

## **Submission by ACCEPT Association**

### **For the Office of the High Commissioner for Human Rights' Compilation Report**

#### **Universal Periodic Review: 3rd Cycle, 29th Session**

#### **ROMANIA**

### **I. BACKGROUND INFORMATION**

[1]. The Romanian Constitution guarantees equal treatment of all citizens before the law and public authorities, without any privilege or discrimination. Article 30 (7) prohibits ‘*any instigation ... to national, racial, class or religious hatred, any incitement to discrimination*’<sup>1</sup>. While the Fundamental Law provides for equality and non-discrimination in broad terms, these provisions are implemented in practice by specific anti-discrimination legislation. The main act in the field is *Governmental Ordinance 137/2000* (hereafter referred to as the *Anti-discrimination Law* or *G.O. 137/2000*).<sup>2</sup> The motivation based on discrimination is introduced as an aggravating circumstance in the criminal legal system<sup>3</sup>.

[2]. Nevertheless, despite significant progress in ensuring equality through anti-discrimination legislation after 2000, lesbian, gay, bisexual, and transgender (LGBT) persons in Romania often face legislative, administrative or practical barriers due to the socially conservative environment in the country, the very public stance taken by representatives of the political class and highly influential Orthodox Church against LGBT persons and the failure of state authorities to provide adequate and effective protection. LGBTI+ people remain one of the categories facing widespread societal rejection, discrimination and violence<sup>4</sup>.

### **II. KEY ISSUES, CHALLENGES AND RECOMMENDATIONS**

#### **Challenges linked to outstanding 2<sup>nd</sup> cycle UPR recommendations**

##### **Issue no. 1: Available awareness raising programs and/or training on sexual orientation and gender identity issues**

Linked to 2nd cycle UPR recommendation No. 109.17 (Turkey), 109.39 (Finland) and 109.43 (Estonia).

[3]. In Romania, topics such as equality, human rights, anti-discrimination – particularly if linked to sexual orientation and gender identity – are not considered a priority and are therefore not widely addressed in comprehensive training schemes for public officials, civil servants or in campaigns for the general public at large. On the contrary, since 2015 up to present, a national campaign against LGBT people takes place with the acquiescence of public authorities

who missed several occasions to ensure respect for human rights for all. A group of religious-based organizations, with the help of the Romanian Orthodox Church, gathered many signatures<sup>5</sup> for the organization of a referendum to change the definition of family in the Romanian Constitution, to be understood as marriage between a man and a woman.<sup>6</sup> The initiative is superfluous and uses LGBT persons as scape-goats.<sup>7</sup> First, the Civil Code already has a restrictive definition of marriage since 2011. Second, the proposed referendum is generating homophobia in public discourse and violent incidents against LGBT persons.<sup>8</sup> The Constitutional Court gave green light for the organization of referendum, despite wider implications of the proposed amendment on human rights (e.g. the right to family, equality and non-discrimination). The first chamber of the Parliament passed the initiative, without taking into account reasons of opportunity and human rights infringements. In the fall of 2017, the Senate is expected to vote.

[4]. Existing training programs on anti-discrimination carried out for judges and prosecutors omit the LGBT group from categories vulnerable to discrimination.<sup>9</sup> Aside from small-scale actions initiated and conducted on an annual basis by civil society organizations – such as ACCEPT Romania – in partnership with state authorities that showed interest in the topic (such as ISOP, the Institute for Public Order Studies<sup>10</sup>), there were no systematic, comprehensive initiatives implemented during the past 5 years.

[5]. In addition to the authorities' lack of interest, a considerable obstacle remains the general lack of funding opportunities in the country. Most human rights organizations, together with the main LGBTI organization in the country, ACCEPT, have been facing considerable challenges in ensuring minimal resources during recent years, aside from the EEA grants funding cycle for 2009-2014<sup>11</sup>. Upon turning to the fewer international donors in search for the (limited) financial assistance for their human rights work, human rights organizations also face public accusations of being foreign agents and serving foreign interests.<sup>12</sup>

[6]. The main framework used to support efforts related to awareness raising to sexual orientation and gender identity was that of the National Anti-discrimination Strategy.<sup>13</sup> However, Romania failed to adopt a new Anti-Discrimination Strategy after the expiration of the previous one, in 2014. A first draft of a new strategy, which is in fact a multi-annual policy document to be adopted by the Government, was produced in 2014 following consultations between the National Council for Combatting Discrimination and civil society, including organizations of the Romanian Anti-discrimination Coalition. However, to date, the new Strategy and its annual action plan are not yet in force.

[7]. We express our hope that the following **recommendations** are made to the Government of Romania:

- **To adopt, in the next year, the multi-annual Strategy on Preventing and Combatting Discrimination, and subsequent annual action plans for its implementation, as a binding document for all relevant ministries and public authorities in the country, creating a framework for initiatives and awareness-**

**raising programmes on gender equality and the protection of LGBT rights, *inter alia*.**

- **To take the necessary measures towards ensuring participation and cooperation between relevant authorities and NGOs dealing with sexual orientation/gender identity issues and antidiscrimination.**
- **To ensure adequate funding, cooperation and support for initiatives by non-state actors who are developing initiatives and awareness-raising programmes on gender equality and the protection of LGBT rights, *inter alia*.**

### **Issue no. 2: The lack of comprehensive, systematic methods of collecting statistical information related to hate-crimes**

Linked to 2nd cycle UPR recommendation no. 109.59 (Austria):

[8]. Romanian authorities publish annual reports on the activity of police, prosecutor's offices and courts. These reports confirm that there is no collection of data regarding the distinct grounds of discrimination and that information regarding hate crimes – if collected at internal level - are not published ex officio. In various contexts, Romanian authorities have explained that, although certain individual hate crimes are reflected in their administrative statistics, the discriminatory ground is not highlighted in their database disaggregated according to grounds such as gender/sex/ethnicity/race/nationality, disability, sexual orientation, religion, age or other grounds. This void of information affects the potential public policies to prevent and combat hate crimes, since, on the one hand, there are no administrative data to serve as grounds for such policies and, on the other hand, there does not seem to exist any institutional will to change this status quo.

#### **[9]. Recommendations:**

- **To take the necessary measures to ensure the systematic collection and publication of statistical data on hate crimes, disaggregated based on the discriminatory ground/motivation of the perpetrators, including sexual orientation and gender identity.**

### **Issue no. 3: Implementation of practical actions and measures to combat discrimination linked, *inter alia*, to sexual orientation and gender identity.**

Linked to 2nd cycle UPR recommendations No. 109.44 (Cuba) and 109.45 (Australia).

[10]. As highlighted above (Issue no.1), Romania currently lacks an Anti-Discrimination Strategy regarding national level measures to promote equality and protection against all forms of discrimination, with the previous one having expired in 2014.

[11]. The activity of the National Council for Combatting Discrimination [NCCD]<sup>14</sup>, the Equality Body responsible, *inter alia*, for sanctioning acts of discrimination and promoting equality for the most vulnerable groups, occasionally remains affected by politicization<sup>15</sup>.

[12]. Furthermore, education programmes linked to anti-discrimination are not implemented in schools, with very few exceptions, although the protection and security of certain groups – such as LGBTI youth – remains problematic. In 2015, Accept Association conducted a study on the perception of high-school students towards LGBT people as well as the educational experience of LGBT students in Romanian high schools<sup>16</sup>, which revealed that 96% of respondents - LGBT students in high schools - believed that the term *homosexual* and *lesbian* is used in a negative way; 71% of LGBT students in high schools believe that high schools are not safe for LGBT students; and 61% of LGBT students in high schools have been the victim or witness to an attack or aggression towards an LGBT student.

[13]. Gender identity is not explicitly included in the list of criteria of non-discrimination and the rights of transgender people remain largely ignored by public authorities.<sup>17</sup> First, there are no official medical protocols adopted in Romania or any kind of training for professionals on providing healthcare services for transgender persons; very few psychologists and medical professionals are available to provide such services. Medical interventions are not covered by the public healthcare insurance.<sup>18</sup> Second, the legislation on name change in civil status documents obliges transgender persons to go through court procedures that are usually long and have an uncertain result.<sup>19</sup> The law is very general and vague and judges lack guidelines on criteria for granting name change. In the absence of clear laws or guidance, the courts issue contradictory interpretation of the law on aspects of gender-affirming surgery.<sup>20</sup>

**[14]. Recommendations:**

- **Ensure that the National Council for Combating Discrimination is able to carry out its functions legally and independently, by appointing persons who have recognized expertise in the field of human rights as members in the Steering Committee and not simply persons who have political support in the Parliament.**
- **Implement the necessary measures such as allocating budgetary lines of each institution having a mandate to implement the Strategy on Preventing and Combating Discrimination so as to ensure that awareness raising campaigns on equality and non-discrimination, as well as educational and continuous learning programmes, are available and implemented in schools and in training facilities for civil servants and for key professional actors such as law enforcement, school teachers, medical professionals.**
- **Ensure the adoption of anti-bullying measures in schools to also protect LGBT students.**
- **Adopt medical protocols and implement training for professionals on providing healthcare services for transgender persons who access these services.**
- **Amend legislation in order to introduce a simple and foreseeable administrative procedure for sex and name change in civil status documents for transgender persons.**

#### **Issue no. 4 –Absence of proper, effective investigations of hate crimes against LGBTI individuals**

Linked to 2nd cycle UPR recommendation No. 109.71 (Austria).

[15]. In recent years some progress has been made in Romania in relation to anti-discrimination and tackling hate crime. Nevertheless, there is still a need for greater legal protection of victims, a better understanding by Police and prosecutors of hate crimes alongside improved responses, and enhanced knowledge and resources available to the courts to reflect the seriousness of offences. First, improvements of legal protection of victims were expected on account of the upcoming transposition of the Victims' Rights Directive. However, there are considerable concerns as regards adequate and effective transposition. No measures were taken during 2016 to improve legislation or policy in this respect. Therefore, hate-crimes remain underreported. Second, in the last five years, in none of the few hate-crimes that were reported did the prosecutor's office file a criminal case in court. This comes as a worrying trend in the context of a recent judgment of the European Court of Human Rights finding Romania accountable for ineffective investigation of hate-crime against LGBT persons.<sup>21</sup>

#### **[16]. Recommendations:**

- **Adopt, as soon as possible, a comprehensive set of measures to ensure that extreme forms of discrimination and hate crimes against LGBTI persons as well as other vulnerable categories are properly investigated.**
- **Ensure that systematic training is provided to police and the judiciary, regarding the identification, investigation of hate crimes and treatment of victims.**
- **Ensure that awareness raising campaigns are implemented for the general public regarding existing legal protection against hate crimes and redress mechanism.**
- **Adopt the necessary legislative measures so as to ensure a proper transposition of the country's obligations in line with the Victims' rights Directive.**

Florin Buhuceanu, Executive President

ACCEPT Association

Bucharest, Romania

**28 June 2017**

---

<sup>1</sup> During the 2013 discussions on constitutional revision, it was proposed that the list of protected grounds be extended to reflect those in Article 21 of the EU Charter of Fundamental Rights, but to exclude sexual orientation, which was initially included but subsequently deleted by the parliamentary commission.

<sup>2</sup> Governmental Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, was published in Monitorul Oficial al României No. 431 of September 2000, and amended subsequently in 2002, 2003, 2004, 2006 and 2013, to enhance transposition of the Directive 2000/43/EC and the Directive 2000/78/EC. The 2013 set of amendments were also triggered by the proceedings before the Court of Justice of the European Union (CJEU) in the case C-81/12.2

<sup>3</sup> The Romanian Criminal legal framework contains two types of provisions on hate crimes:

- a. Hate crime as an aggravating circumstance, provided in art.77, h) in the Criminal Code
- b. Hate crimes as individual crimes provided by the Criminal Code or other special criminal laws. There are individual crimes provided in the criminal law framework which can be considered individual hate crimes: incitement to

hatred or discrimination (art.369 Criminal Code) ; abuse of office, in the version based on discrimination (art.297, para.(2) Criminal code); torture based on any form of discrimination (art.282, para.(1), d) Criminal Code) ; preventing the freedom to practice religion (art 381 Criminal Code) etc; or crimes provided in the Government Emergency Ordinance no. 31/2002 on banning the fascist, racist or xenophobic organizations and symbols and the promotion of the cult of persons guilty of committing crimes against peace and humanity (etc.)

<sup>4</sup> National Council for Combatting Discrimination, Romania, 2015, <http://cncd.org.ro/2015-09-15-sondajul-perceptiilor-si-atitudinii-ale-populatiei-romaniei-fata-de-strategia-nationala-de-prevenire-si-combatere-a-discriminarii>. In 2015, 49% of the respondents indicated LGB persons were the most discriminated groups in Romania. LGB persons also registered the second lowest degree of overall social acceptance (after the category of “persons addicted to drugs”. For instance, only 7% of the respondents stated they would accept to have a LGB person as “relative”, 15% as “friend”, 12% as “work colleague”, 13% as “living on the same street/building”, 13% as “living in the same city/village”, 16% as “living in Romania”, and 13% as “visiting Romania”. At the same time, 47% of respondents consider that it is “harder” for LGBT persons to find employment compared to heterosexuals (the 4<sup>th</sup> highest percent). See also FRA 2014 – *EU LGBT Survey – European Union lesbian, gay, bisexual and transgender survey – Main results*, <http://fra.europa.eu/en/publication/2013/eu-lgbt-survey-european-union-lesbian-gay-bisexual-and-transgender-survey-results>.

<sup>5</sup> See Keep the Romanian Orthodox Church’s campaign away from school environment, <http://www.acceptromania.ro/blog/2016/01/14/tineti-campania-bor-departe-de-spatiul-scolar/>.

<sup>6</sup> The proposed amendment of the definition of family will make Romania the first country in the Council of Europe to adopt such a restrictive definition of family (“family is based on marriage between a man and a woman...”), in violation of ECtHR jurisprudence on the right to family (Article 8 of the ECHR).

<sup>7</sup> See Three millions of Romanians mobilized by hate against LGBT people, <http://www.acceptromania.ro/blog/2016/05/23/trei-milioane-de-romani-mobilizati-de-ura-fata-de-persoane-lgbt/>.

<sup>8</sup> E.g. Gay activist threatened with death after his contact details were published by the Coalition for Family, <http://www.acceptromania.ro/blog/2016/11/24/activist-gay-amenintat-cu-moartea-dupa-ce-datele-sale-de-contact-au-fost-circulate-de-coalitia-pentru-familie/>.

<sup>9</sup> National Institute of Magistracy, Program of continuous education for the year 2017, available at [http://www.inm-lex.ro/fisiere/d\\_1636/Programul%20de%20formare%20continua%202017.pdf](http://www.inm-lex.ro/fisiere/d_1636/Programul%20de%20formare%20continua%202017.pdf).

<sup>10</sup> <http://isop.mai.gov.ro/> ISOP is the main institution under the Ministry of Interior, providing induction and continuous training to staff of the Ministry of Interior, including Police.

<sup>11</sup> <http://www.fondong.fdsc.ro/>

<sup>12</sup> <http://www.activenews.ro/prima-pagina/Asociatia-Accept-incearca-sa-INTIMIDEZE-si-sa-CENZUREZE-libertatea-de-exprimare-45015>; <http://www.cunoastelumea.ro/reteaua-ong-urilor-pro-homosexualitate-din-romania-finatate-de-george-soros-nume-grele-printre-sustinatorii-familiei-gay/>

<sup>13</sup> The previous Strategy document expired in 2014. The new one was published for consultation in April 2017 but has not been adopted. [http://nediscriminare.ro/strategie\\_ro](http://nediscriminare.ro/strategie_ro)

<sup>14</sup> NCCD - National Council for Combating Discrimination (Romanian: *Consiliul Național pentru Combaterea Discriminării*, or CNCD) is an agency of the Romanian government, established in 2001 and responsible for applying Romanian and European Union anti-discrimination laws and managing the National Anti-Discrimination Plan. The legal status of the CNCD was established by the anti-discrimination law of 2000 (Law 137/2000) and subsequently amended. <http://cncd.org.ro/home>

<sup>15</sup> Concerns were expressed by civil society with regard to both the decision making process of NCCD when it comes to sanctioning acts of discrimination from politicians, as well as in relation to the appointments process for the NCCD steering Board in April 2016 – a process which lacked transparency and was affected by multiple procedural irregularities. As a direct result of this second hearing, the new constituency of the NCCD Steering Board does not respect the legal requirement established by the Anti-discrimination Law that a minimum of 2/3 of the members of the NCCD are Law graduates, explicitly violating Article 23 of the Governmental Ordinance 137/2000. <http://www.hotnews.ro/stiri-esential-19806707-parlamentul-validat-noua-componenta-colegiului-director-cncd-cine-lupta-impotriva-discriminarii-romania.htm>.

<sup>16</sup> <http://www.acceptromania.ro/blog/2016/03/01/tinerii-lgbt-victime-ale-violentei-si-hartuirii-la-liceu/>

<sup>17</sup> Government Ordinance 137/2000 on the prevention and sanctioning of all forms of discrimination, Art.2(1).

<sup>18</sup> ACCEPT, ECPI, Trans persons in Romania. Legal recognition of gender identity, <http://accept-romania.ro/wp-content/uploads/2014/02/Recunoasterea-juridica-a-identitatii-de-gen-a-persoanelor-trans-in-Romania-page-by-page.pdf>.

<sup>19</sup> Law 119/1996 on civil status documents, Art.43.

<sup>20</sup> ACCEPT, ECPI, Trans persons in Romania. Legal recognition of gender identity, <http://accept-romania.ro/wp-content/uploads/2014/02/Recunoasterea-juridica-a-identitatii-de-gen-a-persoanelor-trans-in-Romania-page-by-page.pdf>.

<sup>21</sup> ECHR, *M.C. and A.C. v Romania*, judgment of 12 April 2016, no.12060/12.