Ethics and non-discrimination of vulnerable groups in the health system

Association for Development and Social Inclusion (ADIS)

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Introductory Note

The phenomenon called "discrimination" is a reality, even very hard is recognized. Perpetuated by centuries, stereotypes and prejudices from the collective mind contribute significantly to enhancing of existence of this phenomenon. Changing attitudes is a long process that began in early childhood education an unfailing youth.

That is why we believe that education for the knowledge, understanding, acceptance and appreciation of national minorities should be widespread in schools to prevent and combat discriminatory attitudes and behaviors of youngs today and professionals tomorrow.

Through this work we want to bring to the attention of students of the University of Medicine and Pharmacy basics of medical ethics, the phenomenon of discrimination and Roma in order to form an open and tolerant attitudes toward groups with high intolerance and to Roma.

This work is the result of the advocacy campaign to introduce the academic curriculum of a course unit on ethics and discrimination of vulnerable groups in the relevant medical and health services is part of the project "Health and Non-Discrimination", developed by Association for Development and Social Inclusion with the financial support of Open Society Foundations / Roma Health Project.

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We hope the information will be used by students who understand the nature of their chosen profession need as much knowledge about their peers, aplying the nondiscriminatory principle and equal opportunities in their future performance attributes of medical specialists.

Team ADIS

Author's Note

We can say without embarrassment that no one is immune to prejudice. Equally, it might be hypocritical to say that there is not discrimination. The fact that in one place or another are regulations which prohibiting discrimination, does not mean at all that there is not prejudice or discrimination or that they are eliminated. To say that discrimination can not be eliminated is not about pessimism or lack this belief, as social realities in which we all live.

The question that arises is what can we do? Without reservations, we say that prejudice can be overcome. Especially we face ourselves. How, exactly, depends on each of us. It is said that "the most powerful weapon" in fighting prejudice is education. Education and self-education can help us see the real causes of prejudice. A proper motivation, a willed and conscious effort, which look cold the way we think and react to those with whom we interact or not, helps us to overcome stereotypes, prejudices and discrimination as a last resort.

Our human nature in social realities, leads us to develop sympathy and in this context, we approach people, but so far we can develop the same dislikes, and therefore distance ourselves. It's part of the natural interplay of human relationships.

However, in one case, it was felt necessary to impose explicit conditions to overcome the purely subjective sense, related to the person inside the forum. This case is particularly aimed at the doctor with his patient relationship. Patient Rights Act prohibits discrimination on the basis of his "personal dislike". The premise of this condition is given the respect that individual as a human being should be given "the highest health care quality that society has, in accordance with human resources, financial and material."

The work that today we offer readers is a tool that is based essentially on the offer of a dialogue, an exchange of views and perspectives, be they psychological, sociological, philosophical and ultimately legal, but which are intended to be useful or helpful in the medical profession, but not only.

Authors

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Part One: Ethical issues in human subjects research

Chapter I Ethics in human subjects research

Research areas are marked by rapid and significant changes, new models, methods and ideas resulting in uncertainty and controversy arise. Researchers are under the influences of numerous internal and external influences that require improvement methodology, changing work environment and economic assumptions. Currently, research projects raise major ethical issues such as: who are the real beneficiaries of the research, or how to define notions of ownership and market research? Ethical research requires a coherent set of principles and procedures applicable to all disciplines involved in research.

Research has always found justification in the various principles such as the utilitarian (based on estimated costs and benefits of actions, consequences, to produce the greatest amount better for the majority), the universality (inspired by Kant, can be easily described by the law of action and reaction that it is appropriate to do what you expect to receive), or justice and equity.

The human being is limited, living in a area of trying to escape to find a new space, which can provide meanings and power that has not had before. The world in which we live and evolve is strongly influenced by Knowledge of human nature as bio-psycho-social system in a challenge directed the utility and effectiveness. Limitations that were imposed as a result of abuse cases reported in medical research over the last century, require that the argument respect for life and for individual self-determination.

1.1. Historical landmarks in the human subjects research

Human subjects' research ethics was born in modern times. In the U.S. there were ethical regulations since the early 1900s: in 1907, Osler stated that human beings can be used for research only after the safety of a new drug or medical procedure is demonstrated in animals research; human subject can participate only after prior consent and only if the research brings a direct benefit for them; participating of healthy volunteers in the experiments was only permitted under knowledge of details about the study and obtain their acceptance.

Even with the existence of such regulations meant primarily to protect the participants, there have been studies and experiments carried out in dubious circumstances. History of medicine contains records about the actions for determining new treatments medical concepts, procedures, often switched on and motivated based on their benefit to the patient. There are known cases where the original intentions have finally taken a different turn, when the remarkable results obtained required tribute in humans.

Tuskegee study has become a case of international notoriety through time, human resources involved and, last but not least, the many ethical issues they raised. This study was conducted in Tuskegee, Alabama in the U.S., over a period of 40 years (between 1932 and 1972).

Research on human subjects. Tuskegee Study

> With the support of the Public Health Service U.S. Rosenwald Foundation aims Neosalvarsan treatment (medicine for syphilis at the time) of persons with syphilis in Tuskegee, Alabama (where the disease has reached over 20% of the total population). Subsequently, the Public Health Service of the United States regarded as an excellent opportunity to study the natural progression of syphilis in Afro- American male patients. In 1932 this service has tested 4,400 Afro-American male adults in early stage non-infectious latent syphilis, with a development of 3, 6 and 9 years, aged between 25 and 60 years. The study subjects consisted of physical examination, radiographs and performing spinal puncture. At the time this study was initiated, was not known penicillin, which is currently the first choice therapy of syphilis. In addition, subjects included in the study were recruited from among patients who had not received any previous treatment for syphilis, they will only be observed and not treated. Spinal puncture done routinely to subjects were presented as effective methods of treatment for "bad blood" (Bad Blood), which is the name of the disease which subjects were informed that they are suffering. Subjects were reluctant to undergo any medical intervention, largely because they had to leave their farms in conditions which were not considered a pressing health problem. To encourage participants to agree to puncture, doctors have provided transport and free food, free medical examinations and funerals.

In 1943 it was discovered penicillin, the antibiotic that was later recognized as a treatment of choice for syphilis. Subjects enrolled in the study never received treatment with penicillin even though it is widely used in the U.S.. Moreover, they have taken all steps to ensure that subjects would not have access to treatment with penicillin.

In 1966 Peter Buxtun , a young researcher in venereal diseases, Public Health Service employee of the United States, found the study that already held more than 30 years in Tuskegee, Alabama and criticized the officials who led the study. In 1969 United States federal government created Center for Disease Control in Atlanta has appointed a committee of six doctors with the task of deciding whether the study should continue or not. One committee member strongly opposed further, citing moral and therapeutic reasons, but the committee decided that the study should be continued. Moreover, they have agreed not to treat with penicillin on any one subject.

Peter Buxtun pressed the Center for Disease Control for two years for the study to be stopped, but without success. Finally, in July 1972, he made contact with Jean Heller, Associated Press reporter, who told him about the study. In this way, the morning of July 26, 1972 front page of newspapers in the U.S. was occupied by the story of the Tuskegee study, which described the study in Tuskegee, Alabama, where the poor and uneducated black men were used as "guinea pigs. Director at that time of the Center for Disease Control, JD Millar, claimed that the study "was never secret," indicating in this way 15 scientific and medical reports, in addition, he argued that the subjects were informed that they could receive medical treatment for their disease ever wanted, saying " patients were not denied medication, but rather they have not been provided". He also stressed that the study began when attitudes to experimentation on human subjects were significantly different. Participants in the study have opened a court action, but in the end, the federal government has established an arrangement with them through the payment of material compensation.

Tuskegee study is a negative model in research on humans in many ways. Firstly it is noted important shortcomings of informed consent of participants included in this study. Subjects did not know that they are participating in medical research, did not know what is syphilis, some of them were informed that suffers from "bad blood", without receiving explanations about their condition.

Ob viously on this case there were comments for and against. RH Kampmeier, professor of medicine at Vanderbilt Medical School, believes that blame of this study for the fact that has not been obtained informed consent is invalid because it considers unfair assessment study that began in 1932, through the ethical standards currently in force . Thomas Benedek, a historian and physician, concurs with this view stating that the Public Health Service of the United States introduced the need to obtain informed consent of subjects participating in biomedical research in 1966.

Patients' rights supporters argue that, although in the 1930s to tell the truth to patients was not a legal norm, it does not make the misinformation and even lying to Tuskegee study participants in 1930 can be considered ethical and off any criticism. Medicine has always been governed by the principles of non-benefit and harm. There was always the assumption that doctors will not deliberately harm patients and will not allow them to be harmed in any way.

Reward offered for participating subjects was considerable, if we consider the fact that they were in poor physical condition. They were offered free transportation, free funeral and, moreover, have been assured that they receive the best treatment for their disease. From this perspective, voluntary participation in the study requirement in research on human subjects was doubtful as possible.

Some views highlight the racist of the study. The question is whether the fact that all study participants were black men, is a coincidence. Do not forget that this study began and was conducted largely before the civil rights movement. The problem of subjects' injury by participating in the study was placed on the conduct of both spinal puncture non-therapeutic purposes and no treatment subjects' syphilis. The crucial element is whether participants have been harmed as a result of lack of treatment of syphilis. Some doctors argue that there is no evidence that participants in the study had been harmed by the fact that they have been treated for their disease.

Tuskegee study had a significant impact from a distance. For many American Black citizens this study became a symbol of their inadequate treatment in the medical system, a true "racial genocide".

Nazi experiments of the Second World War

> These experiments included: ingestion of salt water, exposure to extreme temperatures and pressures, and bone transplants without medical indication, injection of bacteria in order to test the effectiveness of new antibacterial drugs. Dr. Mengele conducted numerous experiments on twins. In one of them, he sought the Siamese twins by ligation of blood vessels and organs of two twins who ultimately died because of infection. Some prisoners were deliberately infected with malaria to test the effectiveness of antimalarial drugs. Others were infected with typhus to test the effectiveness of the anti-typhoid vaccine and to have a permanent source of bacteria. A large number of women have occurred injuries caused by firearm wounds and infections from the front, to test various treatments. Children with blonde hair and brown eyes underwent injection of methylene blue in eyes in an attempt to achieve permanent change in eye color, blindness and death was the result of many of these children. This list may continue taking into account the fact that in Nazi concentration camps were developed around 26 types of experiments on humans.

Of all the abuses that existed in these experiments, the most striking is the fact that prisoners subjected to these experiments were never information about what was to happen and have not had the opportunity to accept or decline participation. There have been no way attempts to minimize risks to subjects were undergoing. There is a strong similarity between what we now call "euthanasia" and what the Nazi doctors conducted.

Perhaps the most disturbing question is whether the experiments conducted in Nazi Germany is an isolated aberration in the history of medical experimentation, or extreme example of abuse of human beings worldwide are in a much attenuated form, on behalf of medical research.

It is certain that the abuses in research human subjects have not ended, unfortunately, after the Second World War, despite having been issued with strict national and international regulations in this area. Abuses in research on human subjects have been committed with the emphasis on vulnerable populations: institutionalized people, poor people, soldiers, prisoners, incompetent people, members of minority groups, etc.

In this way, it is illustrative the case of Holmesburg Prison, where many experiments were conducted on prisoners, in conditions which violates ethical rules governing research on human subjects.

Research on vulnerable populations. Study at Holmesburg Prison

> Holmesburg prison in the '50s was the largest prison in Philadelphia. Experiments on prisoners in this prison have started in the '50s, under the leadership of Dr. Albert Kligman, a dermatologist doctor by training. This led some research before on human subjects in circumstances of questionable ethical perspective, but have been overlooked. For example, the doctor used experimentally X-rays to treat fungal nail infections of children and mentally retarded prisoners, even experiment was funded by Public Health Service of the United States. One of the most famous experiments involving prisoners was to test the various skin lotions and creams for a period of 30 days. Areas that were applied products were examined periodically using a solar lamp which led to the production of skin blisters and burns on the subjects. This became known,and scars remained on the skin which were even considered a hallmark of those who were prisoners at Holmesburg. Later in the same prison experiments were conducted involving prisoners skin infection herpes simplex virus, herpes zoster, Candida albicans and cutaneous moniliasis. Prisoners were exposed to UV and phototoxic drugs. Many pharmacological companies tested on prisoners different medicines including many tranquilizers, painkillers and antibiotics to evaluate dosing and toxicity for various pharmaceutical companies. The most dangerous experiments were restricted to the black people prisoners.

These experiments have been blamed in ethically because subjects could not give consent freely, voluntarily. Participation in these experiments was one of the ways in which prisoners could earn money to buy various products that they need or they could pay the bail. Participation of prisoners in the experiments became a means of control, meaning that those prisoners who disobeyed the rules of prison not allowed to participate in experiments, thus losing their only source of income.

This situation continued for years. The disclosure occurred during the investigations that have been committed because of sexual abuse in the prison system in Philadelphia. On this occasion it was revealed that some prisoners have used the economic power it had acquired as a result of participating in different experiments to improperly obtain sexual favors from other inmates. In these circumstances, experiments on inmates of Holmesburg Prison ceased. Holmesburg Prison was not the only one what conducted experiments on prisoners.

Research on vulnerable populations. Case Willowbrook

> Willowbrook State School was a state institution for people with mental illness. In the '50s, the institution housed in unsanitary conditions about 6000 residents, all diagnosed with severe mental retardation. Hepatitis A incidence was particularly high, estimated at about 25% per year among children and 40% per year among adults. In these circumstances, assuming that the subjects will contract hepatitis during admission to this school, Saul Krugman, a researcher at New York University, began in the '50s a study involving the deliberate infection of children hospitalized with hepatitis order to follow the natural progression of the disease.

This experiment has been criticized for ethical perspective for several reasons. There was no action taken to protect children against hepatitis hospitalized at Willowbrook by treatment with gamma globulin, whose effectiveness was known at that time. Parents were not informed of the risks to which they are subjected. Moreover, parental Parents consent was obtained under duress. In exchange for their consent are promised urgent hospitalization of children in the Willowbrook School.

2.1. Codes of ethics and principles in biomedical research

At present, given the ethical implications of research involving human subjects, the need to protect participants is made from call to the codes of medical ethics. Considered to be the first code of ethics worthy of being respected in medical research (although before it was reported first Prussian Directive), the Nuremberg Code (1949) has established itself by providing clear conditions to enroll subjects in a study. The most important requirements set by the Code are mandatory informed consent from human subjects and voluntary participation in medical experimentation. Among other specifications, the code lays down that risk to be well weighed no more than the benefit and potential harm should be anticipated and avoided.

The Nuremberg Code was criticized for failing to distinguish between clinical research and therapeutic research on healthy volunteers and does not provide a mechanism to review the actions of researchers. Although it was considered a universal code, it was divided into Western traditions and values and does incorporate ideas from other cultures. Universalists say that the universal recognition and adoption of international standards is a delicate operation to prevent exploitation of populations and societies more vulnerable and more sophisticated. Pluralists believe that more imposing Western standards is a universal form of exploitation.

It should be noted that the issue of informed consent for medical experimentation differs from the concept of informed consent to standard medical care. Before a medical experiment, always risks must be disclosed to subjects, while the medical clinic, can be appealed to the therapeutic privilege to limit the full disclosure of information if it is assumed that they would alter the quality of life and prognosis.

Thus, in 1967 developed the Declaration of Helsinki promulgated by International Medical Association, which serves to solve the ethical problems identified in the application of the Nuremberg Code. The initial version provides the necessary framework for medical research, supplemented by the possibility of participating in the study of mentally or legally incompetent persons, subject to obtaining informed consent from a third person (called a surrogate). It also makes clear the distinction between therapeutic research and non-therapeutic research.

The Helsinki Declaration states that in any study, all participants, including those in the control group should receive the best known methods of diagnosis and treatment. Based on this stipulation, some authors argue that placebo trials in developing countries are unethical when there is a proven treatment for the condition, even if not available in the country is studied. Others also claim that placebo studies are justified because they provide information which meets local needs. A developing country needs to know whether a particular treatment is higher than that which exists at that time in that country, where often no therapy is available. It requires the involvement of local government, researchers and community members to ensure that the standard of care is the highest existing in that country.

Declaration of Helsinki does not mention, however, no mechanism of implementation in different countries, and its stipulations may conflict with national laws and regulations. Another problem in international research is to make available therapies in developing countries since they have proven to be effective there. Researchers, sponsors and international organizations are trying to negotiate with pharmaceutical manufacturers and governments of

host countries for treatments to be made available at prices that these countries can afford them. This means providing discounts on prices, product license for manufacture in a developing country, or other strategies. For example, the purveyance of antiretroviral therapy in developing countries, especially those in Africa, has been the subject of heated debate.

Some researchers have noted that, due to the severity of the AIDS epidemic in African countries, antiretroviral therapy should be provided to those who need it. Others argue that the lack of health system infrastructure in these countries is doing the wrong type of therapy at this time. The United Nations Special Session on HIV / AIDS in June 2001, Secretary General of that institution, Kofi Annan has proposed the allocation of funds of U.S. $ 7-10 billion to fight global AIDS, although, until now, these funds have failed to fully achieve the goal.

The U.S. National Commission for approving Bioethics released a report in April 2001, entitled "Ethical and Policy Issues International Research: Clinical experiments in developing countries", which made recommendations for international research. All research conducted or sponsored by the United States must meet the following minimum criteria:

- previous assessment by a research ethics committee;
- minimize risks to participants in research;;
- risks to participants must be reasonable relative to the potential benefits,
- to ensure adequate care and compensation to participants for injuries directly as a result research;
- individual informed consent for all competent adults participating in the survey
- equal attention to all participants;
- equitable distribution of burdens and benefits of research.
- host country ethical evaluation meets these standards. If the host does not meet these standards, the ethical evaluation to be carried out both in the host country and American Ethics Committee.
- are allowed only those studies that meet health needs of the host country.
- Control group members must received treatment is proven effective, even if that treatment is available or not in the host country. An alternative design that does not include the purveyance of such treatment requires a strong justification based on health needs of the host country.
- community representatives should be involved in the study design and research projects.
- researchers, in collaboration with community representatives, should develop culturally appropriate ways to achieve the standard for culturally informed consent voluntarily. This may include methods of culturally appropriate for the disclosure of information, request permission to participate in research from a community representative or family member on the participant's understanding and evaluation of information provided. Even if permission is required, it should not replace individual informed consent.

- have made improvements to existing U.S. regulations to allow research ethics committees in this country to lift the requirement of written and signed consent documents in accordance with local cultural norms.
- researchers and sponsors of clinical trials should make reasonable efforts in good faith to ensure continued access to all study participants to experimental interventions that have proven effective.
- whenever possible researchers should negotiate agreements to provide interventions that have proven effective over others in the host country prior to study and should also discuss the possibility of providing access to their research proposal to be evaluated by the committee Ethics

National and international regulations designed to ensure the proper conduct of clinical trials and medical acts in general (in the end a clinical trial is a medical act with a high degree of uncertainty).

The purpose of medical research at primary level is to ensure procedures and treatments ever more effective and accessible populations. But never will justify the means to achieve the objectives originally proposed.

Oviedo Convention on Human Rights and Biomedicine, ensure the integrity and identity of human dignity, fundamental freedoms and bio-engineering medical applications. Amendments to the Oviedo Convention provide for the applicability of Articles in European Union countries. Medical research is subject to these amendments as a Steering Committee on Bioethics. It also may be subject to any committee appointed by the Committee of Ministers.

3.1. Ethical aspects of research on vulnerable populations

Vulnerable persons are those in absolute or relative inability to protect their own interests. In other words, they do not have enough power, intelligence, education, resources, skills or other attributes to protect their interests.

There are currently recognized two main groups of people considered vulnerable in biomedical research:

- **P eople who are unable to give informed consent** and who depend on others to be protected, such as children,people in coma, mentally ill;;

This group is characterized by the lack of discernment, either legally or by affecting reason under condition (mental, coma).

- **People can be forced or manipulated to become research subjects**, following a vulnerability given by fear, ignorance, suffering extreme or excessive pressure from the outside.

In the second group but it is not a lack of discernment itself, but a possible impaired ability to reason, accurately assessing the risks and benefits under a particular situation: suffering or extreme poverty, imbalance of power, etc.

Vulnerability in these two groups was defined as "intrinsic" and "situational" or "absolute" versus "relative". However, there are problems in this classification. First, many children or legally incompetent adults have the capacity to carry out some tasks and not others. Thus they are not "absolutely" or "intrinsic" incompetent. But if you are able to give permission (note, this is not valid informed consent from legally), this fact should be taken into consideration in research ethics suffrage. It is also incorrect to characterize these people as mentally incapable of the absolute, while for most of their mental capacity is fluctuating (eg children).

In literature, the term mentally competent or incompetent has legal connotation. This implies that every adult is mentally competent (except mental patients with documented impairment of discernment) and a minor is mentally incompetent. In reality, when many adults lack competent legal making-decision capacity and many minor teenagers are perfectly capable of reasoning even in the medical field. For practical purposes the success of a medical decision, decision-making capacity refers to the individual's ability to understand and appreciate the information necessary to informed decisions, assess that information in terms of personal values and be able to use adequately (LM Kopelman, 1990).

Institutionalized persons, prisoners, military members are often cited as potential subjects coerced. In addition, those without health insurance or despair of ordinary individuals socially or financially could accept unconditionally any enrollment in a study that would make even a minimum income.

It is undoubtedly important in a research to be including all segments of the population, even the vulnerable ones, so that everyone can benefit, directly or indirectly by scientific results. Do not protect vulnerable groups, is a violation of that person and an individual's risk of exploitation. On the other hand, excessive protection would be a form of paternalism and would unduly complicate the conduct of research, which obviously prevents a better understanding of the pathology or treatment of various diseases in these groups. Thus, when vulnerable populations have free mental competence, there is no general agreement or consensus on the "quantity" of specific restrictions on their enrollment.

One advantage of vulnerable research subjects acceptance is that it allows a balance between "natural lottery" (one of the determinants of health inequalities caused by the medical status) and "social lottery" (inequalities caused by social factors). Children, for example, are not responsible for the consequences of such inequalities, with a significant impact on disease progression.

Going therefore, in an apparent ethical dilemma in which the investigator's individual call to the various ethical principles might not be enough. In such a situation, which will balance the inclusion vs. exclusion of certain groups in biomedical research, the following were proposed:

1. **Each research on human subjects must be subjected to ethical evaluation of research ethics committees (CEC)** under which the institution is conducted. CEC has a very difficult task to recognize when a competent person may be or become vulnerable and therefore need special protection. While these committees work by appealing to ethical guidelines in force (national laws, the Declaration of Helsinki, etc.), confidence in these committees varies, depending on the perception that they would be subordinated to those institutions / companies in which the study or on the contrary, is fairly vulnerable interests.

2. **Develop ethical guidelines for vulnerable populations'** further enhancing protection of such groups.

> In addition to tracking how the design and implementation of informed consent, ethical evaluation of a study of vulnerable populations should pursue whether consent is voluntary and not research risks are inequitably distributed by that particular population.

Limiting participants to enroll in a trial or adoption of special protection are based on risk assessment that is subject matter. For research involving people unable to give informed consent or whose ability to make an informed choice does not meet standards of informed consent, CEC must make a distinction between interventional minimal risk that do not exceed those of routine clinical and psychological examinations and higher risk of these types of procedures (it is a minor increase in risk).

If the excess risk, the CEC must satisfy the following:

1. **Research is addressed to disease** of prospective subjects, or a clinical situation to which they are susceptible.
2. **Risks attached** research protocol **interventions** are only **slightly greater** than those associated with routine examinations of the investigation.

3 **Inclusion of vulnerable persons must have a strong justification**. In this regard should make clear the following:

- research could not be performed equally well on people less vulnerable than the ones;
- the information obtained may lead to improved diagnostic methods, prevention / treatment of disease or other health problems characteristic to which a vulnerable class study;
- research subjects must be assured that it will have reasonable access to any measure / product diagnosis, prevention or treatment will be available at the end of this research;
- if the subjects are incompetent mental, or substantially incapable of giving informed consent, their agreement would be strengthened by the permission of the guardian or legal representative.

4. **Interventions** in the study **are expected in reasonably comparable interventions** in which subjects have already been or would perform for the disease / clinical situation in which it is located. In this mode to take an educated decision, subject to appeal to related experiences, which could make him accept or refuse, so the choice is as been adequately informed.

If such individuals (including children) are able to give independendent consent later in the study, then you must still obtain consent from these subjects.

There is no consensus on the definition of a slightly increased risk to the risk of disease associated with routine examinations of those people (it remains at the discretion of ethics committees to decide this issue). For example, performing a lumbar puncture or spinal one more to children who regularly performs these procedures periodically for diagnostic and / or treatment (such as leukemia at the children).

Provided that the objective is relevant for disease research matter, exclude the use of these interventions on vulnerable people healthy.

3.2. Inclusion in research studies of pregnant women

It is in the interest of the future mother and fetus to be studied pathology of pregnant woman. It would be discriminatory to pregnant women to be denied the benefits of research mechanisms and therapeutic effects of various drugs, for example. Also, do not forget that, since in some regions of the globe, women are prone to being neglected or injured due to social conditions, for many, participation in research projects could be the best or even only possibility of having access to health assessments during pregnancy.

CIOMS guidelines (Council of International Organization of Medical Sciences) do not consider automatically vulnerable women as subjects, showing separate indications for vulnerable populations and women. On the contrary, it makes clear that investigators, sponsors, or ethics committees should not

exclude from biomedical research or women of reproductive age, and no potential to become pregnant during the study is not per se a reason for limiting participation.

However, research on this population is relevant to the health of the pregnant woman or fetus only if it bears a direct benefit to them or fetus and carries minimal risk. It should also be strengthened by evidence from animal research (wherever possible), especially if it raises teratogenic and mutagenic risks.

> Informed consent from all pregnant women assume that they are adequately informed about potential benefits and / or injuries, including those directly affecting the fetus. Normally, pregnancy is a physiological condition in which women do not lose their ability to reason, do not become incapable of giving consent, or vulnerable to manipulation or coercion, such as prisoners, soldiers etc.

Ethical issue is who takes the decision in such situations: the woman herself or someone else? How to rank a duty to protect pregnant and her fetus a duty to honor the woman's right to self-determination?

Although apparently accepting the risk decision would be taken by the mother in the process of informed consent is desirable in a research aimed at fetal health directly, to obtain if possible the father's view. Especially in communities or societies in which tradition attaches greater importance to the fetus than the mother's life or health, women may feel coerced to participate in research that addresses directly benefit the fetus.

In this regard, special precautions should be instituted to ensure that these women participate is an authentic voluntarily; investigators creating a monitoring plan for pregnancy outcome. No research will be conducted if there is a priori suspicion of an abnormal fetal development.

In the U.S. there is a consensus now that, if there is a conflict between the health needs of the mother and the fetus, the mother will be free to resolve the conflict herself. Participation restrictions based on protection of the fetus are sometimes hard to motivate with regard to uncertainties about what means "harm" a fetus.

3.3. Including children in research studies

Ensuring the welfare of children mainly refers to methods of protection and assurance of optimal physical and mental development. Obviously, this definition refers to the classification status approximate well as biological concept, excluding the emotional, mental or spiritual. Until relatively recently, was a general consensus about the fact that parents (or legal tutor) always know what

is best for children, supposedly to comply fully family decisions, the state (through representative institutions) have no right to interfere.

With the emancipation of society, with social reforms that strengthen the rights of children, the mentality that a child is the property of their parents slightly changed. In addition, any suspicion of abuse, neglect or operated outside the maximum interest of the child is required to be reported. In some societies, adolescents are free to intervene in the consent for certain treatments, thus emphasizing respect for the views of the child (Holder A, 1989).

In fact, the problem of ethics in research on child and care is who should deciding about clinical / therapeutic? When should be accepted to enroll children in research studies?

Ideally, major medical choices should be the result of a consensus among parents, doctors, nurses and child, if he is mature enough to understand basic information and willing to participate in decision-making process.

In practical and real, are the parents or legal guardian who is required to take a decision on behalf of the child.

Why is it so important for the medical team to translate this decision-making authority?

First, most times parents can appreciate the best interests of the child within, and thus are able to choose the most convenient solution.

Secondly, usually the family is suffering the consequences of the choice made in the name of the child.

Thirdly, children assimilate the values and standards of well within their family, and they are directly related to the value attached to health. Only within the family structure and its values and becomes the child's personality develops later maturity necessary to make their own decisions himself.

Fourthly, the family needs a certain degree of privacy, without much intrusion from the state representatives or the medical system (Buchanan, 1989). Thus, unless the family decision is risky for the child, the medical team must respect the choice of the family.

This tends to involve more and more children in clinical decisions and the enrollment in clinical trials was formed from several observations.

Firstly research on children at different stages of development, on their capacity of understanding concluded that they understand a lot about their disease and even imminent death. Moreover, they understand when others are not completely honest, which may increase their suffering, feeling removed from the discussions and decisions (LR Kopelman, 2004). When children have developed the mental capacity to understand and are properly prepared, revealing the truth has only beneficial effects by promoting collaboration and building trust in the medical team. Doctors' honestity helps maturation process of the child and often helps making a decision in the interests of the child within.

When children suffer from chronic or terminal illnesses is particularly important that they create a sense of control over their lives, and this is done just by respecting their opinions (GB Matthews, 1989).

Secondly, the trend of involving children in medical decisions and therefore developed the understanding that there is a link between mental ability and do the task. In assessing "ability" mental question: what mental capacity? (AE Buchanan, 1989). Each of us has the mental ability to understand and perform some tasks but not others, all performed within our individual performance. A 11 year old child with cancer could mean quite a lot about his illness, even more than most kids his age, given the experience of suffering. Many adolescents are as able as adults to make decisions about life plan.

> In essence, to decide whether minors have the ability to participate in important decisions, such as health, adults should assess how well they understood the information, were able to deliberate and assess the situation, take a decision to support and to communicate. And most important is to detect whether the child is motivated by personal values stable, by virtue of which he takes a particular decision.

In accordance with the recommendation on research on minors CIOMS, before their enrollment in a research study, the investigator must ensure that, that research cannot be similarly conducted on adults, the aim is to enhance knowledge about state health of children, that a parent / legal guardian has given his consent, approval has been obtained from the child (depending on his mental competence) and that took into account the child's occasional refusal to participate or continue participation in study.

Research on minors is conditional upon the need strong justification for their introduction in research studies. We know that child participation is essential to study some typical childhood diseases or situations to which children are particularly susceptible, such as trials of the vaccine study. In the past, many new emerging pharmacological spectrums were not tested in children, while addressing both diseases present in adulthood as well as that of childhood. Thus, children are not benefiting from these new therapies, or were exposed, without knowing much about the specific effects or the safety of their application to children. It is now generally accepted that any new product sponsor therapeutic, diagnostic or prophylactic, which has indications for use in children is required to assess its efficacy in children, before being distributed widely.

Once established justification, the agreement of the child is the desire immediately, of course, if one allows juvenile maturity and intelligence. Age at which the minor is mentally competent legal point of view varies from one society to another. Often, however, that although children have not reached legal age, can understand the implications of agreeing to and therefore may enter the process of informed consent. Therefore, the child will not speak but

informed consent informed consent. Even if the child agrees, it must be doubled permission of parent or guardian.

Some kids are obviously too immature to understand the implications of a decision, showing an obvious objection to any trial. In these situations have made the difference between the refusal of a big kid with a degree of ripeness, and negativism behavior of a small child, likely to deny any proposal. It is therefore prefer large selection of children, unless there are scientific reasons for the choice of a young trial protocol.

Strong objection to a child than entry into the study should be respected, even if the parents gave their permission, unless the child requires treatment not available outside the context of research, which promises substantial therapeutic benefits, and if there no acceptable alternative therapy. In such a situation (especially if it is an immature child), with the consent of the parent, it can overcome the child's objection. If however the child is able to give an informed refusal, it will obtain the opinion of the ethics committee for permission to skip child disagreement. If during the study child reached the legal age of maturity, his consent must be obtained explicitly and strictly adhered to.

Parent / guardian who gave consent for research on a minor must be given reasonable opportunity to participate in research treatment, observing the conduct of research to enable the child to withdraw at a time if deemed it is not in the interest of the child up to its continuation. You also need to ensure any child or family psychological support, and need a global support: pediatrician, family doctor, etc.

A child with a fatal disease at a given moment may refuse further participation in a trial, arguing stress, impaired quality of life, etc., in which parents can lobby to keep the investigator to study the child against his wishes. However investigator will agree to continue the study if that action is promising for prolonging life, and there is no acceptable alternative treatment. In these cases you need additional approval, specify the ethics committee, before deciding to ignore the child's refusal.

We generally assume that any child over the age of 12-13 years is usually able to understand the information necessary to give adequate informed consent, but consent must be supplemented by that of their parent / guardian, even if no local law or regulation demand it. On the other hand, even if the law requires consent of parent, child's consent must be obtained.

In some jurisdictions (particularly in the U.S.), some minors under the legal age of consent are considered "emancipated minors" and are authorized to give consent without parental consent or even without parent. Usually they are underage girls married or pregnant or already parents, living separately and can demonstrate that they can maintain independence.

Also, for studies involving investigation of attitudes and behaviors of adolescents about sexuality, drug use, domestic violence or child abuse, the CEC can accept the exclusion of parental consent, if such information would subject my child potentially at risk of victimization in the family .

In the case of institutionalized children without parents or with parents without parental rights, CEC may ask the investigator or sponsor to seek the opinion of an independent expert, specializing in child protection institutions on the acceptability of such a study management.

> In conclusion, no research study may have led to children if there is a likelihood of higher priori minimal risk standard, especially if there is no direct benefit to the disease. For this reason, studies on healthy children should have a strong scientific justification and a rigorous vote of the ethics committee.

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Chapter II Ethical issues related to cultural diversity

„No man but men inhabit this planet.
Plurality is the law of the earth."

(Hanna Arendt, Spiritual life)

1.1. Importance of cultural diversity in the medical context

In a world where the population is steadily rising, and the percentage of minorities in a sustained, cultural sensitivity requires very special attention.

Culture is the foundation of intellectual processes, a systematic grouping of responses learned (known), a pre-existing solutions to the problems faced by individual and is developed through interaction with others in society (1). In this way, mark the expression of personality and determine responses to various stimulations.

> Culture and ethnicity of a person determines how it perceives the world and its contents, all cultural values interacting with the whole information processing system.

Thus, it is not surprising that it plays a decisive role in the cure process, outlining the response to disease and treatment response and guiding the progress of remission (2). It is essential to take into account cultural issues when planning the best program of rehabilitation. Knowing the patient's culture helps to develop a sensitive attitude towards this value - the first prerequisite of a quality treatment.

Various systems of cultural values, religious community or even significantly influence individual clinical trial, and the concern for protecting individual rights lies precisely identify these particular values. In an extensive network of values, attitudes, prejudices people interpret their different events, giving them unique meanings that others do not even take them into consideration. The uniqueness of human beings does not refer to the specific phenotype (eg, a certain eye color, hair, skin, etc.) but the deep experiences such as physical comfort, safety, overall well physically, psychologically and mentally.

Some religious groups are bearer of beliefs about health, illness, suffering, medical care etc., which are not always familiar to experts and decision makers in health. Sometimes these cultural features influence patients' preferences in a way that doctors consider it unwise or even dangerous.

Similarly, representatives of some minority cultural communities, or followers of particular community vision can perceive the majority of medical practice not only incompatible with their vision, but even strange or repudiated. In both cases the doctor will be faced with a process of "adjustment" of the clinical trial to reach a conclusion reasonable and acceptable to these patients.

Some clinicians are faced with certain concepts, less common, less familiar to them, they consider true "mad" and they suppose everyone thinks in this way is probably mentally incompetent. Warning: This argument is totally unjustified: proving bias and ignorance. The mere adherence to a life less ordinary design is not synonymous with "lack of discernment." In the absence of clinical signs of mental incapacity, such a person is perfectly able to choose and follow her own option (3).

In institutions with large numbers of patients belonging to a certain cultural or religious traditions, the staff must be educated in a spirit of tolerance of cultural diversity, possibly having interpreters or mediators to those minorities, such as priests or other representatives who could explain basis of their faith. Not only is the knowledge of the language or simply citizens of the community members. They may well be posted to the core of their culture, place of birth or the mere possession of a dialect or language is not a criterion of involvement and appreciation of the values of those communities. It needs people who have to believe the same values, have the same preferences and lifestyle.

Wherever possible it will proceed to negotiate a mutually acceptable treatment options. First, it is necessary to find common goals and patient and doctor to outline a strategy for achieving acceptable objectives. Ethical response to an actual or apparent conflict depends heavily on the circumstances.

Concern for respect for individual trial involves automatically adopt a position of tolerance in society and social policies. In this sense, tolerance is closely related to the public conception of justice (4).

It is not only immoral but also unjust, unfair to ignore the preferences of a minority, be addressing such a paternalistic attitude - the dominant is medical authority or a utility type - which seeks the greater "good amount" for the larger "amount of people".

Often this lack of respect for cultural diversity may seem offensive in an essentially liberal society, but does not reflect a malicious or ignorant attitude of the population. Rather reflects a different political perspective, based on the collective good and not the individual one. The collective perspective is typical of that of the Japanese society, which emphasizes the strong prevalence of community rights over individual rights(5).

Respect authority of family and using family relations as a model for other types of social relations in the U.S. contrasts with the individualistic model. Family decision-making is a process in which patients insist the whole family to

consult, to adjust the option depending on family preferences, or even to translate the decision fully and to ensure family harmony (6)1. Also, in many Asian societies, to send bad news means to inhibit to the patient recovery process, it would be harmful to his condition well. Not only is imprinted cultural decision-making, communication and health outcomes, but there are serious lifestyle peculiarity, to which a liberal society, less or no traditional should be sensitive.

Japanese are shyer and less expansive than the Americans. The Japanese education, conduct live and plastic as well as the American would be considered rude and too non conformist to their rules. A Japanese patient is much more reluctant and anxious at the same time if you should speak English. Naturalized Japanese in America believe that a Native American would not have enough patience to listen or try to understand speakers of foreign languages, which would increase foreign shyness and would decrease their confidence in the ability of expression. These issues are obviously much intensified in the medical context, when life and death are the decision parameters (7).

2.1. Recommendations for the ethical approach to cultural diversity

In essence, those who have studied the issue of cultural interference in medical practice have developed a set of 10 rules that should be pursued primarily for the success of such a therapeutic relationship.

2.2.1. Cultural identification

It is desirable that the medical team to determine the patient's culture and origin, and possibly to contact specific organizations for support and assistance.

In some universities can successfully call a support team, composed of members of different ethnic and cultural differences specialized population. If necessary they could suggest alternative solutions to comply with cultural beliefs.

> But if it can not be realized it is recommended to involve a family member or even a representative of the ethnic identification of those who make known to local traditions and customs, which could interfere with the patient's healing process.

For example, Asian or Muslim women, with private views over the wearing of clothes might feel uncomfortable in clothes of hospital - a simple and seemingly unimportant matter, but the potential impact on quality of life in hospital. Therefore, the role of the support team is to identify problems, to

1 It is the Japanese concept of "wa", which has no exact translation in any language of international communication. Means "harmonious relations", ie a combination of conciliation, reconciliation, agreement, unity, harmony and obedience.

facilitate family communication - to educate staff and to staff to reduce prejudice, or cultural ignorance for medical acts involving minorities (2).

2.2.2. Communication method

It is recommended an identification of patient's prefererate method of communication and, if necessary, addressing an interpreter to facilitate communication.

> Lack of communication frequently occurs between experts in medicine and patient, something that enhances and language barriers.

Approximately 14% of American population does not speak English in the family. Of those who speak a foreign language at home, 47% have difficulty in English. Therefore, to ensure that information is properly received translators are used quite frequently.

One potential problem with using these translators is that responders are thus engaged in a communication rather type "one-way "than the "double way ". A check of how information was received, understood and judged is an important desiderat any physician-patient relationship, regardless of cultural diversity. The relationship of "double way", therefore not a strict model information would contribute to quality medical care, the therapeutic success and patient satisfaction (2).

2.2.3. Language barriers

It is important to identify potential barriers of language, verbal and non verbal.

> In any exchange of information in general or in medicine in particular, **non-verbal communication plays a key role** (8)

Most ideas, understanding and non-understanding are expressed through non verbal responses designed to further clarify the complicated situation. Thus, successful communication will translate *to how we say what we say*. Everyone should learn how to transform information in a non verbal way to avoid speculation or subjective personal interpretation.

2.2.4. Understanding

It would be better to check twice: the patient or his family understand the present situation accurately? It is advisable to take into account that some gesture or oral expression Affirmative does not guarantee that the patient understood the information. Often the explanations are useful and help the replay to acquire multiple meanings of information, especially during periods of stress.

> Many conflicts or divergences of views are actually a source of ineffective communication, which led to a misunderstanding on the subject. An easy way to ensure the quality of information understanding is to respectfully ask the patient to reproduce in his own words and expressions received notions before to conclude whether these have been well understood (8)

2.2.5. **Beliefs and values involved** (religious, spiritual, etc.).

Do make contact with key persons in this regard is crucial.

Often patients and family attribute the success of therapeutic act, divine help, invoked through rituals and ceremonies performed. It is therefore better to turn to community resources for understanding the paramedic system, with significant influence on medical care (2).

> The observations and results of survival studies have identified belief system (be it pure or expression of spirituality preserve tradition or even superstition) as the determinant of the rate of recovery from illness.

2.2.6. Trust

Again it must be checked twice: the patient and / or family trust the medical staff? Notice the various verbal and non verbal cues.

A study conducted by the "Brain Injury Rehabilitation Kingdom, Liverpool Hospital, Australia has shown that effective communication which induced confidence was most appreciated by patients, even more than medical professionalism, on the basis that "good doctor" is one where you trust". (2).

> Uncertainty may alter the prognosis for the patient and family could not provide specific information relevant to the disease.

2.2.7. Recovery

It is uncertain whether the patient and / or family have prejudices or unrealistic perceptions of the medical team, treatment or recovery process?

If they indeed exist, it is better to allow time for patient (and others involved) to process received information to become familiar with the situation.

Pay attention for any questions, concerns, to clarify the circumstances. Often the patient can build up unrealistic expectations, undeniable evidence of the disease, can create their own defense system, however interfering with the favorable development.

2.2.8. Diet

And in this area should be taken into account cultural specificities. Modifying of the diet of this is a simple act but may help patients suffering considerably, in addition to ethnicity involved is given respect and self confidence attracts respect.

Some cultures or ethnic groups have very specific diets, so experts in nutrition always stressed their beneficial role in the medical team for optimal recovery.

2.2.9. Evaluation

Finally there will be a reassessment of the case taking into account cultural sensitivities. Even mental and cognitive capacity assessment can be influenced by cultural differences.

Be aware at this moment of cultural differences in emotional expression and verbalization of private information.

2.2.10. Subjectivity of the medical team

It is obvious to everyone that everyday life is prejudice, bias, and favoritism. To recognize them and identify are preconditions for their control. They should not be ignored or denied, but approached the front end of the act is well and not well-patient or doctor egocentrism.

In conclusion, to label, to classify, or even those that are widespread ... "different" based on common stereotypes is to be uneducated and ignorant culture. Without understanding the cultural context in which the patient builds his system of perception and understanding of information, health care will not succeed.

> Medical professionals must understand their own values first and belief systems that can then address with clarity and firmness of the population characteristics of his patients..

Therefore, future doctors and nurses should be educated in the spirit of diversity and cultural heterogeneity, which would greatly improve the therapeutic relationship and patient satisfaction (14). A health authority and respect cultural point of view would require medical experts to express their sensitivity to differences default behavior, attitudes and meanings attached to emotional events, such as pain, depression and disability. The major role of the physician will be to support the active involvement of patient and family in the recovery process of the disease, reducing the fear of the unknown and strengthening hope he recovers quickly.

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Chapter III Medical responsibility in relation to non-discrimination

1.1. Discrimination: ethical sources

The concept of discrimination in regard to the medical practice is not new, but has a starting point reference of texts of antiquity. This is presented as a necessity of non-discrimination the various categories of population such as rich people or those poor, free men or slaves, as a good medical practice.

For example, Maimonides's Prayer affirms:

„...I beg yo,; do not let me deviate from the noble toil to help my fellow men. Strengthen my body and mind powers to be forever ready to help give both the rich and the poor, the good and the bad, those who love and those who hate and do not let me I see nothing but the sick man …"[2]

Thus, medicine is seen as a "noble toil to help others", a humanist profession that had to help all patients, regardless of social status, material, qualities, a humanist mission where is no place for differentiation and discrimination. There will be a good professional conduct a first rule granting medical care to all patients.

In the Hippocratic Oath a reference text for all medical professionals stated:

„I swear by Apollo, the Asclepius, the Higeea and Panaceas, all gods and goddesses, taking them as witnesses that I will accomplish, as far as strength and skill will help me, following the oath and covenant .[...] In any home I come , I will come to benefit patients, guarding me from any wrongdoing committed knowingly , particularly luring the young women and free or slaves..[...]"

These provisions of oath regulate practically guidance for patients, denying the "evil deeds" especially for certain population groups such as women, young free or slaves. Here, practically recognizing the vulnerability of certain populations, like those mentioned, especially prohibiting the abuse of them.

In 1803, Thomas Percival in his book Medical Ethics elaborates a first code of medical ethics, which will be later in the Code of ETHICS of the American Medical Association (AMA), stipulating provisions such compassion and respect for all patients, devotion, professional competence, honesty, respect for law, respect for patients' rights, respect for privacy and confidentiality.

[2] Maimonides was a physician, and philosopher theosophical Spanish Jew, also known as the Ramban (1135-1204), Dr. Salah al Dinh's staff (Saladin) and his son.

Later, Beauchamp and Childress in “Principles of Biomedical Ethics " synthesize four fundamental principles of medical ethics. One of these is the principle of justice seen as a principle of equity and justice.

Starting from the principle of Aristotelian equality according to which "the equal should be treated equal" authors report that this principle is the most difficult to define because the notion of equality is difficult to attribute to persons (who are the equal? Who are unequal? The unequal be treated unfairly?). Essentially, in medical care do not have to be differences between different categories of patients according to medical criteria than being forbidden discrimination by gender , race, age, politics or sexuală orientation, ethnicity, religion or other criteria.

1.2. Concept of vulnerability

It becomes absolutely necessary to protect vulnerable populations and the right to self-autonomy, it is necessary that someone to decide the maximum benefit of the person (a "golden standard" decision).

Relationship vulnerability - discrimination is an extremely complex relationship and develops its significance both in terms of equitable access to care for healthy (and those of the rich and those of the poor "- according to Maimonides's prayer) for all patients, especially within medical research: on one hand the research on vulnerable populations must realized (eg research on patients with HIV/SIDA- for finding effective therapeutic remedies), but on the other hand would have realized such non- ethics researches "taking advantage" on the subjects of research.

2.1. Discrimination: from the medical ethics to the legal Romanian

Initially, professional ethics codes have been promoted by philosophers and jurists. They have implemented the next switch in legal regulations what was originally only ethics requirement to have the protection of patient rights. Thus, at this moment in Romania are there specific regulations on discrimination in the medical profession.

Patient Rights Law 46/2003 stipulates in Article 1 b The fact that patients'discrimination is forbidden , defining the criteria of discrimination such as: race, sex, age, ethnicity, national/social origin , religion, politics option, or subjective criteria, personal dislikes**.**These provisions are supplemented with the selection criteria of patients in special situations. In cases where access to medical services or treatments is limited (for reasons related to financial or working conditions) and appropriate selection of patients - the decision concerning the patient will be treated with priority may be taken only on medical criteria.

The applicable criteria to financial restrictions (eg limited number programs enrolled patients) are established by the Ministry of Public Health.

Compulsory medical care to patients is stipulated in Law 95/2006 on healthcare reform. Violation of this provision dodges responsibility itself of medical personnel, according to Article 642 of the same law.

3.1. Medical professional liability: History

Medical professional liability, aims, on the one hand**, protecting the interests of the patient,** and on the other hand, it has **prophylactic value**, driving the initiative in the interest of the patient's doctor, avoiding responsibility for tracking cases.

The existence of the physician is certified since the first injured hunter of the primitive and the first makeshift splint. The papyrus "E. Smith "(more than two millennia before our era) and in the papyrus" Ebers "is the name" sun "(doctor). Around 1300 BC king of the Hittites Muwattali requires a healer like the king of Babylon, Ur doctor. Lugh - edinna (whose seal has been preserved to us).

For a long time there was a responsibility of the physician, which was consistent with the social system of the time and evolved with it. And since then, there was a moral responsibility that not infrequently the outdated era.

From Ancient Greece, Plutarch describes the anger of Alexander the Great who was sentenced to death on Glaucus - General Ephestion doctor - and ordered the destruction of the temple of Aesculapius (the doctor left the patient to go to the theater, but died because the General has not complied prescribed rules and drank a lot of wine). Attracted by philosophy, Hellenes have long debated this issue.

Hamurabi Code (ca. 1725 BC) contains the first assessment (known) criminal and civil liability of the physician's

Laws of Manu, book of life, the Vedas (India) talk about moral purity and training of the physician's

Books Bible, the Talmud containing texts on the medical conditions of work and responsibility for the mistakes committed by the therapeutic activity, The Egyptians there was a real medical code regulate and medical liability.

Platon advocate of preventive medicine was partisan of physician immunity (for activities related to his profession). Aristotle more weighted to the liability of doctors opinion but asserts that judges should rely on the expertise of specialists.

A true revolution, whose effects are felt today, a fire in professional ethics

and, by implication, in the writings of Hippocrates medical liability. "*Corpus Hipocraticum*", "*Aphorisms*" develop principles of medical ethics and humanities require doctor's responsibility as a legal institution and professional.

In ancient Rome, *Lex Cornelia* doctor establishes liability (even in the absence of bad faith) for abortion, for leaving the patient, treated negligent death of a slave and *Lex Aquilia* establish civil liability (and not criminal) for a slave's death, the fault of the doctor . Death of a free man (attributable to medical incompetence) drew the death penalty as a citizen could be subject to pecuniary evaluation. The *Lex Aquilia* specified for the first time, the term "fault gravis" which was the basis for many laws;

In the Middle Ages medicine was strongly influenced by two events: Arab culture and Christianity. The Muslims had a great respect for medicine, maybe because of liability which was accompanied by the profession. Prophet Muhammad himself passed over religious intolerance and had a Christian doctor and friend - Harith Ibn Kalada. Medical schools of Abu Bakr Muhammad ibn Zakaria Al Razi, Ibn Sina, Ibn An Hafis, Rasd Ibn Abdul-imposed legislation in Koran world of some principles high humanism.

The rebound comparable only to a famous "Hippocratic Oath" enjoyed "Covenant Medical Maimun's Ibn Musa (also known as Maimonides) - physician who has had among patients over the Sultan Saladin and King Richard the Lionheart. Christianity meant the completion of an attitude towards the disease and the sick man. The disease is not (as in the ancient Greco-Roman) and a penalty hopelessly stigma divine (Thomas Aquinas). The duty of every Christian (especially in the era of proselytizing), is to "groom" to relieve pain sufferer. That is why many institutions have incurred caring for a dying, disabled, from the hospital founded by St. Basil the Great in Caesarea of Cappadocia. But everything here, the suspicion with which physicians were perceived (often accused of heresy) and their liability is strictly regulated. Paul Zacchias in "The erroribus punibilibus Medicorum the law" even distinguish between *culpa latissima, culpa latior, culpa lata, culpa levis* şi *culpa levissima.*

In XV-XVII centuries, French law has recognized the responsibility of surgeons in case of ignorance and non ability. English court of law has found ingenious formula that the law requires that those who exercise a trade which requires special knowledge or skill to actually possess. The formula was adopted and the Austrian Civil Code and case law dating from the French XIX.

In Germany, the civil liability of the physician was recognized by Charles V's Constitutio Carolinae, who admitted the facts and the need for expertise.

In our country, the person who brought elements of morality in the practice of medicine was, according to legend, Zamolxe that before God was a philosopher and physician. Format (according to Herodotus and Plato, Strabo),

in an Pythagoras atmosphere (also combined with the influence of Egypt), Zamolxe imposed considering of patient as a unit. After the conquest of Dacia, were imposed the Roman laws and canon law regulations.

Provisions concerning the liability of doctors can be found in Pravila of Vasile Lupu and Matei Basarab (1646 and 1662). Physicians are advised to be moral, modest advice and treat patients with care. Translation in 1710, by Mark Cypriot (Raducanu's request - son of Constantine Cantacuzino), the precepts of Hippocrates, gives a boost in the Romanian medical practice. Among the facts which give rise to liability include failure to provide emergency assistance and an obligation of Scarlat Calimachi charter in 1813. Calimachi's Code and Regulation organic sanitary laws of 1874, 1910, 1935 and 1943, 1974, 2006 containing instructions on the work of doctors whose violation result in liability (criminal and / or civil.

3.1.2. Medical liability in relation to patients

Liability of medical staff has the form:

Civil legal responsibility - in situations where the patient is not a major injury and enjoins payment of claims by those authorities;

Criminal legal responsibility - in situations where the doctor's action resulted in a serious injury of the patient or his death.

Disciplinary responsibility of the doctor, something which is reviewed by disciplinary committees

An important aspect is the fact that these types do not exclude held liable in the sense that a patient may apply to the court asking for payment of claims for damage suffered, but also can challenge the physician and the Disciplinary Commission for inappropriate behavior.

As it is mentioned above, medical liability may be criminal or civil.

Criminal liability arising from a finding of criminal negligence (personal injury, negligence, negligent manslaughter, violation of professional secrecy, etc.) and there aren't specific legislative provisions of the medical profession.

Civil liability is the common procedure for assessing the damage created by the medical patient. Typically Romanian patient choose the path subsidiary of criminal liability and civil liability for economic reasons, as when merging the two actions, criminal and civil, do not pay stamp duty, prohibitive for the majority of Romanian citizens.

Although Law 95/2006 requires both the prosecution and courts as any action against a physician communication related to the occupation, this provision is not respected and we have no statistics on the number of cases and how to solve them.

Disciplinary liability arises when a physician had violated ethical principles and rules set out in professional codes of ethics. It may appear as single or co-exist with legal and administrative responsibility. It can not replace a doctor of civil legal liability, and therefore can not be equated with malpractice even if this confusion is common in practice. Disciplinary liability exists even where there hasn't been a material dispute patient.

Power to review disciplinary liability has Professional Group; in Romania, this power was delegated the discipline of the College of Physicians in Romania. Code of Conduct regulates the College of Physicians in Romania relations between doctor and patient and between doctors and the medical society. Violation of any rule automatically attract disciplinary responsibility.

The types of disciplinary sanctions: warning, financial penalty , reprimand, warning and training courses, censure, courses, suspension of free Practically for a time and withdrawal of the right for Free Practice. These sanctions are gradual, depending on whether the physician and aggravating circumstances and repeated the act in a certain period of time.

For discrimination of patients, the doctor may be both legal, civil and disciplinary. Under Law 95/2006, the doctor held liable for failure to individual civilian patients and healthy care for discriminating patients. This aspect may be the motive of an accusation of malpractice. In such cases, in addition, pay damages to patient (civil liability) is not covered by the insurance policy in case of malpractice in that this policy is non available while the doctor broke any legal provision.

At the same time, legal rules apply three fundamental principles of law, namely:

- No one can claim ignorance of the law
- The sanction is determined by the form of guilt
- Civil liability is driven by its own act

Regarding civil liability, Code of Ethics of Physicians in Romania provides the same duty of care to medical doctors and a doctor's behavior consistent with ethical principles. Discrimination patients are disciplinary penalty which will be analyzed in the context of that situation and the previous conduct of the doctor in relations with this issue.

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* Maimonides's prayer / The Prayer of Maimonides, available at http://www.library.dal.ca/kellogg/Bioethics/codes/maimonides.htm

** Jură mântul Hippocratic available at http://www.univermed-cdgm.ro/img / cnt / jurHipocrate.html

*** Code of Ethics of Physicians in Romania, available at http://www.cmr.ro/content/view/385/38/ **** Patients Rights Law 46/2003, available at http : / /

***** www.cdep.ro/pls/legis/legis_pck.htp_act_text?idt=39946 Law 95/2006 on reform sănătăţii available at http://www.cdep.ro/pls/legis / legis_pck.htp_act? ida = 64032.

**** Patients Rights Law 46/2003, available at http://www.cdep.ro/pls/legis/legis_pck.htp_act_text?idt=39946

***** Law 95/2006 on health reform available the http://www.cdep.ro/pls/legis/legis_pck.htp_act?ida=64032

Second Part: Right to health and non discrimination principle

Preintroduction

1.1. At EU level there is an overall gap of the level of health between Roma and non-Roma population

In the Communication of European Comission to the European Union institutions [1] shows that in EU the life expectancy at birth is 76 years for men and 82 years for women. For Roma, it is estimated that it is 10 years less [2]. In addition, while the infant mortality rate in the EU is 4.3 per thousand live births [3], there is evidence that the rate is much higher among Roma communities. A report by the United Nations Development Programme on the situation of five countries found that infant mortality rate among Roma is two to six times higher than for the rest of the population, with variations from country to country. A high level of infant mortality among the Roma community signals in others countries[4].

This disparity reflects the overall level of health gap between Roma and non-Roma population. The difference is related to poor living conditions of Roma, the lack of information campaigns addressed to their limited access to quality health care and exposure to higher health risks. Use of preventive services among the Roma population is low and, according to surveys, over 25% of Roma children do not have all required vaccinations[5].

1.2. Roma in Romania face adverse factors directly influencing health status

The recent report on "Access of Roma to health services"[6] in Romania

[1] See Communication of the European Council, to the European Parliament, Economic and Social Committee and the Committee of Regions, An EU framework for national strategies for Roma 2020, Brussels, 5 April 2011, COM (2011) 173 final.

2 See COM (2009) 567, Solidarity health: Reducing health inequalities in the EU. See also, Fundación Secretariado Gitano, op cit. and Sepkowitz K, Health of the World's Roma population.

3 Relationship between number of deaths among children under one year during the year and the number of live births that year. Data from Eurostat, 2009.

4 See UNDP, The Roma in Central and Eastern Europe, Avoiding the Dependency Trap [Roma in Central and Eastern Europe - Avoiding the Dependency Trap +, 2003. Bulgaria, Romania, Slovakia, Hungary and the Czech Republic. Commission for Equality and Human Rights, Inequalities Experienced by Gypsy and Traveller Communities: A Review, 2009.

5 See Fundación Secretariado Gitano, op. See also, University of Sheffield, The Health Status of Gypsies and Travellers in England, 2004.

6 See Roma Center for Health Policy - SASTIPEN, 2010, Roma access to health services by Dr. Bogdan Paunescu. Report by the project "Assessment of Roma access to public health services", financed by the Governments of Iceland, Liechtenstein and Norway through the EEA Financial Mechanism.

concludes that: "Socio-economic situation of the Roma population studied suffered visible damage under deepening economic crisis through which the entire population of Romania. Roma living far below the standards of civilization both urban communities and rural communities, faced with unfavorable factors and inhuman living conditions which directly influence the health (makeshift houses without access to drinking water, no toilets, no access to electricity or the use of makeshift facilities at risk for health and personal safety), unequal access to public services (direct or indirect discrimination, residential segregation, inadequate representation of Roma communities in the local public institutions), lack of job opportunities / integration labor market. "

The main reason cited for non accessing primary medical services if required by the Roma is lack of financial resources (38%). Precarious economic situation is likely to affect both the actual beneficiaries' access to health care, and quality service. A significant percentage (12%) of respondents indicated that distance to the medical office is too high, which is the main reason for not addressing to the family doctor. Some study participants were considered inappropriate behavior as professionals, which is why non accessing primary health care services. [7]

Among the main barriers in accessing health services include lack of knowledge about disease prevention and lack of information about rights and how to access health services [8].

This conclusion follows from the fact that concern for health, understood simply as the interest expressed by community members to modern methods of prevention, control and treatment of medical conditions is not very high among the Roma (often accessing primary health services, hospitals, the emergency)[9].

Also, there is a pronounced imbalance in the perception that Roma have on their degree of awareness of health issues. Thus, only a quarter of Roma are considered themselves informed about the factors affecting health, which demonstrates the critical information need felt in the community[10].

[7] Ibidem.
[8] Ibidem.
[9] Ibidem.
[10] Ibidem.

1.3. One of two persons of Roma ethnicity has been discriminated at least once in the last 12 months, the European Union

According to the recent "Survey" of the European Union on discrimination and minorities - EU-MIDIS"[11] realized by The Agency of European Union for Fundamental Rights:

> On average, in Bulgaria, Greece, Hungary, Poland, Romania and Slovakia, 47% of interviewed Roma declared themselves victims of discrimination on ethnic grounds in the last 12 months. The results also showed that the Roma have experienced discrimination, on average, 11 such incidents of discrimination in a period of 12 months.

This shows that some Roma are likely to continue to be discriminated, and thus may be suggested that the intervention strategies of discrimination should be directed to this very sensitive group of Roma communities[12].

Discrimination in the "private services" dominates the daily experiences of discrimination of persons, work experiences of being on second place in most countries surveyed.

In Poland, the Czech Republic and Hungary, over 40% of respondents have been discriminated against in terms of private services in the last 12 months. In comparison, respondents in most countries have felt less discriminated against in housing issues and in relation to staff of educational institutions, which also suggests that not all respondents have children and not all have the issue of housing in last 12 months.

Most Roma ethnicity respondents felt that discrimination because of ethnic origin or immigration status is very or fairly widespread in their country - for example, 90% in Hungary, and 83% in the Czech Republic. In Bulgaria and Romania, only 36%, respectively, 42% of respondents identified discrimination because of ethnic origin or immigration status to be widespread.

A considerable percentage of respondents between 11 and 23%, shows that they have faced discrimination in the past 12 months came from the staff of the health facilities and , in a less extent, from social support staff.

[11] EU-MIDIS survey of 2009 -Roma people interviewed in seven European countries (Bulgaria, Czech Republic, Greece, Hungary, Poland, Romania and Slovakia).

12 See Survey of the European Union-EU-discrimination and minority MIDIS, 2009, the European Union Agency for Fundamental Rights

1.4. Discrimination based on ethnic or racial origin is equivalent to "degrading treatment"

The former European Commission of Human Rights ruled first decision by an international court through that held that discrimination may be one of the forms of "degrading treatment" banned as part of the right to be free obedient of torture, inhuman or degrading treatment provided in Article 3 of the European Convention on Human Rights, in the Case of East African and Asians v. United Kingdom[13]. The Commission stressed that " *a special importance should be given to racial discrimination, and that in public way to differentiate a group of people in terms of treatment based on race, can be, in certain circumstances, a special form of affront to human dignity." Thus, "different treatment of a group of persons because of race may be able to constitute degrading treatment in circumstances where differential treatment based on other criteria such as language, would not ask such questions"*[14].

Subsequently, the European Court of Human Rights reiterated this approach in the case of Cyprus v. Turkey, showing that discriminatory treatment based on ethnic or racial origin may reach a level of severity that is itself degrading treatment.[15]

In the case of Moldovan and Others v. Romania, the European Court of Human Rights found that over the past ten years, *the living conditions of Roma people, particularly overcrowded and unhealthy environment and its effects detrimental to the health and welfare of applicants* in conjunction with the extended period during which they had to live in such conditions and general attitude of the authorities must have produced them considerable distress, diminishing their human dignity and causing them feelings of humiliation and degradation. In addition, remarks by the authorities against their honesty and their way of life seem to be in the absence of any evidence from those authorities, purely discriminatory. In this context, the European Court held that racial discrimination to which applicants were subjected, in public, by the way complaints were dealt with by various authorities and living conditions in which they lived, was an interference with human dignity, in particular circumstances of this case, lead to "degrading treatment" under Article 3 of the Convention[16].

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[13] See European Commission of Human Rights committed. Edh, case East African Asians v. United Kingdom, no.4403/70, 12/14/1973

14 See Kevin Kitching, 2005, Non-Discrimination in International Law, a Handbook for Practitioners, Interights.

15 See European Court of Human Rights, Cyprus v.Turkey (2002) 35 EHRR 30, para. 308-310.

16 See European Court of Human Rights case of Moldovan and Others v. Romania, 12 July 2005, para. 110-113. For details see Gergely D., 2006, Racial Discrimination equivalent degrading treatment: from principles to finding violations in the European Court of Human Rights, New Review of Human Rights, no. 1 / 2006, Ed C.H. Beck.

Chapter I Processes of discrimination forming: stereotypes, prejudices, differences

Attributes or characteristics that we associate with people who belong to a group emphasize the so-called "**stereotypes**". The general attitude we have towards members of a group and how we feel about them discuss what is known as "**prejudice"** Finally, the behavior is manifest to others because of their membership of a particular group gives rise to “discrimination

In the book entitled "The Nature of Prejudice" Gordon Allport (1954) showed that a suitable definition of prejudice must include two essential elements: there must be an attitude of favor or disadvantage and there must be an erroneous belief, overwall . This definition captures the way most perceive prejudice. Contemporary psychologists have a much more refined approach, separating belief or stereotype assessment component of those beliefs and their behavior towards members of the group against which to retain those beliefs. It follows, therefore, three defining elements: **stereotypes, prejudice** and **discrimination**[17].

1.1 Introducing the concept of stereotype

In a simple internet search will be able to find a number of explanations associated the word "**stereotype**." For example, on the site Dexonline[18]

On Online Etimology Dictonary [19] we find a similar definition, even more succinct.

STEREOTIP, 1798 **"method of printing from a plate, from fr. Stéréotype (adj.)" printing through a solid plate type "of GRK. stereos "solid" + Fr. type "type." Noun "a stereotyped plate, dating from 1817. Understood as" image perpetuated without change "dates from 1850 (...). Meaning that "preconceived notions and oversimplied typical features of a person or group" dates from 1922. Stereotyping is attested from 1949 (source :Online Etymology Dictionary).**

STEREOTÍP, Stereotype, (...). 1. Flat or semi-cylindrical plate, metal plate, molded rubber, plastic or otherwise, representing or reproducing text and used as a cliché plates for printing editions of works with a wide distribution. 2. (The phrase) = dynamic stereotype of conditioned reflexes system formed due to recurrence in the same sequence of environmental conditions. II. Adj. 1**. Printed as a stereotype (11). 2.** Fig. What is repeated in the same condition, which is always the same, unchanged, normal, ordinary, stereotyped, trivialized by repetition [Fr:-re-o-] - fr. stéréotype

[17] To see Bernard E. Whitley Jr. & Mary E. Kite, 2010, The psychology of prejudice and discrimination, Second edition, Wadsworth Cengage Learninc.
[18] See Dex online http://dexonline.ro/definitie/stereotip.
[19] To see Online Etymology Dict. At http://www.etymonline.com/index.php?term=stereotype

About the term **"stereotype**" can say it was invented in 1791 by the French printer Didot, initially associated with the printing process used to create reproductions[20]. In language of printing, thus, the stereotype is the metal plate on which were printed pages and which were printinded for many times.

Much later, the journalist Walter Lippmann (1922) takes the stereotype term from specific language of the job and make a connection between stereotypes and "pictures of the mind" or mental reproductions of reality, the term was later gradually associated with generalizations or overgeneralization on members of a group. Lipmann suggests that people apply the same faith without an indeterminate number of cases to adapt to each case whether or not to investigate its validity[21].

This conceptualization is consistent with how modern scientists address the stereotypical beliefs. There is not an universal truth about the social world that people can rely.

Instead, people's experiences and beliefs in their outlook better or worse color landscape and this portrait is used by the people to navigate in their social world.[22]

Stereotypes, such beliefs and opinions, concerns characteristics, attributes and behaviors of members of different groups[23].

Lippman **claims that "what each person does is based not on direct knowledge or some knowledge, but on the basis of images created by himself and taken (note to him or her). Systems of sterotypes may be the essence of our personal traditions defenses of our position in society. They are images of the ordered world, more or less consistent, through which our habits, our tastes, our capacities, our hopes and consolations were adapted. There is therefore no wonder that any disturbance of the stereotypes seems to attack the foundations of the universe. It is an attack on the foundations of our universe, and where great things are at stake, we not really admit that there is no distinction between our universe and the universe"**(Lippman W., Public Opinion, NY: Harcourt, Brace, 1922, p.102-103**).**

[20] See Ashmore, RD & Del Boca, FK, 1981, Conceptual Approaches to Stereotypes and stereotyping in DL Hamilton (Ed.) Cognitive Processes and Intergroup behavior in stereotyping, Hillsdale, NJ: Lawrence Erlbaum Associates

[21] See A. Mihaila, 2010, Sociology of Law, the legal sphere, Ed Hamangiu, scope SRL, Cluj-Napoca

[22] See Bernard E. Whitley Jr. & Mary E. Kite, 2010, The Psychology of Prejudice and Discrimination, Second Edition, Wadsworth Cenggage Learninc, 9:23 p.

[23] 23See Hilton JL, & von Hippel, W., 1996 , Stereotypes. Annual Review of Psychology, 47, 237-272

1.1. Key elements in the analysis of stereotypes

There are several important issues highlighted in relation to stereotypes. **First**, although stereotypes may be **images** in the mind of each individual, they also come from **shared beliefs** are an integral part of a culture[24]. Stereotypes can be refined by each individual, but there is a typically group consensus on the content of those beliefs. Stereotypes **can be retrieved** from media, from educators, parents or from other sources such as classical or modern literature. Of course, people gather information about groups and by simply observing the world around them.

Researchers often analyze these observations by interviewing people on the acceptance, the probability that a member of the group have some features or allow the interviewees to freely express the characteristics associated with a group or you can ask them to choose a set of adjectives which they considered applicable to a group[25].

Another important aspect considered by researchers is the extent to which stereotypes are **correct/precise** or **incorrect / imprecise**. Most researchers assume that not all stereotypes are completely inaccurate[26], but allow this, because stereotypes are to a certain extent based on observations of the world around us which may contain *a kernel of truth*. However, in many cases, this less accuracy becomes exaggerated and often is applied to all group members. The examples that concern total inaccurate stereotypes are endless[27].

In a study conducted by Hamilton College in 2003 indicated that most residents of the United States of America believes that most immigrants are illegal throughout the United States, although research in this area is estimated that only 30% of them are in such a situation.

For example, the idea that men are taller than women may lead to problems when it is applied at the individual level: some women are taller than most men. As such, a stereotype can be accurately compared with a group as a whole, but imprecise in relation to at least some members of that group.

[24] To see Jones, J.M., 2007, Prejudice and racism, Second edition, New York, McGraw-Hill.
[25] To see Bernard E. Whitley Jr. & Mary E. Kite, 2010, The psychology of prejudice and discrimination, Second edition, Wadsworth Cengage Learninc.
[26] To see Schneider, D.J., 2004, The psychology of stereotyping, New Yor: Guilford Press
[27] To see Bernard E. Whitley Jr. & Mary E. Kite, 2010, The psychology of prejudice and discrimination, Second edition, Wadsworth Cengage Learninc.

The third aspect to consider is that stereotypes can be both **descriptive** and **prescriptive** [28]. Thus, stereotypes may describe features that are deemed applicable to members of a group, but they can describe what people feel about the group members on how they should be or should behave. The more prescriptive elements take on stereotypes; they impose limits on members of stereotyped group.

> For example, it is true that most elementary school teachers are women (descriptive stereotypes), but there is a reason that this might be true? If not, girls and women should be encouraged to follow this occupation while boys and men to be discouraged (prescriptive stereotypes), thus limiting the career choices of both women and men? (*Bernard E. Whitley Jr. & Mary E. Kite, The psychology of prejudice and discrimination*)

On the other pate, although psychologists are moving more towards the **negative** stereotypes, beliefs about social group members can be **positive.** Asian Americans are generally regarded as people who achieve their purpose and are well motivated[29]. About men are considered to be good at problem solving and logical [30]. Sometimes, however stereotypical ideas favor a particular group, even, if at the same time, another is disadvantaged.

Even positive stereotypes can have a negative side [31].

> For example, the idea that women are "good with the kids" makes it easier to obtain a position of pre-school educator and at the same time be more difficult for men to obtain such a position. On the other hand, the perception that man are better at logic than women similarly lead to disadvantage women in employment.

[28] To see Prentice, D. A. & Carranza, E., 2002, What women and men should be, shouldn't be, are allowed to be, and don't have to be: The contents of prescriptive gender stereotypes, in Psychology of Women Quaterly, *26*, 269-281.

[29] To see Oyserman & Sakamoto, 1997, Being Asian American: Identity, cultural constructs and stereotype perception. The Journal of Applied Behavioral Science, 33, 435-453.

[30] To see Cejka, M. A., & Eagly, A. H., 1999, Gender-stereotypic images of occupations corresponds to the sex segregation of employment. Personality and Social Psychology Bulletin, 4, 413–423.

[31] To see Bernard E. Whitley Jr. & Mary E. Kite, 2010, The psychology of prejudice and discrimination, Second edition, Wadsworth Cengage Learninc.

1.3. Consequences of stereotypes

Stereotypes, once activated, can affect strong enough social perceptions and behaviors [32]. American studies in training show that when students were exposed to stereotypical expressions and images of aging, then they were going slow, and the performances they have dropped in tests for the identification of words (Bargh, Chen &Burows, 1996, Kawakami, Young & Dovidio, 2002)[33]. Similarly, students faced with stereotypes about "soccer hooligans" as opposed to those of "teacher" offered few answers to questions about general knowledge test (Dijksterhuis & van Knippenberg, 1998)[34].

Another survey shows that when students were asked to write an essay about a person whose name was usually associated with a person of color (Tyrone Walker), they scored worse on math tests than students receiving it had requested to prepare an essay on Erik Walker (Wheeler, Jarvis & Petty, 2001)[35].

> Although the reason underlying these effects is not clear, it seems that stereotypical depictions of behavior when they are activated and the relevant behaviors are activated (*Wheeler S.C. & Petty, R.E. 2001, The effects of stereotype activation on behvior: A review of possible mechanisms. Psychological Bulletin, 127).*

Studies also show that people who are exposed to stereotypes face an additional burden: the threat that their conduct will confirm negative stereotypes. Researchers have shown that this task, known as "stereotype threat" can create anxiety and adversely affect performance during the tests (Steel, 1997)[36].

> Students in mathematics who had passed a comprehensive test showed a decrease in performance when it said that the results revealed a gender difference in terms of ability in mathematics (*Spencer, S.J., Steele, C.M. & Quinn, D.M. 1999, Stereotype treath and women's math performance, Journal of Experimental Social Psychology, 35*).

[32] To see Plous, S., Ed. 2003, The psychology of prejudice, stereotyping, and discrimination: An overview. pg. 3-48, New York: McGraw-Hill.

[33] To see Bargh, J.A., Chen M. &Burows, L., 1996, Automaticity of social behavior: Direct effects of trait construct and stereotype activation on action. Journal of Personality and Social Psychology, 71, 230-244; Kawakami, K. Young, H. & Dovidio, J.F. 2002, Automatic stereotyping: Category trait, and behavioral activations. Personality and Social Psychology Bulletin, 28, 3-15.

[34] To see Dijksterhuis, A. & van Knippenberg, A. 1998. The relation between perception and behavior, or how to win a game of Trivial Pursuit. Journal of Personality and Social Psychology, 74, 865-877.

[35] To see Wheeler S.C., Jarvis W.B.G. & Petty R.E., 2001, Think unto others: The self-destructive impact of negative racial stereotypes. Journal of Experimental Social Psychology, 37, 173-180.

[36] To see Steele, C, 1997, A threat in the air: How stereotypes shape intellectual identity and performance. American Psychologist, 52, 613-629

> When women of Asian origin were highlighted ethnicity, math skills have improved (given positive stereotype that Asians are good at math), but when it showed the kind / their gender, their performance felt (*Shih, M., Pittinsky, T.L. & Ambady, N. 1999, Stereotype susceptibility: Identity salience and shifts in quantitative performance. Psychological Science, 10*).

1.4. Sources of Stereotypes

The vulnerability of children to the threats they are presumed acquired stereotypes still at an early age. Various studies have found influence on groups of around 3 or 4 years and the development of racial and gender stereotypes immediately after this age (Aboud, 1988, Martin, Wood &Little 1990, Cameron, Alvarez, Ruble & Fulgini, 2001)[37]. Although it is difficult to accept that a child can distinguish between social groups so early an age, gender recognition researches have shown that in the first year of life the child begins to form social groups. It is often able to discriminate between men and women from the age of 9 months or earlier (Lainbach &Fagot, 1993[38]).

One of the main sources of acquisition of stereotypes by both children and by adults, is the media. Various U.S. studies show that advertisements, television programs, movies and other media sources are saturated with gender or racial stereotypes (Entman &Rojecki, 2000[39]). Although it is difficult to analyze the cumulative effect of these stereotypes, the large amount of information suggests that many people are exposed to stereotypes every day [40]. Some studies show that advertising deeply influences how people perceive and relate to with each other.

In many cases the immediate effect of stereotype activation decreases after a few minutes, but, regardless of duration, each activation reinforces stereotypical thinking long term. Subsequently, studies show that once a stereotype is activated, it can be restored to anything like a simple misunderstanding with someone in the group subject to the stereotype and is

[37] To see Aboud, F. 1988, Children and prejudice, Oxford, England: Basil Blackwell; Martin, J.L., Wood, C.H. & Littl, J.K., 1990, The development of gender stereotype components. Child Development, 61, 1891-1904; Cameron, J.A., Alvarez, J.M., Ruble, D.N. & Fuligni, A.J., 2001, Childrend's lay theories about ingroup and outgroups: Reconceptualizing research on prejudice. Personality and Social Psychology Review, 5, 118-128.

[38] To see Leinbach, M.D. & Fagot, B.I., 1993, Categorical habituation to male and female faces: gender schematic processing in infancy. Infant Behavior and Development, 16, 317-332.

[39] To see Entman R.M. & Rojecki A., 2000, The black image in the White mind: Media and race in America. Chicago, IL: University of Chicago Press.

[40] To see Plous, S., Ed. 2003, The psychology of prejudice, stereotyping, and discrimination: An overview. pg. 3-48, New York: McGraw-Hill

brought to mind quite often, can become chronically accessible (Kunfa, Davies, Adams & Spencer, 2002)[41].

For example, in an experiment it was found that, compared with a control group members, the men polled who watched TV commercials sexist, later seen at a women candidate as less competent, less retained biographical information more information about these and related physical appearance (*Rudman L.A. & Borgida E., 1995, Journal of Experimental Social Psychology, 31*).

White viewers who watched the shows that portray stereotyped black people later were more inclined to believe a black person accused guilty of committing a crime (*Ford T.E., 1997, Effects of stereotypical television portrayals of African-Americans on person perception. Social Psychology Quaterly, 60*).

Children who were raised in a community without access to television were less gender-based perceptions than children who grew up in comparable communities with access to television and since the introduction of television attitude toward gender-based criterion increased (*Kimball, M.M., 1986, Television and sex-role attitudes, in T.M. Williams, The impact of television: a natural experiment in three communities, Orlando, FL: Academic Press*).

1.2. Autoperpetuation and reducing stereotypes

Stereotypes are not only taken over the media and from personal experience. Once downloaded, either from the media, family, personal experience or another source, sometimes they acquire a certain valence and become "self-perpetuated stereotypes (Skrypnek &Snyder, 1980)[42]. As some research shows, the performance of individuals who faced a stereotypical threat decreases. Similarly, self-perpetuated stereotypes when exposed individuals (nn stereotypes) feel inadequate or aware (by these).

Some studies show that when a swimsuit-clad women have made a complex mathematical test their performance were lower compared with women who have performed the same test in everyday clothing (Fredrickson, Robets, Noll, Quinn & Twnge, 1998)[43]. Similarly, in the case of people aged over 60 who have been to expressions such as senile, incompetent, Alzheimer's, there were

[41] To see Kunda Z., Davies P.G., Adams B.D. & Spencer S.J., 2002, The dynamic time course of stereotype activation: activation, dissipation and resurrection. Journal of Personality and Social Psychology, 82, 283-299.

[42] To see Skrypnek B.H. & Snyder M, 1980, On the self-perpetuating nature of stereotypes about women and man. Journal of Experimental Social Psychology, 18, p. 277-291.

[43] To see Fredrickson B.L., Robets T., Noll S.M., Quinn D.M. & Twenge J.M., 1998, That swimsuit becomes you: sex differences in self-objectification, restrained eating and math performance, Journal of Personality and Social Psychology, 75, p. 269-284.

signs of memory loss (Levy, 1996)[44].

On the other hand, studies show that stereotypes can be successfully reduced, and social perceptions may be more accurate when individuals are motivated to do (Fiske 2000, Sinclair & Kunda 1999)[45]. One of the best methods is empathy. By simply taking the perspective of the outside group and "look things through their eyes, the availability of group stereotypes and bias can be significantly reduced (Galinsky & Moskowitz, 2000)[46].

Researches suggest that stereotype threat can be reduced by changing the targeting.

When African-American students were encouraged to identify intelligence as something malleable rather than fixed, they have shown improvements in education (*Aronson J., Fried C.B. & Good C., 2002 Journal of Experimental Social Psychology, 38*).

When people were exposed to photographs of black Americans admired by the public compared with those of white hated Americans, stereotypes or bias pro- white decreased (*Dasgupta N. & Greenwald A.G., 2001, Journal of Personality and Social Psychology, 81*).

When students were followed over a semester, a course in conflict prevention and prejudice, implicit or explicit bias anti-black people decreased (*Rudman L.A., Ashmore R.D. & Gary M.L., 2001 Journal of Personality and Social Psychology, 81*).

It should specify that if **stereotypes** are widespread and persistent, they are nevertheless **subject to change when individuals make an effort to reduce** (*Plous, S., Ed. 2003, The psychology of prejudice, stereotyping, and discrimination: An overview, New York: McGraw-Hill*)

[44] To see Levy B., 1996, Improving memory in old agetrough implicit self-stereotyping, Journal of Personality and Social Psychology, 71, p. 1092-1107.

[45] To see Fiske S.T., 2000, Interdependence reduces prejudice and stereotyping. In S. Oskamp Reducing prejudice and discrimination, Mahwah, NJ: Erlbaum; Sinclair L. & Kunda Z., 1999, Reactions to a Black professional: motivated inhibition and activation of conflicting stereotypes. Journal of Personality and Social Psychology, 77, p. 885-904.

[46] To see Galinsky A.D. & Moskowitz G.B., 2000, Perspective-taking: decreasing stereotype expression, stereotype accesibility and in-group favoritism, Journal of Personality and Social Psychology, 78, p. 708-724.

2.1. Introducing the concept of prejudice

Word prejudice derives from the Latin word praejudicium. In antiquity, the word "**praejudicium**" as its etymology appears, has some relation *judicium* term, to which is opposed by Cicero (Divine, 4) through the term "non praejudicium quo, sed plane judicium jam factum". Asconius notes in this passage that has been established praejudicium becomes an *exemplum* ahead for judices (*judicaturi*), but not clear if this refers to a fact in one case through a preliminary examination, or an established fact in another case, but similar to that deduced resolve what we know as a precedent. *Prejudicium* means inconvenience, injury, damage, meaning that arise in connection with a damaged thing, decided without a fair trial[47].

In a former period the term has acquired meaning of judgments made before a thorough examination and consideration of the facts, that an early trial [48].

In Black's Law Dictionary[49] alternative meaning of the term prejudice is shown by:

„2. A judgement formed without a preconceived factual basis, a strong bias.".

New Romanian Explanatory Dictionary [50] defines the verb to prejudge by:

To prejudge the prejudices tr. learning. (State of affairs, situations, etc..) **Assess without prior research**, to determine the preconceived. / + Pre-judging

Romanian Explanatory Dictionary [51] defines prejudice as:

PREJUDICE, s.f. view, bias (and often incorrect) on anyone who does anything, adopted, usually without direct knowledge of the facts.

[47] See Ancient Library, Dictionary of Greek and Roman Antiquities, William Smith (1870), p. 954, available at http://www.ancientlibrary.com/smith-dgra/0961.html.

48 See A. Mihaila, 2010, Sociology of Law, the legal sphere, Ed Hamangiu, scope SRL, Cluj-Napoca.

49 See Black's Law Dictionary, Eighth Edition, Bryan A. Garner, 2004, Thompson Business West.

50 See New Romanian Explanatory Dictionary, 2002, Letter Publishing International.

51 See Explanatory Dictionary of Romanian Language, second edition, 1998, Romanian Academy, Institute "Iorgu Iordan, Encyclopedic Universe Publishing.

2.2. Prejudice from the perspective of social sciences

Emotion that a person is thinking or feeling when they interact with members of other groups is a separate component of the stereotype, and is known as prejudice.

Prejudice is an attitude oriented to individuals into account a particular social group appartenence (Brewer & Brown, 1998)[52].

Attitudes are considered to be evaluations of an entire social group or of individuals because belonging to that group.

> Gordon Allport **defines prejudice as being a contrary attitude or hostility against a person who belongs to a group just because they belong to that group and it is assumed, therefore, it is unacceptable qualities attributed to the group** (The nature of prejudice, Reading, Massachusetts: Addison-Wesley Publishing Company, 1954).

2.3. Psychological and sociological side of prejudice

It can be said that prejudice is typically conceptualized as an attitude that, like other attitudes, has a cognitive component (eg, beliefs about certain groups), an affective component (eg, dislike) and a conative component (eg a negative attitude, behavioral predisposition to the target group). Allport defined prejudice as "antipathy based on flawed and inflexible generalization. It can be felt or expressed. Can be routed to a group as a whole or to individual because belonging to the group[53].

> For example, people can see the group of older adults in a positive or negative, or an aged adult as being good or bad. In both cases, the assessments are developed from responses to general social categories.

Psychologists have assumed that, like other attitudes, bias organizes subjectively the individuals environment and directs them to the objects and people within it. It also serves other physiological functions, such as self-esteem empowerment (Fein & Spencer, 1997)[54] and provides material benefits (Sherif & Sherif, 1969)[55].

[52] To see Brewer M. B., & Brown R. J., 1998, Intergroup relations. In D. T. Gilbert, S. T. Fiske, & G. Lindzey (Dir.), The handbook of social psychology, New York, McGraw Hill, p. 554-594.
[53] To see Gordon Allport, 1954, The nature of prejudice, Reading, Massachusetts: Addison-Wesley Publishing Company.
[54] To see Fein S. & Spencer S.J., 1997, Prejudice as self image maintenance: affirming the self trough derogating others, Journal of Personality and Social Psychology, 73, p. 31-44.
[55] To seev Sherif M. & Sherif C.W., 1969, Social Psychology, New York: Harper & Row.

However, even though psychologists have focused on prejudice as an intrapsychic process (an attitude taken by an individual), social scientists have turned to the its group functions. Sociological theory stresses the inter-group dynamics at large and the structural dynamics of intra-group relations, especially race relations (Blauner 1972, Bonacich, 1972)[56].

The sociological theories take into account of group dynamics in economical terms and class relations, often with the exclusion of individual influences (Bobo, 1999)[57]. Despite differences of opinion, both approaches (psychological, sociological) have converged to recognize the importance of how group identities and collective affect inter-group relations, for example, offers a sociological approach to position-oriented defense group, in which competition is central in developing and maintaining social bias (social biases).

Recent definitions of prejudice approach linking the psychological (individual level) and sociological approach (group) by focusing on the dynamic nature of prejudice. Some researchers identified bias as a mechanism to maintain the status and role differences between groups (Eagly Dickman, 2005)[58]. However, they emphasize how this process contributes to individual responses. Individuals who deviate from traditional roles group arouse negative reactions, and others who displays behaviors that reinforce the status quo get positive responses. Consistent with this perspective, for example, bias against women has both components "hostile" and "benevolent" (Glick & Fiske, 1996)[59]. Hostile sexism accuse women who deviate from traditional subordinate role (eg, "most women do not appreciate what men do for them"), while benevolent sexism appreciates encouraging women position, but still subordinate (eg, "women should be supported and protected by men "). This perspective shows that bias current does not always include a negative opinion clearly identifiable target group, but may include views "positive" more subtle and even pernicious[60].

Because prejudice is a psychological bias, individual members of groups who are traditionally disadvantaged may also have prejudices against advantaged groups and their members. Although some studies show that members of minority groups supports cultural ideologies that justify group differences on the positive qualities of the advantaged group, there is sufficient

[56] A se vedea Blauner R., 1972, Race Oppresion in America. New York: Harper & Row.; Bonacich E., 1972, A theory of ethnic antagonism, American Sociological Review, 77, p. 547-559.
[57] A se vedea Bobo L.D., 1999, Prejudice as group position: microfoundations of a sociological approach to racism and race relations, Journal of Social Issues, 55, p. 450-472.
[58] A se vedea Eagly A.H. & Diekman A.B., 2005, What is the problem? Prejudice as an attitude-in-context. In J.F. Dovidio, P. Glick & L.A. Rudman (Eds) On the Nature of Prejudice: Fifty years after Allport , Malden, MA: Blackwell.
[59] A se vedea Glick P. & Fiske S.T., 1996, The Ambivalent Sexism Inventory: Differentiating hostile and benevolent sexism. Journal of Personality and Social Psychology, 70, p. 491-512.
[60] A se vedea Dovidio J.F., Hewstone M., Glick P., Esses V.M, 2010, Prejudice, Stereotyping and Discrimination: Theoretical and Empirical Overview in The SAGE Handbook of Prejudice, Stereotyping and Discrimination, SAGE Publications Ltd.

evidence that members of minority groups developed prejudices against members of majority groups.. Most of these prejudices are responsive and reflects the anticipation of discrimination (Johnson & Lecci, 2003)[61].

In conclusion, it appears that prejudice is an individual approach (subjective positive or negative) toward groups or their members, which create or maintain hierarchical relations[62].

2.4. Emotional and instinctual reactions in relation to social groups

Studies suggest that evaluations of members of social groups are strongly related to how a person treats members of the group rather than in relation to faith or stereotypes that they have on them. It should indicate that these evaluations can arise from a purely emotional or instinctual reaction to a social group as a whole or an individual belonging to that group (Cuddy, Fiske &Glick, 2007)[63].

Instinctual reactions are often automatic, and an emotional reaction may be taken by a person as meaning with little sympathy or antipathy conscious considerations. These emotional reactions can be positive or negative, or a mixture of the two (Glick & Fiske, 1996)[64]. When emotional reactions are mixed, individuals may have ambivalent emotional responses or their response may be determined by the projection of negative feelings or positive.

Emotional reactions to social groups may come from different sources. When people perceive a different social group as a threat to their group may experience fear, anxiety or hostility.

Other groups may be perceived as a threat by the mere fact of different objectives from the reference group [65].

Groups can be a threat if they are perceived as an interference with the objectives of the other group, particularly if the threat takes the form of direct competition for resources, such as job or financial returns.

[61] To see Johnson, J, & Lecci, L., 2003, Assessing anti-White attitudes among Blacks and predicting perceived racism: The Johnson-Lecci Scale. *Personality and Social Psychology Bulletin*, *29*, p. 299-312.

[62] To see Dovidio J.F., Hewstone M., Glick P., Esses V.M, 2010, Prejudice, Stereotyping and Discrimination: Theoretical and Empirical Overview in The SAGE Handbook of Prejudice, Stereotyping and Discrimination, SAGE Publications Ltd.

[63] To see Cuddy A.J.C., Fiske S.T. & Glick P., 2007, The Bias Map: Behaviors from intergroup affect and stereotypes, Journal of Personality and Social Psychology, 92, p. 631-648.

[64] To see Glick, P. & Fiske, S. T., 1996, The Ambivalent Sexism Inventory: Differentiating hostile and benevolent sexism. Journal of Personality and Social Psychology, 70, p. 491-512.

[65] To see Bernard E. Whitley Jr. & Mary E. Kite, 2010, The psychology of prejudice and discrimination, Second edition, Wadsworth Cengage Learninc, p. 9.

Emotional reactions can give off as a result of personal contact with members of other social groups.

Other people are chronically intolerant of social groups [66].

Some people may feel disgust, for example, when interacting with members of stigmatized groups such as foreigners (immigrants), people with disabilities, homosexuals and lesbians.

Negative emotional reactions may occur as part of individual personality rather than as part of statement makers. It is the case of those who tend to have prejudices against certain social groups, because public condemnation which present authoritarian figures or because members of social groups are perceived as being in violation of traditional values (Altemeyer 1996)[67].

Even people who consider themselves free of prejudice may experience negative attitudes towards social groups without being aware of it. While these feelings are generally aligned with a discomfort or anxiety and not a hostility or hatred, yet they affect behavior (Dovidio & Gaertner, 2004)[68]. Also, the emotional reactions of individuals can depend on the context in which they interact with members of stereotyped groups (Fiske, Lin & Neuberg, 1999)[69].

3.1. Introducing the concept of discrimination

The third major issue is the concept of discrimination, which is treating people differently because of their belonging to a particular group.

The outcome of reviews of over 100 studies of the Institute of Medicine of the United States of America, **discrimination contribute to racial disparities in health and a higher rate of death due to cancer, heart disease, diabetes and HIV infection / AIDS regarding minorities** *(Smedley B.D., Stith A.Y &Nelson A.R., 2002, Unequal treatment: confronting racial and ethnic disparities in health care, Washington, DC, National Academy Press).*

[66] Ibidem.

[67] To see Altemeyer, B., 1996, The authoritarian specter. Cambridge, MA: Harvard University Press.

[68] To see Dovidio, J. F., & Gaertner, S. L., 2004, Aversive racism. In M. P. Zanna (Ed.), Advances in experimental social psychology (Vol. 36, p. 1-52). San Diego, CA: Academic Press.

[69] To see Fiske, Susan T., Monica Lin and Steven L. Neuberg, 1999, "The Continuum Model: Ten Years Later", in Dual Process Theories in Social Cognition, Shelly Chaiken and Yaacov Trope eds., New York: Guilford Press, p. 231-254.

As with stereotypes or prejudices, although in general, there is a negative association within the differentiation may also result in positive treatment of people based on membership of a particular group. . Differentiation can take many forms, from expressing in words to the behaviors, evidenced in various areas of social life, the boundaries between different forms, sometimes unclear areas and levels, they overlap.

Discrimination comes from the Latin discriminatio, term which means to perceive distinctions between phenomena or to be selective in judgments against somebody[70]

English edition of the Latin Dictionary [71] defines the term ”discriminatio”:

In Longman Advanced American Dictionary[72], a second sense of the word discrimination is:

I. Contrasting opposing thoughts, Rufin.Schem.lex. § 20.

Romanian Explanation Dictionary [73] defines discrimination as:

2. (I,T) to recognize the difference between things

DISCRIMINÁTION, s. f The act of discrimination and its outcome. 1. Distinction, distinction made between several elements (...) – După fr. **discrimination,** lat. **discriminatio, -onis.**

3.2. Forms of discrimination in the social sciences

The specialized literature shows that discrimination is understood, in general, biased conduct that includes not only actions that directly penalize the

[70] See Mihaila A., 2010, Sociology of Law, the legal sphere, Ed Hamangiu, scope SRL, Cluj-Napoca.
[71] See A Latin Dictionary. Founded on Andrews' edition of Freund's Latin dictionary. Revised, enlarged, and in great part rewritten by Charlton T. Lewis, Ph.D. and Charles Short, LL.D. Oxford, Clarendon Press, 1879.
[72] See Longman Advanced American Dictionary, 2006, Pearson Education Limited.
73See Explanatory Dictionary of Romanian Language, Second Edition, Romanian Academy, Institute "Iorgu Jordan, Encyclopedic Universe Publishing, 1998

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other group and those that unfairly favor their own group, creating a disadvantage relative to other groups [74].

When a person treats another person unfairly because of its membership in a group, there is an **interpersonal discrimination** (Benokraitis & Feagin, 1995)[75]. This treatment occurs at the individual level, may be derived from stereotypical beliefs, evaluations of a group or a combination of both and can give rise to differentiated treatment of a person [76]. For example, if some people have a stereotypical belief that Roma are unwashed, feel disgust towards them based on that idea and try to stop the Roma people into the organization to which they belong. As such,a bias at the individual level determine people to behave in a way that implies the superiority of group over other groups, and this distinction between groups must be maintained.

Emergent behavior can be passive, as some research shows, when white people are reluctant to sit next to a black person in public transport or a restaurant when staff ignore the color and gives priority to other customers [77]. On the other hand, performance can be active and range from the expression of words, remarks (Swim, Hyers, Cohen & Ferguson, 2001)[78] at action, hate crime or even murder (Swim et al, 2001, Levin & Mc Devitt, 2002)[79].

When "the practices, rules and policies of organizations such as corporations or agencies" have a discriminatory result, the literature identifies **organizational discrimination.** Although this type of discrimination can be manifested in many ways, the most common is the basic organizational form of gender discrimination at work[80].

When rules, policies and practices associated with a social institution such as family, religious institutions, education, justice system, leading to differential outcomes in relation to various groups, materializes an **institutional discrimination** (Benikraitis & Feagin, 1995)[81]. Institutional discrimination is apparently neutral, but disadvantages, ultimately, certain groups. It is often subtle, part

[74] To see Dovidio J.F., Hewstone M., Glick P., Esses V.M, 2010, Prejudice, Stereotyping and Discrimination: Theoretical and Empirical Overview in The SAGE Handbook of Prejudice, Stereotyping and Discrimination, SAGE Publications Ltd.

[75] To see Benokraitis, N.V., Feagin, J.R., 1995, Sex discrimination against women; Sexism; United States, Prentice Hall (Englewood Cliffs, N.J.).

[76] To see Bernard E. Whitley Jr. & Mary E. Kite, 2010, The psychology of prejudice and discrimination, Second edition, Wadsworth Cenggage Learninc.

[77] Ibidem.

[78] To see Swim, J. K., Hyers, L., Cohen, L. L., & Ferguson, M. J., 2001, Everyday sexism: Evidence for its incidence, nature, and psychological impact from three daily diary studies. *Journal of Social Issues, 57*, p. 31-53.

[79] To see McDevitt J, Levin J., Bennett S., 2002, Hate Crime Offenders: An Expanded Typology, Journal of Social Issues, 58, Issue 2, p. 303–317.

[80] To see Bernard E. Whitley Jr. & Mary E. Kite, 2010, The psychology of prejudice and discrimination, Second edition, Wadsworth Cenggage Learninc.

[81] To see Benokraitis, N.V., Feagin, J.R., 1995, Sex discrimination against women; Sexism; United States, Prentice Hall (Englewood Cliffs, N.J.).

of a practice by which one group is favored over another by limiting choices, mobility, and access to information or resources[82].

In a culture, a group can define cultural values and forms that those values should take. The group that has this power shall establish and maintain dominance by evaluating those values that correspond to their points of view and remove those that do not correspond[83]. As a result, minority groups and their culture is margnializated, discrimination was centered in literature, art, music, language, morals, customs, beliefs and ideology to a level which defines a generally accepted way of life (Benokraitis & Freagin, 1995)[84]. This type of discrimination is referred to in the literature of cultural discrimination.

3.3. The relationship between stereotypes, prejudice and discrimination

Relations between stereotyping, prejudice and discrimination can be extremely complex. Knowledge of stereotypical ideas not necessarily implies that an individual has a bias. Not any negative attitude is a bias. If you have a negative attitude from the roommate because he is negligent not to say that nurtures a bias towards him. However, if you think he is lazy because he is a Jew or a Roma and that all that belong to that ethnic group have this characterisic, then this belief is a bias[85]. In one experiment, Patricia Devine (1989) asked students to list characteristics of the underlying stereotypes against African Americans. She found that students, both those with high and those with low levels of prejudice were equally aware of the content of stereotypes. The difference was that those with low levels of prejudice were rejected stereotypes, while others have accepted them. Stereotypes are part of a societal belief system and are drawn from many sources, including parents, peers, media etc.. As such, it is not surprising that individuals are aware of the stereotypes, even if they do not accept them[86].

The problem is that people can access beliefs without being conscious and therefore such of ideas influence the behavior, even those who have a low level of prejudice. To understand this phenomenon must be taken into account the distinction made by researchers between implicit prejudices, reactions to groups or individuals who are unaware, and explicit bias attitudes that people are aware and which they can control. . In studies of Patricia Devine (1989), the

[82] See Bernard E. Whitley Jr. & Mary E. Kite, 2010, The psychology of prejudice and discrimination, Second edition, Wadsworth Cenggage Learninc.
[83] Ibidem.
[84] See Benokraitis, N.V., Feagin, J.R., 1995, Sex discrimination against women; Sexism; United States, Prentice Hall (Englewood Cliffs, N.J.).
[85] See A. Mihaila, 2010, Sociology of Law, the legal sphere, Ed Hamangiu, scope SRL, Cluj-Napoca.
[86] See Bernard E. Whitley Jr. & Mary E. Kite, 2010, The psychology of prejudice and discrimination, Second edition, Wadsworth Cenggage Learninc.

stereotypical beliefs were activated at an unconscious level, participants were not able to control the influence of stereotypes in their evaluations. When they were given the opportunity, participants with low levels of prejudice were tried and were able to control the influence of stereotypes and injurious to reply. As such, people who believe that prejudice is wrong and tries to control and eliminate them can successfully minimize the effects of stereotypes in their behavior[87].

We retain, therefore, that there is a distinction between **the concept of stereotype** - held beliefs about the characteristic features of members of different groups, **concept of prejudice -** oriented attitude towards members of groups and **the concept of discrimination -** behavior towards members of groups. Typically, there is a group consensus about the correctness of beliefs or behaviors They have a strong cultural component that guides how people respond to each other. Each of these components has both an individual basis, as well as a group. Relations between the three concepts are however very simple. People can have implicit biases that are difficult to control or described, or explicit biases, which are in the average of control and conscience of the individual. The level of explicit or implicit bias can influence the connection with discrimination [88].

4.1. Perceptions and attitudes towards the phenomenon of discrimination in Romania

HIV infected persons, homosexuals, Roma people and disabled people are perceived as the most discriminated against in Romanian society. 64%, 48% and 45% of respondents believe that HIV infected persons, gays and Roma people are discriminated against in access to health services (*TOTEM Communications, CNCD, 2010, Fenomenul discriminării în România*).

According to the poll "**Discrimination in Romania**" commissioned by the National Council for Combating Discrimination and realized in 2010 by Totem Communications, 62% of respondents consider that discrimination is a common phenomenon and very common in Romania.

24% of subjects who responded to the questionnaire stated that ethnicity is a large and very important measure of success in life. It charged that an ethnicity or other matter of: fiding a job, and access to public services, particularly **access to health services** [89].

[87] Ibidem.
[88] To see Bernard E. Whitley Jr. & Mary E. Kite, 2010, The psychology of prejudice and discrimination, Second edition, Wadsworth Cenggage Learninc.
[89] To see TOTEM Communications, NCCD, 2010, discrimination in Romania, Bogdan Paunescu, Delia Bobîrsc.

4.2. Perceptions of vulnerable groups to discrimination phenomenon

Media index prevailing view in the minds of people for discrimination in certain social contexts show the most discriminated groups**: HIV infected persons, sexual minorities**

GALLUP survey "Perceptions and attitudes of the population of Romania to the discrimination"[90] from 2008, and research INSOMAR "discrimination in Romania - perceptions and attitudes"[91] from 2009 show that:

As it is shown in the table in research TOTEM "**Discrimination in Romania**" in 2010[92], **HIV infected persons** are perceived by the public as being at **the highest risk from discrimination** in all spheres of life (labor, education, access to medical services and relations with public authorities). The following **vulnerable categories to discrimination** consisting of persons belonging to **sexual minorities and the Roma minority,** especially in employment / work, followed by access to public places, education and health. Similarly, HIV infected persons, homosexuals and Roma have the highest weights in relation to legal authorities and justice[93].

The reference group	Contexts of discrimination (%)						
	In employment	At work	In public places	At school	At hospital	In relation with the authorities	In justice
People infected with HIV	71	67	66	71	64	50	48
Homosexuals	54	53	55	55	48	42	41
Roma	56	45	49	44	45	37	38
Women	15	13	11	7	7	8	8
% context (average)	49	45	45	44	41	34	34

[90] See Gallup Organization, NCCD, 2008, Perceptions and attitudes of the population of Romania to the discrimination, national research on a sample of 1,200 people, the population aged 18 and over, type probabilistic, three-stage, stratified georgrafică region, degree of urbanization.

[91] See INSOMAR, NCCD, 2009, discrimination in Romania - Perceptions and attitudes, more research at the national level, on a sample of 1201 people, the population aged 18 years and older, conducted in 44 urban and 52 rural settlements.

[92] See TOTEM Communications, NCCD, 2010, discrimination in Romania, Bogdan Paunescu Bobîrsc Delia, national research on a sample of 1400 people, the population aged 18 and over, type probabilistic, two-stage.

[93] See TOTEM Communications, NCCD, 2010, Discrimination in Romania, Bogdan Paunescu, Delia Bobîrsc

4.3. Majority-minority stereotypes and prejudices

Research TOTEM "**Discrimination in Romania**" from 2010[94] reveals stereotypes that people perceive each to other belonging to the majority and minority.

Positive attributes	% +	% -	Negative attributes
Romanians			
Hard-working	57	18	**Lazy**
United	11	32	Divided
Tolerant	33	7	Intolerant
Peaceful	26	10	Aggressive
Courageous	21	16	**Cowards**
Honest	13	14	**Rogue**
Self-confident	18	15	**Less self-confident**
Generous	24	12	Miserly
Serious	12	14	**Untrustworthy**
Polite	16	9	Rude
With respect to the law	11	10	Without respect for law
Reliable	13	10	Less reliable
Roma			
Hard-working	4	45	**Lazy**
United	58	7	Divided
Tolerant	7	13	Intolerant
Peaceful	5	45	**Aggressive**
Courageous	20	11	Cowards
Honest	2	35	**Rogue**
Self-confident	12	6	Less self-confident
Generous	3	8	Miserly
Serious	2	25	Untrustworthy
Polite	2	26	Rude
With respect to the law	2	32	**Without respect for law**
Reliable	1	23	Less reliable
Hungarian			
Hard-working	24	2	Lazy
United	34	4	Divided
Tolerant	9	17	**Intolerant**
Peaceful	12	13	**Aggressive**
Courageous	14	5	Cowards
Honest	12	4	Rogue
Self-confident	13	6	Less self-confident
Generous	6	11	**Miserly**
Serious	13	5	Untrustworthy
Polite	11	7	Rude
With respect to the law	7	3	Without respect for law
Reliable	7	6	Less reliable
Hebrew			
Hard-working	14	2	Lazy
United	22	3	Divided
Tolerant	6	9	Intolerant
Peaceful	13	4	Aggressive
Courageous	9	4	Cowards
Honest	10	4	Rogue
Self-confident	13	6	Less self-confident
Generous	5	20	**Miserly**
Serious	12	3	Untrustworthy
Polite	10	2	Rude
With respect to the law	7	1	Without respect for law
Reliable	6	6	Less reliable
German			
Hard-working	33	0	Lazy
United	19	2	Divided
Tolerant	9	9	Intolerant
Peaceful	15	4	Aggressive
Courageous	13	1	Cowards
Honest	27	1	Rogue
Self-confident	14	4	Less self-confident
Generous	11	16	**Miserly**
Serious	27	2	Untrustworthy
Polite	19	2	Rude
With respect to the law	20	1	Without respect for law
Reliable	18	3	Less reliable

[94] See Totem Communications, NCCD, 2010, discrimination in Romania, Bogdan Paunescu, Delia Bobîrsc. The table is part of TOTEM research and is reproduced in its entirety, as it appears in the research

As results from research TOTEM, the majority Romanian respondents considered themselves more workers, diligent, tolerant (recipients), generous. They are critical of themselves, seeing longer divided, cowardly, less self-confident, untrustworthy, dishonest.

- Roma are perceived mostly in negative terms: lazy, aggressive, dishonest, disrespectful of the law. They are valued for: unity (solidarity), courage, boldness.
- Hungarians are treasures that are united, hard-working, industrious. Negative stereotypes that nationality is the fact that they are: intolerant, aggressive and miserly.
- The Germans are characterized by the following positive attributes: workers, hardworking, honest, serious, and avarice that is the defining attribute negative.
- Jews are perceived as: united, hard-working, industrious, peaceful, self-confident, serious. Avarice is a negative stereotype associated with this ethnic group [95].

4.4. Stereotypes and prejudices against other social groups

Research INSOMAR "Discrimination in Romania - perceptions and attitudes"[96] from 2009 reveals stereotypes and prejudices against certain social groups:

- **57%** of respondents feel uncomfortable around a gay person
- **55%** believe that sexual minorities should be treated by a doctor for this
- **22%** of respondents associated the word gay with revulsion, disgust, disapproval
- **15%** with disease, madness
- **8%** with abnormal, oddity, eccentricity
- **6%** of normal, everyday person, indifference

- **72%** of respondents believe that most Roma violate laws
- **48%** believe that Roma are a shame for Romania
- **45%** fear when meeting a group of Roma in the street
- **20%** say there should be shops or premises where Roma not be received

- **45%** of respondents would feel uncomfortable if they are near someone with HIV
- **17,4%** of respondents would feel uncomfortable around people with physical or mental disabilities.

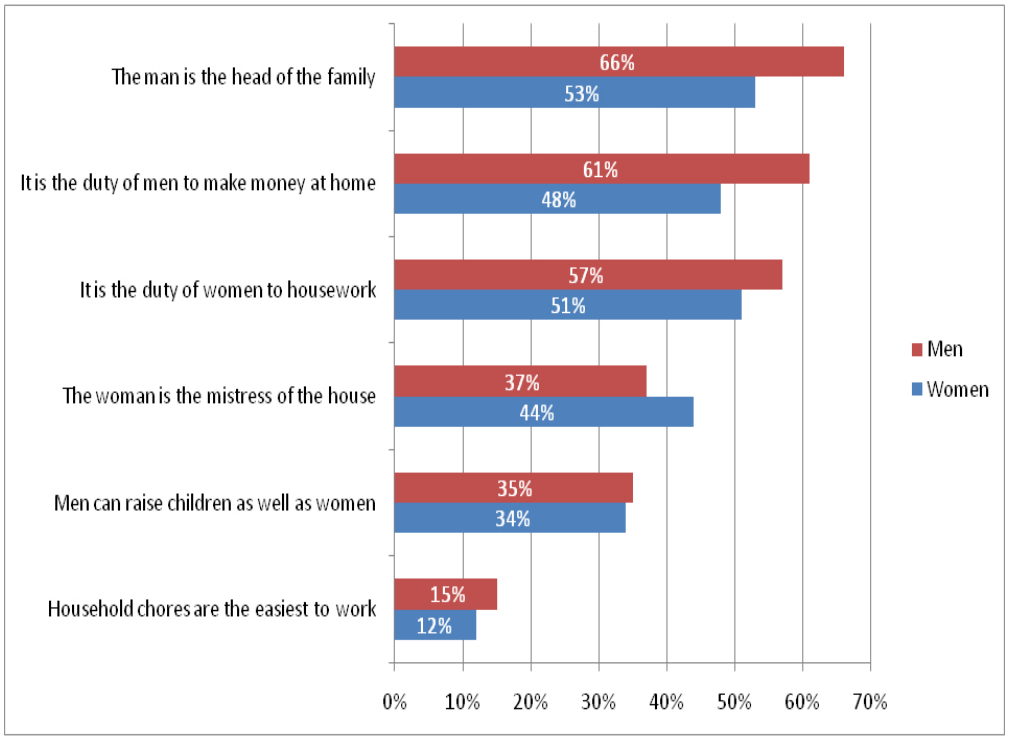
[95] See TOTEM Communications, NCCD, 2010, discrimination in Romania, Bogdan Paunescu, Delia Bobîrsc.

96 See INSOMAR, NCCD, 2009, discrimination in Romania - Perceptions and attitudes.

GALLUP survey "Perceptions and attitudes of the Romanian population against discrimination"[97] from 2008 reveals the gender stereotypes and prejudices.

- **37%** of respondents believe that the man is head of the family
- **29%** % think it is more the duty of men to bring money at home
- **28%** think it is more the duty of women to housework

Research TOTEM "Discrimination in Romania" in 2010 reinforces gender stereotypes found in 2008 and still present on the Romanian society [98].



[97] See Gallup Organization, NCCD, 2008, Perceptions and attitudes of the population of Romania to the discrimination.

98 See TOTEM Communications, NCCD, 2010, discrimination in Romania, Bogdan Paunescu, Delia Bobîrsc. Table is part of the research TOTEM and is reproduced in its entirety, as appears in the research.

Chapter II The notion of equality and its assumptions

1.1. Introducing the concept of equality

The existence of a corollary between equality and nondiscrimination is generally recognized. Literature cataloged as elusive principle of equal and equally complex and controversial subject of theoretical or aim targeting, potential or its limitations.

Subject of controversy resulting in part from the distinction that approaches equality as formal or substantial. Formal approach assumes from similar treatment of similar cases, instead substantive addressing concerns unequal treatment of cases, precisely because of them nonsimilarities [99].

Romanian Explain Dictionary [100] defines equality as:

> **Equality**, equality, SF 1. Being equal **status of two or more things equal.** (...) 2. Principle that all men and all states or nations are recognizing **the same rights and impose the same duties** are prescribed by rule of law, the situation in which people enjoy the same rights and same duties. (Matt.)
> **Relationship between two or more quantities**, elements, terms, etc.. **equal**, expression of this relationship, written with equal sign (2). – Din fr. **Égalité.**

1.2. A philosophical and historical perspective of equality

Althought the social philosophy of Confucius was often associated with the promotion of societal differences and inequality, in particular the distribution of rights and privileges based on social differences, in terms of history, its teachings have meaning for the idea of equality. Confucius's contribution on the concept of equality is reflected in the vertical field. This induces the idea of equality in the sense that those who are unequal should be treated unequally in a way very similar to Greek formalism [101].

[99] To see Loenen T. & Rodrigues P.R., 1999, Non-discrimination law: comparative prespectives, Martinus Nijhoff Publishers, Kluwer Law International.
[100] See Explanatory Dictionary of Romanian Language, Second Edition, Romanian Academy, Institute "Iorgu Jordan, Encyclopedic Universe Publishing, 1998.
[101] To see Clifford J., Locating equality: from historical philosophical thought to modern legal norms, in The Equal Rights Trust, Volume One, 2008, Prontaprint Bayswater.

For the Greeks the notion of equality was an important principle in understanding the "democratic society" and that of "justice." For Aristotle, " the equality is also equal treatment for equal people " and "things that are similar should be treated similarly" (Politics 307, Artistotel). On the other hand, "if two people are not equal, they will have no equal shares" or "things that are not dissimilar in the proportion should be treated like their dissimilarities" (Ethica Nicomachea, V.3, 1331)[102].

> If someone is similar then to be treated similar, if someone is different, then to be treated differently. Is an empirical concept (how one should be treated depends on how it is) and symmetrical (two versions of a mathematical equation combined with equal sign [=]).

The idea of equality is developed in early Christianity in relation to universality, in particular, to equality in front of God. On the other hand, the concept of equality is derived by default from what then is named "golden rule" invoked by Jesus Christ. "Golden rule" as defined in Merriam Webster Dictionary and in Webster's New College Dictionary as "the principle of moral conduct as set out in Matthew 7:12 and Luke 6:31, which states that we must do to others what we would they make us. "

„All people are trying to do to you, and you do them too. "- Cornilescu Bible

„Treat others and exactly how you would like to treat you as well. "— *The New Testament in Modern English,* by J.B. Phillips

„Whatever you want others to do them and we'll do likewise. "- — *The Amplified New Testament.*

„Do to others whatever you want to do it for you." — *The New Testament in The Language of Today* de W.F. Bek

„in all respects, therefore, treat your neighbor as you'd like them to treat you." — *The Four Gospels,* de E.V. Rieu

„to behave towards others as you would like them to behave towards you." — *The New Testament* by C.B. Williams.

The premise of this rule transcends the principle of similarity, even if, ultimately, similar treatment of persons in similar situations. Of course, in this context, strong theocratic rule bear a load, but use a formula for positive action[103] and is addressed precisely to emotion to determine a behavior is based on the idea of similarity, at least in terms of consideration of human dignity.

[102] To see E.Holmes, 2005, Anti-Discrimination Rights without equality, 68, M.L.R. 175, Aileen McColgan (2006) 'Cracking the Comparator Problem: Discrimination, ''Equal'' Treatment and the Role of Comparisons', European Human Rights Law Review, nr. 6, p. 651-677.

[103] Unlike Confucius that is claiming in terms of maximum negative action with the same sense: "Do not do to others what you would like not to be done."

Thomas Hobbes, John Locke, Thomas Paine, Jean Jacques Rousseu and other philosophers of law have joined the concept of equality with the natural law, each person having equal right over its natural freedom of not being subject to the will or authority of another man[104]. Thomas Paine reiterates that all men are created equal with equal natural rights [105]. Locke points out, however: "I can not be assumed to mean any kind of equality. Age or virtue may give man a fair precedent [106].

Rousseau sees two types of inequality, " one of them which they call a natural or physical that is determined by the nature and involves differences in age, health, power and qualities of mind or soul. The other may be called moral or political inequality that depends on a type of agreement and decided, or at least approved, by consent of man. It involves various privileges, which some benefit to the detriment of others, such as to be richer, more honored, more powerful, or even have the ability to make them undergo"[107].

The merit adherents of natural law is to be moved paradigm discourse on the concept of moral equality to a rights-oriented framework, which offers individuals the opportunity to affirm the underlying idea of equality in political and legal sense[108].

The modern approach to the concept of equality and in particular the right to equality is certainly influenced by the universalism, individual liberty, freedom and so on. Field models are integrated into systems of formal equality as a prerequisite, but equally, and substantial equality.

2.1. The assumption of formal equality: treating similar cases in a similar way

Formal equal or better known as legal equality calls into question the traditional approach of national legal systems, based on the idea of the legal norm: "all are equal in front of the law and public authorities." Of course, this formulation is found in international law: "all persons are equal in front of law and entitled without discrimination, the right to equal protection of the law"[109]. This form of equality is linked in some way by Aristotle and his dictum "similar things should be treated similarly.

[104] To see Clifford J., Locating equality: from historical philosophical thought to modern legal norms, in The Equal Rights Trust, Volume One, 2008, Prontaprint Bayswater.
[105] To see P. Thomas, Part the first the rights of man, The Rights of Man, 1791, reprinted in Thomas Paine, Comon Sense and the Rights of Man, London, Phoenix Press, 2000, p. 63-128.
[106] To see Locke, John, The Second Treatise on Civil Government, p. 54, in Abernethy, George, Introduction to the ideea of equality: an anthology, John Knox Press, 1959, p. 134.
[107] To see Rouseeau Jean-Jaques, Discourse on the Origin and Basis of Inequality Among Men, Lowell Bair translation, ed. The Essential Rousseau, 1975, pag. 143-144.
[108] To see Clifford J., Locating equality: from historical philosophical thought to modern legal norms, in The Equal Rights Trust, Volume One, 2008, Prontaprint Bayswater.
[109] To see art.26 from International Pact regarding civil and politic rights

The general assumption in the case of formal equality is linked to the "similarity" legal issues. Consequently, the assertion of formal equality is that a personal characteristic, physical or otherwise, should be seen as irrelevant in determining whether a person is entitled to a benefit or a specific protection of the law. Ergo, all people, regardless of gender, race or ethnic origin, religion or belief, disability, age and so on, are equal in front of the law.

As such, the value of formal equality can be said is precisely that removes the arbitrariness [110].

„ Formal equality promotes the idea of individual justice as the basis for a moral claim , virtues and is based on the requirement of fairness (moral virtue), which requires equal treatment or consistent " (*Wesson Murray, Equality and Social Rights: an exploration in light of the South Africa*

2.2. Case Study

Let's take the following example:

RSE, JHW and LJW are three people who are born with hearing and speech impaired (deaf-mute), the main mode of communication is sign language. By law, health care is financed by the state. Insurance and delivery of hospital services is done through funds provided by the state budget and funds provided by local authorities. Public health benefits provided by physicians are reimbursed by the state.

VDS, BNF and JDI are three people who have not hearing or speech impaired and will call, if necessary to medical services which are offset by funds from the state budget. In this respect, they addressed to the hospital belonged locality where they reside, set more appointments for consultations, rows repeteate are consulted, are found medical diagnostics, are set the appropriate medical treatment and proper medication.

RSE, JHW,LJW medical condition requires, at a time, call medical services. They want to ask the hospital to which they went VDS, BNF and JDI, but have difficulty in setting appointments for consultations, after long efforts to acquire, are experiencing problems with the medical advice, assist physicians in determining the physical , diagnosis and medical treatment . Hospital did not have interpreters for persons with hearing disabilities. Care programs do not compensate or reimburse from the state budget interpretation services for deficient persons with hearing and speech in access to services (benefits) medical

[110] To see Brest P., 1976, In defence of antidiscrimination principle, Harward Law Review, Vol. 90.

(programming, consulting, etc.).

From the perspective of formal equality, in the example above, we assume "all are equal in front of the law and authorities." Therefore, patients VDS, BNF, and RSE, JHW, LJW patients, are equal before the law and medical authorities. It should therefore be treated equally both in terms of law enforcement (free compensation benefit) and the delivery of the relevant authority (the benefit of medical services). Law reimburses medical services provided by hospitals and by physicians, without making any distinction. In both cases, patients receive health services reimbursed by the state, patients were asked the same hospital, same doctor, have benefited from their services and, ultimately, for medical treatment.

In connection with our example, the following questions are raised:

- To what extent formal equality provided the total neutrality of the law or medical authority to all parts (in our case patients VDS, BNF, JDI and RSE patients, JHW and LJW)?
- To what extent patient characteristics RSE, JHW and LJW or not irrelevant in determining whether they are enjoying some benefit from the law or medical authority?
- If a deaf-mute patient can not understand or communicate effectively with the doctor or it can call into question the lack of equal benefit of the health service?
- It is relevant to the potential risk of a misdiagnosis, the treatment ineffective?
- It is effective communication between patient and doctor in question, as part of the medical service?

The specialty doctrine has been suggested that the alleged neutrality that ensures formal equality is just an illusion [111]. In addition, while the consistent treatment (formal / legal) has an important role in society, diversity and complexity of social life and modern social relations transformed formal equality approach in a simplistic conception[112].

[111] To see Fiss O.M., 1976, Groups and the Equal Protection Clause, Philosophy and Public Affairs, Vol.90, p. 1 in Clifford J., Locating equality: from historical philosophical thought to modern legal norms, in The Equal Rights Trust, Volume One, 2008, Prontaprint Bayswater.
[112] Ibidem.

3.1. Hypothesis of substantial equality and differences considering

The starting point of the substantial approach is the second principle of equality: different cases must be treated in a manner that reflects the differences between them. Therefore, this approach requires consideration of differences and treat them accordingly. Specialized doctrine into the question, however, some issues. The question relates to how to take into account the inequalities or differences. Basically, it would be impossible to consider all the individual characteristics of a person. Then, how to determine the appropriate treatment should be applied to where we go in taking into account the differences. The fact is that it takes into account differences parameters and, of course, with a justification of the selected parameters[113].

Substantial equality, real equality called, involves identifying the causes of inequality between groups, then setting a goal likely to redress opportunities between these groups and, ultimately, establish a mechanism by which the aim can be achieved. Difference between "formal" and "substantial" is that the mechanism by which such purpose is to remove those barriers that are associated with the "main features" of the group rather than providing an equal result [114].

3.2. Case study

Returning to our example (RSE, JHW and LJW, the three people who are born with hearing and speech impaired and who use health services), to imagine that the health care system takes into account the real differences between people impaired hearing and speaking to other people. To achieve real equality, health care system would take into account the particular circumstances of the patient. Patients are insured, have contributed to the welfare system and health and are therefore entitled to the benefit of health services. The substantial equality approach would recognize that the effect of identical treatment of patients with disability than those without disability would result in exclusion from the actual benefit provided by health services.

The above example has been the subject of the case *Eldridge v. British Columbia, Medical Services Commission* and others, decided by the Supreme Court of Canada in 1997[115].

[113] To see Minow M., Making the difference, Inclusion, Exclusion and American Law, 1990, Holtmaat R., Naar een ander recht I en II, Nemesis, 1988 in Loenen T. & Rodrigues P.R., 1999, Non-discrimination law: comparative prespectives, Martinus Nijhoff Publishers, Kluwer Law International.

[114] To see Factum of the Intervenor Canadian Council of Disabilities, in Partea III, Argument, disponibil la: http://www.ccdonline.ca/law-reform/Intervention/ andrews%20factum.htm.

[115] To see Eldridge *v*. British Columbia (Attorney General), [1997] 3 S.C.R. 624, Supreme Court of Canada, case Robin Susan Eldridge, John Henry Warren and Linda Jane Warren v. The Attorney

Supreme Court of Canada found that:

„In given case adverse effects suffered by individuals with hearing loss have resulted from the failure to provide equal health care benefits. Once accepted that effective communication is an essential component of health services is more difficult to say that the failure to ensure that communication with the deaf-mute does not constitute discrimination. (...)It will be incumbent by the Government to adopt special measures to ensure that disadvantaged groups benefit equally from public services [116].

„The principle that discrimination may emerge from failure to adopt positive measures to ensure equality of services to benefit disadvantaged groups is widely accepted in human rights. Resulting from the jurisprudence of human rights obligation to ensure reasonable accommodation for disadvantages persons just to ensure equal benefit of public services. Reasonable accommodation in this context, is equivalent to the concept of "reasonable”[117].

„Failure Medical Services Commission and hospitals to provide sign language interpretation in situations where it is necessary for effective communication constitutes a prima facie violation of the principle of equality and discrimination against persons who do not have such a deficiency . This does not mean that in any medical situation is an obligation to ensure a sign language interpreter. Standard "effective communication" is a flexible one and take into account factors such as the complexity and importance of information to be communicated, the context in which communication will take place and the number of people involved. For people with hearing disabilities and limited education level of interpretation, in most cases will be required”[118].

General of British Columbia and the Medical Services Commission and Attorney General of Canada, the Attorney General for Ontario, the Attorney General of Manitoba, the Attorney General of Newfoundland, the Women’s Legal Education and Action Fund, the Disabled Women’s Network Canada, the Charter Committee on Poverty Issues, the Canadian Association of the Deaf, the Canadian Hearing Society and the Council of Canadians with Disabilities.

[116] Ibidem.

[117] Ibidem.

[118] Ibidem.

In essence, the law on health care provide equal treatment for all patients, because medical services are covered by the state, without distinction (Equal legal / formal). However, treating patients equally, without making distinction between their situation (eg patients with impaired speech) and pay by failing to ensure access to medical interpreters funded by the state law violates the principle of equality (Equal substantial / real).

To prevent such a violation, health services must provide "reasonable accommodation" to patients with hearing impairment. This adaptation required a hospital, where appropriate, may use a sign language interpreter, and the benefit in question to be borne by the state as part of the benefit of public health service.

In conclusion, substantial equality envisages the hypothesis of people in different situations to be treated differently. Two distinct hypotheses derived from this concept: equality of result and equality of opportunities.

Equality of results requires that the measures applied to persons in different situations to get an equal result. This recognizes that the same treatment in practice, can produce unequal because of previous or current disadvantages or because of deficiencies / disadvantages of access (to resources, services, rights, etc..). Precisely for these reasons, the assumption of equal effect results and to measure imposed, should be considered the primary [119].

Equality of opportunities states that law can provide equal opportunities for all persons, taking into account their starting positions, to have access to the benefits achieved. Equality of opportunities is aimed at ensuring equal opportunities, but no results [120]. Furthermore,in European law concept is standardized as "positive action", but often confused with the concept of "positive discrimination".

[119] To see Kevin Kitching, Interights: The International Centre for the Legal Protection of Human Rights, Non-Discrimination in International Law: A handbook for Practitioners, Londra, 2005, p. 19.
[120] Ibidem.

Chapter III Health systems, right to health and principle of nondiscrimination

1.1. Fundamentals of health systems: the perspective of Aristotle's philosophy

In Aristotle's view, human prosperity is a given of political activity, as the highest good for each action and decision. Aristotle said: "It belongs to the excelellent legislator to see how the city, a family of human beings (...) will share the good life and happiness which is possible for them"[121].

The political objective is further defined in terms of "opportunity to perform well if one so chooses." This formulation distinguishes the right to perform and requires the allocation of goods and different conditions to enhance the ability and respect the importance of freedom and reason by which human beings show off elections[122].

This approach is relevant in terms of law or of public health policies. First, it requires the government to distribute sufficient goods, services and conditions for the achievement of good human functioning, respecting at the same time, human dignity. For example, the

„In the body case, excellence is health through operation of the body without disease" (***Aristotel**, Retorica, 1. 60*).

„Health is provided complete physical, mental and social development and not merely the absence of disease or infirmity" (***World Health Organization**, Basic Documents of the W.H.O., 37th rd.1992).*

„Health sf 1. Status of a body to which all organs are functioning normally and regularly do. Public health (...) = health welfare, health status of the entire population (...) 2. Fig. Strength, robustness – Lat. Sanitas, -atis. (*Romanian Explain Dictionary, **DEX, 1998**).*

The public health means the health of the population in relation to the determinants of health: socio-economic, biological, environmental, lifestyle, health service provision, quality and accessibility of health services (Law on health reform , Article 4 paragraph *1*).

[121] To see Aristotel, Etica Nicomachea, in Ruger P.J., 2006, Toward a Theory of a Right to Health: Capability and Incompletely Theorized Agreements, Yale Journal of Law & Humanities, Vol. 18: 273.

[122] To see Nussbaum M.C., 1990, Nature, Function and Capability, Aristotel on Political Distribution, Gunther Parzig ed.

state will provide the resources and context of a good diet, but will respect the right to fast for religious reasons .[123]

The distinction is important to understand the state's role in distributive justice and the difference between malnourished people and those who deliberately fast. In short, Aristotle's theory emphasizes the importance of different allocations for people who require different levels of resources to achieve a prosperous life[124].

The second component aims to Aristotle's optics resources such as wealth, health care and income, which is not given the appropriate political activity. Shows Aristotle: "Clearly the wealth is not good that we pursue, as it is (even slightly) useful (only in terms of choice) for any other purpose"[125]. In addition, resources are only an purpose in itself, rather having an instrumental role. In addition, as long as they are relevant to promoting human welfare. The wording is important because the main objective of public policy should be oriented toward the functioning ability of individuals and not the resources[126].

The third component of Aristotle's vision is about assessing the political agreements, in particular, those individuals to an increased work best and "it is obvious that the best agreement (...) is that each does what is best and live a prosperous life "according to his natural circumstances"[127]. Individuals will inevitably face the social and natural barriers that will impede the optimal functioning. However this perspective recognizes the achievements and difficulties of equalization imply that human diversity be taken into account when designing the method of distribution policy. Aristotle sees the best political agreement that one which provides individuals a good life up to the maximum that you allow the circumstances, that is, Aristotle says, "brings a well-functioning individuals as close as their natural circumstances permit." The concept of political distribution involves here the purpose for planning policy, namely the distribution to individuals of the City of conditions under which a good life can be elected and lived[128].

Although Aristotle's theory of political distribution is based on the idea that human welfare is associated with "that aimed at anything," a fourth component of Aristotle's theory takes into account the existence of other targets, since there

[123] To see Sen K.A., Inequality reexamined, 8, 1992 in Ruger P.J., 2006, Yale Journal of Law & Humanities, Vol. 18.
[124] To see Ruger P.J., 2006, Toward a Theory of a Right to Health: Capability and Incompletely Theorized Agreements, Yale Journal of Law & Humanities, Vol. 18: 273.
[125] To see Aristotel, Etica Nicomachea,5: 1096a 6-8, translation from English into Ruger P.J., 2006, Toward a Theory of a Right to Health: Capability and Incompletely Theorized Agreements.
[126] To see Nussbaum M.C.,1992, Human Functioning and Social Justice: In defense of Aristotelian Essentialism, 20 Pol. theory, p. 202, 233.
[127] To see Aristotel, Politica, 199: 1324a 23-25, translation from English into Ruger P.J., 2006, Toward a Theory of a Right to Health: Capability and Incompletely Theorized Agreements.
[128] To see Nussbaum M.C.,1992, Human Functioning and Social Justice: In defense of Aristotelian Essentialism, 20 Pol. Theory.

are more actions, professions and science, and objectives are also many, for the health, the goal is the end of medicine (...)".This latter case indicates that health is an intrinsic value and instrumental value, being the primary objective of health policy [129].

The fifth component of Aristotle's conception emphasizes the need to define "human wealth" to determine whether it promotes political agreements. Aristotle argues that "what the best regimen, one that will investigate the problem properly, it need to discuss, first, that is the benefit way of life . As long as it is incomprehensible and the best scheme would be, necessarily, just (...)"[130].This formulation involves a substantial account of "human asset" for analysis his success, failure of society in assessing the goal of human welfare functions [131].

1.2 The principle of proportional justice (equal cases and different cases) in health systems

In Aristotle's vision of allocating scarce resources to promote prosperity is achieved through the principle of proportional justice: treat similar cases similarly treat different cases differently [132].

Ultimately, the application of Aristotelian principle of proportional justice would require that the society to reduce barriers affecting equal opportunities pertaining to health, particularly by giving greater emphasis (more resources) the needs of disadvantaged compared with those who are in an advantaged position in proportion with the differences between them. Aristotle introduced such concept of “disproportionate" effort, and in health, it would mean bringing disadvantaged individuals as close as possible to a possible corollary of their operating threshold. In this process, Aristotle shows that the structure of a person can not be sacrificed to improve the state of another person, even if the latter is below the normal threshold[133].

For health policy, this form would require generally that the government provide health functional status of an individual working at a threshold of proportion to circumstances, without falls below the level at which others fall. Of course, there is considerable debate on the level of priority that society would have to give those in need[134].

[129] To see Ruger P.J., 2003, Health and Development, 362 Lncet 678.
[130] To see Aristotel, Politica, 197, 1323 a14-17.
[131] To see Nussbaum M.C., 1990, Nature, Function and Capability, Aristotel on Political Distribution, Gunther Parzig ed.
[132] To see infra Cap.II The notion of equality and its assumptions; 1.2. A philosophical and historical perspective of equality.
[133] To see Ruger P.J., 2006, Toward a Theory of a Right to Health: Capability and Incompletely Theorized Agreements, Yale Journal of Law & Humanities, Vol. 18: p. 273.
[134] Ibidem

Therefore, ensuring the right to health inequalities would be reduced opportunities relating to individuals or groups, and in agreement with Aristotle's theory, the state should distribute opportunities so as to allow each individual to attain the highest level functional health to choose and live a good life. This task is mainly aimed at optimizing individual function[135].

On the other hand, justice in health policy would require rules that allow the society to maintain and improve opportunities in health. Each society will have a different set of rules for distributing resources in accordance with reducing the inequalities of opportunities of population in health. Each society will have a different capacity to pay, a totally different budget, different relative costs of services, a total of different individuals who require services to maintain and improve health opportunities[136].

2.1. The concept of health and human rights incidence

Definitions of the concept of "health" given by philosophical trends, the international health institutions, those found in dictionaries, or those used by health systems are considering, essentially, a goal achieved. These indicate that health is more than the absence of disease or infirmity, that it is an affirmative good condition ("Health is provided complete physical, mental and social development and not merely the absence of disease or infirmity" - O.M.S).

If we associate the "right to health" with "human rights", at least from some perspectives, would appear to clarify several issues. From one perspective, human rights challenge a specific opportunity that enjoys recognized legally binding against a possible interference of the state, or a claim to benefit from the state, which enjoys legally executed enforceable.

Rather, the question is what claims might be subject to review by a court for the right to health, expressed as a statement of objective or purpose. Could such a statement (which follows the absence of disease or a state affirmative good) to form the basis or under a legal claim that would be remedied by the court? It must be said that human rights are more than capable of moral claims. The opposite would mean that the concept of law and the concept of morality may merge so as to define the limits of each other concept. Or, for example, what is illegal can not be immoral, unethical and what is imoral may not be illegal. For example, it is immoral to drive 30 km/h in an area with a speed limit of 25km / h and is not illegal to get an abortion, although many would consider such a fact that one immoral [137].

In the specialized literature human health from the perspective of human

[135] Ibidem.
[136] Ibidem.
[137] To see Jamar S.D., 2008, The international human right to health, Southern University Law Center, 1994, Thomson/Westlaw, 22 S.U.L. Rev. 1.

rights is seen as a "claim an interest, a need or a request that is knowing in terms derived from law and moral precepts necessary for respect of human dignity"[138]. A preliminary application of this definition to the right to health shows that the latter qualifies as one of human rights, in most aspects. Health is clearly linked to human dignity, is a human need and at the same time, a human interest. It is clear that any person, whether child, youth, adult, elderly and so on has the right to enjoy health.

Regarding the law nature, it must be said that we should not confuse this with the coercive force is generally enjoy a right recognized by law. Such identification would be likely to exclude both theoretically and empirically, a good part of human rights (eg social, economic, etc..). On the other hand, literature shows that as long as a benefit and a possibility is not recognized by law it can constitute a moral claim, or issue a policy statement of general policy, but not a human right[139].

2.2. The right to health, cogniscibil in international law

The United Nations Carta [140]

> **Art. 55**: „In order to create conditions of stability and well-being necessary for peaceful and friendly relations among nations based on respect for the principle of equality of peoples and their right to dispose of themselves, the United Nations shall promote:
> a. *higher standards of living*, full employment and conditions of economic and social progress and development;
> b. *solutions of* international economic, social, ***health*** and related *problems*, international cooperation in culture and education
> c. universal respect for and effective implementation of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion".

Even if not explicitly refer to a right to health, the United Nations Carta commits both organization and the Member States to health problems, and by Article 56 states assume the duty of care towards action both joint organization and separately to achieve the purposes listed in art. 55 of the UN Carta.

[138] Quote professor Goler Teal Butcher în Jamar S.D., 2008, The international human right to health, Southern University Law Center, 1994, Thomson/Westlaw, 22 S.U.L. Rev. 1.
[139] To see Jamar S.D., 2008, The international human right to health, Southern University Law Center, 1994, Thomson/Westlaw, 22 S.U.L. Rev. 1.
[140] United Nations Carta was signed in San Francisco on 26 June 1945, at the end of United Nations Conference on International Organization and entered into force on 24 October 1945.

Universal Declaration of Human Rights [141]

> **Art. 25**: (1) „Everyone has *the right to a standard of living adequate* for **the health and welfare** of himself and his family, including food, clothing, housing, *medical care* and necessary social services, and the *right to security* in the event of unemployment, *sickness, disability*, *widowhood*, old age or other lack of livelihood as a result of circumstances beyond his control.
> (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born within or outside marriage, shall enjoy the same social protection."

Article 25 of the Universal Declaration of Human Rights in particular covers two categories of benefits. In the first paragraph, the right to a life standard that allows basic needs are met. Among these are included in "health and welfare," but health is treated rather as a way of articulating the extent to which the right is reached (eg nature is instrumental), in this case since this is a minimal standard of living and not directly right to health. An economic system in which each person has the ability to acquire goods and services sufficient to support and develop health implies that individuals would actually benefit the right to carry a minimal standard of living. The idea is that this right does not involve directly providing food, clothing, housing, medical care, but this right is achieved, and usually through access to employment, which allows the individual acquisition of these goods and services[142].

The second principle, which is envisaged by art. 25 concerns social services, adequate social security in case where the person does not exercise the right to enjoy a minimal standard of living. This right does not directly relate to health, than by reference to social security where a person may engage in work activity due to illness or disability. Although not clearly show the nature of a right to health, at least it shows the connection between lack of health conditional and the benefit of social services[143].

Where a person has health problems and is unable to acquire medical services, then arises a claim for the benefit of those services . The State may satisfy this requirement through a system of social security, workers compensation systems or different types of schemes (ie medical). The state can also directly provide those services or financial compensation for these services.

[141] On 10 December 1948 UN General Assembly adopted and proclaimed the Universal Declaration of Human Rights.
[142] To see Jamar S.D., 2008, The international human right to health, Southern University Law Center, 1994, Thomson/Westlaw, 22 S.U.L. Rev. 1.
[143] Ibidem.

In conclusion, although the right to health is not envisioned in the Universal Declaration as a right by itself, it is included as an essential element of the right to a standard of living for everyone.

International Covenant on Economic, Social and Cultural Rights [144]

> **Art.12**: „1. States Parties to the present Covenant recognize the right of everyone to enjoy the best physical and mental health attainable.
>
> 2. Measures that States Parties to this Covenant will take to ensure the full exercise of this right shall include measures to ensure:
>
> 1. decrease new born mortality and infant mortality and healthy child development;
> 2 improve all aspects of industrial hygiene and environmental hygiene;
> 3. prevention, treatment and control of epidemic, endemic, occupational and other, and fight against these diseases;
> 4. creation of conditions which would assure to all medical service and medical help for sickness".

The right to health is the most explicit manner regulated by Art. 12 of the Convention on Economic, Social and Cultural Rights. Unlike the Convention on Civil and Political Rights (eg "everyone has the right"), Article 12 uses the standard phrase "States Parties recognize the right (...) of everyone (...)". This formulation shows that the right shall not be enacted, adopted or determined by the states as is known. This choice induces a natural law or the idea was born the idea of a foundation rather than positivist in the sense that the state establish something, suggesting the recognition of something that exists with all the consequences arising from it.

The contents of this right aims to benefit the individual "best physical and mental health can achieve". Although the text does not define the term health, right to health includes both physical attributes and mental ones. Doctrine indicates that this right can not be a perfect correlative attitude or physical or mental processes flawless as a maximum standard that can be achieved. This

[144] Adopted and opened for signature by the United Nations General Assembly on 16 December 1966 by Resolution 2200 A (XXI). Entered into force on 3 January 1976, according to the provisions of art. 27. Romania has ratified the Covenant on October 31, 1974 by Decree no. 212, published in "Official Gazette of Romania", Part I, no. 146 of November 20, 1974.

involves, first, the existence of standards that can be identified or defined, a set of attributes that can be defined and articulated as health[145].

On the other hand, the standard referred to in Article 12 as it has no such ideas nature as it has practical nature, as used by Aristotle, that is grounded in reality. From this point of view must to examine the meaning of the phrase "that one can reach" (eg, best health). Finally, the standard to be achieved is not a minimal one as "best." Therefore, the right to health is not considering a basic level, minimal, comprising a set of physical conditions that promote health as a right to a high level.

The second paragraph of Article 12 of the Convention identifies specific areas and measures to be adopted to achieve the right to health. Using the phrases "ensure the full exercise of this right is consistent with the theory that such right exists, but it can not be fully realized immediately, and as one whose performance standard will change over time.

The measures listed in paragraph 2 does not configure itself the right to health as areas where efforts should be directed to ensure this right. Furthermore, Article 2 paragraph 1 compared with the distinction between the content of the cause which requires everyone to enjoy the best health "and" steps "intermediaries should take to reach the content of the law. This distinction is one between a status (healthy) and process (measures to improve the ability to achieve the desired status).

Apart from the distinction between content and means of paragraph numbering of the measures from paragraph 2 identifies the State's obligations towards the individual. A person can not claim: "I have the right to health, so I want to make me healthy," but can claim that: "I have the right to health, so do whatever is necessary to enable me to be healthy". In terms of obligations, the State can not guarantee or directly deliver health care but may provide favorable conditions for achieving health. Basically, this feature distinguishes the right to health in virtually all human rights as any other law does not depend entirely on such indirect measures to ensure the full exercise of the right[146].

[145] To see Jamar S.D., 2008, The international human right to health, Southern University Law Center, 1994, Thomson/Westlaw, 22 S.U.L. Rev. 1.
[146] Ibidem.

Other international and regional conventions

The right to health is recognized in other international or regional instruments protecting human rights. This is the case:

- **International Convention of the Elimination of All Forms of Racial Discrimination, Article 5 (e) (iv)**
- **International Convention on the Elimination of All Forms of Discrimination against Women, Article 11 (1) (f), Article 12 and Article 14 (2) (b)**
- **Convention on the Rights of the Child, Article 2**
- **International Convention on Protection of the Rights of**
- **Migrant Workers and Members of their Families, Article 28, art. 43 (e) and Article 45 (c)**
- **Convention on the Rights of Persons with Disabilities, Article 25**
- **Revised European Social Carta, Article 11**

Revised European Social Carta [147] governing the right to health protection:

> **Art. 11**: „In the exercise of the right to health protection, the Parties undertake, either directly or in cooperation with public and private, to take appropriate measures designed regarding especially:
> 1. to eliminate, as far as possible the causes of poor health;
> 2. to provide advisory and educational in terms of improved health and development of individual responsibility for health;
> 3. to prevent as far as possible epidemic, endemic and other diseases and accidents."

European Committee of Social Rights held that the right to health protection complements Articles 2 and 3 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights, by imposing a set of positive obligations of States parties to the task, such ensure the effective exercise of rights. Health-related rights are inextricably linked, since "human dignity is a fundamental value and, indeed, the substance of the position of the European human rights law be it the European Social Carta, be it the European Convention human rights and on

[147] Adopted in Strasbourg on 3 May 1996. It entered into force on 1 July 1999. Romania signed the Carta on 15 May 1997 and ratified it on May 7, 1999 by Law no. 74 May 4, 1999, published in the Official Gazette no. 193 of May 4, 1999.

the other hand health is an essential condition for human dignity"[148].

3.1. Right to Health: nature and content

The right to health is an inclusive law. UN Committee on Social and Cultural Rights states that the right to health is not confined to proper medical care or access to a hospital. It includes the determinants of health [149], as:

- access to safe drinking water,
- adequate sanitation,
- adequate nutrition and housing,
- occupational and environmental appropiate conditions ,
- health education and information, including sexual and reproductive health.

The right to health requires freedom. The right to health includes freedom from non-consensual medical treatment, as medical experiments or forced sterilization research, freedom from not to be tortured or other cruel, inhumane and degrading [150]. It also implies freedom not to be subjected to discrimination, freedom of association or freedom of movement.

The right to health includes benefits. These include:

- A health protection system to ensure equal opportunities of equal chances of the highest attainable level of health
- Prevention, treatment and control of disease
- Essential medication
- Access to reproductive health, maternal
- Equal access to basic health services
- Access to education and health information
- Acces to the public participation in decisions about health issues at community level and at national level [151].

The right to health excludes discrimination. Medical services, supplies and medical facilities should be granted without discrimination. Non-discrimination principle is fundamental and essential human rights in the exercise of law at the highest standard of health.

[148] To see European Committee of Social Rights, Case International Federation of Human rights Leagues (FIDH) v. France, complaint no.14/2003, decizia din 3.11.2004, parag. 31.
[149] To see United Nations, Committee on Economic, Social and Cultural Rights, UN ESCOR, 22d Sess., The Right to the Highest Attainable Standard of Health, UN Doc. E/C, Dec.4 2000, ICESR General Comment 14 (2000).
[150] To see World Health Organization, Office of the United Nations High Commissioner for Human Rights, The right to health, Fact Sheet no. 31.
[151] Ibidem.

3.2. Preconditions for the right to health: availability, accessibility, acceptability and quality

The right to health requires that health facilities and services are available, accessible, acceptable and of good quality.

Healthcare facilities, services and programs should be **available** in sufficient quantity.These include drinking water and safe sanitation facilities, medical buildings, medical and professional staff appropriately remunerated and essential medication [152].

Accessibility involves four aspects that are related to each other:

- **Physical accebility**: physical access to health facilities, goods and services must be provided for all segments of the population, especially vulnerable and marginalized groups. Medical services, safe drinking water and sanitary facilities must be accessible in rural areas and for people with disabilities.
- **Economic Accessibility**: Health facilities, goods and services must have a level of access to all economically. Fairness requires that the poor segments of the population is not disproportionately subjected to medical expenses, compared to wealthier segments of the population.
- **Accessibility of information**: Everyone has the right to seek, receive and disseminate information and opinions about health issues.
- **Non-discrimination:** health facilities, goods and services must be accessible to all, especially vulnerable or marginalized groups in the population segment in both the right and the fact [153].

Acceptability. All health facilities, goods and services must rise to the level of medical ethics and to consider gender and life cycle requirements, services must be such as to ensure confidentiality and improve the health status of those concerned[154].

Quality. Health facilities, goods and services must be scientifically appropriate and medical and quality. This includes medical professionals, medication and medical equipment approved according to the unexpired portion of scientific standards, drinking water and adequate sanitation[155].

[152] To see United Nations, Committee on Economic, Social and Cultural Rights, UN ESCOR, 22d Sess., The Right to the Highest Attainable Standard of Health, UN Doc. E/C, Dec.4 2000, ICESR General Comment 14 (2000).
[153] Ibidem.
[154] Ibidem.
[155] Ibidem.

3.3. Duties and responsibilities of States regarding the right to health

International Covenant on Economic, Social and Cultural Rights [156] provides in Article 2 that:

> „1. Each State Party (...) is committed to action, both through its own efforts and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources for the full exercise of the rights recognized in this Convention to be implemented progressively by all appropriate means, including legislative measures.
> 2. States Parties to this Convention undertakes to ensure that the rights enunciated in it will be exercised without discrimination based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or another circumstance (...) ".

Progressive Achievement

Through ratifying human rights treaties, States Parties shall confer legal rights stipulated under the power of national courts. Regarding economical rights, social and cultural rights, Article 2 of the Convention stipulates that States have an obligation progressively to achieve their exercise, as does the right to health. As such, it can be said that the right to health is subject to a progressive realization. On the other hand, states must demonstrate that every effort possible, considering the resources available to protect and respect the rights of the Convention.

Even if the concept of progressive realization of the Convention applies to all rights, the obligation to guarantee their exercise without discrimination and to adopt measures to achieve the rights enjoyed by the immediate effect, including the right to health.

Measures for the achievement of the right to health

Measures to achieve the right to health can be highly variable, may differ from state to state. Convention on Economic, Social and Cultural Rights in Article 2. paragraph 1 does not prescribe, in particular, a set of such measures, limited to the words "all appropriate means, including legislative measures." The Economic, Social and Cultural stressed that States should adopt national strategies for exercising their right to health, and an essential part of this process is to establish indicators to monitor various dimensions of this right.

[156] Romania ratified the Convention on 31 October 1974 by Decree no. 212, published in "Official Gazette of Romania, Part I, no. 146 of 20 November 1974.

Basic minimum obligations

The Economic, Social and Cultural Commitee stressed that States have the obligation to at least meet minimum levels on the Convention rights. Regarding the right to health States must ensure that:

- The right of access to facilities, goods and medical services without discrimination against vulnerable or marginalized groups
- Access to minimum essential nutrition, adequate and safe
- Access to housing and sanitation,
- drinking water and access to essential medication
- equitable distribution of facilities, supplies and medical services[157].

Obligations to respect

Obligations to respect require that the State should not interfere directly or indirectly on the right to health. For example, States should refrain from prohibiting or limiting access to medical services, use of unsafe drugs, discriminatory practices, limiting access to contraceptives or other means to protect reproductive health, censoring medical information, infringement privacy (medical diagnosis in in the case of people infected with HIV)[158] etc.

Obligations to protect

Obligations to protect assume that State prevent interference to the right to health from third parties. For example, States should adopt legislative measures to ensure that private actors respect human rights standards in the delivery of medical or other services (regulating the composition of consumption). Also, to regulate the control of the market of medical equipment and medicines, to ensure that privatization does not affect the availability, acceptability, accessibility and quality medical facilities, to protect individuals against acts of third parties which affect the right to health (eg . prohibiting female genital mutilation), the right to information in the medical field[159] etc.

Obligations to achieve

Obligations to achieve require States to adopt legislative, administrative, or judicial budget to implement such right to health in practice. For example, states should adopt national health policies to cover public and private programs to provide immunization against infectious diseases, to ensure equal access to adequate nutrition, sanitation and drinking water, medical professionals,

[157] United Nations, Committee on Economic, Social and Cultural Rights, UN ESCOR, 22d Sess., The Right to the Highest Attainable Standard of Health, UN Doc. E/C, Dec.4 2000, ICESR General Comment 14 (2000)
[158] Ibidem
[159] Ibidem

information and advice available public health care (HIV / AIDS, domestic violence, alcohol abuse, drugs or medicines and other similar substances).

4.1 Protection of vulnerable groups in access to health and nondiscrimination principle

It is generally acknowledged that some groups or individuals such as children, women, HIV infected persons with disabilities, immigrants, etc.. face specific barriers in relation to the right to health. They may result from biological factors or those socio-economic, discrimination or stigmatization or a combination of these factors. The specific situation in which you can find these people or groups of people requires specific attention, particularly if that is in a vulnerable group.

Internationally, concern about vulnerable groups entailed the establishment of legal standards for human rights, in order to ensure in practice the protection of these individuals.

4.2. Protection of persons belonging to ethnic groups

For example, in the European Commission's Communication to the European Union institutions [160] is showed that in EU life expectancy at birth is 76 years for men and 82 years for women. For Roma, it is estimated that it is 10 years less [161]. In addition, while the infant mortality rate in the EU is 4.3 per thousand live births [162], there is evidence that the rate is much higher among Roma communities. A report by the United Nations Development Programme on the situation of five countries found that infant mortality rate among Roma is two to six times higher than for the rest of the population, with variations from country to country. A high level of infant mortality among the Roma community is reported in other countries [163]. This disparity reflects the overall level of health gap between Roma and non-Roma population. The difference is related to poor living conditions of Roma, the lack of information campaigns addressed to their limited access to quality health care and exposure to higher health risks.

[160] See Communication from the European Council, the Economic and Social Committee and the Committee of Regions, An EU framework for national strategies for Roma 2020, Brussels, 5 April 2011, COM (2011) 173 final.

[161] See COM (2009) 567, Solidarity health: Reducing health inequalities in the EU. See also, Fundación Secretariado Gitano, op cit. and Sepkowitz K, *Health of the World's Roma population*.

[162] Ratio between the number of deaths among children under one year during the year and the number of live births that year. Data from Eurostat,, 2009 - http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=demo_minfind&lang=en.

[163] PNUD, *The Roma in Central and Eastern Europe, Avoiding the Dependency Trap* The Roma in Central and Eastern Europe, Avoiding the Dependency Trap [Roma in Central and Eastern Europe - Avoiding the Dependency Trap +, 2003. Bulgaria, Romania, Slovakia, Hungary and the Czech Republic. Commission for Equality and Human Rights, Inequalities Experienced by Gypsy and Traveller Communities: A Review * inequalities faced by Gypsies and Travellers communities: a review , 2009.

International Convention on the Elimination of All Forms of Racial Discrimination [164] stipulates the rights protected against discrimination between them and lists the economic and social rights. Right to Health in the Convention is regulated in terms of services and activities, and this approach makes sense, since the goal is to determine the health-oriented actions and not the conditions of health. As such, the State must not discriminate in actions aimed at providing health services.

International Convention on the Elimination of All Forms of Racial Discrimination

> **Art. 5, lit. e, pct. 4: „(...)**States Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone to equality in front of the law irrespective of race, color, national or ethnic origin, the use of the following rights: (...) e)..., in particular: (...) 4**)** **the right to health, medical care**, social security and social services (...)".

4.3. Protection of women

World Health Organization show that women are affected by most of health conditions similar to men, but they felt differently. The level of poverty and economic dependence, violence, discrimination based on several factors, low level of decision regarding sexual and reproductive life, the level of social participation, and other conditions leading to an adverse impact on women's health[165].

Both the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women [166] have elimination of discrimination against women in health and guarantees equal access to all forms, including medical care. For example, Art. 14 of the Convention on the Elimination of All Forms of Discrimination against

[164] Adopted and opened for signature by the United Nations General Assembly Resolution 2106 (XX) of 21 December 1965. Entered into force on 4 January 1969, in accordance with art. 19. Romania acceded to the Convention on 14 July 1970 through Decree no. 345, published in "Official Gazette of Romania, Part I, no. 92 of 28 July 1970. The Law no. 144/1998, published in the Official Gazette of Romania, Part I, no. 261 of 13 July 1998, Romania has made in art book withdrawn art.22.

[165] To see World Health Organization, Office of the United Nations High Commissioner for Human Rights, The right to health, Fact Sheet no. 31.

[166] See World Health Organization, Office of the United Nations High Commissioner for Human Rights, The right to health, Fact Sheet no. 31. 166 Adopted and opened for signature by the United Nations General Assembly Resolution 34/180 of 18 December 1979. Entered into force on 3 September 1981, according to provisions of art. 27 (1.). Romania ratified the Convention on November 26, 1981 by Decree no. 342, published in "Official Gazette of Romania, Part I, no. 94 of 28 November 1981

Women provides the assurance that "women in rural areas (...) participate and benefit from rural development process and" have access to adequate health care facilities (...) the advice and services family planning".

Committee on the Elimination of Discrimination against Women show that states must provide appropriate services in connection with the state of maternity, birth, post-natal care, family planning, obstetric medical services in order to ensure safe childbirth and maternal mortality reduction morbidity. Also, women should be guaranteed the right to control and decision-making in matters concerning their sexuality, including reproductive health, without coercion, lack of information, discrimination or violence.

> **Convention on the Elimination of All Forms of Discrimination Against Women**
>
> Article 12: „1. States Parties shall take measures to eliminate discrimination against women **in health**, to ensure, on a basis of equality between men and women, means of access to **medical services**, including those related to family planning.
> 2. Notwithstanding the provisions of paragraph 1, States Parties shall ensure to women during pregnancy, delivery and after delivery services and, if necessary, free and also adequate nutrition during pregnancy and during lactation".
>
> **International Covenant on Economic, Social and Cultural Rights**
>
> Art. 10 paragraph. 2: „A special care should be given to mothers in a reasonable period before and after childbirth. Working mothers must, during this period of paid leave or leave, benefit from adequate social security benefits."

4.4. Protecting children

Children are confronted with specific health problems of the state of physical and mental development, making them vulnerable to infectious diseases to malnutrition and in adolescence to sexual and reproductive health issues. Most infant mortality can be attributed to major causes – infections acute respiratory, diarrhea, measles, malaria, malnutrition or a combination of them [167]. Children are a risk group in relation to HIV infections occur through mother-child transmission (for HIV-positive women, the percentage of new-born baby to become infected during maternity, childbirth or breastfeeding is 25-30%)[168].

[167] To see World Health Organization, Office of the United Nations High Commissioner for Human Rights, The right to health, Fact Sheet no. 31.
[168] Ibidem.

Child Rights Convention[169] has guaranteed access to health services for children and prohibits any form of discrimination against.

Art. 2: „States Parties undertake to respect and ensure the rights set forth in this Convention to each child within their jurisdiction, regardless of race, color, sex, language, religion, political or other opinion, nationality, ethnic or social origin, whether property, disability, status at birth or acquired the status of the child or the parents or his legal representatives. 2. States Parties shall take all measures to protect children against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of parents, legal guardians or family members."

Articolul 24: „1.States Parties recognize the right of children to enjoy the highest attainable standard of health and obtain medical and rehabilitation services. They will strive to ensure that no child is deprived of the right to access these services.
2. States Parties shall pursue full implementation of this law and, in particular, shall take appropriate measures:
a) reducing infant and child mortality among children;
b) providing medical assistance and health care measures for all children with emphasis on the development of primary health care;
c) To combat disease and malnutrition, including within the framework of primary health care, through others, technologies accessible and nutritious food supply and drinking water taking into consideration the dangers and risks of environmental pollution;
d) providing health care for mothers in pre-and postnatal period;
e)ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge about health and child nutrition, the advantages breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
f) To develop preventive health care, guidance for parents and family planning and providing education in these areas.
3. States Parties shall take all effective and appropriate measures to abolish traditional practices harmful to children.
4. States Parties undertake to promote and encourage international cooperation in view to achieving progressively the full realization of the right recognized in this article. In that regard shall be had, especially the needs of developing countries".

[169]Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989. The Convention was ratified by Romania by Law no. 18/1990 to ratify the Convention on the Rights of the Child, published in Official Gazette no. 314 of 13 June 2001

4.5. Protection of persons with disabilities

People with disabilities face many challenges in exercise of the right to health. Physical disabilities often causes difficulties in accessing health services in rural, suburbia, people with psychosocial disabilities have not adequate access to treatment through the public systems are disproportionately prone to violence, emotional abuse, psychological, sexual, physical, etc. The right to health of persons with disabilities is placed in close connection with discrimination, individual autonomy, social inclusion, accessibility, respect for difference and the opportunities for equal opportunities.[170]

Convention on the Rights of persons with disabilities [171] imposes to States the obligation to promote, respect and guarantee the right to health and freedom from discrimination.

> **Art.5**: „1. States Parties recognize that all persons are equal in front of the law and under the law and are entitled without any discrimination to equal protection and equal benefit of the law.
> 2. States Parties shall prohibit all discrimination on grounds of disability and guarantee to all persons with disabilities equal and effective legal protection against discrimination of any kind.
> 3. To promote equality and eliminate discrimination, States Parties shall take all appropriate measures to ensure reasonable accommodation.
> 4 .Specific measures are necessary to accelerate or achieve de facto equality of persons with disabilities will not be considered discrimination under this Convention".

> **Art.25**: „States Parties recognize that persons with disabilities are entitled to enjoy the highest attainable standard of health without discrimination based on disability. States Parties shall take all appropriate measures to ensure access for people with disabilities to health services pay attention to gender specific issues, including restoration of health. In particular, States Parties shall:

[170] See World Health Organization, Office of the United Nations High Commissioner for Human Rights, The right to health, Fact Sheet no. 31

[171] Convention on the Rights of Persons with Disabilities was adopted by the UN General Assembly resolution 61/106 of 31 December 2006. Romania signed the Convention on 26 September 2007, and by law no. 221 of 11 November 2010, published in Official Gazette no. 792 of 26.11.2010, ratified the Convention.

... In particular, States Parties shall:

(a) Provide persons with disabilities the same range of services at the same level of quality and standard of care and medical programs for free or affordable, such as those provided to others, including sexual and reproductive health and public health programs for the population,

(b) Provide those health services, specific, required for persons with disabilities, including appropriate diagnostic services and early intervention and services designed to prevent the risk of other disabilities, including children and people elderly,

(c) Provide these health services as close as possible to the communities where these people live, including in rural areas;

d) Require health professionals to provide care for people with disabilities the same quality as others, including conscious and free consent expressed, through others , by increasing awareness of human rights, dignity, autonomy and needs of persons with disabilities, through training and by promoting ethical standards in public and private health services,

(e) Prohibit discrimination against persons with disabilities regarding the right to health or life insurance, where national legislation permits, access to realizing this type of insurance is a fair and adequate,

(f) Prevent discriminatory refusal to grant any health care or medical services or of food or liquids on the basis of disability.

CHAPTER IV: Prohibition of discrimination in the European context

1.1. Council of Europe and the European Convention on Human Rights

Council of Europe is an intergovernmental organization, created on 5 May 1949 and currently has 47 members. Council of Europe headquarter is in Europe Palace from Strassbourg.

Romania became a member of the Council of Europe on 7 October 1993, when depositing its instrument of accession to the Statute of the Organisation.

In April 1997 a decision was taken by the Council of Europe Parliamentary Assembly to finish the monitoring Romania on the commitments made at the admission to membership, subject to meeting certain requirements (Recommendation 1326/97 and Resolution 1123/97 of PACE)[172]. On 27 May 1998 issued a statement confirming the completion of the monitoring of Romania by the Council of Europe Parliamentary Assembly.

Convention on Human Rights and Fundamental Freedoms, drawn up within the Council of Europe opened for signature in Rome on 4 November 1950 and entered into force on 3 September 1953.

Romania signed on 7 October 1993, was ratified by Law no. 30/1994. For Romania, the Convention entered into force on 20 June 1994.

172 The documents referred to set for Romania following priorities for action: prison reform, improving the child protection system, amending the Criminal Code and Criminal Procedure Code, to eliminate the fundamental freedoms contrary to the provisions contained in Council of Europe legal instruments, amending legislation restitution of property confiscated in order to ensure owners are "restitutio in integrum" or a fair compensation, promoting a campaign against racism, xenophobia and intolerance and initiating measures for the social integration of Roma. See in this regard the Council of Europe Information Office Bucharest www.coe.ro

Additional Protocols to the European Convention on Human Rights

Since the entry into force of the Convention was adopted 14 additional protocols. Protocols. 1, 4, 6, 7, 12 and 13 are added to those rights and freedoms enshrined in the Convention. Protocol. 2 gave the Court the power to issue advisory opinions. Protocols. 3, 5, 8, 11 and 14 concerned the organization and operation of the Convention bodies - the former Commission and European Court of Human Rights.

Legal force of the Convention in Romania

Under Article 11 paragraph 2 of the revised Constitution, treaties ratified by Parliament, by law, are part of the law. Consequently, by ratifying the European Convention on Human Rights by Law no. 30 of 18 May 1994, it forms an integral part of the Romanian legal system and gained direct applicability[173].

Also, under Article 20 paragraph 2 of the revised Constitution, in the event of a discrepancy between the pacts and treaties on fundamental human rights which Romania is a party and domestic laws, international regulations have priority. So, in case of conflict between the European Convention on Human Rights and national laws, the Convention will prevail.

Rights under the European Convention

Ar ticle 2 Right to life
Article 3: Prohibition of torture
Article 4: Prohibition of slavery and forced labor
Article 5: Right to liberty and security
Article 6: Right to a fair trial
Article 7: No punishment without law
Article 8: Right to respect privacy
Article 9: Freedom of thought, conscience and religion
Article 10: Freedom of expression
Article 11: Freedom of assembly and association
Article 12: Right to marry
Article 13: Right to an effective remedy
Article 14: Prohibition of discrimination

Protocol no. 1
Article 1: Protection of property
Article 2 Right to education
Article 3: Right to free elections
Protocol no.4
Article 1: Prohibition of imprisonment for debt
Article 2: Freedom of movement
Article 3: Prohibition of expulsion of nationals
Article 4: Prohibition of collective expulsion of aliens
Protocol no. 6
Article 1: Abolition of death penalty

Protocol no. 7
Article 1:Procedural safeguards in case of expulsion of aliens
Article 2: Right to double level of jurisdiction in criminal matters
Article 3: Right to compensation in case of legal error,
Article 4: Right not to be tried or punished twice
Article 5: Equality between spouses

Article 4: Right not to be tried or punished twice Article 5:

Protocol no. 12
Article 1: general prohibition of discrimination

Protocol no. 13
Article 1: Abolition of death penalty in all circumstances

[173] Bârsan C., 2005, , the European Convention on Human Rights, Commentary on the articles, Vol Rights and Liberties, House CH Beck, Bucharest.

1.2 Prohibition of discrimination in the European Convention on Human Rights

Article 14: "**Exercise of rights and freedoms recognized in this Convention** shall be secured *without discrimination on any ground* such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The method of drawing up the text contained in Article 14 states clearly, that "... *the exercise of rights recognized by the Convention*" must be done "without any distinction." As such, discrimination is placed in relation to those rights which are guaranteed by the Convention.

About right to non discrimination, as regulated in Article 14 of the Convention is arguably not have an independent existence because it can be invoked only with respect to the rights that govern them. Convention prohibits discrimination only on these rights and freedoms[174].

In its jurisprudence, the Court noted, by default, the character "independently" of Article 14 .Also, in cases Aiery v. UK and Dudgeon v. UK the Court held that "Article 14 is a particular element of the Convention rights. Articles that state those rights may be violated separate and / or in conjunction with article 14. If the Court does not find a separate breach of an item or in conjunction with Article 14, then it must consider the case described under Article 14. On the other hand, this review is not, in general, required when the Court finds a violation of Article taken by itself. The position changes if a clear inequality of treatment in the exercise of that right is a fundamental aspect of the case".

> European Court of Human Rights stated: "The guarantee provided by Article 14 has no independent existence ... it applies only to the rights of the Convention. However, a measure that respects the rights of the Convention itself, can violate that article when it is considered coroboration with 14 on the grounds that the measure is discriminatory". *(Belgian linguistic case, X. V.*

Subsequently, in cases Inze v. Austria,Gaygusuz v. Austria, Van Raalte v. the Netherlands, the Court states that Art. 14 has a certain autonomy: "There must be a relationship between the situation of discrimination and claimed a right of the Convention Even if the applicability of Article 14 does not necessarily require violations of those provisions, and is independent in this regard, Article 14 can not be applied if the conduct in question does not fall within

[174] See C. Barsan, 2010, the European Convention on Human Rights, Commentary on the articles, Edition 2, CH Beck publishing house, Bucharest.

the scope of one of them[175].

1.3. Modifications occured through the aditional Protocolul no. 12 to Convention

Article 14: „**Exercise of rights** and freedoms **recognized in this Convention** shall be *secured without discrimination on any ground* such as sex, race, color, language, religion, political or other opinion, national or social origin, appart to a national minority, property, birth or other status.”	Article 1: „**The exertion of any right set forth by law** shall be secured without any discrimination, in particular, on gender, race, color, language, religion, political or other opinion, national or social origin, association with a national minority , property, birth or other status.

What is very evident in a simple teleological analysis of the text of Article 14 of the Convention relative to that of Article 1 of Protocol No. 12 to amend the term "convention". While Article 14 refers to terminis to "exercise the rights ... ... recognized by the Convention, Article 1 refers to "exercise any right provided by law." This change is substantial in nature, because the protection against discrimination is extended beyond the rights provided in the "Convention", ie rights that are recognized by law, "law assuming the term" national law "of the States that have signed and ratified Protocol 12.

By law no. 103 of 25 April 2006 was ratified Protocol. 12 to the Convention on Human Rights and Freedoms fundamentale [176]. The instrument of ratification was deposited to the Council of Europe on 21 July 2006, so that **Protocol. 12 entered into force in Romania on November 1, 2006.**

European Court of Human Rights was first ruled on the application of art. 1 of Protocol. 12 European court holding that its authors "have used the same concept of discrimination" as that used in the art. 14 of the Convention. Beyond the difference regarding the scope of the two provisions, one in art. 1 of Protocol. 12 being much larger, the Court held that the meaning of the word discrimination in the latter text should be considered identical to the term used in art. 14. That being so, the Court sees no reason for that, pursuant to art. 1, to depart from the interpretation of the concept of "discrimination" that has driven the field of applying art. 14 of the Convention[177].

[175] See C. Barsan, 2005, the European Convention on Human Rights, Commentary on the articles, Voll Rights and Freedoms, Publishing CH Beck, Bucharest.
[176] Law no. 103 of April 25, 2006 published in Official Gazette no. 375 of May 2,2006.
[177] See C. Barsan, 2010, the European Convention on Human Rights, Commentary on the articles, Edition 2, CH Beck publishing house, Bucharest, Protocol. 12 ECHR, 2. Scope, because Sejdic comment in connection with Sejdic and Finici v. Bosnia-Hertzegovina.

2.1. Violations of principle of non discrimination: jurisprudence E.C.H.R.

European Court of Human Rights held that:

„Violation of principle of non-discrimination occurs when are inducted distinctions between similar and comparable situations that they are not based on objective and reasonable justification. European Court has consistently ruled that for such a violation to occur "must be established that persons placed in situations similar or comparable terms, enjoy preferential treatment and that this distinction does not find any objective or reasonable justification".

European Court of Human Rights adopted a set of items to be checked, so there is a violation of the law from nondiscrimination if:

- indicates a **different treatment** situations
- applied to **comparable situations** (comparability test),
- without no objective and reasonable **justification** (justification test)
- a proportionality between the aim and the means used to achieve this goal

The European Court took a rather oriented toward justification test trying to address the issue of different treatment in terms of obiective and reasonable justification [178]. Also, in terms of discrimination prohibited by article 14 Court adopted a general approach allowing the analysis of suspicious criteria of art. 14, extending to distinctions based, for example, on union membership military status, ownership of residential property that non-residential, large or small parcels of land and other[179].

The European Court has not established a standard matrix analysis of test comparability issues or comparators. However, in a relatively small number of

[178] To see European Human Rights Law Review, Issue 6/2006, Ailen McColgan, Cracking the Comparator Problem: Discrimination, "Equal" Treatment and the Role of Comparisons.

[179] See European Court of Human Rights, for example because the National Union of Belgian Police v. Belgium, Case Engel v. Netherlands, Case & Scalebrino Spadea v. Italy, Case Chassagnou v. France and others.

cases dismissed the complaints of violation of Art. 14 on the grounds that the persons listed in relation to the analogy with the applicants do not meet a sufficient similarity to meet the element of comparability. In fact, quite often it is difficult to distinguish between considerations of the European Court if:

a) a different treatment of persons in similar situations and

b) whether this treatment is justified. Although the two concepts are closely connected

For example, in the case Litghow v. United Kingdom, the Court held that in determining incident compensation (damages, the nationalization of property is analogous to the acquisition of property by other means, since "the two categories of situations give rise to different considerations that may be legitimately taken into account in determining a fair balance between public interest and private interest. " In the case of Lindsay v. United Kingdom, former Commission found that in the context of tax law unmarried couples are not in a position analogous to the married. In Case Szrabjer and Clarke v. United Kingdom, former Commission held that there is analogy between the state pension schemes and occupational private pension schemes. In Case Stubbings v. UK the European Court ruled that victims of damage caused intentionally are not in a similar situation with the victim for damages caused unintended purpose of examining the comparability of limitation of action applicable limitations of the two categories of person[180].

In the case of Van der Mussele v. Belgium, European Court held that statements of attorneys with the medical staff, surgeons, pharmacists, dentists, veterinarians are not comparable because each of these cases is characterized by a distinct body of rights and obligations of that would be artificial to isolate one particular aspect. Thus, the European Court of Human Rights in the analogy or comparability ratio analysis of occupational categories considered similarities or differences arising from the status of the profession, the conditions for entry into the profession, the nature of functions performed, the exercise of those functions, etc[181].

2.2. Comparability test in the incidence of nondiscrimination [182]

Statuaries of European Court of Human Rights unquestionably reveals that the first step taken to establish the breach of non-discrimination principle is to decide whether the persons whose rights are compared are situated in an analogy plan. This step, known as the comparability test is often difficult. The question on two situations that can be described as comparable will of course depend on the specific circumstances that are considered to answer the

[180] See Sweet & Maxwell, a Thomson Company, Human Rights Practice, November 2001, Article 14, Prohibition of Discrimination.

[181] See European Court of Human Rights, Van der Mussele v. Belgium

[182] This section is part of the article entitled "The test of comparability in determining discrimination ..." Gergely, D. in New Human Rights Review, no. 3 / 2008, Editura CH Beck, Bucharest, 2008.

question. It will largely depend on applicable law and order in question and the degree of similarity that is required before the courts to determine if the situations are comparable or not. Clearly, if too many details are pre-conditioned to compare the relevance principle is weakened, because the comparison will tend to be impossible. This largely depends on what are considered the first instance[183].

The primary question is how we define similar situations. Discrimination can exist only under a criterion, it is possible to demarcate comparisons, for example based on race, sex, nationality, color, religion, social class, etc.. Precisely this question the principle of equality shall not apply to cases that are "objectively different." Statements to be regarded as comparable in terms of equality, are still a matter of political reasoning, [184] legal, in particular.. For two situations can always say that they are equal in some respects and unequal in others. Thus, in the test of comparability, the criteria used must be properly related to the subject of the provision which prescribes equal treatment. In this respect, it is put into the legitimate value to determine the provisions in question. For these reasons, in many cases the comparability test is either eliminated or analyzed separately, or merged with the test of justification. In principle, merging seems to be properly addressed.[185] Comparability can be best tested in the context of justification because it exists only in relation to the goals and rationale for differential treatment and the applicable legal standard. A negative answer to the question of comparability, without a causal link of this justification test response can lead to ignoring the latter. This would imply that there is no connection between comparability and objective and reasonable justification.

In the case Edoardo Palumbo v. Italy, for example, the protection of tenants, the European Court observed that "the applicant compares with his tenant. From the perspective of the fundamental differences between owner and tenant, the Court considers that the two situations can not be compared as similar and therefore no issue of discrimination is not apparent in this case"[186]. On the other hand, it should be noted that the case-law on the Convention does not provide coordinates of establishing the existence of "comparability or" analogy "between the situations before them, these elements resulting in the prevalence of the facts alleged in each case.

Thus, can be the situation of the father to the mother regarding the obtaining of leave allowances as parents of a newborn baby, holder quality of a gravel pit in relation to private entrepreneurs the same activity in a region, quality of the spouses in relation to the right to choose the surname of marriage,

[183] See Yearbook of European Law, 22/2003, Gavin Barrett, Re-examining the Concept and Principle of Equality in EC Law, Oxford, University Press, 2003.
[184] See Josephine Steiner, Lorna Woods, Christian Twigg-Flesner, EU Law, 9th Edition, Online Resource Center, Oxford University Press, 2007.
[185] See Pieter van Dijk, Fried van Hoof, Arjen van Rijn, Leo Zwaak, Theory and Practice of the European Convention on Human Rights, Fourth Edition, Intersentia, Antwerpen-Oxford, 2006.
[186] See European Court of Human Rights, Edoardo Palumbo v. Italy, Decision of 20 November 2000.

in accordance with national law, the situation of child marriage in relation to child out of wedlock, with effects, among others, the succession plan, the distinction between serviced about the legal age for sexual relations between persons of heterosexual and homosexual people, etc.[187]

2.3. The test of justification in the incidence of nondiscrimination

In the case known as the "Belgian Linguistic" European Court of Human Rights stated that not every distinction or difference in treatment constitutes a violation of Article 14 of the Convention. Court formulated a test that remains valid throughout its case law: "the principle of equal treatment is violated if the distinction has no objective and reasonable justification ... A difference in treatment in the exercise of a right guaranteed by the Convention must not only pursue a legitimate aim: Article 14 is also violated when it is established that there is not a reasonable proportionality between the means employed and the aim to be achieved ". Among other features, the Court stated that "national authorities are free to choose measures that are considered appropriate in areas governed by the Convention. Findings of the Court concern only the conformity of these measures with the requirements of the Convention.

In Case Rassmusen v. Denmark, European Court reiterated that, as found in various decisions, "the Contracting States enjoy a certain" margin of appreciation "in considering whether and to what extent differences in otherwise similar situations justifies a different treatment ... Goal margin of appreciation will vary according to circumstances, the subject in question and its context in this respect, one of the factors may be relevant whether is or not a common criterion between the laws of the Contracting States. "

We conclude therefore that differential treatment will not be considered contrary to Article 14 of the European Convention on Human Rights to the extent that there is an objective and reasonable justification. This justification shall be retained where it can prove that it pursues a legitimate aim and proportionate to the followed[188]. For a measure to be considered proportioned it must ensure a fair balance between individual rights and freedoms and the public interest, having regard to the requirements of a democratic society [189].

Also, in order to determine whether aplicable differences in treatment are justified objectivelly, European Court of Human Rights granted to States Parties a certain "margin of appreciation". The Court ruled that the purpose of the assessment varies from case to case depending on the context, circumstances and subject matter. For example, if differences in treatment

[187] See C. Barsan, 2005, the European Convention on Human Rights, Commentary on the articles, Vol Rights and Liberties, Publishing All Beck, Bucharest 2005.
[188] See European Court of Human Rights, Belgian Linquistics (No. 2) (1968), the cause the National Union of Belgian Police v. Belgium, Case Marckx v. Belgium, Case Rasmussen v. Denmark, Case Abdulaziz v. United Kingdom etc.
[189] See Sweet& Maxwell, a Thomson Company, Human Rights Practice, November 2001, Article 14, Prohibition of Discrimination.

based on race, sex, birth, religion or sexual orientation edge of discretion which enjoyed Contracting States shall be reduced[190].

The existence or absence of a common criterion between Contracting States law and practice has proven to be a factor of major relevance for correlating the discretion the Convention Article 14[191]. For example, in the case Abdulaziz, Cabales and Balkandali v. United Kingdom, the Court held that "promoting gender equality is a major objective of the Council of Europe Member States. This implies that very strong reasons to be advanced before a difference in treatment based on sex to be accepted as compatible Convention. " Case has the target restrictive policy of the state in the immigration to facilitate the established men in the UK unlike the women in obtaining permission for entry or establishment of non-national of their husband. Analyzing arguments raised by Contracting State, among other labor market protection, the Court found a violation of Article 14 together with Article 8, considering that the reasons are not likely to justify the difference in treatment. The Court's reasoning appears that the assessment was based on two factors: the existence of a common criterion between the Member States of the Council, namely the political purpose of ensuring gender equality and the fact that such is a major objective[192]. This last element was the reason for applying a reduced discretion on the difference in treatment based on sex.

In the case of Hoffman v. Austria, the Court examined the allegation of discrimination on grounds of religion. The case concerned the Supreme Court's decision refusing the applicant's parental rights regarding the minor child after divorce, because of her religion. The European Court held that "lack any possible arguments to the contrary, an essential distinction based on a single religion is not acceptable."

In Case Inze v. Austria, the Court examined the national legislation in legacy which the child resulted in out of wedlock was placed in a disadvantage compared with legitimate children. The Court found violations of Article 14 together with Article 1 of Protocol. 1 to the Convention. In applying the test of justification, the Court relied on "common criteria" and applied an election only narrowly retaining that very strong reasons could justify such a difference on tratamant, relating born outside marriage.

In the case of different treatment, essentially based on race might say that "margin of appreciation plays a minimal or even nonexistent role. In the case of East African Asian v. United Kingdom, former Commission has ruled that special

[190] See European Court of Human Rights, East African Asians v. United Kingdom, because Abdulaziz v. United Kingdom, Schuler-Zgraggen v. Switzerland, because Marckx v. Belgium, Case Inze v. Austria, Case XV Germany, Case Salgueiro da Silva v. Portugal Mouta, case Hoffman v. Austria etc.
[191] See Human Rights Law Journal (HRLJ), Jeroen Schokkenbroek, The prohibition of discrimination in Article 14 of the Convention and the Margin of Appreciation, Vol.19, no.1, 30 April 1998, N.P. Engel, Publisher, Strasbourg.
[192] Ibidem

importance should be given to discrimination based on race and in certain circumstances treatmant difference to a group of people based on race is degrading treatment, while differential treatment on the basis of other criteria does not affect such a finding concurrent[193].

On the other hand, in areas such as national security, the prison regime, fiscal policy (taxes) or military policy, the discretion of the Contracting States is wide, which allows a large spectrum of reasons to pursue a legitimate aim[194].
In the case of Lindsay v. United Kingdom, and similar the case Wasa KIV Omsesidigt v. Sweden, former Commission stated that "tax systems inevitably differ between different groups of taxpayers and ... create marginal situations. Also, the attitude towards social and economic objectives should be pursued by states in their policies may differ considerably from one place or moment to moment.... A government can be often in the situation in a position to strike a balance between the need to raise the tax base and to reflect other social objectives of taxation policies. " In Case Spottl v. Austria, former Commission considered that national legislation by which men are eligible for military service is not contrary to Article 14, having regard to common standards of the Contracting States, national traditions, public opinion and public interest consisting in maintaining an effective national defense system.

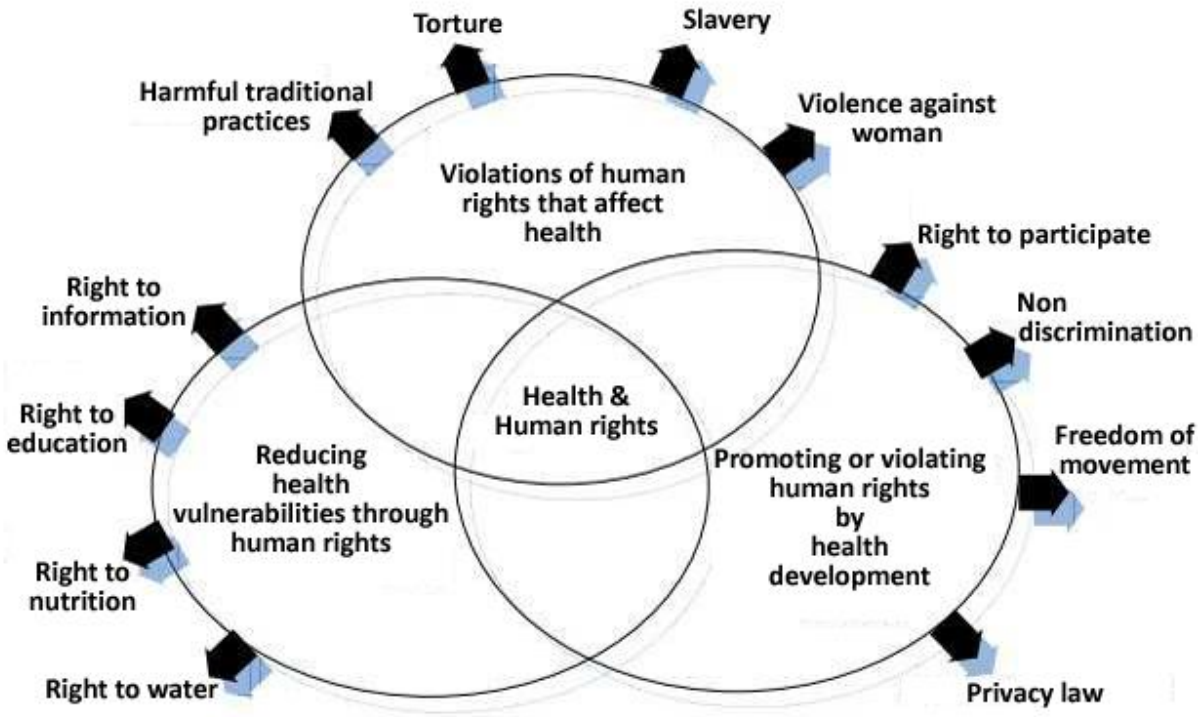
[193] See European Court of Human Rights, East African Asian v. United Kingdom, Cyprus v. Turkey case, because Nachova v. Bulgaria, Case Moldovand and others v. Romania (no. 2).
[194] For details see Sweet& Maxwell, a Thomson Company, Human Rights Practice, November 2001, Article 14, Prohibition of Discrimination, para. 14.037.

CHAPTER V Some interference between human rights and person health in jurisprudence of the E.C.H.R.

1.1 Links between right to health and human rights law

World Health Organization shows that between health promotion and protection of the right to health and promoting and respect for human rights are interdependent links. Violations of the right to health may affect the exercise of other rights, such as the right to education, right to work or vice versa. The importance given by the "determinants of health" - factors and conditions that protect and promote the right to health across the services, supplies and medical facilities show that this right is dependent, but also to contribute to the achievement of other rights. Between these the right to nutrition, drinking water, adequate standard of living, non-discrimination, privacy, access to information, participation, right to benefit from scientific progress and its applications[195].

Interdependence can be seen in the context of poverty. For people in poverty, good health may be the only basis which they can exercise other economic or social rights, such as the right to work or the right to education. Physical and mental health allows adults to pursue a gainful activity times for children to participate in the educational process[196].



[195] See World Health Organization, Office of the United Nations High Commissioner for Human Rights, The right to health, Fact Sheet no. 31.
[196] Ibidem.

Interdependent links between compliance / violations of health and compliance / violation of human rights is given above in the chart realized by the World Health Organization [197].

Human rights violations can have severe health consequences (eg traditional practice - physical mutilation, torture, inhuman or degrading treatment, violence against women or children). Policies and programs can promote health, but may, equally, prejudice to the rights of individuals (eg the right to be subjected to discrimination, individual autonomy, the right of participation, right to information or right to privacy). Also, vulnerability to health may be reduced by measures aimed at promoting and protecting human rights (eg not to be discriminated against based on race, sex, education, housing, nutrition, etc.)[198].

European Committee of Social Rights stated that the right to health protection complements Articles 2 and 3 from the European Convention on the human Rights [199]. Articles in question protect the right to life and the right not to be subjected to torture, inhuman or degrading treatment.

Interference in the protection of health may have to touch the right not to be subjected to discrimination (Article 14) in connection with the civil rights guaranteed by the European Convention on Human Rights or by separate attacks on protected rights (eg right to respect for private and family life, Article 8 of the Convention).

1.2. Respect for the right to life and health interferenc

European Court of Human Rights ruled that the positive obligations incumbent on States for the effective protection of the right to life applie *to public health*.

Such obligations suppose the existence of duty for public authorities to adopt **regulations requiring hospitals**, public or private, such **measures ensure the protection of life** of patients[200].

It also involves the obligation to establish an effective and independent judiciary, able to establish the causes of death of a person who is under the authority of specialized health organizations, public or private and, where

[197] Ibidem
[198] See World Health Organization, Linkages between health and human rights
[199] See European Committee of Social Rights, Case International Federation of Human Rights Leagues (FIDH) v. France, Complaint no.14/2003, decision of 11.03.2004 , parag.31.
[200] See European Court of Human Rights, and Ciglio Cavell v. Italy, January 17 2002

appropriate, make it possible liability for their acts[201].

The European Court has established the principle that value, including certain acts of omission of the authorities in the field of public health policy can lead, in certain circumstances, the state liability under art. 2 of the Convention[202]. In this context and the existence of potential medical negligence, the national legal system must give interested persons an opportunity to appeal to an appeal to have the responsibility to establish medical purpose in question and, if appropriate, can be achieved applying civil penalties.

In case Dodov v. Bulgaria, the Court was faced with the problem of applying the provisions of art. 2 of the Convention, if the disappearance of an elderly, sick with Alzheimer's and admitted to the hospital service of a retirement home in the public health, the dying, apparently due to the negligence of medical staff and maintenance.

In the context of failure to state a positive obligation to make available to interested parties within which legal action can be established subsequent events and possible liability of those who put lives at risk missing person, the European Court concluded violation of Article 2 of European Convention[203].

In terms of positive obligations, the European Court has established that states have a responsibility to take necessary steps to prevent the occurrence of life events where people may be endangered, being necessary **to inform the public** about **the dangers to life and health**.

In case Oneryildiz v. Turkey, in an area of household waste discharge were built thousands precarious makeshift housing of the very short distance from them. Expert reports have found multiple risks, the spread of over twenty infectious diseases, accumulation of methane gas, and explosions. Risk reduction measures have been canceled several times by local authorities, and later, due to the accumulation of methane gas caused an explosion that killed 39 people and destroying several homes.

[201] See C. Barsan, 2010, the European Convention on Human Rights, Commentary on the articles, Issue 2, CH Beck publishing house, Bucharest.
[202] Ibidem.
[203] See Case Dodov v. Bulgaria, 17 January 2008 C. Barsan, 2010, the European Convention on Human Rights, Commentary on the articles, Issue 2, Editura CH Beck, Bucharest.

Among other things, in the case Oneryildiz, the European Court held that protection of the right to life implies the primary duty to adopt a legislative framework to prevent the occurrence of similar deeds, and this obligation implies the public's right to information about the risks to life[204].

Positive obligation to protect life, the meaning of art. 2 of the European Convention requires the competent authorities a duty to provide **medical assistance** in relation to persons held in custody or in prison.

This obligation becomes urgent when the person in question dies[205].

In Case Velikova v. Bulgaria, the applicant complained about the death of a relative in police custody as a result of injuries sustained from a police officer and failure to necessary medical assistance. The Court rejected arguments in the sense that authorities were autocauzate blows, the lesions were extremely severe, and in the absence of any evidence that he provided a medical examination of the person during his detention, the Court held that it violated Art. 2 of the Convention [206].

In Case Anguelova, the Court held that an emergency medical nonobserving by police officers, under the argument that it would not have medical knowledge, especially that the death occurred during the detention, the obvious result of skull fractures and some severe injuries, can not constitute a waiver of responsibility [207].

The European Court held, in its case law, that prisoners are people in vulnerable situations, among them self-harm and suicidal tendencies are pronounced[208].

Competent authorities have the obligation to provide medical assistance to persons with a history of suicide and preventing suicide during detention.

[204] See Oneryildiz Case v. Turkey, 18 June 2002 C. Barsan, 2010, the European Convention on Human Rights, Commentary on the articles, Edition 2, CH Beck publishing house, Bucharest.
[205] See European Court of Human Rights, Tanli v. Turkey, 10 April 2001.
[206] See European Court of Human Rights, Velikova v. Bulgaria, 18 May 2000.
[207] See European Court of Human Rights, Anguelova v. Bulgaria, 13 June2002.
[208] See C. Barsan, 2010, the European Convention on Human Rights, Commentary on the articles, Edition 2, CH Beck publishing house, Bucharest.

Case Renolde v. France target the suicide of a person in preventive detention, which was punished to 45 days of isolation, although suffering from serious mental disorders that had attempted suicide three days before being punished. The European Court held that prison authorities had not fulfilled its positive obligation to safeguard life by not sending this to a psychiatric hospital, not supervised and how the drugs were prescribed and administered and have imposed a severe penalty without regard to health[209].

Also, in the case of mentally ill people must take into account any special circumstances of their vulnerability.

1.3. Respect the right to be free from torture, inhuman and degrading treatment and health interference

What distinguishes torture inhuman or degrading treatment itself is causing you pain intensity, and secondly, the intention of causing this suffering [210].

In the case of Ireland v. United Kingdom, European Court has defined "*inhuman*" as those acts committed with intent, which causes the victim's injuries or living physical and moral suffering, which may cause impairment of mental[211].

In that case, the European Court found that treatment of a person is qualified to be "*degrading*" when it creates feelings of fear, anguish and inferiority capable of humiliating it, to demean and possibly defeat such physical and moral strength[212].

Acts of torture involving any particular pain or suffering, whether physical or mental, is intentionally produced by an agent of public employment or a person acting at the instigation of or with his consent, to those suffering consisting in obtaining information or evidence application of a punishment for an act committed by the victim, or exercise pressure on it or a third person.

[209] See Renolde Case v. France, 16 October 2008 C. Barsan, 2010, the European Convention on Human Rights, Commentary on the articles, Issue 2, Editura CH Beck, Bucharest.

[210] See C. Barsan, 2010, the European Convention on Human Rights, Commentary on the articles, Issue 2, Editura CH Beck, Bucharest.

[211] See Ireland v. United Kingdom case, 18 January 1978 C. Barsan, 2010, the European Convention on Human Rights, comment on articles, Issue 2, Editura CH Beck, Bucharest.

[212] Ibidem.

În some cases, the intention is not necessarily relevant in determining whether treatment (nn degrading, inhuman), as the act and its effect on the person.

For example, a medical or a prescribed medication can be extremely painful for the patient, but could not be regarded as torture, inhuman or degrading treatment, considering the fact that unnecessary suffering had to be avoided.

In case Herczegfalvy v. Austria, European Court held that patients suffering from mental illness are placed under the protection provisions of Article 3 of the Convention, but that "medical principles (...) decisive in such cases, as a general rule nature has a therapeutic measure can not be regarded as degrading or inhuman. " But it is necessary to establish medical necessity for some form of treatment applied to the patient.

Consequently, a medical experiment may be a violation of Article 3 of the European Convention, unless it meets the requirement of medical necessity, even if the goal is not to induce suffering, as scientific progress.

In Case Herczegfalvy former Commission on Human Rights found a violation of Art. 3 because treatment of the patient who was diagnosed with a mental illness has exceeded both the need for strict medical terms and the time required for the intended purpose (eating and forcibly administered antipsychotic drugs, isolated, chained to the bed for a few weeks)[213].

In case Mouisel v. France, the European Court considered that binding handcuffed to the prisoner's hospital bed suffering from cancer and physically weak, during sessions of chemotherapy in the treatment of this disease is disproportionate in relation to the normal security conditions to be taken in such a situation.

Similarly, in Case Henaf v. France, the Court held that, taking into account the person's age, health status, lack of serious concern for the safety of detention, the fact that the hospitalization occurred on the eve of surgery, extent of prisoner binding handcuffed to his hospital bed appears to be disproportionate as to ensure security detention[214].

European Court of Human Rights considered as contrary to Article 3 of the Convention the situations in which can be detainees as:

[213] See Case Herczegfalvy v. Austria, Pieter van Dijk, Fried van Hoof, Arjen van Rijn, Leo Zwaak, 2006, Theory and Practice of the European Convention on Human Rights, Forth edition, Intersentia.

[214] See Case Mouisel v. France, 14 November 2002, case Henaf v. France, 27 November 2003 C. Barsan, 2010, the European Convention on Human Rights, comment on articles, Issue 2, Editura CH Beck, Bucharest.

- Rencarcering possibly of a plaintiff diagnosed as suffering from a serious illness with manifestations that are a handicap to conducting gestures and everyday movement as its own toilet, under the recommendation of a committee of experts in that disease is "an obstacle to prison life"[215].
- Non examination of an inmate suffering from epilepsy, pancreatitis, viral hepatitis B and C and HIV positive at the request of his father by an independent doctor, and administration of injections to the ill cellmate, which the Court held that "medical care given to people unqualified"[216].
- Failure of dental treatment over many years by public health insurance system, due to administrative issues and the lack of satisfactory reasons by the government, in the conditions which, at a time, through the public system were covered treatment costs entirely[217].

European Court of Human Rights considered that does not touch "minimum level of severity "require by Article 3 of the Convention in circumstances such as:

- Appropriate supervision of the applicant in custody, infected with HIV, even if limited to certain periods, without affecting his health, he had lent his own medicine and the diet was not always appropriate for disease[218].
- Refusal to provide a wheelchair that plaintiff suffered from a disease of the spinal cord after he used a wheel chair as a weapon against prison guards [219].
- Worsening health status detainee who suffered from a tumor that does not appear on the grounds of detention was not attributable to worsening prison authorities, and disease progression was monitored by prison doctors[220].

[215] See Case Kurucay v. Turkey, 10 November 2005, Barsan C., 2010, the European Convention on Human Rights, comment on articles, Issue 2, Editura CH Beck, Bucharest.

[216] See Case Khudobin v. Russia, 26 October 2006, Barsan C., 2010, the European Convention on Human Rights, Commentary on the articles, Issue 2, Editura CH Beck, Bucharest..

[217] See European Court of Human Rights, VD v. Romania, 16 February 2010, available on the Court's website. IT.

[218] See Case v. Romania, 24 November 2005, Barsan C., 2010, the European Convention on Human Rights, Commentary on the articles, Issue 2, Editura CH Beck, Bucharest.

[219] See Case Mathew v. Netherlands, 29 September 2005, Barsan C., 2010, the European Convention on Human Rights, Commentary on the articles, Issue 2, Editura CH Beck, Bucharest.

[220] See Case Reggiani Martinelli v. Italy, in C. Barsan, 2010, the European Convention on Human Rights, Commentary on the articles, Issue 2, Editura CH Beck, Bucharest

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1.4. The right to privacy and family life and health interference

> European Court of Human Rights extended the privacy of the person referred to in art. 8 of the European Convention including a healthy environment in which it is entitled to live.

In the case of Lopez-Ostra v. Spain, the Court decided that by placing a purge of waste water stations with adverse effects on privacy and family life of the applicant, close to home, the state has not provided a fair balance between general interests, embodied in case of need to build such a instalation, and personal, in this case, the applicant's right to enjoy a healthy environment, as protected by art. 8 of the Convention [221].

In the case of Guerra and Others v. Italy, the Court held in that there are direct consequences of the production of pollutants by the activity of a chemical factory on the applicants' private and family life, and the Italian state has not taken positive steps to communicate essential information which would be allowed to assess the risks from work and decide whether that can continue to live in the neighborhood [222].

In the case Tătar v. Romania, the Court held that public authorities must ensure public access to findings of investigations and studies with respect to the consequences they produce environmental procedures extract the gold mines. Failure of public authorities to inform about the findings of investigations made it impossible to challenge the results in question. The Court concluded that the authorities have adopted appropriate measures such as to protect privacy within the meaning of art. 8, and the right to a healthy and protected environment[223].

In the case Brânduşe v. Romania, , the applicant was serving a sentence at the prison of Arad, located at 18 m from the former city landfill. In 2003, Arad mayor had chosen another place to "deposit" waste, but had not taken any action in connection with the former pit. This continued to be used by the locals threw their garbage there. The European Court considered that Article 8 is applicable, strong olfactory pollution was confirmed by numerous tests. Even if the applicant's health had been affected, given the existing evidence and the plaintiff incurred during such pollution, the Court held that it had affected the

[221] See Case Lopez-Ostra v. Spain, 9 December 1994, Barsan C., 2010, the European Convention on Human Rights, Commentary on the articles, Issue 2, Editura CH Beck, Bucharest.

[222] See Case of Guerra and Others v. Italy, 19 February 1998 C. Barsan, 2010, the European Convention on Human Rights, comment on articles, Issue 2, Editura CH Beck, Bucharest.

[223] See European Court of Human Rights, Tatar v. Romania, 27 January 2009, available on court website, in French.

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quality of life and welfare, in a way that adversely affected his private life, and this prejudice was not a simple consequence of detention[224].

Respect for individual health information is essential to protect privacy and to safeguard confidence in the medical and health services.

European Court of Human Rights ruled that respect the **confidentiality of individual health information** is an essential principle of the legal system in the Convention signatory countries. Information on the health of a person falling within the definition of "private life".

In the case of Z. v. Finland, the European Court has been seized on the disclosures about the health of HIV infected persons. The Court held that "disclosure of such data can dramatically affect the private and family life and social and employment situation, exposure to risk scorn and ostracism. For the same reason may discourage people to obtain a diagnosis or treatment, thus jeopardizing any community effort to prevent a pandemic control (...). Such interference can be compatible with Article 8 of the Convention unless it is justified by a very urgent requirement in the public interest[225].

In the cases v Armoniene v. Lithuania and Biriuk v. Lithuania, the applicants complained about the fact that Lithuania's largest newspaper published a front page article which drew attention to a threat of the AIDS virus, from an area of the country. The article is based on the confirmations given by the center's medical staff dealing with HIV infected persons and the hospital that are HIV-positive applicants. The article characterizes one of the plaintiffs as "a notoriously promiscuous," which has two illegitimate children. The European Court held that in this case, there was an interference with the privacy of applicants, is causing a public humiliation and exclusion from social life, through an excessive abuse of press freedom, while retaining the concern in relation to Medical staff confirmed that health data of reclamants[226].

The European Court held that any measure taken by the government to compel disclosure of information relating to communication of eropositivity a person without consent, taking account of the extremely intimate and sensitive of such data, requires an extreme rigorously exam for assessing the existence

[224] See European Court of Human Rights, Branduse v. Romania, April 7, 2009, available in French on the website of the court

[225] See Case Z. v. Finland, 25 February 1997, Pieter van Dijk, Fried van Hoof, Arjen van Rijn, Leo Zwaak, 2006, Theory and Practice of the European Convention on Human Rights, Forth edition, Intersentia.

[226] See European Court of Human Rights, Armoniene v. Lithuania Case Biriuk v. Lithuania, 25 November 2008

of effective safeguards to protect privacy under Art. 8 of the Convention [227]. Similarly, the Court stated that it is crucial that the law states to include adequate safeguards to prevent communication or disclosure of personal data [228].

Recently, the Court held that the prohibition of making photocopies of medical records of applicants after they have been allowed access to those records by court order, with reasons given by the authorities that the photocopies "could be improperly used" by them, is a violation of the provisions of art. Article 8. 1 of the Convention[229]. The Court held that the applicants were not able to effectively exercise their right of access to information regarding their reproductive health status at a given time. It should not be borne by the person required to make specific justification as to why requested information about their own health status, as the authority in possession charge is data indicating that there are reasons that can not provide rigorous information in the case[230].

> European Commission of Human Rights stated that "a compulsory medical intervention, even if minor, should be considered as an interference with privacy" *(case X. v. Austria, 1980).*
>
> This aspect of Article 8 of the European Convention puts into question a person's right not to be treated in medical terms, without his consent.

Former European Commission of Human Rights, in Case Godfrey v. United Kingdom, has held that the imposition by the state authorities of a national vaccination campaign is not compulsory interference with the right to privacy. In the case of X. v. Netherlands, Commission ruled that the former does not constitute an interference with the obligation imposed on a driver to submit to a blood test when suspected of driving a vehicle while he was alcohol intoxicated[231].

On the other hand, in case Glass v. United Kingdom, European Court of Human Rights ruled that the administration of a minor patient's medical treatment in hospital, against his family, is a violation of his right to privacy. The Court indicated that the scope of art. 8 of the Convention, the consent required

[227] See Case Johansen v. Norway, 7 August 1996, Case I. v Finland, 17 July 2008, Case DC v. Spain, 6 October 2009, Barsan C., 2010, the European Convention on Human Rights, Commentary on articles Issue 2, Editura CH Beck, Bucharest

[228] See Case Z. v. Finland, 25 February 1997, because Armoniene v. Lithuania, 25 November 2008, Case Biriuk v. Lithuania, 25 November 2008.

[229] See Case KH and Others v. Slovakia, 28 April 2009 C. Barsan, 2010, the European Convention on Human Rights, Commentary on the articles, Issue 2, Editura CH Beck, Bucharest.

[230] See European Court of Human Rights, KH and Others v. Slovakia, 28 April 2009..

[231] See C. Barsan, 2010, the European Convention on Human Rights, Commentary on the articles, Issue 2, Editura CH Beck, Bucharest.

medical treatment, and in the minor case, parent's consent [232].

A similar decision was taken recently in Case MAK and RK v. United Kingdom, the Court holding that the absence of any evidence that the child's condition was critical and the process of becoming critical in pain or discomfort that the mother would not have given consent, the hospital could use authorization from the court for testing environments. In the present case there was no justification for the decision to perform blood tests and photograph the girl for nine years against the express wishes of both parents, while she was alone in hospital[233].

In the case of Pretty v. United Kingdom, European Court held that " in the scope of medical treatment, refusing to accept a particular treatment may inevitably lead to a fatal effect, but the imposition of treatment without the consent of an adult patient exercise capacity will be an interference with physical integrity of person likely to engage in rights protection under art. Article 8. 1 of the Convention"[234] .

> European Commission of Human Rights stated that "issues relating to physical or psychological integrity, and consent to medical treatment applied within the scope of Article 8 of the Convention *(cauza Codorcea v. România, 2009).*

The Court held that States are required to adopt rules by which public and private hospitals are required to introduce appropriate measures with regard to the physical integrity of patients.

Every patient should be informed about the consequences of such surgeries to express consent or not choices, fully informed. When the patient was not informed and the operation took place in a public hospital, the State is directly responsible. In this respect, in the Codarcea v. Romania, the court held that the applicant had access to a procedure for determining the responsibility of the doctor who performed the operation. However, it has not been able to recover damages set by the court because of insolvency and lack of medical insurance schemes in case of negligence and the courts have denied liability for the acts of the employee hospital doctor. Accordingly, the Court held that it violated Art. 8 of the Convention [235].

[232] See Case Flass v. United Kingdom, 9 March 2004 C. Barsan, 2010, the European Convention on Human Rights, Commentary on the articles, Issue 2, Editura CH Beck, Bucharest.
[233] See European Court of Human Rights, MAK and RK v. United Kingdom, March 23, 2010, available on the Court's website..
[234] See case Pretty v. United Kingdom, 29 aprilie 2002 în Pieter van Dijk, Fried van Hoof, Arjen van rijn, Leo Zwaak, 2006, Theory and Practice of the European Convention on Human Rights, Forth edition, Intersentia.
[235] See European Court of Human Dreptruilor Case Codarcea v. Romania, June 2, 2009, available on the website of the French court.

1.5. Respect for the right to life, health and nondiscrimination

> In a recent case, the applicants and their relatives complained to the European Court of Human Rights on the fact that in carrying out blood transfusions in the public health services have contracted HIV or hepatitis C. The persons concerned were suffering from thalassaemia , inherited disorder that requires blood or blood products based.

A group of about 100 people in similar situations, have started legal action (the so-called cases "Emo uno") against the Ministry of Health, requesting damages for the injuries caused. In turn, Ministery was forced to pay compensation only on those cases which occurred during specified periods of time, ie when identifying the causes and consequences of virus. How applicants were infected before those dates, no damages were awarded. Court of Cassation decided that before virus identification hepatitis B and HIV by the global scientific community can not establish a causal link between the injuries and the conduct of the Ministry of Health. Under a government decree, the Ministry has concluded mutual agreement with hemofilactic infected persons. Because plaintiffs were suffering from thalassemia, they did not have a similar understanding. Other groups of people have initiated actions (so-called cases "Emo bis" and "Emo ter"), but courts have not followed the rules on data that can be retained responsibility of the Ministry.

European Court of Human Rights found that among people infected with HIV or suffering from hepatitis C who suffered from thalassemia infected hemofilactic those who have received compensation, there was a difference in treatment, although these people were in similar situations.

This differentiation occurred in the granting of compensation by mutual agreement, on the grounds of a hereditary disorder. As such, because D.N. and Others v. Italy [236], Court held that the plaintiffs were discriminated against and have violated provisions of art. Conjunction with Article 14. 2 of the Convention. On March 15, 2011, the European Court took note of understanding settlement occurred between the complainant and Italy, forcing the government to pay compensation amounting to over **2 million euro** [237].

[236] See European Court of Human Rights, DN and Others v. Italy, Judgement of 1 December 2009, available in French on the Court's website.

[237] See European Court of Human Rights, DN and Others v. Italy, the amicable settlement between the parties, 03/15/2011

Chapter VI Nondiscrimination principle in the European Union

1.1 EU, Lisbon Treaty and the prohibition of discrimination

The European Union was established in 1950 originally as an intergovernmental organization based on economic considerations, at present, constituting a separate legal entity, with 27 Member States.

Romania applied for EU membership in June 1995. It became a member of the European Union in January 2007.

Lisbon Treaty [238], entered into force on 1 December 2009, make significant progress as regards the protection of fundamental rights. By Article 9 and 10 of the Treaty European Union reaffirms the principle of nondiscrimination as the transversal element in the definition and implementation of policies and activities, aiming to "combat discrimination on grounds of sex, race or ethnic origin, religion or belief, disability , age or sexual orientation "and" combat social exclusion".

Another significant aspect is that the European Union acceding to the European Convention on Human Rights and Fundamental Freedoms, whose provisions, including nondiscrimination, are general principles of Community law. Thus, EU law will be interpreted by the European Court of Human Rights in light of the European Convention, not only as a general principle but also through direct application, in cases covered by this legal instrument on human rights.

Lisbon Treaty recognizes the rights, freedoms and principles in the Carta of Fundamental Rights as it was adopted on December 12, 2007, stating that the instrument has the same legal value as the Treaties. In this way, it was formalized the principle of respecting human rights as part of Union law.

Carta of Fundamental Rights reaffirms the important legal measures aimed, in particular, the prohibition of discrimination on grounds of sex, race, color,

[238] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, published in EU Official Journal 2007 / C 306/01, consolidated version of the Treaty on European Union and Treaty on European Union, published in the Official Journal of the EU 2008 / C 115/01..

ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinion, membership of a national minority , property, birth, disability, age or sexual orientation (Art. 20 si Art.21).

1.2. New generations of directives on the nondiscrimination in EU

Amsterdam Treaty, which was amended Treaty on European Community and Treaty of European Union, gave European Institutions considerable powers in relation to combating discrimination. First, the changes imposed by Article 13 EC Treaty, ordered, subject to the Treaty, the possibility that legal measures be adopted to combat discrimination.

Consequently, in November 1999, the European Commission made a proposal under the new Article 13 of EC Treaty and, in June 2000, the EU Council adopted:

- **43/2000/CE Directive of 29 June 2000** implementing the principle of equal treatment between persons irrespective of **racial or ethnic origin** [239].

They were subsequently adopted:

- **78/2000/CE Directive of 27 November 2000** on the general framework for equal treatment in **employment** [240] **(religion or belief, disability, age, sexual orientation**

- **113/2004/CE Directive of 13 December 2004** implementing the principle of equal treatment between **women and men** in terms of access and provision of goods and services [241].

- **Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006** on the implementation of the principle of equal opportunities and equal treatment between **men and women** in matters of employment and ocuppation[242].

[239] See Directive 2000/43/EC, published in the Official Journal of the European Communities, L1s80/22, 7/19/2000

[240] See Directive 2000/78/EC, published in the Official Journal of the European Communities, L 303/16, 02.12.2000.

[241] See Directive2004/113/CE, published in the Official Journal of the European Communities, L 373/37, 21.12.2004.

[242] SeeDirective 2006/54/CE , published in the Official Journal of the European Communities, L 204, 26.07.2006.

1.3. Nondiscrimination principle in the Court of Justice

European Court of Justice held in the scope of Community law that:

principle of equality and non-discrimination rule that comparable situations are treated differently and different situations should be treated similarly, unless the treatment is objectively justified.

Although the provisions of the Union Treaty include references to the principle of equal treatment and discrimination in specific areas [243], European Court of Justice held that the principle of equality is a general principle whose application is "reviewed by any court"[244]. In considering the character of a general principle, it requires that comparable situations must not be treated differently than if the differences in treatment are objectively justified[245]. Also assume that different situations must not be treated the same unless such treatment is objectively justified[246].

The question that arises in this context is why the Court stated a general principle of substantial equality that transcends the specific provisions of the Treaty. It could be argued that the provisions in question do not guarantee equal treatment in all cases so that development as a general principle is needed to fill gaps in existing legislation. Rather, the principle is perceived as a safeguard that prevents the democratic community and national authorities to impose differential treatment without justification[247]. It can be argued that, from the position of general principle of Community law, equality has two functions: the Community institutions are required to justify their policies and engage in prohibited in arbitrar conducts [248].

[243] For example the prohibition of discrimination on grounds of nationality, the prohibition of discrimination between producers and consumers in agriculture, equal treatment in public and private, equal pay for equal work between men and women, etc.
[244] See European Justice Court, case 8/78 Milac (1978), ECR 1721, para.8.
[245] This is the standard formula used by the European Court of Justice in 1977. See joined cases 117/76 şi 16/77 Ruckdeschel v. Hauptzollant Hamburg St. Annen (1977) ECR, 1753, para.7, cauza 810/79 Uberschar v. Bundesversicherungsanstalt fur Angestellte (1980) ECR 2747, para.16, Joined cases 201 şi 202/85 Klensch v. Secretaire d'Etat a l'Agriculture et a la Viticulture (1986) ECR 3477, para.9, cauza 84/87 Erpelding v. Secretaire d'Etat a l'Agriculture et a la Viticulture (1988) ECR 2647, para. 29, case C-56/94 SCAC v. Associazione dei Produttori Ortofrutticoli (1995) ECR I-1769, para.27
[246] See European Justice Court, case 106/83 Sermide v. Cassa Conguaglio Zucchero (1984) ECR 4209, para. 28.
[247] See Takis Tridimas, The General Principles of EC Law, 2 The principle of Equality, Oxford EC Law Library, Oxford University Press, 2000.
[248] Ibidem.

The principle of equal imposes obligations on the Community institutions and Member States when implementing or acting within the scope of Community law. It also imposes obligations in certain circumstances, individuals or legal entities in areas such as the prohibition of discrimination on grounds of nationality, race or ethnic origin, gender, sexual orientation, religion, belief, disability, age, or prohibiting unfair competition[249].

In the scope of Community law, the principle of equality has a particular importance in the economy. The concept of distortion of competition is central to understanding the functions of commercial rights. European Court of Justice held that a measure is discriminatory "when are calcultated differences substantially increased in production costs than by changes in productivity, to give rise to imbalances apreciabile competitive position." The Court concluded: "In other words, any intervention that attempts to distort or artificially distorting competition and meaningful to be seen as discriminatory and incompatible with the Treaty[250].

1.4. Violations of principle of nondiscrimination: Jurisprudence of Court of Justice

Equality and non-discrimination principle has obtained a special importance in the European Court of Justice. In the doctrine of specialty was shown that it assumes that the legislature,in the legislative process to ensure, in essence, that similar situations be addressed in a similar manner and the distinctions to be induced only if they are objectively justified. Also, with regard to entities that interpret, apply and enforce the law (note the judge and the executive) these can not establish arbitrary distinctions in the performance of the functions they perform: to ensure uniform application of the law[251]. This paraphrase is largely consistent with the approach the Court of Justice regarding the principle of equality in Community law.

Court's methodology in dealing with allegations of infringement of the principle of equality has been synthetically summarized in doctrine: first step is to determine whether products or manufacturers from which discrimination is alleged, are in fact comparable to the situation ... If they not are ... case is closed. If it is determined that they are in situations comprise the next step is to determine whether there is a difference in treatment between the two cases. If there is a difference of treatment, the third and last step is to determine whether it is objectively justified[252].

[249] SeeTakis Tridimas, The General Principles of EC Law, 2 The principle of Equality, Oxford EC Law Library, Oxford University Press, 2000.
[250] See European Court of Justice, joined cases 32-33/58, (1959), ECR 127.
[251] SeeJ. Schwarze, European Administratrive Law, Sweet & Maxwell, London, and Office for Official Publications of the European Communities, Luxembourg, 1992, p. 545.
[252] SeeJ. Usher, General Principles of EC Law, Longman, London, 1998, p. 35.

Determination of existing (lack) of a comparable situation

Step known in doctrine as "comparability test" is a difficult step that depends on the particular circumstances of the case. Difficulties, in particular, have been encountered by the Court of Justice in cases involving women who were subject to unfavorable treatment because of pregnancy status.

In case Dekker v. Stichting Vormingscentrum voor Jonge Volwassen Plus[253] was put into question refusal of a woman's employment because of pregnancy for the purposes of direct discrimination based on sex. Considering no man has participated in the selection process for the job, the problem raised earlier comparison could not discuss what treatment would be applied to a man.

In case Webb v. EMO Air Cargo (UK) Ltd. [254] Court held that the dismissal of women due to pregnancy direct discrimination on grounds of sex ruling that put the issue of comparability of a woman who is unable to perform job duties due to pregnancy, that of a man which is in the same impossible otherwise. The solution in both cases the Court has been criticized in the doctrine of specialty, and deemed "unfortunate in terms of components in the non-discrimination legislation" in this case the apparent abandonment of the application comparability in both cases (Dekker si Webb)[255].

Determination of differences in treatment

If it is determined that two situations are comparable, the next step in finding the incidence of the principle of equality is to determine whether a different treatment was applied between the two cases. This is relevant considering that, according to ECJ case, the infringement involves the application of different rules to comparable situations the same rules that apply to different situations[256]. Of particular interest here is the effect of treatment applied and not necessarily the intention, so that once it was established that the effect produces a difference in treatment, the test is conducted. In addition, since Community law regulates and indirect discrimination, it can be said that the requirement of a difference in treatment can be withheld if the two groups are explicit treated differently because of an criterion direct discrimination) or when different situations are treated equally, but with a significantly different impact on protected group (indirect

[253] See European Court of Justice, case 177/88, Dekker v. Stichting Vormingscentrum voor Jonge Volwassen Plus (1990) ECR I-3941.
[254] See European Court of Justice, case 32/1993, Webb v. EMO air Cargo (UK) Ltd. (1994), ECR I-3567.
[255] SeeE. Ellis, The Definition of Discrimination in European Community Sex Equality Law, 1994, EL Rev. 563, EC Sex Equality Law, Clarendon Press, Oxford, 1998.
[256] See European Court of Justice, case 13/63 Italy v. Commission (1963) ECR 335, case8/82 Wagner v. Bundesanstalt fur landwirtschaftliche Marktordung (1983) ECR 371, case C-394/96 Brown v. Rentokil (1998) ECR I-4185, cauza C-342/93 Gillespie v. Northern Health and Services Board (1996) ECR I-475.

discrimination)[257].

The absence of objective justification

Phase known as the "test of justification" requires the determination of whether an explanation for the different treatment induced. A difference in treatment will not be seen as contrary to the principle of equality if it is objectively justified.

European Court of Justice in Case Ruckdeschel, explicitly defined the principle of equality such that it allows the possibility of advancing a justification for different treatment. It seems that in this case, for the first time, the Court held that the principle of equality requires that similar situations should not be treated differently unless differentiation is objectively justified[258]. The justification was seen in terms of the purpose of the measure applied.

Court of Justice indicates different purposes which were regarded as sufficient to ensure a degree of objectivity: for example, in the single market, to avoid imposing an excessive burden to administration[259], fraud prevention and speculative transactions [260], legal certainty and effectiveness of sharing sistem [261], different economical comparable circumstances for products market [262]. Also, the political difficulties in securing agreements to harmonize economic measures were considered to be objective justification for different treatment[263]. On the other hand, the key test of justification seems to have been reported to the arbitrary nature of the measure in question, following up, particularly if treatment is based on rational considerations and objectives and not arbitrary[264].

[257] See Gavin Barrett, Yearbook fo European Law, no.22, Re-examining the Concept and Principle of Equality in EC Law, Oxford University Press, 2003; Also see C. Barnard and B. Hepple, Substantive Equality, 2000, CLJ 562 la 563.

[258] See European Court of Justice, case 117/76 si 17/77 Ruckdeschel v. Hauptzollant Hamburg St. Annen (1977) ECR 1753, para 12-13.

[259] See European Court of Justice, case 8/82 Wagner v. Bundesanstalt fur landwirtschaftliche Marktordnung (1983) ECR 371.

[260] See European Court of Justice, case C-241/95 The Queen v. Intervention Board for Agricultural Produce, ex pană de Justiţie, rte Accrington Beef and others (1996) ECR I-6699.

[261] See European Court of Justice, case C-85/90 Dowling v. Ireland, Attorney General and Minister for Agriculture and Food (1992) ECR-I 5305

[262] See European Court of Justice, case 59/83 Biovilac v. European Economic Community (1984) ECR 4057.

[263] See European Court of Justice, case C-479/93 Francovich v. Italian Republic (1995) ECR I-3843.

[264] See Gavin Barrett, Yearbook of European Law, no.22, Re-examining the Concept and Principle of Equality in EC Law, Oxford University Press, 2003; European Court of Justice, case 106/81 Julius Kind AG v. European Economic Community (1982) ECR 2885 para.22, cauza 11/74 Union de Minotiers de la Champagne v. French Government (1974) ECR 877 para. 22-23, cauza 139/77 Denkavit Futtermittel GmbH v. Finanzamt Warendorf (1978) ECR 1317 para.15, cauza 43/72 Merkur-Aussenhandels GmbH v. Commission of the European Communities (1973) ECR 1055 para. 22.

Application tests in the Court of Justice

It should be mentioned that, in some cases, the Court applied the tests in order comparability and justification for different treatment, however, sometimes apparently not taken into account, not necessarily in that order. In some cases considered equal from a purely formal approach to the relationship between objects that were to be compared on the basis of objective criteria to determine whether they are "similar" or "dissimilar".

In other cases, by contrast, did not consider the problem of comparability of objects but not put the issue of objective justification of the treatment. In some cases, has led to a case of treatment different justified, although it previously said that the objects compared are not similar. However, it should be noted that the Court's primary interest is to prevent treatment "unfair" and "arbitrary", which violates the principle of equality[265].

[265] See J. Schwarze, European Administratrive Law, Sweet & Maxwell, London, and Office for Official Publications of the European Communities, Luxembourg, 1992, Gavin Barrett, Yearbook fo European Law, no.22, Re-examining the Concept and Principle of Equality in EC Law, Oxford University Press, 2003.

Chapter VII Prohibition of discrimination in a national context

1.1. Commitments of Romania in the context of EU accession

In July 1997 the European Commission published its opinion on Romania's intention to become a member of the European Union and in the Regular Report issued in October 1999, the Commission recommended the start of accession negotiations with Romania. Following the Helsinki European Council decision in December 1999, accession negotiations with Romania began in February 2000. Accession Partnership with Romania in 1999, revised in 2000, provided for in Chapter criterion Political / Human Rights Section 4.2 Objectives., Medium term, as a priority recommendation to "**implement measures to combat discrimination,** including in public administration"[266].

It should be noted that the EU Council Decision 2002/92/EC, section 6, shall include the following: "to prepare for accession, Romania must continue to review its national program for adoption of the acquis". Thus, the council, in accordance with article 2 of the (EC) no. 622/98, established the principles, priorities, intermediate objectives and conditions in the Accession Partnership with Romania.

Chapter 4, entitled Priorities and intermediate objectives, Section Criterion Political / Human rights and protection of minorities and Chapter Criterion Economics, Social Policy and Employment Section[267], included as a priority and that Romania had obligations to fulfill:

"establishing and ensuring proper functioning of the institutions to prevent and combat all forms of discrimination "

"the adoption of secondary legislation to combat discrimination and develop a plan for implementatione"

Romania's priorities for accession were reiterated and revised by the European Union 2003/397/EC [268] Council Decision on the principles, priorities, intermediate objectives and conditions in the Accession Partnership with

[266] See Accession Partnership with România (1999, revised February 2000) - political criteria/human rights; 4.2 Medium term.

[267] See Official Journal of the European Communities, L44/82, 14.2.2002, Council Decision on the Principles, Priorities, Intermediate Objectives and Conditions contained in the Accession Partnership with Romania (2002) Political criteria, Human Rights and Minority Protection

[268] See Official Journal of the European Communities, L145/26, 12.6.2003, Council Decision on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with România.

Romania.

EU Council decided in Chapter 4. Priorities, specifically the political criteria for section "**further alignment with the acquis in the field of discrimination** and ensuring proper implementation of the operational functioning of the National Council for Combating Discrimination." In Chapter Criterion Economic, Social and Employment Section, the EU Council reiterates necessity for Romania to continue the "**alignment with the acquis in relation to discrimination and to ensure its implementation."**

Implementation of the Accession Partnership and the obligations assumed by the European Union Council decisions were monitored under art. 2 of Decision 2002/92/EC and 2003/397/EC of the European institutions and institutions of the Council agreement which the European Commission has presented periodic reports[269].

1.2. Transposition of the new generation of directives in the field of nondiscrimination

Council Directive. 43/2000/CE and subsequent ones [270] is a major milestone in the development of legal standards in relation to combating discrimination in the European Union. Over a period of three years, all EU Member States had to bring national legislation into line with the directives in the field, part of the acquis communautaire. Thus, each Member State and subsequently the European Union candidate countries, among which Romania has to ensure **implementation** of the Directives set minimum standard.

Failure to transpose, or improper transposition of directives on non-discrimination provisions may lead to the initiation of infringement proceedings against Member States. For example, on 19 July 2004 the European Commission announced the initiation of infringement proceedings against Austria, Germany, Greece, Finland and Luxembrug for nontransposition Directive no. 43/2000 and Directive no. 78/2000[271]. Also, the European Court of Justice found in material breach of European legislation on discrimination in **Finland, Luxemburg** [272], **Germany**[273] şi **Austria**[274] .

[269] See for details of the decision no. 2002/92/EC and no. 2003/397/EC), Art. 2. 43/2000/CE Directive

[270] Directiva 43/2000/CE of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Directive of 27 November 2000 78/2000/CE general framework for equal treatment in employment (religion or belief, disability , age, sexual orientation) 113/2004/CE Directive of 13 December 2004 implementing the principle of equal treatment between women and men in terms of access and provision of goods and services, Directive 2006/54/EC of the Parliament and Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment between men and women in matters of employment and occupation..

[271] See Press Release, European Commission, Brussels, 20 December 2004, IP/04/1512 272 decisions published in the Official Journal of the European Communities, IP/04/1512.

[272] See Press Release, European Commission, Brussels, 20 December 2004, IP/04/1512 272 decisions published in the Official Journal of the European Communities C 93/2. C93/3, 16.04.2005.

1.3. Insurance of transposition of aquis in nondiscrimination in Romanian legislation

In order to transpose the acquis in matters of discrimination, the Romanian Government adopted:

Order no. 137/2000 on preventing and sanctioning all forms of discrimination. Ordinance was published in the Official Gazette of Romania, Part I, no. 781 of 2 September 2000 and was approved with amendments by Law no. 48/2002, published in the Official Gazette of Romania, Part I, no. 69 of 31 January 2002.

After successive changes made by **the Government Ordinance no. 137/2000, Law no. 48/2002, Government Ordinance no. 77/2003** and by **Law nr.27/2004,** minimum standards laid down in European directives have been transposed into Romanian legislation in part, however, as the European Commission said in its reports, the question remained, and disagreements between the internal law provisions the acquis communautaire, ie Council Directives 2000/43/EC and 2000/78/EC, thus anti-discrimination legislation requiring further amendments.

Considering the potential threat to Romania's accession to the Europan Union on 1 January 2007, the legislation on discrimination is not in accordance with the acquis, on 14 July 2006 was adopted by the Romanian Parliament, **Law 324 / 2006** organic law character, which were brought about substantial changes to the standards of discrimination and in particular on the status of national institution designated to monitor and enforce legislation, the National Council for Combating Discrimination

Law no.324/2006 amending and supplementing **Ordinance No. 137/200** on preventing and sanctioning all forms of discrimination, published in the Official Gazette of Romania, Part I, no. 626 of July 20, 2006, expressly provides that transposes **Council Directive 2000/43/EC** on the principle of equal treatment between persons irrespective of racial or ethnic origin, published in the Official Journal of the European Communities (OJEC) no. L180E 19 July 2000 and the provisions of **Council Directive 2000/78/**EC establishing a general framework for equal treatment as regards employment and employment, published in the Official Journal of the European Communities (OJEC) no. L303 of 2 December 2000.

[273] See Press Release, European Commission, 29.04.2005, IP/05/502.
[274] See Press Release, European Commission Brussels, 04.05.2005, IP.05/543.

1.4. The scope of European Directives and national law on preventing and sanctioning all forms of discrimination

European Directives

Race Directive, known as Directive 2000/43/EC, is the first instrument of European legislation which **prohibits discrimination based on racial or ethnic** origin in all areas of life, applying to "all persons, both public sector and from the private, including public institutions.

Directive aims to prohibit discrimination in relation to:

- **conditions for access to employment,** to self, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- **access to all types and at all levels of vocational guidance,** vocational training and retraining, including practical work experience;
- **conditions of employment and working conditions,** including dismissals and pay;
- **membership and involvement in a organization of workers or employers,** or any organization whose members belong to a particular profession, including the benefits provided by such organizations;
- **social protection including social security** and **MEDICAL CARE**
- **social benefits**
- **education;**
- **access to goods and services and supplied to the public**, including housing;

Framework Directive, known as **Directive 2000/78/EC** prohibits **discrimination based on religion or belief, disability, age or sexual orientation only in employment** (conditions of access, employment, employment, training, etc.

Directives 113/2004 / EC and **2006/54/EC (the Directive recast)** prohibit **discrimination based on sex / gender** in employment and labor relations and access and provision of goods and services.

Currently, the EU institutions is under consideration a proposal for new directive, called horizontal Directive prohibiting discrimination on the basis of religion or belief, disability, age and sexual orientation in access to goods and

service [275].

National Law on preventing and sanctioning discrimination

Unlike the European Directives, national law prohibits discrimination in all spheres of life.

Order no. 137/2000 republished prohibits discrimination based on race, nationality, ethnicity, language, religion, social category, sex, sexual orientation, age, disability, chronic illness noncontagious, HIV infection, belonging, to a disadvantaged category, and any other criterion.

According to art. 3 of Chapter I (General principles and definitions) of G.O. no. 137/2000 republished, "**The provisions of the ordinance apply to all** natural or legal persons, public or private and public institutions with responsibilities in relation to:

a) **employment conditions,** criteria and conditions for recruitment, selection and promotion, access to all forms and levels of guidance, training and professional development,)
b) **social security protection,**
c) **public services** and other services access to goods and facilities,
d) **the education system**,
e) **ensuring freedom of movement**,
f) **ensuring public order,**
g) **other areas of social life**

G.O. no. 137/2000 republished is a special regulation which sets considered discriminatory behavior and creates mechanisms through which **any type of discrimination may be sanctioned**. This legislation ensures a uniform interpretation of the general principles of equality and nondiscrimination established by the Constitution and by international documents dealing with the elimination of discrimination, ratified by Romania, which make up the general area, people who having considered the provision discriminated against on the basis of specific legal provisions which may require the cessation of discriminatory events and damages[276].

[275] See EU FRA, Council of Europe ECHR, 2011, Handbook on European non-discrimination law.
[276] See Romanian Constitutional Court Decision no. 1011 of 8 November 2007, published in Official Gazette no. 809 of 27 November 2007

2.1. Prohibited discrimination in the Directive and national law

2.1.1. Direct discrimination

” Direct discrimination takes place when a person is treated less favorably than was or would be another person in a comparable situation on grounds of racial or ethnic origin”.

(Directive 2000/43/CE - Art. 2 alin.2 lit. a))

The discrimination is any distinction, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social category, sex, sexual orientation, age, disability, noncontagious chronic disease, HIV infection, association with a disadvantaged category and any other criterion which has the purpose or effect the restriction, removal of recognition, the use or exercise, on an equal footing, of human rights and fundamental freedoms recognized by law or rights, political, economic, social, cultural or any other areas of public life.

(O.G. nr. 137/2000 - Art. 2 alin.1)

Unfavorable treatment

Definition of Direct Discrimination from Directive 2000/43/EC is shown successively in Directives 2000/78/EC and 2004/113/EC and 2006/54/EC, with the only difference is given by the criterion of discrimination, in this case home racial or ethnic origin in the first Directive, religion or belief, disability, age, sexual orientation under Directive 78 or gender for the last directive.

In a synthetic form, direct discrimination requires a less favorable treatment or applicable to a person because of race or ethnic origin [277] against another person in a compressed situation. The notion of differential treatment is expressed in the phrase "less favorable" assumptions conjunction it is evidenced by a past action, present or future. In any case, identifying the less favorable treatment will involve an examination of the factual circumstances that may cause such a treat[278].

[277] Racial or ethnic origin, religion or belief, disability, age, sexual orientation, gender.

[278] See Chris Ronalds, Discrimination: law and practice, Third Edition, The Federation Press, 2008.

On the basis of a prohibited criterion or by association with such a criterion

Less favorable treatment is applied based on "," on grounds of "racial or ethnic origin, religion or belief, disability, etc.. The phrase "based on / on grounds of" indicates a component of direct discrimination, that actual causation of action (less favorable treatment) and membership of the element indicated by the legal rule in this case, racial or ethnic origin of the person bear the adverse consequences, it's religion or belief, disability, age, sexual orientation or their sex. In the same situation and state of association included a person with a certain ethnic origin, disability, etc.

Court of Justice held that the prohibition of direct discrimination is not limited only to persons who themselves have a disability.

In case S. Coleman v. Attridge Law, Steve Law, the European Court of Justice has alleged the existence of an applicant's less favorable treatment than that reserved for others' employees, because this without a disability, be dependent a disabled child.

Where an employer treats an employee less favorably and he has not a disability, to another employee in a comparable situation, and it was determined that treatment is caused by the child's disability, the employee whose care is provided by the treaty differently, such a situation is contrary to the prohibition of direct discrimination[279].

Comparable situations

A fundamental element of direct discrimination is the fact that less favorable treatment is applied to persons in comparable situations. As such, should be established that persons placed in similar or comparable situations, receive preferential treatment based on the criteria stipulated in the Directive. European Court of Justice Status within Community law precludes discrimination that comparable situations are treated differently and different situations must be treated similarly, unless the treatment is objectively justified[280].

Direct discrimination in a Romanian law: a copy of the UN Convention

Clearly, the definition of direct discrimination contained in GO no. 137/2000 is different from that contained in the Directive, at least in terms of the wording of the text of Article 2 paragraph 1. The explanation for this disparity is

[279] See European Court of Justice, case S. Coleman v. Attridge Law, Steve Law, ECJ, C-303/06, dispozitive Court of Justice Decision of 17 July 2008.

[280] See infra Chapter VI non-discrimination principle in the European Union, Section 3.3. Violations of discrimination in the Court of Justice, Calf New details of the Human Rights Review, no. 3 / 2008, Gergely D., legal test in determining comparability of discrimination: by the principle of equal pay in relation to the courts

given, on the one hand, that when adopting Romanian legislative act, the initiators had in mind the provisions of Directives adopted very shortly before the European community. Directive 2000/43/EC was adopted on 29 June 2000, Directive 2000/78/EC on 27 November 2000 and the Government Ordinance no. 137 was adopted on August 31, 2000.

Definition of discrimination from G.O. no 137/2000 is in fact a reproduction of the definition contained in art. 1 of **the International Convention on the Elimination of All Forms of Racial Discrimination**. The Convention defines racial discrimination as: "... any distinction, exclusion, restriction or preference based on race, color, descent or national or ethnic origin which has the purpose or effect of eliminating or restricting the recognition, use or exercise, on an equality, human rights and fundamental freedoms in the political, economic, social, cultural or any other areas of public life".

The difference between the definition of Order No. 137 and that contained in the Convention and the European Directives is given, first, the criteria on which discrimination is prohibited. Convention refers specifically to incidents of racial reasons. The list of criteria contained in the Ordinance prohibited. 137 is clearly wider than that contained in the Convention. Moreover, from this point of view, the Romanian legislation extends protection against discrimination on the basis of criteria contained in an exhaustive list, beyond the forms guaranteed by European Directives, limited to racial discrimination or ethnics[281], religion or belief, disability , age, sexual orientation [282]or sex[283].

Secondly, unlike the Convention, which **provides legal protection** in the exercise of human rights and fundamental freedoms in the political, economic, social, cultural or any other areas of public life, order, naturally, added protection of human rights and provide legal protection **in the exercise of rights recognized by national law.**

Unfavorable treatment: difference, exclusion, restriction, preference

The definition of discrimination contained in Article 2 paragraph 1 of Ordinance 137/2000 and reproduced in art. 1 of the Convention refers to **a broad range of acts** that circumscribes the **differential treatment**. If European directives configures the phrase "treated less favorably, instead take the Romanian international legal instrument that includes and not limited to" any distinction, exclusion , restriction or preference. " This follows unambiguously from the phrase "any", next to a behavior, either actively or passively. This formulation reveals an intention to include the widest range of acts or facts that may affect people of criteria for one or expressly prohibited by law.

[281] Directive 2000/43/CE.
[282] Directive 2000/78/CE.
[283] Directive 2004/113/CE and Directive 2006/54/CE.

Qualified different treatment: touch of a right

It should be noted that, as is clear from the definition of discrimination in Article 2, paragraph 1 of GO no. 137/2000, differential treatment is **qualified** by the consequences it produces, in the sense that it **interferes with rights**, or restrict or remove recognition, enjoyment or exercise, on equal terms, the rights of those discriminated against. Such a classification is not expressly provided for in the definition of direct discrimination in the European Directives, but it is beyond any doubt that a discriminatory act results in the allocation of powers guaranteed by law to persons or the rights and fundamental freedoms. Moreover, correlative rights are protected against discrimination scopes of Directives 2000/43/EC, Directive 2000/78/EC, Directive 2004/113/EC, Directive 2006/54/EC or other earlier.

The causal link between different treatment and forbidden criterion

The definitions contained in the Directive and the definition of GO no. 137/2000 discloses a defining aspect of direct discrimination, ie that the **difference in treatment** is based on a **characteristic that a prohibited criterion** such as race, sex, disability, etc.. As such, the treatment must be different from that which has been or would be applicable to a person from a relevant group of similar or comparable circumstances. The benefit of direct discrimination involves harming the rights of the person discriminated against **because of its membership** in a group (eg racial or ethnic origin, language, religion, etc..), or **individual characteristics** (disability, gender, age, chronic illness, etc. .). From this point of view, direct discrimination requires an identifiable causal link between the act or fact of differentiation and belonging to one of the characteristics or criteria contained in the legal norm and individualized to the person who is subjected to discrimination.

This causal link is clear from the definitions of European Directives which indicates that less favorable treatment is applied "on **ground of**" or " **criterion** ". Similarly, the definition of the Ordinance. 137/2000, which takes over the art. 1 of the Convention on the Elimination of All Forms of Racial Discrimination, include the phrase "**based on**", stating that 'discrimination' shall mean any distinction, exclusion, restriction or preference "based on ...". In its General Recommendation XIV on Article 1 of 1993, para. 1 of the Convention, the Committee on the Elimination of All Forms of Racial Discrimination (CERD) shows that the term "based" has a different meaning than the phrase "the criterion."[284] Causation resulting from the definitions of direct discrimination should be assumed that the reason or reasons behind acts of discrimination applied in cases (less favorable treatment) and require the analysis / research / investigate whether a test ban (racial or ethnic origin, age, disability, gender,

[284] See Committee on the Elimination of All Forms of Racial Discrimination, General Recommendation XIV of 1993, Session 42, "Compilation of General Comments and General Reccomendations adopted by Human Rights Treaty BodiesHRI/GEN/1/Rev.7.

etc..) alleged by the complainant is a relevant factor or determinant in the action or inaction complained to the respondent (defendant).

Comparable situations

At first sight, unlike the European Directives that define direct discrimination corollary the situation in which a person is treated less favorably based on racial or ethnic origin, religion or belief, disability, age, sexual orientation or gender than it was or could be treated another person in a **comparable situation**, the definition in Article 2 of Ordinance no. 137 contains no such explicit reference to **comparable or analogous situations** in which to place the person discriminated against others.

This apparent gap, apparent stress, given the initial shape defined in Article 2 paragraph 1, covered by the provisions contained in Article 1 paragraph 3 of the Ordinance, which make express reference to comparable cases of persons exercising rights incidental corollary invocation principle of equality. In its original form, Art.1 not included an explicit reference to persons in comparable situations but the text was set by Law no. 48 of 16 January 2002 to approve Ordinance No. 137/2000[285]. Moreover, the High Court of Cassation and Justice, through the Decision no. 828 of 16 February 2009 noted that Ordinance No. economy. 137/2000 Article 2 defining forms of discrimination are consecutive to those of Article 1 para. (3) and they must be corroborated. From this point of view, the definition of direct discrimination contained in art. 2 para 1 in order to be considered in conjunction with article 1 paragraph 3 which states that: "(3) exercise the rights set forth in this Article **concerning persons in comparable situations"**[286].

[285] See the same effect, Renate Weber, Report on Measures to Combat Discrimination in the 13 countries candiate (VT/2002/47), Country Report Romania, European Consultancy MEDE, Migration Policy Group, 2003.

[286] For details see Gergely D., 2010, New Human Rights magazine, no. 4 / 2010, CHBeck House, Bucharest, 2010 „Compilation of General Comments and General Reccomendations adopted by Human Rights Treaty Bodies", HRI/GEN/1/Rev.7..

Case studies: direct discrimination

National Council for Combating Discrimination has found that demand for both children was refused under the existing medical documents certifying that they were suitable for attendance. The criteria put forward by representatives of the kindergarten was an alleged disability, expressed by the allegations against them, without a medical statement on the situation of children. **The CNCD Case no. 206 of 01.09.2010**, it was found that the facts before them, constitutes direct discrimination on the basis [287].

The petitioner complained about the refusal to allow entry to two local children in kindergarten because of ethnic origin, that their disability. At the time of enrollment of children, the teacher asked to children's grandmother to go " Gypsy, you stupid, go with your children stupid as you." Wanting to know why the entry refusal, the teacher explained the children's father that they, inter alia, have "special needs", "mental problems" and "are disabled, hostile looks." It was subsequently claimed that they can not register as they are concerned allotted this kindergarten.

CNCD found that the analysis of specific situations, such as those involving Roma children should be taken into account the particular interests of students, the educational and non-discrimination principles. It must be ensured a fair balance between the interests of the school and students' interests, but the principles of teaching or continuity would not be capable of separating children from a certain ethnicity, but to ensure true equality in education.

The petitioner complained about the fact that Roma children were separated from mainstream students. In the 2003-2004 school year, the County Inspectorate made a class that taught only Roma children in special school leadership. Later, in school years 2004-2005, 2005-2006 that continued training classes to teach only Roma children, by designing the 3 additional rooms for each class and a group room for kindergarten.

By decision no. 338 of 03.09.2007, it was found out that the establishment of separate classes, maintaining them and moving in the same structure in terms of ethnicity, constitutes direct discrimination on the basis of the children's ethnic origin[288].

[287] See National Council for Combating Discrimination, Report on the implementation of racial Directive (Directive 2000/43/EC) in Romania (2003-2010), available at www.cncd.org.ro

[288] Ibidem.

National Council for Combating Discrimination has noted that the justification condition in case (maximum age) was based on health status of patients after a certain age are more sensitive to a particular medication, and combinations of various drugs. On the other hand, the analysis of those rules, that application of different treatment regimens

L.A. petitioner complained about the health regulations that establish eligibility criteria for inclusion in the treatment and choice of antiviral regimen in patients with liver cirrhosis, HBV, C and D, in particular, providing treatment only to patients under the age of 65.

is considering the patient's disease status and need for adequate treatment of symptoms of the disease and not patient age. As such, health and age is not determinative in the application of appropriate treatment. By decision no. 605 of 13.11.2008, it was noted that imposing an age limit to applying treatment schedule was a direct discrimination (on grounds of age)[289] .

NCCD found that the rules in this case was induced to differentiate in the sense that people over a certain age can receive funding only treatment so far they reach a score by offsetting other criteria. In relation to the aim pursued, funding medical treatment, the College has considered that the means chosen (the imposition of age-specific) were not appropriate and proportionate.

CNCD took notice of the conditions determining the score of applications for approval of medical treatment abroad, establishing age limits (60 years). Part claimed showed that the inclusion criterion of age is not knockout, a person aged over 60 can get a higher score based on its specific situation.

From this point of view, the criteria for prioritization should be based on objective factors closely related to medical status, diagnosis, risk, etc. The estimated benefit. **By decision no. 95 of 09.06.2010** was found that the facts before them constitute **direct discrimination** (age)[290].

[289] See National Council for Combating Discrimination, Report on the implementation of the Framework Directive (Directive 2000/78/EC) in Romania (2003-2010), available at www.cncd.org.ro

[290] Ibidem.

National Council for Combating Discrimination has found that inclusion of all people with a different sexual orientation in "contra" can not be accepted, especially since the fidelity as a form of sexual behavior was not seen as relevant for those with a certain sexual orientation. In addition, also about blood, detailed analysis can be performed. By decision no. No 337 of 21.11.2005 and the decision. 260 of 29/08/2007 to determine the facts constitute direct discrimination (sexual orientation criterion)[291].

The petitioner complained about the fact that people with a particular sexual orientation are not allowed to donate blood. National Institute of Hematology confirmed that donors with other sexual orientations are considered risk group and falls in the category of "definitive contraindication. Subsequently, through a normative project, the criteria for permanent exclusion from blood transfusions was introduced category of men who have maintained, if only once intercourse (even using protection through condom) with another man.

2.1.2. Indirect discrimination

Indirect discrimination occurs where a **provision, criterion or practice apparently neutral,**would put **persons of a particular racial or ethnic origin at a particular disadvantage compared with other persons** unless that provision , criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Directive 2000/43/CE Art. 2 alin. 2 lit. b

They are discriminatory ... provisions, criteria or practice which disadvantages some people apparently neutral, based on criteria set out in para. (1), compared to others unless such provisions, criteria or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

O.G. nr. 137/2000, Art. 2 alin. 3

A provision, a criterion, a practice apparently neutral

European Court of Justice in its case, said that besides the situation is objectively justified and proportionate to the aim pursued, a provision of national law must be regarded as indirectly discriminatory if it is liable to affect migrant workers more than workers national, and there is a subsequent risk of placing

[291] Ibidem.

them in a particular disadvantage[292].

The definition of this line of reasoning follows the European Directives and the primary element is attached to the concept of indirect discrimination effect it produces a certain extent. Race Directive definition indicates that, first, indirect discrimination involves a measure (provision, criterion, practice), which, unlike direct discrimination, is apparently neutral. If in the case of direct discrimination is unfavorable treatment is presumed to be related to a test ban (nn differentiation due to ethnicity, gender, disability) in the case of indirect discrimination, such a presumption does not operate directly.

Despite the apparent neutrality, the measure leads to a disproportionate and detrimental effect occurs to a person or a group of people compared with other persons or group of persons. As such, the element of comparability is also applicable in the case of indirect discrimination, the effect will be precisely the comparability report. Only in such a situation will be indirect discrimination.

Irrelevance of intention

In the case of direct discrimination, its nature involves a direct causal link between differential treatment and the forbidden criterion, being intentional in nature. Regarding indirect discrimination, it does not imply a direct causal relationship, as a disproportionate effect that has on a person or group of persons who are distinguished by characteristics or criteria prohibited under the legal norm.

In Coleman case, decided by the European Court of Justice, Advocate General Miguel Poiares Manduro says: "In cases of indirect discrimination the employer's intention and the reasons they had to act in one way or another are irrelevant. In fact, this is the essence of the prohibition of indirect discrimination: even neutral measures, innocent or good faith and policies adopted without discriminatory intent will be retained as such if their impact on people with particular characteristics is higher than compared to other people. This "disproportionate impact" is the target of indirect discrimination. This practice does not mean that there are cases of unintentional indirect discrimination (Quinn 2007: 270, Fitzpatrick 2007: 326), but assumed that the intention to discriminate is not a precondition for finding discrimination. Only the effect of the measure in question is crucial (Tobler 2005: 235, Loenen 1999:201)[293].

[292] SeeTobler C., 2008, Limits and potential of the concept of indirect discrimination, European Commission, Office for Official Publications of the European Communities.
[293] Ibidem.

Case studies: indirect discrimination

National Council for Combating Discrimination has found that whether a ticket for access to the premises of a club (whose release is conditional upon presentation copy of identity card and passport photo), without the exclusive character, can be justified by a purpose legitimate. (Ensuring public order and public peace or protection of property).

Complainants complained about the fact that trying to get inside a club, dark-skinned Roma people were called access badge, while others were not requested a ticket. Part claimed showed that local access is based solely on ticket. He noted that there is a situation which does not require a ticket agency, namely loyal customers and their guests. The exterior facade of the building was posted on a poster: "we reserve the right to select customers, we appreciate that you were our customers, loyal customers may require membership identification cards showing the copy of a photo identity card and passport, documents are handed to staff security, new customers who wish to be members of the club must provide security personnel the following documents: passport photo, copy of identity card, copy of card work, the original criminal record, fingerprint scanning.

The legitimate question that arises with regard to the conditions imposed by the plaintiff is to what extent is a distinction between facts that can be connected with crimes in connection with the public order or protection of private property, and acts that are not connected with the public (in accidents involving negligence, negligence, abandonment of family, etc..) between persons who have card work and those who do not have the card work, but activities on the basis of contracts or intellectual property rights distinct service , between those who have or have not fingerprint.

In certain circumstances, failure ticket for acts which have no connection with the protection of public order or property of others, or persons who do not have workman's character could get a social sanction, which may be regarded as excessive and inappropriate in a democratic society, where access to goods and services is guaranteed by law. Subsequently, the question is to what extent the imposition of additional special requirements (criminal record, work card, fingerprint), without specifying a specific purpose in a clear and transparent (and methods of assessment / evaluation) can materialize objectively and without discrimination for such purposes. **Decision no. 67/19.05.2010**, the Board held that the facts alleged are likely to assume that, although it raised a seemingly neutral criterion (nn non having badge access), in practice it led to the disadvantage of the two Roma people, to by others (Romanian nationality) without any objective justification and the means to achieve the aim put forward were not adequate for the purposes of **indirect discrimination** [294].

[294] See National Council for Combating Discrimination, Report on the implementation of racial Directive (Directive 2000/43/EC) in Romania (2003-2010), available at www.cncd.org.ro.

The petitioner complained about the implementation of the plan developed by the school ISM by setting up a disproportionate number of classes in relation to the number of students studying in classes taught in Romanian and Hungarian. He noted that although the Ministry of Education has requested that the Hungarian-language classes to be changed, this has not happened. The Ministry of Education has requested a review of school plan, but changes made to the set of classes and not decrease their growth.

National Council for Combating Discrimination has noted that the statistical data presented by the parties showed a disproportion not only between students who study in Hungarian and Romanian language classes that available for further study, but also between the choices of students against those who would like further studies in Hungarian. This discrepancy was likely to affect including teachers who teach in Hungarian language classes. **By decision no. 291 of 14.05.2009**, it was found that the facts before them constitute **indirect discrimination**[295]**.**

The petitioner complained about the conditions of admission and treatment provided to beneficiaries in the home for people with mental health problems, unlike other units provided medical conditions.

National Council for Combating Discrimination has found that the light compared to the number of beds, hospital days, etc. allocated budget there is an obvious difference in the underfunding of the health facility to persons with mental disabilities, which resulted in the emergence of unfavorable conditions in providing medical services. **By decision no. 350 of 16.06.2008**, it was found that the issues before them constitute **indirect discrimination**[296]

The petitioner is disabled under medical certificates attesting to his health, but not given the degree of disability because it did not fall within the criteria stipulated by the regulations applicable in the medical field. Although medical authorities certify that the applicant is a person whose health deficiencies cause serious disability, not disability that can be recognized because the consequences of the attacks suffered serious strokes are not included in the criteria of classification of disability.

National Council for Combating Discrimination has found that the conditions in which similar deficiencies associated with a disability covered by the rules of admission to degree of disability, petitioner's

[295] Ibidem.

[296] See National Council for Combating Discrimination, Report on the implementation of the Framework Directive (Directive 2000/78/EC) in Romania (2003-2010), available at www.cncd.org.ro

situation, although certified by medical authorities as one similar to a degree of disability, was not regulated which produced adverse consequences in terms of health protection and rights arising from this situation.

By decision no. 422 of 15.12.2010, there was indirect discrimination, holding that, although seemingly neutral, in that grants rights to persons with disabilities, the provisions in this case are disadvantaged people who have suffered strokes, restricting their right to access facilities and services provided by law, provided they are absolutely necessary[297].

The petitioner, a doctor of medicine and holder of the quality of the anticommunist resistance fighter, complained about the termination of employment on grounds of age, although the applicable legal provisions to enable it to continue business for 70 years. The petitioner stated that in case of four colleagues who did not meet the criteria laid down by law, to permit further work, but her case was disposed retirement.

National Council for Combating Discrimination has observed that can not be accepted objective and reasonable justification in relation to the differentiation created by the petitioner. Continuing medical activity, the legal provisions applicable to regulated assumptions petitioner's situation (doctor of medicine, anti-resistance fighter) was not subject to any agreement of the employing unit, so apparently neutral situation in the present case was likely to disadvantage the petitioner in compared with persons who have been extended the contract of employment. Moreover, petitioner's situation, correlative assumption specified in Art. 385 para 3 of Law no. 95/2006, was treated differently both in relation to special rules of law no. 95/2006, and in relation to doctors who have been approved extension of employment contracts, ultimately because of age. By decision no. 429 of 22.07.2008, the Board found that the facts before them constitute indirect discrimination.

[297] Ibidem.

2.1.3. The harassment

Harassment is considered discrimination ... if there is **unwanted conduct** related to racial or ethnic origin, with **the purpose or effect of violating a person's dignity** or creating an intimidating, hostile, degrading, humiliating or offensive environment.

Directive 2000/43/CE Art. 2 alin. 3

Costitutes harassment and is sanctioning **any conduct** on grounds of race, nationality, ethnicity, language, religion, social status, belief, gender, sexual orientation, membership in a disfavored category, age, disability, refugee status or asylum seeker or any other criterion that **could create an intimidating, hostile, degrading or offensive**.

O.G. nr. 137/2000 Art. 2 alin. 5

Undesirable behavior, personal dignity, hostile environment

Looking at the definition of harassment contained in Directive 2000/43/EC remember that this involves "unwanted conduct" which is determined by racial or ethnic origin. This link between behavior and criteria of the European legislator is induced by the phrase "linked." Behavior in question has "the purpose or effect of 'two consequences expressly provided normative text:" violation of personal dignity "or" create a hostile environment. "

Unlike the definition in the Directive, national legislation is not limited to sentence a qualified behavior (undesirable behavior) but covers a general hypothesis that can include a wide range of behaviors, using the phrase "any conduct." The causal link between forbidden behavior and the criterion is determined similar directive, by express reference to "any conduct **on grounds** of race, nationality, ethnicity, language," etc.. In terms of the consequences caused by conduct that is subject to harassment, domestic law uses the term "leading to". This term, "leading to" not make a distinction between the purpose or effect created in a similar directive, but does not induce the same kind as distinguished from intent or negligence. What is relevant, in terms of harassment is the result of what happens.

Regarding the product consequences, national law explicitly refers to "creating an intimidating, hostile, degrading or offensive." These consequences are similar to those covered by Directive: "intimidating, hostile, degrading, humiliating or offensive environment." Even if the national law refers to "offensive framework, it does not exclude but includes the" humiliating or

offensive environment. "

Hypothesis of "violation of personal dignity" although not expressly provided for in national definition of it is implicit, because creating an intimidating, degrading or offensive without direct personal dignity. On the other hand, if "violation of personal dignity" is contained in a separate article which transposes the elements of harassment, in particular the law, section V of the right to personal dignity. Article 15 provides: "It is Under the ordinance, if the act does not fall under criminal law, any behavior displayed in public, the character of nationalist-chauvinistic propaganda, incitement to racial or national hatred, or behavior that is aimed at achieving the purpose or dignity or creating an atmosphere of intimidation, hostile, degrading, humiliating or offensive, directed against a person, group of persons or a community linked by their membership in a particular race, nationality, ethnicity, religion, social class or to a disadvantaged or beliefs, sex or sexual orientation of it. " This option must be interpreted by the Romanian legislator final sentence in the definition of harassment contained in the Directive provides that, in this case, "the concept of harassment may be defined in accordance with national law and practice of Member States."

Case studies: haressment

National Council for Combating Discrimination has found that medical claims could be accepted as objective. But the fact that the petitioner never sought admission to the hospital or conducting medical tests or family doctor or the clinic or emergency room, brings the question to what extent such a claim is irrelevant in relation to a person in a special medical situation (pregnancy status) which is part of the Roma community and are placed in a situation of socio-economic or educational disadvantage compared with most people.

Mrs. L. L.,Roma people, pregnant in the second month from August 28 to September 1 went to Obstetrics and Gynecology Department of Hospital TN., to receive professional consultation, but the manner in which she was addressed and consulted by the applicant, Dr. DD, she was discriminated against based on ethnic origin is bringing personal. Thus, it is shown that during several days when a pregnant woman fell ill and turned to defendant's health services, he gave no attention as he did with the other patients and addressed offensive words: "you Gypsies are like that," "Go home, no longer come here, "" What you got? You have nothing. Leave that grab the hair. " The applicant denies the claims alleged, adding that he advised and appropriate medical services despite the fact that no reference was given ticket or request admission.

The same question may amount including a person who belongs of the majority of the population who has not knowledge to assess in terms of his or her particular medical situation and, in particular, the need for a medical admissions of conducting medical examinations to an express request of a physician or an emergency.Such an argument calls into question including the right of every patient to be properly informed about the medical care is given and is assumed to be provided for the highest quality that society has, as stated in the Romanian legislature Law no. 46/2003. Compared to the particulars of the case, analyzed the samples on file, NCCD was of the opinion that the effect created by the approach of the situation claimed by the petitioner, the attribution of statements that explicitly or implicitly, had known about his ethnic origin advertising, has led to the creation of an intimidating or offensive. **Decision no. 149 of 07.07.2010,** the Board found that the issues before them on how the applicant addressed the petitioner, constitutes harassment based on ethnic origin of the petitioner[298].

The petitioner, HIV infected person, complained about how he was approached to carry out procedures for admission. It was presented to the emergency hospital, to carry out surgery, was issued a sheet with the analysis that would make them and when they received written statement noted red marker "person infected with HIV / AIDS." On entering the room of patients he was received by two nurses who were asked to provide reasons for hospitalization. One of the nurses called the colleagues telling them that the person was hospitalized with HIV / AIDS. The complainant responded nurse telling her that the discussion should not be made in public place in the presence of other people. The nurse said in a voice so high to be heard by those present by saying: "What, you came to fill us with AIDS?"

NCCD found the evidence in the record that the applicant approach the situation given the humiliation the complainant had the effect in terms of their own eyes, feeling aggrieved. This has not been analyzed in terms of singular use of presumptive terms / phrases like "HIV" or "AIDS" as a whole relative to the whole complex of circumstances. Situation of a seropositive person can not be regarded or treated similarly to a person who holds another type of diagnosis that requires admission to the ward surgeon, where the petitioner.

In the case of HIV social vulnerability, respect for confidentiality is not only respect a person's right to privacy, but also avoid its stigma which in most cases based on stereotypes and prejudices. From this point of view, conduct medical assistant should have been reported in HIV infected patient's specific situation which involved a different behavior correspondingly different situation in which this person was. Moreover, the European Court of Justice that the principle of equal status precludes comparable situations are treated differently and different situations must be treated equally.

[298] See National Council for Combating Discrimination, Report on the implementation of racial Directive (Directive 2000/43/EC) in Romania (2003-2010), available at www.cncd.org.ro.

On the other hand, the entire defense of the claim was based on the denial of the allegations against them, indicating that the response to petitioner's response was: "Honey, these are the rules of the hospital" or "these are the rules of hospital and health ministry." However, beyond the ethical assessment of such a response, the complainant reported the situation to the fact that the applicant was aware of his diagnosis, this type of argument is likely to hamper not only the medical condition of the petitioner or his dignity as the right of every patient to be properly informed about what medical care is given and is assumed to be provided for the highest quality that the company has "as stated in Law No Romanian legislature. 46/2003**. By decision no. 614 of 13.11.2008**, it was found that the act constitutes harassment on the basis of HIV infection.

National Council for Combating Discrimination has considered that the attitude shown to the situation of a minor student, has created an intimidating and degrading treatment which led to the grounds of disability suffered by the child. By decision no. 101 of 17.02.2009, it was found that the facts before them constitute direct discrimination and harassment[299].

L.I.D. complained about the attitude of the teacher and parents to her minor child, a student in I class, person with disabilities. Although there were no objections to enroll in school after a week of starting the course, following a meeting with parents, pupil teacher and school director asked the petitioner to withdraw their child from school because parents can not support children. In this respect, teachers have initiated a gathering of signatures

National Council for Combating Discrimination has found that personal opinions in public should be protected by guaranteeing freedom of expression. However, the exercise of these rights does not justify the discriminatory use of language based on the alleged grounds of sexual orientation or sexual orientations of individuals (in this case the owner or guests) How to address the allegations charged and their contents was an incitement to discrimination, to create an intimidating nature and degrading. By decision no. 800 of 04.12.2008, it was found that the conduct is harassment (based on sexual orientation[300].

The petitioner complained about the attitude of AG and other people who sent abusive and offensive language on the owner of a bar / club and guests present on their site based on sexual orientation. Being well known that the club is "gay friendly", the accused, together with other people entered the site and have made phrases like "filthy queer", "filthy dyke", "lesbians", "fucking fags".

[299] See National Council for Combating Discrimination, Report on the implementation of the Framework Directive 2000/78/EC in Romaniawww.cncd.org.ro.
[300] Ibidem.

2.1.4. Order / instruction to discriminate

Available to discriminate against persons on grounds of racial or ethnic origin is considered to be discrimination.

Directive 2000/43/CE Art. 2 alin. 4

"

A vailable to discriminate against persons on any grounds referred to in par. (A) shall be considered discrimination..

O.G. nr. 137/2000, Art. 2 alin. 2

Datory precept to be fulfilled

Order or disposition to discriminate means first of all, there is a mandatory precept, either oral or written form, which is issued by an authority or a person entitled to exercise authority, to be met by the target (those to whom they apply) in order to discriminate, ie to treat differently persons whose situations are comparable or similar. The text does not distinguish between forms of discrimination, so discrimination can be a direct or indirect.

Case studies

National Council for Combating Discrimination has found that this causes a restriction was imposed due to membership of Roma people, and the ads posted at the entrance to the disco, café-bar and Internet cafe are provisions that prohibit access to the bar refusal to provide services to the general public**.**

By decision no. 155/15.05.2003, Case no. 165/27.05.2003, Case no. 317 of 28.11.2006, Case no. 180 of 18.02.2008, NCCD remember acts of discrimination, the provisions to discriminate (on the basis of ethnic originetnică)[301].

The petitioner complained about the denial of access of Roma people inside the disco "NO", whose staff said that the policy "owner ordered to not receive crows."

Pententa complained about the announcement posted at the entrance to the cafe-bar "Complex M" with the words: "We reserve the right to choose our customers! Not serve Roma."

The petitioner complained about the notice posted at the entrance of Cafe: "students, children, the Roma, the homeless will not be served in this bar"

The petitioner complained about the announcement of the entry in the Internet cafe "inside the Internet cafes were not the access of Roma ... (...)".

[301] See National Council for Combating Discrimination, Report on the implementation of racial Directive (Directive 2000/43/EC) in Romania (2003-2010), available at www.cncd.org.ro.

The applicant complained about a situation related to a medical intervention, in which, on arrival at hospital, the father reported that "doctors have admitted him on the child and asked him to go after his wife, because the rule is mothers with children to be hospitalized. The complainant considered that this alleged "rule" or the provision of doctors concerned, it is discrimination. Hospital showed that the medical unit there is no such provision or rule and claimed the Order of the Ministry of Health no. 1781/2006.

By decision no. 278 of 22.04.2008**, the National Council for Combating Discrimination** has noted that "Order no. 1781 of 28 December 2006 approving the Methodological Norms of the Framework Agreement on conditions of providing medical care in the health insurance system in 2007, regarding the conditions of providing medical services in hospitals, provides that: „The hospitals covered from the income and expenditure amount of the standard hotel services (accommodation and meals at the standard of food allowance) for carers of sick children aged up to three years, and for companions of people with severe disabilities" Likewise, by Government Decision no. 1842 of 21 December 2006 to approve the Framework Agreement on conditions of providing medical care in the health insurance system in 2007, states that "... hospitals will cover all expenses, according to the law, including: ... d) hotel Standard (accommodation and meals) for carers of sick children aged up to three years, and for companions of people with severe disabilities, as determined by the rules.".

Related to these provisions and the facts of the case, NCCD found that, ipso jure, standard hotel services are available and covered hospital for "companions" of sick children up to 3 years without any distinction, so that does not may be retained based on sex distinction between male companion and a woman companion, ie father or mother, contained in binding documents. (Eg. MS Order no. 1781/2006 or GD. 1842/2006).

On the other hand, it was noted that a distinction between parents, meaning that the father can not be accommodated in the minor patient's admission under 3 years compared mother, that allows her hospitalization, the mere consideration of sex, and circumstance that could materialize by imposing an order, rules or provisions in hospitalization in a medical facility must be justified by strong reasons and objectives for achieving a legitimate aim.In the absence of such considerations, especially such a dress as a different treatment, and subsequently of discrimination on grounds of sex.

In this respect, the European Court of Human Rights, Case-Zgraggen vs. Schuler. Switzerland, showed that "gender is an important aim of the Council of Europe Member States and only very strong reasons may lead to the conclusion that the imposition of differential treatment is compatible with European Convention on Human Rights (nn)" (case Schuler- Zgraggen Vs. Switzerland, 24 June 1993, Series no.263, parag.67) Furthermore, in its jurisprudence, the European Court of Human Rights, Case vs Petrovic. Austria (ECHR, 27 March

1998, Reports 1988-II, parag.36-37) on gender discrimination, states: "without neglecting the differences which may exist between father and mother in the relationship with their child at this age (early age), the Court considers that the care they have to be provided to children during this period, there are two parents in a similar situation.

Likewise, in case Hoffman v. Austria (ECHR, Application no. 12875/88, Judgement 23 June 1993, para. 35) shows that there is a fundamental equality between the parents on parental rights, inter alia. (See the same effect and ECHR Case Salguiero Da Silva vs. Mouta. Portugal, Application no. 33290/96, Judgement 21 December 1999, Final 21/03/2000)[302].

2.1.5. Victimization

The member States shall introduce into their domestic legal system appropriate measures to protect individuals from **any adverse treatment or adverse consequence as a reaction to a complaint or legal action aimed at respecting the principle of equal treatment.**

Directive 2000/43/CE Art. 9

Victimization constitutes a contravention and is punishable under this Ordinance any **adverse treatment, came in response to a complaint or legal action regarding violation of equal treatment and non-discrimination.**

O.G. nr. 137/2000 Art. 2 alin. 7

Advers treatment as reaction to a complaint or legal action

Victimisation is a form of discrimination covered by the European legislator and transposed into national law of member states, is essentially a measure of protection of person who considers himself a victim of discrimination. The treatment that the person is suffering from discrimination, after committing the first act of discrimination, and due to the fact that this person was sent to an institution or a court, brings in some circumstances, victimization

It must be said that the right of petition or free access to justice is guaranteed in international human rights instruments, and similarly, the system of the Romanian Constitution, justice is an effective exercise of the guarantees of rights and liberties. This role is motivated by the judicial authorities where state power system and their functionsThe principle of free access to justice is

[302] Text quote from the decision CNCD No. 278 from 22.04.2008

protected person applies regardless of the quality and access to justice to defend any law or any legitimate freedoms and any interest, irrespective if it derives from the Constitution or other laws. Also, no law can restrict the exercise of this right (see Ioan Muraru Elena Simina Tanasescu, Constitutional Law and Political Institutions, Vol I, Ninth Edition, Editura All Beck). Romania's Constitutional Court ruled that free access to justice requires access to the procedural means by which justice is administered. The meaning of art. 21 para. (2) of the Constitution, which states that access to justice can not be restricted by law, is that no one class or social group can not be excluded from the exercise of procedural rights that it has established[303] (see).

The act of victimization is circumstantiates in adverse treatment can take different forms. The wording of the text includes the phrase "adverse treatment" of a person, but the art. 2 Para 7 expresis verbis not define adverse treatment. The phrase "any treatment" shows the intention of the legislature to include a wide range of behaviors and not a restrictive, allowing the retention of different skills in practice and may vary from case to case, but whether adverse or otherwise circumscribed. In this respect, it should take into account several factors, together or separately: the context in which the offenses occurred, during the "treatment" applied, its effects and consequences on the person who has suffered etc.

Motive or cause of adverse treatment is the introduction of a complaint, a referral or legal action. Thus, the act that determines the perpetration of victimization is the initiation of administrative or judicial, by introducing a complaint that by bringing a legal action, which indicate a causal link, without which they could not hold a victimization.

Adverse treatment came in response to a complaint or legal action intended "violation of equal treatment and non-discrimination." This is the formula used by the national legislature, similar to those commonly used in the Directive: "the principle of equal treatment." Initiation of administrative or judicial procedure, is therefore subject to invoke the principle of equality and non infringement.

This component of victimization implies that the the complaint or legal action which led to adverse treatment had related to infringement of the principle of equality, namely non-discrimination. Lack of invoking the principle of equality and discrimination can lead to withholding of any abuse, but not a victimization as a form of discrimination.

[303] See Constitutional Court Decision nr.204/2000, published in Official Gazette nr.46/2001

Case study

B.R. complained about the fact that the work were presented information on sexual orientation and asked to resign. Proceedings were initiated against petitioner disciplinary research and was sanctioned with a warning. In connection with these facts, BR addressed a complaint to the National Council for Combating Discrimination. Later investigations by the NCCD, the employer had to sanction measures, disciplinary move that job.

By decision no. 29 from 07.02.2007, the Board found that the presentation to employees at the workplace of information with reference to the applicant's sexual orientation constitutes discrimination, thereby creating a hostile and intimidating atmosphere at its address as the nature of prejudice personal dignity. Proceeding research and disciplinary moving workplace constituted an adverse treatment as a result of petitioner's allegations of discrimination in the workplace committed initially. It was found that the facts presented constitute direct **discrimination, harassment and victimization.**

The petitioner complained about the fact that the employer has communicated a decision in informatical system which employees have seen and indicates that she was demoted from his position. According to petitioner, the decision was unilateral, not bilateral as required by law, unreasonable and unlawful, which is why she addressed the Labour Inspectorate and the court. Then his steps, states that he was denied access to the company was registered on annual leave without a request has been forced, abused, to return car, laptop service.

By decision no. 210 of 08.04.2009, NCCD found that referrals to the ITM and recorded action before the court focused not result in unequal treatment and discrimination by the complaint.De petitioner withdrew her action before the Court. It can not hold a constituent meeting of cumulative victimization.This fund is determined that the petitioner's allegations, which were aimed sine qua non, or at least subsequently, contrary to the principle of equality and discrimination issues as labor conflicts. In this context, issues of conflicting claims of the parties to employment relationships and subsequent labor rights are incidents of labor disputes falling under the jurisdictionofthecourts

3.1. Some exceptions to discrimination

3.1.1. Specific occupational requirements

Member States may provide that **a difference of treatment** based on a characteristic related to racial or ethnic origin shall **not constitute discrimination** where, under particular occupational activities concerned or the nature of the context in which they operate, such a characteristic is an occupational requirement real and decisive, provided that the objective is legitimate and the requirement is proportionate.

Directive 2000/43/CE Art. 4

Prevision s of Article5-8 may be interpreted as restricting the employer's right to refuse to hire someone who does not meet the occupational field, as long as the refusal is not an act of discrimination under this ordinance, and such measures is objectively justified by a legitimate aim and methods of achieving that aim are appropriate and necessary.

O.G. nr. 137/2000, Art. 9

The provisions of **Directive 2000/43/EC** and **Directive 2000/78/EC**, in Article 4 and Article 6 introduce as an exception to the direct or indirect discrimination, specific occupational requirements. **Directive 2000/78/EC**, Iin Article 6, provides that "Member States may provide that differences based on age criteria will not constitute discrimination, whether in the context of domestic law, they are reasonably and objectively justified by a legitimate aim, including policies legitimate employment, vocational training objectives and the labor market, and whether the methods of achieving that aim are appropriate and necessary.

Section I of Chapter II of Ordinance no. 137/2000, republished in regulating economic activity and equality in employment and occupation. The contents of articles of Ordinance No. 5-8. 137/2000 covered offenses on condition the participation in a business or practice a profession or choice, discrimination in terms of labor relations, labor rights or other rights, the duties of service, training, disciplinary action, membership a union, refusal of employment and job ads, social benefits. In this context, is brought exception provided in Article 9 of the Ordinance.

An employer has published in the specialized press ad for the position of manager in a joint manager. Among the conditions for participation included: male, aged over 35 years.

By decision no. 23 of 25.01.2007, NCCD found that the conditions of age and gender were not capable of objective justification relied on notes that they are specific occupational demands. Their publication was likely to discourage access of persons to fill the post in question constituted discrimination based on age and sex.

Case study

By decision no. 125 of 07.07.2010, NCCD held that the requirement imposed by the plaintiff, must be analyzed in terms of art. 9 of Ordinance no. 137/2000, republished. On the other hand, it was noted that the requirement is not subject to analysis raises a distinction on any of the prohibited grounds of discrimination Directives 2000/43/EC, 2000/78/EC and 2002/73/EC.

The applicant complained about the competition for the job station chief in the county medical center in the network administration and interior ministry. Shows that it has applied for entry to the contest and was informed that one of the conditions of employment post graduation is an institution of higher education degree in medicine, according to the condition of the job description. The petitioner indicates that the job involves the management, organization, direction, coordination activities in the medical center but does not involve to be a specialist in the medical act.

Regarding the open position, candidates must be police officers, graduates of institutions of higher education or equivalent degree in the field of medicine, have completed masters or postgraduate studies in specialty studies, to be confirmed by a doctor specialist. These conditions should not be separated, as viewed as a whole, which is at a level of interdependence in relation to the job. It can not be ignored, on the one hand, that the post in question belongs to a specific network of public policy (Ministry of Interior), aimed at an institution that provides health care (county medical center), and furthermore, fasting involves exercising the medical unit, as shown in the notice to the respondent. This is in conjunction with the requirement to confirm the candidates as a specialist. Given the specific terms of both unit belonging to a specific branch and in terms of services offered, the exercise station requires a specific position (medical unit), ... condition imposed by the plaintiff is a specific occupational requirement and its failure can not be interpreted as restricting the employer's right to refuse to hire someone who does not meet the occupational field. .. This requirement can not be viewed in terms of direct discrimination, in the sense that induce a differentiation of treatment between persons in comparable situations on the basis of a prohibited criterion, as required by art. 2 paragraph 1 of Ordinance No. 137/2000[304].

[304] Extract from CNCD no. 125 from 07.07.2010

3.1.2. Positive action or affirmative measure

In the implementation of full equality, the principle of equal treatment shall **not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages** linked to racial or ethnic origin.

Directive 2000/43/CE - Art. 5

The measures taken by public or private legal persons for an individual, a group of persons or community, aiming **to ensure their natural development and effective implementation of their equal opportunities to other individuals, groups or individuals communities**, and **positive measures designed to protect disadvantaged groups is not discrimination under the Ordinance.**

O.G. nr. 137/2000 Art. 2 alin. 9

Similarly Directive 2000/43/EC, Article 7 from Framework Directive (2000/78/EC) covers the concept of affirmative action and specific measures and states that "To ensure full equality in practice, the principle of equal treatment prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds specified in Article 1. Regarding disabled persons, the principle of equal treatment shall not prejudice the right of Member States to maintain or adopt provisions on the protection of health and safety at work, or measures for creating or maintaining provisions or facilities for safeguard and encourage their integration into work."

The distinction between positive action and positive discrimination

In the communicate of European Comission[305] from 30 October 2006 to the European Council and European Parliament on the implementation of Directive 43/2000/EC European Commission expressly states that its long-standing and continuing disadvantages suffered by some groups are such that the right to discrimination is not sufficient and may require positive measures to improve equal opportunities. Article 5 of the Race Directive states that to ensure full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin. The European Commission notes that there is a difference between positive steps or actions that are allowed and so-called measures of "positive discrimination" are not compatible with the Racial Equality Directive .

On the one hand, positive action measures aimed at ensuring full equality in practice by preventing or compensating for disadvantages linked to racial or ethnic origin. On the other hand, measures of "positive discrimination" gives an

[305] See COM (2006) 643 final, Brussels, 30.10.2006

absolute preference and automatically (eg in access to employment) to members of a particular group over others for the sole reason of belonging to the group. In its recent communication of 2 July 2008 the European Parliament, European Council, the European Economic and Social Committee and on the "non-discrimination and equal opportunities: A renewed commitment"[306], European Commission reiterated that "identical treatment can result in formal equality, but can not ensure equality in practice. Discrimination legislation at EU level does not prevent Member States to maintain and adopt specific measures or disadvantages in relation to discrimination ...". European Commission points out that "there is a growing appreciation of the role of affirmative action to ensure equal lack substantial remedy company (...). Standing Committee will discuss with Member States to promote the full use of opportunities for positive action, particularly as regards access to education, employment, housing and health. "[306], European Commission reiterated that "identical treatment can result in formal equality, but can not ensure equality in practice. Discrimination legislation at EU level does not prevent Member States to maintain and adopt specific measures or disadvantages in relation to discrimination ...". European Commission points out that "there is a growing appreciation of the role of affirmative action to ensure equal lack substantial remedy company (...). Standing Committee will discuss with Member States to promote the full use of opportunities for positive action, particularly as regards access to education, employment, housing and health.

In terms of European legislation in this area, the first affirmative action provision in the area have been included in art. 2 paragraph 4 of the Equal Treatment Directive 76/207 (gender). Subsequently, the Maastricht Agreement on Social Policy and the Amsterdam Treaty, affirmative action was included in the Treaty establishing the European Communities in the art. 141 paragraph 4: "In order to ensure full equality in practice between men and women in labor, the principle of equal treatment shall not prevent Member States from maintaining or adopting measures providing for specific advantages in order to facilitate the pursuit of vocational activity for the under-represented sex or to prevent or compensate for disadvantages in professional careers. " European Court of Justice held that "exception provided in Art. 2 paragraph 4 of Directive 76/207 is specifically and exclusively designed to allow measures which, although discriminatory in appearance, are aimed, in fact, the elimination or reduction of the current situation of inequality which may exist in the reality of social life "(see Case C-312/86, Commission v.. France (1988) ECR 6315, para. 15). In the later case, the European Court of Justice stated that "the purpose of art. 2 paragraph 4 is to achieve substantive equality rather than formal equality by reducing de facto inequalities which may arise in society "(see Case C-407/98 Abrahamsson (2000) ECR I-5539, para. 48, because C-319/03, Briheche (2004) ECR I-8807, parag.25

To justify a measure taken at Member State level, in terms of Article 2, paragraph 4, which is based, in fact, the recent jurisprudence of the European

[306] See COM (2008) 420 final, Brussels, 2.7.2008).

Court of Justice in relation to gender-based affirmative action, the European Court established a set of items to be considered in a restrictive way.

First, a national measure should aim to "remedy the situation given the disproportion between men and women in a specific industry or career level"[307]. This requires evidence of such disparities that might justify an affirmative action measure. A measure whose aim is considering compensation for the inequalities rather than their removal not covered by art. 2 paragraph 4.

Secondly, a positive measure must be appropriate. European Court of Justice shall consider whether the measure is likely to achieve to remedy existing disparities [308].

Thirdly, the measure or positive action must be proportionate - be balanced with the principle of equality across people who do not benefit from this measure [309]. Thus measure must be necessary, appropriate, and not exceed their target. This implies that preferences are not allowed automatic or absolute [310].

In its recent decision, the European Court of Justice predominantly refers to the requirement of proportionality, but has not established a clear set of criteria to determine this [311].

In relation to measures adopted at EU level should be noted that the provisions of Council Directive 2000/43/EC and the provisions of Council Directive 2000/78/EC have been transposed by G.O. 137/2000, republished. In transposing the two EU directives, GO no. 137/2000, as amended and supplemented, republished, relative to positive action, art. 2 alin.9 provides that "Measures taken by public or private legal persons for an individual, a group of persons or community, aiming to ensure their natural development and actual equality in relation to their others, groups of persons or communities, and positive measures designed to protect disadvantaged groups is not discrimination under the ordinance. " It is unequivocal that the Romanian

[307] See European Court of Justice, Case C-476/99, Lommers (2002) ECR I-2891

308 See European Court of Justice, Case C-366/99, Griesmar (2001), ECR I-9383.

309 See European Court of Justice, Case C-407/98, Abrahamsson (2000) ECR I-5539, Case C-79/99 Schnorbus (2000) ECR I-10997 and Case C-476/99 Lommers (2002) ECR I-2891

310 See European Court of Justice, Case C-407/98, Abrahamsson (2000) ECR I-5539.8.

311 See European Commission, "Implementation of gender in practice: What is the role of affirmative action?", Report funded by the European Commission, Directorate General for Employment, Social Affairs and Equal Opportunities, Unit G.4., 2007, similar to the "International perspectives Measures on positive action, the comparative Analysis in the EU, Canada, USA and South Africa.

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legislature, in consideration of the acquis communautaire in the field of discrimination, chose to allow the positive steps or measures in favor of individuals, aiming to ensure their natural development and effective achievement of their equality. Moreover, the final sentence of Art. Alin.9 of Ordinance No. 2. 137/2000, republished, regulates expresis verbis that the measures taken in favor of persons, groups of persons or communities, or positive measures aimed at protecting disadvantaged groups do not constitute discrimination under the order. It should be noted that in Romania affirmative positive action measures were recently adopted by both legislative authority and the Government on national minorities, especially in political participation and representation in education (...)

Finally, do not ignore the fact that a positive or affirmative action is by nature "temporary." According to the UN Committee on Human Rights' principle of equality sometimes requires States Parties to take affirmative measures to reduce or eliminate conditions which cause or perpetuate discrimination prohibited by the Covenant facilitate (...) as long as such actions are necessary to correct discrimination in fact, founded a situation of legitimate difference through Pact[312].

International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Romania, provides that "special measures taken in order to ensure proper development of certain racial or ethnic groups or individuals requiring such protection to ensure equal exercise of human rights fundamental freedoms are not cosiderat racial discrimination, but providing that those measures should therefore lead to the maintenance of separate rights for different racial groups and that they will not be continued after the objectives for which they were taken have been achieved (Article 1 paragraph 4 of the Convention).

Also, the Framework Convention for the Protection of National Minorities ratified by Romania in Article 4 establishes the obligation of States parties to adopt "appropriate measures" to promote, in all areas of economic, social, political and cultural, declares that the full and effective The action taken will not be considered discrimination. Explanatory Report to the Framework Convention emphasizes that full and effective equality between persons belonging to national minorities and persons belonging to the majority may require signatory states to adopt special measures which take into account the specific conditions of the persons concerned. Such measures must be "adequate", in accordance with the principle of proportionality, to avoid violation of certain rights, and discrimination against others. This principle requires, among other things, that such measures would be extended in duration or purpose, beyond what is necessary to attain full and effective

[312] See General Comment no. 18 Human Rights Committee on freedom from discrimination, art. 26 of International Covenant on Civil and Political Rights

equality. Their goal is to ensure that persons belonging to national minorities enjoy full and effective equality of persons belonging to majority [313].

Case study: regulating the education of Roma

Circumscribing the concept of substantial equality equal opportunities and equal results, first assuming that the outcome of treatment in question are equal, and the latter suggests that the law can ensure that all persons have the same opportunities in conditions where persons have different starting positions, thus providing equal opportunities, but not equal results.

In Romania, schooling Roma people students and Romani mother tongue study is conducted both in the general context of the Romanian education and of the specialized on education for minorities. According to the College, regulation specialized education for ethnic minorities, and in this context, persons belonging to Roma people, has that hypothesis substantial equality principle, which refers to categories of individuals placed in different situations for which treatment must be applied different. European

Court of Human Rights held that because the history and turbulent situation, the Roma have become a disadvantaged and vulnerable minority. Therefore require special protection, including the scope of education. *(*case Orsus v. Croatia, case Sampanis v. Greece, case D.H. and others v. Czech Republic).

Through decision no. 433 from 05.11.2007 and, similarly, Case No 592 of 24.11.2009, **the National Council for Combating Discrimination** has noted that the measures adopted by the legislature and in particular by the Romanian Ministry of Education and Research on Roma pupils aimed at ensuring equality of opportunities, reflected in the implementation of affirmative action. Such affirmative action, by their nature, have pursued progressive equalization of the situation of Roma children, in terms of equality in education opportunities to reach their position in a similar or analogous to students, that children in the educational system. To facilitate the implementation of these measures, the Ministry of Education has developed specific procedures for the organization.

Board of Directors holds in this regard that the Ministry of Education has developed a procedure for organizing and conducting the admission of state school and vocational education for the year 2007 - 2008 school and calendar for admission to state high school and vocational school year 2007-2008. These procedures and timetables are approved by Order no. 5262 of 5 October 2006, published in the Official Gazette of Romania, Part I, no. 1021 of 22 December 2006. Thus, the publication was born on the presumption that it became known

[313] See Explanatory Report to the Framework Convention on National Minorities, art. 4 paragraph 2.

as the topics covered, one can not invoke the defense acts and deeds of the law recognize the legal content that he has committed, according to the principle "nemo censetur ignoring legem . Board of Directors notes that the procedure for admission to the organization and development of state education and vocational secondary school year 2007 - 2008, published in the Official Gazette of 22 December 2006 no.1.021 contains a chapter on "The admission of candidates on special places for Roma and candidates for special education"[314].

Case study

By decision no. 209 of 27.06.2006, the National Council for Combating Discrimination found that differentiation of the new regulation can be equated with affirmative action, but, in fact, the same work, the same classification, seniority, etc.., Women qualify for retirement at a different age that of men.

Petitioners Dr. D.M., Dr. I.G., Dr. I.C., Dr. V.O., Dr. D.A. and Dr L.P. complained about the conditions established in connection with retirement medical profession, in this case establishing the age differential for women and men (Law no. 96/2006). The old regulation, the retirement age was set at 65, regardless of sex, the way forward until the age of 70 years. The new regulation provides retirement age under the public pension system, namely 60 years for women and 65 men.

However, that measure to be considered an affirmative way would be an option for women at the age of 60 years and not a legal obligation. In addition, doctors are a special professional group in terms of duration of actual completion of studies and entry into employment, unlike other professions, so establishing the conditions for retirement ages is contrary to the principle of non-physicians, the G.O. no. 137/2000. College **recommended** that the Ministry of Health to make reasonable efforts to eliminate the provisions in question[315].

[314] See National Council for Combating Discrimination, Report on the implementation of racial Directive (Directive 2000/43/EC) in Romania (2003-2010), available at www.cncd.org.ro Case No College. 433 of 05.11.2007 and no. 592 of 24.11.2009, prepared by a member of the College of reasoning NCCD, Desiderius Gergely..

[315] See National Council for Combating Discrimination, Report on the implementation of the Framework Directive (Directive 2000/78/EC) in Romania (2003-2010), available at www.cncd.org.ro

3.1.3. Reasonable accommodation

In order to guarantee the principle of equal treatment for people with disabilities are provided **reasonable accommodation**. This means that employers shall take **appropriate measures**, where **needed in a specific situation** to allow a disabled person access to **employment, or advance to, or have access to training**, with provided that such measures would impose a disproportionate burden on the employer. This task is not disproportionate when it is sufficiently remedied by measures existing within the framework of the Member State concerned, for people with disabilities.

Article 5 Directive 2000/78/CE

Through the reasonable accommodation at work means "all changes made by the employer to facilitate the exercise of the employment of the disabled person, involving a change of working hours, purchase of equipment, devices and assistive technologies and other such measures." "Persons with disabilities seeking employment or employed entitled to reasonable accommodation at work"

Law no. 448/2006, 5, 6, 83 paragraph 1 b

Case studies

National Council for Combating Discrimination has noted that the plaintiff did not justify any of the impossibility of ensuring a partial work rules, merely state that the store's organization is not equipped with full-time job for 4 hours day that it is unable to provide such a place. Likewise, the plaintiff has not rejected the petitioner's claims that there are part-time jobs at other locations, but neither has presented evidence to the contrary. It is precisely in order to ensure compliance with discrimination against people with disabilities, Directive 2000/78/EC provides reasonable accommodation at work.

L.L.E. complained about the termination of employment because of disabilities acquired during the course of work. Although the plaintiff in the case found that the employment contract as stopped, in fact, has argued that part-time positions in the chart (note that the petitioner could meet) and on the other hand has not activities in accordance with the decision on the work ability resulting from disability.

In this case, the College can not hold that the respondent motivation can be considered a reasonable and objective justification, or that extent part-time to ensure that constituted a disproportionate burden on the employer, since it did not present evidence in this sense, the submissions being in the sense that termination of the contract under the present conditions prevailed. In light of Law no. 448/2006 which provides reasonable accommodation at work, **decision no. 463 02.09.2009**, NCCD found that the

issues before them, constitutes direct discrimination[316].

National Council for Combating Discrimination has noted that although the applicant made the statement knowing petitioner diligence, they were not likely to provide a basic level of accommodation at work. The whole complex of circumstances in which he worked and his particular situation have led to an undesirable atmosphere, without obvious differences of the case petitioner should be taken into account in order to provide opportunities for equal opportunities at work and its accessibility.

L.L.R., p a person with degree I of disability, has complained about conditions at the workplace and the manner in which he was treated, given his medical situation. The complainant stated that the existing health facilities and work not allowed under normal circumstances activities, namely the conditions stipulated by the law on protecting persons with disabilities. His disability was a reason for exclusion from work and has not received "any work".".

Referring to the situation of persons with disabilities, the European Committee of Social Rights has consistently held that human differences in a democratic society should be answered with discretion to ensure real and effective equality. Discrimination includes situations that do not take into account all relevant differences or when appropriate action is taken to ensure that the rights and benefits available are typically available to all persons (see Case Autism Europe v. France, no. 13/2002, decision of 04.11.2003).

By failing to adapt tasks at work or establish new service duties reasonably so as to fulfill its current activities under disability, there were negative consequences. It is precisely to ensure that the principle of equal treatment for people with disabilities, Directive 2000/78/EC provides reasonable accommodation at work for people with disabilities. In this case, adaptation would have been a disproportionate burden on the employer. By decision no. 665 of 26.11.2009, the Board found that the issues before them constitute discrimination [317].

[316] Ibidem.
[317] Ibidem.

A.R.C. complained about the fact that he entered the examination for admission to the profession of insolvency practitioner and called, justified by medical reasons, to grant additional time to half the normal examination. The applicant stated that they suffer from certain medical conditions, impaired concentration, cognitive impairment and poor attention spans with capacity as low as speed. The representatives have informed the respondent that it can not respond favorably to the request for reasons of legal evasion of regulation to be accompanied by such cases.

By decision no. 126 of 07.07.2010, NCCD found that the petitioner there was a limitation (reduction of at least half of working capacity) resulting from physical, mental or physical (disability classification in grade III) and that prevented participation from work for a long period of time. Although the circumstances do not result from an act of showing a disability, strictly speaking, no correlative national law. 448/2006 on the protection and promotion of persons with disabilities, the College was reported to the interpretation given to the definition of disability by the European Court of Justice and the concept of reasonable accommodation transpositioned in the national law.

Under different situation where people are suffering from certain disabilities, the European legislator has regulated the concept of reasonable adjustment. The settlement case brought into question the assumption of treating different people in different situations, candidates for the entrance examination to the profession in relation to those individuals (candidate), between which and the petitioner is suffering from some disability. When these people with a disability (including the complainant), by addressing the request for additional time to review his medical condition concomitant fall into question the concept of reasonable adjustment to the specific case of the petitioner.

His application is, in fact, an appropriate adjustment request based on specific medical need in a specific situation (exam here). Thus, the question is whether adaptation requested (grant additional time) is a disproportionate burden on the plaintiff. Reasons for the respondent are related to the lack of legal regulations to derogate from the organization of the contest rules, but this reasoning, seemingly neutral in character, led to petitioner's disadvantage due to his medical condition, creating discrimination[318].

[318] See National Council for Combating Discrimination, Report on the implementation of the Framework . Directive (Directive 2000/78/EC) in Romania (2003-2010), available at www.cncd.org.

4.1. Burden of proof in discrimination cases

Member States shall take the necessary measures in accordance with their judicial systems, so that **when a person who consider themselves wronged because the principle of equal treatment has not, before a court or other competent authority, facts from which it can assumed that there was a direct or indirect discrimination, the defendant should be required to prove that there had been a violation** of the principle of equal treatment.

Directive 2000/43/CE – Art. 8

The interested party has to prove the existence of facts which allow to suppose the existence of a direct or indirect discrimination, and the **person against whom you filed the complaint has the burden of proving that the facts did not constitute discrimination**. In the College Board can rely on any evidence, including audio and video,statistical data.

O.G. nr. 137/2000 Art. 20 alin. 6

Difficulties in proving discrimination

Demonstration of human rights violations and discrimination in particular can be particularly problematic. In most cases, samples are extremely low or limited early as active subjects of discrimination, for example, it displays its manifestly prejudices or in some cases are not even aware of them. Although the intention is not an element of discrimination per se, the issue of grounds of discrimination is often extremely difficult to prove. The more so as between the different treatment and reasoning (or criteria: race, ethnicity, nationality, gender, sexual orientation, disability, etc..) there is a causal link, however. Although victims of discrimination may belong to a racial minority, it is very difficult to prove that their identity has contributed to the way they were treated[319].

In the case D.H. and others v. Czech Republic, by decree of 13 November 2007, the European Court of Human Rights found violations of Article 14 together with Article 2 of Protocol. A sitting of the Convention were subjected to discrimination of Roma children by placing them in schools for children with special needs[320].

Referring to the burden of proof in matters of discrimination, the Grand Chamber found that once the applicant has shown a difference in treatment is

[319] See for details Gergely D., European standards concerning the burden of proof in cases of discrimination and transposition into national law as an exception to the principle of common law "rests probatio Affirm", New Review of Human Rights, no. 4 / 2008, Editura CH Beck.

[320] See European Court of Human Rights, the case DH and Others v. Czech Republic, Application no. 57325/00, Grand Chamber, Judgement of 13 November 2007..

the task induced the Government to show that the measure was justified. The Court recognized that the Convention does not follow procedures in all cases, the principle of strict application "Affirm probatio incumbent. In certain circumstances, when information on the events in question are wholly or mainly in the exclusive attention of the authorities, the burden of proof may be seen as returning the authorities to provide a satisfactory and convincing explanation[321].

However, the Court stated explicitly that when the plaintiff complains about indirect discrimination and stated facts that allow the detention of a presumption that the effect of the action or practice that is discriminatory, the burden of proof is transferred to the respondent State, to whom obligation to show that the difference in treatment is discriminatory. However, in the case DH and others, the Court, taking into account the particular nature of the facts and allegations made in this case (the placement of children of a certain ethnicity in schools with special needs) considered it extremely difficult in practice for applicants to prove discrimination indirect without such a shift in the burden of proof[322]. Likewise, the Court held that where it is proved that a state law indirect discriminatory effect, similar cases of labor or provision of services, nor when it is not necessary in education to demonstrate any intent discriminatory on the relevant authorities[323].

The burden of proof in European Directives

EU Council on 15 December 1997 adopted Directive 97/80 on the burden of proof in cases of discrimination based on sex, whereby Member States were urged to adopt provisions on probation. Article 4 paragraph 1 of Directive 97/80 provides that "Member States shall take all necessary measures in accordance with the domestic judicial systems to ensure that it is for the accused to prove that there had been a violation of the principle of equal treatment when persons who consider themselves to be wronged by the fact that the principle of equal treatment was not applied in their case appear before a court or other competent authority, facts from which one can assume a direct or indirect discrimination. This new provision is repeated in Article 8, paragraph 1 of Directive 2000/43CE, art. 10 para 1 of Directive 2000/78/EC and Art. 19 of Directive 2006/54/E[324].

Directive on the burden of proof was preceded by the European Court of Justice. Case Danfoss, one of the first test cases was brought by a Danish trade union representing the female employees earned an average of 7% less

[321] Ibidem, parag. 179.
[322] Ibidm, parag. 189.
[323] Ibidem, parag. 194.
[324] See Gergely D., European standards concerning the burden of proof in cases of discrimination and transposition into national law as an exception to the principle of common law "rests probatio Affirm", New Review of Human Rights, no. 4 / 2008, Editura CH Beck

than their peers, a comparable group of male employees[325]. Court of Justice ruled in that case that where a company which operates a pay system that requires a total lack of transparency in setting the criteria for salary and wage statistics show a difference between men and women, the employer bears the burden of proof in company concerned. In other words, the employer responsible for the lack of "transparency" of the criteria for granting salary[326]. Similarly, in the case Brunnhofer, the Court reiterated that the burden of proof shall be transferred by the employer to show that there was no discrimination if the employer's payroll system was not transparency[327].

In the case of Enderby, the European Court of Justice based its decision on the devaluation of women and practitioners pay labor comparative value with those of psychologists, speech therapist and pharmacists. Court initially gave an overview of its previous decisions on the burden of proof in cases of discrimination based on sex, stating that although in principle it is up to the plaintiff to prove discrimination, the burden can be transferred when necessary to avoid depriving workers who appear as victims of discrimination of any effective means of implementing the principle of equality. The Court held that where logopezilor pay is significantly lower than in the case of pharmacists and if the first group the majority is women and if the latter, most are men, we are faced with a case of prima facie.

As the Court observed, the situation we are faced with a prima facie case of discrimination is the employer to show that there are objective and non-discriminatory pay differential. The workers could not benefit from the principle of equality before the national courts in cases where evidence of prima facie would not transfer to the employer[328].

Court of Justice has made the victim of discrimination as a prerequisite requirement to submit evidence necessary to trigger the transfer of the burden of proof is simple correlative findings that allow the detention of a presumption of discrimination arises from the facts presented. Court held an extremely interesting, considering that the public declaration of an employer not to hire employees of a certain ethnic or racial origin constitutes direct discrimination in employment, as defined in Article 2 (2) (a) of Directive 2000 / 43/CE of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, such statements are likely to dissuade certain candidates from submitting their candidature and, therefore, are likely to hinder their access to employment. Public statements by which an employer that its recruitment policy, it will not recruit employees of a certain ethnic or racial origin are sufficient to presume, under Article 8 (1) of Directive 2000/43,

[325] See ECJ, Case Danfoss, 1989 ECJ, C-109/88

[326] SeeMarjolein van den Brink, Accusations of discrimination and the shifting burden of proof, European Law Academy, ERA.

[327] See ECJ, Case Brunnhofer, 1999 ECJ, C-387/99.

[328] See ECJ, Case Brunnhofer, 1999 ECJ, C-387/99.

there was a discriminatory employment policies. Incumbent on the employer, therefore, to prove that there was a violation of the principle of equal treatment, existenţa unei politici de angajare discriminatorii. It can do so by showing that the company's actual recruitment practice does not correspond to those statements. Further, the Court stated that "it is for the court to determine whether the facts alleged are established and to assess whether the evidence presented in support of the employer's contentions that it has not breached the principle of equal treatment are sufficient" [329].

In case S. Coleman v. Attridge Law, Steve Law, a national court (Employment Tribunal, London South) was seised of an action which claims the existence of an implied dismissal (constructive unfair dismissal ") and a less favorable treatment petitioner applied reserved than others' employees, because it takes care of a disabled child. Thus, petitioner claims that the treatment caused her to stop working for her former employer.[330] European Court of Justice, held that the burden of proof applicable in a situation like the one at issue, it should be noted that Article 10 (1) of Directive 2000/78, Member States should take measures necessary to comply with their legal system so that when a person is affected by a failure in the principle of equal treatment and submit to a court or other competent bodies, enabling the assumption of facts direct or indirect discrimination, it is the respondent to prove that the principle of equal treatment has not been violated. In the main proceedings, in accordance with Article 10 (1) of Directive 2000/78, the Court stated that 'it is, Mrs. Coleman to determine, before the court, a statement of fact to be presumed that there direct discrimination on grounds of disability prohibited by this Directive. Under this last provision of Directive 2000/78 and considerent (31) thereof, adaptation of rules on the burden of proof is required when there is a presumption of discrimination. If Ms Coleman establishes facts from which it may be presumed existence of direct discrimination, the effective implementation of the principle of equal treatment then requires that the burden of proof on the respondents, which should prove that there had been a violation of that principle. In this context, referred defendants could challenge the existence of such a breach, by any legal means, in particular the treatment of the employee is justified by objective factors unrelated to any discrimination on grounds of disability, and any relationship that this employee has a disabled person"[331].

[329] See Case gelijkheid Centrum voor voor en van kansen racismebestrijding Feryn Company v. NV, C-54/07, 10 July 2008, part of the judgments of the Court of Justice (Second Chamber), para. 1 and parag.2

[330] See ECJ, Case S. Coleman v. Attridge Law, Steve Law, ECJ, C-303/06, Judgement of 17 July 2008.

[331] See ECJ, Case S. Coleman, ECJ, C-303/06, Judgement of 17 July 2008, parag.52-55.

Interpretation of mechanism of the burden of proof in case of the National Council for Combating Discrimination

Recently, the National Council for Combating Discrimination was referring specifically to the principle of reverse burden of proof, performing art. Paragraph 6 of Ordinance No. 20. 137/2000, republished, applicable in cases of discrimination. In the case Romani CRISS vs. CPT the petitioner had complained about defendant CPT statements on the situation of Romanian citizens in Italy, considering that they have discriminated against the Roma ethnic minority people.

NCCD Board of Directors noted that the hearings were held on time by the Council, the petitioner invoked the provisions of article 20 paragraph 6 of Ordinance 137/2000, republished, stressing the need to reverse the burden of proof in the petition drawn resolution.Petitioner demonstrated to the Board of Directors as part probation petition based solely on the contents of press articles, namely "EZ" and newspaper "G. S", the defendant statements are taken, which, in his view, proves the existence of which allows to suppose the existence of a direct or indirect discrimination, such as advertising provisions of article 20 paragraph 6 of Government Ordinance no. 137/2000.

Related to Article 20 paragraph 6 of the GO content 137/2000, republished, the Steering Board held principle arising from the provisions of article 20 paragraph 6, in discrimination cases as an exception to the principle of common law "onus incubated probing actors "that the burden of proof lies with the person who makes a proposal (statement) before the trial.

In handed down decision[332], Steering Board noted the following: "6.3. In common law matters, remember that even the defendant has the burden of proving the assertion, given that out of passivity and defend themselves by proving disprove the plaintiff's claims, making suggestive principle rests her probatio qui dicit, non qui denied her "task of sample is thus divided between the plaintiff and defendant. (See this theoretical and practical Treaty of Civil Procedure All right, Univ. Dr. Viorel Mihai Ciobanu, National Publishing House, pag.155) 6.4. It should be noted however, that the principle of reversal of the burden of proof, as is assumed by the Romanian and transpuns leguitorul in article 20 paragraph 6, does not lie sui generis exclusive obligation of the applicant to prove a negative in the sense that there is no discrimination, totally return the sample in the task of defendant.

6.5. Board of Directors notes that the phrase "reverse burden of proof"

[332] See National Council for Combating Discrimination, Romani CRISS v. CPT, Case no. 180 of 17.07.2007, para. 6.1 .- 6.14.

does not accurately reflect its substance as defined procedure is much more nuanced than what the phrase suggests. This implies the principle is actually sharing the burden of proof and the claimed transfer of those elements affecting him on the facts in question.

Can not be interpreted so that we stand in the presence of an absolute reversal of the burden of proof for exceptions to the principle of procedural rules "onus probation incubated actors" since the procedural rule stated in article 20 paragraph 6 determines the obligations of the parties under the probation issue sharing the burden of proof between the complainant and the respondent. Thus, "the person concerned is required to prove the existence of facts which allow supposing the existence of a direct or indirect discrimination, and the person against whom you filed the complaint has the burden of proving that the facts did not constitute discrimination." 6.7. Under this principle, the person concerned, in our case, the petitioner must show sufficient evidence of discrimination may be inferred. These elements can be considered as evidence for the existence of a different treatment (exclusion, restriction, preference, distinction) the applicant applied directly or indirectly, but it should be noted that the provisions of article 20 paragraph 6 in relation to the obligation of the petitioner is " prove the existence of facts "which puts us in the general principle that the burden of proof lies with the complainant to prove facts, but as an exception, leguitorul sets," implies the existence of facts which allow the direct or indirect discrimination, as is defined by Ordinance 137/2000, republished. This requires the procedural point of view, the petitioner in support of his obligation to prove the existence of facts likely to give rise to a presumption of different treatment. 6.8. At this point, the person against whom you filed the complaint has the burden of proving that the facts did not constitute discrimination. However, in this respect, it is clear beyond doubt that it matters exception to the common law regarding burden of proof, since the petitioner did not prove the obligation incumbent no justification for differential treatment (difference, exclusion, restriction, preference). (See the same effect and the European Court of Justice, Case Bilka Kaufhaus, parag.31; Case C-33/89 Kowalska [1990] ECR I-2591, para. 16, Case C-184/89 Nimz [1991] ECR I-297 para 15. Danfoss Case C-109/88 [1989] ECR 3199, para. 16, Case C-127/92, Enderby [1993] ECR 673 para. 16.)

6.9. Board of Directors finds that the petitioner, Romani CRISS relies European Court of Justice case, C C-381/99 Brunnhofer vs. Österreichischer Postsparkasse Bank [2001] ECR I-4961 or C196 vs Nikoloudi Vasiliki vs. Organismos Tilepikinonion Ellados AE [2005] ECR I-1789. Similar reasoning cited above by the College Board, the European Court of Justice states: "if the plaintiff to adduce evidence which shows that the criteria for determining the existence of a difference in pay between women and men and for identifying comparable work are met, so prima facie case of discrimination and there will then be borne by the employer to prove that there was no breach of the principle of equal pay. 6.10. It is obvious that the interpretation of the European Court of Justice is considering essentially sharing the burden of proof, since, as indicated by the Court, "where the plaintiff evidence ... so, prima facie, there is a case of

discrimination" will then be charged to the employer to prove "that there was a violation of the principle of equal treatment. (ECJ decision C-381/99 Brunnhofer vs. Österreichischer Postsparkasse Bank [2001] ECR I-4961, para. 52 and 53.

6.11. As the Court ruled on Human Rights, the difference in treatment is discriminatory when inducing differentiation between similar and comparable situations without them based on objective and reasonable justification. European Court has consistently ruled that for such a violation to occur "must be established that persons placed in situations similar or comparable terms, enjoy preferential treatment and that this distinction does not find any objective or reasonable justification ". 6.12. The burden of proof regarding evidence of justification, defendant is transferred, it will prove a positive fact, namely that the different treatment applied in the case, there is an objective or reasonable justification for reaching a goal legitimate and proportionate means of achieving, which amounts in practice to show that it has not committed an act of discrimination. 6.13. National Council Against Discrimination or the courts have discretion to determine whether and to what extent the differences between similar or comparable circumstances are such as to justify the distinction of legal treatment. 6.14. Coupled deduced solving the issues of fact, the College Board, notes that it is notified about the contents of documents or facts which take the form of statements expressed in words. The object of analysis is circumscribed petition alleging settlement concerned allegations, which requires in the first instance, finding the allegations and ultimately finding the contents statements, in terms of incidence or not the Government Ordinance 137/2000 on preventing and sanctioning all forms of discrimination, as amended and supplemented, republished

6.17. ... Board of Directors notes that the claimant has submitted his views in writing on the petition and proof of his defenses depuns Press Conference Transcript extract in which allegations were made subject to the petition and audio recording compact disc its hard .... 8.7. In this regard, linking defendant claims, as specified in the complaint expresis verbis petitioner, taken from the newspapers mentioned, the audio recording that includes verbatim statements of the defendant as he made himself in the press conference, the Steering Board Notes that there is identity between the assertions appeared in newspaper articles and statements in the press conference, as recorded and attached to file the petition ... "[333].

[333] See Romani CRISS v. CPT, Case no. 180 of 17.07.2007, para. 6.1 .- 6.14, 6.17, para. 8.7

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The petitioner complained about the termination of labor contract through decision no. 604 of 07.02.2008, due to pregnancy status notified to the employer. Substantive element of this event was the fact that the petitioner had informed the company of her condition of pregnancy, at the same time. The address no. 561 of 07.02.2008 the petitioner notified the company in writing about the condition of pregnancy and attached a copy of the inspection imaging outcome of pregnancy.

In another case resolved by the Board of Directors, case N.M. vs. SCCMO SRL[334] College noted that the petitioner's opinion, the employer fired her after he found about her condition, despite having been raised on grounds of incompetence . Thus, the Board found that petitioner's allegations are likely to retain, at least apparently, a rebuttable presumption of different generic treatment through termination on the grounds of pregnancy status. However, from this point of view, must be established that pregnancy status was an obiter dictum role in the decision to terminate the contract of employment.

Bearing in mind the same considerations on the interpretation of the principle of reverse burden of proof in Case Romani Criss v. CPT, the College Board, in Case N.M. v. SCCMO SRL, the sample admitted testimonial statements, documents and questioning the parties to clarify the circumstances and the decision factor its trigger. The declarations filed in support of the complaint, the Board noted that the witness took a taxi from M. Street in the street PS, later moving to the petitioner at the clinic M., around 12, but on 08.02. From the interrogation of the petitioner received, in response to question. 4 (acknowledge that you have never presented the company or directly, or by any other means, a letter of notice that you are pregnant?) petitioner states that she not recognizes this fact. Also, by answering the question. 6 (it is true that you brought to the employer, only at the request of the proceedings, 561/07.02.2008 fictitious address that you are pregnant?) petitioner states that is not true. On the other hand, questioning given to the applicant, to question. 3 (recognizing that on 07.02.2008 I was present at the service to carry out my normal working day between 08.20-17.00 hours?) It recognizes that the petitioner was present at the service without interruption throughout the day 02/07/2008 between the hours of 8.30-17.00, so could not perform the medical examination only after hours and could not record the address of the employer about pregnancy status Compared to this latter point, the College noted that the petitioner has stated in her complaint no. 3008 of 20.02.2008 that address no. 561 of 07.02.2008 attached to imaging outcome of pregnancy. Thus, the evidence in the record, the Board found that the petitioner has submitted a document containing the initials and no specialist doctor. 4190 recording of 07.02.2008, with written explanations in development task 8 weeks and 3 days "but not the copy of that document imaging outcome of pregnancy. To clarify this crucial point deducted in determining the objective circumstances

[334] See National Council for Combating Discrimination Case v. NM SCCMO LLC, Case no. 440 of 30.07.2008

resolution, given the explicit details regarding the annexation of the petitioner to address the company's notice and copy of medical imaging results issued by the clinic that carried out the investigation, the College Board admitted (note the subsequent application to the applicant) and requested the petitioner to the file copy in this case. In relation to this request by letter Ref. 8382 of 12.06.2008, the petitioner informed the Board that it had no control imaging results issued on 07.02.2008, it is clear that medical records to monitor the pregnancy, but it can not find any doctor and not may indicate the reason why this document is missing. Following investigations ordered at the Medical Center and the Center specified by the addresses written in 23.07.2008 and 28.07.2008, filed, it appeared that the petitioner has been consulted by Dr. BL in 2008 on 01.02. 2008, 02/12/2008, 29/02/2008, 14/03/2008, 11/04/2008, 15/05/2008, 18/06/2008 and 07/23/2008.All consultations developments were related to pregnancy and expressly stated that the petitioner was not consulted on 02/07/2008. Dr BL recommended ultrasound examination on 01.02.2008 and the petitioner presented to the Cabinet of ultrasound, on 07.02.2008, in turn (14-20) to another doctor here, Dr. VM, making examination is approximately between 18.30-19.00 hours (nn evening)[335].

To assess whether treatment of the state based on a prohibited criterion, the Steering Board has made some key nuances deducted case resolution. Correspondingly paragraphs issues presented above and in relation to the definition of discrimination, the College Board said that the situation of people treated differently in this case treatment is due to their belonging to one of the categories (nn criteria) provided in the text of the law, art. 2 of Ordinance 137/2000, republished. Thus, the Steering Board should consider whether the different treatment was induced due to a criterion set by article 2, paragraph 1, that race, nationality, ethnicity, language, religion, social category, sex, sexual orientation, age, disability, noncontagious chronic disease, HIV infection, belonging to a disadvantaged category, which would have been decisive in the application of mobile treatment. Board of Directors finds that Article 2 paragraph 1 does not contain an exhaustive list of criteria for discrimination because the criteria listed expresis verbis laws are supplemented with the phrase "or any other criterion," which actually offers the possibility of arrest and other unspecified criteria law, committing an act of discrimination. But any of these criteria to the situation of petitioner's situational / petitioner generally must have been decisive in the treatment different motive in this case. The mobile condition as decisive criterion must be interpreted as an element there that is materialized and because the act or fact which is discriminatory, and, where absence would not lead to discrimination commission. The nature of discrimination, in terms of its constitution, as follows from the fact that the difference in treatment is determined by the existence of a criterion, which assumes a causal connection betweenthe different treatment induced criterion prohibited by law. From this point of view, considering the evidence submitted to it relative to the art. Paragraph 6 of Ordinance No. 20. 137/2000,

[335] See CNCD, Decision no. 440 from 30.07.2008, parag. 6.29-6.32. .

republished, the College Board is of the opinion that the petitioner's claims can not be corroborated with other evidence of the kind alleged in the petition, on termination of employment on 07.02.2008 due to the state of pregnancy to society in the same date 02/07/2008. College Board is of the opinion that the initial presumption arising from the facts complained of, as formulated, is rebutted by the totality of the evidence given to the file, which does not allow a causal relationship between treatment-induced and the criterion cited by the petitioner.

From the very arguments of the parties, that on 07.02.2008 the petitioner was at work, where he worked during the workday. Although apparently attached document address notice to the state of pregnancy, signed by the practitioner and registered in 02/07/2008 nr.4190 could induce the presumption that the petitioner has met this time to pregnancy and communicated to society, this does not corroborate the allegations that petitioner's earlier medical consultation did not occur during the service program from 07.02.2008 and communicated such as outside office hours. This follows unambiguously from the response of 28.07.2008 Medical Center stating that the petitioner was not consulted on 07.02.2008 by Dr. BL Indeed, the petitioner went to a consultation, but the Office of the ultrasound Dr. VC, on 07.02.2008, but in turn (14-20), the examination is accomplished at about 18.30-19.00. Also, a witness statement for the record relates to medical examination dated 02/08/2008 after 02/07/2008. However, no decision. 604 of 07.02.2008 was sent by mail, as reflected in the acknowledgment copy of the record, with nr.11965 of 02/07/2008.

Thus, the College Board was of the opinion that the issue can not be held liable evidence to show that the state of pregnancy was found in an obiter dictum decisive causal link with the termination of employment within the meaning of behaviors considered discriminatory under Art. 2 of Ordinance no. 137/2000, republished. Certainly, issues concerning the legality of the decision to stop incidents of labor relations, and conflicting claims about the conditions and justification for termination of employment contract law, courts are competent in the field of employment law. Besides, the petitioner has addressed this Court, to resolve pending cases[336].

[336] See CNCD, Decision no. 440 from 30.07.2008, parag. 6.33-6.38

5.1. Organizations for promote equal treatment in racial Directive and in national context

Member States designate an organization or more to promote equal treatment of all persons without discrimination based on race or ethnic origin. These organizations may form part of agencies at national level to protect human rights or the rights of persons

(2) Member States must ensure that the competences of these organizations include:

- providing independent assistance to victims of discrimination in pursuing their complaints discrimination, without prejudice to the right of victims and of associations, organizations and other legal entities referred to in Article 7 (2)

- conducting independent surveys concerning discrimination;

- publishing independent reports and making recommendations on any issue relating to such discrimination,

Directive 2000/43/CE Art. 13

Nationalnal Council for Combating Discrimination is discrimination in state authority, independent ... under parliamentary control, guaranteeing the observance and application of the principle of non Council operates independently, without this being hindered or influenced by other institutions or public authorities the Council is responsible for implementation and enforcement of the law in its field of activity Council exercises its powers in the following areas:

a) the prevention of discrimination,

b) mediation acts of discrimination,

c) investigating, finding and punishing acts of discrimination,

d) monitor cases of discrimination,

e) assistance of specialites

The Council exercises its professional referral powers of a natural or legal persons or to victims of discrimination.

National Council for Combating Discrimination

National Council for Combating Discrimination is a quasi-judicial body, to promote equal treatment within the meaning of the Directive 2000/43/EC. NCCD is a **jurisdiction** exercised by "**administrative jurisdiction**" implies a special procedure, **administrative and judicial**. This is based on the **principle of independence** of the body that issued the document to the parties of a dispute with the adversarial principle and ensure those rights. Act of settling a conflict correlative provisions of GO no. 137/2000, republished, issued by an administrative authority is vested by an **organic law**, with special administrative

powers of jurisdiction (NCCD) and the act per se, is likely to be contested in the general administrative courts, as courts censorship [337].

These issues are stated by art. 16 (independent body issuing the act), Art. 20 (special procedure), Art. 20 paragraph 6 (adversarial principle and the right of defense), Art. 20 Para 7 (**mandatory grounds act),** Art. Alin.9 20 (procedure for appeals before the **administrative court)** of Ordinance no. 137/2000, as amended and supplemented, republished under Law no. 324/2006 (organic law). **Administrative and judicial** character of the measures adopted by the Board of Directors of the NCCD, the entry into force of Law no. 324/2006, has been repeatedly held by **the administrative courts**[338].

Constitutional Court was asked to rule on the constitutionality of the statute several times NCCD. For the first time, the question of independence was raised from the perspective representation of an extraordinary court, contrary to the Constitution, the failure to meet the guarantees necessary for a fair trial and impartial throughout the proceedings, having regard to subordination to the Parliament. Subsequently, to raise the question of independence in terms of establishing legislative procedures NCCD and functioning, in terms of status and budget.

Through Decision no. 1.096 from 15 October 2008[339], The Constitutional Court rejected the plea of unconstitutionality raised, holding that, by regulating the initial GO no. 137/2000, National Council for Combating Discrimination has been designed as a specialized body of central public administration in Government. **But that legislation has raised** the question whether any political pressure on Council to **affect the neutrality and autonomy** in relations with the Government and its subordinate state government, on the occasion of fighting discrimination. For these reasons ... GO no. 137/2000 was completed, providing that "in exercising his duties, the National Council for Combating Discrimination operate independently, without thereby be hindered or influenced by other institutions or public authorities." Subsequently, in order to ensure **real autonomy** of the Council, through amendments to Ordinance no. Law No. 137/2000. 324/2006, the **organ was placed under the control of Parliament** is limited to presenting an annual report on the work of the Council under powers conferred by the Ordinance no. 137/2000. Therefore, **the Council exercises its functions independently, free from any influence by any institutions or public authorities**, in compliance with art. 1 para. (4) Basic Law which enshrines the principle of separation and balance of powers within the constitutional democracy.

[337] See Gergely D., 2009, the constitutional control of the Independence of the National Council for Combating Discrimination and compliance with the acquis communautaire and European Law, New Human Rights Review, no. 3 / 2009, Editura CH Beck.
[338] See Civil Judgement no. 2799/08.11.2007 the Court of Appeal, Civil Decision no. 1960 of 15.05.2008 of the High Court of Cassation and Justice and others..
[339] See Constitutional Court Decision no. 1096 of 15 October 2008 published in Official Gazette no. 795 of 27

Also, the Court noted: "The fact that in resolving cases of discrimination, members of the College Board, which the inspectors have the status of penalties for contraventions established by decree and in order to find the truth, they carried out a research activity is **not capable of influencing the independent nature of the business college of the parties involved**".

The Constitutional Court found that under the constitutional control subject, the National Council for Combating Discrimination **is an administrative body with judicial powers, which enjoys the necessary independence of judicial and administrative performance of the constitutional provisions** contained in Article respects. 124 on justice and art. 126 par. (5), which prohibits the establishment of extraordinary courts and the constitutional provisions contained in art. 21 para. (4)[340].

Similarly**, by Decision no. 444 2009**[341], from 31 March, the **Constitutional Court** again rejected the objection and noted that in this case, **the National Council for Combating Discrimination** has been placed under the control of Parliament, is an administrative body having jurisdiction. "Consequently, there are constitutional provisions of art. 23 para. (A) and (2) and art. 30 of Ordinance no. 137/2000, **National Council for Combating Discrimination** is an autonomous public authority under the control of Parliament and not Government. In this respect is the Constitutional Court **Decision no. 1096/2008**".

[340] See Constitutional Court Decision no. 1096 of 15 October 2008 published in Official Gazette no. 795 of 27 November 2008.
[341] See Constitutional Court Decision no. 444 of 31 March 2009 published in Official Gazette no. 331 of 19 May 2009.

6.1. Right to health protection and special and specific laws prohibiting discrimination in the medical profession

A.Constitutional Provisions

The right to health care is a fundamental right enshrined in Article 34 of the Constitution.

The text of the constitutional legal principle in picking coordinates the International Covenant on social, economic and cultural (social security Article 9 and Article 12 on right to the best physical and mental health).

Article 34 establishes a comprehensive and complex law, right to health care.

„(1) The right to health protection is guaranteed.

(2) The State shall take measures to ensure hygiene and public health.

(3) organization of health care and social security system for sickness, accidents, maternity and rehabilitation, control the exercise of medical professions and paramedical activities, as well as other measures to protect the physical and mental health be established by law.”.

This right takes the human condition as the current requirements of life, its content providing citizen to preserve and develop physical and mental qualities that enable a real and effective participation in political, economic, social and cultural.[342]

This right implies obligations and its efforts to reduce newborn mortality and infant mortality, healthy child development, improving environmental hygiene, disease prevention and tratametnul epidemic, endemic, occupational and other, creating conditions to ensure the health and aid in case of sickness, etc.[343]

The right to health care should be viewed in light of the state's obligations in terms of organizing health care, health insurance system or health protection measures. The principle of equality and non-discrimination is highly relevant to the way in which it provides medical services, health care, health insurance system or health protection.

For example, in connection with the obligation to fund public health contributiveness was argued that it would violate the principle of equality, the right to physical and mental integrity and the right to health protection, inter alia, by establishing differentiated contributions based on income achieved, although same package of health services is allocated to policyholders.

[342] See Muraru I. Tanasescu, 2003, Constitutional Law and Political Institutions, Vol, Eleventh Edition, Publishing All Beck, Bucharest

[343] See M. Constantinescu, A. Lilac, Muraru I. Tanasescu, 2004, the revised Constitution, comments and explanations, Editura All Beck, Bucharest.

Romania's Constitutional Court ruled that[344]:

„Compulsory insurance and contribution to social health insurance system must be considered in connection with the principle of solidarity. Thus, due to the solidarity of those who contribute, the system can achieve its primary objective, which is to provide a minimum health care for the population, including those categories of persons who are unable to contribute to the establishment of health insurance funds . These provisions of the law is actually an expression of constitutional provisions governing health care and those who devote the state's obligation to provide social protection to citizens.".

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„Principle of fair settlement of the tax burden to require that contributions be made in the same way by all taxpayers, the exclusion of any privilege or discrimination, so that equal pay contribution is the same. The same principle means that putting the tax burden but take into account taxpayers' ability to pay, namely the settlement of tax liabilities to take into account the need to protect disadvantaged social categories, taking into account the elements that characterize the situation of their individual and social tasks".

The **Constitutional Court** also held [345]:

„Art. 34 of the Constitution enshrines the right complex - right to health care - ambivalent, with two components, one substantive and one procedural. ... According to article 34 par. (3) of the Constitution, organizing medical assistance and social insurance system established by law, which means that the legislature is entitled to impose rules for creating, maintaining and developing a system of social insurance principles constitutional. The system implemented by the Romanian legislature is an expression of the principles of the Constitution in Article 1. (3) on the social character of the State of Romania and article 4. (A) the solidarity of its citizens, and the procedural side of the right to health, in terms of mandatory payment of contributions to the health insurance system is organized in accordance with the constitution. Thus, the Court holds that the right person to have set itself to article 26 par. (2) of the Constitution in respect of health insurance must be construed in accordance with the constitutional principles set forth above, since the individual is not entitled to have itself absolutely, but on condition of not violating the rights and freedoms of others, in other words, the person concerned, by its conduct, nor can it affect the procedural side of his right to protection of health or substantial side of this right enjoyed by other individuals".

[344] See Decision nr.907 of 6 July 2010 on the unconstitutionality of some provisions of Law 95/2006 on healthcare reform, published in Official Gazette No. 520 of 27.07.2010
[345] See nr.1.252 Decision of 7 October 2010 on the plea of unconstitutionality aunor provisions of Law 95/2006 on healthcare reform, published in the Official Gazette of 15.11.

B. Provisions in the law on preventing and sanctioning discrimination

O.G. . no. 137/2000, republished in Chapter I of principles and definitions, paragraph 2 Art.1. point IV: **guaranteeing the principle of equality has the right to health**:	Art. 1 **paragraph 2) "principle of equality among citizens, exclusion and discrimination are guaranteed privileges particularly in exercise of the following rights:**: (...) **(iv) the right to health, medical care, social security and social services".**
Sp ecific provisions of GO no. 137/2000 republished acess to prohibit discrimination in health care and the sanctioning this act (Special Provisions Chapter II, Section).	**Art. 10:** „**"It is Under the ordinance, if the act does not fall under criminal law, discrimination against an individual, a group of people because of their affiliation or persons administering the legal person to a particular race, nationality , religion, social category or to a disadvantaged category, because of beliefs, sex or sexual orientation in the case by ... b) refusing access to an individual or group of persons to public health services - choosing a family doctor, nurse, - health insurance, emergency or other health services".**
Identification of offenses specified in Article 10 of Ordinance no. 137/2000 is republished by: **National Council for Combating Discrimination.**	**Art. 26 (1)** The contraventions referred to in art. 10 is punishable by a fine of 400 lei to 4,000 lei, if perpetrated against an individual, namely a fine of 600 RON to 8,000 RON, if perpetrated against a group of persons or a community.".

C. Provisions in the Act on Equality between Women and Men

Law nr. 202/2002[346] governing measures to promote equal opportunities and treatment between women and men, to eliminate all forms of discrimination based on gender in all spheres of public life in Romania.

Law nr. 202/2002 **prohibits any discrimination in access to all levels of care**.

Violations of law no. 202/2002 is **sanctioning**.

The finding of discrimination on grounds of sex in acceesul to health services is made by: **National Council for Combating Discrimination**:

Art. 17: It is forbidden any form of discrimination on grounds of sex in regard to women and men at all evels of health care and disease prevention programs and health promotion. "

Art 18: "The county health departments and Bucharest are responsible for compliance with measures of equal opportunity and treatment between women and men in health, in terms of access to health services and their quality and health workplace.

"Article 46 paragraph 1:" It is a contravention and is punishable by a fine of 1,500 RON to 15,000 RON breach (...)

Article 46 paragraph 3:" Finding and punishing offenses under ... law made by: (...) b) National Council for Combating Discrimination, in case of contravention in breach of Art. 6. (2) - (4) and art. 15-23".

[346] Law 202/2002 was approved with amendments by Law no. 507/2006, published in the Official Gazette of Romania, Part I, no. 10 of 8 January 2007, giving the texts a new numerotare.Legea no. 202/2002 was republished in the Official Gazette of Romania, Part I, no. 135 of 14 February 2005 and has subsequently been amended by Lega no. 340/2006, published in the Official Gazette of Romania, Part I, no. 642 of 25 July 2006. Republished with changes in the Official Gazette no. 150 of March 1, 2007

D. Specific provisions in the rules of the medical profession

Law no. 95 of 14 April 2006 regulates health reform [347].

According to art. 374 of the Act, the medical profession is mainly aimed at providing health by preventing disease, promoting, maintaining and recovering individual and community health. To achieve this end, throughout the occupation, **the doctor must demonstrate willingness, honesty, devotion, loyalty and respect for human beings**.

Provision of medical services without discrimination by the family **doctor is regulated in art. 62 of the law**.

Donations and sponsorships are prohibited which discriminate in providing medical services, according to art. 93 of the law.

Title IV of the law governing emergency **medical system and first aid qualified, without discrimination, in art. 98 of the law.**

Decisions will be taken care respecarea discrimination between patients portivit art. 373 of the law.

According to Article 61 paragraph 2: "Family physicians provide health care access for its patients, the most appropriate skill levels to their needs."

Article 62: "Family physicians care for people in the family context and that the families in the community without discrimination."

Article 93, paragraph 2: "The donations and sponsorships to public emergency services can not be made to obtain privileges that lead to discrimination in the provision of emergency assistance, such as providing emergency medical assistance or first aid qualified preferential donor, spn0sor or other persons. "

Article 98 paragraph 7: "First aid qualified emergency medical assistance be granted without discrimination related to, but not limited to, income, gender, age, ethnicity, religion, nationality or political affiliation, whether the patient has or not the quality of care provided. "

Article 374, paragraph 3: "The decisions and medical decisions will be made taking into consideration ... discrimination between patients ...".

[347] Law no. 95 of 14 April 2006 published in Official Gazette no. 372 of 28 April 2006, with amendments and completions

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Title XV of the law governing the liability of medical personnel. Chapter IV concerns the obligation to ensure care and explicitly **prohibits discrimination in art. 652 para 2 of the Act**.

Par.2 Art 652: "The doctor, dentist, nurse / midwife can not refuse to provide medical / health care to ethnic, religious and sexual orientation or other grounds of discrimination prohibited by law."

Disciplinary responsibility of the physician is referred to in art. 442 of Law no. 95/2006. Disciplinary liability does not exclude criminal or civil offenses.

Article 442 (1) doctor for disciplinary action for failure to meet laws and regulations of the medical profession, the Code of medical ethics and rules of good professional practice, the Staff College in Romania, for non-binding decisions adopted by the governing bodies of the College of Physicians in Romania and for any acts committed in connection with the profession, which are likely to damage the honor and prestige of the profession or the College of Physicians in Romania.

(2) The disciplinary liability of members of the College of Physicians in Romania, according to this Law shall not exclude criminal liability or civil offenses, according to law.

Code of Medical Ethics

Medical ethics code is adopted by the College of Physicians in Romania and published in Official Gazette no. 418 of 18 May 2005.

Article 3 of the Statute introduces the obligation to defend the doctor of physical and mental health, without discrimination**.**

Article 3 "Human health is the ultimate goal of medical care. The doctors' obligation to protect the physical and mental health of man, to ease the suffering while respecting human life and dignity without discrimination based on age, sex, race, ethnicity, religion, nationality, social status, political ideology or Another reason, in peacetime and in wartime. Respect due to the human person does not cease even after her death.

Law on patient rights

Law no. 46 from 21 January 2003 published in Official Gazette no. 51 of 29 January 2003 governing the rights of the patient.

By law, the patient is healthy or sick person means that use of health services and by health care means medical services, community services and services related to medical care.

Patient Rights Act defines and prohibits **discrimination in art. 1, Art. 3 and art. 27**

The rules for the application of law no. 46/2003 was approved by Order no. 356/2004 of the Ministry of Health and published in the Official Gazette. 356 from 22 April 2004. Provide the details of the law expressly prohibiting discrimination.

Law 487/2002 on the protection of individuals with mental health and mental disorders.

Act **prohibits discrimination based on mental disorder** in the art. 35 para 3.

Article 1 lit. b: "'discrimination' means the distinction between persons in similar situations based on race, sex, age, ethnicity, national or social origin, religion, political options or personal dislike."

Article 3: "The patient has the right to be respected as human beings without any discrimination."

Article 27: "The patient has the right to information, education and services necessary to develop a normal sex life and reproductive health, without discrimination."

Article 2 paragraph 1 and 2: Units must ensure equal access of patients to medical care without discrimination based on race, sex, age, ethnicity, national origin, religion, political option or personal dislike. Each unit must include in its rules of organization and operation of provisions relating to staff on duty to respect patients' rights as human persons

Article 35: "(1) Any person with mental disorder has the right to the best medical services and care available mental health.

(2) Any person suffering from mental disorders or being treated as such must be treated with humanity and respect for human dignity and to be protected against all forms of economic exploitation, sexual or otherwise against the harmful and degrading treatment.

Part Three: History and traditions of Roma

Chapter I Foundations of Roma identity

1.1. Rromanipen: a cultural Roma people model

Rromanipen is a system of rules that are centralized around the family. Fundamental principles of everyday life of the Roma are:

Roma life principles are reflected in the Hindu faith. If you encounter the opposition of Hindu culture and Ashuci Shuci (pure-impure), the Roma life is structured around the concept of pure (UJO), as opposed to foul (MAHRIME) [1].

PHRALIPE: brotherhood, support
PAKIV: respect, trust, faith, purity
BAXT: luck, fortune

This thinking has as the main mark, human body . Top and to the waist is considered pure (ujo) and the bottom, from the waist down, is considered impure (mahrime). From here you split a large number of rules relating to the human body and hygiene ritual. Pure concept involves two dimensions: a physical and a spiritual, reflecting the purity of bodily purity of mind.

The head, a place of good fortune as its roof-hat, are considered pure. A woman is not allowed "to pass over hat a man, because it will contaminate. Clothing should consist of two parts corresponding to the two parts of the human body: pure and impure. In the whole of the opposition between pure and impure are finding rules of social behavior that are still present in traditional communities.

Mentioned examples show that in the traditional Roma culture impure behavior of physical insight can bring Bibaxt (bad luck,), which is extremely serious for the whole community [2].

Old woman enjoys of a great respect, being called phuri daj - old mother.

Woman does not pass in front of a man, a woman's hair is clinch and covered by diklo, does not wash in front of others, even in front of her husband.

The man goes in the morning, first to water lest she come forward because they would risk that water may appear to be polluted.

Daj phuri's wisdom can resolve a serious conflict in a very efficient way. Old woman involved in judgments having not only a spectator role, but the regulator

[1] Lucian Cherata, Indian Philosophy, History and Culture in Roma culture, p. 90, Ed AIUS Printed Craiova, 2010.
2 Delia Grigore, Anthropology and hairy Course: Introduction to the study of traditional culture elements of contemporary identity, Credis 2001
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of the trial - in situations where the risk is deemed an injustice, it can raise the skirt or simulating this gesture as a threat of contamination. If this happens, however, then the foul is part of the community are considered impure contempt.

It is customary to use the word trivial formulas aimed impure elements of the human body and must not regard it as a violation of the laws of purity. In fact expressed good faith, love, trust, honesty guarantee[3].

In the past, an important role in the regulation of human relationships have it the elders, consisting of elderly and wise Roma. Their primary role was to do justice in the case of major conflicts. They formed **Kriss Romani.**

Judgement is taken by consensus, justice done having a compensatory character . Reconciliation is manifested through a dinner of reconciliation. This way of resolving conflicts is one of the few common traditions and worship reflecting traditional Roma had for elderly people.

The way to do justice (Kriss Rromani) by Roma krisinitori or judges - respected men of great honor, there are in traditional Roma today,too.

To maintain a specific cultural model of civilization requires a religion that can determine the community memory and amount of representation.

Roma attitude toward this opposition is a noting one. That is why prayers are with the way *Del and baro A!, Devla, na mai mundar ma!- God does not kill me*! or *Te del tut baht o Del! - Let God gives you good luck!.*

Roma believe in a principle of good - DEL-and principle of evil - BENG - as a reflection of the opposition between pur and impure.

In relationship with God, especially Roma venerates the Virgin Mary. The most important festival of Roma coppersmiths is 8th September, the birth of St. Mary, full of great pilgrimage.[4] Special Faith in Virgin Mary can also have a further explanation: putting her relationship with mother goddess worshiped in pre-Aryans in India.[5] Moreover, in the same sacred spirit of mother's deification , Roma have a special reverence for the sacred, holy women greater than holy sacred men, shown and two other large pilgrimages: the Roma of Western Europe at St Sara (France - Camargue 24 -25 May) and the Orthodox Roma in Romania (but not exclusively Orthodox, and not only in Romania) to the relics of St. Paraschieva (Iasi, 14 October).

[3] Ibidem
[4] Delia Grigore, Petre Petca, Mariana Sandu, *History and traditions of the Roma minority*, Bucharest, Sigma
[5] Ibidem, Lucian Cherata, pp.207-215

Preserving the purity of the community is the most important factor of community control and protection. In this sense, the bride's virginity is worth a sacrament, being the basis for a moral life.

An important proof of faith in the creative and destructive force of the spoken word is Roma's faith in the oath - SOLAX-and curse - Arman. Keep faith in fate, gods who decide the fate of born children and prayers to them that stands for health, happiness and luck of the baby.

It is kept the custom of the so-called bride's purchase. "Bride price" includes important characteristics that reflect girl's beauty, diligence, modesty and honesty , who can become a guarantee for the nation in terms of family harmony, family and thus sustainability of the nation. Mistake to translate into other languages is evident in this respect.[6]

Girl's honesty is celebrated on the pakiv party (honor, honesty, pride). If the bride does not prove *"pakivali"* then called *"dosali"* - wrong. The result is that the wedding is off and the groom's family asks for damages brought shame.

In the traditional Roma language it is used the term "*pokinel*" - to pay and not "*bikinel*" - to sell. So pokinel makes sense connotative term, meaning to value, to assess the girl and her family who respected purity.

It is very important for the happiness and fertility of young family to be removed *bibaxt's (bad luck, misfortune).* This is done through a set of magical practices: an oath of allegiance, breaking a pot with water, etc. The purpose of marriage is procreation, in a traditional Roma family being a real cult for the child.

Traditional Roma family in fact reflects the community through socio-cultural relations. The whole philosophy of life is related to the Roma traditional opposition between pur and impure, as an absolute balance and harmony of the family order, in fact the community[7].

1.2. The family, fundamental value of Roma culture

" In the ethnic diversity on earth is the beauty of mankind, each of which contributes to world cultural heritage with its

[6] Delia Grigore Anthropology and folklore course: introduction to the study of traditional culture elements of contemporary identity, Credis 2001
[7] Idem

specifics. History, traditions and culture of each ethnic group constitutes a major portion of universality" [8].

History of the Roma people is characterized by survival over the centuries, some specific features and cultural features Defining, in terms of mentality toward the Roma is a stereotype that can lead to stigmatization of Roma identity. In the context of lack of knowledge of Roma cultural and spiritual values, blocks of language or thinking are the only source of knowledge that binds the social environment surrounding Roma. Changing attitudes is a lengthy process in this education awareness, understanding and appreciation of the Roma minority, should be generalized.

In the Roma culture, family has a fundamental value, in which is manifested the educational structure to ensure solidarity and social security and protection of the individual.

Traditional marriage is made only by consensus of two families in the nation (it is traditional Roma belonging to a race and socio-occupational criterion - coppersmiths, bear leaders, tin men, etc..). Marriage establishes kinship as a category of social and cultural obligations ritual order, economic and in spirit of brotherhood and solidarity in general, all life is an alliance between two families, affinity relationship is as strong as that of blood. Members of both families have an obligation to support one another in any case do not to refuse anything to one another and to grant full trust.

In most cases, money is used to ensure the soundness and sustainability of marriage. In the new family, "bride price" is recognition of the girl's value and her material contribution to the family, after marriage, protection of future bride in the husband's family, but also a guarantor of mutual respect and reward of the boy's parents for girl's parents, according to representation, as the traditional gold, not cash.

So- called "bride price", the amount of money paid by the groom's family to girl's family, is actually a kind of payment for future children, which will belong to husband's family and that he must take over in return for symbolic values, thus reinforcing their reputation. This payment symbolizes the most important value of Roma marriage : girl's virginity.

As in any traditional culture,the fundamental purpose of the family is birth and raising children. That may explain the exceptional role of Roma woman in the family as a symbol of spiritual and bodily purity. Thus, the young woman in

[8] Delia Grigore, Rromanipen's (Romany dharma) and mystical family.Traditional family in Roma communities from the Romanian territory, the paper printed with the support of the Council of Europe.

the house of parents in laws must obey the head of household, to give respect and honor parens in laws, to raise and educate her children in the spirit of traditional rules.

The basic concepts of traditional Roma family are those of pure and impure. Honor rules in the traditional family prohibit a woman to go through before a man but, in change of this, a woman with child in arms, considered to be purified by the child, may move at any time in front of the men. Purity standards can be categorized by the following criteria: bodily purity, non-interference of blood, family and community responsibility. Violations of these customary laws means murder, outrage to the community and family, even excluding the following finnd concerned in the community, even worse than death. Conservation of these rules, becomes a controlling customary factor for the protection of community cohesion.

Interesting that the same thing happens with orphans that are immediately adopted by the community, believed to be brothers. We can say that in a traditional family, children and old people are true saints of the family.

In traditional Roma culture is a cult for the elderly. Never a traditional family will not give elders to the asylum, their exclusion would be their spiritual killing - thus a mortal sin.

The special importance of child in the community is reflected in many rites of protection surrounding the birth, baptism, and the child's whole life. We can note: Security Baier, a knife or scissors under the pillow to be protected from evil spirits, incantations against the evil eye etc.

In traditional Roma culture, the notion of race is not about their relationship, but the Roma group by some common elements: job traditional social organization, customs, family, holiday calendar, etc.

The Roma child’s raditional education is based on the formation of Roma children in the spirit of brotherhood, mutual aid and responsibility for others. Girls are trained to handle the household, the boys learn crafts. Initiative, children’s ability to handle at a young age is valued within the family and the Roma community. Consider the equal of adults, able to understand what they are told, children are at the beginning of their existence, some incentives similar to those intended for their parents.

1.3. Roma classification in traditional Roma culture

Classification of Roma people it is exposed to risks of interpretation. Concerns in this regard have been to many Romanian researchers: Mihail

Kogalniceanu, Octav Lecca, CP Şerboianu, George Miller, John Chelcea who tried to make a clear picture of the Roma in the Romanian space. [9].

Based on the classification criteria proposed by Ion Chelcea, Professor Gheorghe Sarau and Romanian sociologist Nicolae Gheorghe made a classification by seven criteria:

Historico-legal criterion. It covers the period of slavery, a period that lasted for a period of almost five centuries. During the slavery period distinguish following types of bondage of slaves, which at the time, could be called nations Roma slaves of the state or ruler; Roma slaves of churches or monasteries, boyars Roma slaves, who were to become more numerous.

Stability criterion. It refers to the lifestyle of the Roma, nomad or sedentary. If in the period of slavery, in the eighteenth century and nineteenth century we see a process of sedentary Roma, after emancipation, in the state of confusion occurred many former slaves returned to their nomadic lifestyle.

Occupational criterion. Representative for categorized Roma families according to practiced craft. In the period between the two wars C. P. Şerboianu presented a range of occupations of Roma, resulting the existence of many of the Roma families, but the presentation was not used criteria based on organic, yet lacking in logic.

Aculture criterion. Refers to cultural and linguistic influences that Roma have adopted from the majority populations that were in contact, or near where they aculturated. If the Romanian and Moldovan Land, Roma have been formed, in addition to the preponderant majority Romanian population, in this sense being influenced or aculturated, in Transylvania situation was quite different, since, besides the majority Romanian population, there were two communities many - Hungarian and Saxon / Swabian - which led to the nuances of a language especially. In Transylvania, talk the three branches of the Romani language, in the vernacular: Hungarian-Romani, Saxon-romani and Wallach romani. Obviously, extrapolating and other minority communities in Romania, can be identified and Roma-Serbian, Roma- Ukrainians, Roma- Turkish (Mohammedans). Aculture phenomenon sometimes takes a conjectural character, even anecdotal - Roma celebrated Easter on all Catholic and Orthodox Easter.

Historical and geographical criteria. After the historic province in which they live, the Roma can be called: regăţeni,moldoveni ardeleni, bănăţeni, olteni, dobrogeni.

Conscience of the nation membership criterion based on kinship. The criterion "blood" Roma groups in nations that are called by the name of an ancestor: *Gaborii, Ioneştii, Modoranii, Danceştii,* Pituleştii etc.

[9] Sarau Gheorghe*, Roma people*. Foray into history and their language, p. 74-89, Ed Sigma, Bucharest, 2008

Socio-linguistic criteria. From the linguistic perspective the main families of Roma in Romania are: vătraşii, căldărarii, ursarii, spoitorii.

Vătraşii Roma come from the nomadic Roma, who were subjected sedentarisation and assimilation. It was a lengthy process and found by a promoter of the emancipation of Roma in the nineteenth century, Mihail Kogalniceanu, which in 1837 in "Welfare" show that "in Wallachia and Moldova are many Roma people who not speak their native language." *Vătraşii Roma are those who have lost their identity of language*.

Coppersmiths Roma - have a nomadic lifestyle, known as very good craftsmen and people who carry specific cultural Roma values . In coppersmiths' language are kept many Greek words and less Turkish influence, which leads to the idea that they have cohabited with more time with the Greek population than the Turkish.

Ursari Roma are certified shortly after the certification of Mount Athos. Practicing of ursărit beyond simple circus stage. Bear, totemic ancestor was considered a symbol of power and fertility, htonian animal with multiple virtues. Thus act as charm - the house and land protection, initiatory of fertilization , thaumaturge - bear footprint cure for iele(a kind of mythological fairies) the scare, the evil eye, the spell, a wedding-related and other diseases.

1.4. Traditional Roma occupations

One of the traditional Roma crafts is processing of precious metals, gold and silver.

Blacksmithing specialization include trades such as blacksmithing, farriery, locksmith, caretery, hardware, tinware. Specialists in this area are considered Gabori Roma who live in Transylvania [10].

Processing of copper, is a representative craft for Roma coppersmiths. The most important technique is a gypsy coppercraft, old process, sent in the family and kept secret, including great mastery of copper's knocking. Tinning copper vessels is a missing job today, which dealt Tinsmiths Roma.

Silversmith make jewelry and silverware manufactured harness parts, clothing accessories (buttons, knobs), household items (cutlery, bowls, trays, salt shakers gold, silver or gold cups) and religious objects(pans, candlesticks, font, candle, crosses). Watermark technique It is noted, the filigree technique, modeling relief technique by hammering and inlay art with precious stones**.**

The most important traditional occupation of the Roma is precious metal processing, gold and silver

In the wood processing, occupation of rudari Roma, have developed a

[10] Ibidem; Gheorghe Sarau, Delia Grigore*, History and tradition*, Save the Children Organisation, p. 36

range of specializations: rudăritul practiced by butnari , who made wooden household items (dishes, cups, rammers to beat machine) and covătari / albieri the people who make whiteys, covets, spoonmade practiced by spoon Roma; fusăritul practised by Fusari, chestmade practiced by lădari specializing in household furniture, the chests, high chests kept cornmeal and other grains.

One of the most popular traditional crafts is Roma musicians

Roma musicians big names list starts with Barbu Lăutaru and his memorable meeting with Franz Liszt and ends, depending on the era in which they lived with Cristache Ciolac, Fanica Luca, Petre Cretu Solcanu, Clejani folk music (created by the Roma musicians big names list starts with Barbu Lăutaru and his memorable meeting with Franz Liszt and ends, depending on the era in which they lived, with Cristache Ciolac, Fanica Luca, Petre Cretu Solcanu, Clejani folk music (created by the famous violoniost of Ialomita, Ion Albesteanu), Grigoras Dinicu, Faramita Lambru. This job is transmitted from generation to generation, is practiced in a group or band. It does not require knowledge of music and musical scores, it is learned. Music is a part of the artistic community events, but may have a ritualistic character. Fiddler music is characterized by a lot of improvisation, spontaneity, rhythm ically rich, melodically varied[11].

I.5. Denomination: why ROMA and not GYPSY

In the dialects of the Roma from different European countries there are words and linguistic structures that are irrelevant to the Roma language they speak in India, but come from the populations with which Roma came into contact during their migration. This language loan is evidence of places have gone through different groups of Roma during their travels.

Current opinions about the Roma have considered three hypotheses: (1) are probably losers joined a group from which they come, (2) have been and continue to be different from the peoples who have lived (3) faced marginalization, stigma and social discrimination. If we examine these views more closely we see that in terms of their origin, hypothesis of Indian origin has many unclear points, as long as its not a conclusively associate the Roma with certain people or certain periods of the ethnicity of India or certain actions which relate to very large periods of time and try pairing with a wide variety of groups.

In studies of Roma origin were made only speculations about the reasons for the Roma tribes to emigrate from central and north-western India. Regarding the sources that were used by researchers, they rarely exist in, common terms

[11] Viorel Cosma, *Fiddlers of yesterday and today*, Ed DU STYLE, 1996, 1996

describing the nations to which they related. These terms have been shown to be, by those who study the history of Roma, as versions of the word "*gypsy*" in each different language, but there is no certainty that refers to a particular ethno-cultural group - as are understood Roma today, and not something else, such as family names or names that inspire local origin or professional specialization.

In many of these texts, primarily the words indicate the existence of ethnic differences, using a word which refers to Gypsies metonymy, such as: "*asinganos" Egyptian, "romnitis", "Saracen," boehmian*". There are descriptions that have been recorded as giving data that lead us towards a unique historic image, but that has nothing to do with ethnic characteristics of the type. These descriptions were made by Roma speak of "*people of darkness", "witches," "Acrobats," "musicians"* etc [12].

Also, it is worth to mention that historical data are used to describe the Roma history always refers to distinct groups, but separated only as regards social behavior. Testimonies were mainly connected with their appearance and did not convey issues related to their culture. In this respect, it is very important to accept the official term to designate this people, ethnonyms ROM.

The first mention of the Roma in Byzantium imposes uses of exonim Athinganos. The approach of imposing the correct term should be borne in mind that in the Romani language, the word "*Gypsy*" does not exist. Almost all researchers agreed that the term *athiganos* comes from medieval Greek (Byzantine) with the meaning "untouchable" or people from a certain caution is recommended. From this term come the names which takes a similar phonetic shape: Cigani - Slovakia Ciganie - Poland *Ciganos* - Portugal *czigányok* - Hungary, *cikáni* - Czech Republic; aţigani then Gypsies - Romanian territory; sigayner - Norway T*siganes* - France *Gypsy* - Russia , *Gypsy* - Bulgaria, *Zigeuner* - Germany *Zingara* - Italy [13].

This term is seen, increasingly, in the context of European openness in recent years by all the Roma in Europe as a pejorative. In some countries, like Germany, use of the word Zigeuner was against the law imposing the term Roma und Sinti. ROM is an old word of the Romany language, always used to describe the Roma ethnicity. The correct term to describe members of this minority is the Roma.

We present the arguments raised by teachers at the Department of Romani Language and Literature at the Faculty of Foreign Languages and

[12] Ibidem, Gheorghe Sarău, *Foray into their history and language*,

13 Gheorghe Sarau, Delia Grigore*, History and tradition*, Save the Children Organisation, p.14

Literatures - University of Bucharest, at the initiative of the Romanian parliament member to impose the state's official documents the term gypsy:

> „There are many scientific, history and lingvistic arguments to support the denomination of "Roma" as correct. Using the term exogenous "Gypsy" at the expense of legitimate ethnonyms "Roma", ever since the Roma's advent on the territory of the Romanian Principaties, does not justify its use and can not be validated as historical argument, knowing that exonim gipsy designate objects law, and not subjects, having regard to the status of slavery, the Roma have been since more than half a millennium. Linguistic, etymological arguments along with those from anthropology of communication, are relevant for ethnonyms "Roma", a term inherited from the old language spoken in India - Prakriti, they having axiom value and therefore, we think it would be useless and unelegant to bring into question with a negative person, malicious, discretionary or insufficiently informed or educated. As we know, the word "gypsy" does not exist in the Romany language and there has never been self-identification in the Romani language with the Roma people, is a deeply pejorative word used by otherness / non-Roma for Roma insult, although, unfortunately, the term wrong and unscientific of "Gypsy" is sometimes assumed by some Roma, particularly by those who do not speak the Romani language, of ignorance, but by some Roma speak Romani language as a form of "captatio benevolentiae" to thank the non Roma speaker. Since the beginning of movement of Roma, Roma associations have consistently asked that the name "Roma" take the place of "Gypsy," considered an insult. On the occasion of the Great Union of Transylvania with the Kingdom of Romania, the Roma in Transylvania understand the particular historical moment that they lived and wanted to take part in it. The Memorandum of the National Assembly of Gypsies in Transylvania, held in Ibaşfalău / Dumbrăveni, Sibiu County, on April 27, 1919, Article II, Section 2, requesting the following: "As citizens and sons of the great Romanian nation, not wanting and unable to be considered as foreign nation in foreign country, as we were considered for centuries, we pray that henceforth, in all Romanian official acts should not be in use for us and our next, namely (nickname) as mockery "gypsy", but that, if not totally wipe out even the official use, to be circumscribed by another name that you find appropriate. " (Prof. dr. Gheorghe Sarau, lect. Univ. Dr. Delia Grigore, Bucharest, 12 December 2010).

In the process of affirmation of identity is important to achieve an institutional reconstruction to regain the dignity of the Roma ethnic identity, the conviction against an absolute right to use the term Roma and not Gypsy with strong negative connotations and also win back the ethnic past memory Roma.

Chapter II Roma origin, language, and certifications in Europe

1.1. Legends and theories on the origin of the Roma people

Prevailing theory on origin of Roma is that they come from India.

The absence of historical sources to shape a safe millennial history has given rise to legends that attempt to explain the history of this nation. Some historians have considered Egyptian, or descendants of the ancient Egyptians, whose wandering and misfortune have been predicted by prophets or that a curse has befallen them as a Gypsy blacksmith made nails necessary of the crucifixion of Jesus Christ.

By the '60s, Donald Kenrick, known as romologist, picked a legend, from a Bulgarian Roma, named Ali Ceauşev coşniţar Roman from the village of Shumen (Bulgaria), about the dispersal of the Roma in three parts of the world before they can be reached the Byzantine Empire[14]. Ali Ceauşev had contacts with other specialists in the field of historiography of Roma as: Chaman Lal from India or the Czech Hüschmannová Milena. Legend picked by Ali Ceauşev has following content:

> *" We had a great emperor, a Roma. He was our prince. It was our padishah. Roma lived then all together in one country, in a good vilayet. Sindh was the name of this vilayet ... It was a clean country (beautiful). There was the happiness and joy. All was well. The name of our king was Maramengro Dev. He had two brothers. Their names were Roman and Singan. All well and good, but it happened a great war. Muslims did it. Soldiers destroyed the Roma country. They scorched the earth. All Roma have fled their country ... The three brothers have worn away the people on the road. Some went into Arabia, Armenia and some others in Byzantium. In those countries became poor "(translation done by Prof. Dr. Gheorghe Sarau, after the text written in Romani)*).

[14] Gheorghe Sarău, Grigore Delia Roma history and tradition, p. 7-8 Material Editor: Save the Children, June 2006, Gheorghe Sarau, Roma. Foray into history and their language, p. 9, Sigma Publishing, 2009. Note: The legend that was published by Donald Kenrick in his The Destiny of Europe's Gypsies, Romany reproduced in Bibaxtale berša. The translation was done by Professor Gheorghe Sarau Doctor of Philology.

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In his *Zingara Dall 'India's Mediterraneo* (1995), Donald Kenrick showed that the first migration of the possible ancestors of today's Roma to the west can be seen in the events of the year 224 AD when the shah of Persia Ardashir conquered North India that has transformed into the colony. Kenrick seen in this historical context a first opportunity to explain migration[15].

In Persia at the beginning of the Middle Ages we identify texts which may serve to attempt to explain reasons and the period of migration of Roma. Arab historian Hamza of Ispahan recounts, in work "A history about the kings of the earth", that the Persian monarch Bahram Gur (the great hunter of rubaiats Omar Khayam) decided that his subjects to work only half day, they should spend the rest of day eating , drinking and listening to music. One day he met a group of subjects who drank wine without listening to music. When he complained that they neglect the music, the group replied that they had tried to hire a musician, but have not been able to find him. Then Persian King asked an Indian monarch to send musicians. "Their descendants are still there," show the Arab chronicler. Legend is found at Abul Kasim Mansur - famous Firdousi - author of epic poem " Sah Name" (Book of Kings), poem in 60,000 verses in that recounts the history of Persia. It is noted that at the request of Bahram Gur Persian monarch, Indian King Shangul offered 10,000 luri. Bahram Gur gave them grain, cattle and donkeys, then sent them to Persia. These ones, in a year, losing everything so they had been banished from the Persian empire. [16] In countries such as Israel, Syria, Egypt, is also using the Persian names of luli or luri to designate people of Indian origin.[17].

As it is shown by D. Kenrick, in the Middle East, luri of nowdays speak a language (language beluchi) which has nothing to do with Romani language, so in any case the legend can not be considered a landmark in explaining the migration process[18]. There are evidence which a number of occasions when people in north and northwest India have been displaced westward to Persia and beyond.[19]

Arab invasion from VII and VIII century [20] which reached the borders of India determined that detachments of inzi soldiers to serve in the Persian army. In the early eighth century Sind region was invaded by the Arab army which led to the displacement of inhabitants inzi in the Arab dominated territories. Arab chronicler Tabari recorded that in 855 when the Byzantine armies attacked Syria, a large

[15] Ibidem, p. 8
[16] Angus Fraser, The Gypsies, p. 1940-1941, Humanitas, Bucharest, 1992, 1995
[17] Ibidem, p. 41
[18] Gheorghe Sarău, Grigore Delia, History and tradition, p. 9 Material Editor: Save the Children, June 2006
[19] Angus Fraser, The gypsies, p. 43
[20] Note: From the seventh century, having a religion that unite and mobilize them to fight, and a common language, the Arabs conquered large territories. Fundamentals of the Arab Islamic state have been made by Muhammad ("the blessed"), named the prophet, a statesman and founder of a new religion. After the Prophet's death the Arabs trigger a true offensive to the territories of east Imp.Byzantine succeeding, in a hundred years, to create an Islamic empire. There are conquered Syria, Palestine, Iraq, Persian Empire, Egypt and the Indus Valley.

number of Zotti (the name given to people coming from India) *have fallen prisoners and were taken from there with the women, children and their cattle*[21].

A milestone in triggering migration of Roma ancestors may be represented by Seljuk Turks invasion. Residents in present Afghanistan Islamic faith Seljuk Turks succeeded in a relatively short time to create an empire. In the mid-eleventh century, the Seljuk Turks conquered Armenia [22] triggering a veritable exodus of the Armenian population. In this context, it seems plausible the idea of Roma travelling to the west. In 1071, at Manzikert near Lake Van, Byzantine army was defeated by the army of Seljuk, [23]lost much of Anatolia.

Seljuk Turks had triggered attacks on India's North and Northwest early in the twelfth century, which were the largest and most prosperous cities of India. Seljuk Empire which had its capital in Ghazni, stretching from the Caspian Sea to the Punjab (NW of India), is based only on a policy of plunder. Attacks directed against the Indian states were designed to bring wealth. Since 1001 until 1027 Sultan Mahmoud of Ghazni launched 17 campaigns of plunder against India. By the year 1001 he defeated the Jayapala's army, which had to be sacrificed at the stake, leaving the throne to Anandapala. Mahmoud of Ghazni robbed and Lahore, and Multan and Punjab's [24].

In 1018 conquered the city Kannauj, conquest that brought 53,000 prisoners, 385 life-size elephants made of gold, rubies, pearls and other various riches [25]. All they have been robbed of two hundred temples has the city

[21] Angus Fraser, Ibidem,

[22] Note: In the year 651, after the collapse of the Sassanid Persian Empire, is the first Arab invasion in the Armenian territories of The Empire and in the decades which come, Persian Armenia is conquered by the Arab Caliphate. During Bagratizi Dynasty (885-1045), Armenia has succeeded in regaining independence, still threatened by the expansionist tendencies of Byzantine and Islamic. In this context, Armenia is divided into several kingdoms which easily end up in a period of major political confrontations and transformations. Seljuk Turks can thus conquer the entire Armenia triggering an exodus of the Armenian population in Cilicia and Cappadocia.

[23] Note: Battle of Manzikert or Malazgirt, took place in summer of 1071, between the Byzantine army and troops from the Seljuk Sultan Alp Arslan. The achievements made in eastern Asia Minor by Turks tribes worried the Byzantine Emperor Romanos IV, who undertook, in 1068, shortly after he accesses to the throne, an expedition against the Seljuks in Syria. In 1070, Romanos attacked Seljuk forces in the eastern end of Anatolia (now the Turkish province of Mus). The fight was given at Manzikert, near Lake Van. Seljuk army inferior in number compare with Byzantine one adopted a specific tactic and won a brilliant victory, after which lost the Byzantine terri fromtories East. Then followed the conquest of the Holy Sites and triggering the Crusades by Catholic Europe as a last chance to stop the expansion of the Seljuk Turks.

[24] Mircea Itu, Julieta Moleanu, Indian Culture and Civilization, p. 119, CREDIS Publishing, Bucharest,, 2001.

[25] Idem; Kulke Herman, Rothermund Dietmar, A History of India, Artemis Publishing, Bucharest,2003

Kannauj[26]. This information of great historical importance is provided to us by chronicler Abu Al-Utbi Nars in "*Paper Yamin*" [27].

Marcel Courtiade link Roma left from India by these events in the early eleventh century [28]. Other authors believe that after leaving India by proto Roma, crossed geographical areas were most appropriate current territories of Pakistan, Afghanistan and Iran, and northern Mesopotamia. We must show that in the eastern neighborhood of Byzantine Empire, has been a key point, there was a trifurcation, a migratory wave separation into three branches. At this hypothesis was reached after linguistic researches. Perhaps the area bounded by the current territories of Iran, of Iraq, Turkey, of Azerbaijan, Armenia and Georgia occurred this separation in three waves of migration. Linguists have calld:

> **Branch "Lom" or North:** migration wave that has passed through the actual territories of the republics Azeri, Armenian, Georgia,
> **Branch "dom" or south-west**: with the way Syria, Palestine, Egypt, North Africa, where perhaps , Roma groups continued their journey across the Mediterranean Sea in Spain (from sec. VIII). Vaux of Foletier shows that some of the ancestors of the Roma from the branch "dom" came as a result of the expansion of Arab trade, in the island of Zanzibar (Tanzania),
> **Branch "Roma" or the West:** the largest, Roma who have continued road to the Byzantine Empire, where they remained for several centuries and this forward,in Central and Western EuropeVest.

Marcel Courthiade, citing lack of serious documentation, points to the atention the observation made by Jan Hancock Roma origin linguist, namely that these language groups were separated before the penetration into the iranofone territories*, "although all three have the Iranian loans, however these loans, almost all, do not meet each other"* [29]*.* Jan Hancock (2005) disagrees with the Roma originated in one geographical and biological roots. It takes into account three factors: first, that group of people who would be left in India has been more complex and not uniform and also that during that historic period populations were classified by practicing their professions and not by their ethnic origin.[30].

If such things happened, we only have to hope that it will find, however, evidence of written history to create a clear picture of migration. Also we could not be surprised by the extraordinary tenacity shown by the ancestors of

[26] Kannauj City has experienced an economic development came to be one of the most flourishing cities of India. Cang Sieun, Chinese traveler stated that the city covers more than 6 km. Along the Ganges and had a hundred Buddhist monasteries and 200 Hindu temples . In fact, this city became the capital for tribe Pratihāra, descended from the Rajput warriors tribes.
[27] Mircea Itu, Julieta Moleanu, Ibidem, p. 120
[28] Ibidem, Gheorghe Sarău, Grigore Delia, , history and tradition, p. October, p. 10
[29] Ibidem, p. 12
[30] Ibidem, Gheorghe Sarău, Foray into history and their language, p.7-8.

today's Roma, who have managed to maintain social and cultural identity during a long period of migration.

Uprooted from India and having a mobile life, unstable identity becomes unavoidable. Although over time were subjected to cultural and linguistic influences of the people with which they come into contact, however, their identity, their culture remains distinct from the Gadźé population. Undoubtedly one important factor of the migration was series of political and military events that took place during the first millennium and the beginning of millenium II AD. Migration occurred in times of great political and territorial dislocations in the East then Europe Balkans. What remains is that the specific migration of Roma has a military character.

1.2. Roma people Language

The string of assumptions, or legends about the origin of the Roma, can continue, but as it pointed Rajko Djuric*, "these are scholarly sources which, however valuable it may cannot be used as such".”* [31] Alexandre Paspati, a great linguist of the nineteenth century said that *"True History of the Gypsy race is in their own language study"* [32].

> *Undeniably, the Romany language study can reveal a lot of information about the origin of the Roma language and Roma people.*

The first language finding of Indian origin of the Romany, was conducted by Hungarian theologian Wali Istvan in 1763.[33]. He studied theology at the University of Utrecht in the period 1753-1754. There he met three students malabrezi actually from Ceylon (Sri Lanka). Hearing speaking them noted the similarity of their language and Roma from the Hungarian city Györ. He makes a list of 1,000 words, after returning home, he reads to Roma, these latter recognizing the meaning of words. How it is explained this situation? Obviously malabrezi students did not speak Romany, but being part of the Brahman caste spoke Sanskrit, the language of worship. In the neo-Indian languages are finding grammatical relations and even the Sanskrit vocabulary - language that served as religious language and literary language, the same role in Europe as they had Latin, Greek and Slavonic.

After about 30 years from the observation made by the young Hungarian, German scientist Heinrich Moritz Gottlieb Grellmann published in 1783 the work *Die Zigeuner – Ein historischer Versuch über die Lebensart und Verfassung, Sitten und Schicksale dieses Volks in Europa, nebst ihrem Ursprung*, in which

[31] Ibidem, Gheorghe Sarău, Foray into history and their language, p. 10
[32] Angus Fraser, The Gypsies, Blackwell Publishers, 1992, p. 17
[33] Ibidem, Gheorghe Sarău,Foray into history and their language, p.11

argue Indian origin of Romani language[34]. The discovery made was also confirmed by other reputable romologs IC Ch Rüdiger, M. Graffunder, AFPott, Heinrich von Wlislocki Franz Miklosich [35].

Romany language belongs to North West / North indic subgroup of Indo-Iranian branch of Indo-European languages, togheter with idioms Western panjabi, panjabi East, Sindhi. Language Romani, one of the main neo 27 languages - Indo - Aryan togheter with three other languages - shing, kohistani and Maldivian Dhivehi - in the unique situation of not being spoken today on the territory of the Indian subcontinent[36].

Romani language, characterized by its fund basic vocabulary inherited from the ancient Indo-Aryan and its typological vicinity by old Indo-Aryan but also by its close typological by medium and new Indo-Aryan languages and it is presented at the level of dialects that distinguished not by the grammatical structure but by lexical nuances. It is interesting that the grammatical structure due to its conservative nature, has been preserved almost intact in all dialects spoken by Roma.

The existence in Romani language of archaic linguistic features, from synthetic languages (about 1500 BC - V century BC) and medium (about V century BC . In the fifth century AD entitles the linguists to accept leaving Roma people's linguistic ancestors during the period from II century AD - The end of millenium I AD. Linguists have as their main argument, as stated above, the synthetic nature of the Romany seconded unlike the analytical nature of the other neo-Indian languages.[37]

Linguist Franz Miklosich analyzing Roma vocabulary identified, in addition to the old Indian words and old Afghan words, Persian, Armenian, Osetian, Georgian, Turkish, Greek, South Slavic, Romanian, scoring in this way historical and geographical spaces through passed the ancestors of Roma today. [38]

[34] Grellmann, H.M.G., Die Zigeuner Ein historischer Versuch über die Lebensart und Verfassung, Sitten und Schicksale dieses Volks in Europa, nebst ihrem Ursprung (Gypsies, an attempt on the life history and constitution, morality and destiny of this nation in Europe, together with their origin), 1783.

[35] Gheorghe Sarău Roma. India and the Roma language, p. 22, Ed Kriterion, Bucharest, 1997.

[36] Gheorghe Sarău, Grigore Delia, Roma History and tradition, p. 5.

[37] Idem

[38] Gheorghe Sarău, Roma. India and Roma language. Note: Prof. Dr. Gheorghe Sarau, says: "Note that, by confronting the main elements of the background of the Romany language with their equivalents in the languages of Punjabi, Gujarati and Hindi, I noticed personally closer - obviously, at lexical level - the Romany language by Gujarati language. I made a comparison from a similar experiment (in which I participated, in 1991, the International Romany language courses organized at Karjaa - Finland), conducted by Mrs. Harpal, Hindi-language lecturer at the University of Helsinki. On that occasion, were juxtaposed the main fund words and their equivalents in the Romany language Sanskrit, Hindi and Gujarati (the language of Mrs. Harpal) and found, too,a closer to the Romany language of Gujarati language than Hindi.

Linguistics had at least three merits: it revealed the Indian origin of Romani language and Roma people, set around the time when migration occurred and reconstituted achieved.

1.3. Roma certifications on the European continent

In the fourteenth and fifteenth centuries, the presence of Roma is known throughout the entire European continent. Whether we accept the theories of initial startup of the Roma from India where are talking about a common origin of this population (mainly linguistic studies), whether this attempt to look critically interpretation and chronology of their history, there is a consensus among researchers that space Balkan, essentially, is the Roma area, which, historically, have sense of place of birth. And this is motivated by three reasons:

1) in the Balkan region in historical times has focused and continues to live the majority of Roma around the world,
2) the finding of the richest communities in culturally and linguistically,
3) here have begun to multiply significantly histories and other evidence to support the great truth, over others, in connection
with this group of people, here is the scene which took place early presence of Roma (Lockwood, 1985).

Modern Era there were attempts were laying the emergence of the Roma in Europe, at Bataillerd, Borów, Guido Cora, f.Miklosich [39].

The first reference to the presence of Roma in the Byzantine Empire comes from Georgian hagiographic text, *The Life of Saint George*, written around 1068 at Iviron Monastery on Mount Athos. Here we learn that the Emperor Constantine IX Monomahul, being fussy by predators devouring its Philopation imperial hunting park in Constantinople, he sought help from *a "population of Samaritans, descendants of the Simon Magus, called* ***adsincani, well known for their art to guess and make charms****" [40]*. These *adsicani* were put down magic charm pieces of meat that killed all the beasts. Impressed by their skill, the king asked them to repeat witchcraft to his dog, but St. George passed the cross over magic meat and the dog remains alive. Adsincani name is used in the story is the Georgian form of Greek *atsinganos* or *atzinganos*, term used by Byzantine when they refer to Roma.

The next reference to anthinganoi, clearly the term used here as Gypsies, came from the twelfth century in a comment made by Theodore Balsamon: "Those who bear the collar bears are called bear leaders. They painted a thread connecting the entire head and body of the animal Then used to cut the thread and provide them with animal fur yarn, as amulets against disease or cure the

[39] Lucian Cherata, Filosofie, History and Culture in Indian Traditions Roma, p. 138, Publishing House printed AIUS Craiova 2010.
[40] Ibidem, Angus Fraser, p. 52

evil eye ... [41]. This comment was in fact a message that appears to the faithful that it was a sin to seek the assistance of appointed *anthinganoi*.

A century later the message is repeated by Athanasius I, Patriarch of Constantinople, in a circular letter addressed to clergy, urging them not befriend to riddle , ursarii and "not allow them into the house ***adinganous*** that teach the devil things ". [42] Several decades later, scholar Joseph Bryennius (1340-1431), in a treatise on the causes of misfortune which deviate on the empire, bemoaning the fact that people associate with "... *athinganous*". An interesting variation in the terminology appears in a Byzantine canon in a fifteenth century, which included five years of excommunication for those who go to " **egiptian women for guess...".** The fact that the name refers to the Roma women aiguptissas resulting from translation into Slavic -*ciganki.*

There are references that highlight and crafting occupations such as blacksmithing, making the horse shoes, the existence of a "***feudum acinganorum***" on the island of Corfu where blacksmiths and coppersmiths members depended only their Bulibaşa. This form of social and economic organization will exist until the nineteenth century[43]. . In 1373 in Zagreb are mentioned "***gypsies craftsmen***".[44], at Dubrovnik are remembered "***curelari***i"" [45], , and in Serbia of Ştefan Dusan are mentioned ***aţiganii farriers*** [46].

Other references to Roma either aţigani , Egyptians or with other names appear in the popular poetry dating from the fourteenth century. From this it appears that Roma have been associated with blacksmithing, ursărit with making horseshoes, strainers and the occult practices in the Byzantine Empire which suffered a further expansion of the Seljuk Turks, of the Crusades, of the Great Schism from 1054. From these references is found not to have enjoyed a good reputation. Of course it is a unilateral perspective, we can never know Roma to view this new world that they came into contact. At that time, Byzantium was on the verge of collapse, it was reduced to Constantinople, Thessaloniki and the Peloponnese. The capital was besieged by the Ottoman Turks, who once managed to land at Gallipoli in 1354 settled its capital at Adrianople managing to control the entire Balkan Peninsula. In fact in 1453 Constantinople was conquered, and the history of the Byzantine Empire ceased[47]. Roma have settled in these areas long before the Ottoman offensive

[41] George Soulis, The Gypsies in the Byzantine Empire,1961, pp.146-147
[42] Ibidem, p.148.
[43] Jean- Pierre Liégeois Roma in Europe, p. 16, published work supported by the Council of Europe,, 2007
[44] Gheorghe Sarău, Grigore Delia , Roma History and tradition,p. 15
[45] Ibidem
[46] Ibidem
[47] The event took place on Tuesday, 29 May 1453. Fall of Constantinople meant not only end the Eastern Roman Empire and the death of the last Byzantine emperor, Constantine XI, but also a crucial strategic victory for the Eastern Mediterranean and Balkan conquest by the Ottomans. Ottoman offensive influenced movement of Roma groups from Asia Minor to the Balkans and also from the Balkans to the Danube north into Europe.

and it is possible that migration to Central Europe or North of the Danube had to be based on these military events.

Penetration of Roma in the Balkan Peninsula, in XIV century, marks the start of their European history. In the Greek territories Roma people encamped for a long time, as witnessed being the considerable influence of Greek on the Romany language. In the late fourteenth century, the Ottoman advance step by step swallowed whole Balkan Peninsula and the South Slavic became Turkish territories. In this context, one part of the Roma moved to the north of the Danube, to Central Europe or in the Romanian medieval. Nobody knows exactly when Roma arrived in the kingdom of Hungary. In the late fourteenth century, this kingdom has remained the only major European power which made hard efforts to stop Ottoman offensive. A letter from 1260 from Ottokar II of Bohemia to Pope Adrian IV, King recounts victory of King of Bohemia and over Hungarian King and the fact that in the Hungarian army were so-called *Cingari*[48].

The first documentary attestation on the presence of Roma in Kingdom of Hungary is since 1422, when King Sigismund of Luxembourg awarded to groups of Roma, led by Prince Ladislaus, the right to walk across the country[49]. King Sigismund becomes king of the Roman-German Empire too,since 1411, being crowned by the pope only in 1433. He took the initiative in convening a council of Konstanz in hopes they will succeed in restoring the unity of the Christian church. For the city of Konstanz turned and some Roma. Here they first salvo-pipe (passports Middle Ages) which allowed them to travel freely through the empire. Much later, Sebastian Munster in the work-Cosmograph Universalis (1550) - shows that many Roma in Heidelberg have shown copies of a letter from the king obtained at Lindau / Emperor Sigismund of Luxembourg with more than 100 years ago [50].

At the beginning of the fifteenth-century Roma have already attained German Empire countries, they are certified in France, in Italy

> *Chronicle of Bologna, reports that: "... arrived in Bologna a duke of Egypt whose name was Andre, he came with women, children and men from his country ... Being disowned by Christianity, Duke was expatriated by the king of Hungary and removed from its lands. As a result, the Duke said to the King that he wants to return to Christian faith and be baptized with many others of his people, about 4,000 people. ... Once baptized by the Hungarian king, this ordered them to leave to the world for seven years and to address the Pope of Rome. Then they will return*[51].

[48] F. Predari, Origine e Vicende dei Zingari, Milano, 1841, p.63. Note: probably that these were actually cingari Roma who were enrolled in the Hungarian army as mercenaries.
[49] Ibidem, Angus Fraser, p. 69.
[50] Ibidem, p. 70
[51] Ibidem, Jean- Pierre Liégeois, Roma people in Europe, p. 17

The Chronicle shows how city residents went to see these *Egyptians*. It is noted that he reports at the time about alleged Egyptian origin of the Roma are quite frequent. Certainly not reflect historical reality, rather an issue that has the ability to take their continued existence. For the Roma it was important that in Europe there is the custom, as a moral-Christian tradition, even by law established by Charlemagne, 800, to ensure the basic needs of pilgrims. Roma are using this experience to ensure their life. This reality did not last very long time because in the context of religious reform, the Roma began to be held responsible for the evils that afflict the Catholic Church so that they become "scapegoats" with consequences that affected even physical existence.

A document, we believe very important to reflect that they believe that Roma has Indian origin is *Chronicon fratris Hieronzmi de Forlivio:*

> *„Came the men sent by the king, willing to accept our faith, they arrived at Forli on 7 August. And, as I heard that said, some would say that coming from India is stopped here two days, unlooking very measured but furious like wild animals. There were about two hundred and went to Rome, to the Pope, men, women and children"* [52] .

It can be seen raising the Indian origin, which is remarkable because in the collective memory of the Roma still exists consciousness of the past, of belonging to a historical and geographical space.

Central and Western Europe discovers its first Roma as pilgrims. Led by their leaders with impressive titles - barons, dukes, princes - Roma not demonstrate discretion, deliberately seeking to draw attention to themselves. They said they are Christian pilgrims. Acts of cities, chronicles of this period recorded the arrival of Roma groups are claiming that they were pilgrims. They were called "*Egyptians*" or "*Saraceni*". They lived in tents and led a tough life. They had - in the interim chronicles - no home, no religion but said they are Christians. They had leaders who were well dressed and went riding in contrast to others who went on foot and were mostly barefoot.

From 1417 until 1430 they spread throughout entire Germany and other European countries, including England (1500). Using letters of protection, or other documents that have been able to obtain and the other kings, even to the pope, and often using the pretext that they are pilgrims were able to pass in areas where it is today France (1419) The Netherlands (1420), Brussels (1420) and Paris (1427).

Moving from north to south in the French region they have reached in the areas of Spain around the fifteenth century, while in the early sixteenth century they have occurred in regions of Portugal. During the XVI century, all countries of central and southern Europe have received the Roma population and their movements were directed and to the north.

[52] Ibidem, p. 18

In the early sixteenth century they have occurred in Scotland (1505) and England (1514) and towards the end of the century in Wales (1579). In the same century have occurred in other northern European countries such as Russia, Denmark (1505), Sweden (1512), Norway (1544), Finland (1584), Estonia and Poland. Dispersion of Roma across Europe seems to have ceased at the end of the XVI century, while the early eighteenth century, Roma have emerged in Asian regions of Russia and trying to reach in China.

The data below shows the first written references to the presence of Roma who have been in different countries of Europe, that does not exclude the possibility to have existed even before those dates but their presence was not recorded: 1407 - Germany 1419 - France 1420 - Netherlands, 1422 - Italy 1425 - Spain, 1501-Russia 1505 - Scotland, Denmark, 1512-Sweden 1514 - England 1533 - Estonia 1540 - Norway 1584 - Finland. Arriving in Western Europe, some groups have continued their journey from the region in the region, from country to country. Some groups have reduced or stopped their migration and their way of life adapted to the needs of the region, such as dealing with trade, crafts or seasonal work in agriculture.

1.4. Situation of Roma in the European continent

By the end of the fourteenth century, attitudes toward the Roma, these “pilgrims”, begin to deteriorate. Tougher laws will be taken against Roma in a time of spiritual transformation in Central and Western Europe.

> *In the German Empire, Diet accuses that they are spies and discusses the most effective way to get rid of them. It is decided the expulsion of the empire, or even to death.*

In France, the right situation from the start, "*the noble Prince Thomas, earl of Little Egypt*" by his suite for 30 people, ask for help city Nevers in 1436, changes. [53]. In subsequent years, from the city documents, apparents a clear downward trend in the host against Roma. By way of life different from the Christian peoples, mobile identity through continuous movement due to social and economic reasons, began to be perceived as destabilizing internal order and the security of states. Thus, there is adopted repressive legislation.

> *In France, in 1504 the Roma are put under the ban. Subsequently, it is disposal the ban has gathered more than three or four Roma in one place and finally, in 1647, the mere fact that someone was "Bohemian" was of itself a crime and was sentenced to prison.*

In France, the Declaration of July 1682 initiated by Colbert and signed by King Louis XIV

[53] Ibidem, Angus Fraser, pp. 98-103

condemned to the Roma men to the galleys and their women at the prison hospital where they were to be educated in the Christian religion. In the eighteenth century, French kingdom measures against Roma nomadic had gone until the deportation overseas in America and even the death penalty in this respect giving prizes for every killed Roma.

In Spain, the government developed a policy of persecution to nomadic Roma. In a letter to King Fernando VI of Father Francisco RAVAGO stated:*„..Measures proposed by the Council for eradication aestei governor races of people and hated by God seem good ... It does the will of our Lord would succeed if eradication of these people "* [54].Those caught were brought to work in factories, sent in the navy yards or Africa or killed. Prisons were wholly inappropriate to receive a large number of Roma who were arrestedand thus they were released gradually, proccess which ended in 1765. In 1783 King Charles III has implemented a very detailed legal plan (including 44 articles). Prologue is a summary of its ideology within such a policy:

> *From the action of 30 July 1749 all Roma have been arrested in Spain.*

> *„We declare that all who are appointed or Gypsies call themselves, are really what they say, either by nature or because of the place of origin or because they come from a morbid race. Given the words, declare that all, without exception, must stop using this language, how they are dressing or their habits of life which they have followed so far. The king granted a period of 90 days, so that all who are listed in the declaration, to settle somewhere and to forsake the language, dress and customs of the so called Gypsies, with the threat of punishment by the stigma of hot iron. As regards those who will oppose this decision, will be sentenced to death"* [55].

In Germany, in 1496 Parliament declared repeatedly that Roma are Chistianity traitors, spies of the Turks and bring the plague. Blamed for the theft, magic, abduction of Roma children were not accepted in Germany and could be killed without the perpetrator to be punished. In 1721, Emperor Charles VI decided Roma extermination of adult men and in relation to women and children determination to provide an ear cut [56]. In 1725, Frederick William condemned them to death any Roma met on the Prussian land older than 18 years, regardless of gender.

In Italy between 1506 and 1785 were 147 agreed restrictions against the Roma, like in the Netherlands, where it maintained a total rejection.

Since the beginning of seventeenth century until the eighteenth century, have been organized buntings of Roma (*heidenjachten*: hunting pagans). The

[54] Ibidem, pp. 103-107
[55] Ibidem
[56] Ibidem, pp. 94-98

same thing happened in Switzerland and elsewhere: there were organized popular hunters, which began at the hearing of a signal such as pulling the bells of the village and ordered to be shot there, anyone would be opposed. Sometimes hunting was a well-organized military action, involving infantry, cavalry and gendarmerie. They set up rewards for the capture and bringing Roma, thus causing an increase in the number of "*professionals*" in the hunt of Roma [57] Also in Venice, a text dating from 1692, offered amnesty to those convicted to 10 years in prison, provided that hunting over Roma. Such practices were followed in Scandinavia,too .

In the nineteenth century, political and ideological changes have radically affected the lives of Roma. We are in the era of Social Darwinism, argued after 1890 when the strong current to reach the conclusion that the biological factor is absolutely the only factor in all areas of life: "the modern state, rather than provide protection to the weak, would do better to focus the elements valuable biological, or social utility of valuable biological characteristics of the individual becoming a measure of its social value" [58].

[57] Ibidem, Angus Fraser, pp. 107-111.. Note: The work of O. Van Kappen, Geschiednis Zigeuners der in Nederland, Assen, 1965, carried a picture of Roma living in the Netherlands from the sixteenth century

[58] Ibidem, Angus Fraser, p. 246-247

Chapter III. Socio-economic and legal status of Roma in the Romanian Countries

1. 1. The presence of Roma in the Romanian territory

In Romanian historiography there is the view that the presence of Roma in the Romanian would be due to the Mongol invasion in the years 1239-1241, they were seen as a Tatar heritage, including the social status of Roma they had the slaves, being a Tatar inheritance[59]. It is believed that even the presence of Roma to the north of the Danube due to the invasion of Cumans and Pechenegs from XI-XII centuries. Following linguistic studies of Miklosich F. this opinion was quickly abandoned. Documentary findings also reveal the presence of Roma in the country first in the Romanian and then in Moldova. Of course it can not exclude the idea that in the migration of the Tatars military was not involved and other populations with auxiliary role, which could be among the Roma. Camps Tatar needed craftsmen blacksmiths, farriers and dealers.

The possessions donated to Tismana Monastery belonged Vodita Monastery, which in the context of military events from the end of the reign of Vladislav Vlaicu (1364-1377) was closed [60]. Subsequently, information about aţigani, in the Romanian Country, are becoming more numerous.

> The first documentary attestation on the presence of Roma in the Romanian lands dates from 1385. By a document issued by Prince Dan I, **gave the monastery Tismana "40 aţigani house***".*

In 1388, Prince Mircea the Old, gave the Cozia monastery, his built " *300 aţigani house."* [61]. From the fifteenth century, all monasteries and large landowners owned Roma slaves.

> In Moldova, the Roma are mentioned first time in 1428, when the ruler Alexandru cel Bun gave to the Bistrita monastery, **31 aţigani house***.*

Roma are not arrived in the Romanian in a single wave, but over several centuries. Moreover, there were antiOttoman military actions carried out by Romanian princes in the south of the Danube, from which they were captured and Roma.

[59] Nicolae Iorga, Anciens documents de droit roumain, Paris-Bucharest, 1930, p. 22-23
[60] Documenta Romaniae Historica (D.R.H.), B. Ţara Românească, I, Bucharest, 1966, p. 19-22.
[61] Ibidem, p. 25-28.

In Transylvania, the first information about the presence of Roma concerns at Fagaras Country. Mircea the Old, given to boyar Costea, 17 "ciganus tentoriatus" - Gypsy tent.

This historical reality emerges from the documents of the era - in the 1445 Prince of Romanian, Vlad Dracul, passed to north of the Danube after a military campaign *12,000 people of whom the chronicler Jehan Wawrin, said that "resembled aţigani"* [62].

We assume that around the year 1400, the Roma were present in Transylvania. Roma came into Transylvania from the Romanian Country. In the early sixteenth century they are certified in all of Transylvania. In Sibiu, Brasov, tax records reveal specific names ofpeople bearing. Around 1500 they are certified in Timisoara that gun makers, so that we meet them in 1514 to the perpetrators of the rebels Roma of the rebellion of Gheorghe Doja. In the process of adapting to new socio-economical realities, the Roma are those who fail to social niche which could fill their continued existence.

1.2. The Roma status in Romania countries

In the sixteenth century, the Roma were part of ethnically diverse landscape of Transylvania. Here it created a form of administrative - legal form voivodship of Roma. Function of prince of the Gypsies was owned by a nobleman named by the Hungarian king, performing legal duties and tax[63]. Rulers exercising authority over all the country's Roma leaders, they have the obligation to pay taxes.

Status of Roma who had lived in Transylvania was much different from the Roma to the south and east of the Carpathians (Wallachia and Moldova). They represented one ethnic autonomies which existed in the Hungarian kingdom and principality, principality (since 1541) of Transylvania. They were placed under the exclusive authority of their bosses, depending directly by the king or ruler.

Relatively autonomous status of Roma in Transylvania, ended the period in which Transylvania was included in the orbit of political interests of the Austrian Empire, from Empress Maria Theresa (1740-1780) and her son Joseph II (1780 - 1790). This is the period in which are **adopted sedentary measurements and forced assimilation of Roma** [64].

[62] Slavo-Romanian Chronicles century. XV-XVI, published by Ion Bogdan PPPanaitescu House, Bucharest, 1959, p. 30
[63] I. Peretz, Course of Romanian law, IV, royal foundation charter
[64] Viorel Achim, The Roma in Romanian history, pp68-75, Encyclopedic Publishing House, Bucharest,, 1998

Maria Theresa issued decrees concerning sedentary and forced assimilation of Roma: binding the Gypsies of a place, banning the holding of horses and carts, replacing the term *gypsy* with *new peasants* , prohibiting speech Gypsy language, forbidding marriages between Gypsy, children over five years would be raising from their families and entrusted to non gypsy families , young Gypsies were over 16 years can be enrolled in military.

Emperor Joseph II continued the policy toward the Roma promoted by her mother. In the year 1782 adopted Regulation Zingarorum: Gypsy children to be put to school, Gypsies to follow local custom location, *Gypsies* were forced to deal with agriculture, no gypsy no longer have horses. A year later Joseph II issued a new collection of laws on sedentary and forced assimilation of Roma, in fact a summary of laws enacted by that time - *Hauptregulatio*. We have a comprehensive picture of the program envisaged by the Imperial Court regarding integration and forced assimilation of Roma in Transylvania.

Due to the large number of Roma set in medieval Romanian states, slavery has become a widespread phenomenon, Roma monopolizing this institution, ethnonyms "Gypsy" becoming synonymous with "slave", reflecting the fact a social state[65].

In the Romanian and Moldovan Land Roma have had the status of slaves. It seems that in the beginning, it was the tax service. Over time, however, this status was tightened, the right to claim tribute, becoming the rights of the person paying tribute or forced labor.

Note that this social status, not necessarily involve binding to a domain, but binding to a specific owner. Depending on the owner of slaves distinguish these categories: princes, priests and noblemen or monasteries. Lord of the country, as the absolute master of the country, given to monasteries and the boyars, among others Roma slaves. This institution was an organizational component of the Romanian Countries until the second half of the nineteenth century. In all its components, this institution was holding consuetudinar right, long time as there are no written laws on slaves. When in Wallachia and Moldova began to appeal to Byzantine laws were taken and arrangements for the slaves.

At the middle of seventeenth century, first printed laws in Romanian*, the Govora Rule, Correction Law* in the Land of Romanian and Moldavian Romanian Teaching Paper by Vasile Lupu contain rules of law on slaves, by Byzantine origin. Slaves had a particular legal status different from that of the Romanian population. Right of slaves consisted of a number of rules which related primarily to obligations which slaves had to their masters and the state. The economic importance of slaves is the reason for that the rulers have granted a

[65] George Potra, Despre ţiganii domneşti, mănăstireşti şi boiereşti, „Revista Istorică Română”, 1935-1936; Contribuţiuni la istoricul ţiganilor din România, pp. 26-65,

special interest in this institution. The author of a study, PN Panaitescu, held that *"the history of Gypsies in the Romanian and Moldovan Land belongs to the economic history of these two countries aparţine istoriei economice a acestor două ţări"* [66]. Ottoman invasion, the occupation by them of the Romanian port on the Danube and Black Sea, the great geographical discoveries, canceled the position as a transit country, to the great trade which *"* link Europe to the Orient. Great properties needed craftsmen. An observer of the realities of the two Romanian countries, I.St.Raicewich, noted that here *"all the mechanical arts are in the hands of Gypsies and of foreigners from close countries"* [67]. Romanian society, agricultural through excellence needed by foreign craftsmen.

In the same period in Wallachia and Moldova, we are witnessing to the emergence of new elements as regards the legal status of slaves. Thus, prohibiting mixed marriages, priests were forbidden to officiate at such weddings. "*Sobornicesc decree*" issued in 1785, completely prohibits marriages between free people and slaves in Moldavia and Walachia, "*Pravila register*" in 1780 established the dissolution of mixed marriages, and if children were born from such a relationship, they became freemen.

The end of the eighteenth-century meant the appearence of abolitionist current in the context of major political and ideological movements that took place in Europe. We are witnessing of the emergence of private initiatives regarding the need for emancipation. The emergence of a generation of young intellectuals who have studied in the West, by the liberal ideals of the West, had a major role in modernizing institutional proccess, cultural and political life of the Romanian principalities in the nineteenth century.

1.3 Roma in the "Century of Nations" and their liberation

The nineteenth-century or nations century was characterized in Europe through a process of developing national consciousness and the creation of national states. During this period of transformation, the people and political consciousness, the Romanian principalities survived between three great empires: the Ottoman, Russian and Austrian. A new European spirit is required in the Romanian since the eighteenth century because the emergence of the Enlightenment, which led to the grounding of the new philosophy about human rights. Works of thinkers such as Voltaire, Montesquieu, Rousseau, works such as "*Social Contract*", "*Declaration of Independence*", *"Human and citizen rights declaration"* have the circuit in the Romanian and the American Revolution or the French Revolution spread democratic ideas about man and society including in the Romanian space.

[66] P.N.Panaitescu, Le Rôle économique, p.936

[67] I. St. Raicewich, Bemerkungen uber die Moldau und Wallachez in Rucksicht auf Geschichte, Naturproducte und politik. Aus dem Italienischen, Wien, 1789, p. 126

In a context of economic and political pressure neighboring powers, in the Romanian Principates noticed a slow start, shy, "Europeanization", reporting to the principles of the Enlightenment, with beneficial effects in the formation of a modern Romanian culture and society. Studies of Romanian youth travelers in the West have helped this process.

An indispensable condition forthe modernization of Romanian society became abolition of slavery. The emergence and existence of this institution belongs to history the Romanian Countries, late being considered an absolutely natural part of Romanian legal social system. We can say that the existence of this institution, for centuries, has created a specific feature of Romanian history, from the rest of Europe.

With all the changes that took place in Moldova and the Romanian Country, during Phanariot times, reformisme of Greek rulers were far from enlightened policy of the Habsburg emperors. If during this period there were changes in the status of peasants, for the Roma, **the situation remained almost unchanged, slavery constituted a social class with clear economic and social functions**.

Although in Romanian Principates, as in America has evolved from the institution acceptance of slavery, that slavery, recognizing the need to abolish them, *"A man possessed of one another! A man the owner! An image of God made yoke like an animal!* [68] . Arguments for the abolition of slavery were humanitarian, Christian (invoking the Bible) but also economic, it is considered unprofitable for a modern economy.

Promoters of emancipation were:

- V. Alecsandri: "*Nothing is more expensive and more glorious than liberty, the most precious treasure that God has given people";*
- Mihail Kogalniceanu *"... all men are born free and they are free*[69]*;*
- Ion Câmpineanu: first gentleman of the country which has issued slaves in 1834;
- Alecu Russo: showing that slavery is unprofitable from the economic point of view;
- Caesar Bolliac: in 1843 published the poems "The girl to the landowner and the gypsy's girl" "*Gypsy sold"* in 1848 published "*A gypsy with her child to Freedom Statue*";
- Heliade Ion Radulescu, published in 1844, "Lord John" ("*Mr. poets with the ideas of the century, Lord Ion can inspire you more than a King, his work must releases his brothers from slavery, you* have to *see the dawn of the great and Christian day in which the Romanian territory will not know the name of a slave, if there is God in heaven*[70]*;*

[68] Constantin Buşe "From Bolivar to Cardenas", Buc. 1984, p. 47
[69] M. Kogălniceanu „The prosperity", Release from slavery of gypsy, nr.5,6 February 1844
[70] „Curierul românesc", nr. 13, 14 februarie 1844

- Golescu brothers, Costache Negri, Dimitrie Filipescu, demanding the abolition of "*social leper*" that represent slavery, allusions to the work of Henri Storch [71], and many others, there were new abolitionist ideas promoted by press of the time and proper acts.

Socio-economic modernization of the Romanian Countries was deeply influenced by the political transformations that have taken place since the Revolution of Tudor Vladimirescu in 1821. Emancipation was not considered still a priority of the modernization.

The first time of reference is the Organic Regulations, acts which meant the first documents of the Romanian constitution. Extraordinary Public Meetings of Wallachia and Moldavia have been adopted in 1831, during the Russian occupation.

Regulations that it looked bondage Roma slaves were aimed only the slave of the state. Thus, in Wallachia, through art. 67 and 95 and in Moldova through art. 79 slaves of the state were forced to the same tax obligations as free people, being forced to pay capitation (30 lei per family). Goldsmiths had to pay 50 lei. Roma craftsmen who lived in towns and fairs, must enroll in corporations as all the other handicraft artisans in the country. Slaves of monastery and noblemen continued to have the same tax statusa article 95 Wallachia and art. 86 in Moldova, were to identify ways in which to carry out the liquidation of the nomadisme and Roma stabilisation.

Public Assembly of Wallachia adopted in 1831, "*Guidelines for improving the fate of Gypsies of the state, seeking the liquidation of nomadism.* As was the case in Moldova, where it was adopted the "*Regulation for the establishment of the Gypsies."* The Organic Regulations included Roma settlement measures to boost state on lands the boyars, who were established being exempt from taxes.

1.4. Laws of emancipation in Wallachia and Moldova

The first emancipation law was adopted in Wallachia on 22 March 1843 by " the Act to abolish dajnici of Magistration administratively prisons and theim passing under the leadings of the counties.

From this moment, former slaves of the became citizens that had to pay a tax (capitation). In August 1843, Department Trebor inside of Wallachia, gives a provision which all owners of slaves were forced to take care of the establishing of their nomadic Gypsies.

[71] Henri Storch, Cours d` economie politique ou Exposition des principes qui determinent la prosperite des nations

In Moldova, Prince Michael Sturdza, proposed releasing of that the captives belonged to churches. To the law of 31 January 1844, taxes were collected from Roma, have formed a special fund for the redemption of captives which individuals drew it up for sale.

On 31 January 1844, was adopted in Moldova " Law for Gypsy regularisation of Mitropolie , the bishops and monasteries".

On 14 February 1844 vote a law that slaves became free gaining the same rights and responsibilities as all other nationalities. In Muntenia emancipation process continues with the law on 11 February 1847, which freed slaves of mitropolia, the bishops, of monasteries and metocs, of churches and of any other public institution. The law does not provide any compensation.

1848, the year of European revolution, meant for the Romanian and a milestone in shaping the modern Romanian state. In the Great National Assembly have adopted programs that trace the main development objectives of the Romanian society. Revolutionary programs were recorded the need for emancipation of all slaves.

Proclamation from Izlaz (9 June 1848) was entered in section 14 "Gypsy emancipation through compensation." The scamper of Prince George Bibescu and establish a revolutionary government, in which were active and militants of emancipation, was to determine the establish, together with other committees of the Commission for the liberation of slaves [72]. The Commission was composed of Jehoshaphat Znagoveanu, Caesar Bolliac and Petrache Poenaru. It has started activity through issuing tickets of free for the emancipations . Former owners would be compensated by the state.

Abolishing slavery figure in the "National Party wishes" in Moldova, prepared under the direction of Mihail Kogalniceanu, in August 1848, in Bukovina. The defeat of the Romanian revolution initiated forfeiture of all democratic measures and return to default status of Roma slaves belonging to noblemen. Emancipation of Romanian society is at a stage forward in the abolition of slavery. Now, this institution was identified with barbarism.

Rulers who have succeeded at the head of the Romanian Countries until the double election of Alexandru Ioan Cuza (January 1859), were promoters of modernization. In the Romanian Country, Prince Barbu Ştirbei (1849-1856), issued an order on 22 November, 1850, forbidding the slaves Roma families to be separated. A year later, stated that the State to redeem slaves who suffered beatings and other shortcomings from the masters. In his correspondence, published by Nicolae Iorga, in 1904, it appears deeply critical attitude towards of the Prince regarding slavery, which he considers "a monstruosity".

[72] The year 1848 in Romanian Principates. Files and papers, I, II, Bucharest, 1902

Liberation is achieved by compensation; the owners received 10 ducats for each individual issue. Compensation would be paid by installments over several years by the House Settlement Fund.
Law established the obligation to settle the Roma.

In December 1855, Universal Divan of Moldavia, adopt *"Law for abolish slavery, emancipation and transition compensation regulation to release".*

In Moldova, after the laws from 1844 remained in a state of slavery Roma belonging to the individuals.Prince Grigore Alexandru Ghica (1849-1856) address on 28 November 1855, to Administrative Council, proposing the adoption of a law of Roma emancipation. The project was designed by Mikhail Kogalniceanu and Peter Mavrogheni.

In February 1856, was adopted in Romanian Land " The law for the emancipation of all Romanian Gypsies." This law abolished slavery Roma who were the property of individuals..

On 10/22 December 1855, Universal Divan of Moldavia, vote for the abolition of slavery, emancipation and transition compensation regulation to release" [73].Through the law for the abolition of slavery passed in December 1855, Roma owners would receive compensation for the spoon Roma and vatrasi eight gold pieces and 4 gold pieces for lăieşi . It should be noted that some landowners released their slaves without charge.

The abolition of Roma slavery, a process started in the first half of the century. XIX, lasted about three decades. Romanian society, however, was far from solving the social and economic problems of this nation. For most of Roma, emancipation became a burden. Clăcaş condition meant much more obligations to the state than had the slaves before. This explains why, along with obtaining legal freedom, many Roma have left the places where they were established. Also, there were situations in which they were expelled from the estates of noblemen, and were forbidden to settle in the vicinity of settlements (villages or towns.) As such, many Roma became nomads and have again went abroad, Europe facing a real migration of Roma from the Romanian principalities.

The realization of the union by the double election of Alexandru Ioan Cuza, reform era that followed could not consider the situation of emancipation. Thus, Rural Law of 14 August 1864, which landed property capitalist institution, has helped transform the clăcaşilor in landlowners. The text of the law makes

[73] Official Bulletin, December. 1856.

no references to Roma, but there is evidence that among those given land were the former slaves. From a Journal of the Council of Ministers has decided that the former slaves who had only housing, not agricultural land too, to be given only owned the house and garden place.

Land reform has contributed significantly to binding Roma by agricultural occupation . It is hard to predict a certain number of Roma who were employed agricultural life. Nomadic Roma were still found niches in the Romanian rural economy. Romanian village still had to call the Roma craftsmen. However, their place in the economy is a peripheral one, like the place which they occupy in society, marginalized and on the periphery of towns. This reality has created a gap between the majority population and Roma, are likely to influence the future development of this ethnic group.

In conclusion, abolition of slavery was generally limited to legal, economic and social issues are neglected, which caused negative repercussions, considering that it began an era in which said biological determinism theory.

Chapter IV. Roma situation in modern Romania

1.1. Roma in the interwar period

1918 marks the end of World War I with the victory of the Entente. The collapse of multinational empires (Austria-Hungary and Russia) also favored the formation of national states. Historical Romanian provinces of Bessarabia, Bukovina and Transylvania (the Banat, Crisana, and Maramures) united with Romania in 1918. Following these events, most of the Romanians living within the borders of one country - Big Romania . Inevitably, after 1918, has greatly increased the number of minority populations.

The 1930 census, Romanians accounted for 71.9% (12,981,324) of the total population, while the Hungarians formed 7.2% (1,415,507, and other minorities (German, Hebrew, Ukrainian, Roma) remaining percentage. In this census there were 262,501 Roma said persons, or 1.5% of total population [74]. It is very clear that this census, as well as others that have followed, no reflects clear statistical summary number of Roma. Percentage established in 1930 was lower than that of the late nineteenth century, or in a short period of time so we can not talk about assimilation, but rather a problem that unfortunately we meet today, assuming the identity. Roma identity was structured on the basis of a history of exclusion and racism, consequence are visible today in the collective mind the minority one.

Ion Chelcea, in his work "Gypsies in Romania.Ethnic Monograph "appreciates that the number of Roma in Romania is about 525,000[75].

Following the ratification the acts of Union in 1918 all citizens of Romania have the same rights and responsibilities as the rest of the population. Besides the documents of Union stipulate this. This was the reason for that the Romanian Government led by I.I.C. Bratianu opposed signing in 1919 of a treaty of minorities wanted by the Great Powers, regarded as an act which infringes national sovereignty. Note that the Roma were in the spirit of that period, being united with the act of union.

On 27 April 1919, a Meeting of the Gypsies in Romania, meeting in Târnăveni, welcomed the decision of the Grand National Assembly in Alba Iulia on December 1, 1918 of the union of Transylvania with Romania. Roma expressed their commitment to the new homeland and the hope of equality with

[74] The general census of Romanian population on 29 December 1930, II (nation, language, religion), Bucharest, 1938, p. XXXII LVI. It can be seen in The National Archives of Bucharest Department, Presidency of the Council of Ministers.

[75] Ion Chelcea How many Gypsies are in Romania?, pp. 63-88

other citizens of Romania [76].

Interwar period was for the Roma population an era of major transformation. Land reform accomplished after World War transformed in the agricultural smallholders a part of the Roma living in rural areas. Place of Roma in the country's economy remains one peripheral, marginal. In the Romanian village world it can not talk about agriculture without analyzing the economic role that they were Roma. Repair of agricultural equipment, blacksmithing and other crafts, continued to be practiced exclusively by Roma.

The migration from village to city is increasing, raising the problem in finding a job. In urban life, Roma covereconomic niches reflecting the social and economic situation of the marginalized people. Roma who remain outside the social and economic influences remain nomads that traveled seasonally to practice their crafts.

> As a general feature, the Roma remain a low social class, representing a cheap labor force, a particular social class.

They were seen as a plague of times long past, not at all relate to the realities of time. The state got involved too little in this matter left to local authorities care. During this period, Roma organizations were demanding that these people, the state to provide house, sites and land.

1.2. Movement for Emancipation of the Roma

Interwar period is notable that the direction of modernization of Roma from the kingdom . There is a Roma elite composed of intellectuals, artists, publishers, retailers and musicians who do not betray the origin and beginning of the emancipation movement Roma people. Following the pattern of other populations in the kingdom, Roma set of social organizations, professional, cultural and even political. Fiddlers foundations of the professional societies in many cities.

In Bucharest works, "*Junimea Music*", one of its leaders being Grigoras Dinicu, also known as a militant for the cultural emancipation of the Roma. In 1926, at Calbor in Fagaras County, came into existence, "*Neorustica Brotherhood* ", from the initiative of Naftanailă Lazar. The main objective of this association, was to enhance economic and cultural level of the Roma. The association managed to produce the publication "*Gypsy race*". [77].

It is interesting that we are witnessing the emergence of a trend of centralization of the Roma movement in a single representative organization. Promoter, was Calinic I. Popp-Şerboianu, Bachelor of Theology who founded the General Association of Gypsies in Romania, in March 1933. The programme of this organization reveals a particular concern for Roma issue in that period.

[76] 1918. Union of Transylvania with Romania, ed. rd revised and enlarged, Bucharest,, p. 666-667
[77] Ibidem, Viorel Achim, p.128

Thus, consider: literacy of Roma, publishing books on the history of Roma, Roma establishment of a university, a "Gypsy" museum, setting up workshops according to the "nature of our nation" in the guild organization of the Roma who practice a particular trade, the establishment the "tips county" and a "council of elders to resolve disputes between the Roma, as a means of reporting the society to Roma cultural specificity, favorable precondition for integration of Roma[78]. The program objectives reflect a desire to promote social and educational integration of Roma, to improve the image of the Roma in Romanian society.

Also in 1933, there is another representative of the Roma organization, "General Union of Roma in Romania." At the National Congress held in October 1933 was elected a steering committee which was a president G.A. Lăzăreanu Lazurica, writer and journalist. Honorary President, was appointed Grigoras Dinicu. Within this organization, there are frictions, following which, Lazurica is removed, becoming president Gheorghe Niculescu,a flower merchant. Under his leadership, the Union has obtained legal status and was proved the most important organization of the Roma, the only nationally active. Active in relations with authorities and media had their own newspapers: "Oh, Roma", appearing in Craiova and "Voice of Roma", in Bucharest. The organization had 40 branches throughout the country and 784 793 members[79].The programme of organization, which resume the association earlier ideas, the main purpose being to act "because the fate of our Roma nation improves , that we stand with our fellow countrymen not to be ashamed" [80].

Significantly for the Emancipation of Roma, is the emergence of regional movements. In Oltenia a group of Roma intellectuals have started a very active movements. We mention Aurel Manolescu in Dolj County, a journalist by profession, Marin Simion, poet, N.St. Ionescu, lawyer, professor Plopsor C.Ş.Nicolăescu, who also published two books of folklore: "Gypsy Songs" and "Gypsy Tales." Those in the interwar period, had assumed the role of leaders of the Roma people have campaigned for the formation of the Roma ethnic consciousness. The process was not specific only to the Roma in Romania, we meet all over Europe. It is significant that in 1933, in Bucharest is organizing the first international meeting of Roma, in which it discussed the strengthening of the Roma ethnic identity [81].

1.3. The influence of nationalist and Nazi ideologies on Roma

If in the history, Roma on the Romanian land were subjected to a process of marginalization in the interwar period we are witnessing the emergence of a

[78]Time Newspaper, II, nr. 11-12, 25 September1933, p. 1-2
[79] G.Potra, Contributes, 124-125;
[80] Ibidem, Viorel Achim, p. 129
[81] Ibidem, p. 132; W.J.Halez, The Gypsy Conference at Bucharest, p.182-190

particular interest in science for Roma. Romania would not be foreign to racist ideology which is based on the theory biological determinism. The twentieth century began in Romania, with the ideology that "the modern state, rather than provide protection to the weak, would do better to turn their attention to encouraging valuable biological elements, the social utility or biological characteristics of the individual becoming unit of measure of its social value" [82].

Rising of Nazi Germany after 1933, with its doctrine on purity of races, very clearly expressed in the work of Adolf Hitler, "Mein Kampf" has brought an inland current of thought which argued the need to preserve indigenous racial purity of the Romanian people. In the interwar period in Romania is developing a specific nationalism, but foreign from antirroma attitudes. For example, the activity of the organization that is at the far right of the Romanian political life, Legion of the Archangel Michael (Iron Guard, later), they focus on antisemitism, later adopting a racial policy making toward the Roma. Goga-Cuza government activity, the royal dictatorship (1938 - 1940) did not pertain to Roma. In fact, until the Antonescu regime, representatives of biopolitics' concerns have not been implemented in practice. Biopolitics as a founder, in Romania, Professor Iuliu Moldovan from Cluj [83].

In the fourth decade, appear new concepts as: ethnic purity, ethnic lower, bioethnic distress, minorities ballast. It can be seen, the influence of ideas of Robert Ritter, a psychologist and psychiatrist who led the German Research Center for Racial Hygiene and Population Biology and aimed mainly purpose battling "*the scourge of Gypsy*."

Because of the way of life in Romania, the Roma began to be regarded as a plague of society. Ioan Făcăoaru, a leading theorist of racial research, believes that the assimilation of certain ethnic groups, could lead to "alienation and impoverishment of our ethnic traits" [84]. Roma assimilation was considered a major threat to the integrity of Romanian race. "The big racial problem of Romanians is the problem of Gypsy R. They constitute the largest ethnic group after the Romanian. And while, they are promiscuous and dysgenic element in our country. There was nothing done to solve the Gypsy problem" [85], sustained Sabin Manuilă, director of Central Statistics Institute.

Political changes in Romania, in 1940, set aside the democratic system enshrined by the Constitution of 1923, following the takeover of political power by the Legionnaires, and then by General Antonescu were to determine in Romania the adoption of the "final solution" - extermination of the Roma.

[82] History of Minorities in Romania, Auxiliary for history teachers, coordinators: Doru Dumitrescu, Capita Carol, Manea Mihăiţă Didactic and Pedagogic Publishing 2008,
[83] I. Făcăoaru, A leading state anthropology as a science and taught in schools, Cluj, p. 14-16
[84] Ibidem, p. 17
[85] A.S.B., fond Sabin Manuilă, XIII. 209

1.4. „Gypsy problem" during the Antonescu regime and deportation of Roma

Deportation of the Roma in Transnistria was Antonescu whereas all the work, not only performance but also on the idea. Before the Antonescu regime in Romania there was no public policy against Roma. Roma have not been a special concern for the Romanian society, not being considered an "*ethnic problem*". Right-wing government from 1938, Goga-Cuza, has not adopted legislation anti-Romani nature. The policy of *"Romanization*" and "*antiminority law*" adopted in early 1938 by this government, not related to Roma. At the level of political factors, the Roma were not seen as a "*problem*". Even if they were census as a separate ethnic group with their own language, they were treated more as a social category. For this, in the Romanian authorities' action, the Roma were not included among national minorities, legislation concerning minorities was not referring to them.

Interwar Romanian nationalism was foreign in attitudes and manifestations against Roma, and the Romanization policies of Goga government in 1938 and then during the regime of monarchical authority of Charles II did not pertain to the Roma. Commissioner General of Minorities, established in 1938, not deal with the Roma.

Roma policy was the creation of Ion Antonescu. At the 1946 trial, he said that had decided to deport them because of the problems which they did. Initially there was no plan for deportation to Transnistria. In the vision of Ioan Făcăoaru, a leading proponent of biopoliticy, "*Gypsy problem*" could be solved by "... *admission to labor camps. There, they change clothes, to be shorn and neutered ... With the first generation, we get rid of them* "(Anthropology in the state as a science and taught in schools, Cluj, 1941) [86]. It is obvious the influence of ideas of Robert Ritter who prepared under the ideological report the Roma extermination in the Nazi space.

Participating of Romanian Army in the Operation „Barbarossa"[87] provided a happy opportunity for the Romanian people to review the territory between the Prut and Nistru in Romanian borders[88] Following the agreement between Antonescu and Hitler Bender (end of August 1941), Romania receives administration of Transnistria. This show the geographic area where the Romanian authorities could implement the ideas of isolation and solve the "problem of inferior races" living in Basarabia, Bukovina and elsewhere in the country. By the end of May 1942, Romanian authorities took a census of the Roma as *"problem".*

[86] Idem, I. Făcăoaru, A leading state anthropology as a science and taught in schools

[87] Codename for the German Army's offensive military action and its allies against the USSR

[88] In the summer of 1940, following the Molotov-Ribbentrop Pact, concluded on August 23, 1939 Romania was summoned by the USSR to give up territory of Bessarabia and Northern Bukovina

The deportations began on June 1, 1942 with the nomadic Roma. To ease the process of deportation, Roma are making promises: land, animals, houses. There have been many abuses committed by the gendarmes and policemen charged with carrying out the operation. In Transnistria Roma were settled in the counties Golta, Ochakov, Balta, Berezovka.

Living conditions were unspeakable: deportees were deprived of food, shelter, wood for fire, clothing, lacked the most basic things needed there. Due to hunger, most Roma have been weakened so far that they became real skeletons . Hunger, cold, typhus killed thousands of people guilty simply because they belonged to another ethnic group.

According to the Romanian Commission for War Crimes during the deportation to Transnistria were about 36,000 Roma died.

We consider that it is practically impossible to estimate the number of those killed in Transnistria because it was a time when many of those deported had a nomadic way of life, without identification. When done reviewing the census is not settled by name but simply specify the leader (Bulibaşa) with his tribe.

Deportation was not an agreed position in Romania by the people or the politicians. Constantin I.C.Bratianu , National Liberal Party leader address to Ion Antonescu a letter which was a harsh indictment, calling the deportation of the Roma an "unjustified and cruel act" and demanded "immediate cessation of such operations which throws us a few centuries ago [89]. *Colonies"* of Roma from Transnistria were characterized by hunger, lack of basic items and no clothes, because the vast majority of Roma was forced to leave their homes without taking any thing from them.

It is estimated that at least half of the population was deported to Transnistria died of hunger, cold, and lack of medical care. What is not described with much detail, although it implicitly suggests, is the role of pre-existing population in this region. Because extreme acts do not occur if people do not close your eyes and mouth, if not pretending it does not see, and if not forced to keep quiet .

Atrocities during the Second World War occurred not only because some regimes have chosen to pursue a policy of brutality, but because all social levels, in their turn, preferred (at best) to turn back of all those who were considered "socially dangerous" .

[89] Ibidem, Viorel Achim, p. 148

No doubt that the deportation of Roma to Transnistria is in pursuit of the Holocaust in the Second World War , is actually a measure of racial.

It is estimated that in the same period 70-80% of Roma living in countries under the Nazi regime were the victims of the extermination and concentration camps. In Germany, 12% survived, while in Croatia, Serbia, Belgium, Netherlands, Luxembourg, Estonia and Lithuania have survived only 1%. The same fate had it, the Roma from France, Latvia, Austria, Czech Republic and Poland.

1.5. Emancipation of Roma after the Second World War

After the Second World War, the Roma begin to establish the national religious and cultural organizations. In 1965, in Paris is founded the International Committee of the Gypsies (Roma), which promoted the establishment of subsidiaries in several countries to promote the legitimate right to existence of the Roma people and recognition of the injustices of the years of World War II (1939 -1945) years of the Holocaust for the Roma people.

In April 1971, CIT (International Committee of the Roma) held in London the first World Congress of Roma, where delegates from around 14 countries will adopt the name of the Roma, the organization's flag and the slogan "Opre Roma" (Roma Arise). Address by the President of Congress captures the spirit that animates this congress:

> *" The purpose of this congress is to unify the Roma and to encourage them to act in the world; to bring a emancipation in agreement with our own insights and ideals, for improvements in the pace at which we feel comfortable (...). Everything we do will bear the mark of our own personalities, will be amaro Romano Drom, our Romany way. Our people need to plan and organize local actions, national and international. Our problems are everywhere the same: we must be as their models of education, to maintain and develop our Roma culture, to bring a new dynamism in our communities and to build a future in line with our lifestyle and our beliefs ....".*

In Proceedings of the Second World Congress of Roma, held in Geneva in April 1978, 120 delegates will attend observers from 26 countries. India, the mother country, was represented by a large delegation. Were elected delegates to the UN (Human Rights Commission) and UNESCO. The fate that Roma had during the war will dominate the discussions of the third Congress held in Göttingen, in May 1981.

Restoring history of Roma in Romania during the communist era is more difficult than for years during the Second World War. With the ascension to power of communism, with Soviet troops in Romania are produced radical

changes: the abdication of King Michael I, the proclamation of the Republic,eradication of political parties . General Union of Roma was forced to disband in 1949.

During the early years of communism, against the Roma has shown a hitherto unthinkable phenomenon - quite many Roma work in police, army and security organs. In some villages Roma are appointed presidents. These actions seek to ensure loyalty from the lower economic strata in a broader plan to remove inequalities.

In the early 1960s, the authorities "push" the Roma to a permanent residence. The refusal of Roma was treated with moving of families from one region to another, often making calls to the help of local authorities and the militia. Even if they were available houses, a large part of the nomadic Roma were refused and continued to practice ancient crafts. In 1977 it was estimated that the number of nomadic Roma was 65,000. Their sedentary occurred in the '70s, '80s. The most effective policy of assimilation of the Roma population was educational policy, which became compulsory education, so the Roma families were forced to enroll their children in school.

During Ceausescu's period, Roma assimilation policy has increased. He tried to "civilize" them through restraints. Disconnected from the traditional community, many Roma are losing their identity or refuse to have it more of a stigma of shame that ethnic belonging that was not recognized, did not appear in the documents of the country is deepening. The communist regime stated that the "private" occupations of citizens had to disappear. Nomadic Roma, best craftsmen were confiscated gear. For those whose job no longer prevails, sanitarition has become their new job. Other Roma could be seen collecting recyclable materials (glass, iron, paper) or buying feathers, textiles in return for which offers various articles made of them. By the fall of communism, according to statistics, 48-50% of working-age Roma were working in agriculture. Those who practiced traditional crafts were considered "social parasites", for which many were imprisoned, beaten or sent to forced labor at construction sites of the country.

Resolution of the Politic bureau of the CC of the Romanian Workers' Party to ignore the existence of the Roma ethnic minority. However, 1965 census shows that their number was 104,214, 0.60% of the population. From a cultural standpoint, very strict censorship imposed in Romania after 1946 affected the emergence of over 2000 titles of books and magazines.

During communism, Roma culture was considered a "culture of under development and poverty" (Pons, 1999), Roma are treated as foreign elements which must to be integrated and assimilated. Thus, nomadic habits start to disappear gradually and in parallel, the regime in late 1970 and then, decided that areas inhabited by Roma were to be incorporated into plans to clear urban areas and to dissapered traditional slums. Old people are expelled, their homes are demolished and in their place appear modern buildings. Roma

themselves had to be spread in these new districts, which in a certain sense of community cease to manifest.

Having lost the possibility of exercising the traditional jobs, without being able to move to another job, a quite number of Roma living in cities have turned to illicit trade. The proceedings for the confiscation of gold from owners of 1960 and thereafter corturari Roma, who used gold jewelry as a way of saving, have lost all their savings. Suddenly, the number of children who arrived in orphanages and hospitals has increased, as evidence of increasing poverty, but also because it was destroyed in a great degree of solidarity and support among members in the community. Al of these in the "civilizing" process of the Roma by the regime. Many Roma who left to pursue traditional occupations have had difficulty integrating into a new job, have been characterized as "social parasites" and were sent to forced jobs in construction or Black Sea-Danube channel. The communist regime has pursued a policy assimilation, racism comes from the dominance (sedentary forced confiscation of gold) which aimed at suppression of ethnic identity.

The transition from communist to a democratic regime is also characterized by violence. From 1989 and for a period of almost 10 years, the Roma have suffered attacks from the public and the authorities. List evidence of violence against Roma in Romania and not only the rest of Europe is long. Several cases were brought to their attention through mass media, others were passed over in silence, but were described in more detail in countless declarations written by the associations which occur by human rights.

From December 1989 a whole series of events marking the use of violence against Roma with all that in Romania, as well as in other European Union countries, the Roma are citizens with full rights and legal citizens of the towns and villages where they are installed very many years. In many of these violent episodes, masses of people gathered when they pulled the church bells to attack the houses of the Roma. These scenarios are modern versions of old normal programmes in central and eastern Europe. Only in Giurgiu region were four such incidents happened in April-May 1991, all common in villages near Bacu and all were completed by burning the homes of Roma and their banishment from the village. The guilties were not sent or not guilty today in court. Investigations and court proceedings - which began after complaints were victims often failed, as long as there was no evidence given the solidarity shown by the inhabitants of those villages. The victims were left in the lurch without receiving any compensation.

In Bacu village, located at 23 km from Bucharest, on the night of 7 to 8 January 1995 (religious feast of St. John), following clashes between villagers and Roma long established in the village was burned down their homes. As always in these situations is difficult to elucidate the hypothesis, as long as each side accuses the other. However, it is known that two Romanian fighter fired a gun against a Roma family who lived in their neighborhood, seriously wounding two of its members. The events that followed have been seriously injured two

Romanian and three Roma. Roma announced the Police immediately and handed weapon, which took it from the villager. Because they feared further violence, they have left the village. On the night of Jan. 8, although police were present, villagers gathered when they pulled the church bells and fire to abandoned houses of the Roma. They torched four houses, three of which were completely destroyed. All belonged to families who had no connection with the initial motives of the conflict. They were destroyed simply because he belonged to Roma and the villagers have seized this opportunity to banish their community in Bacu.

Roma representative organizations have condemned these attacks and also condemned the passive position of the authorities against these repeated acts of violence against Roma. Against the backdrop of events after 1989, although the recognition of Roma as a national minority involved gaining political rights and civil, economic and social, the deterioration of their situation was a consequence of institutionalized racism. In an emerging democracy, blocking accesion to the social rights and the exclusion of individual development resources have induced a recrudescence of racism and discrimination in a fragile status of citizen.

EPILOGUE

In an enlarged and unified Europe, the Roma should be known and valued, appreciated for what they offer and can bring Europe's cultural heritage. In Romania, according to 2002 census, live 535,250 Roma . Unofficially, however, several Roma organizations claim that their number is much higher. Many Roma do not declare their ethnic affiliation. Why this situation? Hundred years of slavery, marginalization of their lives, led to the stigmatization of the Roma identity. To escape the shadows of the past, we need the history of culture and civilization of this people. In a world of multiculturalism and tolerance, we must try to do something for reconsideration of the Roma.

From the moment of their presence in Europe, Roma have been subjected to systematic extermination or forced assimilation. For hundreds of years captives, cursed, humiliated, marginalized, discriminated against, subjected to public disapproval, poor and despised. Roma however, survived, maintaining ethnic specificity. Living with other people it has brought a charm and mystery and influenced many fields, especially art, knowing Roma native talent for music and crafts skills which have contributed to some feudal economy, at least in Romanian Countries. And Roma have contributed to universal culture and, even if they are a transnational people without an own state, their presence in the world is felt especially in Europe. Discrimination against Roma was and unfortunately is a reality recognized even very hard. Stereotypes and prejudices perpetuated for centuries have helped to promote ideas that Roma people have approached the gates of hell.

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