective labour contracts, and yet others emphasised their engagement in the implementation and, last but not least some highlighted their work towards the modification of the existing anti-discrimination legislation. However, one common theme was mentioned in all responses, that is anti-discrimination considerations were usually discussed only along with other aspects related to the collective labour contracts and equal opportunities

Consequently, respondents expressed relatively high levels of awareness of Romania's new anti-discrimination legislation that incorporates the principles of the Racial Equality Directive. Despite this, in all cases we learned that trade union efforts focus entirely on promoting gender equity in employment with some limited provisions on youth issues. They do not focus on any other principle of the Directive that is incorporated in the Romanian national legislation. Thus there were also instances of limited awareness, as illustrated by the response of one trade union interviewee who indicated that:

'In terms of how far the modifications of the provisions related to national equality directive I cannot judge the changes in the regulation of rights. ... I am not aware of the changes that the law introduced in what concerns the rights of disenfranchised groups. However, labour unions play a fundamental role in promoting equal rights and opportunities.'

The limited attention given to anti-discrimination topics is also highlighted by the statement made by another trade union respondent:

'Whenever the Labour Ministry or other Ministry works on the subject related to the racial directive we are invited to the discussions, and we participate, but we are not too involved on these subjects.'

This state of affairs is further re-iterated by the following statement:

'In all our projects we included a paragraph that refers to all forms of discrimination as listed in the racial equality directive, but in fact we do not make too many references to other forms of discrimination besides that of gender. I am also not aware of any special undertaking by minority and immigrant organisations.'

When discrimination against members of the Roma ethnic groups was discussed the trade union respondents took a different turn in most cases. One such account is:

'There exists a level of annoyance among Romani people about being considered gypsies or criminals, but, frankly, there are very many examples which make them to be considered like that. The fact that there are also some who are different - very well educated people, but until this to be a general feature of the group takes a long way to go and many steps to take.'

In some instance, we learned that the lack of detailed familiarity with the provisions of the anti-discrimination legislation is doubled by limited awareness of government actions to promote the exiting legislation:

'I know that there is some government strategy to promote anti-discrimination legislation. But, I do not know how it works. Except some rare television clips I am not aware of anything else.'

The employers interviewed were also aware about the adoption of the new anti-discrimination legislation in the country. However, their general attitude was that there are no problems related to ensuring labour market equity. For instance, one respondent pointed out that:

'We did not face any such [discrimination] situations, or at least no one ever reported any such instance. ... Women are always a bit disadvantaged. ... But, such situations are solved naturally, as someone who is efficient and competence will prevail. And the interests of the company are that competences and nothing else dictates. ... Employers are practical people and oriented towards the well being of their business, which implies not carrying about discriminating. Thinking about discriminating comes against their interest.'

One of employer respondents pointed out that it is natural for employers to have their own preferences when it comes to hiring people, and considered that:

'When we discuss the hiring of people in an already formed team the decision will be taken by the team leader. Implicitly we already have preferences; this is why I would not say discrimination, in particular regarding the age of the person. As the team leader would choose someone that would be closer in age to that of the colleagues from the team.'

Nevertheless, the same respondent and others pointed out that such informal 'preferences' are not explicitly expressed in the hiring announcements of companies, as they realize this is not possible given the provisions of the legislation. Instead, the practice adopted by companies is to define criteria, such as entry level job, which signal that a person younger in age is being preferred for the given position. The main changes flowing from the law consist therefore in companies emphasising certain competences and eliminating requests related to the age or marital status of candidate. However, the employer respondent believed that:

'By the end of the day, once we identify, for instance, three candidates that meet the requirements on competences, a company can make the selection

based on other criteria than those of competence (e.g. marital status, etc.) ... in practical terms any person can be eliminated based on any criteria.'

Although, the respondent indicated that in some situations employers use criteria other than competences when selecting among candidates for employment no instance of a formal complaint by candidates was reported. However, if such an allegation were to be formulated this would be put forward to the relevant anti-discrimination body. However, there had as yet been no such cases according to the interviewee.

4. Comments on the Equality Body

All respondents were aware about the existence of the National Council for Combating Discrimination. Despite this, the most often identified relevant institution with which work relations developed was the National Agency for the Equality of Opportunity between Women and Men. This confusion points to some lack of clarity between equal opportunity legislations and the provisions of the Racial Equality Directive.

5. Union and employer policies and practices

5.1. Union anti-discrimination policies & practice

The main focus of trade union policies is on promoting equal opportunity with main emphasis and consistent work on the equal opportunity between woman and man, as well as youth. Thus, while all the unions have a women and a youth charter there are no similar organisational structures to deal with racial, ethnic or cultural issues. This is illustrated by the opinion of some of the respondents according to which central to the implementation of the anti-discrimination legislation are the annual collective labour contracts, and that the existing social dialogue is mainly of informative nature about the activities of the government. For instance, one respondent pointed out that the congress adopted two resolutions for the promotion of women and youth rights. But, that there are not similar provisions yet on the other Racial Equality Directive principles.

One trade union respondent pointed out that:

'Our strategies (of the Confederation) include very few provisions related to anti-discrimination, we consider that all members are equal and if employees discriminate these situations are solved at the factory level. The level of awareness in the case of minorities is extremely limited, as they do not consider using these instruments in the situations in which they face discrimination.'

Other trade unions generally understand work in the anti-discrimination domain to essentially consist of publishing the collective labour contract that includes provisions of equal opportunity:

'We did not carry out activities that would have explicitly promoted the anti-discrimination legislation. We made this public through the publishing of the collective labour contract.'

Another interviewee declared:

'Most of our activities were carried out as part of EU projects funded in partnership with civil society organisations focusing primarily on equal opportunity of women and youth rights.'

Still another responded:

'I could not say that in our Confederation special emphasis was put on working in the field of racial and ethnic anti-discrimination legislation.'

With a few, notable exceptions, all the trade union respondents indicated the existence of some activities related to the promotion of anti-discrimination legislation. Respondents described their efforts to instrument and represent those discriminated against:

'We had a number of cases on the ground of the anti-discrimination legislation presented at the CNCD. For instance, in one case Romanian labourers were replaced by Turkish labourers who were paid with higher wages than those Romanian labourers that remained employed. Following our appeal, on the grounds of anti-discrimination legislation, at CNCD the Turkish labourers were fired and the Romanian ones were re-hired.'

Another union respondent reported:

'I cannot give an example of an employee complaining about ethnic or racial discrimination. In the case of religious discrimination we had a case of a teacher belonging to the X congregation was interrogated by the school inspectorate, which was considered to be a case of discrimination, and we won the case. We also had a case in which one person was relocated on the job position on grounds of sexual orientation. This case was also won the case at National Council for Combating Discrimination.'

A different form of action – but identified by all trade unions respondents – consisted in undertaking action seeking to raise trade union members' awareness on the provisions of the newly enacted anti-discrimination legislation. An illustration of these actions concerning gender discrimination was given by one respondent:

'We carried out activities to disseminate and popularise the content of the legislation among our members. For instance, we collaborated with CNCD, by inviting their representatives to all county level representatives of women's organisations from our Confederation. They presented case situations, which was extremely useful to learn to recognize situations of discriminations and how to undertake action when such situations emerged. Participants also received publications (books, brochures, and newsletters) and these were put in the libraries of our local clubs.'

Another example on the work within the union to promote the awareness and the implementation of the anti-discrimination legislation is illustrated by this respondent:

'An important service by our organisation is that at county level we have lawyers on the payroll working as legal council on anti-discrimination cases. So, trade unions and individual members can turn to them for professional council whenever consider to be suffered any form of discrimination. Depending on the case the lawyer either instruments the case for National Council for Combating Discrimination, or work towards settling the case at the work-unit level.'

Another account raised the issue of gender and trade union discrimination:

'At the level of company X there are several trade unions and one of our colleagues refused to sign the collective labour contract because despite clear provisions in the contract for the same position in the factory she received lower pay mostly because of her trade union work. We initiated the legal procedures and we are right now in the courts with the case. We also work in putting forward a plea to the National Council for Combating Discrimination.'

It was exceptional, however, that issues went that far. Most of the trade union interviewees pointed out the lack of such practice at the level of their trade union:

'We did not have any complaints, or any official case. In the cases when it seemed to someone to be discriminated against they discussed the issues with their supervisors or trade union leaders and the situations were dealt with without the engagement of lawyers, or lawsuits, the Ombudsman, or the National Anti-discrimination Committee.'

There was a divergence in opinions related to the relevance and usefulness of the anti-discrimination legislations. One respondent said that:

'Within the confederation we never heard of any situation that would fall under the incidence of the anti-discrimination legislation from our member unions. No one from among our trade unions came to draw our attention to any situation that could have been discriminatory in nature.'

Equally one respondent while acknowledging the importance of the adopted principles considered that: *'Although these changes [the Directive] which made it in the national legislation are important, their inclusion did not change anything in the common practice. ... I do not think that in Romania there are racial issues considered at hiring a person. But, I am not aware about these issues. Well, the Romani people have their problems. When it comes to women in commercial activities there are no such problems. There are some issues in small neighbourhood based boutique shops, where sometimes there are allegations of harassment by owners, but in the case of large companies managers are interested in profit, so they do not engage in such activities.'*

The views of this trade union respondent were straightforward:

'Honestly, our procedures and policies ...we did not even discuss this [the Directive] in our federation, because from the view of our activity all categories were treated identically, equally. There were no cases of discrimination at all in our field of activity. The problem of ethnic difference or discrimination just was never formulated.'

In conclusion, despite trade unions using different instruments to promote both within their organisation and at the level of the general public it seems that trade unions pay only limited attention to the anti-discrimination legislation, being more preoccupied with equal opportunity issues between women and men.

All the trade union respondents emphasised their organisations' good collaboration with civil society organisations in order to promote equal opportunity. However, one respondent admitted that:

'Despite good will on the side of trade union to participate in joint projects addressing ethnic and racial discrimination it is extremely difficult to initiate and run projects with concrete results.'

The trade union interviewees did consider that the legislation was of key importance in drawing up of the collective labour contract. However, one respondent pointed out that:

'Despite most of the companies adopting anti-discrimination policies, I would estimate that 30 or 40% did not comply with the provisions of the Romanian legislation. This is also supported by the fact that there are allegations of discriminatory practices.'

These were particularly evident in relation to gender, the respondent went on:

'At the level of factories women are employed in jobs which are less paid than those of men. In fact, women are paid 14% less in similar jobs if compared to men. However, we need to point out that this has gone down from 21% couple of years ago. When you are a women and over 45 years it is terribly difficult to find a new job.'

Trade union respondents considered that the relationship between the social partners in general has been one based on open collaboration. A considerable number of such instances were described with both the National Council for Combating Discrimination and the National Agency for the Equality of Opportunity between Women and Men. This joint work most often consisted in the initiation and carrying out common public awareness raising campaigns, the participation in events organised by the public institutions, etc. One account of this engagement was highly positive:

'We are always consulted though our representatives in the Romanian Economic and Social Council, and through the specialized social dialogue commissions that exist at the level of different ministries. Participation offers the opportunity to intervene, to be consulted and to formulate observations by the representatives of the organisations represented at the level of the

Confederation. This has ensured that there is always a possibility to sustain a dialogue among social partners.'

Another view, however, suggested that the trade union links did not lead to any special channels of information being opened. Another trade union interviewee reported:

'We are informed about the activities of the Government on anti-discrimination legislation like any other citizens through mass media, and we also receive information from ANES like any other citizens. Yet, we have participated to a series of information sessions and discussions held by public institutions.'

5.2 Employer anti-discrimination/diversity policies and practices

Two respondents indicated that policies related to anti-discrimination policies at company level did exist, giving the example of equal employment opportunities incorporating the provisions spelled out in the Romanian national legislation. Nonetheless the respondent from another company admitted not being sufficiently informed to comment on possible adjustment of the company's policy given modifications of the national anti-discrimination legislation.

One employer respondent said that their firm has a direct relationship with the national anti-discrimination body, but argued that responses to the change in the law mainly occurred in large firms:

'If a company had a human resource and a legal department at the moment when the legislation was adopted, they made the necessary modifications automatically. But, these were generally the large companies. Trade unions at the level of these companies, generally learned, from the employer about these legal changes.'

Another employer interviewee reported on training sessions have being organised following the adoption of the Romanian anti-discrimination legislation.

Another employer respondent pointed out that the employers' associations had not yet developed structures dealing with anti-discrimination issues:

'There are no such bodies. The problems faced by SMEs are more complex and difficult, which are related to other factors, such as extreme fiscal. The first priority is the survival of companies. The result is that our work is to defend the interests of such companies and to promote legal initiatives in this direction.'

Employers often don't effectively promote anti-discrimination because it is not a priority. The interviewee continued:

'Employers do not really have any idea about what happens in this area. The legislation is somewhat obscure, and to be in the attention of employer it would require an aggressive promotion to raise awareness. Employers have many other problems, for instance, excessive taxation. This makes it

extremely difficult to think of anything else than surviving the next day, especially in the case of small and medium enterprises.'

It is not that discrimination does not take place. Another employer respondent identified two instances of discrimination, one related to a physical disability and another one related to an employee's appearance. In both cases the employees were marginalized and ridiculed by the employer. However, instead of undertaking action against the employer on grounds of discrimination:

'They preferred to leave as work in such a company makes not sense. If someone is not satisfied with the colleagues and the supervisor it makes no sense to want to stay. No actions were taken as they considered not being necessary.'

Employer associations' relations with the national anti-discrimination institutions and organisations were considered weak. In the word of the respondent:

'They do not contact us, and we have other problems. Therefore, their lack of interest in communicating with us means information does not reach us and as we have are busy we have no time to get informed. In conclusion, the relations between our institutions are weak.'

Employer respondents, in contrast to trade union respondents, considered that the participation of employer associations in the national consultation processes and tripartite discussions was of limited scope. The reason as identified by one respondent was that:

'All governments in Romania since 1990 up until today preferred to engage with trade unions, which explain why many trade unionists became ministers and even prime ministers. ... In fact, in Romania employer organizations were not wanted. As a result, from the many such organisations in the early 1990s today we have approximately 11 or 12 such organisations in the country today.'

The employer association respondent confirmed, however, that their organisation participated in the tripartite negotiations on collective labour contracts, and through the Socio-Economic Council the association has permanent relations with trade unions. However, the respondent pointed out:

'Unfortunately, the Romanian Socio-Economic Council has a structure comparable to one of a condominium level association. Maybe I overstate a bit. It has no capacity to analyse complex situations and inform those engaged in social dialogue about state of affairs in the society. Therefore, the social dialogue structures could not fulfil their role because of these institutional weaknesses. ... This can be explained, again, by the lack of interest in working together with employer associations.'

The respondent continued:

'More specifically, in the case of collective labour contract negotiations we had significant problems as Government took the side of trade unions, and we

ended up with the saying: it is easier to divorce than separate from an employee.'

The interviewee believed:

Trade unions tend to aggressively engage in the affairs of employer matters. For instance, despite that fact that the employer associations never interfere with the legislation on trade unions, they seek to influence the re-thinking of the legislation on employer associations. This influence is tacitly supported by government.'

6. Views on how to tackle discrimination better

Trade union respondents formulated several suggestions on the effectiveness of the law and the awareness of its provisions, generally referring to the Government needing to better promote the legislation, for instance through showcasing example situations. To enhance the effectiveness of the law one respondent considered that more emphasis should be put on including anti-discrimination topics into the curricula of formal education.

Trade union respondents also pointed out that the anti-discrimination legislation has limited effectiveness because of the weak sanctions that it applies for those breaching it. In one case, a respondent indicated that:

'The legislation itself has not at all helped to fight discrimination as it does not impose any sanctions in comparison with the legislation on equal opportunities between women and men. In the case of anti-discrimination legislation there is no such explicit provision. It is already a good indicator if an employer is sanctioned if it discriminates, but that implies that the person who signals the discrimination needs to assume the risk of losing their job and has a chance only if able to access a good attorney of law, and to wait for many years for a ruling. Also it is extremely difficult as the person needs to assume public exposure.'

Another respondent explained that:

'Once the European Directive is implemented in the national legislation it is normal that they need to be respected. However, the improvement of legislation could be done by applying higher sanctions. Right now, anti-discriminatory action is punished by a fine, which is low RON 4,000 (approx. Eur 1,000). This would need to be raised to frighten employers so as not engage in discriminatory actions. I say this given that – unfortunately – in Romania you need sanctions, as people in this country do not work in any other way, just by sanctions. I would also raise the amount of the fine to at least RON 10,000 (approx. EUR 2,500).'

Trade union and employer respondents agreed on the need for more public awareness-raising campaigns of the existing legislation as a possibly effective instrument to improve the implementation of the anti-discrimination legislation with emphasis on case studies.

In addition to trade union responses the employers also highlighted the lack of empirical studies on topics related to discrimination, which right now is missing to a large extent. It was considered that there is limited systematic knowledge about the realities of society that should be enhanced by carrying out studies and analysis, especially about the rural areas.

One employer respondent indicated as a complementary measure to the current rules there was the need to introduce standardised tests to assess the competences of candidates. The same respondent also pointed out the need to introduce clear regulations on the ways in which job interviewing is carried out. An alternative measure suggested consisted in the adoption of a standardised ethnical code of conduct for all companies related to what is considered to be an unacceptable form of behaviour.