

ANTIDISCRIMINATION GUIDE

**National Institute for Research and
Development in Informatics - ICI Bucharest**





DISCRIMINATION - discrimination is understood as any distinction, exclusion, restriction, or preference based on criteria established by the legislation in force. The criteria established by Romanian law include race, nationality, ethnicity, language, religion, social category, beliefs, sex, sexual orientation, age, disability, chronic non-contagious disease, HIV infection, belonging to a disadvantaged group, as well as any other criterion that has the purpose or effect of restricting or eliminating the recognition, use, or exercise, under conditions of equality, of human rights and fundamental freedoms, or rights recognized by law, in the political, economic, social, and cultural fields or any other areas of public life.

EQUALITY OF OPPORTUNITY BETWEEN WOMEN AND MEN - the absence of barriers regarding economic, political, and social participation and equal treatment for women and men. Equality of opportunity is understood as "consideration of the different capacities, needs, and aspirations of men and women, and equal treatment of them" (Law no. 202/2002).

HARASSMENT - degrading, intimidating or humiliating behaviour that aims at or seriously impacts a person's ability to carry out their activities naturally or exercise their rights. Actions intended to attack a person's dignity based on their gender identity, racial or ethnic origin, religion or beliefs, disability, age, or sexual orientation, which create a hostile, intimidating, degrading, humiliating and offensive environment.

SEXISM - represents prejudice or discrimination based on a person's sex. It refers to "ideas and practices that treat both sexes either unfairly or differently."

MISOGYNY - fear, hatred or contempt toward women.



WHAT ARE THE FORMS OF DISCRIMINATION?

DIRECT DISCRIMINATION - occurs when a person is treated less favourably than another person who is or would be in a comparable situation, based on any discrimination criteria established by current legislation.

INDIRECT DISCRIMINATION - happens when a seemingly neutral provision, criterion, or practice disadvantages certain people based on criteria established by current legislation, except in cases where these provisions, criteria, or practices are objectively justified by a legitimate aim and the methods to achieve that aim are appropriate and necessary. Indirect discrimination also includes any active or passive behaviour that, through its effects, unjustifiably favours or disadvantages, subjects to unfair or degrading treatment of a person, group of people or community compared to others in similar situations.

MULTIPLE DISCRIMINATION - arises when a person or group of people is treated differently, cumulatively, in an equal situation, based on two or more discrimination criteria.

INCITEMENT TO DISCRIMINATE - the encouragement or command to discriminate against someone, typically from a person in a position of power (including opinion leaders), regardless of whether the discrimination actually occurred.

HARASSMENT - includes any behaviour that creates an intimidating, hostile, degrading, or offensive environment based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, affiliation with a disadvantaged group, age, disability, or refugee/asylum status or any other criteria.

VICTIMIZATION - refers to any adverse treatment in response to a complaint or legal action filed with competent institutions regarding violating the principle of equal treatment and non-discrimination.



LEGAL FRAMEWORK



NATIONAL LEGISLATION

- Equality among citizens is primarily guaranteed by Article 4, paragraph (2) of the Constitution of Romania: "Romania is the common and indivisible homeland of all its citizens, regardless of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth, or social origin," as well as by Article 16, paragraph (1) of the Romanian Constitution, which guarantees equality of citizens before the law and public authorities without privileges or discrimination (Article 29/Constitution, paragraphs 1-2).
- The legal framework addressing discrimination at the national level is supplemented by Government Ordinance No. 137/2000 on preventing and sanctioning all forms of discrimination, which ensures respect for human dignity, citizens' rights and freedoms, and the free development of human personality as supreme values. Government Ordinance no. 137/2000 penalizes any public behaviour characterized by nationalist-chauvinist propaganda, incitement to racial or national hatred, or any act aimed at or resulting in harm to dignity or the creation of an intimidating, hostile, degrading, humiliating, or offensive atmosphere directed against a person, group of persons or community, based on their belonging to a particular race, nationality, ethnicity, religion, social category, or disadvantaged group, or based on their beliefs, gender, or sexual orientation.
- Emergency Ordinance no. 45/2020 for amending Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination.
- Law no. 167/2020 for amending and supplementing Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination, as well as amending Article 6 of Law no. 202/2002 on equal opportunities and treatment between women and men.
- Other key legislative documents in the field of non-discrimination include Law no. 202/2002 on equal opportunities between women and men (republished); Government Emergency Ordinance no. 31/2002 prohibiting fascist, racist, or xenophobic organizations and symbols and the promotion of the cult of persons guilty of committing crimes against peace and humanity; and the New Criminal Code, adopted by Law no. 286 on July 17, 2009.

INTERNATIONAL LEGISLATION

- The Convention for the Protection of Human Rights and Fundamental Freedoms (1950);
- The Revised European Social Charter;
- The Charter of Fundamental Rights of the European Union;
- Directive 2000/43/EC implements the principle of equal treatment between persons irrespective of racial or ethnic origin;
- Directive 2000/78/EC establishes a general framework for equal treatment in employment and occupation;
- Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and work (recast);
- Directive 2010/41/EU of the European Parliament and the Council on the application of the principle of equal treatment between men and women engaged in self-employed activity, repealing Council Directive 86/613/EEC;
- The Treaty on the functioning of the European Union.



WHAT CAN YOU DO IF YOU HAVE BEEN DISCRIMINATED?

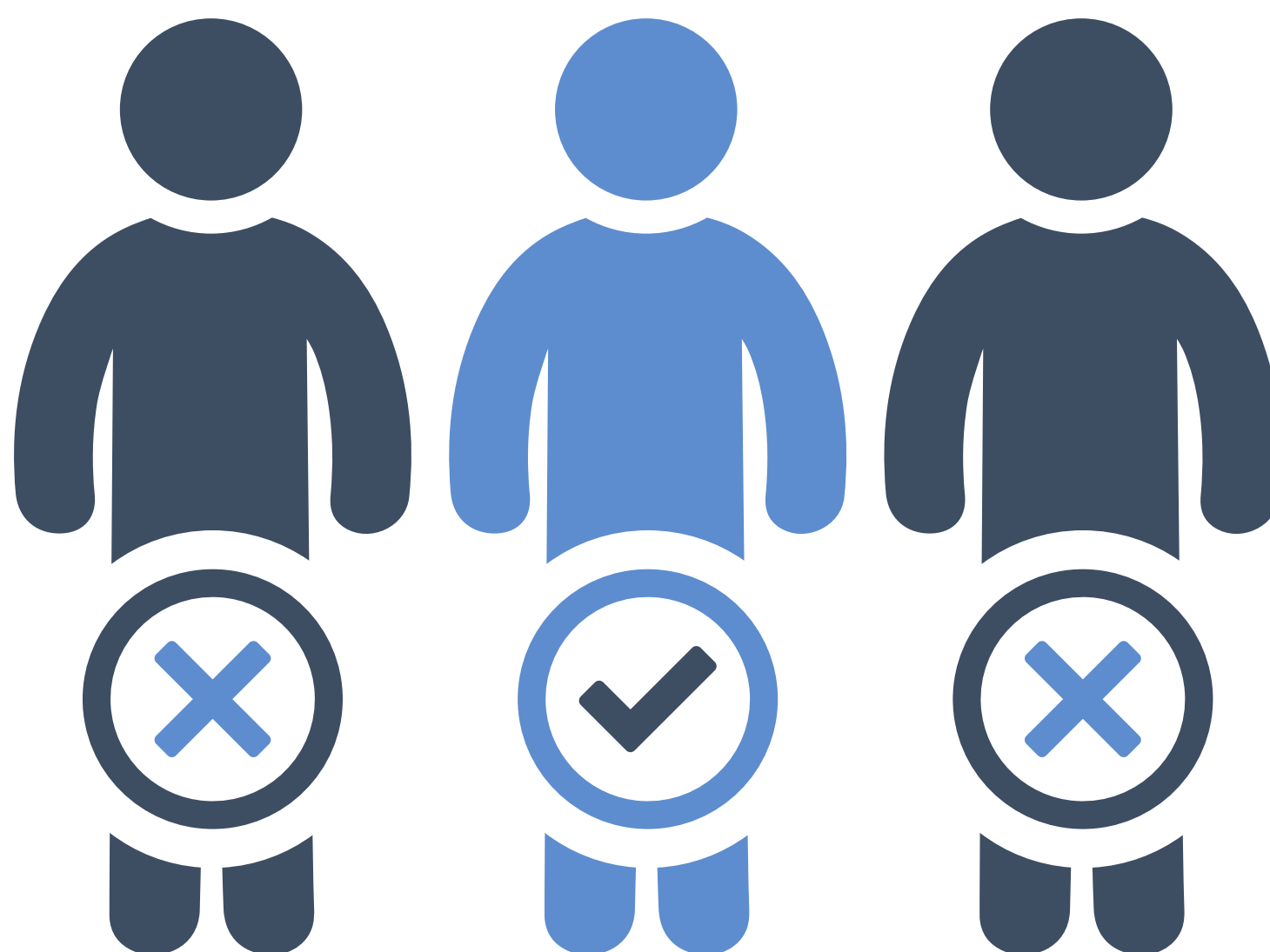
If discrimination has occurred, the person who has suffered may:

- Address the situation directly with the person who discriminated against them or their superior, including with the higher hierarchical institution;
- Attempt to mediate the situation through a professional mediator;
- If these solutions do not work, or if the situation is severe enough to warrant filing a formal complaint, the person who was discriminated against may:

FILE A INDIVIDUAL COMPLAINT WITH THE NATIONAL COUNCIL FOR COMBATING DISCRIMINATION (CNCD) - to establish whether discrimination has occurred. Once the CNCD finds evidence of discrimination, it forwards the case to the court for imposing an administrative fine.

FILE A CIVIL ACTION IN COURT - to establish that discrimination has occurred, request the annulment of the discriminatory administrative act, and restore the situation before the violation of rights and/or seek civil and compensatory damages (compensation for moral and/or material harm suffered due to discrimination).

FILE A COMPLAINT WITH THE POLICE OR PROSECUTOR'S OFFICE - if it is a criminal offence, to penalize the person who committed the act.



SPECIALIZED INSTITUTIONS IN THE FIGHT AGAINST DISCRIMINATION

NATIONAL COUNCIL FOR COMBATING DISCRIMINATION - C.N.C.D.

The Council is the state authority in the field of discrimination, autonomous, with legal personality, under parliamentary control, and a guarantor of the respect and application of the principle of non-discrimination by the current domestic legislation and the international documents to which Romania is a party.

The C.N.C.D. has the following responsibilities in the field of non-discrimination:

- Preventing acts of discrimination through awareness-raising activities about the principles of equality, non-discrimination, and respect for human dignity.
- Mediating the resolution of conflicts that may arise from acts or deeds of discrimination amicably in the presence of the parties involved.
- Sanctioning discriminatory behaviour results in analyzing, investigating, and resolving complaints.
- Promoting and supporting equal treatment for workers from the European Union exercising their rights in Romania.

WHAT CAN YOU REQUEST?

Specialized assistance for you, as a victim of discrimination, through the explanation of the legislation by C.N.C.D. legal advisors, guidance on filing a complaint, and providing additional information resulting from it.

Mediation of discriminatory acts to amicably resolve the discriminatory acts involving the parties concerned in the presence of representatives from the C.N.C.D.

A thorough analysis of cases and decision-making regarding the received complaints. The C.N.C.D. has measures to investigate cases, after which it determines the existence or non-existence of discriminatory acts and, if applicable, sanctions them.

Monitoring cases of discrimination following the initial finding of such cases by the C.N.C.D. through subsequent supervision of the situation and the parties involved.

You can notify the C.N.C.D. in writing via fax, email, postal mail, or orally - through an audience note.

The contact details of the C.N.C.D. are: 1-3 Valter Mărcineanu Square, 010155 Bucharest, Sector 1

Tel: 021 312 65 79, Fax: 021 312 65 78

Website: (online complaints can also be submitted) www.cncd.org.ro

Email: cncd@cncd.org.ro



NATIONAL AGENCY FOR EQUAL OPPORTUNITIES

ANES is the central authority, subordinate to the Ministry of Labor, Family, Social Protection, and Elderly Persons, with responsibilities and duties in the field of equal opportunities between women and men.

The National Agency for Equal Opportunities receives complaints regarding violations of the principle of equal opportunities and treatment between women and men and forwards them to the competent institutions for resolution and the application of sanctions (Law No. 202/2002).

The contact details of the National Agency for Equal Opportunities are:

5 Camil Petrescu Entrance, Sector 1, Bucharest, Romania

Tel: +4 021 313 0059, Fax: +4 021 367 2406

Website: www.anes.gov.ro

Email: secretariat@anes.gov.ro

LABOUR INSPECTION

The Labor Inspection is the specialized body of the central public administration, subordinate to the Ministry of Labor, Family, Social Protection, and Elderly Persons.

The Labor Inspection oversees the territorial labour inspectorates, units with legal personality, organized in each county and the municipality of Bucharest.

Law 202/2002 regarding equal opportunities and treatment between women and men stipulates that labour inspectors from the territorial labour inspectorates identify and sanction offences that violate the principle of equal opportunities and treatment in labour relations.

Who can notify the Labor Inspection?

A person who has suffered from discrimination at the workplace.

How can I notify the Labor Inspection?

The notification must be submitted in writing and can be filed at the registry of the Territorial Labor Inspectorate to which the employer belongs, online, or by mail with acknowledgement of receipt.

ANTI-DISCRIMINATION COALITION

The Anti-Discrimination Coalition is an informal non-governmental structure comprised of ten organizations active in the field of human rights in Romania. The Coalition has carried out numerous actions to prevent and combat discrimination and has contributed its expertise to improve the anti-discrimination legislative framework in Romania. Through the online platform www.antidiscriminare.ro, the coalition offers free legal advice and provides useful information for preventing and combating of discrimination.



COURT OF LAW

If you believe you have been discriminated against by the actions of an individual (or a group of individuals), you can address the court in the jurisdiction where the defendant resides or has their headquarters (the defendant): either a court of first instance or a tribunal (depending on the amount of damages claimed).

The complaint must take the form of a legal action and should be filed at the court's headquarters or sent by registered mail.

The action for damages can be initiated within 3 years from the occurrence of the damage or from the moment the victim became aware of the damage.

The administrative litigation procedure requires going through a mandatory preliminary stage, which allows the issuing public authority the opportunity to remedy the harm caused by revoking the administrative act.

This preliminary procedure must be initiated within 30 days from the communication of the administrative act or from its non-communication within the legal timeframe.

The term within which one can request the annulment of an individual administrative act or the recognition of the claimed right and compensation for damages (after completing the preliminary procedure) is 6 months from the date of receiving the response.

IF YOU ARE A VICTIM OF DISCRIMINATION RESULTING FROM AN ADMINISTRATIVE ACT, you can address the court, requesting its annulment (based on Law No. 554/2004 on administrative litigation) and compensation for the damages caused to you.

