

“EQUAL WORK REQUIRE EQUAL SALARY” – PART OF THE PRINCIPLE OF EQUALITY TREATMENT BETWEEN MEN AND WOMEN

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Abstract: *Enlarging the provisions of Universal Declaration of Human Rights, The Convention no.111 from 1958 regarding discrimination in the field of employing manpower and practicing profession, , has pointed out the effect of discrimination: to suppress or to prejudice the equal opportunities or treatment in the field of employing manpower and practicing profession.*

Key words: *equal opportunities or treatment, employing manpower, practicing profession.*

The European Union promotes among the member States the human fundamental rights and liberties; the non-discrimination and the opportunity of equality being a main field of action upon which this, through its own structures, has concentrated its activity especially as, according to the Regulation 1083/2006 of the European Union Council, the equality of opportunity is deemed one of the intervention principles of the Structural Funds. A proof of this statement is the declaration by the European Parliament and by the European Union Council of the year 2007 as the „European Year of the Equality in Opportunity for Everyone”, there being pursued four targets through the actions and through the programs developed within this frame: rights – the accent being laid on the rise of the degree of awareness upon the right to equality and to non-discrimination, as well as upon the issue of the multiple discrimination; representation – stimulation of the debates

upon the means for the increase of the participation within society of the groups which are victims of the discrimination and of the men’s and women’s equal participation, this being one of the objects of this target; recognition – which implies the facilitation and the celebration of the diversity and of the equality; respect – which focuses upon promoting a society based on a greater cohesion.

Under the perspective of the community documents, which constitute a legal basis for protecting and for guaranteeing this principle, there have to be reminded not only those on the level of the European Union, but also those of the Council of Europe, its constitution previous to the one of the first European Communities entitling us to give priority even to the latter.

This way, art.14 of the European Convention on Human Rights imposed on the States the observance, among other requirements, even of the one according to

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whom the exercise of the recognised rights and liberties has to be ensured with no discrimination especially based on sex, race, colour, language, religion, public opinions or any other opinions, national or social origin, appurtenance to a national minority, wealth, birth or any other situation, the Protocol 12 of the Convention stipulating in the same direction and forbidding in a general direction, the discrimination. Such a requirement will be imposed even if through the European Convention of the Human Rights, there is made reference only to the civil and political rights, the former having to be regulated through other documents – conventions, among whom the most important are the European Social Charta of 1961, together with its additional Protocol of 1988, the European Code of Social Security from 1972 and the European Convention with respect to the migrating worker's judicial status of 1977.

On the level of the European Union, Title III of the third part in the Treaty with respect to the constitution of the European Economic Community – Treaty CEE -, respectively art. 117-128, bearing the name „Social Policy”, contained, except dispositions relative to the closeness of the legislation and to the European Social Fund, some others with respect to the sex equality, an equality that has to be considered likewise under the aspect of the treatment equality – „equal in work, equal in wages”. *Considered a genuine standard-frame in the field, this disposition stipulates that through **payment** there is understood „the minimum or regular wages, either in cash, or in assets, that the worker receives, directly or indirectly, for his work, from his employer **and equal payment without discrimination based on sex** implies that „that payment for the same work in units of products should be calculated on the basis of the same unit of measure, as well as that payment for the*

work in the unit of time should be the same for the same activity”. Currently, the Treaty of Lisbon of the 13th of December 2007 for the modification of the Treaty with respect to the European Union and of the Treaty for instituting the European Community, in full process of ratification by the signing States, however already ratified by Romania through the Law no. 13/2008, published in the Official Monitor of Romania no .107/2008, has reminded, through art.2 paragraph. (3) thesis II, the fact that the European Union promotes, among other things such as the social protection, the solidarity among generations, the protection of the child's rights, also the equality between man and women. More than that, through its own jurisprudence, the European Court of Justice admitted the right to this equal treatment as a fundamental right in the community law, so that this principle should be developed through a series of directives elaborated by the European Union or by the communities that have preceded it. The fact should be pointed out that these documents cannot produce judicial effects but between the signing States, States that confine themselves, under the geographical aspect, to the space of the European continent, are based on the provisions of the Universal Declaration of Human Rights and, implicitly, on all the standards of the International Labour Organization (O.I.M.) which „express the reflection of the will of the Member States to ensure, through international regulation, a fundamental right of the human being: the right to labour and social security, as well as the rights connected to this one”. In fact, the Convention nr.111 of 1958 with respect to the discrimination in the field of employment of the workforce and of the exercise of the profession has defined, in art. 1 paragraph 1 lett. a), the discrimination as any differentiation, exclusion or preference based on race,

colour, sex, religion, political beliefs, national or social origin, which causes the suppression or prejudice the equality in opportunity or in treatment as regards the occupation of the workforce and the exercise of the profession. The sphere of application of the Convention reaches fields such as professional training, access to employment of the workforce and the exercise of various professions, as well as the conditions for the employment of the workforce. During the year 1988, through the declaration O.I.M. with respect to the principles and the fundamental rights, the signing States enhanced the values which are of a primordial importance for the economic and social life of any society, among these ones, besides the liberty of association and effective recognition of the right to negotiate, besides the elimination of any form of forced or compulsory work and besides the effective abolition of the children's work, there being found the principle of eliminating the discrimination in the subject of the employment and of the profession. Starting from the fact that the human being's fundamental rights, such as the right to work and social security, have to be guaranteed, under all its aspects, for all humans, with no discrimination, we appreciate that these two documents of the International Labour Organization cover, through these provisions, all facets of this right, therefore including the one with respect to the fact that for equal work, the wages have to be equal. One of the arguments for this statement is to be found in the Declaration from 1988 of O.I.M. with respect to the principles and to the fundamental rights, which settles, with no doubt and without allowing any unfavourable interpretation of its own provisions, that the rights previously mentioned are universal and they are applied to all populations and to all States, independent of their level of economic development. Therefore, the applicability

of these dispositions has to reflect on the level of each individual, but because the right to work and social security is appreciated as a right of the second generation, implying consequently actions of the State, as they cannot be carried out by the citizen on his own, there is needed „a helping hand from the State” for the accomplishment of this right. The issue that emerges in this situation is the different economic situation of the States, more precisely their level of development, a reason for which the same Declaration from 1988 of O.I.M. has imposed the elaboration of annual reports with respect to the progresses realized on the national level, in the approaches for the implementation of these provisions. In our opinion, such a regulation should be transposed on the European level, too, not only through the recording in documents, but also through projects with clear, precise and pertinent targets, which should grasp all facets of this right without ignoring, in any way, the impossibility to impose any discrimination.

Starting from the facts mentioned above, but also taking into consideration that the enhancement of the cultural, ethnic diversity and of the differences in gender, age constitutes and has to constitute premises for the development of society, we cannot but observe that all social relations are based on values such as tolerance and equality, however the equality in treatment that we consider refers not only to the aspect – „for equal work, equal payment”. Consequently, in the second part of this paper, we will formulate and develop, succinctly, the principles that contribute to outlining the principle of the equality in treatment – „for equal work, equal payment” – aspect of the equality of the sexes.

In compliance with the international and European regulations from the domain that were mentioned in the first part of this

paper, without ignoring the consideration of the cultural, ethnic diversity as well as the gender and age differences that constitute and must constitute premises for society's development, it is obvious that all social relations are based on values such as tolerance and equality, without the mentioned equality of treatment to be reduced only to the aspect – „for equal work, equal salary”. Thus, there shall also have to be specified the following principles mentioning that that particular component of discrimination that was taken into consideration is that concerning gender:

- The principle of equality of treatment of men and women – Directive 76/207 CEE This directive, which concerns the equality of treatment of men and women regarding the access to employment, training and professional promotion and working conditions has established the obligation of the member states to insert into their national legislation the necessary dispositions to assure equality of treatment between men and women in what concerns the access to jobs, training, professional promotion, as well as the working conditions, defining, in art. 2, this principle as being the one that states that “there shall be no discrimination directly or indirectly based on gender, through reference to the material of familial status”.

However, the directive has also admitted, as an exception, certain derogations from the principle of equality of treatment. Thus, there has been specified, in art. 2 paragraph 2, that for certain activities due to their nature or to the environment in which they are being carried out, the gender of the employee may constitute a determinant factor, and paragraph 3 of the same article imposed, introducing thus into the communitarian legislation the concepts of “indirect discrimination” and „positive action” in favour of the people, the assumption of dispositions concerning

women's protection, especially in cases of pregnancy and maternity. “Equal payment for equal value work” is an expression of the derived communitarian legislation which merely develops, under the aspect of regulation, the principle of nondiscrimination based on gender, imposing on member states the harmonization of the legislation concerning the application of the principle of equal remuneration between men and women. Therefore, right from the first article, the principle of remuneration equality is defined, which implies for the same work or for a work for which an equal value is considered, the elimination of any gender based discrimination. As a result, whenever a professional classification system is used for the establishment of remunerations, this will have to be based on common criteria both for men and women, which allows, together with the fulfilment of other conditions, that the protection granted to the internal doer, by the unions and patronages extended to equal value also works The Directive has imposed on the member states the following obligations: to introduce in the national legislation the measures necessary to allow employees considered to have been affected by the non-application of the principle mentioned, to sustain their own claims in a judiciary trial after a possible recourse to other competent authorities; to apply equality of normative documents, in regulations, in collective conventions, and in individual labour agreements; to compulsorily correct or declare as null the individual or collective agreements that do not comply with the equal remuneration principle; to take the measures necessary to protect employees against any dismissal that would constitute a reaction of the employer in a complaint submitted at the level of the company or in a court action, as a result of

infringement of the equal remuneration principle.

Romanian legislation admitted this fundamental principle of equality of treatment, first, by art.5 of the Labour Code, with the subsequent modifications and additions, that foresees as fundamental the principle of right to work and the principle of equality of treatment for all employees and employers. Other two normative documents, Government Ordinance no. 137/2000 concerning the prevention and the sanctioning of all forms of discrimination, approved with the modifications and additions of Law no.48/2002, ordinance that was published in the Official Monitor, Part I, no.137/2008, in which there are defined the notions of discrimination, harassment and victimization, its provisions being applicable to all natural or juridical persons, public or private, as well as to public institutions with attributions in what concerns the occupational conditions in the work place, recruiting criteria and conditions, selection and promotion, access to all forms and levels of professional orientation, training and improvement. The second normative document worthy to be reminded is Law no.202/2002 concerning the equality of opportunity between women and men, republished in the Official Monitor, Part I, no. 150/2007, that targets the harmonization of the internal legislation with the communitarian norms concerning the promotion of equality of opportunity between men and women. But, being prior to the above mentioned regulations, the constitutional provision of art.16 of The Romanian constitution, republished must not be omitted, as it consecrates as constitutional value the principle of equality of women and men.

We would like to mention moreover that the principle of equality of treatment under its most visible aspect – equal work for equal payment – has been the object of the

jurisprudence of the European Court of Law which through its decisions stated that art.119 from the CEE Treaty is directly applicable, including what concerns the private, collective or individual conventions (Garland case no.12/81), but the equality of the salaries is not subject to the existence of any professional classification being enough if the work carried out is of equal value (case Commission c. United Kingdom no.61/81), and the equality of salaries must not be interpreted just as an equality between the employees who simultaneously work with the same company but equality between the workers who successively occupy the same function (Wendy Smith case no.129/79), etc.

In conclusion, we can state that both the communitarian legislation or that of the European Council, and the internal legislation must warrant individuals – both women and men – equal rights to participate in the economic and social life, to prepare and train in a certain profession, to get employed and promoted and to participate in the distribution of the benefits, to enjoy social protection in certain situations, a reason for which it was necessary in the professional segregation of women, a phenomenon which persists and is highlighted through the existence of gender differentiated occupation models, determining salary differentiation, to be eliminated.

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