

DISCRIMINATION OF DISABLED PEOPLE ON THE LABOUR MARKET

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ABSTRACT: *Despite the efforts made at both national and European Union level, a large part of citizens continues to feel discriminated on the labour market and distrustful of the efficiency of the work carried out by competent authorities, and people with disabilities are no exception. An analysis of the data provided by Eurostat on the employment gap between the disabled and the able-bodied supports this perception, and in the case of Romania we are witnessing, throughout the analysed time frame, a very slow pace in remedying the situation; our country exceeds the EU-27 average and registers a value that is double compared to the highest rated EU member country. The benefits generated, at the level of an individual, employer and national economy/society, by the inclusion of people with disabilities on the labour market, the national legislative framework which is favourable and connected to European requirements are not taken into consideration and are not strong enough to remove the barriers which stand in the way of increasing the employment rate of the disabled and thus improving their living standards and their integration into society in an accessible and resilient environment.*

KEY WORDS: *discrimination, disabilities, labour market.*

JEL CLASSIFICATION: *J71, K38.*

1. THE CONCEPT OF DISCRIMINATION

Discrimination, whether it is found on the labour market (by limiting the free choice of or the right to a profession or the participation in an economic activity) or in another context (access to public administrative or health services, education, freedom of movement, access to public places, the right to personal dignity, etc.), is a form of marginalisation, of creating a disadvantage or showing an unjust or prejudicial treatment of the person that is being discriminated, which is why, at present, there are a series of legislative regulations and institutions empowered to detect and punish acts of discrimination and those who carry them out.

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In Romania, *discrimination* refers to 'any differentiation, exclusion, restriction or preference, based on race, nationality, ethnicity, language, religion, social category, beliefs, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV infection, belonging to a disadvantaged group, as well as any other criterion with the purpose to restrict, eliminate recognition, use or exercise of human rights and fundamental freedoms or rights recognised by law, under equal conditions, within the political, economic, social and cultural fields or in any other areas of public life" (Art.2, GO no.137/2000). Differences, exclusions, restrictions and preferential treatment are considered discrimination when applied with the intention of having a negative impact on a person, group of people or community.

As the previous definition shows, we are witnessing a variety of criteria which sets the grounds of discrimination, which is why we can identify gender discrimination, age discrimination, ethnic discrimination, etc., and even multiple discrimination generated by 'the intersection of multiple identities that coexist at a given time within a person' (for example, one is a woman, and at the same time, of Roma ethnicity or one is a black man and an immigrant at the same time, etc.) (Grünberg).

According to Aninosanu, Marțis and Sorescu, at present, in Romania, the categories of people who are considered a high risk of multiple discrimination are: Roma women, poor women and women with disabilities both in public spaces, in relation to local authorities, but also as regards the access to education and health; on the labour market, the highest degree of discrimination in employment is found among young and elderly men, but also among women with minor children, while young and elderly women are much more at risk of discrimination in the workplace.

2. DISCRIMINATION ON THE LABOUR MARKET

The labour market is considered to be the sector where multiple discrimination cases occur most frequently.

The main types of discrimination encountered on the labour market are:

1. *Direct discrimination* is when the differential treatment occurs intentionally, when the employer treats an employee worse than the others in a comparable situation, on grounds of age, sex, disability, ethnicity or race, religion of belief, or sexual orientation. (Example: two employees with the same qualifications are rewarded differently in similar situations, due to their ethnicity or race, religion, age, sexual orientation or disabilities).
2. *Indirect discrimination* is more subtle and harder to identify, but it occurs when a norm or regulation that applies to everybody has a prejudicial effect upon certain people (for example: enforcing rules which are less favourable to part timers can indirectly discriminate women since most of the part time workers are women).
3. *Harassment*. It is defined as an illegal behaviour that demeans a person and creates an intimidating, hostile, humiliating or offensive environment on grounds of race, nationality, ethnicity, language, religion, social status, beliefs, gender, sexual orientation, connection to a disadvantaged category, age, disability, refugee or asylum status, or any other criteria (for example: a young Roma man is employed in a

company where his colleagues systematically poke fun at him and tell jokes about Roma people).

Harassment can be sexual or moral. Sexual harassment generally manifests itself towards women and it usually comes from someone who holds a leadership position. Moral harassment at the workplace can take the form of bullying or mobbing.

Bullying is a form of emotional and physical abuse that takes the form of insults, isolation of the person or treating them with contempt, labelling them or spreading rumours. They are intentional, repetitive and are characterized by an imbalance of forces – the aggressor chooses the victim who is perceived as vulnerable, weak and cannot defend himself or herself.

Mobbing is a form of moral harassment which mainly refers to 'intense psychological abuse directed at an employee to force them out of the workplace, since their dismissal would entail legislative problems' (Negruțiu).

In his book *Mobbing – Psychological Violence at Work*, Heinz Leymann has identified 45 mobbing actions which he grouped into 5 categories, according to their effect on the victim (Negruțiu):

1. *Effects on self-expression and communication*: the victim cannot express himself in front of his superiors; the victim is constantly interrupted when speaking; colleagues restrict the victim's opportunity to express a point of view; colleagues yell at and offend the victim; work and the personal life of the victim are constantly criticised.
2. *Effects on social contacts*: people do not speak with the victim anymore; the victim is not allowed to talk to anyone; the victim is relocated to another room far away from other colleagues; colleagues are not allowed to speak with you; the physical presence of the victim is ignored.
3. *Effects on personal reputation*: people talk badly about the victim and spread unfounded rumours about the victim's actions; the victim is ridiculed and treated as if he were mentally ill; people make jokes about the victim's political or religious beliefs; the origin, nationality and personal life of the victim are mocked; the victim is forced to do certain jobs; the victim is harassed sexually.
4. *Effects on the professional life of the victim*: there are no assignments for the victim or the victim is given meaningless or absurd tasks which are beyond or below his qualifications; the tasks are changed frequently and the victim is given assignments that are humiliating.
5. *Effects on health*: assigning jobs that are dangerous and harmful to health; threats of physical violence are made; light physical violence is used as a threat; serious physical abuse; inconvenience at work or at home; outright sexual harassment of the victim. Romania is among the countries where there is no special legislation that punishes mobbing in particular however, there are a number of laws, the provisions of which can be used to penalize mobbing as a form of discrimination or violation of equal opportunities (G.O. no. 137/2000 on the prevention and punishment of all forms of discrimination, Law no. 202/2002 on equal opportunities and treatment of men and women).
6. *Victimization* comes as a reaction to reports of acts of discrimination in the workplace (for example: a young woman who is sexually harassed by her boss

has filed a complaint against him in court. From that moment on, she has no longer been included in any training program with her other colleagues).

7. *The instruction to discriminate (the order to discriminate)* arises when a person or group of people induces another person or group of people to discriminate (e.g. an employer instructs a temporary work agency to find only workers under the age of 40).

3. PREVENTING DISCRIMINATION ON THE LABOUR MARKET

While the EU actions in terms of non-discrimination were initially focused on preventing discrimination on grounds of nationality and sex, the adoption of the Treaty of Amsterdam in 1999 gave the Community new powers to fight against discrimination on grounds of sex, race, ethnic origin, religion or beliefs, disability, age or sexual orientation, embodied in a series of Directives (Directive 2000/43/EC, Directive 2000/78/EU, Directive 2019/1158/EC, Directive 2014/54/EU). For each adopted EC Directive, a deadline has been set for the transposition of its objectives into national law and all Member States are legally obliged to meet the cut-off date, except in cases where an alternative or a particular case is agreed.

Despite the existing legislative and institutional framework at EU and Member State level, which seeks to prevent discrimination on the labour market, this continues to exist and, unfortunately, in many cases it remains unreported by the victims of discrimination. According to the survey *Special Eurobarometer 437: Discrimination in the EU in 2015*, ‘one in eight citizens consider themselves to be part of a group that is at risk of discrimination because they belong to an ethnic or racial minority, have a disability or because of sex, sexual orientation, age, religion and/or beliefs’ and only one third of citizens are aware that they are legally protected from discrimination (<https://ec.europa.eu/info/policies/>).

Romania, as a Member State of the European Union, has adopted these directives, the main national regulations regarding discrimination being:

- Ordinance no. 137 from 31st August 2000 on the prevention and punishment of all forms of discrimination;
- Emergency Ordinance no. 45/2020 for supplementing Government Ordinance no. 137/2000 on the prevention and punishment of all forms of discrimination;
- Law no. 167/2020 for amending and supplementing Government Ordinance 137/2000 on the prevention and punishment of all forms of discrimination, as well as for supplementing Art. 6 from Law 202/2002 on equal opportunities and equal treatment of men and women;
- Law 202/2002 on equal opportunities and equal treatment of men and women.

The main autonomous authority in Romania tasked with preventing acts of discrimination, mediating them, and also investigating, finding and punishing acts of discrimination is the National Council for Combating Discrimination (CNCD) (www.cncd.ro). There are other public authorities with responsibilities in fighting discrimination, such as the National Agency for Gender Equality, the National Agency for Roma, the National Authority for People with Disabilities, the Romanian Ombudsman (People's Advocate), the Labour Authority, etc. and a number of non-governmental organizations that work alongside the National Council for Combating Discrimination.

4. DISCRIMINATION OF DISABLED PEOPLE ON THE LABOUR MARKET

People with disabilities are the persons who have limited opportunities or no access to society life, requiring protection measures in support of social integration and inclusion due to the social environment which is not adapted to their physical, sensory, psychic, mental deficiencies.

The work of disabled people is regulated by Law no. 76/2002 regarding *the insurance system for unemployment and the stimulation of employment* (with subsequent amendments and supplements) according to which each person is guaranteed the right to choose their profession and work, as well as the right to unemployment insurance, and any kind of discrimination on political criteria, race, nationality, ethnic origin, language, religion, social category, beliefs, sex and age must be excluded and by *Law 448/2006 on the protection and promotion of the rights of disabled people* (with subsequent amendments and supplements) which regulates the rights and obligations of people with disabilities granted for the purpose of their integration and social inclusion.

According to the legislation in force, the people with disabilities have the right to be provided with the necessary conditions to carry out their job or profession, to maintain a job and the right to equal opportunities to advance professionally. A person with disabilities has several rights guaranteed by government institutions, including the right to training, to annual leave and salary. Moreover, persons with disabilities may also be employed as per the below:

- on the free labour market;
- protected employment (protected work places and authorised protected units);
- working from home.

In order to stimulate the employment of people with disabilities, public authorities and institutions, public or private legal entities with at least 50 employees are required by law to employ a number of such people equal to at least 4% of the total number of employees. Companies or institutions that do not employ people with disabilities can opt for one of the alternatives below:

- to make monthly payments to the state budget of an amount equivalent to 50% of the minimum gross salary at country level multiplied by the number of jobs not occupied by persons with disabilities;
- the purchase of products or services supplied by authorized protected units in an amount equivalent to the amount owed to the state budget.

Employers who employ people with disabilities have certain fiscal facilities. First of all, the following are deductible from the calculation of taxable profit:

- expenses incurred to adapt to the new job;
- expenses incurred for the purchase of machinery or equipment to be used by people with disabilities;
- expenses related to the transport of people with disabilities between home and work;
- expenses necessary for the transport of raw materials, finished products and other products to the home of persons with disabilities if they work from home.

Moreover, the expenses necessary for the integration at the workplace, for the training, orientation and professional development of people with disabilities are deductible from the payment for unemployment insurance that the company pays to the state budget.

Those who employ people with disabilities, although they are not required by the law, will receive from the state, for one year, the minimum wage for each person employed, if the employer keeps them on the books for at least two years.

Furthermore, employers who take on graduates with disabilities for indefinite period of time, are exempted from the payment of unemployment insurance and they even receive the following monthly payments from the state, for 18 consecutive months:

- a minimum gross basic salary for gymnasium or arts and crafts graduates;
- 1.2 minimum gross basic salaries for high school or postsecondary school graduates;
- 1.5 minimum gross basic salaries for higher education graduates.

Authorized protected units set up to employ people with disabilities also benefit from several advantages

- Exemption from registration and authorisation fees;
- Certain rights granted by local authorities, financed from their own funds.

Despite the fact that the EU and all its Member States have ratified the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD), adopted in New York by the United Nations General Assembly on 13th December 2006, opened for signature on 30th March 2007, which explicitly prohibits discrimination on the labour market on grounds of disability; the Strategies which ‘empower persons with disabilities so they can enjoy their rights and participate fully in society and economy’ (www.ec.europa.eu/social/main.jsp?catId=1484&langId=en) (*European Disability Strategy 2010-2020*, followed by *Strategy for the rights of persons with disabilities 2021-2030*), in 2020 in the European Union there is still a significant difference of 24.3% in the employability of people with or without disabilities, to the detriment of the latter (Eurostat).

The ratification of the Convention on the Rights of Persons with Disabilities was carried out at national level through Law no. 221/2010 which designated the National Authority for Persons with Disabilities as the central coordinating authority for the implementation of the Convention. Starting from the importance that had to be given to the process of implementation, in 2016 they approved the National Strategy 'A society without barriers for persons with disabilities' 2016-2020 and the Operational Plan on the implementation of the National Strategy 'A society without barriers for persons with disabilities' 2016-2020 (G.D. no. 655/2016). Despite the amendment of the existing legislative and institutional framework, if one analyses the employment rate of persons

with disabilities, one can notice that it continues to be much lower than the employment rate of people without disabilities (table 1). If in 2019, 74% of the people employed between the ages 20 and 64 had no disabilities, the percentage is 51% in the case of people with some disabilities and it decreases dramatically in the case of people with severe disabilities (only 12% of them are employed) (Grigoraş et al., 2021).

Table 1. Disability employment gap (%)

	2014	2015	2016	2017	2018	2019	2020
UE-27	22.7	23.8	24.2	23.5	23.5	24.4	24.3
Ireland	39.8	41.7	46.5	43.2	40.0	44.0	38.6
Belgium	34.4	34.9	34.5	33.1	32.0	33.1	36.3
Bulgaria	33.0	29.2	36.6	34.7	38.0	34.8	33.0
...
ROMANIA	34.3	31.0	30.6	31.9	30.4	29.2	30.4
...
Denmark	25.6	20.2	25.0	23.2	18.2	16.6	18.1
Latvia	21.0	19.1	19.7	16.4	19.3	19.0	16.7
Italy	13.2	13.2	13.9	14.2	14.9	16.9	14.9

Source: Eurostat

Unfortunately, if we consider the period 2014 - 2020, the values recorded in Romania are higher than the EU-27 average regardless of whether we take into consideration the employment gap for people with some disabilities (table 2) or for people with severe disabilities; in fact, in the second case, Romania has the highest disability employment gap of all the EU Member States (table 3).

Table 2. Disability employment gap by level of activity limitation – some disabilities (%)

	2014	2015	2016	2017	2018	2019	2020
UE-27	15.4	17.2	17.8	17.4	16.3	17.0	17.3
Ireland	34.9	36.4	43.0	38.4	35.9	37.7	31.3
Bulgaria	28.1	23.9	32.0	29.7	34.5	29.5	28.0
Croatia	27.8	23.3	24.2	26.6	28.3	28.7	27.8
...
ROMANIA	26.2	23.6	23.7	25.2	23.5	21.6	22.5
...
Austria	10.8	11.0	9.4	11.6	13.1	14.2	11.7
Latvia	16.2	13.1	14.1	12.0	13.4	14.5	10.2
Italy	9.0	7.8	8.4	10.1	8.9	10.1	9.5

Source: Eurostat

Table 3. Disability employment gap by level of activity limitation – severe disabilities (%)

	2014	2015	2016	2017	2018	2019	2020
UE-27	41.8	41.8	41.5	39.7	43.1	43.7	43.0
ROMANIA	60.5	58.9	61.3	62.5	60.8	62.3	65.6

Lithuania	60.2	65.6	62.3	58.0	60.3	61.5	58.9
Bulgaria	-	51.2	53.6	51.7	52.8	60.8	58.6
...
Italy	27.2	30.0	33.0	37.2	41.0	44.0	33.7
Spain	41.9	42.4	44.8	40.5	45.1	44.0	31.0
Portugal	34.8	33.4	34.2	31.2	34.4	37.2	28.8

Source: Eurostat

According to the *Diagnosis of the situation of persons with disabilities in Romania* (<http://anpd.gov.ro/web/wp-content/>) the employment at the level of people with disabilities in Romania has the following characteristics:

- people with disabilities living in rural areas, with a low level of education or aged 20-34 have an even higher risk of not being employed;
- youngsters with severe disabilities have the lowest rate of employment (7%);
- women with disabilities have a lower rate of employment than men;
- people with a higher level of education have higher employment rates however, significant differences in the level of employment (over 50%) can be found in the case of people with severe disabilities and those without disabilities but with the same level of education.

The characteristics mentioned above are not only specific to Romania, but they generally form the employment picture at the level of many EU-27 Member States, which justifies not only the continuation of efforts to increase the inclusion of people with disabilities on the labour market, but also highlights the measures, actions and instruments used so that they effectively target vulnerable groups.

5. CONCLUSIONS

Anyone who carries out an economic activity undoubtedly constitutes a gain at the level of society. The economic benefits associated with people with disabilities employed on the labour market can be differentiated:

1. *at individual level* – the financial gains obtained through work ensure a higher standard of living than that generated by economic inactivity and dependence on social benefits; they encourage the development of personal autonomy, increase the chances of social integration, and instil the feeling of being useful and valuable to society;
2. *at the level of economy/society* - high employment among persons with disabilities ensures an additional contribution to the GDP and a reduction in the costs of paying unemployment benefits and other social benefits.

Despite the fact that Romania is committed 'to mobilising the necessary resources in order to remove the barriers so that no person with disabilities is discriminated, marginalized, excluded or abused, and their choices and beliefs are respected and supported' (Directive 2014/54/EU), the performance of our country in terms of discrimination and employment of persons with disabilities on the labour market continues to be low, as a result of shortcomings such as: an education system

insufficiently correlated with the needs of the labour market and less inclusive or a social protection that does not stimulate the employment of persons with disabilities.

An objective and pertinent analysis of the results recorded so far not only in terms of employment of persons with disabilities, but in terms of the entire spectrum of their lives within the society, which would be the basis for the elaboration and implementation of measures, tools and strategies, is likely not only to improve their lives, but to exploit all the benefits generated by the active involvement of these people in society.

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