NEWS REPORT

Date:	12 November2010
Expert:	Romaniţa Iordache
Title:	Provision of the Anti-discrimination Law on the burden of proof proposed to be amended by the joint committees of the Senate
Country:	Romania
Context	
Issue at stake:	Senators adopted a new wording regarding the burden of proof in the Anti-discrimination Law
Ground of discrimination:	all grounds
Source:	Draft law
Field:	all fields
Legislative provisions:	

Content

Political development: A draft to amend the Romanian Anti-discrimination Law was submitted to the Senate. The proposal is a response to the institutional crisis generated by many delays in making new appointments in the Steering Board of the national equality body that occurred between August 2009 and April 2010 and to the subsequent calls for improving the nomination procedures. Senator Urban, the head of the Legal Committee in the Senate, who had been previously sanctioned by the national equality body and warned that he will use his mandate to dilute the provisions of the law, proposed additional changes to the law. The amendments proposed by Senator Urban regarding the down-grading of the status of the members of the Steering Board of the National Council on Combating Discrimination were not accepted, but his proposals regarding a new wording for the provisions regarding the burden of proof were approved in the report of the Joint Legal and Human Rights Committees of the Senate.

Content of the Bill: The Joint Committees adopted provisions regarding a clear calendar for making the nominations for the Steering Board of the

NCCD in case of expiration of mandates as well as regarding Senator Urban's proposals on the burden of proof.

Article 20 (6) in the form adopted by the Joint Senatorial Committees on 10 November , introduces a new definition of 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 *can invoke in his/her defence any means of evidence to prove* that the facts do not amount to discrimination.'

In appearance the amended language does change the legal provision significantly, as from the current phrasing it was obvious that the defendant would bring any evidence necessary anyway.[1] Notably, the changes refer solely to burden of proof before the national equality body and not before the courts.

Internet link source and additional information: The text of the joint report is available here: http://webapp.senat.ro/pdf/10L462CR.pdf (11.11.2010). The legislative history of the proposed draft is available here: http://webapp.senat.ro/sergiusenat.proiect.asp?cod=15091&pos=0&NR=L462&AN=2010 (11.11.2010).

[1] Current Art. 20 (6) provides: '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.'