



INTERNATIONAL LAWYERS NETWORK



SEXUAL HARASSMENT IN THE WORKPLACE



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SEXUAL HARASSMENT IN THE WORKPLACE: WHAT ROMANIAN COMPANIES NEED TO KNOW



In Romania, issues regarding gender discrimination, gender equality (including in the work place) and the banning of sexual harassment, are regulated through a number of legislative acts, such as the Romanian Labour Code, the Romanian Criminal Code and Law no. 202/2002 On Equal Opportunity for, and Treatment of, Men and Women.

As a result of the #MeToo movement, but also as a result of the implementation into domestic law of the undertakings of Romania under international law and international initiatives, in 2018, there were major amendments with regard to Law no. 202/2002 On Equal Opportunity for, and Treatment of, Men and Women (“Law 202/2002”).

The amendments to Law 202/2002 were drafted and proposed by the National Agency for Equal Opportunity, a specialized public administration body under the subordination of the Ministry of Labour, Family, Social Protection and the Elderly, that promotes the principle of equal opportunity between men and women in view of eliminating forms of discrimination based on the criterion of sex in all national programmes and policies.

Among the changes introduced by the new amendments to Law 202/2002 is the provision that persons who have been sentenced in a final decision for a criminal offence or who have been sanctioned for discriminatory acts by the National Council for Combatting Discrimination, as well as persons who were previously removed from the position of member of the County Commission for Equal Opportunity, cannot occupy such positions.

One of the most significant changes brought about by these legislative amendments was the introduction of a definition of gender violence, whose legal definition had not been laid down in any previous Romanian legislative text.

Gender violence was defined as violence directed against a woman, or, as the case may be, a man, which is grounded in his/her belonging to a certain sex. Gender violence against women is violence that affects women in a disproportionate manner. Gender violence includes, without limitation, the following acts: domestic violence, sexual violence, genital mutilation of women, forced marriage, forced abortion and forced sterilization, sexual harassment, human trafficking and forced prostitution.

Law 202/2002 does not provide for specific penalties for gender violence, as it has been newly defined in the law, but, given the fact that the concepts that it includes (e.g., sexual harassment, domestic violence, etc.) fall under the scope of criminal offences provided for and sanctioned by the Romanian Criminal Code, we can safely state that gender violence, as a cluster concept, is effectively sanctioned under Romanian law, with the most severe liability, criminal liability.

Moreover, one of the novelties brought about by the above-mentioned amendments consists in the regulation of the general regime of the occupation of expert on equal opportunity and technician for



equal opportunity. It is true that the names of these two occupations do not include specific reference to gender, but, since they are included in Law no. 202/2002, which deals with equal opportunity for, and treatment of, men and women, there is no doubt that such occupations deal with gender equality.

These new amendments will most likely have an impact on certain Romanian employers. According to the new amendments, public institutions and authorities, civil and military, with over fifty employees, as well as private companies with over fifty employees have the possibility of identifying an employee to whom they will allot, through the job description, duties in the field of equal opportunity for, and treatment of, men and women – up to the limit of the budget existing for expenses related to salaries or hiring an expert on/technician for equal opportunity.

Therefore, for the time being, the hiring of an expert/technician in the field of equal opportunity is not yet mandatory for the Romanian employers mentioned above. However, this new provision opens up a path, in our opinion, for good practices in the field of gender equality in the workplace.

According to the new amendments, the expert/technician in equal opportunity or the person appointed with duties in the field of equal opportunity between men and women will have the following responsibilities:

- a) He/she will analyse the context of the occurrence and evolution of the phenomenon of gender equality, as well as the failure to observe the principle of equal opportunity between men and women and he/she will recommend solutions in view of complying with this principle, according to the law;
- b) He/she will formulate recommendations/observations/proposals in view of preventing/administering/remedying the risks that may lead to a breach of the principle of equal opportunity between men and women, in compliance with the principle of confidentiality;
- c) He/she will propose measures regarding the insurance of equal opportunity for, and treatment of, men and women, and will assess the impact thereof on men and women;
- d) He/she will draft action plans regarding the implementation of the principle of equal opportunity between men and women, which should include at least: active measures for the promotion of equal opportunity for, and treatment of, men and women, and the elimination of direct and indirect discrimination based on gender, measures regarding the prevention of and combat against harassment in the work place, measures regarding the equality of treatment with respect to remuneration policy, job promotion and access to decision-making positions;
- e) He/she will draft, provide grounds for, assess and implement programmes and projects in the field of equal opportunity for, and treatment of, men and women;
- f) He/she will grant specialized advice for the application of the provisions of national and EU legislation in the field of the equal opportunity between men and women.

Although the legislative framework already existed as far as the prevention of the acts the #MeToo movement has focussed on and Romania has continued in moving forward with the implementation of



subsequent legislative measures, there is still a long way to go before such a cultural change is successfully assimilated on a large scale in Romanian society.

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