

## OPPORTUNITY AND GENDER EQUALITY IN THE CONTEXT OF THE EXERCISE OF WORK FORCE RIGHT TO FREEDOM OF MOVEMENT BY EU CITIZENS

Brîndușa MARIAN\*

**ABSTRACT:** *Opportunity and gender equality are among the fundamental principles that European Union law is based upon. The EU is obliged to promote this principle in all the actions it enterprises. The studies conducted at the level of EU member states high-lighten diverse and multiple cases of both direct and indirect discrimination, gender motivated or otherwise, one of the most important forms of discrimination being nationality based. Immigrants are more exposed to discrimination compared to the “natives” and women immigrants even more. In this study, we focus our research on immigrants within the EU and merely secondarily on third country national immigrants.*

*In an attempt to reduce discrimination under all its aspects, the EU has adopted the Strategy for equality between women and men for the 2010 – 2015. In this Strategy, the EU has set certain objectives through which the UE evaluates the means member state use to accomplish, implement, monitor and evaluate their actions. Romania, in its quality of member state, has adopted, at its turn, a strategy in the field covering 2014 – 2017 and proposed a number of accomplishable objectives through different key-actions.*

**KEYWORDS:** *free movement of workers, opportunity and gender equality, strategy.*

**JEL CODE:** *K31;K37; K40.*

Opportunity and gender equality stand among the fundamental principles of European Union law and European Court of Justices' case-law. Equality between women and men is not merely a “mission” but also an “objective” of the European Union that has the obligation to promote this principle in all its actions. The problem of opportunity and gender equality of the work force market requires multiple approaches, when analyzing the situation of migrant workers.

---

\* Lecturer, Ph.D. „Petru Maior” University, Tg Mureș, ROMANIA.

This paper has been financially supported within the project entitled „SOCERT. Knowledge society, dynamism through research”, contract number POSDRU/159/1.5/S/132406. This project is co-financed by European Social Fund through Sectoral Operational Programme for Human Resources Development 2007-2013. Investing in people!”

## 1. LEGISLATIVE ASPECTS REGARDING GENDER AND OPPORTUNITY EQUALITY IN THE CONTEXT OF WORK FORCE FREE MOVEMENT RIGHT EXERCISE

In order to properly draw a correlation between the principle of gender and opportunity equality and free movement of workers it is necessary to present the European legislation in the matter. The Lisbon Treaty and the acts of European Unions' institutions as well as the case-law of the European Court of Justice create the frame-work within gender and opportunity equality of migrant workers can manifest. Equal opportunity and gender equality entail the absence of discrimination in any of its forms.

The Treaty on the Functioning of the European Union provides in article 18 that *“within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.”* This provision points out the requirement for member states to apply the regulations meant at prohibiting these types of discrimination. Non-discrimination represents the premise for the effective guarantee of workers free movement. Lacking such legal provisions, member states can allow the access of immigrant on their territory, but, by providing preferential treatments to its citizens, can lead to discriminatory situations for migrants.

Discrimination of migrant workers is a problem towards which the European Union has turned its attention in the context of maintaining or lowering the growing rates of the phenomenon in the region. The foundation of a well structured economy is represented by the fluxes of workers and the maximization of the work markets' potential by employing *“the right person at the right moment”*. The existing data for the post 2008 period show different levels of discrimination. In general, this discrimination is materialized in the growth of unemployment rates and the reduction of work force migration rates. (EMPL Committee, 2014)

The Lisbon treaty provides the equality of treatment or non-discrimination based on nationality. The equal treatment principle is provided in art. 45: *“Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. It shall entail the right: to accept offers of employment actually made; to move freely within the territory of Member States for this purpose; to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action; to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.”* These rights can be subject to limitations justified on grounds of public policy, public security or public health, employment in public services and in cases of new member states (e.g. in the case of Romania and Bulgaria, limitations to the work market have been set until 31<sup>st</sup> December 2013).

Secondary legislation that provides for free movement in correlation with equal opportunity and gender equality is represented by Directive no. 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and Regulation no. 2011/492 on freedom of movement for workers within the Union as well as Directive no. 2006/54 on the implementation of the

principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

Article 24 of Directive no. 2004/38 on the free movement of workers provides the right of citizens of European Union member states to equal treatment in comparison to the “natives” of the country; the family members also benefit of this right.

Directive no. 2006/54 prohibits any type of gender based direct or indirect discrimination regarding remuneration conditions. Also, discrimination is prohibited concerning access to employment, professional training, promotion and work conditions.

Regulation no. 2011/492 brings into discussion the rights “workers” benefit. The very ideal of accomplishing work force free movement implies the elimination of any form of citizenship based discrimination between member state workers as far as employment, remuneration and work conditions are concerned as well as their right to move freely in order to perform paid activities.

According to the regulation, free movement of work force on the territory of the European Union represents one of the means that guarantee workers’ possibility of increasing their living standards, of creating better work conditions and of social progress, having in the same time an important contribution in the growth of member states’ economies. The exercise of free movement right requires the existence of equal treatment in the matter of performing a wage-paid activity. There are close connections between workers mobility and work force occupancy and professional training in so far as it answers real employment offers from various regions of the Union.

The non-discrimination principle implies the recognition at EU level, for all member states citizens, of the same priority in employment as that granted to the citizens of the member state on whose territory migrants reside on. More so, it envisages aspects pertaining to employment, equal wage conditions for work activities. Therefore, according to article 1 of the Regulation, any national of a Member State shall, irrespective of his place of residence, have the right to take up an activity as an employed person, and to pursue such activity, within the territory of another Member State, with the same priority as nationals of that State. Articles 5 and 6 of the Regulation state that a national of a Member State who seeks employment in the territory of another Member State shall receive the same assistance there as that afforded by the employment offices in that State to their own nationals seeking employment. The engagement and recruitment of a national of one Member State for a post in another Member State shall not depend on medical, vocational or other criteria which are discriminatory on grounds of nationality by comparison with those applied to nationals of the other Member State who wish to pursue the same activity.

On the issue of employment conditions and treatment equality, article 7 of the Regulation states that a worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment. Workers that are nationals of a member state enjoy the same social and tax advantages as national workers. At the same time, a worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy equality of treatment as regards membership of trade unions and enjoy all the rights and benefits accorded to national workers in matters of housing, including ownership of the housing he

needs. The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory.

Identifying problems brings also solutions. To this end, the Commission has drawn up a series of reports precursory to the adoption of a Directive.

In 2010, the Commission realized a report on the EU citizenship entitled "Dismantling the obstacles to EU citizens' rights". The report showed that the divergent and unfair application of EU law regarding free movement of workers represents one of the main obstacles that EU citizens face. Consequently, the Commission expressed its intention to adopt measures in order to facilitate free movement for EU citizens, their families by strictly applying EU legal provisions in the matter of non-discrimination and by promoting good practices in this field. Also, the Commission stated its desire to reach a better level of legal knowledge among the citizens through a better information process of EU citizens on the subject of their right to free movement. (Commission, 2010, Marian, 2014, pp.159-165).

The "Towards a job rich recovery" report of 2012 presents the intention of the Commission to elaborate a legislative proposal for sustaining mobile workers by offering information and advisement concerning the exercise of their rights and has urged member states to ameliorate the knowledge degree of the rights conferred through Union law in the matters of fight against discrimination, gender equality and free movement of workers as well as open and facilitate access to employment in the public sector (Commission, 2012, Marian, 2014, pp 159-165 ).

In 2013, by adopting the "EU citizens: your rights, your future" report, the Commission high lightened the need to eliminate administrative obstacles as well as simplify the procedures for EU citizens that reside, live and move towards member states. The need to apply and ensure compliance with Union legal provisions constitute fundamental elements for human rights protection, while inadequate application diminishes the efficiency of Union norms in the matter and endanger the protection and rights of workers and of their families. (Commission, 2013, Marian, 2014, pp. 159-165).

In 2013, Directive no. 55/2013 was adopted, directive that facilitates the access of migrant workers to member states' territories by regulating professional qualifications recognition. The directive sets a number of rules that aim at increasing the mobility of persons with high professional qualification on the territory of EU member states. An analysis made upon the impact of previous regulations shows that neither one of the member states has transposed the legislation before the set deadline (2007). Only in 2009, Directive no. 36/2005 was transposed in all member states, after infringement procedures were introduced. It has been noted that legislation did not represent an obstacle for complying with migrant workers rights. Through Directive no. 55/2013 the automatic recognition of professional qualifications has been extended and the system of linguistic competences examination has been regulated.

In February 2014, Directive no. 2014/36 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers was adopted. According to the provisions of this directive, seasonal workers enjoy equal treatment with EU citizens regarding employment, work conditions, minimum employment age and health and work security as well. The regulation is not mandatory for states in the matter

of unemployment and social welfare, states having the possibility of restricting treatment equality in areas such as fiscal advantages, education, etc. (EMPL, 2014, pp. 32)

In 2014, taking into account the problems found, Directive no. 2014/54/CE was adopted on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers. This directive was adopted as a solution to the problem of non-exercise of their rights by worker and their families. The directive provides the obligation for member states to ensure judicial and administrative procedures that allow workers and their families that have or do suffer from unjustified restrictions or obstacles in the exercise of their right to free movement or who consider to have been injured by the non-appliance of the principles of equal treatment or non-discrimination to act in order to get their rights recognized. More so, states must ensure that associations, organizations and social partners that have a legitimate interest in ensuring compliance with the provisions of the directive can undertake, in the name or in supporting workers and their families, legal and/or administrative procedures in order to ensure compliance with workers' rights, within the framework of national legal provisions.

The European Court of Justice has pointed out that the exercise in good conditions of migrant workers free movement requires the elimination of nationality based discrimination in all European Union member states. The Court took into account the elimination of discrimination regarding employment, wage and work conditions. The ECJ referred to both direct and indirect discrimination. Setting certain language conditionings can be labeled as indirect discrimination. The requirement imposed on an immigrant to know a language at a certain level, certified through a diploma or a certain type of diploma represents nationality based discrimination. Also, the ECJ established that the migrant worker enjoys equal treatment in matters such as wage, work place stability and professional promotion. Likewise, the time intervals when the worker carried out activities in different member states must be considered professional experience for the migrant worker in the same conditions as for the "natives". (EMPL, 2014, pp.19)

It must be stressed out that migrant workers and their families coming from European Union third states also enjoy the same rights, if they reside on the territory of any EU member state. (EMPL, 2014, pp.13)

## **2. GENDER AND OPPORTUNITY EQUALITY OF MIGRANTS. LITERATURE REVIEW**

In the last years, at the level of European institutions, studies and analysis have been made regarding free movement of workers and the exercise of their rights on the territory of member states of the Union.

According to a study made in 2012 (European Commission, 2012), there are more types of problems concerning the application of European Union law in the national law of states and these represent true barriers and obstacles in the accomplishment with optimum results of worker free movement and the exercise of their rights. The problems signaled include: lack of conformity between national legislation and Union legislation in the matter; incorrect application of Union law; the inadequate application of EU law by employers; the lack of exercise by workers of their rights.

In 2014, the EMPL Committee made a study that aimed all European Union states and concerned the discrimination risk that migrant workers face in each state. This document

devolve data contained in analysis, surveys and studies from different member states presenting a series of risks that immigrant workers are faced with. Thereby, the risk of immigrant discrimination varies depending on a series of factors: sector of employment; gender and ethnic origin; lack of professional qualification; structural barriers (indirect discrimination). (EMPL, 2014, pp. 38-68)

Concerning the activity sector it has been noticed the tendency of employing migrant workers in those sectors that are most affected by the economic cycle, with precarious work conditions (Eurostat, 2011). Immigrant women are disproportionately present on the work market. They are preponderantly employed in work sectors such as home nursing, house keeping, sectors where work legislation does not apply and are therefore subject to exploitation, with high risks of low wages. For example, in Great Britain, au pair (mostly women) do not have access to minimum wage per economy (ILO, 2013). The jobs in the sector where women are the majority are worst paid than those where men represent the majority. (EU Commission, 2014)

Discrimination risk depends on the particular contexts, but it has been noticed that a migrant man having high qualification is less exposed to discrimination than a specialist migrant woman. The discrimination risk for women is double or triple, according to age, sex and/or ethnicity. (Eurostat, 2011)

Concerning the possibility of evaluating gender or ethnicity based discrimination risks, it has been shown that there are difficulties in evaluating the risks for women in the context of employment. This is due to the fact that researches were aimed at more traditional aspects, such as family planning. (EMPL, 2014) Studies however point out that the discrimination risk for women is double. Migrant women and third country nationals tend to be overqualified for the jobs they occupy unlike men. This aspect has been concluded from a wage comparison. Men often have double wage compared to other categories. Similarly, it has been concluded that migrant women are least integrated. (Galotti, Mertens, 2013)

Women are less present in economics and politics. Only a third of the scientists and engineers from Europe are women. Even in those sectors where they represent the majority women occupy in a small percentage management positions. In 2014, at European Union level, women in positions of management board presidents summed up to only 7% and as members to 20%. There are states, such as Czech Republic, Denmark, Estonia, Ireland, Greece, Luxemburg, Hungary, Malta, Holland and Portugal where women are not present in the capacity of president of an administration board. The percentage of men in the quality of presidents of administration boards in these states is 100%. Concerning Romania, the situation is much better, the percentage of women in these positions being of 20%, ranking Romania over the EU average. On this particular aspect, our country is surpassed only by Poland, where women – presidents of administration boards - amount to 26%. ([http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/business-finance/supervisory-board-board-directors/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/business-finance/supervisory-board-board-directors/index_en.htm))

On the subject of the quality of member in an administration board, the European average percentage for men in this position is 80%. Women are the least present in states as Czech, Cyprus, Estonia, Greece, Malta, and Portugal, situated far under the European Union average level. The best representation rates exist in France and Leetonia – 32%.

Romania is under the EU average for women are present in the capacity of member in a administration board in a percentage of only 11%.

In the public administration, at EU-28 level, at first ranking, women sum up to 31% compared to men – 69%. At second ranking administration women represent 40% while men 60%.

The greatest disproportion between women-men we find in Luxemburg where at first level of administration there are no women, while at second level of administration we remark Belgium where the proportion of men is of 86%. In Romania the situation is somewhat balanced. At first level administration women represent 46% and at second level they add up to 57%, the largest percentage at the level of all European Union member states. ([http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/public-administration/national-administrations/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/public-administration/national-administrations/index_en.htm))

A survey conducted at EU – 27 level, by the European Union Agency for Fundamental Rights, on a sample of 23.500 immigrants, has outlined that “visible” minorities (having a different physical aspect) are to a greater degree discriminated, especially women compared to men. “Visibility” varies on factors such as skin, hair and eye color related to the “natives”. There exists a consensus among specialists upon the vulnerability of the migrant and gender status: EU third country national and EU women are more exposed to discrimination risk than men. (EMPL Committee, 2014)

A 2005 study done by the European Union Agency for Fundamental Rights has shown that immigrants have disproportionably been employed in the lowest ranking occupational categories on the work market, in a limited number of sectors and that they did not lodge complaints against their employers. Lack of reported cases exposes migrants without protection to a higher discrimination risk. Fear of sanctions that might be applied by the employer is high and determines a certain type of behavior. For example, in Spain there exists a larger presence at work of sick migrants than in case of natives in the same situation. This type of behavior shows the way in which precarious work places having low wages and difficult access to social welfare services negatively influences the health status of migrants. (EWCO, 2011)

A different discrimination risk that migrant workers face is that of exploitation in the informal economy. Another European Union Agency for Fundamental Rights study presents the sectors of informal economy where the category of migrant workers is oversized and that offers low remunerative jobs, with low incomes, lack of satisfactions and physically demanding. In these sectors there exists forced work and constraint is often used. The risk of discrimination is greater for women who are over-represented in these sectors. (EMPL Committee, 2014)

The aptitudes and competences of women are under-evaluated, especially in those areas where they represent the majority. There are situations where physical tasks done by a man are better evaluated than those done by a woman. For example, a woman cashier in a supermarket will be less paid than a man that works in a warehouse. (EU Commission, 2014).

A series of analysis and studies have shown discrimination problems at employment. OECD predicted the fact that the economic crisis has had a significant impact on the policies regarding work force migration. The impact varied upon how well states were prepared to adjust their work markets to economic shocks. In states where the economic crisis made felt its presence sooner, there has been noticed an increase in unemployment

rates and a decrease in the employment rate among migrants compared to natives. A study from 2008 carried out by the European Union Agency for Fundamental Rights confirms the predictions made by OECD and concluded that this situation can be explained through existing discrimination at employment, but made no distinction between direct discrimination and indirect discrimination. (OECD, 2009)

The scholarly literature agrees that migrant women integrate more difficultly on the work market than men due to gender or migrant status discrimination. Women work jobs with reduced program or part time in order to mix family life with work responsibilities. (EU Commission, 2014) Women assign more time for children education and growth and cultural barriers and traditions play an important role. In these conditions, the unemployment rate is higher among immigrant women than “natives”. (EMPL Committee, 2014) To all these previously mentioned, we can add direct or indirect discrimination at employment due to lack of transparency. The absence of social networks can be an obstacle in cases of informal recruitment and without publicity except friends and relatives of the already existing employees. Unrecognizing professional qualifications, language conditions, state budgetary cuts in their integrations efforts – all represent structural barriers for migrant employment and, in the same time, discrimination causes.

In the employment stage migrants can confront themselves with situations where they are discriminated directly and positively. Studies from France and Germany, made by the European Union Agency for Fundamental Rights, show numerous cases of negative discrimination of migrant workers. There are situations when in case of identical resumes, with one candidate having a name that sound foreign, the candidate whose name sound native is hired in the end. Cases like these have been seen in Belgium, Ireland and Holland. In case of Germany it has been however noticed that when to the resume references are added the situation presented above disappears. Negative discrimination is more frequently noticeable in times of slower rates of economic growth. There are, however, proves of positive discrimination at employment. There are employers that favor at employment workers of a certain nationality because it is known that they are hard-working and ambitious. In some activity sector (e.g., constructions), less regulated, the migrant worker is favored for employment. (EMPL Committee, 2014)

The employment rate among women is of 63% compared with 75% in case of men between ages of 20-64. 34,9% of women work part time unlike men who work part-time 8.6%. (EU, 2014 [http://ec.europa.eu/justice/gender-equality/files/gender\\_pay\\_gap/140227\\_gpg\\_brochure\\_web\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/140227_gpg_brochure_web_en.pdf))

Concerning work conditions there are numerous studies that high-lighten work place discrimination and that link it to the economic crisis in UK, Portugal, Romania, Germany and Finland. Also, it is mentioned that unqualified migrant workers are more vulnerable to work place discrimination than natives. (EU, 2014 [http://ec.europa.eu/justice/gender-equality/files/gender\\_pay\\_gap/140227\\_gpg\\_brochure\\_web\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/140227_gpg_brochure_web_en.pdf)) Similarly, studies from Denmark and the UK have proved that non-occidental immigrants in the health sector have been discriminated at their work place, including in the period of education and professional training. Discriminatory situations included for e.g. work schedule (migrants worked during weekends while the natives had the weekend days off). An inquiry made in France underlined the fact that migrants were paid a third less than the natives and the difference could not be explained through age or experience. A survey

made in 2004 in Britain showed that for many migrants discrimination has represented the reason for their departure from different EU states. (EU, 2014 [http://ec.europa.eu/justice/gender-equality/files/gender\\_pay\\_gap/140227\\_gpg\\_brochure\\_web\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/140227_gpg_brochure_web_en.pdf)) In Slovenia, irregularities have been identified concerning work contracts and job health and security. In certain cases, migrants were refused at employment or had a work contract for a determined period because of their immigrant status. (EU, 2014 [http://ec.europa.eu/justice/gender-equality/files/gender\\_pay\\_gap/140227\\_gpg\\_brochure\\_web\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/140227_gpg_brochure_web_en.pdf))

Most discrimination cases have been related to remuneration. The wages paid to migrant workers are much lower than that of natives. Migrants tend to work more, in more precarious conditions and receive remuneration for their work under the guaranteed minimum. Migrants are discriminated at their work place by colleagues and clients. (EMPL Committee, 2014) The European Commission has drawn-up a report regarding the remuneration difference between men and women. It is shown that, at European Union level, women are paid 16% less per hour than men. The difference is under 10% in states such as: Slovenia, Malta, Italy, Romania, Poland, and Luxemburg and higher than 20% in Hungary, Slovakia, Czech, Germany, Estonia and Austria. The wage differences exist even if women are graduates of higher education. 60% of college graduates in the European Union were, in the year 2012, women. (EU, 2014 [http://ec.europa.eu/justice/gender-equality/files/gender\\_pay\\_gap/140227\\_gpg\\_brochure\\_web\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/140227_gpg_brochure_web_en.pdf))

On the issue of lay offs, studies show that economic crisis has determined discriminatory lay offs. The results of studies carried out in OCDE countries in the 2008 – 2010 period point to an increase in the number of lay off among migrants. After 2010, this growth has come to a deceleration. In recession periods, the number of migrant lay offs seems to be higher also due to their employment in work sector dependent on the business cycle. Because of the cyclic nature of work force employment it proves quite difficult to conclude whether migrants are discriminated. A means of testing this aspect resides in verifying access to pensions and unemployment help. In Slovenia the mandatory contribution of migrants to unemployment insurances is provided for in legal provisions. However, there are no provisions regarding the right of migrants to benefit from unemployment help. Gender differences have been noted in case of migrants. Women were hired in areas such as health and social services while men lost jobs in agriculture, constructions and retail sales( EU, 2014 [http://ec.europa.eu/justice/gender-equality/files/gender\\_pay\\_gap/140227\\_gpg\\_brochure\\_web\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/140227_gpg_brochure_web_en.pdf))

In the Romanian scholarly literature, studies on gender equality and equal opportunity of migrant workers are not in abundance. In 2014, the Research and documentation center in the field of immigrant integration has made a final report regarding the integration level of immigrants on the territory of Romania. One of the chapters of the study has as theme “Work and economic integration.”

According to the data of the General Inspectorate for Immigration, at 31<sup>st</sup> March 2014, on the territory of Romania there were 5307 EU third country nationals, with work purpose residence permits. The data used in conducting the study have been supplied by 23 public institutions having responsibilities in the fields of immigrant integration on the work market.

The report follows the accomplishment of four indicators:

- Access on work market;
- Employer practices;
- Access to a loan from a financial institution;
- Property rights.

Regarding access to the work market, the conditions and access procedures for foreign citizens were analyzed, as well as the application of legal provisions and procedures in the matter.

According to the report, citizens from European Union third countries can access the work market in Romania based on a labor authorization. The legislation differentiates more categories of workers, as follows: “*permanent worker*” (the foreigner employed on the territory of Romania on the grounds of a individual labor contract), “*trainee worker*” (the foreigner employed on the territory of Romania for a determined amount of time with the purpose of improving professional, linguistic or cultural knowledge), “*seasonal worker*” (the foreigner employed in a well defined job on the territory of Romania, in an activity sector that depends on the succession of seasons, on the grounds of an individual labor contract signed for a determined period of time that cannot exceed six months in a period of 12 months), “*trans-boundary worker*” (the foreigner employed in the border cities on the territory of Romania that returns daily or at least once a week in the common border with Romania where he resides), “*detached worker*” (the qualified foreigner, employee of a foreign legal person, that carries out its activities in Romania in certain situations), “*special qualification personnel*” (university teachers, researchers and scientific staff that carry out academic activities or research activities within universities, education and research institutions and authorities in the central system of public administration in Romania), “*highly qualified worker*”. ([http://www.cdcdi.ro/files/services/18\\_0\\_Barometrul%20Integrarii%20Imigrantilor\\_%202014%20f.pdf](http://www.cdcdi.ro/files/services/18_0_Barometrul%20Integrarii%20Imigrantilor_%202014%20f.pdf) pp.87-95)

The legislation in force provides the need to cumulatively fulfill certain conditions by foreigners in order to be employed on the territory of Romania, as follows:

- “vacant jobs cannot be occupied by Romanian citizens, citizens of other EU member state or countries that have signed the Agreement on the European Economic Area. This condition does not apply to foreigners that are managers of the enterprise or that are professional athletes, seasonal workers, trans-boundary workers or foreigners whom posses a residence permit for study purposes;
  - fulfill special conditions of professional training, experience in the activity and authorizations required by the employer; prove that they are medically apt to carry out that activity and that they do not have criminal antecedents;
  - do not exceed the contingent annually approved through G.D.;
  - the employer is up-to-date with its contributions to state budget;
  - the employer effectively carries out the activity for which the work authorization was demanded for;
  - the employer has not previously been sanctioned for undeclared work.”
- ([http://www.cdcdi.ro/files/services/18\\_0\\_Barometrul%20Integrarii%20Imigrantilor\\_%202014%20f.pdf](http://www.cdcdi.ro/files/services/18_0_Barometrul%20Integrarii%20Imigrantilor_%202014%20f.pdf), pp.87-95)

The work authorization is issued by the General Inspectorate for Immigration at the request of the employer if the latter presents documentation to the following: the contributions for the first semester have been paid, it carries out a legal activity in

Romania and has made a legal selection, and as well that the foreigner fulfils the requirement previously presented. *The analysis made upon the application of legislation and procedure shows situations where public institutions produce instances of discrimination by violating the rights of third country national to practice in certain areas of activity.* To this end, we exemplify the situation of an Iraqi citizen whom, after graduating a pharmacy university in Romania, had the right, according to law, to become a member of the Pharmacists College in order to be able to practice in this specialty field. However, due to the refugee status he had at that particular moment, this right was denied to him by the Pharmacists College based on the argument that he is not a Romanian citizen. Consequently, although the legal framework ensure third country national the right to access, within reasonable conditions, the work market this access is difficult and differs from one domain to another, the accession conditions being rarely respected in practice”.

([http://www.cdcdi.ro/files/services/18\\_0\\_Barometrul%20Integrarii%20Imigrantilor\\_%202014%20f.pdf](http://www.cdcdi.ro/files/services/18_0_Barometrul%20Integrarii%20Imigrantilor_%202014%20f.pdf), pp.87-95)

Concerning employer participation, in the undertaken analysis, the authors did not identify employers that prefer foreign citizens or certain categories of foreign citizens as employees. The surveys carries out on employed immigrants have shown that the main issues at employment are related to linguistic competences and unrecognizing professional qualifications. Most of the times, the set-backs at employment have been related to this last topic. The conclusion of the report was that immigrant workers are employed after taking into consideration their professional training but with certain limitations related to language knowledge and the regime of qualification recognition.

In order to verify the possibility of contracting a loan, the authors of the study analyzed the legislation in force and have demanded from five credit institutions data concerning the conditions and practices in granting loans. According to the legislation, the citizenship of those that demand a bank loan is not an eligibility criterion. At the request of the authors of the study and after using the “mystery client” method different answers were obtained. One bank does not grant under any way loans to foreign citizens with legal residence right on the territory of Romania. Two banks have answered positively to loan demand from a foreign citizen with legal residence right. Another bank granted a personal need loan but not the “First House” mortgage loan. It is interesting to mention, at this time, that immigrants form EU third countries do not request bank loans. One of the reasons consists in their lack of trust in the Romanian banking system, lack of job security. The absence of any legal provisions regarding coherent crediting could represent an impediment in the path of economic integration of immigrants. ([http://www.cdcdi.ro/files/services/18\\_0\\_Barometrul%20Integrarii%20Imigrantilor\\_%202014%20f.pdf](http://www.cdcdi.ro/files/services/18_0_Barometrul%20Integrarii%20Imigrantilor_%202014%20f.pdf), pp.87-95)

Immigrants have, according to legal provisions, the right to acquire and detain real estate in Romania. The study however outlines situations where those that have acquired real estate are co-owners with Romanian citizens or have acquired real estate after obtaining Romanian citizenship. Therefore, article 44 of the Constitution provides that foreign citizens or persons without any citizenship can obtain private property rights over land only in the conditions resulted from the integration of Romania in the European Union and from other international treaties that Romania is a part at, based on reciprocity, in the conditions set through organic law, as well as legal inheritance.

[http://www.cdcdi.ro/files/services/18\\_0\\_Barometrul%20Integrarii%20Imigrantilor\\_%202014%20f.pdf](http://www.cdcdi.ro/files/services/18_0_Barometrul%20Integrarii%20Imigrantilor_%202014%20f.pdf), pp.87-95)

An analysis made within the same study, on the efficiency of the institutions responsible for immigrant integration from third countries on the work market has shown numerous problems: the absence of a data-base (justified through technical limitations, confidentiality of personal data); the lack of correspondence between the numeric indicators regarding immigrants provided for in the National Occupation Plan for 2013 with numeric indicators that can be found in the plans of local agencies; citizens of EU member states are found in the same data-base with third country nationals.

### **3. EUROPEAN UNIONS' STRATEGY REGARDING EQUALITY BETWEEN WOMEN AND MEN (2010 – 2015)**

The European Union considers promotion of opportunity and gender equality as an improvement factor for the growth of European citizens' life standard. It was the European Court of Justice that, in 1975, has successfully invoked the principle of equal remuneration for equal work. This case stood at the grounds of the adoption process of the first European directives regarding equality of opportunities between men and women. The progress made in this area in the last years is significant. Although results are mainly owed to legislative regulations, meaningful disparities between men and women can still be found. The most representative ones can be found on the work market in the conditions where women are over-represented in sectors where work is poorly remunerated. Meanwhile, women are under-represented in decision-making positions. Birth, raising children, traditions in some cases explain the low employment rate among women compared with men. The roles men and women play in society impact decisions on education, career, work conditions, family and fertility. These decisions impact, at their turn, economy and society. The European Union has the obligation to promote equality between men and women. Therefore, the Union has adopted the Strategy for equality between women and men for the 2010 – 2015, identifying actions for five priority domains: equal economic independence; equal pay for equal work and work of equal value; equality in decision making; dignity, integrity and an end to gender-based violence; equal opportunities for men and women in external actions; horizontal aspects.

In the following paragraphs we will present some of the key- actions regarding the interest domains for our theme, namely equal economic independence; equal pay for equal work and work of equal value; equality in the decision making process; horizontal aspects.

On the issue of *equal economic independence*, the European Union has set the following key-actions: support the promotion of gender equality especially as regards definition and implementation of relevant national measures, through technical support as well as through the Structural Funds and other major funding programs. The Commission will monitor closely the national policies adopted to improve gender equality in the labor market and boost the social inclusion of women; promote female entrepreneurship and self-employment; assess remaining gaps in entitlement to family-related leave, notably paternity leave and care leave, and the options for addressing them; present a report on the Member States' performance with regard to childcare facilities; promote gender equality in all initiatives on immigration and integration of migrants.

Although the principle of *equal pay for equal work and work of equal value* is provided in the European treaties, remuneration disparities continue to still exist. The causes of wage disparities between women and men are pinned on the level of education and professional training of women, but also on the “from segregation in the labor market as women and men still tend to work in different sectors/jobs”. On this subject, the following key-actions are provided: explore possible ways to improve the transparency of pay as well as the impact on equal pay of all types of labor contracts; support equal pay initiatives at the workplace (such as equality labels, ‘charters’, and awards) as well as the development of tools for employers to correct unjustified gender pay gaps; institute a Equal Pay Day; encourage women to enter non-traditional professions, for example in “green” and innovative sectors.

Despite progress towards a *gender balance in political decision-making*, the data presented in the work show a lack of balance in the proportion of women in decision making positions. The sectors with the highest level of disproportion are science and research (19% of the university teachers are women). In order to remedy these issues the EU set the following key-actions: consider targeted initiatives to improve the gender balance in decision making; monitor the 25% target for women in top level decision-making positions in research; monitor progress towards the aim of 40% of members of one sex in committees and expert groups established by the Commission (2000/407/EC Commission Decision of 19 June 2000); support efforts to promote greater participation by women in European Parliament elections including as candidates.

The European Union wishes to *promote a nondiscriminatory redefinition* of roles in all aspect of life: education, career, employment and sport. Equality between men and women entails the participation of men in all these actions.

To this end, the European Union targets the simplification and major modernization of legislation regarding gender-based discrimination at work but also in other domains.

Concerning the management of gender equality tools, the Commission promotes a high level permanent dialogue regarding gender equality, cooperation with state-member Governments, with social partners and organizations that represent civil society, evaluation of the impact public policies in the field have. More so, it wishes to establish a European Institute for Gender Equality. The key actions are: address the role of men in gender equality; promote good practice on gender roles in youth, education, culture and sport; monitor the correct implementation of EU equal treatment laws and the extent to which gender has been taken into account in applying the non-discrimination directives; promote full implementation of the Beijing Platform for Action including the development and updating of indicators, with the support of the European Institute for Gender Equality.

#### **4. THE NATIONAL STRATEGY REGARDING EQUALITY BETWEEN WOMEN AND MEN FOR 2010 – 2015**

The National Strategy regarding equality between women and men shows that in 2012 “the employment rate of the population of work age (the 15 – 64 age segments) was 64, 2% (72,1% men and 56,4% women). For the age segment between 20 – 64 years, in 2012 the employment rate was of 63, 8, at 6, 2 percentage points from the national target of 70% set in the 2020 European Strategy context. Also, there were recorded high values for

the male population (71, 4% compared to 56, 3% for the female population) and for the age segment between 55-64 years – the senior active population, the percentage recorder by Romania was of 32, 9% for women and 51, 2 for men.”

Romania is positioned on the 7<sup>th</sup> place in the lowest unemployment rate states, with 3,5% under the European average. The unemployment rate among women was of approximately 6,4%, 1,2% lower than the unemployment rate among men.

The National strategy identifies certain areas of intervention, such as: education, work market, balanced participation of both women and men in the decision making process, integrative approaches of gender and gender-based violence. Concerning the work market, the Romanian Government has set a series of strategic objectives, as:

- Promotion of gender perspectives in public policies concerning employment, mobility and work force migration. State authorities wish to fulfill this objectives through “organizing training and awareness seminars in gender equality for employees of public institutions and authorities that have responsibilities in the fields of elaborating employment, mobility and work force migration public policies; analyzing the gender nature impact of the economic crisis on women and men participation on the work market, emphasizing: gender based differences regarding participation on the formal work market (employment, unemployment, long lasting unemployment, unemployment among young persons and highly qualified persons) and informal one, evaluation of work market segregation gender based as well as their evolution depending on the economic cycle (growth or recession); the impact of austerity measures on women and men’s participation on the work market; the gender dimensions of economic stimulation measures and the evaluation of their consequences on women and men’s participation on the work market.

- Increase the awareness degree regarding legal provisions on opportunity equality between women and men; organizing training and awareness seminars on the topic of equal opportunities between women and men for work inspectors that ensure the application of and compliance with legislation concerning opportunity equality between women and men; achieving a study to identify and evaluate gender-based discrimination situations that intervene in the professional development process, with two components: equal access to promotion for women that return on the work market after long periods of caring for children or other dependent family members; drawing-up a set of recommendations for improving and completing the legislative framework and the practices use by human resources departments.

- Increase the awareness degree concerning the wage difference between women and men; setting-up awareness reunions for employees in the private sector concerning the importance of diminishing the wage difference between women and men.

- Increase the awareness degree regarding the reconciliation of professional life with family and private life; organize an awareness and information campaign on the main instruments favorable for the reconciliation of family and professional life; encourage private companies to ensure day-care type services for employee children; promoting flexible work schedules for those employees that have in their family care children or dependent persons; invisible side of women’s work (occupations, life style, invisibility, etc.); maintaining and encouraging women-men partnerships in private life and assuming, on behalf of men, responsibilities of caring for children.

- Encouraging work market integration of women vulnerable to the discrimination phenomenon; concluding partnerships with NGOs or other interested entities in order to

access nonrefundable European funds from the budget of each public institution/authority involved, within the allocated amount, in order to implement projects aimed at improving the situations of women from vulnerable groups.”

The analysis of the provisions of the National strategy on equality of opportunity between women and men makes us emphasize the fact that all governmental actions must be channeled towards population awareness and information on the diverse topics contained in the objectives of the strategy. Although the objectives are correctly stated and to a certain degree in accordance with the provisions of the European Union Strategy, we can conclude that governmental actions are mainly centered on training courses, organizing seminar and less on creating policies or legislative frame-works that can solve a great deal of the existing problems on gender equality and opportunity equality on the work market.

## 5. CONCLUSIONS

The principle of gender and opportunity equality represents a priority on the work market. The existing legal frame-work at European level is favorable for diminishing the number of discrimination cases. The incorrect or incoherent implementation of this legislation determines situations where immigrant workers – men or women – are being discriminated. Different studies made at European Union level, by EU member states show different cases and reasons for discrimination.

In Romania, studies show such cases of discrimination either of women in relation to men or, regardless of gender, a nationality based discrimination especially of EU third country nationals.

The strategy of the European Union in the field constitutes a proof of the Union’s desire to reduce the number of discrimination cases through palpable key-actions, encouraging member states to pursue the same objectives. Nevertheless, in Romania, the National Strategy is ambiguous and actions are diminished for the most part of them aiming at increasing awareness of discrimination. The Strategy did not take into account the results of a multitude of projects made from European funds that already developed awareness actions at national level, developed skills for correctly identifying discrimination situations. Consequently, there is a high risk of repeating the same type of actions that will not lead to solving the present problems. We believe that increased attention should be paid to opportunity and gender equality of foreign workers on Romanian territory, both citizens of EU member states and EU third country nationals. The existing legislative gaps themselves lead to breaches of opportunity and gender equality, representing, in some cases, the source of direct and indirect discrimination situations on the work market.

## REFERENCES

- Lisbon Treaty
- Directive no. 38/2004 on the free movement of workers
- Regulation no. 2011/492 on freedom of movement for workers within the Union
- Directive no. 55/2013 on the recognition of professional qualifications

- Directive no. 2006/54 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation
- Ovidiu Voicu (coord.), Andra Bucur, Victoria Cojocariu, Luciana Lăzărescu, Marana Matei, Daniela Tarnovschi, *Barometrul integrării imigranților*, Research and Documentation in the field of immigrant integration, 2014, pp. 87-95.  
[http://www.cdc.ro/files/services/18\\_0\\_Barometrul%20Integrarii%20Imigrantilor\\_%202014%20f.pdf](http://www.cdc.ro/files/services/18_0_Barometrul%20Integrarii%20Imigrantilor_%202014%20f.pdf)
- EMPL Committee, 2014, *Discrimination of migrant workers at work place*,  
[http://www.europarl.europa.eu/RegData/etudes/note/join/2014/518768/IPOL-EMPL\\_NT%282014%29518768\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2014/518768/IPOL-EMPL_NT%282014%29518768_EN.pdf)
- Eurostat(2011), *Migrants in Europe* [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/pdf/migrants\\_in\\_europe\\_eurostat\\_2011\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/pdf/migrants_in_europe_eurostat_2011_en.pdf)
- EU Commission, 2014, *Tackling the gender pay gap*, [http://ec.europa.eu/justice/gender-equality/files/gender\\_pay\\_gap/140227\\_gpg\\_brochure\\_web\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/140227_gpg_brochure_web_en.pdf)
- European Commission's database on women and men in decision-making:  
[http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/index_en.htm)
- G.D. no.1050/2014 for approving the National Strategy on opportunity equality between women and men for 2014-2017 and the General plan of actions for 2014-2017 for implementing the Strategy
- Commision, E., 2010. *Dismantling the obstacles to EU citizens' rights*, s.l.: s.n. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012D1093>
- Commision, E., 2012. *Towards job-rich recovery*, s.l.: s.n.  
<http://ec.europa.eu/social/main.jsp?catId=89&langId=en&newsId=1270&moreDocuments=yes&tableName=news>
- Commision, E., 2013. *EU citizens: your rights, your future*, s.l.: s.n.  
[http://ec.europa.eu/justice/citizen/files/2013eucitizenshipreport\\_en.pdf](http://ec.europa.eu/justice/citizen/files/2013eucitizenshipreport_en.pdf)
- European Commission, D. E. S. A. a. I., 2012. *Study to analyze and assess the socio-economic and environmental impact of possible EU initiatives in the area of freedom of movement for workers, in particular with regard to the enforcement of current EU provisions*, s.l.: s.n.
- ILO(2013), *Domestic workers across the world and the economic crisis: global and regional statistics and the extent of legal protection*,  
[http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_173363.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf)
- Maria Galloti, Jesse Martens, *Promoting integration for migrant domestic workers in Europe: A synthesis of Belgium, France, Italy and Spain*,  
[http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_222301.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_222301.pdf)
- EWCO(2011), *Sick immigrant workers more likely to go to work*  
<http://eurofound.europa.eu/observatories/eurwork/articles/working-conditions-labour-market-other/sick-immigrant-workers-more-likely-to-go-to-work>
- OECD(2009), *Chapter 1 International migration and the economic Crisis: Understanding the links and shaping policy responses*,  
<http://www.oecd.org/migration/mig/46292981.pdf>

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 21 September 2010 - Strategy for equality between women and men 2010-2015

Brîndușă Marian, *Report between European Union law and national member states law in the field of work force free movement*, in *The Juridical Current*, no. 4/2014, pp.159-165

2000/407/EC Commission Decision of 19 June 2000

