



## NEWS REPORT

<b>Date:</b>	13 July 2011
<b>Expert:</b>	Romanița Iordache
<b>Title:</b>	Inadmissibility of the reference for a preliminary ruling regarding a potential conflict between the Anti-discrimination Directives and the national legislation and a judgment of the Constitutional Court
<b>Country:</b>	Romania
<b>Context</b>	
<b>Issue at stake:</b>	Conditions for compensation for the harm suffered on grounds of membership of a socio-professional category or place of work triggered by legislation and following decision of the Constitutional Court challenged for conflicting with Article 15 of Council Directive 2000/43/EC and Article 17 of Council Directive 2000/78/EC
<b>Ground of discrimination:</b>	Other: membership of a socio-professional category or place of work
<b>Source:</b>	Judgment, Case C-310/10: Reference for a preliminary ruling from the Curtea de Apel Bacău (Romania) lodged on 29 June 2010 — Ministerul Justiției și Libertăților Cetățenești v Ștefan Agafiței and Others
<b>Field:</b>	Employment, salary related rights
<b>Legislative provisions:</b>	Article 15 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22) and Article 17 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) Article 27 of Ordinance No 137/2000 on the prevention and punishment of all forms of discrimination ( <i>Monitorul Oficial al României</i> , Part I, No 431 of 2 September 2000) and Decisions Nos 818 to 820 of 3 July 2008, Decision No 1325 of 4 December 2008 and Decision No 146 of 25



## February 2010 of the Romanian Constitutional Court

### Content

#### **Legal development:**

Romanian Anti-discrimination legislation transposing Directives 2000/43 and 2000/78 into national law, provides for an open-ended list of grounds being granted protection against discrimination, including socio-professional category.<sup>1</sup>

As a part of a long term conflict regarding salaries and salary related rights in the Judiciary, the different categories of magistrates invoked the Anti-discrimination Law, particularly Article 27 of the Ordinance No. 137/2000 in ruling against different legislative measures leading to a limitation of their salaries which were considered as discriminatory.<sup>2</sup> Subsequently, this interpretation of Article 27 of the Ordinance was challenged by the Ministry of Justice before the Curtea Constituțională [Romanian Constitutional Court] which declared that various provisions of Ordinance No 137/2000, including Article 27, are to be regarded as unconstitutional, in so far as, under the terms of those provisions, the courts interpreted to have jurisdiction to annul or to decline to apply legislative acts with the force of law which they consider to be discriminatory and to replace them with rules developed in the case-law or provisions contained in other legislative acts.<sup>3</sup>

On 29 June 2010, Curtea de Apel Bacau filed a reference for a preliminary ruling concerning the interpretation of Article 15 of Council Directive 2000/43/EC and Article 17 of Council Directive 2000/78/EC regarding a

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<sup>1</sup> Article 2(1) of Ordinance No 137/2000 is worded as follows: 'For the purposes of this Legislative Decree, discrimination shall mean any distinction, exclusion, restriction or preference applied on grounds of race, nationality, ethnic origin, language, religion, social class, belief, gender, sexual orientation, age, disability, non-contagious chronic illness, HIV-positive status, membership of a disadvantaged group and any other criterion the purpose or effect of which is to restrict or refuse the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms or the rights recognised by law in the political, economic, social and cultural sphere or in any other area of public life.'

<sup>2</sup> Article 27(1) of Ordinance No 137/2000 provides as follows: 'Any person who considers himself to be the victim of discrimination may seek before the court compensation and the restoration of the status quo ante or the elimination of the situation to which the discrimination gave rise, in accordance with the provisions of general law. ...'

<sup>3</sup> Romanian Constitutional Court. Decisions Nos 818 to 820 of 3 July 2008, Decision No 1325 of 4 December 2008 and Decision No 146 of 25 February 2010. See Flash Report 4 from 29.07.2008, Flash Report 8 from 29 December 2008.

potential conflict between those provisions and national legislation or a judgment of the Curtea Constituțională.<sup>4</sup>

On 7 July 2011, the Court decided that the reference for a preliminary ruling from the Curtea de Apel Bacău was inadmissible. In reaching that conclusion, the judgment underlined that the situation at issue in the main proceedings did not fall within the scope of Directives 2000/43 and 2000/78 as ‘the discrimination at issue in the main proceedings was not based on any of the grounds thus listed in those directives, but operated instead on the basis of the socio-professional category, within the meaning of national legislation.’ The Court also stated that ‘the order for reference does not contain sufficiently precise information from which it can be inferred that, by making infringements of rules prohibiting discrimination under Directives 2000/43 and 2000/78 and infringements of rules prohibiting discrimination under national law alone subject to one and the same compensation scheme, the national legislature intended, as regards infringements of the national rules, to refer to the content of provisions of European Union law or to adopt the same solutions as those adopted by those provisions.’

**Internet link source and additional information:** Judgment available at: <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurtfp=jurtfp&numaff=310/10&nomusuel=&docnodecision=docnodecision&allcommjo=allcommjo&affint=affint&affclose=affclose&alldocrec=alldocrec&docdecision=docdecision&docor=docor&docav=docav&docsom=docsom&docinf=docinf&alldocnorec=alldocnorec&docnoor=docnoor&docppoag=docppoag&radtypeord=on&newform=newform&docj=docj&docop=docop&docnoj=docnoj&typeord=ALL&domaine=&mots=&resmax=100&Submit=Rechercher>

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<sup>4</sup> See Romania Flash Report from 31.08.2010.