

## **REPORT ON THE STATUS OF ROMANIA'S IMPLEMENTATION OF THE UN WORKING GROUP'S 2020 RECOMMENDATIONS**

**Submitted by A.L.E.G. - Association for Liberty and Equality of Gender**

### ***I. EXECUTIVE SUMMARY***

In its 2020 report, the UN Working Group on Discrimination against Women and Girls (UNWG) recommended Romania to “adopt and implement further policies and strategies protecting women from harassment in the workplace, and ratify the ILO Violence and Harassment Convention, 2019 (No. 190)”.<sup>1</sup> This submission focuses specifically on this recommendation of the UNWG, providing an overview of the current context and what remains to be done.

The submission is prepared by Asociația pentru Libertate și Egalitate de Gen (A.L.E.G. - Association for Liberty and Equality of Gender). Since 2021, A.L.E.G. has been leading - in partnership with other NGOs, unions, and other civil society organisations - a national campaign for the strengthening of Romania's laws and their implementation concerning workers' protection against violence and harassment in the world of work. Specifically, A.L.E.G. and over 40 civil society organisations have been calling for the ratification of the ILO Violence and Harassment Convention (“C190”).<sup>2</sup>

Following persistent advocacy over the course of the last two years, on 17 November 2023, the Government adopted a legislative proposal to ratify C190, which is now with the Parliament to be voted on.<sup>3</sup> A.L.E.G. and over 40 other civil society organisations and trade unions have been calling on the Government to ensure that the ratification of C190 will translate into better protection of workers' right to a safe and healthy work environment, free from harassment and violence. While the bill for ratification has not been adopted by the Parliament yet, at the end of 2023, the Government has initiated multi-stakeholder consultations regarding the harmonisation of the legal framework according to C190 standards.

### ***II. GENERAL & SYSTEMIC PROBLEMS IN ADDRESSING HARASSMENT IN THE WORLD OF WORK***

The ratification of C190 and the harmonisation procedure requires a comprehensive process to review the gaps and weaknesses in national laws, policies, and institutional practices concerning harassment in the world of work and implement legislative and policy change. This section highlights the key existing gaps and provides a series of concrete recommendations on how to address them, based on the provisions of C190 and its accompanying ILO R206 - Violence and Harassment Recommendation, 2019 (No. 206).<sup>4</sup>

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<sup>1</sup> Report of the Working Group on discrimination against women and girls on its visit to Romania, 2020, para. 94, g): <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F47%2F38%2FAdd.1&Language=E&DeviceType=Desktop&LangRequested=Falsehttps://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F47%2F38%2FAdd.1&Language=E&DeviceType=Desktop&LangRequested=False>.

<sup>2</sup> See, for example, the open letters sent by civil society organisation, including NGOs working on eliminating violence against women and unions, sent to the Parliament and Government on 28 April 2022: <https://alegromania.eu/wp-content/uploads/2022/04/Scrisoare-deschis%C4%83-1-Mai-Conven%C8%9Bia-OIM-antih%C4%83r%C8%9Buire.pdf>; and the press release published on 9 December 2021 announcing the launch of the campaign for Romania's ratification of the ILO Convention no. 190: <https://aleg-romania.eu/angajatori-pentrurespect-comunicat-de-presa/>. Members of the Parliament and relevant governmental institutions attended the launch of the campaign.

<sup>3</sup> Plx 735/2023.

<sup>4</sup> R206 - Violence and Harassment Recommendation, 2019 (No. 206), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R206](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R206).

## I. DEFINITIONS & SCOPE OF KEY LEGAL PROVISIONS

### 1. DEFINITION OF HARASSMENT AND VIOLENCE IN THE WORLD OF WORK

As highlighted by the Romanian Ombudsperson in the 2023 Special Report on Harassment and Violence at Work, an analysis of national labour legislation shows that **there is no uniform regulation of harassment and there is no regulation of harassment at work**, although *moral* harassment at work is defined.<sup>5</sup>

**Currently, harassment, implying harassment in the world of work, is defined in national law exclusively as a form of discrimination**, except in the Penal Code.<sup>6</sup> Both Ordinance No. 137/2000 on the prevention and punishment of all forms of discrimination,<sup>7</sup> Law No. 202/2002 on equal opportunities and treatment between women and men<sup>8</sup>, as well as the Labour Code<sup>9</sup> restrict the application of protection against harassment to the existence of a protected identity criterion which is a constituent element of the current legal definitions of harassment (instead of being considered an aggravating circumstance). This unjustifiably restricts the scope of the beneficiaries, since harassment does not require a term of comparison as in the case of discrimination, given that harassment is in itself unacceptable behaviour that violates human dignity.

#### Recommendations:

- **Romania should adapt the definition of harassment to C190 standards.** According to C190, the unacceptability of harassment does not depend on the existence of an identity/protected criterion, the intention of the perpetrator or the repetition or duration of certain behaviours and is based on both subjective and objective considerations:<sup>10</sup>
  - In the Labour Code, discrimination should be considered an aggravating circumstance of harassment, not a constituent element of the definition of harassment as currently provided by Article 5(5).

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<sup>5</sup> Romanian Ombudsperson, 2023, [Special Report on Harassment and Violence in the Workplace](#), p. 62.

<sup>6</sup> [New Penal Code](#), art. 208. From a criminal law point of view, both harassment and sexual harassment have definitions limited to repeated actions, thus narrowing the scope of protection.

<sup>7</sup> [Ordinance No. 137/2000](#) on the prevention and punishment of all forms of discrimination, Art. 2(5). Although the courts may apply a historical-teleological interpretation of these provisions, focusing on their purpose, the National Council for Combating Discrimination (CNCD) interprets workplace harassment strictly as a form of discrimination, the protected criterion being understood as a constituent element of harassment (See, for example, [CNCD Decision no. 405 of 12.05.2021 \(Case no. 620/2020\)](#); [CNCD Decision no. 517 of 30.06.2021 \(Case no. 635/2020\)](#)).

<sup>8</sup> [Law No. 202/2002](#) on Equal Opportunities and Equal Treatment of Women and Men, Art. 4(c). The regulation of psychological harassment in 2015 (introduced by [Law No. 229/2015](#) amending and supplementing Law No. 202/2002, published in the Official Gazette No. 749 of 7 October 2015) as a form of gender discrimination, has been useful in resolving disputes concerning psychological harassment at work, independent of gender discriminatory behaviour. At the same time, however, it has been noted that useful provisions enshrined in Law No. 202/2002 cannot be extended to discrimination in the field of employment law, other than with regard to discrimination on grounds of sex under Law No. 202/2002 (see: Bucharest Court of Appeal, Seventh Section for Labour Disputes and Social Insurance Cases, dec. civ. no. 4023 of 24 September 2019, cited on p. 86 in Oana Cristina Niemesch, 2020, "Harassment in labour relations: judicial practice, procedural rules", *Universul Juridic*: Bucharest; Oana Voinea, 2020, *Revista Biz*, "[Ce drepturi ai și cum combați hărțuirea morală au locul](#) de munca"). Therefore, the applicability of the notion of psychological harassment, as defined in this law, is often limited to the context of equal opportunities and treatment for women and men.

<sup>9</sup> [Labour Code](#), Art. 5(5): "Harassment consists of any type of behaviour based on one of the criteria set out in para. (2) which has the purpose or effect of violating the dignity of a person and results in the creation of an intimidating, hostile, degrading, humiliating or offensive environment."

<sup>10</sup> ILO Convention No. 190, Article 1(a) defines violence and harassment as: "a series of unacceptable behaviours and practices or threats of such behaviours and practices, whether single or repeated, that are intended to, result in, or are likely to result in physical, psychological, sexual or economic harm".

The notion of violence and harassment as defined in C190, art. 1(b) explicitly includes gender-based violence and harassment, which are defined as: "violence and harassment directed against persons because of their sex or gender or which disproportionately affects persons of a particular sex or gender, including sexual harassment".

- Recognition of harassment by third parties (e.g. clients), in the world of work, not only by co-workers or hierarchical superiors - in the Labour Code and related acts, and in Law no. 202/2002.
- The law must recognise the economic harm<sup>11</sup> that can result from harassment, along with physical, psychological, and sexual harm.

## 2. “WORLD OF WORK” DEFINITION

**Violence and harassment in the "world of work" can occur both during and in connection with work**, not only the workplace, but also related places where the worker is paid, on break, dining, or using sanitary facilities and changing rooms; during travel, commuting, training, work-related events or social activities; in work-related communications; in accommodation provided by the employer; and while travelling to and from work.

### Recommendations:

- **Romania should harmonise the definitions of "workplace" in the current legal framework in accordance with C190, art. 3** by resolving the inconsistencies highlighted by the Romanian Ombudsperson in the Special Report on Harassment and Violence at Work, including those in the Labour Code, Law no. 319/2006 on health and safety at work, Law no. 81/2018 on the regulation of telecommuting, Law no. 111/2022 on the regulation of the activity of domestic service providers, and special laws regulating the activity of day labourers, seasonal workers, activities carried out in various places.<sup>12</sup>

## 3. DEFINITION OF WORKERS

The current legal framework does not protect all workers equally against harassment and violence, favouring *employees* and *wage earners* and marginalising or even ignoring categories of workers such as *freelancers*, workers in the informal economy, volunteers, apprentices, trainees, domestic workers, etc.

### Recommendations:

- **Romania should harmonise the scope of anti-harassment legal protections, as per C190 Art. 2**, by updating the legal framework, including the Labour Code, to cover all workers, regardless of their contractual status, including trainees, interns and apprentices, workers whose employment contract has ended, volunteers, jobseekers, and people exercising the authority, duties or responsibilities of an employer, regardless of sector - public, private, formal or informal.<sup>13</sup>

## II. PROTECTION AND PREVENTION

### 1. COMBATING HARASSMENT AS AN ELEMENT OF OCCUPATIONAL SAFETY AND HEALTH

Both the Occupational Safety and Health (OSH) Law and corresponding Implementing Methodological Norms do not explicitly provide for combating harassment. The Law requires employers to "ensure the best conditions in the work process, protect the life, physical and mental integrity and health of workers and other persons involved in the work process",<sup>14</sup> but the **focus is on physical accidents and occupational diseases, and the**

<sup>11</sup> Economic harm may consist, for example, of loss of income or property damage, but also of restrictions in access to financial resources, education or the labour market, including limiting a person's ability to remain/advance in the labour market; see ILO, 2021 "[Violence and harassment in the world of work: A guide on Convention No. 190 and Recommendation No. 206](#)", p. 8.

<sup>12</sup> Romanian Ombudsperson, 2023, [Special Report on Harassment and Violence in the Workplace](#), pp. 10-11.

<sup>13</sup> ILO Convention No. 190, Art. 2.

<sup>14</sup> [Law No. 319 of 14 July 2006 on safety and health at work](#), Art. 5(n).

**risks associated with harassment are not addressed either in the law or in related acts.**<sup>15</sup> According to the law, this obligation includes identifying hazards and assessing risks; drawing up, implementing and monitoring a prevention and protection plan; informing and training workers in occupational safety and health; and checking that workers apply the information they receive.<sup>16</sup> In the absence of mention of harassment in the world of work in the OSH Law, employers and Labour Inspectorates do not include harassment in OSH prevention, protection and training plans.

### Recommendations:

- **Introduce prevention and combating of harassment in the Occupational Safety and Health Law.**<sup>17</sup> This would also mean more attention from the Labour Inspectorates on this issue. At the moment, the Labour Inspectorate works with a very narrow concept of what occupational safety and health means, focusing strictly on physical safety and health.
- Through the Occupational Safety and Health Law and related methodological acts, **impose an obligation on employers to have clear procedures for investigating complaints of harassment and to ensure that these investigations are carried out fairly, impartially and in a timely manner**, as well as an obligation to provide regular training for male and female workers, including those in management, on preventing harassment, identifying harassment and how to report harassment.<sup>18</sup>

## 2. IDENTIFYING THE CATEGORIES OF WORKERS, SECTORS AND WORKING ARRANGEMENTS MOST AT RISK OF HARASSMENT

Identifying categories of workers, sectors and working arrangements at high risk of harassment is essential to design an effective prevention strategy, tools to assess the risks of harassment, as well as tools to raise awareness of workers' rights.<sup>19</sup>

Some categories of workers may be more exposed to the risk of harassment in the world of work; for example, migrant workers,<sup>20</sup> workers who work alone, at night, or who work in contact with the public, such as those working in health, transport, social services, education, domestic services, hospitality services, or young workers (e.g. volunteers, trainees, apprentices) etc..<sup>21</sup>

Violence and harassment against women are more common in masculinised sectors of work and in sectors where women make up the majority of the low-paid workforce but supervisors and managers are men, such as in the garment industry, or, as in Ms. C's case, the cleaning industry.<sup>22</sup>

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<sup>15</sup> According to the documents of the National Centre for Monitoring Risks in the Community Environment, which provides specific national coordination for the National Institute of Public Health, harassment and its effects are not an occupational health/occupational medicine issue: <https://cnmrmc.insp.gov.ro/en/ghiduri>; <https://cnmrmc.insp.gov.ro/en/metodologii-pnii/medicina-muncii2>; <https://cnmrmc.insp.gov.ro/en/prestari-servicii/sanatate-ocupationala-si-mediul-de-munca>; <https://cnmrmc.insp.gov.ro/en/prestari-servicii/sanatate-ocupationala-si-mediul-de-munca/33-evaluarea-sanatatii-lucratorilor>. See, for example, also Labour Inspectorate, 2007, "[Guide of risk assessment](#)" in the field of occupational safety and health in small and medium-sized enterprises (one of the few resources on the subject).

<sup>16</sup> [Methodological rules of 11 October 2006 implementing the provisions of the Law on safety and health at work no. 319/2006](#), art. 15.

<sup>17</sup> In accordance with C190, Art.9(b), Art.11(a), R206 paras. 2, 6 and 21.

<sup>18</sup> In accordance with C190, art.4(2)(h).

<sup>19</sup> In accordance with R206, point 8.

<sup>20</sup> A.L.E.G., 2023, "[What you don't like, someone else doesn't. Harassment of migrant and refugee workers in Romania. Study and recommendations for public policies 2023](#)".

<sup>21</sup> ILO Recommendation No. 206, points 8 and 9.

<sup>22</sup> Training of Trainers Toolkit on the ILO Violence and Harassment Convention (No. 190) and Recommendation (No. 206), Facilitator Guide, 2021, <https://www.ei-ie.org/file/62>, p. 25.

## Recommendations:

- **Romania should identify the sectors and working arrangements that are most at risk of harassment, especially sexual harassment, from an intersectional perspective, including gender.** This can be done by the Labour Inspectorate and/or other relevant authorities and should be followed by the development and implementation of a plan to reduce the risks of harassment against workers, in accordance with C190, art.8 and R206 para. 9.

### **3. PROTECTION OF MIGRANT WORKERS IN ACCORDANCE WITH HUMAN RIGHTS AND ENSURING THE RIGHT TO A SAFE AND HEALTHY WORKING ENVIRONMENT**

In Romania, the number of migrant workers has doubled in the last two years due to the labour shortage. In both 2022 and 2023, the government has approved a record 100,000 foreigners to be admitted to the labour market each year. More and more foreign workers from outside the EU, from countries such as Bangladesh, Nepal, Pakistan and even Ukraine (due to the war), are arriving in Romania in search of work. Although they hope for and have the right to safe and healthy working environments that provide them with a decent living, they are often subjected to harassing and abusive behaviour, such as insults, lack of rest time, deprivation of information about their rights as workers, unpaid overtime, withholding of wages or personal documents or accommodation in precarious conditions provided by employers.

**Legislative changes in 2022 prevent migrant workers from changing jobs in their first year of employment without the written consent of their employer, which further complicates workers' right to be protected from harassment.**<sup>23</sup> Furthermore, although mechanisms for reporting harassment exist, they are often not informed of their existence or the process for reporting, and when they are informed, they are ineffective. The lack of an adequate legal framework and effective measures that capture the particularities of the situation of foreign workers, including from a gender perspective - given the gendered sectors in which they end up working - deepens the risk of harassment to which they are exposed.

Undocumented migrant workers,<sup>24</sup> work in the informal economy. When faced with harassment or abusive labour practices, they hesitate to access public or legal services for fear of being detained, arrested or deported.

## Recommendations:

- **Include the prevention of harassment of foreign workers in the world of work in the action plans of the National Immigration Strategy for the period 2021 - 2024,<sup>25</sup> as well as in the National Immigration Strategy for the period 2025 - 2028 (in accordance with R206 para. 10).** The Strategy for 2021-2024 includes strategic objectives on migration management, but omits the inclusion of clear objectives on migrant integration, such as ensuring respect for the rights and protection of migrant workers against harassment and violence in the workplace, as well as collaboration with the Territorial Labour Inspectorate (ITM) and other relevant institutions in preventing and combating this phenomenon.
- **Impose minimum standards on migrant worker recruitment agencies (in line with R206(8)(a)).** The usual recruitment procedures are managed by local intermediary - Romanian intermediary -

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<sup>23</sup> [Emergency Ordinance no. 143 of 28 October 2022](#) amending Article 17 of Government Ordinance no. 25/2014 on the employment and secondment of foreigners on the territory of Romania and amending and supplementing certain regulations on the status of foreigners in Romania.

<sup>24</sup> According to data collected by A.L.E.G. from the General Inspectorate for Immigration, in 2022, 5,214 migrants (of which 4,405 were men and 809 women) were detected in "illegal" work situations (see A.L.E.G., 2023, "[Ce tie nu iti place, altuia nu ii face!](#) Harassment of migrant and refugee workers in Romania Study and recommendations for public policy 2023").

<sup>25</sup> [National Immigration Strategy 2021-2024; Draft Action Plan for the period 2023 - 2024 for the implementation of the National Immigration Strategy for the period 2021 - 2024.](#)



employer networks, but are not regulated by law. The law should regulate all stages of recruitment, including promotion, information dissemination, selection, transport, job placement, etc.<sup>26</sup>

#### 4. THE IMPACT OF DOMESTIC VIOLENCE ON THE WORLD OF WORK

Domestic violence has a great impact on the world of work, including in terms of employment, productivity, safety and health of workers. The workplace often becomes the very space where domestic violence occurs. Women who are abused at home are often followed to work by abusive partners, which also makes their colleagues and co-workers vulnerable.

The moment when women experiencing domestic violence decide to separate from abusive partners is one of the most dangerous and stressful. There is a need for the law to come to their support, to provide paid leave for victims of domestic violence so that they do not risk losing their income/job when they decide to leave an abusive relationship behind. Starting proceedings for a protection order, obtaining a medical forensic certificate, initiating criminal, divorce or child custody proceedings, and finding a new home are stressful, overwhelming and costly processes. Women should not have to choose between their salaries and separating from a domestic partner.

##### Recommendations:

- **Introduce paid leave for victims of domestic violence under C190, art. 10(f) and R206 paras 4(a) and 18, so that workers who are victims of domestic violence are entitled to 10 days paid leave annually when they need it, regardless of marital status.** Other countries such as [Ireland](#), [Italy](#), [New Zealand](#) and [the Philippines](#) have already passed laws giving victims of domestic violence paid leave. Victims of domestic violence should have the right to apply for paid leave through a streamlined process and receive support in completing this application.

### III. LAW ENFORCEMENT MONITORING

In general, the legal framework on workplace harassment does not provide for concrete provisions regarding the monitoring and evaluation of its implementation, and Labour Inspectorates do very little, if any, monitoring of compliance with anti-harassment laws.<sup>27</sup> As the Romanian Ombudsperson's recent report points out, labour inspectors are currently unable to prove, from a legal and procedural point of view, the existence of harassment in the workplace, a situation which is also due to unclear and non-uniform legislation in this area and a lack of specialised training.<sup>28</sup>

At the local level, the County Commissions for Equal Opportunities for Women and Men (“Comisiile Județene în Domeniul Egalității de Șanse între Femei și Bărbați” - COJES) and the Labour Inspectorates are responsible for evaluating and monitoring the application and compliance with Law no. 202/2002 (the only law whose implementing methodological rules contain clear anti-harassment measures that employers must adopt "in order to prevent, combat and eliminate discrimination based on sex").<sup>29</sup> The COJES membership also includes a

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<sup>26</sup> For example, OneStaff is a marketplace where the employer can choose workers based on several characteristics, including appearance, marital status, etc.

<sup>27</sup> See A.L.E.G. research, 2021, "[Employers for Respect: No Harassment in the World of Work. Recommendations for Public Policies 2021](#)", pp. 24-25; and Romanian Ombudsperson, 2023, "[Special Report on Harassment and Violence in the Workplace](#)".

<sup>28</sup> Romanian Ombudsperson, 2023, "[Special Report on Harassment and Violence in the Workplace](#)", pp. 59-60.

<sup>29</sup> [Decision No 1054/2005](#) of 8 September 2005 approving the Regulation on the organisation and functioning of the county and Bucharest municipal commissions on equal opportunities between women and men, Art. 3(1)(b), (c) and (h); Law No 202/2002, Art. 24(4); [Law No 108/1999](#) on the establishment and organisation of the Labour Inspectorate, Art. 5(a); Law No 202/2002, Art. 37(a).

representative of the Labour Inspectorates,<sup>30</sup> but collaboration between these institutions is hampered by certain institutional/structural limitations.<sup>31</sup> According to the law, the main tasks of the COJES include the drafting of reports on the application of legislation in this field.<sup>32</sup> Although legally COJES can request reports from Labour Inspectorates on how employers' obligations to combat harassment are being enforced, in practice this does not happen.<sup>33</sup>

In a context in which trade unions' power is limited (and in some industries absent), the lack of institutional monitoring and evaluation of how anti-harassment legislation is applied means that abuses go, oftentimes, undocumented and, thus, the culture of impunity persists.

### Recommendations:

- **Romania should amend Law no. 108/1999 on the establishment and organisation of the Labour Inspectorate to set up a procedure for carrying out inspections regarding harassment in the world of work by labour inspectors.<sup>34</sup>**
  - Explicitly include verification of anti-harassment measures on the inspection grids of all Labour Inspectorates in the country;
  - Introduce the possibility to carry out inspections in the employer's private space when the worker provides domestic services and there is suspicion of harassment at work;<sup>35</sup>
  - Establish clear procedures for collaboration between the Labour Inspectorates and other authorities, such as the police, to address cases of harassment in the world of work when necessary;
  - Mandate regular training for labour inspectors to identify and address harassment in the world of work, including psychosocial hazards and risks, gender-based violence and harassment and discrimination against vulnerable groups of workers;
  - Mandate regular reporting of recorded harassment cases and the results of investigations to the relevant authorities;
  - Encourage Labour Inspectorates' cooperation with social partners and civil society to end harassment in the world of work.
- **Improve the framework for the functioning of the National Commission for Equal Opportunities for Women and Men (CONES)/COJES in relation to the Labour Inspectorate/s and allocate sufficient resources to the National Agency for Equal Opportunities between Men and Women (ANES)/CONES/COJES to ensure better monitoring and evaluation of the implementation of anti-harassment and gender/sex discrimination legislation at national and county level;<sup>36</sup>**

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<sup>30</sup> Regulation of 8 September 2005 on the organisation and functioning of the county and municipal commissions on equal opportunities between women and men, Annex, <http://legislatie.just.ro/Public/DetaliiDocumentAfis/194283>.

<sup>31</sup> According to A.L.E.G. interviews with Labour Inspectorates' representatives (September 2021), institutional/structural limitations include issues such as the fact that COJES members are civil servants who do not have time dedicated to the work of this structure and the lack of clearly defined processes and responsibilities for the institutions responsible in the case of reporting by victims of harassment and violence at work. See: A.L.E.G., 2021, "[Employers for respect: No harassment in the world of work. Recommendations for public policies 2021](#)".

<sup>32</sup> Decision no. 1054/2005 for the approval of the Regulation on the organisation and functioning of the county and Bucharest municipality commissions in the field of equal opportunities between women and men, art. 3(1)(c) and (h).

<sup>33</sup> From the interviews conducted by A.L.E.G. with representatives of the Labour Inspectorates (September 2021), it emerged that these reports are not mandatory but voluntary. This is also reflected at national level by the lack of availability of monitoring reports on the ANES website: <https://anes.gov.ro/rapoarte-de-monitorizare/> (accessed 12 October 2021).

<sup>34</sup> In accordance with C190, art.10(h) and R206 p. 21 and in line with the recommendation of the Romanian Ombudsperson, 2023, [Special Report on Harassment and Violence at Work](#), p. 66.

<sup>35</sup> See the case of migrant nannies, for example: <https://ziare.com/locuri-de-munca/anunturi-locuri-munca/deutsche-welle-bone-filipineze-tratate-ca-sclavele-in-romania-1439583>.

<sup>36</sup> In accordance with R206, para.21.

- **Promote collective bargaining at all levels as a means of preventing and combating harassment,** and support collective bargaining by collecting and disseminating information on trends and good practices in the bargaining process and the content of collective agreements;<sup>37</sup>
- **Revise the Social Dialogue Law, which governs Government-trade unions consultations, to include clear provisions on the rights of trade unions to fight harassment in the world of work** and to protect trade union members who report harassment.<sup>38</sup>

#### **IV. SANCTIONS**

Harassment and victimisation are considered offences punishable by a fine according to the Labour Code (art. 260), Law no. 202/2002 on equal opportunities and treatment (art. 37) and Government Ordinance no. 137/2000 on the prevention and punishment of all forms of discrimination (art. 26). However, the level of fines varies greatly from one law to another, and the minimum threshold is insufficient as a sanction and as a deterrent to harassment (i.e. EUR800 according to the Labour Code art.260(r), EUR 200 according to Government Ordinance no. 137/2000, art. 26(1), or EUR600 according to Law no. 202/2002 art.37(1)).

#### **Recommendations:**

- **Correlate the sanctions applied to the acts of harassment and victimisation set out in Government Ordinance no. 137/2000, Law no. 202/2002 and the Labour Code, taking into account the major differences in the amount of fines applied, raising the minimum threshold of possible fines and increasing the penalties applied.**<sup>39</sup>

#### **V. REMEDIATION**

The National Council Countering Discrimination (“*Consiliul Național pentru Combaterea Discriminării*” - CNCD) is the state authority that guarantees respect for and application of the principle of non-discrimination, including by dealing with petitions concerning harassment in the workplace and sanctioning individuals and entities responsible for acts of harassment. However, **the CNCD has this mandate only in cases where harassment occurs as a form of discrimination under Ordinance no. 137/2000 on the prevention and punishment of all forms of discrimination.**<sup>40</sup> Workers who are harassed, but without the acts of harassment taking place on the basis of their protected identity criteria, cannot access any remedy before the CNCD and their petitions to the CNCD are not admissible.

Furthermore, as the Romanian Ombudsperson pointed out in a recent thematic report, in the case of harassment, the quantification of non-material damage is not subject to legal criteria for determination, but should be carried out fairly, in accordance with the principles of proportionality.<sup>41</sup> In the absence of legal criteria for determining non-material damage, there are major discrepancies in the way non-material damage is quantified by courts across the country, and in many cases non-material damage is seriously underestimated.

#### **Recommendations:**

- **Take measures to ensure that Labour Inspectorates have the mandate and capacity to deal with petitions on harassment in the world of work;**<sup>42</sup>

<sup>37</sup> In accordance with R206, para. 4.

<sup>38</sup> In accordance with R206, para. 4.

<sup>39</sup> In accordance with C190, Art.4(2) and Art.10(d). See also: Romanian Ombudsperson, 2023, [Special Report on Harassment and Violence in the Workplace](#), p. 66.

<sup>40</sup> See, for example, [CNCD Decision No 405 of 12. 05. 2021 \(File No 620/2020\)](#); [CNCD Decision No 517 of 30.06.2021 \(File No 635/2020\)](#).

<sup>41</sup> Romanian Ombudsperson, 2023, [Special Report on Harassment and Violence in the Workplace](#).

<sup>42</sup> In accordance with R206, points 14, 15 and 21.



- **Develop a guide for courts on the quantification of moral/psychological, economic, sexual and physical harm arising from harassment in the world of work;**<sup>43</sup>
- **Ensure access to specialised legal and psychological assistance for victims of harassment/violence in the world of work** to help them cope with the consequences and provide support in cases of litigation or investigation, as well as access to counselling services for re-entering the labour market;<sup>44</sup>
- **Introduce temporary protection orders for victims of harassment.**<sup>45</sup>

## **VI. EMPLOYERS' LIABILITY AND WORKERS' RIGHTS WHEN EMPLOYERS FAIL TO MEET THEIR RESPONSIBILITIES**

The Occupational Safety and Health Law does not provide for an explicit obligation to prevent and combat harassment or related acts. Only some anti-discrimination laws provide for an explicit obligation for employers to prevent and combat harassment, in particular moral harassment<sup>46</sup> and psychological harassment based on sex,<sup>47</sup> which is insufficient and ineffective in protecting workers against harassment, especially since employers and labour inspectors generally look at the OSH Law as the primary law in this field.

The clearest and most specific anti-harassment measure can be found in the Methodological Norms for the application of Law no. 202/2002 of May 2019, which obliges employers to take a number of concrete measures to "combat and eliminate discrimination based on sex".<sup>48</sup> According to these Norms, employers with more than 50 employees have the *option* to hire or identify an employee to whom they assign, through the job description, duties in the field of equal opportunities and treatment between women and men, including preventing and combating harassment in the workplace.<sup>49</sup> The legal text does not oblige the employment of an expert or the appointment of a worker with equal opportunities and equal treatment duties, leaving it to the discretion of employers to take such a measure, which renders the regulation meaningless.

### **Recommendations:**

- **Romania should introduce the *obligation* for employers to employ an expert or designate a worker to be in charge of equal opportunities and equal treatment, including preventing and combating harassment, in the Methodological Norms for the implementation of Law no. 202/2002 on equal opportunities and equal treatment between women and men;**
- **Amend the Labour Code in order to introduce a provision stating that employers with more than 10 employees are obliged to identify at least one employee to whom they assign, through the job description, duties in the field of prevention of harassment/violence at the workplace, as recommended by the Romanian Ombudsperson;**<sup>50</sup>

<sup>43</sup> In accordance with R206, paras 14 and 15.

<sup>44</sup> In accordance with C190, art. 10(b) and R206, para. 17.

<sup>45</sup> In accordance with C190, art. 10(b) and R206, para. 17.

<sup>46</sup> Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, art. 2(5<sup>5</sup>): employers are obliged to take "any measures necessary to prevent and combat acts of moral harassment at the workplace, including by providing in the unit's internal regulations for disciplinary sanctions for employees who commit acts or facts of moral harassment at the workplace".

<sup>47</sup> [Decision No 262/2019 of 24 April 2019](#) approving the Methodological Rules for the application of the provisions of Law No 202/2002 on equality of opportunities and treatment between women and men, published in the Official Gazette No 333 of 2 May 2019, Art. 5.

<sup>48</sup> Ibid.

<sup>49</sup> [Decision No 262/2019 of 24 April 2019](#) approving the Methodological Rules for the application of the provisions of Law No 202/2002 on equality of opportunities and treatment between women and men, published in the Official Gazette No 333 of 2 May 2019, Art. 1 and Art.3(2)(b).

<sup>50</sup> According to the recommendation issued by the Romanian Ombudsperson, 2023, [Special Report on Harassment and Violence in the Workplace](#), p. 66. And in line with C190, Article 9.

- **Introduce an obligation for employers to monitor and report cases of harassment in a transparent way** and make the data readily available to the relevant authorities.<sup>51</sup>
- **Introduce the right of harassed workers to refuse to work until effective action is taken to stop harassment without loss of wages**<sup>52</sup> if employers fail to comply with obligations to provide a safe and healthy working environment free from harassment. For example, in Germany, the law allows employees to refuse to work without loss of pay if the employer does not take appropriate measures to stop harassment in the workplace.<sup>53</sup>
- **Introduce paid leave for victims of harassment in the world of work** to recover and cope with the effects of harassment. The law should provide for a number of days of paid leave that may be granted in addition to regular leave. Victims of harassment should have the right to apply for paid leave through a simplified process and receive support to complete required applications.

## **VII. TRAINING OF PROFESSIONALS DEALING WITH HARASSMENT CASES**

An analysis of judicial practice at national level concerning the adjudication of harassment in the workplace shows that courts have a patchy practice which sometimes has an effect contrary to the purpose of anti-harassment legislation. This has also been highlighted by the recent thematic report issued by the Romanian Ombudsperson.<sup>54</sup> For instance, according to the text of the law, the *duration of* hostile or unwanted conduct is not a constituent element of harassment; harassing conduct does not have to take place over a specific period of time. However, case law considers that, in order to confirm the phenomenon of psychological harassment at work, vexatious conduct must last for a "long period of time"<sup>55</sup> or a period of at least six months.<sup>56</sup> This practice has an effect contrary to the purpose of the anti-harassment legislation, denying access to justice to workers who are subjected to a deterioration of working conditions through the violation of their rights or dignity over a period of less than six months. Thus, a number of workers, such as interns, trainees or probationary employees, i.e. people who enter into employment relationships covered by the law, generally for up to six months, are not protected at all by anti-harassment legislation in the workplace.

### **Recommendations:**

- **Romania should mandate specialised training on harassment, gender-sensitive and from a human rights perspective, for those dealing with harassment cases, including labour inspectors, police officers, prosecutors, and judges.**<sup>57</sup> For example, this topic can become part of the National Institute of Magistrates' courses and professional development plans of authorities dealing with harassment cases under the law.

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<sup>51</sup> In accordance with C190, art.9.

<sup>52</sup> In accordance with C190 art. 10(g), R206 para 14.

<sup>53</sup> Germany, Federal Anti-Discrimination Agency, [General Equal Treatment Act](#), 2006, Section 14, p. 40.

<sup>54</sup> Romanian Ombudsperson, 2023, [Special Report on Harassment and Violence in the Workplace](#), p. 61.

<sup>55</sup> For example: Bucharest Court of Appeal, Seventh Section for Labour Disputes and Social Insurance, dec. civ. no. 2365 of 23 April 2019, cited on p. 229 in Oana Cristina Niemesch, 2020, "Harassment in labour relations: judicial practice, procedural rules", *Universul Juridic*: Bucharest. See also the case law analysed by the Romanian Ombudsperson, 2023, [Special Report on Harassment and Violence in the Workplace](#), pp. 40-50.

<sup>56</sup> See, by way of example: Bucharest Court of Appeal, Seventh Section for Labour Disputes and Social Insurance, Dec. civ. no. 4210 of October 2019, cited on p. 236 in. Oana Cristina Niemesch, 2020, "Harassment in labour relations: judicial practice, procedural rules", *Universul Juridic*: Bucharest; Sibiu Court, Civil Section I, decision. civ. 223/2021 of 30 March 2021, file no. 1247/85/2020. See also the case law analysed by the Romanian Ombudsperson, 2023, [Special Report on Harassment and Violence at Work](#), pp. 40-50.

<sup>57</sup> In accordance with C190 art. 11(b), R206 23(b), (c).

## **VIII. INFORMATION**

Workers are not aware of their rights and Labour Inspectorates inform employers and workers only to a limited extent about their obligations and rights in this respect.<sup>58</sup> In 2021, a third of Labour Inspectorates in the country considered that it was not within their remit to identify opportunities to train employers on reporting and combating harassment at work, and only 8 Labour Inspectorates carry out information activities for employers on anti-harassment legislation.<sup>59</sup>

### **Recommendations:**

- **Establish regular information campaigns, including through mass-media and social media, for workers on the manifestation of harassment in the world of work and access to reporting mechanisms - in multiple languages to ensure accessibility for migrant workers too.**<sup>60</sup> Such information campaigns can be facilitated through the communication mechanisms of the Ministry of Labour, Labour Inspectorates, or the National Agency for Workforce Occupation (ANOFM), e.g. information on the website, posters in public spaces and in migrant communities such as Facebook groups, etc..
- **Develop regular information campaigns for employers on their responsibility to prevent, combat and sanction harassment in the world of work.**<sup>61</sup>

## **IX. DATA COLLECTION**

A major problem in developing effective anti-harassment policies is the lack of systematic, disaggregated, and regular data collection. **The current legal framework and methodological norms do not provide for a data collection and recording policy.** At national level, there are no in-depth studies on the extent and specificity of harassment in the world of work.

### **Recommendations:**

- **Develop a policy of systematic, regular, and disaggregated data collection, including by gender, age, occupation, nationality and other protected identity criteria of persons affected by harassment, as well as forms of harassment/violence, for institutions with relevant responsibilities;**<sup>62</sup>
- **Conduct national surveys on harassment in the world of work every three years to monitor the efficiency of anti-harassment measures.**

## ***III. CONCLUSION AND RECOMMENDATIONS***

The current bill to ratify C190 is a positive development and must be followed through. The current legal framework, public policies and institutional practices require a wide reform to prevent and combat sexual harassment in the workplace and to protect victims, and so far, while the Government has made considerable efforts to start the process for C190 ratification and its translation into national law, there is no clear timeline of action.

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<sup>58</sup> A.L.E.G., 2021, "[Employers for Respect: No harassment in the world of work. Recommendations for public policies 2021](#)", p.26.

<sup>59</sup> Ibid.

<sup>60</sup> In accordance with C190 art. 11(c), R206 p. 23(d), (g).

<sup>61</sup> In accordance with C190, Art. 11 and R206, para. 23.

<sup>62</sup> In accordance with R206, para. 22.

**In light of all this, the UNWG should:**

- Request the Romanian Government to provide a timeline for harmonisation of law, policies and institutional practices to C190 standards,
- Request the Romanian Government to allocate the necessary financial resources to ensure that the legislative, policy and institutional reforms following C190 ratification and harmonisation will be implemented,
- Ask the Romanian Government to continue including civil society in consultations and deliberations regarding Romania's ratification of C190 and Romania's harmonisation of laws, public policies and institutional practices concerning the elimination of harassment in the work of work,
- Urge the Romanian Government to ensure that the harmonisation to C190 standards will continue to be based on the following principles:
  - a. *Inclusive approach*: A broad scope of protection against violence and harassment that includes all workers, in the formal and informal economy, and takes into account the different needs of people with disabilities, migrants, refugees and people at risk of discrimination, especially multiple or intersectional discrimination; protection in the physical workplace, but also in work-related places; protection against harassment and violence by or against third parties, such as clients, patients or students; consultation with all relevant actors (workers, trade unions, employers and NGOs) to better capture all the needs of workers.
  - b. *Gender-sensitive approach*: addressing the causes and effects of gender-based violence and harassment, such as unequal power relations based on gender, gender stereotypes, as well as intersectional inequalities related to sexual orientation, ethnicity, age, (dis)ability, etc. and reducing their negative effects. Gender equality thus becomes a central element in the implementation of C190 and R206.
  - c. *Integrated approach*: integrating the prohibition and protection against harassment and violence in the world of work into labour law, as well as into laws and public policies on occupational safety and health and laws on non-discrimination, equal opportunities and treatment and migrant rights; prevention and protection measures, enforcement measures and access to remedies and redress, and guidance, training and awareness-raising measures on harassment and violence in the world of work for both workers and employers.
  - d. *Human rights-centred approach*: respect for human rights and dignity in all processes and procedures related to the prevention, reporting, management and redress of harassment or violence in the world of work.
- Continue to monitor Romania's ratification of C190 and Government's efforts to ensure that workers' right to work in a safe and healthy environment, free from violence and harassment, is fulfilled.

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