

# ROMANIA

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## 1. National court system

Courts in Romania are hierarchically structured as established by Article 126 of the Romanian Constitution and Law 304/2004 regarding the judicial organization<sup>1</sup> in: courts of law/first instance courts, tribunals, specialized tribunals, military courts, Courts of appeal the High Court of Cassation and Justice (HCCJ).

The High Court of Cassation and Justice is the supreme court, and has four sections (civil and intellectual property, criminal, commercial and fiscal and administrative claims), a panel of nine judges and the joint sections.

The courts of appeal have under their supervision tribunals and specialized tribunals. At present, there are 15 courts of appeal. Within the appeal courts there are sections or specialized panels for

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<sup>1</sup> Romania/ Legea nr. 304/2004 privind organizarea judiciară, [Law on the judicial organization] (28.06.2004).

civil cases, criminal, commercial, minors and family cases, fiscal and administrative claims, labour conflicts and social insurances, etc. The decisions ruled by the courts of appeal may only be challenged before the HCCJ.

The tribunals are organized at every county level and in Bucharest. Apart from their own court competencies established under the law with respect to certain categories of litigation of medium importance, tribunals, in their capacity as courts immediately superior to local courts of law, exercise the legal control over the decisions ruled by the latter. In the jurisdiction of every tribunal there are first instance courts and within tribunals, there are sections or panels for civil cases, criminal, commercial, minors and family cases, fiscal and administrative claims, labour conflicts and social insurances or for other matters. First instance courts are organized at county level and in the six districts of Bucharest.

The Romanian legal system is based on the principles of Roman-German system of law and legal precedents are not a formal legal source. The Romanian judges settle cases according to their own conviction and their own conscience. Romanian justice is organized on the basis of the principle of double jurisdiction. Therefore, as a rule, any case with respect to which a court resolution was ruled by the first-degree court, may be subject to a retrial by the appeal court in all of its aspects, both in merits and in procedural aspects. As a guarantee for the quality of the act of justice, this system is intended to secure the possibility of the court hierarchically superior to remedy the potential errors made by the judges of the first-degree court.

Access to a dispute resolution body in the area of anti-discrimination includes the possibility to initiate proceedings before: a) the national equality body, the National Council on Combating Discrimination NCCD, which is a specialized quasi-judicial body, with decisions being appealed under the administrative litigation rules by the courts; b) the courts of law in civil cases based on the Anti-discrimination Law and general Torts provisions. According to Art.27(3) the courts of law can also decide that the public authorities will withdraw or suspend the authorisation of legal persons who caused significant damage as a result of discriminatory action or who repeatedly infringed the provisions of the anti-discrimination legislation. The two venues are not mutually exclusive and the plaintiff can choose to use them simultaneously or only one of them

According to Art. 20(9) of the Anti-discrimination Law allows for the right to appeal according to Administrative Litigation Law provisions. The appellate court can maintain the NCCD decision or maintain it in part or it can quash the decision. After the Courts of Appeal there is one appeals

level more, before the High Court of Cassation and Justice in order to exhaust all domestic remedies. In civil cases the Code of Civil Procedure allows for the right to appeal with the appeal courts examining questions of law and procedural aspects and not questions on facts.

The Romania Constitutional Court (RCC) is the guardian of the Constitution. Amongst others, the Constitutional Court has the power to receive an objection as to the unconstitutionality of laws and ordinances, brought up before courts of law or commercial arbitration, including on grounds related to the respect of human rights and fundamental freedoms. The provisions of the laws and ordinances in force, as well as those of the regulations, which are found to be unconstitutional, cease their legal effects, unless brought into line with the provisions of the Constitution.

## 2. Restrictions regarding access to justice

Effective access to civil courts and to the national equality body which is a special quasi-judicial body is provided for in Art. 20 and Art. 27 of the Anti-discrimination Law and was confirmed by the Constitutional Court in a series of cases. However, the Constitutional Court invoked the constitutional principle of separation of powers and limited the right to effective access to the courts in cases of discrimination triggered by legislative provisions.<sup>2</sup>

The prohibition imposed by the Emergency Ordinance 75/2008.<sup>3</sup> to the mandate of the national equality body, the National Council on Combating Discrimination (NCCD), to solve complaints regarding discrimination in the area of salary related rights and benefits of civil servants arbitrarily erodes the mandate of the national equality body and denies effective access to justice in such cases. Also, the limitation of the Anti-discrimination Law by the Romanian Constitutional

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<sup>2</sup> Romania/Curtea Constituțională/Decizia 818, 819, 820 (3.07.2008) and Romania/Curtea Constituțională/Decizia 997 from 7.10.2008. Available at <http://www.ccr.ro/cauta/DocumentAll.aspx?SearchDoc=true> (20.02.2009)

<sup>3</sup> Romania/Ordonanța de Urgență 75 (11.06.2008), Emergency Ordinance 75 from 11.07.2008 regarding measures taken to solve financial issues in the area of justice-related work published in the Official Gazette 462 from 20.07.2008. The Emergency Ordinance provides that the Anti-discrimination law will be amended with the following provision: Article 19.3: Petitions regarding legislative measures issued in the context of establishing salary-related policies for the personnel working in the public sector do not fall under the mandate of the National Council on Combating Discrimination.

Court in a series of decisions issued in 2008 which limited both the mandate of the NCCD<sup>4</sup> and of the civil courts in relation to discrimination generated by legislative provisions,<sup>5</sup> created a gap in the effective protection against discrimination. As the Constitutional Court is the only entity able to assess and decide when a legal provision (law or ordinance) conflicts with the equality principle spelled out by the Constitution, the mandate of the NCCD should be adequately amended to include the possibility of automatically seizing the Constitutional Court in cases of discrimination triggered by laws or ordinances, in accordance with Article 146 letter d) of the Constitution which is currently providing for this capacity only in relation to the Ombudsman.

The Anti-discrimination Law, Art.20(1) requires that petitions relating to discrimination be filed with the NCCD within one year from the date when the deed occurred or from the date when it was possible to find out about the deed. Art. 27(2) provides that the civil complaint for damages, re-establishing status quo antes and nullifying the situation established as a result of the discrimination, must be filed in maximum three years from the date when the deed occurred or from the date when it was possible to find out about the deed. The NCCD rules on the existence of a discriminatory act and issue an administrative sanction while compensation claims for discrimination can be decided only in the civil court.

Existing limitations regarding the right to access to the courts or to NCCD are reasonable, though the afore-mentioned decisions of the Constitutional Court in relation to cases of discrimination generated by legislative norms amount to a bar to suit in such cases. As challenges regarding the unconstitutionality of legal provisions are strictly defined by the Constitution in Article 146, victims of discrimination triggered by legislative provisions are denied an effective remedy.

### 3. Length of judicial proceedings

In spite of legal provisions stating that a decision of the National Council on Combating Discrimination (NCCD) must be issued in maximum 90 days from the date of the complaint according to Art. 20(7), the analysis of the duration of the proceedings showed that the deadline is

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4 Romania/Curtea Constituțională/Decizia 997/2008 (7.10.2008) finding that Article 20 (3) of the Anti-discrimination Law, defining the mandate of the NCCD in relation to discrimination triggered by legislative provisions is unconstitutional.

5 Romania/Curtea Constituțională/Deciziile 818, 819 and 820 (3.07.2008) with the CCR concluding that the dispositions of Article 1(2) letter e) and of Article 27 of the Governmental Ordinance 137/2000 are unconstitutional, to the extent that they are understood as implying that the courts of law have the authority to nullify or to refuse the application of legal norms when considering that such norms are discriminatory.

not unitary observed.<sup>6</sup> Thus, depending on the member of the Steering Board responsible with the case, a solution might be issued in the legal period of 90 days or in more than a year, with few cases pending before the NCCD for more than two years. There is no internal mechanism to sanction non-observance of the legal term.

Appeals against a decision of the NCCD must be filed in 15 days from the communication. The duration of the appeals procedure depending on the complexity of the case has an average of a year.

In the civil cases examined,<sup>7</sup> the judicial proceedings took between a year and a half and two years, depending on the complexity of the cases, the evidence administered and the use of appeal. As a rule, for most civil cases, the bulk of the length of proceedings lays at the first instance. In one of the cases analysed, with the complaint filed in November 2006, a first instance decision is still not issued and the court is still administering evidence.

The appeal stages in the cases examined lasted between one year and one year and a half, also depending on the overlap with the judicial holiday.

Systemic information as to the time taken to execute the decision is, however, not generally available.

## 4. Are procedures concluded within a reasonable time?

No statistics are available regarding the length of judicial proceedings in general, though the Romanian justice system is widely accused for unreasonable delays in timely resolution of disputes.<sup>8</sup>

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<sup>6</sup> The data is however limited as only 7 out of the 9 members of the Steering Board provided a response on the status of their proceedings based on a FOIA request.

<sup>7</sup> Public access to court cases is limited as the decisions of the Romanian courts are not yet fully available online. Given the lack of a spread number of cases in the *acquis* areas specified available, the current analysis is done based on the assessment of data from cases communicated to the FRALEX researcher by NGOs or lawyers engaged in litigation in the area of non-discrimination.

<sup>8</sup> European Court of Human Rights, *Bursuc v. Romania*, (12.10.2004), *Nichifor v. România*, admissibility decision (27.01.2005); *Moldovan and others v. România* (12.07.2005), *Anghel v. România* (7.10.2007).

In the case of the National Council on Combating Discrimination (NCCD), with several notable exceptions determined by the person responsible with the particular complaints, procedures are generally concluded within reasonable time.

Excessive delays are a systematic concern in relation to courts in general, even for routine activities. Even more so in the case of implementation of non-discrimination legislation which is a new area for the judges, involving exemptions from the rules of civil procedure. Based on the cases examined it does not seem possible to suggest a concrete number of years as average for non-discrimination cases. However, there are several common traits: unjustifiable delays both in first court decisions and in enforcement of final decisions, abuse of appeals and a reasonable back-log.

## 5. Does provision exist for speedy resolution of particular cases?

Provisions for speedy resolution of cases are not available for cases in the area of anti-discrimination.

## 6. Is it possible to waive the right of access to a judicial body?

The Anti-discrimination Law (Art. 20 and Art. 27) leaves it up to the plaintiff to choose between the two remedies available: the judicial body and the National Council on Combating Discrimination (NCCD) which is a quasi-judicial body.

The Law does not provide for the possibility of waiving the right to access to a judicial body.

## 7. Access to non-judicial procedures

The Governmental Ordinance 137/2000 (hereafter referred to as 2000 Anti-discrimination Law), subsequently amended in 2002, 2003, 2004 and 2006,<sup>9</sup> established the national equality body, the

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<sup>9</sup> Romania/Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (20.07.2006) republished in February 2007.

National Council on Combating Discrimination (NCCD).<sup>10</sup> The NCCD 's nature as special administrative jurisdiction had been confirmed by the Romania Constitutional Court (RCC) in a series of cases challenging the constitutionality of the institution.<sup>11</sup>

The NCCD was established to deal with all forms of discrimination, including racial and ethnic discrimination. The NCCD has as a mandate in preventing discrimination through awareness raising and information and education campaigns, mediating between the parties, providing legal assistance to victims of discrimination, investigating, finding and sanctioning discrimination, including initiating *ex officio* cases, monitoring discrimination cases, as well as proposing legislative bills and public policies to ensure harmonisation of legal provisions with the equality principle.<sup>12</sup>

According to the internal mechanism for dealing with petitions adopted by the NCCD in April 2008, any individual or any legal entity with an interest can file a complaint with the NCCD within one year of the event.<sup>13</sup> The NCCD can also start the case *ex officio*.<sup>14</sup> The NCCD has 90 days to investigate the case of alleged discrimination, organise hearings requesting the presence of all parties involved and decide whether antidiscrimination provisions were breached or not.<sup>15</sup>

In 2005, the NCCD started *ex officio* investigations in two cases regarding race, 26 on ethnic origin and in eight cases involving nationality. In 2006, the NCCD received 432 petitions and started *ex officio* investigations in 24 cases (out of which 10 regarded ethnic origin and 3 nationality). In 2007, out of the 558 petitions assessed by the NCCD, the investigations started ex

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<sup>10</sup> Romania/ Consiliul Național pentru Combaterea Discriminării [National Council for Combating Discrimination (NCCD)]. The official website of the institution is available at: [www.cncd.org.ro](http://www.cncd.org.ro) (06.08.2009). The NCCD was established by Romania/ Hotărâre de Guvern 194/2001 privind organizarea și funcționarea Consiliului Național pentru Combaterea Discriminării (27.11.2001)[Government decision 1194 on the structuring and functioning of the NCCD].

<sup>11</sup> Romania/Curtea Constituțională/Decizia 1096 (15.10.2008) questioning the constitutionality of Articles 16-25 of the Anti-discrimination Law, defining the mandate of the NCCD. The plaintiff alleged that the NCCD was an extraordinary jurisdiction established by ordinary legislation, thus infringing the constitutional prohibition of establishing extraordinary instances. The Romanian Constitutional Court found that the NCCD is an administrative body with jurisdictional mandate, which presents the elements of independence required for administrative-judicial activities and which observes the constitutional provisions of Article 124 and Article 126 (5) on the prohibition of establishing extraordinary tribunals. Available at <http://www.ccr.ro/cauta/DocumentAll.aspx?SearchDoc=true> (20.02.2009).

<sup>12</sup> Article 10, Romania/ Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (20.07.2006):

<sup>13</sup> Romania/ORDIN nr. 144 din 11.04.2008 privind aprobarea Procedurii interne de soluționare a petițiilor și sesizărilor, Consiliul Național Pentru Combaterea Discriminării, Monitorul Oficial nr. 348 din 6.05.2008.

<sup>14</sup> Article 19(2), Romania/ Ordonanța Guvernului Nr. 137/2000 privind prevenirea și combaterea tuturor formelor de discriminare, republished in February 2007 [Government Ordinance No. 137/200 regarding the prevention and combating of all forms of discrimination]

<sup>15</sup> Art 20 (4) Romania/ Ordonanța Guvernului Nr. 137/2000 privind prevenirea și combaterea tuturor formelor de discriminare, republished in February 2007 [Government Ordinance No. 137/200 regarding the prevention and combating of all forms of discrimination].

officio in 19 cases<sup>16</sup> (out of which nine referred to ethnic origin and three referred to nationality).<sup>17</sup>

The NCCD can try to solve the conflict by using mediation as provided by Article 2 (10) and Article 19 (1) b of the Antidiscrimination Law under the specific provisions of the Law 192 from 2006 regarding mediation and the establishment of mediator as recognised profession.<sup>18</sup>

The cases brought before the NCCD can be solved as a result of a friendly settlement as provided by Article 80 of the NCCD Order 144 from 2008 regarding the internal procedure in solving petitions which provides that ‘during the period when the petition is solved, the parties can come, even without being *sub poena*, to request to the NCCD to issue a decision certifying their friendly settlement. (2) The parties can also ask the NCCD to take note of their agreement by sending a written statement to the NCCD without having to present themselves to the hearings. (3) The friendly settlement will be communicated in writing and it will be included in the decision of the Steering Board of the NCCD.’

The NCCD rules on the existence of a discriminatory act and issue an administrative sanction while compensation claims for discrimination can be decided only in the civil court. The NCCD rulings and sanctions can be appealed before the administrative courts in 15 days after their communication, by any of the parties. In 2006, for example, the decisions of the NCCD had been appealed before the courts of law in 46 cases out of the 376 decisions issued by the NCCD (approximately eight per cent) and the courts maintained the decisions of NCCD in 34 cases and quashed the decisions of the NCCD in six cases.<sup>19</sup>

The 2006 amendments of the antidiscrimination legislation emphasised the optional character of the administrative procedure for sanctioning discrimination before the NCCD.<sup>20</sup> The victim of discrimination can choose between filing a complaint before the NCCD, which will result in an administrative sanction, and/or filing a civil complaint for damages with the court of law, with the advantage of being exempt from paying judicial taxes. A decision of the NCCD is not required

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<sup>16</sup> Romania/Consiliul Național pentru Combaterea Discriminării [National Council for Combating Discrimination (NCCD)] Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2007.

<sup>17</sup> Response of the NCCD from 04.03.2009 on file with FRALEX.

<sup>18</sup> Romania/Lege 192/2006 privind medierea și organizarea profesiei de mediator, Law 192 regarding the mediation (16.05.2006).

<sup>19</sup> Consiliul Național pentru Combaterea Discriminării (CNCD) [the National Council on Combating Discrimination (NCCD)], Raport de activitate, 2006, [Report 2006].

<sup>20</sup> See Article 21 of Romania/ Ordonanța Guvernului Nr. 137/2000 privind prevenirea și combaterea tuturor formelor de discriminare, republished in February 2007 [Government Ordinance No. 137/2000 regarding the prevention and combating of all forms of discrimination]



for the civil complaint but it might help in making a claim for damages under general torts provisions. The procedure before the NCCD provides for all procedural guarantees.<sup>21</sup>

The two venues are not mutually exclusive and the plaintiff can choose to use them simultaneously or only one of them. This possibility of forum shopping in practice creates problems for all the parties involved and generates a huge logistical burden for the NCCD and for the courts which have to *sub poena* the NCCD in the cases.

Courts decide independently, but, if the NCCD has issued a decision prior to the civil case, the NCCD decision has the benefit of a strong presumption of legality and it can be used before the civil court in proving discrimination, liability and the existence of damages. This presumption in favour of the NCCD decision is not, however, absolute and the party unhappy with the decision can challenge its legality and submit evidence which would lead the civil court to pass over the NCCD decision.

The amount of the fines issued by the NCCD varies: when the victim is only one individual, the amount of the fine varies from 400 RON to 4,000 RON (EUR 114-1,114); if the victims are a group or a community, the fine ranges between 600 and 8,000 RON (EUR 170-2,285). A downside in NCCD practice is that when the perpetrators are central or local governmental agencies or public actors, the NCCD has informally developed a practice of sanctioning them with administrative warnings or of issuing recommendations carrying no financial damages. The decisions of the NCCD are the main sanctions in cases of discrimination due to the increased visibility of the institution and the reluctance of the victims of discrimination to go in court.

The courts of law can also decide that the public authorities will withdraw or suspend the authorisation of legal persons who caused significant damage as a result of discriminatory action or who repeatedly infringed the provisions of the anti-discrimination legislation. Civil complaints on grounds of the Anti-discrimination Law are exempted from judicial taxes according to Article 27 of the Law. The two venues are not mutually exclusive and the plaintiff can choose to use them simultaneously or only one of them. This possibility of forum shopping in practice creates difficulties for all the parties involved and generates a huge logistical burden for the NCCD and for the courts which have to *sub poena* the NCCD in all the cases.

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21 Romania/ORDIN nr. 144 din 11.04.2008 privind aprobarea Procedurii interne de soluționare a petițiilor și sesizărilor, Consiliul Național Pentru Combaterea Discriminării, Monitorul Oficial nr. 348 din 6.05.2008 [Order 144 of the NCCD approving the Internal Procedure for solving petitions] (11.04.2008).

The good practice introduced by the Anti-discrimination Law is that NGOs with an interest in combating discrimination are granted *locus standi* and can appear before the national equality body or in court as parties in cases involving discriminations pertaining to their field of activity and which prejudice a community or a group of persons according to Article 28 of the Anti-discrimination Law. This allowed strategic litigation in sensitive cases improving the standards and raising awareness as to the possibility of challenging discrimination.

In 2008, the mandate of the NCCD was seriously limited as a result of decisions of the Romanian Constitutional Court in relation to discrimination generated by legislative norms (laws and secondary legislation).<sup>22</sup> The mandate was further limited in relation to salary related rights and benefits of civil servants following the adoption of the Emergency Ordinance 75/2008 which is closing the venue of a complaint to the NCCD for cases of discrimination this particular area.<sup>23</sup>

The Romanian Constitutional Court also limited the mandate of the civil courts in regard of cases of discrimination generated by legislative provisions.<sup>24</sup>

Judicial and non-judicial procedures are complementary and it is up to the plaintiff to choose between the two *fora* or use both of them simultaneously.

## 8. Legal aid

According to the Emergency Ordinance 51/2008, the persons that can benefit from public legal aid are EU citizens living in Romania or in other EU Member States who have a civil case before the Romanian courts and have insufficient funds for legal assistance and/or representation.

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<sup>22</sup> Romania/Curtea Constituțională/Decizia 997 from 7.10.2008 finding that Article 20 (3) of the Antidiscrimination Law, defining the mandate of the NCCD in relation to discrimination triggered by legislative provisions is unconstitutional. Available at <http://www.ccr.ro/cauta/DocumentAll.aspx?SearchDoc=true> (20.02.2009).

<sup>23</sup> Romania/Ordonanța de Urgență 75 (11.06.2008), Emergency Ordinance 75 from 11.07.2008 regarding measures taken to solve financial issues in the area of justice-related work published in the Official Gazette 462 from 20.07.2008. The Emergency Ordinance provides that the Anti-discrimination law will be amended with the following provision: Article 19.3: Petitions regarding legislative measures issued in the context of establishing salary-related policies for the personnel working in the public sector do not fall under the mandate of the National Council on Combating Discrimination.

<sup>24</sup> Romania/Curtea Constituțională/Deciziile 818, 819 and 820 (3.07.2008) published in the Official Gazette 537 from 16.07.2008. In these three decisions, the Constitutional Court has concluded that the dispositions of Article 1(2) letter e) and of Article 27 of the Governmental Ordinance 137/2000 are unconstitutional, to the extent that they are understood as implying that the courts of law have the authority to nullify or to refuse the application of legal norms when considering that such norms are discriminatory. Available at <http://www.ccr.ro/cauta/DocumentAll.aspx?SearchDoc=true> (20.02.2009). See also Romania/Curtea Constituțională/Decizia 1325 (04.12.2008) repeating the earlier finding that Article 27 of the Governmental Ordinance 137/2000 is unconstitutional, to the extent that it is understood as implying that the courts of law have the authority to nullify or to refuse the application of legal norms when considering that such norms are discriminatory. Available at <http://www.ccr.ro/cauta/DocumentAll.aspx?SearchDoc=true> (20.02.2009).

Interestingly, travel costs in the case of a person who is not a Romanian citizen and needs to appear before court are also included in legal aid. The application of these legal provisions is particularly problematic in the case of Law 248/2005, due to very short time-limits for appeal (five days) and for the judge to solve the case (three days) which render ineffective the right to free of charge legal representation or legal aid. Without publicly available jurisprudence, it is difficult to assess how these new provisions will apply in the area.

In discrimination cases, the national equality body, the National Council on Combating Discrimination (NCCD) is also mandated to provide specialised legal assistance to victims of discrimination<sup>25</sup> and legal aid is available during civil proceedings similar to other areas of law, based on destitution according to Articles 77-78 of the Code of Civil Procedure.

This specialised assistance consists in telephone discussions or discussions face-to-face between the complainants and the NCCD's competent staff to provide assistance, the investigation teams, or the NCCD's territorial structures. The information provided by the NCCD personnel refers to: the content and the form of a complaint, the legal qualification of acts according to the Antidiscrimination Law, the procedure before the NCCD, the sanctions available in case of discrimination, and the legal proceedings for challenging the NCCD's decisions. The assistance in drafting a complaint is provided by a person working within the Assistance Service of the NCCD's Steering Committee. This person does not draft the complaint himself/herself, but only assists the individual in drafting it.<sup>26</sup> Furthermore, the NCCD does not provide legal representation before courts or other public authorities in cases of discrimination. According to the NCCD, there have been no records regarding specialised assistance cases kept during 2002-2007.<sup>27</sup>

According to the national legislation, NGOs which have a legitimate interest in the field of antidiscrimination may engage, either on behalf or in support of the complainant, in any judicial and/or administrative discrimination procedures. Furthermore, the Antidiscrimination Law goes beyond these minimum requirements providing for legal standing for NGOs even without the

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<sup>25</sup> Article 19 (1)e of the Romania/ Ordonanța Guvernului Nr. 137/2000 privind prevenirea și combaterea tuturor formelor de discriminare, republished in February 2007 [Government Ordinance No. 137/200 regarding the prevention and combating of all forms of discrimination].

<sup>26</sup> See Response of the National Council for Combating Discrimination to the Public information request from the Center for Legal Resources No. 07/22.01.2009, Answers Nos.11, 13-15, pp. 7-8, on file with the national FRALEX expert.

<sup>27</sup> See Response of the National Council for Combating Discrimination to the Public information request from the Center for Legal Resources No. 07/22.01.2009, Answer No.14, pp. 8, on file with the national FRALEX expert.

approval of the alleged victims of discrimination when the discrimination concerns a community or a group of people.

The NGOs' engagement on behalf of the complainant is regulated by Article 28 of the Antidiscrimination Law and constitutes one of the limited number of exceptions in the civil procedure law when other persons than the actual persons which enter the civil relations can act as a party in the procedures. According to Article 28, NGOs have legal standing in cases of discrimination on two alternative conditions: 'the NGO's objective is the protection of human rights or the NGO has a legitimate interest in combating discrimination.'<sup>28</sup> The NGOs' legal standing in cases of discrimination operates automatically when the alleged discrimination concerns a community or a group of people and it is conditioned by the request of the victim when the alleged discrimination concerns an individual.<sup>29</sup> Since the wording in paragraph 2 is so open – 'upon the person's request' – the simple written request of the alleged victim of discrimination to the NGO is enough evidence to achieve legal standing before the court or the NCCD. No mandate signed before a public notary is required.<sup>30</sup>

NGOs have other possibilities to engage in discrimination procedures, for example in support of the complainant according to the general civil procedure law. This type of involvement can take the form of representation, intervention, or *amicus curiae*.<sup>31</sup> Compared to the institutions of *representation* and *intervention*, *amicus curiae* is not regulated as a separate institution in the Romanian civil procedure law. However, when introduced in some of the discrimination cases, the courts and the national equality body admitted the *amicus curiae* briefs and often picked up on some of the legal arguments presented.<sup>32</sup>

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<sup>28</sup> Article 28 of Romania/ Ordonanța Guvernului Nr. 137/2000 privind prevenirea și combaterea tuturor formelor de discriminare, republished in February 2007 [Government Ordinance No. 137/200 regarding the prevention and combating of all forms of discrimination].

<sup>29</sup> See Article 28 of Romania/ Ordonanța Guvernului Nr. 137/2000 privind prevenirea și combaterea tuturor formelor de discriminare, republished in February 2007 [Government Ordinance No. 137/200 regarding the prevention and combating of all forms of discrimination].

<sup>30</sup> This flexible formulation was suggested by the NGOs that considered a barrier the general civil procedure practice requiring a mandate signed before a notary to prove the status of representative. Such a requirement implied additional cost for the alleged victim of discrimination. See the advocacy document signed by 12 organisations working in the field of antidiscrimination, *Comments of the Antidiscrimination Working Group* from 13 July 2003, p.14, on file with the national FRALEX expert.

<sup>31</sup> The *representation* is regulated by Articles 67-72 of Romania/ Codul de procedură civilă [Civil Procedure Code]. The *intervention* is regulated by Articles 49-56 of Romania/ Codul de procedură civilă [Civil Procedure Code]. There are two types of intervention: the intervention in the interest of one of the parties and the intervention in its own interest.

<sup>32</sup> Without any particular reason, these discrimination cases were on other grounds than race, ethnic origin, or nationality. See *Amicus Curiae Brief* introduced by the Centre for Legal Resources before the National Council for Combating Discrimination in the *Case regarding the presence of religious symbols in classrooms in public education schools*, 21 November 2006, NCCD Decision No. 323/21.11.2006; see also *Amicus Curiae Brief*

The procedural role of NGOs in the discrimination procedures is very important in Romania for the overall effectiveness of the legislation addressing racial or ethnic discrimination. First, NGOs are given the opportunity to develop case law on the interpretation and application of the Antidiscrimination Law – e.g. awarding moral damages or public apologies for compensating the suffering caused by discrimination,<sup>33</sup> the issue of balancing the right to a private life and the antidiscrimination provisions,<sup>34</sup> the competence of the administrative court to declare the illegality or inaccuracy of the NCCD’s investigation and to order the NCCD to redo its investigation in a case of discrimination.<sup>35</sup> Second, NGOs can use their procedural role to raise awareness about the discrimination persistent in certain areas of the social life and advocate for law and policy changes – e.g. the segregation of the Roma children in education,<sup>36</sup> the discrimination of the Roma in access to public places and access to public services,<sup>37</sup> flagrant discrimination of Roma in access to housing.<sup>38</sup> Third, it is easier for some NGOs to take on discrimination procedures than individuals, groups, or communities allegedly affected by discrimination. These NGOs have the knowledge and skills to navigate the law and practice in the field of discrimination; they provide for certain protection to the alleged victims of discrimination. Fourth, the rate of success is higher in cases of discrimination where the NGOs are involved on behalf or in support of the alleged victims than in cases introduced by the victims themselves.<sup>39</sup>

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introduced by the Centre for Legal Resources before the Court of Appeal Bucharest in the *Case regarding 62 resident doctors discriminated based on the year of graduation from the medical school*, 5 April 2006, see also the Court of Appeal Bucharest, Secția a VIII-a, Civil Decision no.1027 from 10 May 2006, on file with the national FRALEX Expert.

<sup>33</sup> See RAXEN 7 Bulletin, Romanian NFP presenting a case introduced by RomaniCRISS. In 2006, Romania/ Judecătoria Botoșani awarded 6,000,000 ROL (around 150 Euros) civil damages to compensate the emotional suffering of three Roma young men whom, in 2002, have been forbidden the access to a pub because of their ethnic origin. Along with the compensation, the court ordered to the owner of the pub to allow in the future the free access of the plaintiffs in his pub.

<sup>34</sup> See *Romani CRISS și Forumul European al Romilor și Travellers v. Traian Băsescu*, NCCD Decision No.92 from 23 May 2007, on file with the national FRALEX expert.

<sup>35</sup> See *Liga Pro Europa v. Consiliul Național pentru Combaterea Discriminării*, Court of Appeal Bucharest, Civil Decision No. 1089 from 6 June 2005, on file with the national FRALEX expert.

<sup>36</sup> See the case of *RomaniCRISS (Cehei School)*, NCCD Decision from 23 June 2003.

<sup>37</sup> See various cases from the publication RomaniCRISS, *Raport Narativ privind implementarea proiectului. "Monitorizarea cazurilor de discriminare față de romi și aplicarea prevederilor Ordonanței Guvernului 137/2000 privind eliminarea tuturor formelor de discriminare"* [Narrative Report regarding the implementation of the project "The monitoring of the discrimination cases against Roma and the application of the Government Ordinance 137/2000 regarding the elimination of all forms of discrimination provisions"], Volumes I & II, financed by Open Society Foundation – Bucharest (2003).

<sup>38</sup> See RAXEN National Reports on Romania from 2006, 2007 and RAXEN Complementary Data Collection Report on Romania from 2008, on file with the national FRALEX expert.

<sup>39</sup> In 2005, the percentage of cases solved in favour of the alleged victim of discrimination based on nationality was 12.5 in cases where NGOs were involved, compared to only 9.6 in cases where the victims did not have NGO support; for discrimination on the ground of ethnic origin, the difference is even higher 63.6 compared to 6.34 and all cases of alleged discrimination on the ground of race where NGOs were involved were successful, compared to only 50% rate of success in 2006, for cases introduced by the victims without NGOs’ support. In 2007, the success

NGOs are not publicly funded by the Romanian authorities to provide information and assistance in discrimination procedures.<sup>40</sup> There is no institutionalised mechanism of legal assistance and representation in cases of discrimination (grants accessible for NGOs, publicly funded NGOs or public bodies performing this function).

Moreover, trade unions can play the same procedural role in discrimination cases in employment procedures as NGOs because trade unions fall under the conditions prescribed by Article 28 of the Antidiscrimination Law . Trade unions are non-governmental organisations and they have as objective the protection of the employees' rights which are human rights. Furthermore, trade unions can also prove having an interest in combating discrimination in employment. However, during 2002-2007, no trade union has ever been acting on behalf or in support of an alleged victim of discrimination in employment on the ground of race, ethnic origin, or nationality before the national equality body.<sup>41</sup> This is likely to be the case for courts procedures, too, because the NCCD is considered to be the more accessible discrimination procedure.

More generally, it is not in the culture of trade unions in Romania to provide assistance, especially legal or human rights assistance to their members. The trade unions focus more on advocating for the level of salaries or labour stability or negotiating the labour collective agreements. This kind of work is concentrated at the national level, in the capital city, while the local trade unions which are directly in contact with the employees have a low profile and are considered weak.<sup>42</sup>

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is again on the side of NGOs, with regard to cases of discrimination on the ground of ethnic origin 27% compared to 5.3%. See Response of the National Council for Combating Discrimination to the Public information request from the Center for Legal Resources No. 07/22.01.2009, Answer No. 10, p. 6, on file with the national FRALEX expert.

<sup>40</sup> For example, the National Council for Combating Discrimination affirmed it does not provide funding to NGOs and it is not aware of other public institutions doing this. See Response of the National Council for Combating Discrimination to the Public information request from the Center for Legal Resources No. 07/22.01.2009, Answers Nos. 16-17, p. 8, on file with the national FRALEX expert.

<sup>41</sup> See Response of the National Council for Combating Discrimination to the Public information request from the Center for Legal Resources No. 07/22.01.2009, Answers Nos.18-20, p. 8, on file with the national FRALEX expert. See also the set of responses from 4 trade unions out of 7 trade unions interviewed for this study showing that none of these trade unions ever provided assistance or representation in discrimination procedures on the ground of race, ethnic origin, or nationality, on file with the national FRALEX expert.

<sup>42</sup> See Renate Weber, *Mapping Exercise: NGOs and Trade Unions Working to Combat Discrimination: The Case of Romania*, March 2007, study conducted within the EC financed project Anti-discrimination and Diversity training, VC/2006/0047, Human European Consultancy B.V., pp. 3-5, on file with the national FRALEX expert.

## 9. Forms of satisfaction available to a vindicated party

Remedies equivalent to those provided in other areas of law are available both before the National Council on Combating Discrimination (NCCD) and before the courts of law.

The Anti-discrimination Law foresees that the NCCD can decide solely on fines (to be paid to the state budget).<sup>43</sup> Out of the administrative remedies available, the NCCD applied in a large number of cases examined the administrative warning (carrying no financial liability).

The civil courts can decide on claims for damages or other effective remedies as requested by the parties according to Art.27 of the Anti-discrimination Law. According to Article 27 of the Anti-discrimination Law, the courts of law can also decide that the public authorities will withdraw or suspend the authorisation of legal persons who caused significant damage as a result of discriminatory action or who repeatedly infringed the provisions of the anti-discrimination legislation.

The practice of the courts, in general, and even more so in the case of non-discrimination cases, shows reluctance in awarding large amounts in relation to claims for moral damages.

## 10. Adequacy of compensation

In the National Council on Combating Discrimination (NCCD) cases examined the sanctions ranged from administrative warning (no financial sanction) to Ron 400 (Euro 114). Given the educational, punitive and deterring role of the sanction, it seems that the level of the sanctions is too low.

There is no ceiling in the national law as to the amount of compensation, however, courts are very reluctant in awarding moral damages. In the civil cases examined compensation ranged from Ron 3000 (approx. Euro 750) to 1000 Euro.

Relevant to levels of compensation in similar claims for damages in other areas of the law, it seems that the compensation is comparable.

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<sup>43</sup> The amount of the fines differs: when the victim is only one individual, the amount varies from 400 RON to 4,000 RON (114-1,114 Euro) when the victims are a group or a community (e.g.: ethnic minority or the LGBT community as a group), the fine ranges between 600 and 8,000 RON (170-2,285 Euro).

To conclude, the level of compensation is deemed to be inadequate given the educational, deterring and punishing role of the sanctions which are generally speaking too low as showed by the cases examined.

## 11. Rules relating to the payment of legal costs

The financial risk of legal procedures in discrimination cases in Romania is carried by the party that loses the case. He/she is obliged to cover the court fees, the fees of the other party's attorney and any compensation ordered by the court. However, in the beginning of the trial, it is the complainant (the alleged victim of discrimination or the NGO acting on behalf of the alleged victim of discrimination) who must advance the fees of the attorney. Article 27 of the Antidiscrimination Law prescribes that discrimination procedures are exempted of judicial taxes, irrespective the amount of the claims.

No legal costs are incurred before the National Council on Combating Discrimination (NCCD).

## 12. Rules on burden of proof

The Romanian 2006 amendments to the 2000 Law introduced the concept of 'sharing the burden of proof.' By sharing the burden of proof 'the person interested has the obligation of proving the existence of facts which allow to presume the existence of direct or indirect discrimination and the person against whom a complaint was filed has the duty to prove that the facts do not amount to discrimination.'<sup>44</sup>

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<sup>44</sup> Article 20 (6) of the Governmental Ordinance 137/2000.