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28th March 2023

## COMMUNICATION

**In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by A.L.E.G. - Association for Liberty and Equality of Gender**

C. v. Romania (Application No. 47358/20)

### I. EXECUTIVE SUMMARY AND RECOMMENDATIONS

This submission concerns the implementation of *C. v. Romania* (Application no. 47358/20) delivered by the European Court of Human Rights (“the Court”, “ECtHR”) on 30 August 2022, which became final on 30 November 2022.<sup>1</sup> In *C. v. Romania*, the Court held that Romania had violated Article 8 of the European Convention on Human Rights (“the Convention”) because of the significant flaws in the criminal investigation concerning Ms. C.’s alleged sexual harassment at the workplace.

The submission is prepared by *Asociația pentru Libertate și Egalitate de Gen* (A.L.E.G. - Association for Liberty and Equality of Gender) and supported by 14 NGOs and trade unions.<sup>2</sup> A.L.E.G. is a Romanian non-governmental organisation which aims to promote and foster gender equality and combat violence against women. Since 2021, A.L.E.G. - in partnership with other

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<sup>1</sup> C. v. Romania, Application no. 47358/20, Judgment of 30.08.2022, final on 30.11.2022:  
[https://hudoc.echr.coe.int/eng#{%22appno%22:\[%2247358/20%22\],%22itemid%22:\[%22001-218933%22\]}](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2247358/20%22],%22itemid%22:[%22001-218933%22]})

<sup>2</sup> APADOR-CH; Asociația ACCEPT; Asociația A.R.T. Fusion; Asociația Centrul de Acțiune pentru Egalitate și Drepturile Omului; Asociația Centrul pentru Inovare Publică; Asociația Front; Asociația Iele-Sânziene; Asociația Moașelor Independente; Asociația Romanian Women’s Lobby; Centrul FILIA; Confederația Națională Sindicală Cartel ALFA; Consiliul Tineretului din România; Fundația Centrul de Mediere și Securitate Comunitară; IndustriAll European Trade Union. See the list at the end of this submission.

NGOs, unions, and other civil society organisations, including those supporting this submission - has been advocating for the strengthening of Romania's laws and their implementation concerning workers' protection against violence and harassment in the world of work. More specifically, A.L.E.G. and over 40 civil society organisations have been calling for the ratification of the International Labour Organisations' (ILO) Convention no. 190 concerning the Elimination of Violence and Harassment in the world of work ("C190").<sup>3</sup>

A.L.E.G. seeks to assist the Committee of Ministers in its evaluation of the general that the Romanian government needs to undertake in order to comply with the findings of the *C. v. Romania* judgement of the Court. Given that the *C. v. Romania* case illustrates a general and systematic problem, in Romania, regarding human rights violations in the context of harassment and sexual harassment in the world of work, we ask the Committee of Ministers to:

- Classify the *C. v. Romania* case under enhanced supervision,
- Schedule the case for examination on the Committee's agenda for one of its upcoming Human Rights meetings in 2023,
- Request Romanian authorities to provide an Action Plan with general measures designed to ensure that laws and public policies concerning harassment in the world of work are improved, and their implementation strengthened, in line with the International Labour Organisation (ILO) Violence and Harassment Convention 2019 (C190), so that violations such as those in Ms. C's case will not happen again,
- Urge the Romanian Government to ratify C190.

As the Council of Europe's Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) notes, eliminating harassment and violence in the world of work is fundamental for gender equality.<sup>4</sup> Given that the *C. v. Romania* case represents the first time the Court has issued a judgement concerning sexual harassment in the workplace (violation of Article 8 of the Convention), we ask the Committee of Ministers to set a good precedent in the way it monitors the implementation of the judgement, the development of the national Action Plan and the recommendations it makes to the state for ensuring that legislative, policy and administrative gaps that have allowed for such violations to take place will be adequately addressed.

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<sup>3</sup> See, for example, the open letters sent by civil society organisation, including NGOs working on eliminating violence against women and unions, sent to the Parliament and Government on 28 April 2022: <https://aleg-romania.eu/wp-content/uploads/2022/04/Scrisoare-deschis%C4%83-1-Mai-Conven%C8%9Bia-OIM-anti-h%C4%83r%C8%9Buire.pdf>; and the press release published on 9 December 2021 announcing the launch of the campaign for Romania's ratification of the ILO Convention no. 190: <https://aleg-romania.eu/angajatori-pentru-respect-comunicat-de-presa/>. Members of the Parliament and relevant governmental institutions attended the launch of the campaign.

<sup>4</sup> To this end, an important legal framework is the Council of Europe's Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which was ratified by Romania: <https://rm.coe.int/168008482e> (see especially art. 40).

## **II. THE C. v. ROMANIA JUDGEMENT**

This case concerns the breach of the State's positive obligation to protect the personal integrity of the applicant, a cleaning lady in a railway station, and to take measures to avoid secondary victimisation due to significant flaws in the criminal proceedings concerning her allegations of sexual harassment in the workplace, which were ultimately dismissed in 2020 (violation of Article 8 of the Convention).

The ECtHR judgement shows that, in addition to the superficial way in which the domestic courts handled this complaint, Romania has a more general problem with the way in which authorities approach the issue of sexual harassment (and harassment, in general) in the world of work: undertaking superficial investigations, ignoring unequal power dynamics and reinforcing stereotypes and prejudices instead of addressing them, especially concerning gender-based stereotypes.<sup>5</sup> The judgement illustrates the acute need for magistrates to undertake specialised training to adequately investigate and examine cases of (sexual) harassment at work. The judgement notes that the domestic decisions were poorly motivated and there was no analysis of the facts.<sup>6</sup> In addition, the Court noted that the National Council for Combating Discrimination, a key institution in the country in the field of combating discrimination and harassment, has declared numerous complaints of sexual harassment inadmissible for reasons that are difficult to justify.<sup>7</sup>

In its judgement, the Court referred to the standards laid down in the world's first dedicated treaty on addressing harassment in the world of work, the ILO Violence and Harassment Convention (C190), and those in the European Social Charter.<sup>8</sup> In its analysis, the Court noted that Romania is lagging in ratifying both the C190 and the Charter. Specifically, Romania has not ratified the European Social Charter's article on the right to respect for dignity at work,<sup>9</sup> nor the C190, a key international instrument on this issue, for whose adoption at the ILO, in 2019, the Government of Romania voted favourably but which it has not ratified yet.

## **III. GENERAL AND SYSTEMATIC FLAWS IN ROMANIA'S LAWS AND PUBLIC POLICIES CONCERNING HARASSMENT IN THE WORLD OF WORK**

Gender-based violence and harassment are the most common forms of violence and harassment in the world of work, affecting women disproportionately. More than four out of ten Romanian

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<sup>5</sup> C. v. Romania, Application no. 47358/20, Judgment, para. 37-40.

<sup>6</sup> Ibid, para. 79-86.

<sup>7</sup> Ibid, para. 47, respectively para. 41-43.

<sup>8</sup> Ibid, para. 41-43 and 47.

<sup>9</sup> Ibid, Judgment, para. 43.

employees, an overwhelming majority of them women, have felt sexually harassed at work at least once in their career.<sup>10</sup>

While the *C. v. Romania* case is the first sexual harassment in the workplace case that the Court has adjudicated on, the problem of sexual harassment in the world of work, as well as psychological, physical and economic harassment, is widespread and highly tolerated by those in decision-making powers. For example, a recent journalistic investigation showed how a woman working in the National Administration of Penitentiaries had to endure prolonged physical harassment, emotional blackmail and intimidation from her boss, the director of the institution.<sup>11</sup> As an NGO working directly with victims of harassment, A.L.E.G. has worked last year with numerous cases that perfectly illustrate how rampant harassment in the world of work is. In one case, a woman had to sue her employer a second time for harassment, despite having won the first litigation case, because harassment did not stop. Eventually, she had to resign so that she could protect her health. In another case, a woman reported to a hierarchical institution that her manager was harassing her. In the institution's response to her complaint, it was recommended to her to change her workplace to protect her health - instead of taking measures to stop the harassment she has been experiencing and sanctioning those responsible for harassing her.

Despite important amendments brought to the Romanian anti-harassment legislation over the last years, the current legislative framework has numerous lacunae and does not stipulate any methods to monitor and evaluate its implementation. In a context in which labour inspectorates monitor how the law is observed to a very small degree (as explained below), this results in very limited protection for workers against harassment.

## **1. Analysis of the Current Anti-Harassment Legislative Framework and Its Limitations**

### ***Labour Code***

The Labour Code protects the *employees'* (not all workers) right to equal opportunities and treatment, to dignity, to health, including psychological health,<sup>12</sup> and occupational

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<sup>10</sup> Business Magazin, 2019, "Sondaj BestJobs: Peste patru din zece angajați români s-au simțit hărțuiți sexual la locul de muncă" ("Best Jobs Survey: More than Four out of Ten Romanian Employees Have Felt Harassed at Work"),

<https://www.businessmagazin.ro/actualitate/sondaj-bestjobs-peste-patru-din-zece-angajati-romani-s-au-simtit-hartuiti-sexual-la-locul-de-mun-ca-17883407>.

<sup>11</sup> Recorder.ro, 2022, "Peace is better than justice" The philosophy of an abuser at the head of a public institution': <https://recorder.ro/pacea-e-mai-inalta-decat-dreptatea-filosofia-unui-abuzator-de-la-varful-unei-institutii-publice/>.

<sup>12</sup> The Bucharest Court of Appeal, civil decision no. 4210 of 2 October 2019, quoted at p. 248 in Oana Cristina Niemesch, 2020, "Hărțuirea în raporturile de muncă: Practica judiciară, norme procedurale" (*Harassment in Work Relations: Legal practice, procedure rules*), Universul Juridic Publishing: Bucharest; Decision no. 338/2018 by the Iași Court of Appeal of 15.05.2018, <http://www.rolii.ro/hotarari/5b1e43b9e490098c1e00008d>: "Since it does not exclusively refer to physical health, we understand that the lawmaker also refers to the employee's moral health".

safety.<sup>13</sup> According to the same law, work relations are based on the principle of good faith.<sup>14</sup>

In addition to protecting only *employed workers*, the definition of harassment provided by the Labour Code is narrow, as it conceptualises harassment strictly as a manifestation of discrimination.

More specifically, the Labour Code prohibits “harassment motivated by race, citizenship, ethnicity, skin colour, language, religion, social origin, genetic traits, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV infection, political choice, family situation or responsibility, being part of a labour union or not, belonging to a disadvantaged category”.<sup>15</sup> In this context, harassment is defined as any type of behaviour based on any of the above-mentioned criteria and “which is intended to harm a person’s dignity and creates an intimidating, hostile, degrading, humiliating, or offensive environment”.<sup>16</sup>

The application of legal protection against harassment is limited by the existence of a protected criterion which is a constituent element of the definition of “harassment”, instead of considering discrimination based on said criteria as an aggravating factor. As the definition of harassment provided in the ILO C190 illustrates,<sup>17</sup> there is no need for the definition to include a term of comparison, since harassment itself is an unacceptable behaviour violating human dignity. The definition of harassment should be updated in line with the ILO definition of harassment in the world of work, which does not conceptualise harassment exclusively as a form of discrimination.

### ***Ordinance no. 137/2000 on Preventing and Sanctioning All Forms of Discrimination***

According to Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination, “any behaviour motivated by race, nationality, ethnicity, language, skin colour, religion, social category, belief, gender, sexual orientation, being part of a disadvantaged category, age, disability, refugee or asylum-seeker status or any other criterion that creates an intimidating, hostile, degrading, or offensive environment” constitutes *harassment* and is punishable with an administrative sanction.<sup>18</sup>

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<sup>13</sup> Labour Code, art. 39(1)(d), (e) and (f), <http://legislatie.just.ro/Public/DetaliiDocument/128647>.

<sup>14</sup> Labour Code, art. 8(1).

<sup>15</sup> Labour Code, art. 5(2). The amendments introduced in 2020 through Law no. 151/2020 also prohibit all direct or indirect acts of discrimination, discrimination by association, or victimization against an employee, based on the criteria listed under art. 5(2), <http://legislatie.just.ro/Public/De-taliiDocument/228367>.

<sup>16</sup> Labour Code, art. 5(5).

<sup>17</sup> Art. 1(1) of the International Labour Convention nr. 190 on eliminating violence and harassment in the world of work defines the term “violence and harassment” in the world of work as “ a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment”, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C190](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190).

<sup>18</sup> Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, art. 2(5), <https://legislatie.just.ro/Public/DetaliiDocument/24129>.

The amendments brought in 2020<sup>19</sup> introduced the concept of moral harassment in the workplace, which is defined as “any behaviour exercised against an employee by another employee who is their immediate superior, by a subordinate and/or by a peer, concerning work relations, with the aim or effect of deteriorating work conditions by infringing upon the employee’s rights or dignity, by altering their physical or mental health, or by compromising their professional future, a behaviour manifested under any of the following: hostile or unwanted behaviour, verbal comments or acts or gestures”, as well as “any behaviour which, by its systematic character, can harm the dignity, the physical or mental integrity of an employee or a group of employees, endangering their work or degrading their work environment”.<sup>20</sup>

Ordinance no. 137/2000 prohibits harassment between employees, both horizontally (between colleagues on the same hierarchical level) and vertically (exercised by a superior against a subordinate or the other way around).<sup>21</sup> However, harassment by third parties, such as clients, patients, pupils, etc., is ignored, which goes against the standards of ILO Convention no. 190.<sup>22</sup>

Notably, even though courts may interpret these provisions from a historical-teleological perspective, placing an emphasis on their purpose, the National Council for Combating Discrimination interprets workplace harassment strictly as a form of discrimination, as the protected criterion is understood to be a constituent element of the definition of “harassment”.<sup>23</sup> This has led the Council to dismiss petitions where harassment was not a result of discrimination based on a protected criterion.<sup>24</sup>

### ***Employers’ legal obligations to prevent and address harassment in the workplace***

Romanian laws and public policies on workplace health and safety and occupational health do

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<sup>19</sup> Law no. 167 of 7 August 2020 modifying and amending Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, and completing art. 6 of Law no. 202/2002 on equal treatment and opportunities for men and women, published in the Official Journal of Romania no. 713 of 7 August 2020, <http://legislatie.just.ro/Public/DetaliiDocument/228723>.

<sup>20</sup> Ordinance no. 137/2000, art. 2(5<sup>1</sup>) and (5<sup>2</sup>).

<sup>21</sup> Article 2 (5<sup>1</sup>) of Ordinance no. 137/2000, <https://legislatie.just.ro/Public/DetaliiDocument/24129>.

<sup>22</sup> Article 4 of the International Labour Convention nr. 190 on eliminating violence and harassment in the world of work.

<sup>23</sup> According to Ordinance no. 137/2000, harassment is an explicit form of discrimination: Romanița Iordache, European Commission, 2021, “Country Report, Non-discrimination - Romania 2021, including summary”, European Network in Gender Equality and Non-discrimination, [https://www.equalitylaw.eu/downloads/5492-romania-country-report-non-discrimination-2021-1-34-mb?fbclid=IwAR3-4CDcjtH-G20uEua-B0oc6Nj44pq\\_LAF8JONvgw5vKvAHTRETsiQ82sE8](https://www.equalitylaw.eu/downloads/5492-romania-country-report-non-discrimination-2021-1-34-mb?fbclid=IwAR3-4CDcjtH-G20uEua-B0oc6Nj44pq_LAF8JONvgw5vKvAHTRETsiQ82sE8), p. 26.

<sup>24</sup> See, for instance, the National Council for Combating Discrimination’s Decision no. 405 of 12. 05. 2021 (File no. 620/2020), <https://www.cncd.ro/wp-content/uploads/2021/08/Hotarare-405-2021.pdf?fbclid=IwAR2AeyiL9auaL77H42i20QLpoTOBJUqn4k2kfPTZKSfEWjIyuCb92Ctj160>; National Council for Combating Discrimination’s Decision no. 517 of 30.06.2021 (File no. 635/2020), <https://www.cncd.ro/wp-content/uploads/2021/09/Hotarare-517-2021.pdf>.

not tackle the risks associated to harassment and ignore aspects related to psychological and social health and safety, placing the onus on physical aspects.

According to Romania's Law on Health and Safety at Work, employers have an obligation to ensure the health and safety of all workers "in all work-related aspects",<sup>25</sup> to provide the best conditions throughout the work process, including the physical and psychological integrity,<sup>26</sup> yet the onus is on physical accidents and occupational diseases, as harassment-related risks are not addressed.<sup>27</sup> According to the law, this obligation includes identifying and assessing risks, drafting, implementing and monitoring the implementation of a prevention and protection plan, informing and training workers about occupational health and safety, as well as checking that the workers apply the information learnt.<sup>28</sup> However, the law, nor its methodological norms for application, does not conceptualise harassment in the workplace as a health and safety issue.

Moreover, the workplace is defined as being limited to the physical space of the enterprise and/or the facility accessible to workers when performing their work,<sup>29</sup> and therefore excludes the online space or spaces related to work, such as those specific to remote work or working from home or employer-provided accommodation spaces,<sup>30</sup> as stipulated in ILO C190.

In addition, since 2020, the amendments brought to Ordinance no. 137/2000 have made it mandatory for employers to take "any necessary measures to prevent and combat acts of moral harassment in the workplace, including by stipulating disciplinary actions in the company's

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<sup>25</sup> Labour Code, art. 175(1), see also art. 175-191.

<sup>26</sup> Law no. 319 of 14 July 2006 on health and safety at work, art. 5(n), <http://legislatie.just.ro/Public/DetaliiDocument/73772>.

<sup>27</sup> According to the documents by the National Centre for Risk Monitoring in the Community Environment (CNMRMC), which ensures specific national coordination for the National Institute for Public Health (INSP), harassment and its effects do not constitute an occupational health/occupational healthcare problem: <https://cnmrmc.insp.gov.ro/en/ghiduri>; <https://cnmrmc.insp.gov.ro/en/metodologii-pnii/medicina-muncii2>; <https://cnmrmc.insp.gov.ro/en/prestari-servicii/sanatate-ocupationala-si-mediul-de-munca>; <https://cnmrmc.insp.gov.ro/en/prestari-servicii/sanatate-ocupationala-si-mediul-de-munca/33-evaluarea-sanatatii-lucratorilor>; See also, for instance, Labour Inspectorate, 2007, "Ghid de evaluare a riscului" (*Risk Assessment Guidebook*) in health and safety at work in small and medium enterprises (one of the few resources on the subject): <https://www.inspectiamuncii.ro/documents/66402/260290/Ghid+de+evaluare+a+riscului/ef2d66c3-68a5-42bd-8b8d-ae447daca8c7>.

<sup>28</sup> Application methodology of 11 October 2006 for the provisions of Law no. 319/2006 on health and safety at work, art. 15, <http://legislatie.just.ro/Public/DetaliiDocumentAfis/182889>.

<sup>29</sup> Ibid, art. 5(k).

<sup>30</sup> Ciprian Brindescu, 2021, *Renașterea Bănățeană, "Administratorul unui cămin al unei mari companii din Timișoara a hărțuit sexual o tânără muncitoare până a adus-o în pragul depresiei"* (*A big company's block administrator in Timisoara sexually harassed a young worker pushing her to the brink of depression*), <https://renasterea.ro/administratorul-unui-camin-al-unei-mari-companii-din-timisoara-a-hartuit-sexual-o-tanara-muncitoare-pana-a-adus-o-in-pragul-depresiei/>.

bylaws for employees who commit moral harassment acts in the workplace”.<sup>31</sup>

Still, the most clear and specific anti-harassment measures are stipulated in the application methodology of Law no. 202/2002 of May 2019 on equal opportunities and equal treatment between men and women, which make it mandatory for employers to take the measures below to “combat and eliminate sex-based discrimination”.<sup>32</sup> Such measures include: developing an internal anti-harassment policy; training, information, education, and awareness-raising programmes for employees about harassment at work and knowing how to report such situations; and informing employees on the procedure to submit a sexual harassment/improper behaviour complaint at work and to solve reports/complaints formulated by persons aggrieved through such acts.

According to the same application methodology of Law no. 202/2002, employers with more than 50 employees *may* choose to employ or identify one employee whose job description includes tasks related to equal opportunities and treatment between men and women and to identify certain professional training opportunities.<sup>33</sup> The law does not make it mandatory for the employer to hire an expert or to appoint a worker responsible for equal opportunities and treatment (under whose scope would also fall anti-harassment measures), but leaves such a measure at the employer’s discretion, which renders this methodology of applying the law void of content, as voluntary guidelines remain virtually completely ignored.

## **2. Law Enforcement Limitations**

### ***Legal enforcement, monitoring and evaluation***

Romanian legislation concerning work relations and occupational health and safety does not include a homogenous, coherent set of rules to eliminate violence and harassment in the world of work.<sup>34</sup> The most detailed and progressive obligations for employers concerning combating harassment in the workplace “to prevent, combat and eliminate sex-based discrimination” are stipulated under the application methodology of Law no. 202/2002 on equal treatment and opportunities for men and women (as detailed above). However, these legal provisions are poorly

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<sup>31</sup> Ordinance no. 137/2000 on Preventing and Sanctioning All Forms of Discrimination, art. 2(5<sup>^</sup>5).

<sup>32</sup> Decision no. 262/2019 of 24 April 2019 approving the application methodology of the provisions of Law no. 202/2002 on equal treatment and opportunities for men and women, published in the Official Journal no. 333 of 2 May 2019, [https://mmuncii.ro/j33/im-ages/Documente/MMJS/Legislatie/Hot\\_262-24042019\\_anes.pdf](https://mmuncii.ro/j33/im-ages/Documente/MMJS/Legislatie/Hot_262-24042019_anes.pdf), art. 5.

<sup>33</sup> Decision no. 262/2019 of 24 April 2019 approving the application methodology of the provisions of Law no. 202/2002 on equal treatment and opportunities for men and women, published in the Official Journal no. 333 of 2 May 2019, [https://mmuncii.ro/j33/im-ages/Documente/MMJS/Legislatie/Hot\\_262-24042019\\_anes.pdf](https://mmuncii.ro/j33/im-ages/Documente/MMJS/Legislatie/Hot_262-24042019_anes.pdf), art. 1.

<sup>34</sup> See, for example: The Ministry of Labour, no date, “*Competențe și legislație incidentă în domeniul relațiilor de muncă*” (*Competences and legislation applicable to work relations*), [https://www.inspectiamuncii.ro/documente/66402/266085/LegislatieRM\\_13102017.pdf/a268377e-c596-4826-aaf6-ef3084ecc939](https://www.inspectiamuncii.ro/documente/66402/266085/LegislatieRM_13102017.pdf/a268377e-c596-4826-aaf6-ef3084ecc939) (accessed on 12 October 2021).



implemented, rendering the law inefficient.

A research study conducted by A.L.E.G.<sup>35</sup> showed that between May 2019-March 2021 (i.e. during the first 22 months since the introduction of employers' obligation to develop and implement anti-harassment policies and to denounce sexual harassment in the workplace according to the application methodology of Law 202/2002) over a third of the regional labour inspectorates conducted less than 10 inspections concerning the implementation of anti-harassment laws.<sup>36</sup>

In five counties, regional labour inspectorates conducted no inspection at all in May 2019-March 2021.<sup>37</sup> While this timeframe partly overlapped with the state of emergency instated due to the COVID-19 pandemic, the data collected shows that, in general, regional labour inspectorates conduct extremely few inspections, especially in state institutions. In seven counties, between May 2019 and March 2021, regional labour inspectorates conducted no investigation in state institutions on the topic of employers' obligation to observe the implementation of anti-harassment policies as per the application methodology of Law no. 202/2002.<sup>38</sup>

Furthermore, in general, the legal framework concerning harassment in the workplace does not stipulate concrete provisions related to monitoring and assessing its implementation and regional labour inspectorates manage to monitor how the law is observed to a very small degree or not at all. At the local level, County Committees for Equal Opportunities between Women and Men (known as "COJES") and regional labour inspectorates (known as "ITMs") are responsible for evaluating and monitoring the implementation of Law no. 202/2002 (the only law whose application methodology includes clear anti-harassment measures that employers have to adopt "to prevent, combat, and eliminate sex-based discrimination").<sup>39</sup> A.L.E.G.'s qualitative research

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<sup>35</sup>A.L.E.G., 2021, "Angajatori pentru respect", Policy brief, pp. 24-25, <https://aleg-romania.eu/wp-content/uploads/2021/11/Policy-brief-ALEG-Angajatori-pentru-respect-2021-FINAL.pdf>.

<sup>36</sup> Regarding the employers' obligation to develop internal policies to prevent and report harassment in the work place, according to the application methodology of Law no. 202/2002, in May-December 2019, in the counties of Alba, Botoşani, Cluj, Giurgiu, Mehedinţi, Timiş, Sibiu, and Suceava, Regional Labour Inspectorates conducted no inspections; in the counties of Argeş, Dâmboviţa, Gorj, Olt, and Prahova, ≤5 inspections were conducted, while in Neamţ, Vaslui, and Vrancea ≤10 inspections took place. In January-December 2020, in the counties of Alba, Cluj, Covasna, Giurgiu, Mehedinţi, Sibiu, and Timiş, no inspections were carried out; in Dâmboviţa, Gorj, Prahova, Suceava, and Vâlcea ≤5 inspections were held, while in Botoşani and Vrancea ≤10 inspections were conducted, <https://aleg-romania.eu/wp-content/uploads/2021/11/Policy-brief-ALEG-Angajatori-pentru-respect-2021-FINAL.pdf>.

<sup>37</sup> Alba, Cluj, Giurgiu, Mehedinţi, and Timiş.

<sup>38</sup> Brăila, Buzău, Cluj, Covasna, Ialomiţa, Mureş, Teleorman.

<sup>39</sup> Decision no. 1054/2005 of 8 September 2005 approving the Rules on the organization and functioning of County and Bucharest Committees for Equal Opportunities between Women and Men, art. 3(1)(b), (c), and (h), <https://anes.gov.ro/wp-content/uploads/2018/07/HG-1054-2005.pdf>; Law no. 202/2002, art. 24 (4); Law no. 108/1999 on the establishment and organization of the Labour Inspectorate, art. 5(a), <http://legislatie.just.ro/Public/DetaliiDocument/38845>; Law no. 202/2002, art. 37(a).

shows that while COJES committees include a representative of the ITMs,<sup>40</sup> the collaboration between these institutions is hampered by certain institutional/structural limitations.<sup>41</sup> The law stipulates that one of the main tasks of COJES committees is to develop reports on the implementation of relevant legislation.<sup>42</sup> Although legally speaking COJES committees may ask the ITMs for reports on how they ensure that the employers' obligation to combat harassment is fulfilled, this rarely, if at all, happens in practice.<sup>43</sup>

As regards the support to accessing psychological and social services for the people who file sexual harassment complaints, only 5 ITMs refer victims to specialised services, while 10 ITMs believe this does not fall under their duties.<sup>44</sup>

Finally, A.L.E.G.'s research revealed that labour inspectors are not trained on the subject of workplace harassment, or are poorly trained, and in turn ITMs only partly inform employers and workers about their obligations and rights on this matter.<sup>45</sup> A third of Romanian ITMs think it is

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<sup>40</sup> Rules of 8 September 2005 on the organization and functioning of County and Bucharest Committees for Equal Opportunities between Women and Men, Annex, <http://legislatie.just.ro/Public/DetaliiDocumentAfis/194283>

<sup>41</sup> According to our interviews with ITM representatives (September 2021), some of the institutional/structural limitations are the fact that COJES members are civil servants who have no time dedicated to the activity of this structure or the lack of clearly defined processes and responsibilities for the institutions responsible when the victims report workplace harassment and violence.

<sup>42</sup> Decision no. 1054/2005 for the approval of Rules on the organisation and functioning of County and Bucharest Committees for Equal Opportunities between Women and Men, art. 3(1)(c) and (h).

<sup>43</sup> The interviews with ITM representatives conducted by A.L.E.G. (September 2021) showed that these reports are not mandatory, but voluntary. This is also reflected at a national level in the fact that monitoring reports are not available on the website of the National Agency for Equal Opportunities between Women and Men (ANES): <https://anes.gov.ro/rapoarte-de-monitorizare/> (accessed on 8 February 2023).

<sup>44</sup> Three ITMs refer victims to the National Council for Combating Discrimination (CNCD) or to ANES, while 21 ITMs did not answer the question: "Do ITMs refer the people who file sexual harassment complaints to specialized psychological and social care services?" (see question I.6. of our request for the ITMs in the Annex of the policy brief, <https://aleg-romania.eu/wp-content/uploads/2021/11/Policy-brief-ALEG-Angajatori-pentru-respect-2021-FINAL.pdf>).

<sup>45</sup> In most cases, ITMs disseminate notification letters or mention the related legislation during their inspections, but few ITMs (only Arad, Galați, Sibiu) have organised public meetings with employers aimed at informing them on their obligation to develop and implement anti-harassment policies. In the "2019 Framework programme of the Labour Inspectorate", the Ministry of Labour integrated awareness-raising activities related to the new regulations in the field of work relations and control, as per Law no. 202/2002: Ministry of Labour, 2018, "2019 Framework programme of the Labour Inspectorate", <https://www.inspectiamuncii.ro/documents/66402/187880/PROGRAM+CADRU+IM+2019.pdf/78315042-2058-484d-9216-9a301b7038c2>, p. 4. In 2020 and 2021, the framework programmes include no such awareness-raising activities: Ministry of Labour, 2019, "2020 Framework programme of the Labour Inspectorate", <https://www.inspectiamuncii.ro/documents/66402/187880/PROGRAM+CADRU+IM+2020.pdf/b6a734e4-7245-43e1-9377-243cb25541aa>; Ministry of Labour, 2020, "2021 Framework programme of the Labour Inspectorate", <https://www.inspectiamuncii.ro/documents/66402/187880/PROGRAM+CADRU+IM+2021.pdf/3f64f563-f582-4aaf-8c55-06ba2ce9761d>.

not their duty to identify training opportunities for employers on the topic of reporting and combating workplace harassment<sup>46</sup> and only 8 ITMs inform employers on anti-harassment legislation.<sup>47</sup> At a national level, the Ministry of Labour makes no guideline or resources available to employers on preventing and eliminating workplace violence.<sup>48</sup>

### ***Legal Practice***

According to the law, the duration of the hostile or unwanted behaviour is not a constituent element of harassment; no specific period of time is mentioned for harassing behaviour at work to be considered as such. However, in domestic jurisprudence, it is considered that, to confirm psychological harassment at work, the offensive behaviour must take place “over a long period of time”<sup>49</sup> or for at least six months.<sup>50</sup> This practice goes against the purpose of anti-harassment legislation, denying access to justice to workers when their rights or dignity have been violated for less than six months. This way, workers have to endure long periods of harassment before they appear in front of a court and a series of workers, such as interns, practising students, or employees on probation, i.e. people whose work relations are generally covered by law for up to six months, do not benefit from protection based on anti-harassment at work legislation. Furthermore, as the *C. v. Romania* judgement illustrates, there is an imperious need for magistrates to be better trained in assessing power dynamics, especially when gender is involved, in order to avoid stereotypes and re-victimisation.

As other cases before the ECtHR have shown, in Romania, there is a general problem regarding prosecutorial and court practice when it comes to gender-based violence - in all of its forms (see

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<sup>46</sup> To justify this, the 17 ITMs referred to the application methodology of 24/04/2019 of Law. 202/2002, art. 5(1)(c). According to Law no. 108 of 16 June 1999, art. 5(b) the labour inspectorate is also responsible for “communicating, ensuring and exchanging information with central and local public administration authorities and with natural persons and legal entities under their control, informing them and citizens at large on how to observe and implement the legislation in their relevant fields”.

<sup>47</sup> The 8 counties are Argeş, Buzău, Călăraşi, Neamţ, Satu-Mare, Salaj, Sibiu, Vaslui. The mentioned information activities consisted of press releases and printed information materials. It was mentioned that there are major gaps in understanding the implementation of the legislation on preventing and combating workplace harassment, especially among small and medium enterprises (interview with an ITM representative, September 2021).

<sup>48</sup> The official website of the Labour Inspectorate does not provide resources for employers and workers on workplace harassment and discrimination, although it does provide information on other work-related aspects: <https://www.inspectiamuncii.ro/>.

<sup>49</sup> For example: Bucharest Court of Appeal, Section VII for cases related to work and social insurance conflicts, civil decision no. 2365 of 23 April 2019, quoted at p. 229 in Oana Cristina Niemesch, 2020, “*Hărțuirea în raporturile de muncă: Practica judiciară, norme procedurale*” (*Harassment in Work Relations: Legal practice, procedure rules*), Universul Juridic Publishing: Bucharest.

<sup>50</sup> See, for instance: Bucharest Court of Appeal, Section VII for cases related to work and social insurance conflicts, civil decision no. 4210 of 2 October 2019, quoted at p. 236 in Oana Cristina Niemesch, 2020, “*Hărțuirea în raporturile de muncă: Practica judiciară, norme procedurale*” (*Harassment in Work Relations: Legal practice, procedure rules*), Universul Juridic Publishing: Bucharest; Sibiu Court, Civil Section I, civil decision 223/2021 of 30 March 2021, file no. 1247/85/2020.

also, for example, *M.G.C. v Romania*<sup>51</sup> and *Balsan v Romania*<sup>52</sup> - both currently under enhanced supervision), given the institutionalised sexism and biases, which reinforce gender stereotypes and affect investigations.

### ***Data Collection***

A major issue in developing efficient anti-harassment policies is the lack of systematic, disaggregated, periodic data collections. The current legal framework and application methodology stipulate no data collection and data registration policy. There are no national in-depth studies on the dimension and specificity of workplace harassment, which makes it extremely difficult to identify the work sectors and workers with the highest vulnerabilities and to target resources in those areas.

## **IV. CONCLUSION AND RECOMMENDATIONS**

Given that the *C. v. Romania* case the first case of the Court concerning sexual harassment in the world of work and that the case is illustrative of a general and systematic problem in Romania regarding sexual harassment, and harassment more generally, in the world of work, we respectfully ask the Committee of Ministers to:

- Monitor the implementation of the case under enhanced supervision;
- Schedule the case for examination on the Committee's agenda for one of its upcoming Human Rights meeting in 2023;
- Request Romanian authorities to provide an Action Plan with general measures designed to ensure that laws and public policies concerning harassment in the world of work are improved, as well as their implementation, in line with the ILO Violence and Harassment Convention 2019 (C190), so that violations such as those in Ms. C's case will not happen again; and
- Urge the Romanian Government to ratify C190.

### **Contact information**

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<sup>51</sup> *M.G.C. v Romania*, Application no. 61495/11, Judgment of 15.03.2016, final on 15.06.2016: <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2261495/11%22%5D,%22itemid%22:%5B%22001-161380%22%5D%7D>}.

<sup>52</sup> *Balsan v Romania*, Application 49645/09, Judgment of 23.05.2017, final on 23. 08.2023, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-173619%22%5D%7D>}.

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Asociația Front / Front Association

Asociația Iele-Sânziene / Iele-Sânziene Association

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