



Mid-term report after Romania's third review in the WG 29th session

Universal Periodic Review

Submission prepared and delivered by ACCEPT Association

Submission supported by ECPI-Euroregional Center for Public Initiatives, SECS-Society for Education on Contraception and Sexuality, Identity Education, PRIDE Romania, Rise OUT

I. INTRODUCTION

- 1.** This compilation of information is produced as a Follow up submission at the previous UPR report. The focus of the submission is on the situation of lesbian, gay, bisexual, transgender and intersex persons (LGBTI) in Romania.
- 2.** The submission is relevant for the implementation of the following recommendations supported by Romania at UPR 2018: 114.49 (Mexico), 114.76 (United States of America), 114.77 (Germany), 114.46 (Tunisia), 114.48 (Israel), 114.60 (Chile), 114.69 (Greece), 114.73 (Belgium), 114.42 (Honduras), 114.39 (Cuba), 114.40 (Germany), 114.41 (Indonesia), 114.63 (Spain), 114.64 (Canada), 114.65 (Belgium), 114.70 (Czechia), 114.68



(Austria), 114.62 (Australia), 114.61 (Italy), 114.51 (United States of America), 114.52 (Argentina), 114.150 (United Kingdom of Great Britain and Northern Ireland), 114.151 (Estonia), 114.93 (Czechia), 114.133 (Australia), 114.134 (Israel), 114. 135 (Germany), 114.66 (Ireland), 114.67 (Sweden).

3. Background Information:

In accordance with the most recent study issued in 2020 by the European Union Agency for Fundamental Rights (FRA), Romania is facing structural and unaddressed problems regarding the protection of the LGBTI minority group from discrimination, exclusion and violence. The social distance scale confirms the results of the FRA survey, identifying LGBTI population as being the most distrusted minority group in Romania (74%), along with Roma population (72%).¹

Romania is the member of the European Union confronted with the highest rate of physical or sexual assaults of LGBTI persons in the last five years, while 1 in every 2 transgender persons has encountered harassment due to their gender identity (the second largest percentage in the EU).² In such hostile circumstances, LGBTI people felt under direct and constant attack during 2015-2018 when a campaign carried out by the "Coalition for Family" for a National „Family” Referendum aimed to redefine the constitutional definition of family by replacing the current neutral definition (as "union of spouses" in the article 48 of the Constitution), and excluding the access to family rights for same-sex couples.

¹ IRES, Discrimination and Hate Speech in 2019, accessible on <http://www.ires.com.ro/articol/367/discriminare-si-discurs-al-urii-in-romania--2019>, 6/28/2020

² Fundamental Rights Agency (May 2020), "A long way to LGBTI equality", accessible on https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality_en.pdf, 6/28/2020.



II. KEY LGBTI ISSUES, CHALLENGES AND RECOMMENDATIONS

1. Awareness raising and dissemination of information

Theme A54, Recommendations: 114.49 (Mexico), source of position: A/HRC/38/6/Add.1

On small scale, the National Council for Combating Discrimination has continued to provide trainings for various professional categories (including judges and law enforcement officials) on various grounds of discrimination, including sexual orientation. No national campaigns promoting equality, human rights, and non—discrimination based on sexual orientation and gender identity were conducted by public authorities at national or local level for the general public at large.

On contrary, explicit anti-LGBT campaigns were prepared and conducted between 2015-2018 at national scale with support from the Romanian Orthodox Church and various religious groups united under the "Coalition for Family", including advertisement paid by the ruling political party that further marginalized this minority group.³

In June 2020, a series of street banners portraying LGBT seniors were exhibited for less than a week in several places in Bucharest before being vandalized. The display was part of a European project aimed at changing the perceptions and attitudes of professionals and the general population regarding LGBT seniors. One of the local mayors of Bucharest that has removed those banners in his district justified his administrative measure as response to the pressure organized by several religious NGOs that militate against any public visibility in the case of LGBTI persons: „there has been a great deal of discomfort in the community from the majority side (...).”⁴

³ The spot paid by the Social-Democrat Party (the political party that led the Governmental Coalition at that time, mentioned explicitly that voting „yes” at referendum will preserve marriage between a man and a woman, while „no” is opening the legal possibility for same-sex marriage, as well as „four men marrying three women, or a man marrying a ficus tree”. Spot available here: <https://www.libertatea.ro/stiri/cum-a-ajuns-psd-sa-plateasca-pentru-mesajul-nu-la-referendum-casatoria-intre-barbat-si-ficus-2414588>.

⁴ Free Europe Radio, Romanian section, accessible on <https://romania.europalibera.org/a/scandalul-afi%C8%99elor-cu-bisexualii-v%C3%A2rstnici-de-ce-s-au-sup%C4%83rat-cre%C8%99tinii-%C8%99i-au-vandalizat-panourile/30688674.html>, 6/27/2020



A bill adopted by the Parliament in June 2020, amending the Education Law no. 1/2011 prohibits providing in schools, universities of continuing professional education courses information regarding gender identity. If the amendment will enter into force, any kind of education regarding sex, gender, gender identity will be prohibited, in violation of articles 5 and 10 of the UN Convention on Elimination of All forms of Discrimination against Women.

Recommendations:

- To adopt, in the next year, the multi-annual Strategy on Preventing and Combatting Discrimination which is due since 2014, and subsequent operational plans that include awareness-raising programmes on LGBTI issues for various professional categories (teachers, medical providers, social workers, policemen, magistrates, etc.).
- To ensure adequate funding, cooperation and support for NGOs that are delivering awareness-raising programmes on gender equality and the protection of LGBTI rights, *inter alia*.

2. Statistics and indicators related to hate crimes

Theme A 62, Recommendations: 114.76 (United States of America), 114.77 (Germany), source of position: A/HRC/38/6/Add.1

Despite the repeated commitments to collect and publish disaggregated data on hate crimes and hate speech and take appropriate measures to encourage victims to report these crimes, Romania did not make any progress in this specific area. Therefore, hate-crimes remain severely underreported.

Since the adoption of the hate crime legislation in 2006, there was no prosecution of LGBTI related hate crimes, despite the fact that ACCEPT Association submitted several criminal complaints. The situation does not appear to be significantly different with respect to other criteria of discrimination. For example, according to the statistical data collected by the General Prosecutor's Office, in 2019, from a total of 138 cases of alleged incitement to discrimination and abuse in the



exercise of authority, the prosecutors finalized 59 cases – 57 cases were closed before starting prosecution and 2 cases were closed with the motivation of the lack of public interest.⁵

At the moment, the Ministry of Justice still does not collect data regarding the motives of the perpetrators that are stirring hate crime such as ethnicity, disability, gender, sexual orientation or HIV status among other grounds of discrimination. No public plan of the Ministry of Justice is in preparation for improving its data collection.

The law enforcement authorities failed to document seriously the reported hate crime cases in order to identify evidences of such criminal offence, despite the fact that Romania was found accountable in 2016 by the European Court of Human Rights for ineffective investigation of hate-crime against LGBTI persons (*M.C. and A.C. v. Romania*)⁶. Based on a Revised Action Plan on the execution of this ECtHR judgement, a common methodology was supposed to be prepared for a proper investigation of the hate-crimes offenses. No such a methodology was adopted so far.

Recommendations:

- Standards on the interaction between the police and victims of hate crimes, should be adopted, including with regard to communication with community leaders and representative LGBTI organizations.
- Measures should be taken to create and adequately finance support services for victims of hate crimes, especially among vulnerable categories (youth, trans persons, persons without income) from the LGBTI community.
- Measures should be taken to increase financial support and expand training programmes on non-discrimination for law enforcement (policemen, prosecutors, judges, lawyers), and seek co-operating with LGBTI associations.

⁵ General Prosecutor's Office, Response No.327/VIII-3/2020, March 2020.

⁶ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-116847%22%5D%7D>



3. Equality & non-discrimination

Theme B 31, Recommendations: 114.46 (Tunisia), 114.48 (Israel), 114.60 (Chile), 114.69 (Greece), 114.73 (Belgium), 114.39 (Cuba), 114.40 (Germany), 114.41 (Indonesia), 114.64 (Canada), 114.65 (Belgium), 114.70 (Czechia), 114.68 (Austria), 114.62 (Australia), 114.61 (Italy), source of position: A/HRC/38/6/Add.1

114.51 (United States of America), 114.42 (Honduras), 114.52 (Argentina), source of position: A/HRC/38/6/Add.1 - Para. 25

114.66 (Ireland), source of position: A/HRC/38/6/Add.1 - Para. 11

114.67 (Sweden), source of position: A/HRC/38/6/Add.1 - Para. 12

From 2014, Romania lacks a National Anti-Discrimination/ Equality Strategy. A common initiative led by the National Council for Combating Discrimination and member organizations of the Anti-Discrimination Coalition prepared a draft of the “Equality, Inclusion, Diversity” Strategy 2016–2020 and submitted it to the Romanian Government. No such a national strategy was adopted so far by the Romanian Government.

The practice of nominating political appointees with no human rights expertise and experience as members of the Steering Board of the National Council for Combating Discrimination (NCCD) has continued in 2020. Between 2016-2018, NCCD publicly sent messages condemning the rhetoric developed by representatives of public authorities or religious denominations who equated LGBT people with „child thieves” and „agents of the destruction of traditional families”. No sanctions were applied against these public figures who intentionally have used hate speech against LGBTI persons for forging a base of support in favour of the 2018 Constitutional Referendum.

In 2018, NCCD has cooperated with representatives of ACCEPT, the Anti-Discrimination Coalition, RESPECT Platform for Rights and Liberties to initiate and propose a draft law on civil



partnership in Romania. Despite the cooperation with various political parties in this process, the proposed bill is blocked in the Romanian Parliament. Taking into consideration the upcoming parliamentary elections, there are no possibilities to adopt this legislation for the protection of the family in the current legislature. The lack of legal recognition and protection of same-sex families is discriminating against this minority group, affecting their right to private and family life.

Gender identity remains outside of the non-discrimination grounds recognized explicitly by the legislation, while no provision on legal gender recognition was adopted so far. The current legislative framework is scarce and unclear, leaving the burden to the law enforcement authorities (judges, prosecutors, civil status authorities, mayors) for establishing conditions and procedures trans persons need to fulfil in order to obtain legal gender recognition with uncertain and contradictory results. The judicial procedure is not accessible for trans population denying their right to self-determination and imposing a high level of administrative and medical proofs that are extremely difficult to be met.

Recommendations:

- Adopt civil partnership legislation that is ensuring effective recognition and protection of same sex families.
- Judges throughout the country should implement European standards of human rights protection for trans persons in ensuring legal gender recognition.
- Amend legislation in order to introduce a simple and foreseeable administrative procedure for sex and name change in civil status documents for transgender persons, based on informed consent of trans persons about medical and social risks involved.



4. Right to health

Theme E 41, Recommendations 114.133 (Australia), 114.134 (Israel), 114.135 (Germany), source of position: A/HRC/38/6/Add.1

Romanian authorities have failed to take appropriate actions and measures to advance access to sexual and reproductive health and rights for vulnerable groups, including with respect to HIV prevention among MSM and transgender groups. In the absence of the National HIV Strategy or a National HIV Plan due since 2007, the current national health programs are not implementing programs and new approaches on HIV prevention among vulnerable groups, such as MSM and transgender groups while HIV incidence is constantly rising on an alarming scale.

No official medical protocols were adopted in Romania and specialized training for professionals on providing healthcare services for transgender persons is still missing. Therefore, trans community is lacking access to healthcare services that are specialized in supporting medical transition, while discrimination in accessing ordinary healthcare services is rampant. Aside from hindering access to healthcare, the generalized lack of expertise in this specific health area is directly affecting their access to legal gender recognition because judges require a mandatory medical evaluation.



Recommendations:

- Adoption and budgeting of the National HIV/AIDS Strategy in correlation with the measures provided by the National Sexual and Reproductive Health Strategy, with a focus on vulnerable groups such as MSM and transgender population.
- Adopt medical protocols and implement training for professionals on providing healthcare services for transgender persons.
- Adopt and implement WHO standards of depathologization of gender identity (ICD 11).