Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity

Romania

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Romania adopted comprehensive anti-discrimination legislation as early as 2000. The defining element for the Romanian case is the transposition of both directives in one piece of legislation, subsequently amended to increase compliance with the European norms, and the establishment of one common national equality body to deal with all forms of discrimination, including sexual orientation.[1] Gender identity and expression are not explicitly mentioned as protected grounds but they are covered by a catchall phrase: 'any other criterion'.[2]

The Law on Equal Opportunities between Women and Men indirectly protects sexual orientation without explicitly mentioning it.[3] The law does not cover transgender status. Transgender people are not explicitly protected by any Romanian law.[4]

The national equality body, *Consiliul Naţional pentru Combaterea Discriminării* [National Council on Combating Discrimination (NCCD)] started *ex officio* investigations in a number of relevant cases on sexual orientation discrimination and also received complaints from human rights NGOs and from individual victims of discrimination.[5] A limited number of cases had been brought also before civil courts.

In 2008, the scope of the Anti-discrimination Law was substantially limited by series of decisions of the *Curtea Constituţională* [the Romanian Constitutional Court] which nullified both the mandate of the C*onsiliul Naţional pentru Combaterea Discriminării* [National Council for Combating Discrimination (NCCD)] and of the civil courts in regard of cases of discrimination generated by legislative provisions.
During 2010-2013, there has been very little litigation under the Emplyment Directive, whether before the NCCD or before courts, with the notable exception of a case that resulted in a preliminary reference to the Court of Justice of the European Union [CJUE]. This is due, among others, to a low level of awareness and trust by victims of discrimination in the effectiveness of the mechanisms set out under the national anti-discrimination legislation.

Freedom of movement

Current Romanian legislation does not provide for a definition of partnership between Romanian citizens. The new Civil Code adopted in 2009,[6] includes a prohibition of same-sex partnership and marriage, including denial of recognition of partnerships and marriages registered in other

[1] Romania/ Consiliul Naţional pentru Combaterea Discriminării [National Council for Combating Discrimination (NCCD)]. The official website of the institution is available at: http://www.cncd.org.ro (10.01.2008).
[2] For definitions of sexual orientation and gender identity see, Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, available at: http://www.yogyakartaprinciples.org/principles_en.htm (25.02.2008).
[3] Romania/ Lege 340/2006 pentru modificarea şi completarea Legii nr. 202/2002 privind egalitatea de şanse între femei şi bărbaţi [Law 340/2006 for the amendment and approval of Law 202/2002 regarding equal opportunities between women and men] (25.07.2006).
[4] ACCEPT, IGLHRC, ILGA Europe, joint submission to the United Nations Human Rights Council, under the Universal Periodic Review, available at www.iglhrc.org (08.02.2008).
[5] The NCCD decided in cases of discrimination in labour relations, including testing of teachers and denial of employment on grounds of sexual orientation, access to health services, access to transportation services, discrimination resulting from harassment, victimisation or the denial of the right to dignity. See Annex 1 for a presentation of relevant case law from the NCCD.
[6] Romania/ Lege 289/2009 privind Codul Civil [Law 289/2009 on the Civil Code] (17.07.2009)

countries. Prior norms regarding freedom of movement spelled out in Ordinance 30/2006 included a definition of partnership for citizens of EU Member States for the purposes of free movement and residence in Romania, which deferred to the legislation of the country of origin. Thus, the partners of EU citizens had free access to Romanian territory if their partnership was valid in their Member State of origin. This regime was applicable also to de facto cohabitation and same-sex partnerships, provided they were recognised by the national legislation in their Member State of origin. The new Civil Code, which entered into force in 2011, mentions that the legal provisions on the freedom of movement in Romania of EU/EEA citizens remain in force without providing needed clarification regarding the conflict between the express provisions recognising the marital status of the EU citizens as granted by their countries mentioned in the legislation transposing Directive 2004/38/EC and the recent prohibition of recognition of same-sex marriages or partnership entered into abroad by same-sex couples.[7]

Unmarried partners of single Romanian citizens can join their partners only if they have at least one child together with the sponsor. The law does not distinguish between same-sex or opposite-sex partners.

There have been no notable changes in the legal framework governing the freedom of movement of same-sex couples, asylum and subsidiary protection, and family reunification. No cases have been reported testing the ability of same-sex couples to reside freely on the territory of Romania.

Asylum and subsidiary protection

Sexual orientation may be considered a common denominator to justify membership of a particular social group as a ground for persecution for the purpose of seeking refugee status. Asylum seekers invoking persecution due to their sexual orientation were initially rejected by the Romanian Office for Immigrations, however, a first case was won in court quashing the negative decision of the asylum authorities and granting asylum.[8]

The Romanian transposition of Article 2(h) of the Qualification Directive does not include unmarried partners among the family members in the context of asylum or subsidiary protection.

There have been no notable developments with respect to asylum and subsisdiary protection during 2010-2013.

Family reunification

Foreigners granted refugee status or subsidiary protection can request family reunification for the husband/wife only if the date of the marriage predates the date when any of these forms of protection were established.

There have been no notable developments with respect to family reunification during 2010-2013.

[7] Romania/Lege 500/2006 privind aprobarea Ordonanţei Guvernului nr. 30/2006 pentru modificarea şi completarea Ordonanţei de urgenţă a Guvernului nr. 102/2005 privind libera circulaţie pe teritoriul României a cetăţenilor statelor membre ale Uniunii Europene şi Spaţiului Economic European [Law 500/2006 on amending and approving Ordinance 30/2006] (28.12.2006) defines as a partner 'a person who lives together with a citizen of the EU, if the partnership is registered according to the law of the Member State of origin or, when the partnership is not registered, the relationship can be proved.'

[8] See Annex 1 for a presentation of relevant case law.

Freedom of assembly

Marches with a pro-LGBT, pro-equality message have been organised since 2005. Though the authorities initially refused to allow the march in 2005, eventually these events started taking place and generated a vigorous counter- reaction from religious groups, conservative and nationalistic parties, as well as neo-Nazi groups. The authorities protected the participants on the pro-gay marches effectively but failed to take adequate measures against the counter- demonstrations when they degenerated into violent, illegal riots. Another positive aspect of State protection is a 2008 court decision dismissing a request for injunction against the gay march. The court decision was based on substantive grounds related to pluralism and ensuring the exercise of the right to freedom of association and assembly (reference to Art.11 of the ECtHR, applying Baczkowski v Poland).

The case of *M.C. and A.C. v. Romania* has been communicated to the Government in 2013. It focuses on alleged ineffective investigation of the law enforcement authorities into a case of violent attack motivated by hate against homosexuals, inflicted against six participants to the 2006 gay march.

Although violent counter demonstrations have no longer occurred in the last three years during the annual gay march, other events promoting gay issues and rights have been hindered by the New Right organization and other groups having an anti-gay agenda. The public authorities did not intervene to protect and sanction such physical and verbal violence grounded in homophobia.

Hate speech and criminal law

The *Codul Penal* [Criminal Code] was amended in 2006 to include incitement to discrimination based on all grounds of discrimination sanctioned by the *Legea Antidiscriminare* [Anti-discrimination Law], including sexual orientation. The same amendment introduced discriminatory intent as aggravating circumstance in the commission of the offences. The implementation of these provisions by the law-enforcement agencies is not satisfactory. The new Criminal Code adopted in 2009 maintained the aggravating circumstances in case of deeds perpetrated with discriminatory intent, including based on sexual orientation, in Article 77. The new Code, to enter into force at a later, unknown date, rephrased the definition of incitement to hatred or discrimination in Article 369 by deleting the list of protected grounds and introducing a new language: 'incitement of the public, by any means to hatred or discrimination against a category of persons is punished with prison from six months to three years or with fine.[9]

The law enforcement authorities do not collect data regarding hate speech and hate crime on grounds of sexual orientation and gender identity. Even the existing general data shows an insignificant number of cases prosecuted or convicted. There is no public policy to train the law enforcement in the field of investigating and prosecuting hate-crime, only small-size trainings of police officers.

Transgender issues

Romanian legislation does not mention the term 'transgender' or equivalent terms. Transgender people are theoretically protected by the provisions of the anti-discrimination legislation but have to bear the consequences of the legislative gap in relation to modifying identification data or undergoing a change of sex. Operating any changes in the civil status requires a court decision which, in practice, is based on a certificate issued by the *Institutul Naţional de Medicină Legală*

[9] Romania/ Lege 286/2009 privind Codul Penal [Law 286/2009 on the Criminal Code] (17.07.2009).

[National Institute for Legal Medicine], following a very intrusive and arbitrary procedure, developed ad hoc to fill a legal vacuum.

During 2010-2013, the *Institutul Naţional de Medicină Legală* [the National Institute of Legal Medicine (NILM)] developed a methodology for diagnosing gender identity disorder and determining eligibility for gender reassignment treatment. The procedures set out in the methodology are very lengthy, intrusive, and medicalised. The caselaw on legal gender recognition continued to be extremely inconsistent.

Miscellaneous

Some themes are important for sexual minorities: the lack of relevant statistical data which would allow more effective policy making, the denial of access to marriage and partnership but also the increased violence, including sexual violence against homosexuals or detainees from vulnerable groups in penitentiaries.
A recent draft law proposed for public discussions by the *Oficiul Român pentru Adopţii* [Romanian Office for Adoptions] regarding a new law regulating adoptions explicitly prohibits adoption of children by two persons of the same sex.[10] Given that the current legislation specifically prohibits multiple adoptions,[11] excepted in cases of married couples, the express prohibition proposed by the new draft, without any feasibility study to justify this legal solution, indicates institutional homophobia.

A draft law on the legal recognition of the civil partnership introduced in the Parliament in September 2013 received wide opposition in the Parliament.
There is no thorough assessment of the implementation of the 2006 Regulation allowing protected accommodation for homosexuals, among other vulnerable categories.
The Draft law regulating adoption proposed in 2010 never reached the Parliament.
The new Civil Code adopted in 2009 stipulates single women along heterosexual couples as potential beneficiaries of medical assisted reproduction technologies. However, two bills currently under debate in the Parliament implicitly exclude lesbian women who choose artificial insemination to become pregnant.

Good practices

Strategic litigation has only been used by the NGO Asociația ACCEPT (ACCEPT) to promote non-discrimination in access to services.

Intersex

Intersex people are not specifically mentioned in non-discrimination legislation, case-law or policies. Under general legislation, patients have the right to refuse medical interventions. Parents or legal guardians may however validly consent to medical treatment on behalf of their children.New births are registered on the basis of a medical certificate stating the newborn's sex. Unless the sex is declared, the birth cannot be registered. A birth declared after the term of 14 days prescribed by law may be registered on the basis of a special dispensation issued by the mayor, or of a final court judgment.

[10] Romania/Oficiul Român pentru Adopţii, Proiect de modificare a legii privind regimul juridic al adopției, available at http://www.adoptiiromania.ro/documente_dezbatere.aspx (01.01.2010).
[11] Art.7 of Romania/Lege 273 /2004 privind regimul juridic al adopţiei [Law 273/2004 on the legal regime of adoption](21.06.2004).

A. Implementation of Employment Directive 2000/78/EC

In an attempt to harmonise Romanian legislation with European standards, prior to EU accession, in 2000 the government adopted legislation responding to the needs served by both the Employment Directive and the Racial Equality Directive.[12] The law was adopted following a joint effort by civil society and human rights experts and the *Departamentul pentru Protecţia Minorităţilor Naţionale* [Department for the Protection of National Minorities] and used as framework advanced drafts of the European Directives.[13] The law was amended subsequently in 2002, 2003, 2004 and 2006, to enhance harmonisation.

Explicit protection of sexual orientation and the subsequent work on LGBT- related cases by the national equality body is highly commendable given the level of rejection of homosexuality manifested by Romanian society. LGBT people remain the most rejected group according to statistics for 2005,[14] 2007,[15]2008,[16] 2009,[17] and 2013.[18].
The national law was changed several times in 2013,[19] partly in response to a European

[12] Romania/Lege pentru modificarea şi completarea Ordonanţei Guvernului nr. 137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare [Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination], (20.07.2006).

[13] Renate Weber, Romania: Legal analysis of national and European anti-discrimination legislation; A comparison of the EU Racial Equality Directive & Protocol N° 12 with anti-discrimination legislation (2001), available at http://www.migpolgroup.com/multiattachments/2426/DocumentName/Romaniaelectronic.pdf (10.01.2008).

[14] In December 2005, NCCD published the results of an official survey stating that 61 per cent of the interviewees avoid having relations with homosexuals. This is the highest rejection percentage, Roma ranking second with 34 per cent and persons living with HIV/AIDS ranking third with 26 per cent. The sample consisted of 1,238 Romanians and the margin of deviation amounts to ±2.8 per cent for a probability of 95 per cent. The survey can be found at: http://www.cncd.org.ro/biblioteca/Sondaje-4/ (06.02.2008).

[15] G. Bădescu, M. Comşa, D. Sandu, M. Stănculescu, Barometrul de Opinie Publică, October 2007, BOP1998-2007,available at http://www.fsd.ro/ro/evenimente_detaliu.php?eveniment=28 (17.12.2007). The Public Opinion Barometer of the Soros Foundation, published in December 2007, found that in the last three years, homosexuals remained one of the most rejected categories of the population: as at October 2007, 61 per cent of the respondents declared that they would not want to have a homosexual neighbour. The same survey conducted in 2005 revealed a rejection rate of 51 per cent and when conducted in October 2006 revealed a 61 per cent rejection rate. In these surveys LGBT people rank third in the question on rejecting particular groups as neighbours, after people who are addicted to drugs and alcoholics.

[16] A 2008 study Percepţii şi atitudini ale populaţiei României faţă de fenomenul de discriminare, The Gallup Organization Romania, Cercetare realizată la cererea Consiliului Naţional Pentru Combaterea Discriminării, found that the highest degree of intolerance is manifested in relation to sexual minorities (68 per cent of respondents consider homosexuality a bad thing, 36 per cent consider that homosexuality should be sanctioned and 19 per cent of the interviewees think that the sanction should be the prohibition of some rights, 42 per cent mention administrative fines and 28 per cent mention the criminal detention. Study available at www.cncd.org.ro (20.10.2008).

[17] Romania, Consiliului Naţional Pentru Combaterea Discriminării, Fenomenul discriminării în Romania – percepţii şi atitudini (The Phenomenon of Discrimination in Romania - Perceptions and Attitudes) research conducted by Institutul Naţional pentru Studii de Opinie si Marketing (INSOMAR) in September 2009. The survey shows that while 55.9 per cent of the respondents believe that the LGBT are discriminated or very discriminated against, only 4.9 per cent would accept an LGBT member of the family, only 23 per cent would accept an LGBT friend and more than 55 per cent believe that sexual minorities should be treated medically for their sexual orientation.

[18] Romania, National Council for Combating Discrimination (*Consiliul Naţional pentru Combaterea Discriminării*) (2013) Perceptions and attitudes regarding discrimination 2013 – Research report (*Percepţii şi atitudini privind discriminarea 2013 - Raport de cercetare*), available at www.cncd.org.ro/files/file/Sondaj%20de%20opinie%20CNCD%202013.pdf (accessed on 26 April 2014).

[19] Romania, Law No. 61/2013 for the modification of the Governmental Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination (*Lege nr. 61/2013 pentru modificarea Ordonanţei Guvernului nr. 137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare)* of 21 March 2013*;* Romania, Emergency Ordinance No. 19/2013 for the modification and completion of the Governmental Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination (*Ordonanţă de urgenţă nr. 19/2013 pentru modificarea şi completarea Ordonanţei Guvernului nr. 137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare*) of 27 March 2013; Law No. 189/2013 for the approval of the Emergency Ordinance for the modification and completion of the Governmental Ordinance no. 137/2000 on the

Commission letter drawing attention to potential inconsistencies with anti-discrimination Directives, as well as a preliminary reference to the Court of Justice of the European Union (CJEU) lodged by a Romanian court.[20] If one is to make an analysis of what happened in 2010-2013 it looks like high levels of stigma and discrimination have not however translated in a growth of litigation under the Employment Directive. Actually, during 2010-2013, there has been less relevant case law, both from the NCCD, and from the courts empowered to hear complaints under the national anti-discrimination legislation. This may be traced back to lack of awareness among victims of discrimination about the existence of relevant remedies, but also the fact that the NCCD case law has been inconsistent and the remedies awarded have not generally been effective, proportionate and dissuasive.

A.1. Concepts defined by national anti- discrimination legislation

Anti-discrimination legislation sanctions 'any difference, exclusion, restriction or preference based on race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, age, disability, chronic disease, HIV positive status, belonging to a disadvantaged group or any other criterion, aiming to or resulting in a restriction or prevention of the equal recognition, use or exercise of human rights and fundamental freedoms in the political, economic, social and cultural field or in any other fields of public life.'[21]

Though the law does not explicitly mention gender identity and expression, including transsexualism, a catch-all phrase 'any other criterion' would apply in conjunction with a wider interpretation of sexual orientation.

Even though not all the legal concepts present in the two Directives were initially transposed into law, due to subsequent amendments, Romanian legislation covers both direct and indirect discrimination[22] and also includes other relevant legal institutions[22] such as: multiple discrimination;[23] positive action;[24] harassment;[25] victimisation;[26] and instruction to

prevention and sanctioning of all forms of discrimination (*Legea nr. 189/2013 privind* aprobarea *Ordonanței de urgență nr. 19/2013 pentru modificarea și completarea Ordonanței Guvernului nr. 137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare)* of 25 June 2013.

[20] Court of Justice of the European Union (CJEU), Case C-81/2012, *Asociația ACCEPT v Consiliul Național pentru Combaterea Discriminării*, 25 April 2013, see section A.2.4.1.

[21] Art. 2, Romania/Lege pentru modificarea şi completarea Ordonanţei Guvernului nr. 137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare [Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination], (20.07.2006).

[22] A. Tabacu, R. Iordache (2003), 'Not Yet Viable: Discrimination Action in Romania' in: Roma rights /2003 pp. 61-70, available at http://errc.org/rr_nr1-2_2003/noteb6.shtml.

[23] Romania/Lege pentru modificarea şi completarea Ordonanţei Guvernului nr. 137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare [Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination], (20.07.2006), Article 2 (6), reads: 'Any distinction, exclusion, restriction or preference based on two or more of the criteria foreseen at para. 1 shall constitute an aggravating circumstance in establishing the contraventional responsibility if one or more of its components is not subject to criminal law.'

[24] The law explicitly allows affirmative actions or special measures to be instituted in favour of persons or groups of persons belonging to vulnerable or disadvantaged groups, with the purpose of ensuring they enjoy equal opportunities.

[25] Art. 2.5. Romania/Lege pentru modificarea şi completarea Ordonanţei Guvernului nr. 137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare [Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination], (20.07.2006): 'Any behaviour on grounds of race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, belonging to a disadvantaged group, age, disability, refugee or asylum seeker status or any other criterion, which leads to establishing an intimidating, hostile, degrading or offensive environment.'

[26] Romania/Lege pentru modificarea şi completarea Ordonanţei Guvernului nr. 137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare [Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the

discriminate.[27]

The internal legal framework makes no reference to standards detailed by European Commission against Racism and Intolerance (ECRI) General Policy Recommendation no. 7 but the case-law of the *Consiliul Naţional pentru Combaterea Discriminării* [National Council on Combating Discrimination (NCCD)] has gradually incorporated most relevant legal concepts suggested by this document into the interpretation of the law.[28]

Areas covered by anti-discrimination legislation

Romanian anti-discrimination legislation encompasses the areas protected by the Employment Directive and the Race Directive: employment and labour- related issues, access to services, access to health, education etc., and goes beyond these standards by introducing the concept of protection of the right to dignity. The principle of equality and prohibition of discrimination applies in relation to all 'human rights and fundamental freedoms or rights recognised by Romanian legislation, in the political, economic, social and cultural field or in any other domains of public life.'[29]

A series of decisions of the *Curtea Constituţională* [the Romanian Constitutional Court] limited both the mandate of the national equality body[30] and of the civil courts in regard of cases of discrimination generated by legislative provisions.[31] Thus, the scope of the Anti-discrimination Law was substantially diminished in 2008, excluding cases of discrimination triggered by legislative norms.

During 2010-2013, it became apparent that there was a gap at the national level in the legal protection afforded to victims of discrimination. Namely, since the Constitutional Court abridged the legal mandate of the Consiliul Național pentru Combaterea Discriminării [the *National Council for Combating Discrimination* (NCCD)] in 2008, victims lack a mechanism to challenge a legal provision that is discriminatory. In addition, the NCCD does not have the legal possibility to seize

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punishment of all forms of discrimination], (20.07.2006), Art. 2. 7: any adverse treatment triggered by a complaint to the NCCD or by a case lodged with the courts of law regarding
the infringement of the principle of equal treatment and non-discrimination.

[27] Art. 2.2. Romania/Lege pentru modificarea şi completarea Ordonanţei Guvernului nr. 137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare [Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination], (20.07.2006).

[28] Para. 6 of the ECRI General Policy Recommendation no. 7 reads as follows: 'The law should provide that the following acts, inter alia, are considered as forms of discrimination: segregation; discrimination by association; announced intention to discriminate; instructing another to discriminate; inciting another to discriminate; aiding another to discriminate.'

[29] Article 3 of the Romania/Lege pentru modificarea şi completarea Ordonanţei Guvernului nr. 137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare [Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination], (20.07.2006).

[30] Romania/Curtea Constituţională/Decision 997 from 7.10.2008 finding that Article 20 (3) of the Anti-discrimination Law, defining the mandate of the NCCD in relation to finding and
sanctioning discrimination triggered by legislative provisions is unconstitutional.

[31] Romania/Curtea Constituţională/Decisions 818, 819 and 820 (3.07.2008) published in the Official Gazette 537 from 16.07.2008. In these three decisions, the Constitutional Court has concluded that the dispositions of Article 1(2) letter e) and of Article 27 of the Governmental Ordinance 137/2000 are unconstitutional, to the extent that they are understood as implying that the courts of law have the authority to nullify or to refuse the application of legal norms when considering that such norms are discriminatory. Based on the constitutional principle of separation of powers, the Constitutional Court emphasised the constitutionality of the Law but asserted that the enforcement of the Law by some courts is unconstitutional due to the fact that in the application of the Law, some courts decided to quash particular legal provisions deemed as discriminatory and replaced them with other norms, thus 'creating legal norms or substituting them with other norms of their choice.' Available at http://www.ccr.ro/cauta/DocumentAll.aspx?SearchDoc=true(20.02.2009).See also Romania/Curtea Constituţională/Decision 1325 (04.12.2008) repeating the earlier finding that Article 27 of the Governmental Ordinance 137/2000 are unconstitutional, to the extent that they are understood as implying that the courts of law have the authority to nullify or to refuse the application of legal norms when considering that such norms are discriminatory.

the Constitutional Court to secure a review of such a provision.[32]

The NCCD explained its practice after the Constitutional Court Decision along the following lines: "Initially, the Steering Board [of the NCCD] decided on the breach of the principle of equal treatment and of non-discrimination in relation to the express content of legal acts and, consequently, recommendations were formulated to remove the consequences of the implementation of the acts in question. Subsequently, the Board delineated its competence related to the legal regime applicable to the deeds of a contaventional nature but, given the status of the NCCD, chose the option to formulate a point of view without legal consequences. Finally, taking note of Decision 997/2008 [of the Constitutional Court], the Board reformulated its case-law and rejected the cases regarding situations of discrimination triggered by legal provisions."[33] Data as to the practice in the courts of law related to this aspect is not available.

A.2. NCCD work on discrimination on the grounds of sexual orientation

Though Art. 23 of Ordinance 137 from August 2000 provided that a national equality body would be established within 60 days of the law being published, it took more than a year for the government to issue a decision establishing the NCCD.[34] Despite a rather slow start in its first years of functioning, the NCCD gradually became a proactive actor, engaging in a multitude of projects and establishing itself as a serious voice in combating discrimination. Unfortunately, the institution was paralysed since the summer of 2009 until April 2010, following the failure of the Parliament to appoint new members in the Steering Board, leading to the impossibility of issuing new decisions, absent a simple majority of five out of nine members.

In 2013, the provisions in the national law regulating the procedure for appointing Steering Committee members were reinforced in order to avoid such problems from reoccurring in the future.[35] Thus, the applicants' names shall be forwarded to the relevant parliamentary bureau 60 days before incumbents end their mandates, instead of 30 days after that time. Any objections may be filed in 15, rather than 10 days from the date the list of candidatures was made public. Finally, the relevant bureaus have to elaborate and present a common opinion on the candidatures before the holders' mandates end, whereas in the previous version of the law no specific deadline applied.

A.2.1. Profile of the national equality body

In September 2006, the NCCD became an autonomous public authority under the control of the Parliament. This change was intended to ensure the independence of the NCCD.

As part of its mandate, the NCCD is requested to propose draft laws in the field of combating

[32] Romania, Romaniţa Iordache (2012) *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC Country Report Romania*, p. 9, available at: www.migpolgroup.com/portfolio/country-reports-measures-combat-discrimination-2012/ (accessed on 25 April 2014).

[33] Romania, National Council for Combating Discrimination (Consiliul Naţional pentru Combaterea Discriminării) (2010), *Selection of Steering Board Case-law (Culegere de hotărâri ale Colegiului Director)*, Bucureşti: Mayon, pp.11-12.

[34] Romania/ Hotărârea de Guvern 1194 privind înfiinţarea CNCD, Government Decision 1194 from 2001 establishing the National Council on Combating Discrimination (12.12.2001).

[35] Romania, Law No. 61/2013 for the modification of the Governmental Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination (*Lege nr. 61/2013 pentru modificarea Ordonanţei Guvernului nr. 137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare)* of 21 March 2013, paragraph 2.

discrimination and to initiate acts to ensure the harmonisation of other legal provisions with the equality and non-discrimination principle.[36]

The powers of the NCCD include preventing discrimination via awareness raising and education campaigns, mediating between the parties, providing support for the victims of discrimination, investigating and sanctioning discrimination, including *ex officio*, as well as initiating drafts to ensure harmonisation of legal provisions with the equality principle.[37]

The internal proceedings for addressing the cases of discrimination and for solving a petition are spelled out by the internal procedures adopted in April 2008.[38]

The role of the NCCD as a quasi-judicial body was confirmed in 2008 and 2009 by the Constitutional Court in several cases challenging the constitutionality of the mandate of the NCCD.[39]

During 2010-2013, repeated concerns were expressed regarding the alleged politicization of the Steering Committee that came with parliamentary supervision.[40] Some NGOs alleged that certain Steering Committee members appointed in 2010 lacked human rights expertise.[41]

A.2.2. Venues available for anti-discrimination complaints

The 2006 amendments of the anti-discrimination legislation, adopted under the impact both of the two EU directives and of the ratification of Protocol no.12 of the European Convention on Human Rights (ECHR),[42] underlined the optional character of the administrative procedure for sanctioning discrimination before the NCCD.[43] The victim of discrimination can choose between filing a complaint with the NCCD, which will result in an administrative sanction, and/or filing a civil complaint for damages with the court of law, with the advantage of being exempt from paying judicial taxes. These venues are not mutually exclusive and the plaintiff can choose to use them simultaneously, which in practice creates problems for all the parties involved. Courts decide independently, but, if the NCCD has issued a decision prior to the civil case, the NCCD decision has the benefit of a strong presumption of legality and it can be used before the civil court in proving

[36] See Article 19³ of the Romania/ Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, amended (20.07.2006); see also Article 2 para. (1) point (b), (c), (d) of the Romania/ Hotărârea de Guvern 1194, Government Decision 1194/2001 regarding the organisation and functioning of the National Council for Combating Discrimination, amended (17.11.2003).

[37] The NCCD is still working on developing a mechanism for tracking complaints and drafting statistics based on relevant indicators. So far the effort of collecting data was undertaken in an empirical manner based on ad hoc requests.

[38] Romania/Ordin. 144 din 11.04.2008 privind aprobarea Procedurii interne de soluţionare a petiţiilor şi sesizărilor, Consiliul Naţional Pentru Combaterea Discriminării, Monitorul Oficial nr. 348 din 6.05.2008 [Order 144/2008 approving the Internal procedures for solving petitions filed with the NCCD.] (11.04.2008).

[39] Romania/Curtea Constituţională Decision 444 from 31.03.2009 published in Official Gazette 331 din 19.05.2009 is reaffirming the role of the national equality body as an autonomous specialized public administrative body with a mandate in combating discrimination. The decision of the CCR clearly spells out the role of the NCCD as an administrative body with a jurisdictional mandate which enjoys the independence entailed by an administrative-jurisdictional activity.

[40] Romania, Romaniţa Iordache (2012) *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC Country Report Romania*, p. 10-11, available at: www.migpolgroup.com/portfolio/country-reports-measures-combat-discrimination-2012/ (accessed on 25 April 2014), ACCEPT (2011) Activity Report 2010 (*Raport de activitate 2010*), p. 3, available at http://accept-romania.ro/wp-content/uploads/2011/08/raport_anual_2010.pdf (accessed on 25 April 2014).

[41] U.S. Department of State (2011) *2010 Human Rights Report: Romania*, available at: www.state.gov/j/drl/rls/hrrpt/2010/eur/154446.htm (accessed at: 25 April 2014).

[42] Protocol no.12 of the European Convention on Human Rights (ECHR) was ratified by Romania in 2006.

[43] See Article 21 of Romania/Lege pentru modificarea şi completarea Ordonanţei Guvernului nr. 137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare [Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination], (20.07.2006).

discrimination, liability and the existence of damages. This presumption in favour of the NCCD decision is not, however, absolute and the defendant can challenge the legality of the decision by the NCCD and submit evidence which would lead the civil court to pass over the NCCD decision.

The NCCD was not able to provide any examples of case law from courts seized directly, during 2010-2013, with complaints concerning discrimination on the basis of sexual orientation or gender identity. Although courts, even when seized directly, have to call before them also the NCCD,[44] to provide expert opinion, the equality body does not collect statistical data according to discrimination grounds in relation to the court cases, but only in relation to their object. The NCCD was however able to estimate that approximately 90% of all cases brought under the national anti-discrimination legislation concerned the ground of "socio-professional status."[45] It therefore follows that the number of sexual orientation and gender identity cases that reached the courts, if any, is likely to be negligible.

Administration of anti-discrimination complaints

Any individual or any legal entity with an interest can file a complaint with the NCCD within one year of the event or from the date when it was possible to find out about the discrimination according to Art. 21 of the NCCD Internal Procedures. The NCCD can also start the case *ex officio.*[46]. The NCCD has 90 days to investigate the case, organise hearings and decide whether anti- discrimination provisions were breached or not.

The NCCD rules on the existence of a discriminatory act and issue an administrative sanction while compensation claims for discrimination can be decided only in the civil court. The NCCD rulings and sanctions can be appealed before the administrative courts.

In accordance with the directives, the anti-discrimination legislation introduces the concept of 'sharing the burden of proof.' Instead of shifting the burden of proof onto the defendant,[47] the Romanian law used to provide that 'the interested party has the obligation to prove the existence of facts which allow the existence of direct or indirect discrimination to be presumed, and the party against whom a complaint was filed has the duty to prove that the facts do not amount to discrimination.'[48]

The 2006 amendment of the law allowed as means of proof for acts of discrimination any type of

[44] Romania/Government Ordinance 137/2000 republished (*Ordonanţa de Guvern nr. 137/2000 republicată*), Art. 27, para. 3.
[45] Romania, National Council for Combating Discrimination (*Consiliul Naţional pentru Combaterea* Discriminării) Letter No. 657/28.02.2014 to the Center for Legal Resources, on file with the NFP.
[46] Art.19.(2), Romania/Lege pentru modificarea şi completarea Ordonanţei Guvernului nr. 137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare [Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination], (20.07.2006).
[47] Article 8 of the Council Directive 2000/43/EC of 29June 2000 implementing the Principle of Equal Treatment between Persons irrespective of Racial or Ethnic Origin reads: 'Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.' See also, ECRI General Policy Recommendation no. 7, para. 11, which states: 'The law should provide that, if persons who consider themselves wronged because of a discriminatory act establish before a court or any other competent authority facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no discrimination.'
[48] Art.20.(6) and Art.27.(4), Romania/Lege pentru modificarea şi completarea Ordonanţei Guvernului nr. 137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare [Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination], (20.07.2006).

evidence, including audio and video recordings, as well as statistical data.[49]

The provisions in the national law regarding the concept of sharing the burden of proof have been changed in 2013. In the new wording of the law, the claimant will "present facts on the basis of which the existence of direct or indirect discrimination can be presumed, and the person against whom the complaint had been filed has the task to prove that there was no breach of the principle of equality of treatment."[50] No cases have been identified that test the application of this provision in practice.

A.2.3. Remedies and sanctions applied under the anti- discrimination legislation

A.2.3.1. Remedies and sanctions applied by the NCCD

The NCCD can issue administrative sanctions: administrative warnings and fines.[51] The NCCD has informally developed a practice of adopting recommendations carrying no financial damages when the perpetrators are central governmental agencies or public actors (e.g. discrimination is triggered by a minister's orders or the internal regulations of central public administration).[52]

Recent changes, prompted by proceedings before the CJEU in the ACCEPT v. NCCD case mentioned below,[53] sought to rectify a gap in the law that compromised, in some circumstances, the NCCD's ability to hand down sanctions that were effective, proportionate and dissuasive. As the CJEU noted in its decision,[54] on the one hand, Article 13§1 of Governmental Ordinance No. 2/2001 provided for a the limitation period of six months from the date on which the events took place, for imposing a fine for administrative offences.[55] On the other hand, Article 20 of the Governmental Ordinance No. 137/2000 used to lay down a limitation period of one year for bringing an action, also starting from the date when the events took place. The lack of correlation between these two provisions meant that when a claimant lodged a claim with NCCD after the six-month period laid down in Governmental Ordinance no. 2/2001 expired, or when the NCCD took longer than six months to adjudicate on a claim, it was only able to apply at most a warning, regardless of the seriousness of the breach. The Governmental Ordinance no. 137/2000 in its current version provides that that the time limit for applying one of the sanctions included in Article 26§1 is six months from the date when the NCCD handed down a decision in the case, thus derogating from the general provisions in Article 13§1 of Governmental Ordinance No. 2/2001.[56]

[49] See Article 20 (6) and Article 27(4) of the Romania/Lege pentru modificarea şi completarea Ordonanţei Guvernului nr. 137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare [Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination], (20.07.2006).

[50] Romania, Law No. 61/2013 for the modification of the Governmental Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination (*Lege nr. 61/2013 pentru modificarea Ordonanței Guvernului nr. 137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare)* of 21 March 2013, paragraph 1.

[51] The amount of the fines differs: when the victim is only one individual, the amount varies from 400 RON to 4,000 RON (114-1,114 Euro) when the victims are a group or a community (e.g.: ethnic minority or the LGBT community as a group), the fine ranges between 600 and 8,000 RON (170-2,285 Euro). These amounts were increased in 2013 as follows: in case of an individual the amount varies from 1,000 to 30,000 RON (approx. 222-6,667 Euro), when the victims are a group or a community the fine ranges between 2,000 to 100,000 RON (approx. 445-22,222 Euro).

[52] See Romania-CNCD, Decision 260, ACCEPT v. the Ministry of Health from 29.08.2007 (in annex 7).

[53] Section A.2.4.1.

[54] Court of Justice of the European Union (CJUE), Case C-81/2012, *Asociația ACCEPT v Consiliul Național pentru Combaterea Discriminării*, 25 April 2013, §60-73.

[55] Romania, Governmental Ordinance No. 2/2001 on the legal regime of misdemenours (*Ordonanța Guvernului nr. 2/2001 privind regimul juridic al contravențiilor*) of 12 July 2001.

[56] Romania, Law No. 189/2013 for the approval of the Emergency Ordinance for the modification and completion of the Governmental Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination (*Legea nr. 189/2013*

An additional legal change enables the NCCD and civil courts to order the guilty party to publish a summary of the decision rendered against them.[57] Furthermore, the level of fines included in national law has been increased through changes adopted in 2013.[58] If previously the fines ranged from 400 lei (approx. 89 eur) to 4,000 lei (approx. 890 eur) when discrimination targeted a natural person and from 600 lei (approx.. 133 eur) to 8,000 lei (approx. 1.778 eur) when discrimination targeted a group of persons or a community, they now range from 1,000 lei (approx.. 222 eur) to 30,000 lei (approx. 6,667 eur) when the target is a natural person and from 2,000 lei (approx.. 445 eur) to 100,000 lei (approx. 22,222 eur) when the target is a group of persons or a community.[59] It remains to be seen how the NCCD will apply the enhanced sanctions. The number of decisions regarding sexual orientation handed down by the NCCD since these changes took place is small, making any conclusive assessment of their impact in practice difficult. However, whereas the four decisions where the NCCD made a finding of discrimination between 2010 and 27 March 2013 did not result in the applicaton of fines, in two decisions rendered since 27 March 2013, the NCCD applied fines.[60] In one of these two decisions, the NCCD made spefic reference to the above-mentioned CJUE ruling, and the need to apply sanctions that were "effective, proportionate and dissuasive".[61]

The NCCD has been criticized for failing to set up a mechanism to monitor compliance with its decisions, making it difficult to assess the effectiveness of its mandate and of the sanctions issued.[62]

A.2.3.2. Remedies and sanctions applied by the civil courts

According to Article 27 of, Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, the person who considers him or herself discriminated against has three years to file a complaint for civil damages, requesting moral and pecuniary damages, or re-establishing *status quo antes* or, nullifying the situation established as a result of the discrimination, according to civil law.[63]

The courts of law can also decide that the public authorities will withdraw or suspend the authorisation of legal persons who caused significant damage as a result of discriminatory action

privind aprobarea *Ordonanței de urgență nr. 19/2013 pentru modificarea și completarea Ordonanței Guvernului nr. 137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare)* of 25 June 2013, paragraph 2.

[57] Romania, Law No. 189/2013 for the approval of the Emergency Ordinance for the modification and completion of the Governmental Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination (*Legea nr. 189/2013 privind* aprobarea *Ordonanței de urgență nr. 19/2013 pentru modificarea și completarea Ordonanței Guvernului nr. 137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare)* of 25 June 2013, paragraph 1.

[58] Romania, Emergency Ordinance for the modification and completion of the Governmental Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination (*Ordonanță de urgență nr. 19/2013 pentru modificarea și completarea Ordonanței Guvernului nr. 137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare*) of 27 March 2013, paragraph 5.

[59] Romania, Government ordinance 137/2000 republished (*Ordonanța de Guvern nr. 137-2000 republicată*) Art. 26.

[60] Romania, National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării)*, Decision No. 561 of 18 September 2013 – the defendant got a 400 RON fine, and Romania, National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării)*, Decision No. 353 of 29 May 2013 – each of the two defendants got a 1000 RON fine.

[61] Romania, National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării)*, Decision No. 561 of 18 September 2013

[62] Romania, Romanița Iordache (2012) *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC Country Report Romania*, p. 10, available at: www.migpolgroup.com/portfolio/country-reports-measures-combat-discrimination-2012/ (accessed on 25 April 2014).

[63] Art. 27, Romania/Lege pentru modificarea și completarea Ordonanței Guvernului nr. 137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare [Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination], (20.07.2006).

or who repeatedly infringed the provisions of the anti-discrimination legislation.[64]

A.2.4. Gradual increase of visibility of the NCCD

Though recent reports note a lack of awareness regarding the existence and the enforcement of anti-discrimination legislation in general,[65] a series of high profile cases in 2006-2008, as well as a sustained effort of enhanced public presence have led to a gradual increase in the public visibility of the NCCD.[66]

The NCCD, both in its Plan of Action[67] and in its 2007 National Strategy, included relevant data on discrimination on the grounds of sexual orientation.[68]

Since its establishment until beginning of 2010, the NCCD has received 46 complaints of discrimination on the grounds of sexual orientation, has started one case *ex officio,* following media reporting and has issued decisions in 33 of them. Of this total, the NCCD found and sanctioned discrimination in eight different cases. Four decisions of the NCCD on the grounds of sexual orientation have been appealed before the administrative courts, three had been maintained by the courts of law and one case was still pending as of March 2010.[69]

A 2013 opinion poll continued to report low popular awareness of non-discrimination legislation.[70]At the same time, the activity of the NCCD pertaining to sexual orientation during 2010-2013 has been fairly limited.[71] Of 27 complaints involving discrimination claims based on sexual orientation, the NCCD found in the claimant's favor in six cases. In two of those cases, the NCCD applied a fine, and in the other four it applied warnings and/or recommendations. According to an NGO report, in 2010 the NCCD produced a position document in which it criticized the provisions of the draft Civil Code restricting marriage to different-sex couples.[72] Other than that, it

[64] Art. 27.5, Romania/Lege pentru modificarea şi completarea Ordonanţei Guvernului nr. 137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare [Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination], (20.07.2006).

[65] Romania/ANES/ Studiu Privind Discriminarea Multipla pe Piata Muncii [press release on Study on Multiple Discrimination of the Labour Market], available at http://www.anes.ro/ (19.01.2008)

[66] Romania/ National Council for Combating Discrimination, Perceptions and Attitudes towards Discrimination, available at: http://www.cncd.org.ro/studiianalize.swf. (20.01.2008). See also Romania/ National Council for Combating Discrimination, Direcţia Relaţii Internaţionale, Integrare Europeană, Politici Afirmative, Studii si Monitorizare, [Department for International Relations, European Integration, Affirmative Policies, Studies and Monitoring], Analiza de imagine a Consiliului Naţional pentru Combaterea Discriminării pentru primul semestru al lui 2006, available at: http://www.cncd.org.ro/studiianalize.swf.

[67] Romania/Hotărârea de Guvern 1258 privind adoptarea Planului Naţional de Acţiune pentru Combaterea Discriminării, Government Decision 1258 on adopting the National Action Plan
to Combat Discrimination (13.08.2004).

[68] Romania/Consiliul Naţional pentru Combaterea Discriminării, Strategia natională de implementare a măsurilor de prevenire şi combatere a discriminării (2007-2013) on file with national FRALEX expert..

[69] Response of the NCCD to FRALEX request from 31.01.2008, on file with national FRALEX expert and Response of the NCCD to FRALEX request from 06.01.2010, on file with national FRALEX expert.

[70] Romania, National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării*) (2013) Perceptions and attitudes regarding discrimination 2013 – Research report [*Percepții și atitudini privind discriminarea 2013 - Raport de cercetare*], available at www.cncd.org.ro/files/file/Sondaj%20de%20opinie%20CNCD%202013.pdf (accessed on 26 April 2014).

[71] Romania, National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării*), Letter No. 657/28.02.2014 to the Center for Legal Resources, on file with the NFP.

[72] Romania, ACCEPT (2013) report concerning the implementation of Reccomendation CM/Rec(2010)5 of the Committee of Ministers regarding the measures for combating discrimination on the basis of sexual orientation and gender identity in Romania (*Raport privind implementarea Recomandării CM/Rec(2010)5 a Comitetului de Miniștri privind măsurile pentru combaterea discriminării pe criteriile orientării sexuale și identității de gen de către România)*, [p. 70, available at: http://accept-romania.ro/wp-content/uploads/2013/12/Raport_RecomandareCMCE_ROonline.pdf (accesed on 25 April 2014).

did not elaborate any policy proposals regarding sexual orientation or gender identity, and did not engage in any awareness raising activity focused specifically on these criteria, [73] in line with its legal attributions.

A.2.4.1. Employment-related cases

The NCCD has decided in cases where the victims of discrimination were harassed and penalised in their work context following the disclosure of their sexual orientation or following allegations about their presumed homosexuality.[74]

In a letter dated 28 February 2014, the NCCD stated that during 2010-2013,, it only handed down two decisions concerning discrimination on the grounds of sexual orientation in the context of employment.[75] However, we were able to identify at least four decisions in cases involving claimants who alleged they had been discriminated on the basis of sexual orientation in the context of employment.

The more prominent of these decisions resulted in a request for a preliminary ruling to the CJEU, in the case *Asociația ACCEPT v Consiliul Național pentru Combaterea Discriminării*.[76] In the main proceedings ACCEPT lodged a complaint regarding an interview given by Gigi Becali, a businessman and unofficial owner of Steaua Bucharest, a football club, during which he declared that he would never hire any homosexuals to play in his team. ACCEPT complained that Mr Becali directly discriminated on grounds of sexual orientation, breaching the principle of equal treatment in employment and violating the right to dignity of homosexuals. By a decision dated 13 October 2010, the NCCD held that the circumstances at issue in the main proceedings did not fall within the scope of a possible employment relationship, as Becali was not formally the owner of the club.[77] However, it decided to sanction his statement with a warning, as a form of harassment.

ACCEPT appealed the ruling before the Bucharest Court of Appeal, which in turn referred the case to the CJEU, with questions regarding the scope of Directive 2000/78 and the provisions in national law regarding the burden of proof and the statute of limitations available to the NCCD for applying sanctions in cases of discrimination. On the substantive question, the CJEU ruled that statements such as those at issue in the main proceedings might constitute a prima facie case of discrimination, notwithstanding the fact that its author was not formally entitled to represent the club, considering that he was publicly perceived to do so.

On 23 December 2013, the Court of Appeal rejected the appeal filed by ACCEPT in the main proceedings, endorsing the initial decision handed down by the NCCD.[78]In order to do so, the Court of Appeal indicated that Mr. Becali's statements did not amount to a refusal to employ the footballer in question, since there had never even been actual negotations to transfer him to Steaua Bucharest, and considering that Mr. Becali did not hold an official position at the club. Furthermore, the Court of Appeal stated that ACCEPT did not establish facts from which it may

[73] Romania, National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării*), Letter No. 657/28.02.2014 to the Center for Legal Resources, on file with the NFP.
[74] Romania/CNCD/ACCEPT on behalf of B. R. v. AV, MI and Regia Autonoma Decision 29 of the NCCD, (07.09.2007). See also Romania/CNCD/ ACCEPT and CRL on behalf of PMG v. IS, Decision 16(18.01.2005).
[75] Romania, National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării*), Letter No. 657/28.02.2014 to the Center for Legal Resources, on file with the NFP.
[76] Court of Justice of the European Union (CJUE), Case C-81/2012, *Asociația ACCEPT v Consiliul Național pentru Combaterea Discriminării*, 25 April 2013, summarized in Annex 1.
[77] Romania, National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării), Decision No. 276 of 13 October 2010.*
[78] Romania, Bucharest Court of Appeal (*Curtea de Apel București*), Civil Decision 4180 of 23 December 2013.

be presumed that there has been discrimination, and that in particular it did not prove that Steaua Bucharest had in place a policy to discriminate on the basis of sexual orientation. At the same time, the warning applied by the NCCD was upheld as an appropriately "effective, proportionate and dissuasive" sanction. The claimants lodged a further appeal against the decision, which is currently pending before the High Court of Cassation and Justice, arguing among others that the Court of Appeal was not entitled to refuse to follow the CJUE ruling.[79]

The second employment case decided by the NCCD concerned a gay employee at a pizza take-away place, which allegedly dismissed him during his trial period for breaching internal rules that banned the wearing of nail polish. The petitioner claimed that these rules were enforced solely against him, and thus were discriminatory on the basis of his sexual orientation. The NCCD rejected the complaint summarily, stating that the petitioner did not establish the existence of a causality link between the impugned differential treatment and the ground of discrimination, as required under the national law.[80] We were not able to ascertain whether the claimant in this case, which we obtained during previous communications with the NCCD, challenged this decision in courts. The NCCD did not consider this to be an employment case to start with, and failed to provide the information requested, in particular whether it resulted in a challenge before courts. NCCD rejected the applications in two other employment cases for failure to adduce suffcient evidence to prove the impugned discriminatory treatment,[81] and because the claimant withdrew his application respectively.[82]

The Council also supported the lobbying efforts of ACCEPT in 2003 when a Joint Order issued by the Ministry of Education and the Ministry of Health required the psychological evaluation of teachers and stated that homosexuality was incompatible with teaching. The regulation was repealed in 2003, but in 2006, discrimination on the basis of sexual orientation and gender identity was again included in a joint order by the two institutions, which once again mentioned homosexuality on the lists of conditions triggering the prohibition to work as teacher.[83]

As of 25 April 2014, the discriminatory joint order of the Ministry of Health and Ministry of Education including "severe behavioral disorders owing to mental illnesses, including those that can accompany gender identity and sexual preference disorders" among disqualifying conditions for working as a teacher is still in force. [84] As far as we are aware, this order has not been challenged in court or before the NCCD.

A.2.4.2. Access to services

One of the most famous court decisions in relation to discrimination based on sexual orientation was decided in 2007 by a court of first instance in a civil suit for damages against a gas company,

[79] Romania, High Court of Cassation and Justice (*Înalta Curte de Casaţie şi Justiţie*), File no. 12562/2/2010, pending, appeal request provided to the author of this chapter by Iustina Ionescu, on file with the NFP.
[80] Romania, National Council for Combating Discrimination (*Consiliul Naţional pentru Combaterea Discriminării),* Decision No. 42 of 30 January 2013.
[81] Romania, National Council for Combating Discrimination (*Consiliul Naţional pentru Combaterea Discriminării),* Decision No. 377 of 29 November 2010.
[82] Romania, National Council for Combating Discrimination (*Consiliul Naţional pentru Combaterea Discriminării)*, Decision No. 374 of 15 September 2011.
[83] Romania/Ministry of Education and Research, Ministry of Health and the National Health Insurance Authority, Order No. 4840/IR 38342/2796/2005 on mandatory health check of school personnel.
[84] Romania, Ministry of Education and Research (*Ministerul Educaţiei şi Cercetării*), Ministry of Health (Ministerul Sănătăţii) and the National Health Insurance Authority (Casa Naţională de Asigurări de Sănătate), Order No. 4840/IR 38342/2796/2005 on mandatory health check of school personnel (*Ordinul nr. 4840/IR 38342/2796/2005 privind controlul medical anual pentru personalul din învăţământul preuniversitar*) of 24 August 2005, Annex 1.

Distrigaz Sud.[85] The plaintiff who was subjected to degrading language and behaviour when he went to pay the gas bill for an NGO working on sexual minorities, ACCEPT, was awarded 1,000 Euro in civil damages. The decision was confirmed in appeal.

In its first major decision on sexual orientation, the NCCD found against the Romanian airline, TAROM, for denying same-sex couples access to its transport services caused by the explicit exclusion of same-sex couples from the promotion for Valentine's Day specials for couples (opposite-sex couples were allowed to participate in the promotion without any restrictions).[86]

During 2010-2013, the NCCD received a single complaint of discrimination with regard to access to services.[87] Although this complaint was formally classified as concerning sexual orientation, it in fact was related to gender identity and is analysed below.[88]

A.2.4.3. Access to health services

Access to health services was discussed in two cases until March 2010, in the context of restrictions applied to homosexual men in relation to donating blood. The legitimate interest in public health and blood safety was balanced by the NCCD against the measures proposed by the Ministry of Health (permanent exclusion of gay men from donating blood) which were considered both inadequate and unnecessary.[89]

During 2010-2013, the NCCD received a single complaint of discrimination with regard to access to health. [90] The claimant in that case alleged that he was denied access to a rehabilitation centre for drug users on the basis of his sexual orientation. The NCCD rejected the complaint as inadmissible, due to the claimant's failure to specify his address in the complaint.[91]

A.2.4.4. Right to dignity

The NCCD invoked the provisions on the right to dignity[92] in almost all its decisions on the grounds of sexual orientation, either in conjunction with other provisions specifically prohibiting discrimination in various areas, or on its own, particularly in cases of messages using offensive or insulting language, or creating an intimidating and hostile environment in relation to the victim or the LGBT community as a group.[93]

This continued to be the trend since 2010 – most decisions handed down by the NCCD were concerned with the right to dignity, in the context of offensive or insulting language. However, the

[85] Romania/ Judecătoria sectorului 4 Bucuresti/ D.Z. v. Distrigaz Sud, Decision 4222 in File no.710/4/2006 (01.08.2007).
[86] Romania/CNCD/ Tarom Decision, decision 39 (01.03.2005).
[87] Romania, National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării*), Letter No. 657/28.02.2014 to the Center for Legal Resources, on file with the NFP.
[88] Section G1.

[89] Romania/CNCD/ ACCEPT v. the Ministry of Health for the National Institute of Haematology, Decision 337, (21.11.2005) and Romania/CNCD/ ACCEPT v. the Ministry of Health, Decision 260, (29.08.2007).
[90] Romania, National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării*), Letter No. 657/28.02.2014 to the Center for Legal Resources, on file with the NFP.
[91] Romania, National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării),* Decision No. 247 of 29 September 2010.
[92] Art. 15 of Romania/Lege pentru modificarea şi completarea Ordonanţei Guvernului nr. 137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare [Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination], (20.07.2006).
[93] Romania/CNCD/ Asociatia Attitude v. Gazeta de Cluj, Decision No. 207 (14.07.2003). See also Romania/CNCD/ SA v. Ziarul Atac, Decision 231 (29.08.2005). See also Romania/CNCD/ Decision 598 from 26.11.2009.

relevant case-law remains unpredictable, as the NCCD by and large failed to develop clear criteria for determining the type of speech that was liable to offend the right to dignity under national law.

Two cases decided in 2013 illustrate this point. In the first case, the defendant, a member of parliament, stated during an interview that homosexuals "were sick people" and that "homosexuality was not a normal state, it was not a natural relationship which is why…it stood no chance." The NCCD concluded that the statements in question were not discriminatory.[94]A case decided subsequently concerned a billboard placed close to a venue hosting an LGBT cultural event, which carried the message: "could you imagine your baby boy a… Homosexual? Can you imagine your baby girl a LESBIAN? Some things are happening [there]. " On this occasion, the NCCD concluded that this statement was discriminatory and sanctioned its authors with a fine.[95] Whereas in the former case, the NCCD considered that there was no "clear and present danger" of incitement to hatred or violence against LGBT people, in the latter case it assumed, without additional elaboration, that the impugned statement was susceptible to lead to violent actions against sexual minorities justifying the "pressing public need" to suppress it. The involvement of a high level official in the former case making prejudiced statements in the context of a highly charged debate around proposed legislation on registered partnerships, in contrast to the private parties involved in the latter case, was not considered by the NCCD to be sufficiently material to influence its verdict.

A.2.4.5. Incitement to hatred

Since 2000, the Anti-discrimination Law has integrated a provision against incitement to hatred on all grounds of discrimination, against behaviour which takes place in public and harms the dignity of an individual, and against harassment based on any ground of discrimination.[96] The NCCD issued two sanctions against articles published in newspapers[97] which had a discriminatory element based on sexual orientation and three sanctions against discriminatory utterances in the workplace[98] and in 2008-2009, the NCCD issued two sanctions for incitement to discrimination and harassment which took place in public places, out of the ten complaints specifically on discrimination on grounds of sexual orientation.[99] See the discussion in Section A.2 and cases presented in Annex 1.

Between 2010 and 2013, the NCCD issued one sanction, in the form of a warning, for incitement

[94] Romania, National Council for Combating Discrimination (*Consiliul Naţional pentru Combaterea Discriminării),* Decision No. 197 of 24 April 2013.

[95] Romania, National Council for Combating Discrimination (*Consiliul Naţional pentru Combaterea Discriminării),* Decision No. 561 of 18 September 2013.

[96] Article 19 of Ordonantă 15 Romania/Lege pentru modificarea şi completarea Ordonanţei Guvernului nr. 137/2000 privind prevenirea şi sanctionareaşi sancţionarea tuturor formelor de discriminare [Law 324/2006 for the amendment of the Government Ordinance No.137/2000 regarding the prevention and sanctioningthe punishment of all forms of discrimination] (30.08.2000).], (20.07.2006).

[97] Romania/ CNCD, Hotărârea nr. 207/14.07.2003 of the Steering Committee of the National Council for Combating Discrimination, Asociatia Attitude v. Silviu Manastire (journalist) and Gazeta de Cluj, and Romania/ CNCD, Hotăraâea nr. 231/29.08.2005 of the Steering Committee of the National Council for Combating Discrimination, S.A. v. Atac Newspaper.

[98] Romania/ CNCD, Hotărârea nr. 16/18.01.2005 of the Steering Committee of the National Council for Combating Discrimination, Mr. P.M.G. v. I.S. & Episcopia D, Romania/ CNCD, Hotărârea nr.29/07.02.2007, of the Steering Committee of the National Council for Combating Discrimination, B.R. v. A.V., M.I. & Regia Autonomă de Piețe, Agrement si Salubritate Oradea, Romania/ CNCD, Hotărârea nr.102/24.05.2007 of the Steering Committee of the National Council for Combating Discrimination, Mr. R.G. v. Jandarmeria Buzau.

[99] Romania/ HotarareaCNCD, Hotărârea nr. 16/18.01.2005 800/04.12.2008 of the Steering Committee of the National Council for Combating Discrimination, Mr. P.M.G.Asociaţia ACCEPT v. I.S. & Episcopia D,G.A., Romania/ HotarareaCNCD, Hotărârea nr.29/07.02.2007, 598/26.11.2009 of the Steering Committee of the National Council for Combating Discrimination, B.R. v. A.V., M.I. & Regia Autonoma de Piete, Agrement si Salubritate Oradea, Romania/ Hotararea nr.102/24.05.2007 of the Steering Committee of the National Council for Combating Discrimination, Mr. R.G. v. Jandarmeria Buzau

to violence in a case concerning an article on a blog that suggested that men who were kissing in the close proximity of a religious event in Barcelona involving the Pope should have been arrested and beaten up.[100]

A.3. Work of other national bodies

The Annual Report of *Avocatul Poporului* [the Romanian Ombudsperson] does not explicitly mention sexual orientation, although it does mention cases of discrimination on other grounds.[101] Upon being requested for more information on this issue, the Ombudsperson reported receiving no complaints on the grounds of sexual orientation between 2000 and 2007 and initiating one case *ex officio* – the case was closed for lack of competence.[102] In its 2010 response, the Ombudsperson mentions that its 'annual activity reports do not include specific information regarding alleged infringements of human rights based on homophobia.'[103]

The Ombudsperson is entitled to receive and investigate petitions from physical persons complaining about the breach of their fundamental rights and liberties.[104] In case a breach is found, the Ombudsperson may issue a non-binding request that the treatment in question is stopped, for the restoration of the status quo ante, and for damages to be paid. The Ombudsperson is also entitled to seize itself ex officio in relation to breaches of fundamental rights.[105]

The Ombudsperson's 2010 report includes brief information about a complaint received concerning discrimination on the basis of sexual orientation in employment, which however had been referred by the Ombudsperson to the NCCD on jurisdictional grounds.[106] In addition, on 16 November 2012, the Ombudsperson acted *ex officio* in relation to the case of an assault against a group of youth after having attended an LGBT cultural event.[107] However, the case was closed after the Ombudsperson received information that the police started an official investigation into the events.[108] There is no explicit requirement in the law for the Obudsperson to close its investigation when an authority (which is not judicial in nature) starts its own investigation. As of March 2013, the Ombudsperson started collecting information about the petitions received based on the ground of discrimination invoked, including sexual orientation.[109]

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[100] Romania, National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării),* Decision No. 285 of 11 July 2011.

[101] Romania/ Avocatul Poporului [the Romanian Ombudsman], Raport anual 2006, available at: http://www.avp.ro/ (12.11.2007). The Ombudsman reports that the institution received 78 complaints from persons who considered themselves to have been discriminated against (no grounds are individualised) out of the 6,407 petitions received in 2006.

[102] An article was published by Adevarul on 18.01.2001 and was entitled: 'The Investigation by the Police of a Young Gay Leading to a Strasbourg Case'. As the article mentioned interrogations on the sexual preferences of the plaintiff and offensive treatment by the police, the representatives of the Ombudsman wrote to the police office. When the plaintiff filed a criminal complaint against the police officers for the criminal offence of abuse in service with the limitation of certain rights, the Ombudsman ceased to monitor the case. Response of the Romanian Avocatul Poporului [Ombudsman] to FRALEX national expert request for information 15.01.2008, on file with FRALEX national expert.

[103] Response of the Romanian Avocatul Poporului [Ombudsman] to FRALEX national expert request for information 11.01.2010, on file with FRALEX national expert.

[104] Romania, Law for the organization and functioning of the Ombudsperson institution no. 35/1997 (*Lege nr. 35/1997 privind organizarea și funcționarea instituției Avocatul Poporului*) of 15 September 2004, Article 13.

[105] Romania, Law for the organization and functioning of the Ombudsperson institution no. 35/1997 (*Lege nr. 35/1997 privind organizarea și funcționarea instituției Avocatul Poporului*) of 15 September 2004,, Art. 14§1.

[106] Romania, the Ombudsperson (*Avocatul Poporului*) (2010) Activity Report for the year 2010, [*Raport de activitate pentru anul 2010*], [p. 38, available at www.avp.ro/rapoarte-anuale/raport-2010-avocatul-poporului.pdf, accessed on 25 April 2014].

[107]Romania, Ombudsperson (*Avocatul poporului*) Letter No. 961/6.02.2014 to the Center for Legal Resources, on file with the NFP.

[108] Romania, Ombudsperson (*Avocatul poporului*) Letter No. 961/6.02.2014 to the Center for Legal Resources, on file with the NFP..

[109] Romania, the Ombudsperson (*Avocatul Poporului*) (2013) Activity Report for the year 2013, [*Raport de activitate pentru*

A.4. Work of NGOs

Romanian anti-discrimination law creates legal standing for NGOs with an interest in combating discrimination.[110]

The vast number of anti-discrimination complaints filed with the NCCD originated from human rights associations working for the protection of sexual minorities (ACCEPT[111] (approx. 25 complaints) and Attitude Cluj)[112] and from the Centre for Legal Resources.[113]

In particular, ACCEPT and the Centre for Legal Resources were actively involved in supporting the amendments to the anti-discrimination legislation and in strengthening the capacity of the NCCD.[114]

ACCEPT is a member of an informal coalition of human rights NGOs representing various groups who are potential victims of discrimination. Together they coordinate their efforts for more effective advocacy within the Anti-discrimination Coalition.[115]

During 2010-2013, ACCEPT has acted as the secretariat of the Anti-Discrimination Coalition.[116] The activities of the coalition included supporting the civil society candidates to the NCCD Steering Committee, contributing to the consultation process on the revision of the Constitution, issuing proposals for updating the ethical standards of public servants, etc.[117]
On transgender rights, ACCEPT has published an analysis of national legislation and practice and of the case-law of the European Court of Human Rights on legal gender recognition, for the use of judges and lawyers.[118] ACCEPT continued its strategic litigation program, the most notable result of which has been the preliminary referral to the CJEU in the case *ACCEPT v. NCCD*.[119]

anul 2013], [p. 79, available at www.avp.ro/rapoarte-anuale/raport-2013-avocatul-poporului.pdf, accessed on 25 April 2014].

[110] Art. 28, Romania/Lege pentru modificarea şi completarea Ordonanţei Guvernului nr. 137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare [Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination], (20.07.2006): (1)Human rights non-governmental organisations can appear in court as parties in cases involving discrimination pertaining to their field of activity and which prejudice a community or a group of persons. (2) The organisations provided in the above paragraph can also appear in court as parties in cases involving discrimination which prejudices a natural entity, if the latter delegates the organisation to that effect.

[111] See www.accept-romania.ro (04.02.2008).

[112] See www.attitude.ro (04.02.2008)

[113] See www.crj.ro (13.02.2008).

[114] See http://accept-romania.ro/index.php?option=com_content&task=view&id=37&Itemid=55 (10.02.2008).

[115] See www.antidiscriminare.ro (20.02.2008).

[116] Accept Association (*Asociaţia Accept*), Letter No. IES 206/19.02.2014 to the Center for Legal Resources, on file with the NFP.

[117] Accept Association (*Asociaţia Accept*), Letter No. IES 206/19.02.2014 to the Center for Legal Resources, on file with the NFP.

[118] ACCEPT Association and the Euroregional Center for Public Initiatives (ECPI) (*Centrul Euroregional pentru Inițiative Publice (ECPI)*) (2014), Trans persons in Romania: Legal gender recognition in Romania (*Persoane trans în România - Recunoașterea juridică a identității de gen*) [available at www.ecpi.ro/persoane-trans-in-romania-recunoasterea-juridica-a-identitatii-de-gen/, accessed on 25 April 2014].

[119] See above section A.2.4.1.

B. Freedom of movement

Oficiul Român pentru Imigrări [Romanian Office for Immigration (ROI)] functioning under this name until 2012, reported transposition of Directive 2004/38/EC in the Ordinance 30/2006 on the free movement of citizens of the EU and of the EEA in its 2008 response.[120]

According to the Ordinance 30/2006, a partner is 'a person who lives together with a citizen of the EU, if the partnership is registered according to the law of the Member State of origin or, when the partnership is not registered, the relationship can be proved.'[121] The legal definition does not distinguish between de facto partners or registered partnerships, between same-sex or different-sex partnerships, but it leaves it to the national legislation in the country of origin to establish the validity of the partnership.

Paragraphs 1, 2 and 3 of Article 277 of the new Civil Code, adopted in 2009 and which entered into force in 2011,[122] include a prohibition of same-sex partnership and marriage, as well as a prohibition to recognize partnerships and same-sex marriages registered in other countries, be it between Romanian or foreign citizens.[123]At the same time, paragraph 4 of Article 277 explicitly states that the legal provisions on the freedom of movement in Romania of EU/EEA citizens remain in force.[124] The new Civil Code does not clarify the potential conflict between the express provisions recognising the marital status of the EU citizens as granted by their countries mentioned in the legislation transposing Directive 2004/38/EC and the prohibition of recognition of same-sex marriages or partnership entered into abroad by same-sex couples. However, in the absence of any attempts to test the legislation in practice, the prohibition of same-sex marriage and same-sex partnerships in Article 277 does not appear, at least in theory, to have a bearing on the freedom of movement of EU LGBT citizens and their family members. If this interpretation of the law were eventually confirmed in practice, it would also institute a double standard to the extent that Romanian citizens would not be able to enter a legally sanctioned same-sex relationship in Romania, as opposed to same-sex couples from other EU Member States seeking to reside in Romania, whose freedom of movement rights apparently remain unaffected.

In its 2008 and 2014[125] responses the ROI/GII reported that it did not register any requests for

[120] Romania/Governmental Ordinance 102/2005 on the freedom of movement and of residence of EU citizens (14.07.2005) was approved and amended by Romania/Lege 500/2006 privind aprobarea Ordonanţei Guvernului nr. 30/2006 pentru modificarea şi completarea Ordonanţei de urgenţă a Guvernului nr. 102/2005 privind libera circulaţie pe teritoriul României a cetăţenilor statelor membre ale Uniunii Europene şi Spaţiului Economic European [Law 500/2006 on amending and approving Ordinance 30/2006] (28.12.2006).

[121] Art. 2.(1)7 of Romania/Lege 500/2006 privind aprobarea Ordonanţei Guvernului nr. 30/2006 pentru modificarea şi completarea Ordonanţei de urgenţă a Guvernului nr. 102/2005 privind libera circulaţie pe teritoriul României a cetăţenilor statelor membre ale Uniunii Europene şi Spaţiului Economic European [Law 500/2006 on amending and approving Ordinance 30/2006] (28.12.2006).

[122] Romania/ Lege 289/2009 privind Codul Civil [Law 289/2009 on the Civil Code] (17.07.2009).

[123] Art. 277 (prohibiting or equating certain forms of living together with marriage) of Romania/ Lege 289/2009 privind Codul Civil [Law 289/2009 on the Civil Code] (17.07.2009) reads as follws: "(1) marriage between same sex persons is prohibited; (2) Marriages between same-sex persons closed or contracted abroad, either rby Romanian or foreign citizens are not recognized in Romania: (3) Civil partnerships between different 0r same-sex persons closed abroad either by Romanian or foreign citizens are not recognized in Romania; (4) Legal provisions on freedom of movement in Romania of EU and EEA member states citizens remain applicable."

[124] Art. 277 (prohibiting or equating certain forms of living together with marriage) of Romania/ Lege 289/2009 privind Codul Civil [Law 289/2009 on the Civil Code] (17.07.2009) reads as follws: "(1) marriage between same sex persons is prohibited; (2) Marriages between same-sex persons closed or contracted abroad, either rby Romanian or foreign citizens are not recognized in Romania: (3) Civil partnerships between different 0r same-sex persons closed abroad either by Romanian or foreign citizens are not recognized in Romania; (4) Legal provisions on freedom of movement in Romania of EU and EEA member states citizens remain applicable."

[125] Romania, General Inspectorate for Immigration (*Inspectoratul General pentru Imigrări*) Letter No. 2597819/11/02/2014 to

admission or registration from LGBT partners of EU citizens.[126] The ROI also specified that the institution does not collect data on the sexual orientation of its beneficiaries according to Article 7. (1) of the Law on the Protection of Private Data. In its response to a request filed under the Freedom of Information Act, the ROI mentioned that in enforcing the provisions of the Directive 2004/38/EC, marriages and partnerships concluded between same sex couples are recognized on grounds of the legal provisions in the country of origin, 'only for the purpose of exercising the right to free movement on Romanian territory.' Registered partnership can be proved with the partnership registration act, while unregistered partnership can be proved based on a statement issued by the partners which might be supported by any other documents. ROI mentioned that no statistical data is available as no such cases were registered so far.[127]

In 2012, the ROI has changed its name to General Inspectorate for Immigration, (GII) (*Inspectoratul General pentru Imigrări,* IGI), but kept the same field of competence.[128] The lack of any reported cases testing the application of freedom of movement rights in practice renders any analysis of the trends over the recent years impossible.

B.1. EU citizens who are LGBT partners of EU citizens

LGBT partners of EU citizens who are also EU citizens have the right to move and reside freely on Romanian territory on the basis of Article 3 of the Governmental Emergency Ordinance 102/2005 further amended by Ordinance 30/2006 approved through Law 500/2006 or, as partners, according to Article 2.(1)7 of GEO 102/2005, the concept of partnership having been introduced into Romanian legislation by GO 30/2006.[129] The above-mentioned provision the Civil Code (in force since 2011) banning same-sex marriage, explicitly excludes freedom of movement rights recognized under these laws from its scope.

B.2. Third country national LGBT partners of EU citizens

Currently, third country nationals who are partners of EU citizens can freely move and reside in Romania together with their partners only if the partnership is registered according to the law of their Member State of origin or, in cases where the partnership is not registered, if the relationship can be proved.[130] No case law was reported on this issue.

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the Center for Legal Resources.

[126] Response 2150194 of the Romanian Office for Immigration, 25.01.2008, on file with national FRALEX expert.

[127] Response 2396807 of the Romanian Office for Immigration, 24.02.2010, on file with national FRALEX expert.

[128] Romania, Law concerning the approval of the Emergency Governmental Ordinance no. 30/2007 concerning the organization and functioning of the Ministry of Administration and Internal Affairs no. 18/2012 (*Lege nr. 18.2012 privind aprobarea Ordonanței de Urgență a Guvrnului nr. 30/2007 privind organizarea și funcționarea Ministerului Administrației și Internelor*) of 4 July 2012, Article II.

[129] Romania/Lege 500/2006 privind aprobarea Ordonanței Guvernului nr. 30/2006 pentru modificarea și completarea Ordonanței de urgență a Guvernului nr. 102/2005 privind libera circulație pe teritoriul României a cetățenilor statelor membre ale Uniunii Europene și Spațiului Economic European [Law 500/2006 on amending and approving Ordinance 30/2006] (28.12.2006).

[130] Romania/Lege 500/2006 privind aprobarea Ordonanței Guvernului nr. 30/2006 pentru modificarea și completarea Ordonanței de urgență a Guvernului nr. 102/2005 privind libera circulație pe teritoriul României a cetățenilor statelor membre ale Uniunii Europene și Spațiului Economic European [Law 500/2006 on amending and approving Ordinance 30/2006] (28.12.2006).

B.3. Third country national LGBT partners of Romanian citizens

Unlike third country national partners of EU citizens, the partners of Romanian citizens who are not citizens of an EU Member State can request visas only if the couple has at least one child in common.[131] In this way, Romanian citizens are treated less favourably than EU citizens residing in Romania as regards the possibility of being joined by non-married partners.

The law does not distinguish between registered and unregistered partnership but the partners must have at least one child together, which implies that childless, same-sex as well as childless, different-sex partners are excluded.

The visa request for family reunification must be accompanied by evidence of the marriage, kinship or partnership, without detailing what types of evidence can be submitted in the case of a partnership.[132]

The applicable law grants the same right to family reunification to 'Romanian citizen children of the spouse or of the partner, including those adopted, who are younger than 21 or who are in the care of the Romanian citizen of the spouse or of the partner'.[133]

[131] Romania, Emergency Ordinance no. 194/2002 on the status of aliens (*Ordonanţa de urgenţă a Guvernului nr. 194/2002 privind regimul străinilor în România*).
Romania, Law No. 544/2001 on freedom of information (Legea nr. 544/2001 privind liberal acces la informaţiile de interes public), Art. 46.16.b.
[132] Romania, Emergency Ordinance no. 194/2002 on the status of aliens (*Ordonanţa de urgenţă a Guvernului nr. 194/2002 privind regimul străinilor în România*).
Romania, Law No. 544/2001 on freedom of information (Legea nr. 544/2001 privind liberal acces la informaţiile de interes public), Art. 46.17.
[133] Romania, Emergency Ordinance no. 194/2002 on the status of aliens (*Ordonanţa de urgenţă a Guvernului nr. 194/2002 privind regimul străinilor în România*).
Romania, Law No. 544/2001 on freedom of information (Legea nr. 544/2001 privind liberal acces la informaţiile de interes public), Art. 46.16.c.

C. Asylum and subsidiary protection

The Romanian legal system recognises sexual orientation, as defining membership of a particular social group, as a ground for persecution for the purpose of seeking refugee status as attested by recent case law.[134]

C.1. Sexual orientation as common characteristic for membership of a particular social group

Romanian legislation transposed the provisions of Article 10(1) of Directive 83/2004 (Qualification Directive), including the definition of persecution of a social group, when sexual orientation is the common characteristic of the group, in Article 10 d) (iii) of Governmental Decision 1251/2006 approving the methodological norms for Law 122/2006 on Asylum.[135]

The text of Governmental Decision 1251 from 2006 provides that, 'when establishing the reasons for the persecution, it should be taken into consideration if (…) d) the applicant belongs to a social group meaning (…) (iii) depending on the circumstances in the country of origin, a certain social group can include a group based on the common denominator of sexual orientation. Sexual orientation cannot trigger the existence of a social group under the definition of the current provision when the activities specific to sexual orientation are criminal and penalised by Romanian legislation. Gender elements can be included in the understanding of sexual orientation, under the requirement that they are the only reason for enforcing this article.'[136]

The ROI mentioned that there were no cases registered by their offices of sexual orientation being invoked as a justification for persecution in its 2008 response.[137] No information was issued in this regard by the ROI in 2010, however, the institution specified that it is not using phalometry.[138]

In 2008, at least two asylum seekers invoked persecution 'for reasons of homosexuality' as reported by lawyers and NGOs active in the field. Both cases were initially rejected by ROI. One of them had been reversed by the courts and the other case was closed due to the disappearance of the applicant. In its rejection, ROI acknowledged that the asylum seeker invoked fear of persecution due to his homosexuality and due to the fact that homosexuality was criminalized and the Cameroons' authorities were aware of his status as he stated that he was prior arrested for two weeks but found that 'the number of such indictments (for homosexuality) is reduced and, as for any other crime, the accusations must be proved.'[139] The ROI decision proceeds to find that 'the fact that the applicant was released (after two weeks), without any documentation shows that there was not enough evidence to lead to an indictment for being guilty and that because of this, practically there is no risk for him to be condemned for this reason.' When assessing the country

[134] Romania/Tribunalul Suceava, Secţia Penală de Contencios Administrativ şi Fiscal, Decizia 347 (01.07.2009).
[135] Romania/ Lege 122/2006 privind azilul în România, Law 122/2006 on Asylum in Romania (18.05.2006).
[136] Art. 10 d) (iii) of Romania/Hotărâre de Guvern 1251/2006 pentru aprobarea normelor metodologice de aplicare a Legii nr.122/2006 privind azilul în România,Governmental Decision 1251/2006 approving the methodological norms for Law 122/2006 on Asylum.
[137] Response 2150194 of the Romanian Office for Immigration, 25.01.2008, on file with national FRALEX expert.
[138] Response 2396807 of the Romanian Office for Immigration, 24.02.2010, on file with national FRALEX expert.
[139] Romania/Oficiul Român pentru Imigrări, Centrul regional pentru cazare şi proceduri pentru solicitanţii de azil Rădăuţi, Dosar ORI 15487+2008, Hotărârea 2303 267/H/BS from 28.11.2008 on file with national FRALEX expert.

of origin information the ROI decision concluded that 'from the information we have, it is clear that there are enough legal guarantees in Cameroon for a fair trial, observing access to justice related rights and the presumption of innocence.' The ROI did not assess how the risk of persecution applies in the personal case of the applicant - a person already arrested for homosexuality and only noted that 'in such cases persons are convicted only if caught in action' and mentioned that 'the applicant is not a public person and relocation to 'another city where he is not known and not sanctioned by the public is a real possibility.' The decision also stated that 'the applicant is aware of the legal regime of homosexuality (criminal sanction) and of the possibility of being liable and he basically takes his risk (when engaging in homosexual conduct).'

The ROI decision was attacked by the applicant represented by an appointed lawyer but the court of first instance maintained the ROI decision.[140] For the appeal, the applicant was supported by two NGOs (*Consiliul Naţional pentru Refugiaţi* and *ACCEPT*) and the tribunal decided in favour of the applicant, quashed the ROI decision and granted asylum.[141] In reaching this decision, the court looked at the country of origin information (provisions of Cameroons' Criminal Code sanctioning homosexual conduct) and at the personal situation of the applicant (being arrested for two weeks after being spotted by the neighbours while hugging a foreigner in his car) and concluded that 'in case of return in his country of origin, the applicant runs the risk of being condemned for his sexual orientation, hence the conditions for protection as refugee under the Romanian law are met.'

As of 2014, the GII declared that it was not keeping information regarding the reasons invoked by asylum claimants that the Freedom of Information Act[142] exempted information concerning personal data from being disclosed, and that in any event the applicable law prevented it from disclosing information regarding an individual's sexual life. [143] The main NGO in Romania deaing with asylum-seekers stated that it does not have statistical data on the grounds for asylum requests and that it is not able to do a retroactive research at this point.[144]

In 2011, the Galați Court of first instance handed down a positive decision in a case that was similar to those presented above.[145] The claimant in that case, a Tunisian national, applied for asylum in Romania due to persecution in his country of origin occasioned by his homosexuality and appurtnenance to the Christian faith. The ORI initiatlly rejected his request, which he challenged before the Galați Court of first instance. The Court held that his fear of persecution was well founded, on the basis that homosexuality was criminalized in Tunisia, and of the social stigma attached to it, and granted the appeal.

On 20 November 2011, the Galați Tribunal struck down this judgment and rejected the claimant's asylum request. The Tribunal based its decision on country of origin evidence purporting to show that "gay individuals were sanctioned only in isolated cases, when they displayed behavior that was too intimate in public places, and not when such behavior took place in private places."[146]

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[140] România/Judecătoria Rădăuţi, Suceava, Dosar 6848/285/2008 sentinţa civilă 332 from 26.01.2009 on file with national FRALEX expert.

[141] România/Tribunalul Suceava, Dosar 6848/285/2008, Decizia 347 from 01.07.2009 on file with national FRALEX expert.

[142] Romania, Law No. 544/2001 on freedom of information (Legea nr. 544/2001 privind liberul acces la informaţiile de interes public).

[143] Romania, General Inspectorate for Immigration (*Inspectoratul General pentru Imigrări*) Letter No. 2597819/11/02/2014 to the Center for Legal Resources, on file with the NFP.

[144] Consiliul Național Român pentru Refugiați (*the Romanian National Council for Refugees*), E-mail of 30 April 2014, on file with the NFP.

[145] Romania, Galați First instance court (*Judecătoria Galați*), Civil decision no. 6482 of 13 June 2012, provided to the NFP by the Romanian National Council for Refugees through Letter No. 12087/21.12.2012.

[146] Romania, Galați Tribunal (*Tribunalul Galați*), Civil decision no. 42CC of 20 November 2012, provided to the NFP by the NGO Romanian National Council for Refugees as a reply to the Request for Information No. 272/25.04.2014 from the Centre for Legal Resources.

C.2. Definition of family members in the context of asylum and subsidiary protection

Article 2(h) of the Qualification Directive was transposed into Romanian legislation in Article 2.j of Law 122/2006 on Asylum[147] which defines family members as: 'the following members of the family of the beneficiary of refugee status or of subsidiary protection status, as long as, at the date when the application was lodged by the main applicant, the family existed in the country of origin: (i) the husband or the wife of the beneficiary of refugee status or of subsidiary protection status, (ii) minor children of the beneficiary of refugee status or of subsidiary protection status or of her/his wife/husband, under the requirement that they are not married, no matter if they were born within wedlock, outside wedlock or if they were adopted according to national legislation'[148]and, as of 2014, the '(iii) father or the mother of the beneficiary of international protection or another person of age who is responsible for this person according to Romanian law, when the beneficiary in question is a minor and unmarried'.[149]

The ROI concluded that Romanian legislation does not include under the definition of family persons living in a stable relationship without being married (same-sex partners of the beneficiaries of refugee status or of subsidiary protection status) because Romanian legislation does not provide for a legal framework for civil unions/unregistered partnerships (*concubinaj*). This approach was reinforced once the new Civil Code entered into force, particularly Art. 277 (prohibition of same-sex partnership and marriage, including denial of recognition of partnerships and marriages registered in other countries) and Art. 258 (definition of family as marriage between a man and a woman).[150]

[147] Romania/ Lege 122/2006 privind azilul în România, Law 122/2006 on Asylum in Romania (18.05.2006).
[148] Art. 2.j, Romania/ Lege 122/2006 privind azilul în România, Law 122/2006 on Asylum in Romania (18.05.2006).
[149] Introduced by Article I, point 7 of Romania, Governmental Ordinance No. 1/2014 on the modification and completion of Law No. 122/2006 on asylum in Romania and of Governmental Ordinance 44/2004 on the social integration of foreigners who have not acquired any form of protection or a right of residence in Romania, as well as of foreigner nationals of the European Union and of the European Economic Space (*Ordonanţa Nr. 1 din 22 ianuarie 2014 pentru modificarea şi completarea Legii Nr. 122/2006 privind azilul în România şi a O.G. 44/2004 privind integrarea socială a străinilor care au dobândit o formă de protective sau un drept de şedere în România, precum şi a cetăţenilor statelor membre ale Uniunii Europene şi Spaţiului Economic European*), available at: http://www.lege-online.ro/lr-ORDONANTA-1%20-2014-%28154808%29.html (accessed at: 13.05.2014)
[150] Romania/ Lege 289/2009 privind Codul Civil [Law 289/2009 on the Civil Code] (17.07.2009).

D. Family reunification

Article 4(3) of Council Directive 2003/86/EC on the right to family reunification was transposed into Romanian legislation in the Emergency Ordinance 194 of 2002 on the status of aliens in Romania amended and republished.[151] Article 46(1) of the Emergency Ordinance states that 'the sponsor who possesses a temporary stay permit valid for one year, of an EU blue card, of a long term stay permit or is a beneficiary of a refugee status or subsidiary protection may ask for family reunification for: a) spouse; b) minor unmarried children of the sponsor and husband/wife, including those adopted; c) unmarried children of the sponsor, including those adopted, in her/his care and for whom the sponsor exercises the parental rights d) minor unmarried children of the spouse including those adopted and under her/his care and for whom the spouse exercises the parental rights.' For the last two situations, where parental rights are shared, the agreement of the other person sharing the rights is needed for family reunification. Art 46 (6) states that 'those who undertake scientific research and those who have an EU blue card may ask for family reunification even if their stay permid is valid for less than a year'.[152]

The authority in charge with issuing visas, ROI reported as of January 2008, not receiving any application for family reunification based on same-sex marriages.[153] No new information was issued by the ROI in 2010.[154]

The sources we contacted in 2014 for the 2010-2014 update of this report did not provide any relevant information, in addition to that presented above.[155]

[151] Romania/ Ordonanţa de urgenţă a Guvernului nr. 194/2002 privind regimul străinilor în România, Emergency Ordinance 194/2002 on the status of aliens, incoprorating subsequent amendments.
[152] The new wording of Art. 46(1) was introduced by Art I, §58 of Romania, Law No. 533/2011 on changing and completing some normatice acts concerning the regime of foreigners in Romania (*Legea nr. 533/2011 privind modificarea şi compeltarea unor acte normative privind regmul străinilor în România*).
[153] Response 2150194 of the Romanian Office for Immigration, 25.01.2008, on file with national FRALEX expert.
[154] Request filed on 08.02.2010.
[155] Romania, General Inspectorate for Immigration (*Inspectoratul General pentru Imigrări*) Letter No. 2597819/11/02/2014 to the Center for Legal Resources and Consiliul Național Român pentru Refugiaţi (*the Romanian National Council for Refugees*), E-mail of 30 April 2014, on file with the NFP.
Romania, Law No. 544/2001 on freedom of information (Legea nr. 544/2001 privind liberal acces la informaţiile de interes public).

E. Freedom of assembly

E.1. Implementation in the legal system

Article 39 of the Romanian Constitution guarantees freedom of any peaceful assembly.[156] This right is thoroughly described in the legislation[157] and establishes the general principle that any peaceful assembly can take place freely, without limitation.[158] Exceptions are set for reasons of public safety.[159]

All assemblies taking place on a public road, in public market squares or in other places outdoors, need to be notified to the mayor's office. The request, *'declaraţie prealabilă'* [preliminary declaration], must be filed at least three days in advance. A commission comprised of representatives of the local administration and police officials is convened by the mayor and gives its opinion on the request. The mayor takes the final decision.

Based on the experience of the last three years, what was intended as a rather formal condition of notification of a public assembly to the mayor's office,[160] turned out to function as an obstacle to freedom of peaceful assembly raised by the authorities. This is particularly burdensome in case of small assemblies, like flashmobs and small-size protests. For example, on 12 April 2012, a group of people notified the mayor's office regarding the organization of a public assembly on the street parallel to the Russian Federation Embassy to protest against the adoption of a law sanctioning homosexual propaganda in Sankt Petersburg. They did not receive any answer from the mayor's office until the day the assembly was scheduled so they went on and organized the protest as notified. A group of gendarmes were waiting for them in front of the embassy and did not allow them to protest; several persons were fined for 'participating to an undeclared assembly' (Article 26.(1).(d)of the Law 60/1991). At least one person obtained the annulment of the administrative fine in court.[161] The Judecătoria Sector 1 Bucureşti stated that the assembly was lawfully declared to the mayor's office and it was not forbidden by the mayor.[162] According to this judgment, there is no need to wait for the answer of the mayor to the notification or to fulfil other administrative conditions to carry out a peaceful assembly.

E.2. Cases of refusals or bans

The first initiative to organise an LGBT-related march in Romania dates from 2005.[163] The process

[156] Article 39 of the Romanian Constitution: 'Freedom of assembly: any meeting, demonstration or procession or any other gathering shall be free and may be organised and take place only peacefully, without arms of any kind'.
[157] Romania/Lege 60/1991 privind organizarea şi desfăşurarea adunărilor paşnice [Law 60//1991 regarding the organisation and execution of peaceful meetings], (23.09.1991) republished in Romania/Monitorul Oficial no.888 of 29.09.2004.
[158] Article 1 and 2 of Romania/Law 60//1991 regarding the organisation and execution of peaceful meetings (23.09.1991).
[159] For example, it is forbidden to organise two or more separate public events in the same place or on the same itinerary; demonstrations might be forbidden because they are against democratic values, the law prohibiting demonstrations promoting fascist, communist, racist or chauvinistic ideas, demonstrations that incite to discrimination, to public violence, to obscene manifestations or which are against moral values) Art. 9, Romania/Law 60//1991 regarding the organisation and execution of peaceful meetings (23.09.1991).
[160] Romania, Law 60/1991 on the carrying out of public assemblies (*Legea 60/1991 privind desfăşurarea adunărilor publice*), Article 7.
[161] Romania, Bucharest District 1 Court (*Judecătoria Sector 1 Bucureşti*), File No.18560/299/2012.
[162] Romania, Bucharest District 1 Court (*Judecătoria Sector 1 Bucureşti*), Sentinţa civilă No.19041 of 23 October 2012 in the File No.18560/299/2012.
[163] The initiative belongs to ACCEPT Association: http://www.accept-romania.ro. The event took the form of a march for

of authorising the gay march was prolonged, exceeding the 48-hour time interval established by the law[164] due to hot public debates.[165] The first response from Bucharest's Mayor, Adriean Videanu, was negative. The official justification was that the local authorities were not able to ensure the safety of the march participants.[166] This justification did not fall under any of the legal exceptions prescribed by the law.[167]

Some public officials' reactions criticising this decision came promptly.[168] Apart from these reactions, no political party or public person came publicly to support the march. In the end, because of the political pressure and international lobbying, mayor Videanu issued the authorisation and allowed the gay march to take place.[169]

Mayor Videanu authorised three other gay marches in 2006 and 2007, and 2008; in 2009, dr. Sorin Oprescu replaced Videanu as Mayor of Bucharest and another gay march was authorised. However, in 2006 the mayoralty had objections to the itinerary, which had to be changed.[170]
The argument of the commission convened by the mayor was that the proposed itinerary passed by the Ministry of Internal Affaires, allegedly, a strategic site.171 However, the headquarters of an administrative institution is not a site included in the limited list of exceptions.172 Furthermore, according to Article 15(a) of the same law, the mayor's office must establish a list of all these sites, yet no list was invoked in the refusal from the local authorities. By 2014, the Bucharest Mayor's Office still has not adopted the list of strategic sites from Bucharest where peaceful assemblies are forbidden by law. Therefore, Article 5 provisions should be considered ineffective. Similarly, in 2009, the itinerary had to be shortened in order to avoid passing through Unirii Square, which was considered by the authorities as a difficult place to ensure protection of the participants to the march.[173]
During 2010-2012, the local authorities have been slow in approving the itinerary for the gay march

equal rights and not of a gay pride, as did the marches in 2006 and 2007.

[164] L.V.S (2005) 'Homosexualii romani, decişi să iasă in stradă' [Romanian homosexuals determined to take to the streets] in: Gândul, (23.05.2005).

[165] During this time, a fervent public debate took place in the media. The opponents of the march differed: Orthodox priests, public persons etc. The mayor's office reported having received almost 600 protest letters against the march collected by an Orthodox priest. See V. Zamfir (2005) 'Fotbalul incurcă marşul homosexualilor' [Football creates problems for the homosexuals' March] in: Evenimentul Zilei, (25.05. 2005).

[166] G. Baciu (2005) 'Primăria capitalei nu a găsit jandarmi pentru homosexuali' ['Bucharest Mayor's Office did not find gendarmes for homosexuals'] in: Adevarul, (24.05.2005); see also V. Zamfir (2005) 'Primăria interzice defilarea homosexualilor prin centru' ['The Mayor's Office interdicts homosexuals marching downtown'] in: Evenimentul Zilei, (23.05. 2005).

[167] See the information in Section E.1 – Implementation in the legal system.

[168] The Ministry of Justice, Monica Macovei, and the President of Romania, Traian Băsescu, harshly condemned Videanu's decision stating that the decriminalisation of homosexual relations took place years ago. O. Stancu (2005) 'Băsescu şi GayFest: 'Fiecare o face cum ii place' ['Basescu and GayFest: Everyone is free to do it how he/she likes'] in: Jurnalul National, (26.05.2005). See also Chapter I.

[169] V. Zamfir (2005) 'Homosexualii vor defila prin centrul capitalei' ['Homosexuals will march in the centre of Bucharest'] in: Evenimentul zilei, (27.05.2005).

[170] This information was provided by Mr. Florin Buhuceanu, ACCEPT Director during the gay march in 2006, interviewed on 20.01.2008.

[171] Article 8 paragraph 2 of the Romania/Lege 60/1991 privind organizarea şi desfăşurarea adunărilor paşnice [Law 60//1991 regarding the organisation and execution of peaceful meetings], (23.09.1991) republished in Romania/Monitorul Oficial no.888 of 29.09.2004 states that the local authorities' commission that is giving the advice during the authorisation procedure may make justified modifications in the organizers' authorisation with their permission. See the discussion on this Article in Section E3 – Legislative limitations and need for amendments.

[172] Article 5 of Romania/Lege 60/1991 privind organizarea şi desfăşurarea adunărilor paşnice [Law 60//1991 regarding the organisation and execution of peaceful meetings], (23.09.1991) republished in Romania/Monitorul Oficial no.888 of 29.09.2004, contains a list of sites that qualify for the prohibition of public assemblies in their vicinity, e.g. railway stations, airports, hospitals, military objectives etc.

[173] This information was provided by Ms. Florentina Bocioc, ACCEPT Director during the gay march in 2009 interviewed on January 20th, 2010.

and the itinerary could not be changed despite the wish of the organizer (ACCEPT Association), due to security reasons invoked by the police and jandarmes representatives.[174] In 2012, Accept Association publicly accused the Bucharest Mayor's office of hostile attitude towards the organization of the Diversity March. The NGO accused, among others, that the last necessary approval was only released a day before the March while having ignored their request to organize the March for two months.[175] Nevertheless, there were no more refusals or bans and in 2013 a new itinerary was accepted by the local authorities – on Kiseleff Boulevard, a main boulevard in the center of Bucharest.

Every year along with the gay march a so-called Normality March was allowed to take place. In 2005, this was an initiative of the Conservative Party,[176] in cooperation with the Romanian Orthodox Church and extreme right-wing groups, including the organisation *Noua Dreaptă* [New Right].[177] In 2005, they were issued authorisation in due time, without any delays or discussions. The participants displayed fascist symbols and the portrait of Corneliu Zelea Codreanu, and they used slogans inciting discrimination and violence against LGBT people. This is particularly worrying since in Romania there is a special law prohibiting such organisations and their activity, which was not enforced by the authorities in any of these cases.[178]

Apart from these authorised marches, New Right also organised illegal homophobic manifestations in parallel with the gay march (organised ad hoc, at the same time and in the same place as the gay march).[179] In 2005, Tudor Ionescu, the organisation's leader was fined by the police.[180] Starting with 2006, these counter-manifestations were authorized every year by the local administration to take place a few hours before the gay march, on the main boulevard in Bucharest – Victoriei Road.[181]

On 19 May 2008, Provita Association for Born and Unborn Children [*Asociaţia Provita pentru Copii Născuti şi Nenăscuţi*] filed an administrative case before Bucharest Tribunal against Bucharest Mayor's Office and ACCEPT Association. Provita asked the court to issue an injunction against the gay march and the annulment of the authorization given by the Mayor's Office to

[174] Interview with Florin Buhuceanu, Director ACCEPT Association, 23.04.2014.

[175] Accept Association (2012), *'Comunicat de presă Re: Atitudine ostilă a Primăriei Municipiului Bucureşti faţă de Marşul Diversităţii' ('Press release Re: Hostile attitude of the Bucharest Mayor's Office towards the Diversity March')*, available at: http://accept-romania.ro/blog/2012/06/28/comunicat-de-presa-re-atitudine-ostila-a-primariei-municipiului-bucuresti-fata-de-marsul-diversitatii/ (accessed at: 03.06.2014)

[176] L. Ciobanu (2005) 'Voiculescu îşi scoate PC-ul in stradă' ['Voiculescu is taking his CP members out on to the street'] in: Cotidianul, (26.05.2005).

[177] Noua Dreaptă [New Right] is a non-governmental organisation registered in Romania. It acknowledges its descent from the interwar fascist movement of Legionari, whose head was Corneliu Zelea Codreanu – executed by the Romanian authorities during the operation to eliminate reactionary, undemocratic movements. See more information on the organisation's website www.nouadreapta.ro. This organisation was sanctioned in 2006 by the NCCD for racist articles published on their website comparing the so-called 'Roma problem' to the 'Jewish problem' Romania had during the interwar period and inciting discrimination and violence against the Roma community. Yet the Prosecutor's Office did not find grounds for prosecuting the organisation or the authors according to criminal legislation in this field.

[178] Romania/ Ordonanta de Urgenţă a Guvernului 31/2002 prohibiting organisations and fascist, racist and xenophobic symbols and the promotion of the veneration of persons guilty of crimes against peace and humanity. See information in Section E4 – Duties of protection by the state.

[179] Article 5 (2) of the Romania/Lege 60/1991 privind organizarea şi desfăşurarea adunărilor paşnice [Law 60/1991 regarding the organisation and execution of peaceful meetings], (23.09.1991) republished in Romania/Monitorul Oficial no.888 of 29.09.2004.

[180] The amount of the fine was 30,000,000 ROL (around 1,000 Euro). See Andrei Luca Popescu (2005) 'Gay Parade – de la timiditate la cafteala' [Gay parade – from timidity to fight] in Averea, (30.05 2005).

[181] See news reporting on the march at Mischian, A., 'Primele imagini! În Bucureşti a început MARSUL NOUA DREAPTĂ PENTRU NORMALITATE împotriva căsătoriilor şi adopţiilor homosexuale. Se scandează: ROMÂNIA, ţară ortodoxă!' *('The first images! The NEW RIGHT MARCH FOR NORMALCY against gay marriage and adoptions has started in Bucharest. People chant: ROMANIA, orthodox country!')* **Napoca News**, 8 June 2013, available at: www.napocanews.ro/2013/06/primele-pozein-bucuresti-a-inceput-marsul-pentru-normalitate-impotriva-casatoriilor-si-adoptiilor-homosexuale.html (accessed at: 03.06.2014)

ACCEPT for reasons of being against ethical and moral norms and infringing the right to private and family life. The court dismissed the case on substantive grounds related to pluralism and ensuring the exercise of the right to freedom of association and assembly (Art.11 of the ECHR, applying *Baczkowski v Poland)*.[182]

E.3. Legislative limitations and the need for amendments

No gay march was actually forbidden from taking place, only the 2005 gay march was initially refused authorisation and subsequently authorised by the Mayor of Bucharest. None of the justifications the mayor presented for this decision were covered by the express legal exceptions to freedom of assembly listed by Romanian legislation.

Taking into consideration all the debate around the gay parades in Romania since 2005, there are two main provisions in Law 60/1991 which need amendment.

The first provision refers to Article 9(a), final thesis, and Art.9(c) of the law.[183] The provision lacks clarity and specificity for a limitation to a fundamental right. This may lead to misinterpretations of the law infringing the exercise of freedom of assembly in the case of gay marches, in a society where homosexuality is considered to be against public morals and homosexual relations displayed in public are considered obscene.

The Romanian Senate rejected a proposal[184] to amend Law 60/1991 aiming to forbid assemblies promoting 'the ideas and manifestations of homosexuals and lesbians'. On 15 October 2008, the draft was rejected by the Chamber of Representatives, too.

Article 8(2) of the law also needs further amendment. This paragraph gives competence to a commission convened by the mayor's office to make any changes in the request for authorisation, with the consent of the applicants. The commission, formed from the local administration, gendarmerie and police officials, has an essential role in the process of authorisation: based on its advice, the mayor issues or refuses to issue an authorisation. As illustrated above, this legal provision may be used in practice to put pressure on the organisers to change an itinerary or other elements of the demonstration. This leads to 'bargaining' with the manifestation of freedom of assembly: the local authorities prefer the new form because the conditions are more convenient and not because the initial elements fell under the legal exceptions; the organisers prefer to obtain authorisation more quickly without complications.

E.4. Duties of protection by the state

During the first three gay marches in Romania (2005, 2006, 2007), violent homophobic demonstrations have taken place and the trend was that these opponents become more violent

[182] Romania/ Tribunalul Bucuresti/ Asociaţia Pro Vita pentru Copii Născuţi si Nenăscuţi – Filiala Bucureşti v. Primăria Municipiului Bucureşti si Asociaţia ACCEPT, Judgment 2807 in File no.18838/3/CA/2008 (24.10.2008).

[183] The provision in the list of prohibited events for cases where the assembly aims to promote incitement of obscene manifestations which go against good public morals and cases where the assembly aims to infringe public morals.

[184] Romania/ Lege pentru modificarea Legii 60/1991 privind organizarea şi desfăşurarea adunărilor paşnice [Law for the modification of Law 60/1991 regarding the organisation and execution of peacefulmeetings],L724/2007,availableat: http://80.97.216.132/senat.proiect.asp?cod=12516&pos=23 (13.02.2008).

and better organised every year. In the last three years, although counter-demonstrations to the annual gay march were organized and authorized by the authorities, they were not violent. After four years of marching on a shortened and sealed itinerary on reasons of ensuring protection from counter-demonstration, in 2013, after long discussions, the authorities allowed the change of the itinerary.[185] Therefore, the gay march was organized on Kiseleff Boulevard, where the annual parade on the National Day traditionally takes place.

According to Romanian legislation, the mayor's office, the police and the gendarmes have obligations to protect the participants in demonstrations: to ensure order and physical integrity and to adopt all the necessary administrative measures to that effect.[186] For each of the marches, police mobilisation was to a large extent efficient.[187]

In 2006, the protection of the participants on their way out of the area where the march took place became a problem. Six people were probably followed and were beaten inside the metro, although they were not wearing any distinctive symbols.[188] The press reported that the police officials acknowledged that there were more people beaten in the metro, but they did not lodge complaints.[189]

The six victims of the aggression in 2006 filed criminal complaints supported by medical certificates and photographs of the perpetrators. An investigation was opened. After almost four years the police had not yet informed the victims of any resolution.[190] In October 2011, the prosecutor terminated the investigation for being time-bared. After ineffectively appealing the prosecutor's decision, in February 2012, two of the victims filed a complaint before the European Court of Human Rights arguing violations of Articles 3, 6, 8, 11, 13, 14 and Protocol 12 of the ECHR. The case was communicated to the State at the end of January 2013 and it is currently pending before the Court.[191]

In 2005, the police arrested tens of people from the anti-gay group who behaved violently against the participants.[192] However, no criminal investigation was carried out and no criminal charges have been brought.[193]

In 2006, the gay march was preceded by a joint press conference held by the extreme right-

[185] Interview with Florin Buhuceanu, member of ACCEPT Association, 12.02.2014.

[186] Articles 15-24 of the Romania/Lege 60/1991 privind organizarea şi desfăşurarea adunărilor paşnice [Law 60/1991 regarding the organisation and execution of peaceful meetings], (23.09.1991) republished in Romania/Monitorul Oficial no.888 of 29.09.2004.

[187] The information was provided by Mr. Florin Buhuceanu, former Director of ACCEPT, interviewed on 20.01.2008.

[188] M. Dohi (2006) 'Sase presupusi homosexuali au fost loviti bestial' ['Six alleged homosexuals seriously beaten'] in Libertatea, (07.06. 2006), available at: http://www.libertatea.ro/index.php?section=articole&screen=stire&sid=154873.

[189] A. Niculae (2006) '15 ultraşi stelişti din „Peluza Sud" – agresorii homosexualilor mitingişti' ['15 Steaua hooligans from 'Peluza Sud' – the aggressors of the homosexuals who participated in thegaymarch']inGandul,(06.06.2006), availabl at: http://www.gandul.info/2006-06-06/actual/15_ultrasi.

[190] United States Bureau of Democracy, Human Rights and Labour, Romania. Country Reports on Human Rights Practices. 2006, (06.03.2007). Furthermore, Romania/ Inspectoratul General al Politiei Române was unable to provide us information on the status of investigations in this case and referred to the local police – Romania/ Directia Generală de Poliţie a Municipiului Bucureşti, Serviciul de Poliţie Metrou and the Prosecutor's Office. See Response No.52590/S1/29.01.2010 of the Romania/ Inspectoratul General al Poliţiei Române, Ministerul Internelor şi Reformei Administrative, on file with national FRALEX expert.

[191] ECtHR, *M.C. and A.C. v Romania*, Application No.12060/12.

[192] V. Zamfir (2005) 'Atacaţi cu icoane' ['Attacked with icons'] in Evenimentul zilei, (29.05.2005); see also G. Capuerde (2005) 'Homosexuali romani bătuţi de legionari' ['Romanian homosexuals beaten by the Legionari'] in Libertatea, (29.05.2005); see also R. Radu (2005) 'Articolul 200 a marşăluit prin centrul Bucurestiului' ['Article 200 marched along the centre of Bucharest'] in Cotidianul, (29.05.2005).

[193] V. Zamfir (2005) 'Atacaţi cu icoane' ['Attacked with icons'] in Evenimentul zilei, (29.05.2005).

wing organisation New Right and George Becali, the leader of the extreme right party *Noua Generaţie* [New Generation] and owner of Steaua Soccer Club, in partnership with the Romanian Orthodox Church, in the Metropolitan seat.[194] The Conservative Party and the Christian Democratic Peasants' Party also fervently condemned the gay march.[195] Consequently, the homophobic demonstrations during the 2006 march were the most violent of all the marches. Neo-fascist groups and hooligans, so-called *Ultraşii Steaua* (Steaua soccer fans), initiated the violence. Fifty people were arrested. The police identified 15 of them as belonging to the last group.[196]

In 2007, the gay march was again confronted with violence.[197] The police ensured the protection of the participants. Two policemen were harmed by stones thrown in the direction of the march participants. The media reported that five criminal investigations were initiated after the march against anti-gay protesters carrying or using weapons against the participants in the pro-gay march.[198]

According to criminal law,[199] the state has the obligation to protect its citizens against these kinds of organisations and against their actions. Nevertheless, the public prosecutors did not take any measure to open a criminal investigation against any of these groups. Furthermore, although the so-called Normality March promotes slogans inciting discrimination and violence against homosexuals, the authorities have not applied the legislation criminalising such acts, instead the organisers received authorisation easily and no fine was given to the participants or organisers of the ad hoc counter-protest in 2006 or 2007.[200]

Since 2011, there is a new trend with respect to homophobic manifestations: several events promoting gay rights and cultural events on gay issues have been hindered by the organization New Right and groups having an open anti-gay agenda – participants were exposed to verbal or physical violence, harassment and the events could no longer take place. This is connected to certain diversification of the groups that oppose LGBT, which seem to have better organization and more resources than in the past. However, the authorities are considering these counter-manifestations to be within the limits of freedom of expression; they do not intervene to stop them and to sanction the organizers.

For example, on 22 November 2011, at the premiere of the documentary film *'Noi doi'* (The Two of Us) within DaKINO Festival at Scala Cinema in Bucharest, a few minutes into the film, a group of 15-20 persons carrying symbols of the New Right organization broke into the cinema with a torch-like fire device and started shouting homophobic slogans.[201] The

[194] C. Ghinea (2006) 'Preoţi, neofascişti si jandarmi la discotecă' ['Priests, neofascists and gendarmes at the disco'] available at http://www.hotnews.ro/articol_49991-Jandarmi-preoti- si-neofascisti-la-discoteca-de-Cristian-Ghinea.htm; see also Razvan Ionescu (2006) 'Legături primejdioase' ['Dangerousliaisons'] in Ziua, (10.06. 2006),availableat: http://www.ziua.ro/display.php?id=201321&data=2006-06- 10&kword=Legaturi+primejdioase.

[195] Realitatea TV (2006), 'Protest politic – PPCD condamnă manifestaţia gay' ['Political protest – PPCD condemns the gay manifestation'] 03.06.2006, 09:26.

[196] M. Dinescu (2006) 'Cine ne-a pus magiun pe clanţă?' ['Who soiled our door?'] in Gândul, (09.06.2006), available at: http://www.gandul.info/2006-06-09/actual/cine_a_pus.

[197] 'Children of God,' in Nine O'clock, issue 3953 p. 4 (13.06.2007), available at: http://www.nineoclock.ro/archive_index.php?page=detalii&categorie=frontpage&id=200706 13-500941.

[198] PROTV News (2007) 'Dosare penale şi politisti raniti' ['Criminal investigations and harmed policemen'] 09.06.2007, 19:00, available at: http://www.protv.ro/stiri/social/dosare-penale- si-politisti-raniti-la-marsul-diversitatii.html.

[199] Romania/ Ordonanţa de Urgenţă a Guvernului 31/2002 prohibiting organisations and fascist, racist, xenophobic symbols and the promotion of the veneration of persons guilty of crimes against peace and humanity. See information in Section E4 – Duties of protection by the state.

[200] See information in Section E2 – Criminal Law.

[201] Mediafax (2013), 'Lozinci homofobe ale unor membri Noua Dreaptă, la proiecţia unui documentar la DaKINO' (*Homophobic slogans of the New Right members at the projection of a documentary within DaKINO Festival*), 23 November 2011, available at http://www.mediafax.ro/cultura-media/lozinci-homofobe-ale-unor-membri-noua-dreapta-la-proiectia-unui-documentar-la-

Ambassador of France to Bucharest was also present in the room. According to the police, a few protesters received administrative sanctions for disturbing the public order.[202]

On 6 November 2012, the organizers of a theater play regarding gay history in Romania ('După Traian şi Decebal. (Din Filele Istoriei Gay în România))' (After Traian and Decebal (Pieces of Gay History in Romania)) were beaten by a group of unidentified men immediately after leaving the premises of the event – the National School of Political Sciences and Administration – in the center of Bucharest. The victims of the attack filed a complaint to the police.[203]

On 20 February 2013, at a film screening of the movie '*The Kids Are All Right'*organized in partnership with the US Embassy in Bucharest in the context of LGBT History Month, a few minutes into the film, about 50 far-right activists broke into the room at the museum hosting the event. They discontinued the screening and harassed the spectators by photographing, filming, shouting homophobic slogans (including "Death to homosexuals!"), singing the national anthem, Orthodox chants, displaying religious icons, and making the Nazi salute. The museum's director called the police, but officers who arrived at the scene did not intervene to stop the harassment and ensure the continuation of the event.[204] Several criminal complaints were filed with the police, the preliminary criminal investigations are pending; no solution was yet issued by the investigators and none of the aggressors was sanctioned.[205]

dakino-8998668 (last visit 17.02.2014).

[202]Interview with Irina Niţă, former Director of ACCEPT Association, 14.02.2014.

[203] România Liberă (2012)*'Organizatorii unei piese despre ISTORIA GAY în România, BĂTUŢI după o reprezentanţie la SNSPA'* (*'The organizers of a play about the gay history in Romania have been beaten after a show at SNSPA'*), available at http://www.romanialibera.ro/actualitate/bucuresti/organizatorii-unei-piese-despre-istoria-gay-in-romania-batuti-dupa-o-reprezentantie-la-snspa-283274.html (last visit 14.02.2014).

[204] ACCEPT, Press release of February 2013, available at http://accept-romania.ro/blog/2013/02/21/angajati-ai-statului-in-cardasie-cu-extremistii/ (last visit 14.02.2014).

[205] Information from D.P., one of the complainants (obtained on Thursday, 23 January 2014).

F. Criminal law

F.1. Legal provisions on hate speech related to homophobia

The sanctions issued according to the Anti-discrimination Law on incitement to discrimination have an administrative nature. For criminal penalties, the persons subjected to homophobic speech may invoke the provisions on insult and slander in the Criminal Code, but only to protect their dignity, not to punish 'hate speech.'

Up until 1 February 2014, the law of July 2006 amending the Criminal Code created the new crime of 'hate speech', as incitement to discrimination based on all grounds of discrimination sanctioned by the Anti-discrimination Law, including sexual orientation.[206] This broadened the scope of application of an earlier provision which only criminalised 'national and xenophobic propaganda' and incitement to racist and nationalistic hatred and did not mention sexual orientation.

Taking into consideration the Criminal Code amendments together with the administrative and civil remedies available under the Anti-discrimination Law referred to above, it may be said that protection against homophobic speech was reasonably covered by Romanian legislation up until 1 February 2014 when the New Criminal Code entered into force. The new Criminal Code adopted in 2009, rephrased the definition of incitement to discrimination in Article 369 by deleting the list of protected grounds and introducing a general language: 'incitement of the public, by any means to hatred or discrimination against a category of persons is punished with prison from six months to three years or with fine.'[207] In conclusion, "sexual orientation" is no longer explicitly protected in the definition of incitement to discrimination.

Other criminal offences in the field of hate speech are sanctioned by the Romania/*Ordonanţa de urgenţă 31/2002 privind interzicerea organizaţiilor şi simbolurilor cu caracter fascist, rasist sau xenofob şi a promovării cultului persoanelor vinovate de săvârşirea unor infracţiuni contra păcii şi omenirii* [Law prohibiting fascist, racist and xenophobic organisations and symbols and the encouragement to venerate persons guilty of crimes against peace and humanity].[208] The text was never used to sanction homophobic groups which acknowledge their lineage to the Fascist movement.[209] Furthermore, the repeal of Articles 8 to 11, which defined misdemeanours and provided for the possibility of dissolving legal entities engaged in fascist, racist or xenophobic conduct, leaves the law without legal remedies when confronted with more than mere individual incidents to illegal conduct.

[206] Article 317 of the Criminal Code.

[207] Romania, Law 286/2009 on the Criminal Code (Lege 286/2009 privind Codul Penal), of 17 July 2009.

[208] Romania/ Ordonanţa 31 privind interzicerea organizaţiilor si simbolurilor cu caracter fascist, rasist sau xenofob si a promovării cultului persoanelor vinovate de săvârsirea unor infracŃiuni contra păcii si omenirii, Ordinance 31/2002 on the Prohibition of Fascist, Racist and Xenophobic Organisations and Symbols and the Encouragement to Venerate Persons Guilty of Crimes against Peace and Humanity.

[209] See information in Section E – Freedom of assembly.

F.2. Legal provisions on hate crimes

F.2.1. Legal provisions prior to 2006

Prior to 2006, the Criminal Code contained four criminal offences fitting the framework of discrimination-motivated crime.[210] None of them was applicable to homophobia motivated hate crimes. Other provisions such as the aggravating circumstance ('shameful reasons for committing a crime'[211]) or insult and slander,[212] which in theory could have been interpreted to apply to homophobic acts, have never been applied by the judiciary in such cases.

Prior to 2006, Article 247 of the Criminal Code, on abuse in the exercise of authority against the rights of the person, did not mention 'sexual orientation'. In December 2000, the police held illegally and interrogated a young man, A.G., on the basis of his sexual orientation. He was asked for the names of all the gay people he knew. A.G. lodged several criminal complaints with the public prosecutors' offices, based on Article 247 and Article 250 paragraph (1) of the Criminal Code (Abusive Behaviour). The authorities rejected the complaints and never opened an investigation. The organisation, ACCEPT, reported that the case was sent to the European Court of Human Rights on 7.02.2003 but the case was communicated to the Romanian government only in April 2010.[213] On 22 October 2013, the European Court of Human Rights declared the case inadmissible for not fulfilling the six month rule of filing the application to the ECtHR.[214]

F.2.2. The 2006 amendments

In April 2006, two NGOs[215] in partnership with the NCCD, lobbied the Ministry of Justice to introduce in the amendments of the Criminal Code provisions sanctioning hate crimes, including homophobia motivated crimes:[216]

- The legal aggravating circumstance for any criminal offence conducted with discriminatory motivation on any ground of the Anti-discrimination Law.[217]
- Expanding the list of grounds protected in the case of two criminal offences already existing in the Criminal Code: abuse in the exercise of power by a civil servant (Article 247) and incitement to hatred (Article 317).[218]

In July 2006, the Criminal Code was amended to specifically punish homophobic motivated crimes, as described above.

There is no assessment of the enforcement of this text. In its Shadow Report, the European Network Against Racism (ENAR) notes that, in spite of governmental efforts to introduce anti-

[210] Article 247 – Abuse in the exercise of authority against the rights of the person, Article 317 – Nationalistic and chauvinistic propaganda, Article 318.(1) – Impeding the free exercise of religion, Article 319 – Profanation.
[211] Article 75 (d) of the Criminal Code.
[212] Article 205 and Article 206 of the Criminal Code.
[213] Adrian Costin Georgescu c. Roumanie, Requete 4867/03 filed on 7.02.2003; see also http://accept.ong.ro/stiri.html#17ian.
[214] ECHR, Decision of 22.10.2013, Application No.4867/03.
[215] Romania/ ACCEPT Association and Romania/ Centre for Legal Resources.
[216] Romania/ LegeaLege 278 / 2006, (4.07.2006).
[217] Article 75. (1), point c¹ of Romania/ Criminal Code amended in 2006.
[218] Article 247 and Article 317 of Romania/ Criminal Code amended in 2006.

discrimination legislation and practices among law enforcement officials and within concerned institutions, training and real implementation is slow.[219] The Ombudsperson does not give particular attention in its annual reports to human rights violations motivated by homophobia.[220] In addition, police authorities and the Superior Council of Magistracy declare they do not have statistics or data disaggregated on sexual orientation,[221] while the Gendarmerie could offer an analysis of administrative fines issued.[222]

After the decriminalisation of homosexual consensual relationships between adults (Article 200 of the Criminal Code),[223] the police used the provisions of the law on public order to harass homosexuals.[224] The police patrolled the public parks and bars known as meeting places of homosexuals.[225] Reportedly, police officers framed cases against homosexuals and either punished them with administrative fines or blackmailed them and solicited money or alcohol.[226] ACCEPT reported a series of such cases in 2002-2003.[227] The victims were represented before the administrative courts and the sanctions were declared void because they were unfounded. As prior to 2006 Article 247 of the Criminal Code did not protect sexual minorities, it could not be used against the police officers harassing gay men. Furthermore, starting a procedure before the NCCD might have been easily dismissed based on the fact that these facts were of a criminal nature.[228] Similar cases have been reported in 2009-2010 and another administrative fine was declared void in 2009.[229]

F.2.3. The Criminal Code adopted in 2009

In 2008-2009, during the drafting of the proposal for the New Criminal Code, the criminal provisions regarding the aggravating circumstances in case of discriminatory motivation of criminal deeds were left out by the Government in its initial proposal. The Anti-discrimination

[219] ENAR, 2007 Shadow report: Romania, available at: http://www.enar-eu.org/en/national/romania/Romania_2006.pdf (05.02.2008). The National Institute of Magistracy reports organizing numerous trainings for graduates studying to become judges and prosecutors and also continuous education for judges and prosecutors. See Response No. 4/305/1154/20109/ 4.02.2010 of Romania/ Consiliul Superior al Magistraturii, on file with national FRALEX expert.

[220] See Response No.132/11.01.2010 of Romania/ Avocatul Poporului, on file with national FRALEX expert.

[221] See Response No.9113/19.01.2010 of Romania/ Direcţia Generala de Poliţie a Municipiului Bucureşti, Serviciul de informare şi relaţii publice, on file with national FRALEX expert. See Response No.4/305/1154/20109/ 4.02.2010 of Romania/ Consiliul Superior al Magistraturii, on file with national FRALEX expert.

[222] See Response No.357930/02.02.2010 of Romania/ Jandarmeria Română, Direcţia de Jandarmi a Municipiului Bucureşti, on file with national FRALEX expert.

[223] Romania Lege 61/2002 privind aprobarea Ordonanţei de urgenţă a Guvernului nr. 89/2001 pentru modificarea şi completarea unor dispoziţii din Codul penal referitoare la infracţiuni privind viaţa sexuală (16.01.2002). Law no.61/2002 approving Government Emergency Ordinance no. 89/2001 was published in the Official Gazette of Romania, part I, no. 65/30.01.2002, and came into force.

[224] Article 2(1) and Article 2(6) of Romania/ Lege 61/1991 pentru sancţionarea faptelor de incălcarea unor norme de convieţuire socială, a ordinii şi liniştii publice (18.08.2000) on invoking the offer made in public of sexual services in exchange for money, the prohibition of acts that are obscene, insulting or vulgar, that disturb the public order or disturb persons or affect their dignity.

[225] United States Bureau of Democracy, Human Rights and Labour, Romania. Country Reports on Human Rights Practices. 2005, March 2006, February 2009.

[226] The information was provided by Danielle Zavoianu, Coordinator outreach workers, ACCEPT, regarding a case that took place in 2007 in Operei Park, Bucharest, interviewed 02.02.2008.

[227] Case of D.A. & B.S from Operei Park (2002), Case of M.S. from Gara de Nord Park (2003). Their summaries are on file with the Centrul de Resurse Juridice [Center for Legal Resources].

[228] The National Council for Combating Discrimination deals only with cases of discrimination that are of an administrative nature. When receiving cases of a criminal nature, they decline their competence in favour of the public prosecutor's office.

[229] Interview with Florin Buhuceanu, President of ACCEPT, 20.01.2010. See also Romania/ Judecitoria Sectorul 5 Bucureşti, Secţia a II-a civili /O.C. v. Jandarmeria Români UM 0575, Civil Judgment 3651 in File no.13019/302/ 2008 (24.04.2009).

Coalition of NGOs petitioned the parliamentary commission debating the proposal of the new Code. The new Criminal Code adopted on July 17th 2009 maintained the aggravating circumstances in case of deeds perpetrated with discriminatory intent, including criminal motivation based on sexual orientation, in Article 77.[230]

The new Criminal Code also sanctions the abuse in the exercise of authority in Art. 297 as the deed of the civil servant who during the exercise of work-related tasks, is limiting the exercise of a right of a person or creates a situation of inferiority on grounds of ... gender, sexual orientation ... which is punishable with prison from two to seven years and the prohibition to take a public position. Art. 223 on sexual harassment sanctions 'requesting repeatedly favours of sexual nature within a work-related relation or a similar on, if the victim was intimidated in this way or was placed in a humiliating position' with prison from three months to one year or with a fine. The new Criminal Code also sanctions torture by a civil servant on a reason based on any of the grounds of discrimination protected in the Anti-discrimination Law according to Art. 282 with prison from two to seven years.

The new Criminal Code which entered into force on 1 Februaty 2014, also rephrased the definition of incitement to hatred or discrimination in Article 369 by deleting the list of protected grounds and introducing the following language: 'incitement of the public, by any means to hatred or discrimination against a category of persons is punished with prison from six months to three years or with fine.[231] The old Art. 317 of the Criminal Code sanctioning hate speech as incitement to discrimination mentioned specifically that it protects all grounds of discrimination sanctioned by the Anti-discrimination Law and included the list of protected grounds for clarification.

F.3. Recent trends in law enforcement's actions

Information communicated by the public authorities in 2014 shows that the law enforcement authorities do not collect data regarding hate speech or hate crime cases disaggregated on grounds of discrimination. This practice is showing lack of interest and ability of the authorities to monitor and address these issues. Specifically, the Romania/*Inspectoratul General al Poliţiei Romane* [The General Inspectorate of the Romanian Police] declared such a data collection is against the law, by reference to Article 7.(1) of the Romania/*Legea 677/2001 pentru protectia persoanelor cu privire la prelucrarea datelor cu caracter personal si libera circulatie a acestor date* [Law 677/2001 for the protection of individualswithregard to the processingof personal dataand the free movementof such data].[232] The Romania/ *Parchetul de pe lângă Înalta Curte de Casaţie şi Justiţie* [The General Prosecutor's Office] declared it does not collect data regarding hate crimes committed against LGBT persons.[233] Only the Romania/ *Ministerul Justiţiei* [Ministry of Justice] collects data disaggregated on grounds of discrimination; however, sexual orientation and other grounds are not included in the limited list (nationality, ethnicity, sex and serious illness).[234]

Nevertheless, based on the existing general data collected on the Incitement to hatred and

[230] New wording of Art. 77 (h) includes as aggravating circumstances 'perpetrating a criminal deed for reasons related to the race, nationality, ethnicity, language, religion, gender, sexual orientation, opinion or political affiliation, wealth, social origin, age, disability, un- contagious chronic illness or HIV/AIDS infection, or other similar circumstances which are considered by the perpetrator as the causes of the inferiority of a person compared to another.'

[231] Romania/ Lege 286/2009 privind Codul Penal [Law 286/2009 on the Criminal Code] (17.07.2009)

[232]Romania, The General Inspectorate of the Romanian Police (*Inspectoratul General al Poliţiei Romane)*, Response No.2281705 of 10.02.2014, on file with the NFP.

[233]Romania, The General Prosecutor's Office (*Parchetul de pe lângă Înalta Curte de Casaţie şi Justiţie*), Response No.248/VIII-3/2014 of 06.02.2014, on file with the NFP.

[234]Romania, Ministry of Justice, (*Ministerul Justiţiei)*, Response No.9001 of 11.02.2014, on file with the NFP.

Government Emergency Ordinance No.31/2002 regarding fascist and xenophobe symbols, there is a significant disproportion between the number of cases investigated and the number of cases prosecuted or convicted under these legal provisions. For example, out of 32 complaints of Incitement to hatred investigated in 2013 and 66 complaints investigated in 2012, none has been prosecuted; out of 13 complaints under the Government Emergency Ordinance No.31/2002 regarding fascist and xenophobe symbols investigated in 2013 and 26 complaints investigated in 2012, none has been prosecuted.[235] Moreover, there are only 4 cases of Incitement to hatred convicted in 2012,but only to a penal fine (the incitement was against persons belonging to nationality – understood as national minority)[236] and in 2013 only one conviction (criminal fine) under the Government Emergency Ordinance No.31/2002 regarding fascist and xenophobe symbols.[237]

As to the aggravating circumstance of committing the crime out of hatred and discrimination, stipulated by Article 75.(c^1) of the Criminal Code (now Article 77.(h) of the new Criminal Code), only the General Prosecutor's Office is recording the number of cases where this aggravating circumstance is considered. The recordings are limited because the General Prosecutor's Office is reporting it only in relation to the criminal offences against the property and to the number of cases finalized by prosecutors and not the number of cases investigated under this legal provision. Thus, in 2013, there were 4 cases solved by prosecutors, in all 4 cases there were prosecutions of a total of 11 persons.[238] These cases are not made available by the General Prosecutor's Office – the only detail provided was that they refer to hatred or discrimination on the ground of nationality.

As to the criminal offence of Abuse in service stipulated by Article 247 of the Criminal Code (now Article 297 of the Criminal Code), only the Ministry of Justice and the Superior Council of Magistracy are recording data. Therefore, the data is limited to the results obtained in the court, without covering the criminal investigation phase, before the prosecutor or the police. There had been no cases examined by courts in 2010 and 2011, 5 cases in 2012 out of which 4 men and 1 woman were convicted – 2 criminal fines and 3 cases of suspended imprisonment[239] and 1 conviction of two persons in 2013 to suspended imprisonment.[240]

Moreover, in the last three years there had been no public policy to train the law enforcement in the field of investigating and prosecuting hate-crime, only small-size trainings of police officers initiated by NGOs in cooperation with the police forces. For example, between November 2009 to June 2011, ACCEPT Association in partnership with the Danish Institute for Human Rights implemented in Bucharest the project called "Tracing and Tackling Hate Crime against LGBT Persons." Its aim was to raise awareness and knowledge of LGBT persons and the law enforcement about the hate crimes against LGBT people from the perspective of human rights. Among other activities there was one training for 25 police officers on how to handle hate crime incidents and victims, distribution of information materials for potential victims and for law enforcement, and the development of a website.[241] Similar small-size trainings have been resumed since then.[242]

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[235] Romania, The General Prosecutor's Office (*Parchetul de pe lângă Înalta Curte de Casaţie şi Justiţie*), Letter No.2062/VIII-3/2013 and Ministry of Justice, Letter No.112176/31.01.2014, Annex 1, both communicated for the Annual Report 2013 drafted within FRANET, on file with the NFP.

[236] Romania, Superior Council of Magistracy (*Consiliul Superior al Magistraturii*), Letter No.3/25392/1154/26.11.2013, communicated for the Annual Report 2013 drafted within FRANET, on file with the NFP.

[237] Romania, Ministry of Justice (*Ministerul de Justiţie*), Letter No.112176/31.01.2014, Annex 1, on file with the NFP.

[238] General Prosecutor's Office, Response No.2062/VIII-3/2013, on file with the NFP.

[239] Superior Council of Magistracy, Response No.3/25392/1154/26.11.2013, communicated for the Annual Report 2013 drafted within FRANET, on file with the NFP.

[240] Romania, Ministry of Justice (*Ministerul de Justiţie)*, Letter No.9001 of 11.02.2014, on file with the NFP.

[241] Information provided by Irina Nită, coordinator of the project on behalf of ACCEPT Association, 10.02.2014. More information on the project are available at http://www.ilga-europe.org/home/issues/hate_crime/challenging_hate_crime/dihr (last visit 17.02.2014).

[242] Information provided by Irina Nită, coordinator of the project on behalf of ACCEPT Association, 10.02.2014.

A case that has been recently handled by the law enforcement in Bucharest illustrates the ineffectiveness of the existing legislation sanctioning hate-crimes. In July 2011, a man was allegedly harassed, insulted and threatened by several police officers in the courtyard of a police station in Bucharest because he was perceived as being homosexual. Mr. Georgescu filed a criminal complaint to the police against the police officers' abusive behavior. He also filed an administrative complaint to the National Council for Combating Discrimination with respect to the police station's not taking any internal measures about the alleged discrimination inflicted by its employees. This last complaint was decided by the NCCD in March 2012 holding that it is not competent *rationae materiae* to examine a complaint against a police station because of the hierarchical system of the police.[243] The Court of Appeal of Bucharest upheld this decision.[244] The appeal on grounds of law introduced by Mr Georgescu is pending before the High Court of Cassation and Justice. After one year and a half of waiting a solution of the preliminary investigation, Mr Georgescu filed a complaint in court against the unreasonable delay and ineffectiveness of the criminal investigation carried out by the police and the prosecutor's office. The court declared the complaint inadmissible, essentially stating that in cases where there is no solution from the prosecutor's office on the preliminary criminal investigation, the victim has no option but to wait.[245] The Court of Appeal of Bucharest upheld this decision.[246] As to the criminal complaint on alleged abusive behavior of the police officers, on 30 May 2013, the Prosecutor's Office decided not to start the criminal investigation against any police officer for Abusive behaviour motivating that there are reasonable doubts regarding the alleged offences being committed by the police officers. The appeal against the prosecutor's resolution was rejected by the Judecătoria Sector 3 Bucureşti for being unfounded.[247] In October 2013, Mr Georgescu filed an application to the European Court of Human Rights alleging violations of Articles 3, 8, 13, 14 and Protocol 12 of the ECHR.[248] On 13 March 2014, the Court declared the case inadmissible in the preliminary phase, without giving any reasoning.

[243] Romania, National Council for Combating Discrimination (*Consiliul Naţional pentru Combaterea Discriminării*), Decision No.108 of 28 March 2012.
[244] Romania, Bucharest Court of Appeal (*Curtea de Apel Bucureşti*), Civil Judgment No. 5059 of 18 September 2012
[245] Judecătoria Sector 3 Bucureşti, Criminal Judgment No.235 of 31.01.2013.
[246] Romania, Bucharest Court of Appeal (*Curtea de Apel Bucureşti*),, Decision No. 803/R of 24.04.2013.
[247] Romania, Bucharest District 3 Court (*Judecătoria Sector 3 Bucureşti)*, Criminal Judgment No. 53/2014 of 20.01.2014.
[248] ECHR, *Georgescu v. Romania*, Application No. 67772/13.

G. Transgender issues

G.1. Transgender status as a ground for discrimination

The Anti-discrimination Law does not explicitly mention gender identity and expression, including transsexualism. Discrimination on such grounds would be covered by the catch-all phrase 'any other criterion.' Neither the legal provisions, the jurisprudence or the academic writing perceive discrimination on grounds of gender reassignment as a form of 'sex' discrimination as established in ECJ jurisprudence. See Section A.1., paragraph [19].

Harassment of persons due to their transgender status became increasingly a problem as reported by ACCEPT Romania, the only NGO providing support to LGBT.[249]

The NCCD does not appear to be familiar with the meaning of gender identity, or its relevance from the perspective of an anti-discrimination legal framework. In its correspondence with the authors of the 2010-2013 update for this study, the NCCD appeared to confuse "gender identity" with "gender", citing several promotional activities it was involved in concerning women's rights, as examples of good practices related to gender identity.[250] This persistent confusion is also visible in its case-law. For example, on 19 December 2011, the NCCD handed down a decision in a case involving a transgender claimant who complained about a bank's refusal to open an account due to the disagreement between her appearance and the gender marker recorded in her personal documents, as well as about certain transphobic remarks made by bank employees on this occasion.[251] The NCCD ultimately rejected the complaint stating that the refusal to open an account was justified on the basis of the lack of resemblance between the applicant's presentation and her ID photo. On the other hand, the claimant did not present sufficient evidence to prove the alleged discriminatory remarks. In this decision, the NCCD uses the terms gender identity and sexual orientation interchangeably, and does not designate the claimant by her self-identified gender identity, but by her sex assigned at birth. It is plain from the wording of the decision that the NCCD analysed this case as one pertaining to sexual orientation, failing altogether to grasp the particular life experience of a transgender person undergoing gender transition.

Furthermore, the decision presented briefly above concerning the dismissal of a gay employee by a pizza takeaway offered the NCCD an opportunity to examine the discriminatory impact of gendered dress codes used by public and private businesses, which would have been relevant to transgender people too.[252] Unfortunately, the NCCD did not ultimately examine this aspect in its decision.

With the exception of the above-mentioned joint order of the Ministry of Health and the Ministry of Education, gender identity is not mentioned in any other piece of Romanian legislation, whether in the context of freedom of movement, asylum/subsidiary protection, family reunification, freedom of assembly, criminal law or hate speech. No cases involving transgender claimants

[249] Interiew with Ms. Alina Oancea, Executive Director of ACCEPT, on April 10th, 2010. See also incidents mentioned in the 2009 US State Department Human Rights Report, text of the report is available at http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136053.htm (14.04.2010).
[250] Romania, National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării),* Letter No. 657/28.02.2014 to the Center for Legal Resources, on file with the NFP.
[251] Romania, National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării),* Decision No. 501 of 19 December 2011.
[252] Romania, National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării),* Decision No. 42 of 30 January 2013, discussed above Section A.2.4.1.

pertaining to these areas have been reported either.

G.2. Legislation affecting transgender people

There is no special legislation regulating the situation of transgender people, not even secondary legislation at the level of authorities with competency in such cases – Ministry of Health, Ministry of Internal Affaires, Ministry of Justice, *Inspectoratul Naţional pentru Evidenţa Persoanelor* [the National Inspectorate for the Registration of Persons], *Direcţia Generală de Paşapoarte* [Passport Department], *Institutul Naţional de Medicină Legală* [the National Institute of Legal Medicine (NILM)].

The NILM adopted a new methodology for evaluating "gender identity disorder (transsexualism)" cases ("the methodology").[253] The methodology is part of a larger document, which regulates the manner in which psychiatric forensic examinations are carried out, which is not publicly available except upon express request.[254] The metholdogy has not yet been challenged, although in any event it is not immediately apparent what the procedural ways are for doing so. However, in practice, trans people have been able to circumvent the NILM, and obtained legal gender recognition without needing to go through the procedures set out in the methodology.[255]

The objectives of the assessment set out in the methodoldogy is to establish the diagnosis of transsexualism, whether the person in question has the requisite capacity to understand the consequences and risks of gender reassignment surgery, to evaluate the existence of any post-operatory risks, and the risks in the event that permission for gender reassignment treatment is withheld. The methodology emphasizes the sensitivity and complexity of gender identity disorder cases, justifying a detailed and lengthy assessment by a special forensic-psychiatric commission located in the premises of NILM in Bucharest, and formed of experts with "great experience". The assessment of the surgery, which is "unique" and cannot be repeated during one's lifetime, lasts three years, and can be interrupted at any time if medically recommended and/or in case of failure by the person concerned to follow medical advice.

The assessment has three stages and includes, among others, multiple psychiatric examinations, in case of female patients a full gynecological exam,, hospitalization, psychotherapy for one year and, upon assessment, if deemed appropriate and possible at a specific stage of the assessment, endocrinological treatment. The person in question also has to pass a "real life test", requiring them "to carry out activities in an environment dominated by persons belonging to the preferred sex" and to have "direct relations with people who underwent gender reassignment surgery and people who gave up their plans to undergo sex reassignment surgery." Finally, the assessment includes a social investigation. This investigation is generally performed by local authorities, and involves interviews with those close to the person in question. This extraordinarily lengthy and intrusive procedure does not appear to be in line with the requirement that name and gender change procedures should be "swift, transparent, accessible and that they respect the person's physical integrity and their private life", in accordance with Council of Europe standards.[256]

[253] Romania, National Institute of Legal Medicine (*Institutul Național de Medicină Legală*), *Scrisoarea metodologică privind desfășurarea expertizelor medico-legale psihiatrice Revizuită 2*.
[254] Romania, National Institute of Legal Medicine (*Institutul Național de Medicină Legală*) Letter No. A8/172/2010/2014 to the Centre for Legal Resources, on file with the NFP.
[255] See for example Romania, Bucharest Court of Appeal (*Curtea de Apel București*), Civil decision no. 2261 of 6 December 201, discussed below section G.2.2.
[256] Council of Europe Committee of Ministers (2010) *Recommendation to member states on measures to combat discrimination on grounds ofsexualorientationorgenderidentity*, para. 21.

G.2.1. Norms on identification data

The law on civil registration data[257] and the law on the procedures for identification documents[258] offer only indirect guidance on the procedure for sex change and for changes to names and identification data. The legal provisions state that, in order to effect changes in the identification data or in order to undergo sex-change surgery, the plaintiff needs a final judgment which is an intrusion on the right to private life of the person, as explained below.[259]

In addition, the conditions under which the right to access to a court might be exercised are not clarified in sufficient detail, adding to the uncertainties of the procedures.[260]

According to Article 44 (i) of the Law 119/1996 on civil status documentation, the information on the new sex can be entered in the civil status documents upon request, once the individual has a final decision from a court. This is an administrative procedure carried out by the civil status bureau within the mayor's office. The regulations implementing the law do not contain any express reference to this situation and do not clarify the procedures. [261]

According to Article 2.(2).l of the Ordinance 41/2003 on administrative venues for changing names, any transgender person can apply for an administrative procedure to change the individual's forename and the identification documents only after the approval of sex change has been given in a final decision by a court. Additionally, the person must provide a forensic medical act stating his/her sex. The law does not specify whether such an act may be issued by the general practitioner, the doctor who performed the surgery or whether it must be issued by the NILM. In practice, the authorities require a certificate issued by the NILM which implies delays and travelling to Bucharest for those outside the capital. Furthermore, the NILM does not have special expertise in handling such cases nor protocols or procedures for carrying out such examinations.[262] The request of forensic medical expertise and the whole civil case in court are very intrusive into the individual's private life, instead of being a decision by the individual with the support of medical specialised personnel.

The National Inspectorate for the Registration of Persons declared that in the last seven years they had received six requests for change of forename due to sex changes. No other information was available.[263] The NILM states that they have not received any request for

[257] Romania/ Lege 119/1996 cu privire la actele de stare civila [Law regarding civil status documents] (11.11.1996) with the last modifications from 08.09.2006

[258] Romania/ Ordonanţa Guvenului 41/2003 privind dobândirea şi schimbarea pe cale administrativă a numelor persoanelor fizice,(02.02.2003) with the last modifications from 06.07. 2004.

[259] Art. 44(i) and Art. 57-58 of the Law 119/1996.

[260] The laws do not specify which court is competent to judge the case for changes in identification data, on what legal basis, whether it is a contradictory procedure or a non-contradictory procedure, in the event of it being a contradictory procedure what institution the case should be filed against, if the case is a sensitive case and can be heard in camera, what the judicial tax that needs to be paid is, what the means of evidence necessary in order to get a positive judgement are, where the first instance's judgement is appealed etc. See the case of D in Annex 1.

[261] Romania/ Metodologie 1/1997 pentru aplicarea unitară a dispoziţiilor Legii nr. 119/1996 cu privire la actele de stare civilă, (13.10.1997).

[262] The National Institute of Legal Medicine regularly handles cases to assess the legal capacity of the person or the degree of physical injuries. See information available at: http://www.legmed.ro (02.10.2008). See the Case of D. in Annex 1, when the expertise report recommended a one-year waiting period before allowing the sex-change operation to take place.

[263] See Response No.203520/31.01.2008 of the Romania/ Inspectoratul Naţional pentru Evidenţa Populaţiei, Ministerul Internelor şi Reformei Administrative, on file with national FRALEX expert.

expert forensic examination in the last three years, which contradicts information provided by NGOs, by the lawyers and by the media about individuals addressing requests during the same period of time.[264] Also, this information is contradicted by the fact that the authorities report that during 2008-2009 four persons have changed their forename because of gender reassignment medical intervention.[265]

The NILM stated that since 1990 it received 20 requests for a forensic expert report on the viability of sex change, of which 5 were from transgender women and 15 from transgender men.[266]5 out of 20 people abandoned their request, and 2 requested the NILM to certify that the change of sex occurred after undertaking genital surgery abroad. In 9 cases, the INML recomended that the sex change take place, based on a "transexualism diagnosis" in 8 cases and on a "hermaphroditism diagnosis" in one case. In the remaining 4 cases the INML issued a negative recommendation, as it could not confirm the diagnosis of transsexualism. According to information provided by the Directorate for Persons Record and Databases Management (DPRDM) (*Direcţia pentru Evidenţa Persoanelor şi Administrarea Bazelor de Date*, DEPABD), between 2010 and 10 February 2014 five persons changed the gender in their identity documents. [267]

In the absence of clear laws or other authoritative guidance, national courts issued contradictory interpretations of the law on crucial aspects of the legal gender recognition procedures. For example, some courts held that legal gender recognition was contingent on gender reassignment surgery,[268] whereas others accepted requests for legal gender recognition and ordered local authorities to operate the necessary changes in the absence of gender reassignment surgery.[269]

G.2.2. The sex-change operation and adjacent treatment

There is no clear data on whether sex-change surgery and treatment are performed in Romania and in what conditions. Spitalul Clinic de Urgenţă Floreasca declared that it is the only clinic in Romania where this type of surgery is performed according to the law.[270] However, the hospital does not ensure the pre- and post-operation treatment necessary according to the medical protocols and does not have a department of transsexology.[271] The costs of such intervention and treatment are not covered by public health insurance.

The NILM requires that transgender people who want to undergo a sex-change intervention go through multiple psychiatric assessments and treatments as well as hormone treatment.[272] These decisions are ad hoc, as the Institute lacks a standing committee specialised in transgender-related

[264] See Response No.A8/172/12.01.2010 of Romania/ Institutul Naţional de Medicini Legali "Mina Minovici" Bucureşti, on file with national FRALEX expert.
[265] See also Response No.52590/S1/29.01.2010 of Romania/ Inspectoratul General al Poliţiei Române, on file with national FRALEX expert.
[266] Romania, National Institute of Legal Medicine (*Institutul Național de Medicină Legală*) Letter No. A8/172/2010/2014 to the Centre for Legal Resources, on file with the NFP.
[267] Romania, Directorate for Persons Record and Databases Management (Direcţia pentru Evidenţa Persoanelor şi Administrarea Bazelor de Date) Letter No. 2578/10 February 2014 of the to the Center for Legal Resources, on file with the NFP.
[268] For example Romania, Bucharest Court of Appeal (*Curtea de Apel București*), Civil decision no. 2261 of 6 December 2012.
[269] For example Romania, Cluj Tribunal (*Tribunalul Cluj*), Cluj, Civil Sentence 384/A/2011 of 27 September 2011, summarized in Annex 1
[270] See Response No.14/04.02.2008 of Romania/ Spitalul Clinic de Urgenta Floreasca given to ACCEPT, on file with national FRALEX expert. A follow-up letter sent in January 2010 remained without a response. See Center for Legal Resources' Request of 05.01.2010, on file with the national FRALEX expert.
[271] See Response No.1059/24.01.2008 of Romania/ Spitalul Clinic de Urgenta Floreasca given to a Romanian citizen living in the Netherlands asking about the existence of a transsexology department, on file with national FRALEX expert, courtesy of ACCEPT.
[272] Interview with Ms Danielle Zavoianu, Project Assistant, ACCEPT, interviewed 02.02.2008. See also Case D in Annex 1.

issues and there is no publicly standardised procedure or medical protocol established on scientific grounds to ensure the predictability and objectiveness of the decision.

The NILM stated that "transsexualism, as opposed to sexual orientation, was a mental disorder".[273] Accordingly, the "transsexual will always be assessed from a psychopathological perspective."

The National Health Insurance House (*Casa Națională de Asigurări de Sănătate*, NHIH) stated that any psychiatric and/or endocrinological treatment would be covered from health insurance, based on a diagnosis issued by the relevant specialist.[274] On the other hand, gender reassignment surgery is not included in the list of diagnoses the treatment of which is paid for from health insurance. In the past, the authorities' statements on the subject, made in reply to requests for information and in the media, have been contradictory, demonstrating a low level of awareness of the medical needs of transgender patients.[275] At the same time, relevant information is not readily available to transgender people seeking gender reassignment treatment, although, according to ACCEPT, there have been a few situations of people who were successful in that respect. [276]

[273] Romania, National Institute of Legal Medicine (*Institutul Național de Medicină Legală*) Letter No. A8/172/2010/2014 to the Centre for Legal Resources, on file with the NFP.

[274] National Health Insurance House (*Casa Națională de Asigurări de Sănătate*, NHIH) Letter No. 70/7 February 2014 to the Center for Legal Resources, on file with the NFP.

[275] See FRANET Submission AR 2011: Romania, 2011. Para. 5.4.1 and Romania, ACCEPT (2013) Report concerning the implementation of Reccomendation CM/Rec(2010)5 of the Committee of Ministers regarding the measures for combating discrimination on the basis of sexual orientation and gender identity in Romania (*Raport privind implementarea Recomandării CM/Rec(2010)5 a Comitetului de Miniștri privind măsurile pentru combaterea discriminării pe criteriile orientării sexuale și identității de gen de către România)*, [p. 63-64, available at: http://accept-romania.ro/wp-content/uploads/2013/12/Raport_RecomandareCMCE_ROonline.pdf (accesed on 25 April 2014).

[276] Romania, ACCEPT (2013) Report concerning the implementation of Reccomendation CM/Rec(2010)5 of the Committee of Ministers regarding the measures for combating discrimination on the basis of sexual orientation and gender identity in Romania (*Raport privind implementarea Recomandării CM/Rec(2010)5 a Comitetului de Miniștri privind măsurile pentru combaterea discriminării pe criteriile orientării sexuale și identității de gen de către România)*, [p. 64, available at: http://accept-romania.ro/wp-content/uploads/2013/12/Raport_RecomandareCMCE_ROonline.pdf (accesed on 25 April 2014).

H. Miscellaneous

H.1. Decriminalisation of consensual homosexual relations

The provisions of the Criminal Code banning consensual homosexual relations between consenting adults were repealed in 2002.[277] The legal changes came as a result of pressure from abroad, including from the United Nations,[278] the Council of Europe,[279] and the European Union (on the basis of the Copenhagen political criteria for EU enlargement and through the regular annual reports prior to accession).[280]

H.2. Limitations in gathering statistical data

The difficulties in drafting effective legislation and public policies responding to the needs of LGBT people start with the lack of relevant statistical data. Public authorities invoke Article 7 (1) of Law 677/2001 on the protection of persons regarding the use of personal data[281]190 prohibiting 'the use of personal data regarding the racial or ethnic origin, political, religious, philosophical or similar opinion, membership of unions, as well as private data regarding health status or sexual life'. The same provision is identified as a deterrent for effective data-gathering and policy-making in the case of women[282] or Roma.[283]

The public authorities are still not collecting statistical data on the needs of LGBT persons. For example, the Romania/*Inspectoratul General al Poliţiei Romane* [The General Inspectorate of the Romanian Police] declared such data collection is against the law, by reference to Article 7.(1) of the Romania/*Legea 677/2001 pentru protectia persoanelor cu privire la prelucrarea datelor cu caracter personal si libera circulatie a acestor date* [Law 677/2001 for the protection of individuals with regard to the processing of personal data and the free movement of such data].[284]

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[277] Romania/ Emergency Ordinance No. 89 (21.06. 2001); adopted by Parliament through Romania Lege 61/2002 privind aprobarea Ordonanţei de urgenţă a Guvernului nr. 89/2001 pentru modificarea şi completarea unor dispoziţii din Codul penal referitoare la infracţiuni privind viaţa sexuală (16.01.2002).

[278] Human Rights Committee, (CCPR/C/79/Add. 111, July 28, 1999 para 16).

[279] The Parliamentary Assembly of the Council of Europe (PACE), Committee on Legal Affairs and Human Rights, Draft opinion on the application for membership to the Council of Europe submitted by Romania, appendix II, AS/Jur (44)74, Strasbourg, 1993 in which PACE expressed its expectation that Romania would change its law in such way that Article 200 of the Penal Code would no longer consider homosexual acts in private between consenting adults a criminal offence. Similarly, in its Resolution 1123/97 on the honouring of obligations and commitments by Romania, the Parliamentary Assembly noted that 'certain provisions of the Penal Code now in force are unacceptable and seriously imperil the exercise of fundamental freedoms, especially Article 200 on homosexual acts', and expected that within one year Romania would 'amend without delay the provisions of the Penal Code'.

[280] Resolution of 19.09.1996, the European Parliament denounced the intention of the Romanian Parliament to increase punishments for consensual same-sex relations between adults. European Parliament - Résolution sur l'aggravation des sanctions contre les homosexuels en Roumanie. Similarly, in its Emergency Resolution on equal rights for gays and lesbians in the EC of 17.09.1998 the European Parliament demanded the elimination of discrimination and unequal treatment of homosexuals.

[281] Romania/Lege 677/2001 pentru protectia persoanelor cu privire la prelucrarea datelor cu caracter personal si libera circulatie a acestor date, Law 677 on the protection of persons in relation to the use of personal data (21.11.2001).

[282] See, CEDAW/C/ROM/CO/6, Concluding comments of the Committee on the Elimination of Discrimination against Women, Romania, June 2006.

[283] DecadeWatch : Roma activists assess the progress of the Decade of Roma Inclusion 2005- 2006, available at: http://www.romadecade.org/index.php?content=6, (10.10.2007).

[284] Romania, The General Inspectorate of the Romanian Police (*Inspectoratul General al Poliţiei Romane*), Response No.2281705 of 10.02.2014, on file with the NFP.

H.3. Marriage and partnership

The Romania/Codul familiei [Family Code] in force up until 1 October 2011, defined family in Article 1.3 in gender-neutral terms, 'based on marriage between spouses',[285] as provided for by Article 48 of the Constitution.[286] Partnerships are not recognised by Romanian legislation. Though the standing definition of marriage was not excluding same-sex marriage, it has never been used for this purpose and the practitioners agreed that the interpretation of the Family Code definition limited the institution of marriage to heterosexual couples. Nevertheless, since 2006, religious and conservative groups have organised attempts to restrict marriage to opposite-sex couples.

In 2006, a coalition of religious actors collected signatures for a proposal to modify the Constitution and explicitly introduce a same-sex marriage ban. The Court found unconstitutional the citizens' initiative but the decision was based on procedural grounds (the initiative did not respect the number and geographical representation for signatures).

The new Civil Code adopted in 2009,[287] includes in Article 277 a prohibition of same-sex partnership and marriage and a prohibition to recognize partnerships and same-sex marriages registered in other countries.[288] The Code adds that the legal provisions on the freedom of movement in Romania of EU/EEA citizens remain in force without addressing the conflict between the express provisions recognising the marital status of the EU citizens as granted by their countries mentioned in the legislation transposing Directive 2004/38/EC and the recent prohibition of recognition of same-sex marriages or partnership entered into abroad by same-sex couples.[289] The new Civil Code entered into force on 1 October 2011.

The new Civil Code prohibition of recognition by Romanian authorities of same-sex marriages and heterosexual and same-sex partnerships validly contracted abroad triggers legal conflicts starting with 1 October 2011, when the new Civil Code entered into force.

Recent developments from 2013 show an intensification of the opposition to any legal recognition of same-sex couples.

First, in June 2013, in the context of Parliament's discussions on the amendment of the Constitution, a vehement debate took place regarding a proposal to extend the list of grounds of discrimination stipulated in Article 4 of the Constitution to bring it in compliance with the Charter of Fundamental Rights of the European Union. The MPs and the representatives of the Orthodox

[285] Art. 1.3 Romania/Codul Familiei, Family Code (4.01.1953).

[286] The Constitution of Romania, available at http://www.cdep.ro/pls/dic/site.page?id=371 (10.01.2008) states in Art. 48: 1) The family is founded on the freely consented marriage of the spouses, their full equality, as well as the right and duty of parents to ensure the upbringing, education and instruction of their children. (2) The terms for marriage dissolution and nullity of marriage shall be established by law. Religious weddings may be celebrated only after the civil marriage. (3) Children born out of wedlock are equal before the law with those born within wedlock.

[287] Romania/ Lege 289/2009 privind Codul Civil [Law 289/2009 on the Civil Code] (17.07.2009).

[288] Art. 277 of Romania/ Lege 289/2009 privind Codul Civil [Law 289/2009 on the Civil Code] (17.07.2009). 'same-sex marriages performed abroad, by Romanian citizens or by foreigners are not to be recognized in Romania.' Similarly, the new Civil Code mentions that same-sex or opposite-sex civil partnerships registered or contracted abroad by Romanian citizens or foreigners are not recognized in Romania.

[289] Romania/Lege 500/2006 privind aprobarea Ordonanţei Guvernului nr. 30/2006 pentru modificarea şi completarea Ordonanţei de urgenţă a Guvernului nr. 102/2005 privind libera circulaţie pe teritoriul României a cetăţenilor statelor membre ale Uniunii Europene şi Spaţiului Economic European [Law 500/2006 on amending and approving Ordinance 30/2006] (28.12.2006) defines as a partner 'a person who lives together with a citizen of the EU, if the partnership is registered according to the law of the Member State of origin or, when the partnership is not registered, the relationship can be proved.'

Church opposed the introduction of "sexual orientation" as an explicit ground of discrimination in the Constitution. In reaction, the MPs proposed to adopt at Article 48 of the Constitution a definition of "marriage" restricted to heterosexual marriage.[290] Both ideas were finally rejected after a passionate public debate.[291] In the end, the parliamentarian commission decided to extend the list of grounds of discrimination, but not with the ground "sexual orientation" and the definition of marriage remained unchanged (neutral).[292] The discussions on the content of proposals to amend the Constitution continue in the Parliament in 2014.

Second, at the beginning of September 2013, a draft law on the legal recognition of civil partnership was introduced by an independent MP together with six other MPs.[293] The draft law proposes legal rights for persons who are in a registered legal partnership, primarily in the area of property, inheritance, mutual support and health and other social benefits. The initiative does not have political support from any of the political parties represented in the Parliament. Moreover, the Government's point of view was to reject the draft law. The Government affirmed that in 2009, the legislative power made its option regarding same-sex marriage by defining marriage in the new Civil Code as being exclusively heterosexual. Moreover, the legal proposal is not useful for heterosexual couples because they already have the legal option to marry and the civil partnership is similar to marriage.[294] As a consequence, the Senate rejected the draft law in December 2013. The Chamber of Representatives is to debate the bill in 2014.

Third, in September 2013, the Romanian adaptation of international TV show *Four Weddings and a Challenge* included the symbolic wedding of two men, led by a bishop from abroad. Despite the fact that it was a symbolic ceremony without having any legal effect in terms of civil marriage, a number of self-identified Christian organizations put together a wide campaign to have the TV show banned by the Romania/ Consiliul Naţional al Audiovizualului (National Council of Audiovisual) on the ground that it represents "gay propaganda".[295] On 11 October 2013, the National Council of Audiovisual (CNA) issued a public statement that the TV show is in compliance with the audio-visual legislation and the CNA's role is to ensure that no discriminatory behaviours including on the ground of sexual orientation take place in audio-visual activities.[296] The show is currently not being aired anymore by the TV station.

[290] Adevărul (2013) 'Noua Constituţie: Căsătoriile între homosexuali, excluse prin legea fundamentală' ('*The New Constitution: Gay marriages excluded by the fundamental law*'), 5 June 2013, available at http://adevarul.ro/news/politica/comisia-constitutionala-familia-intemeiaza-casatoria-liber-consimtita-barbat-femeie-1_51af5d0bc7b855ff565f3a30/index.html.

[291] Antena 3 (2013) 'Ponta nu vrea în Constituţie sintagma de "căsătorie între un bărbat şi o femeie"' *('Ponta does not want in the Constitution the expression "marriage between a man and a woman"'*), 6 June 2013, available at: www.antena3.ro/politica/ponta-nu-vrea-in-constitutie-sintagma-de-casatorie-intre-un-barbat-si-o-femeie-216972.html. See also Ziare.com (2013) 'Basescu, despre casatoriile gay: Interzicerea prin Constitutie este o greseala' *('Băsescu on gay marriages: To forbid them in the Constitution is a mistake'*), 16 June 2013, available at www.ziare.com/basescu/presedinte/basescu-despre-casatoriile-intre-homosexuali-interzicerea-prin-constitutie-este-o-greseala-1241309.

[292] The texts adopted by the Parliament commission on 25 June 2013 are available at http://www.senat.ro/UploadFisiere/bb175b74-8e6b-4603-8589-d27a014a2dc0/prop.de_revizuire_a_Constitutiei_-_final_-_25_iunie_2013.pdf.

[293] Romania, Romanian Parliament, Chamber of Representatives, *Pl-x nr.670/2013* Draft law regarding the civil partnership (*Propunere legislativă privind parteneriatul civil*), available at www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=13901 (last visit 17.02.2014).

[294] Romania, Romanian Government, Point of view on the Draft law regarding the civil partnership, available at http://www.cdep.ro/proiecte/2013/600/70/0/pvg670.pdf (last visit 17.02.2014).

[295] They allege filing 2000 individual complaints to the CNA and two legal actions in court to stop the TV show from being aired. See Ziare.com (2013), 'Nunta gay televizata de Pro TV s-a lasat cu doua mii de plangeri la CNA' (*The gay wedding on TV aired by PRO TV lead to two thousand complaints to CNA*), 30 September 2013, available at http://www.ziare.com/media/pro-tv/nunta-gay-televizata-de-pro-tv-s-a-lasat-cu-doua-mii-de-plangeri-la-cna-1259843.

[296] Romania, National Council of the Audio-Visual (*Consiliul Naţional al Audio-Vizualului*), Public Reply No. 10762 RF, 11 October 2013, available at http://www.cna.ro/article6435,6435.html.

H.4. LGBT people in detention

The Romanian Helsinki Committee (APADOR-CH) found in its periodic reports that: prison staff have started to recognise that there are cases of men having sex with men; there are sexual abuses in prisons conducted by inmates and ignored by the guards; the complaint procedures in case of rape are not efficient; in general, there is a lack of protection in complaint procedures; homosexuals are discriminated against by their fellow inmates and this treatment is tolerated by the management; sexual education and condoms are absent.[297] ACCEPT declared that abuses still exist and that they receive complaints. ACCEPT started monitoring detention facilities and filed a case.[298]

Recent regulations create the legal possibility for protection of vulnerable groups, including sexual minorities, who can be accommodated, on request, in special rooms.[299] There is no thorough assessment on the implementation of this provision and on its effectiveness in combating discrimination and protecting vulnerable groups. The *Administraţia Naţională a Penitenciarelor* [National Penitentiary Administration (NAP)] established specific procedures for requesting accommodation in rooms for vulnerable persons and provided the centralized data for each detention unit.[300] Thus, the number of places available in protected rooms is of only 567 for a capacity of 30.229 in the penitentiary system; only 76 places are occupied at the moment, out of 38 detention facilities under the administration of NAP, nine facilities do not include rooms for detainees belonging to vulnerable groups as they did not receive specific requests and out of the six penitentiary-hospitals, four have socio-medical units for persons with special needs. The approval rate for the requests to be transferred in rooms for vulnerable groups varies for the different locations, with 18 facilities having a 100 per cent approval rate. The rejection of the transfer request can be appealed before the instruction judge, though the centralized data provided by the NAP shows that no rejection decision was ever challenged by the detainees.

There is still no thorough assessment on the implementation of the regulation allowing for the accommodation of persons belonging to vulnerable groups, including sexual minorities, upon their request in special rooms. Moreover, as opposed to 2010, in 2014 the National Administration of Penitentiaries no longer provided us with statistical data regarding the number of places available in protected rooms, number of places occupied, number of requests and rejections, etc.[301] On the other hand, in its reply from 2014, the NAP invoked a multidisciplinary procedure adopted in May 2013 regarding the identification of persons who are in places of confinement and are vulnerable or are at risk of vulnerability on grounds of ethnicity, race, religion or belief, age, sexual orientation or disability. The aim of this procedure is to ensure "a balanced living climate in the penitentiaries through affirmative measures and reasonable accommodation of persons who are at risk of being discriminated against."[302]

In December 2012, the Court of Appeal of Bucharest issued a final judgment in the case of T.M., a young gay man who alleged being subjected to rape by inmates in several penitentiaries during

[297] APAOR-CH (2005) 'Sistemul penitenciar în România 1995-2004' [The Penitentiary System in Romania 1995-2004], pp.49-52, available at: http://www.apador.org.

[298] Interview with Florentina Bocioc, Executive Director of ACCEPT, 02.02.2008.

[299] Art. 7.(5) of Romania/ Hotărâarea Guvernului nr.1897/21.12.2006 pentru aprobarea Regulamentului de aplicare a Legii nr. 275/2006 privind executarea pedepselor şi a măsurilor dispuse de organele judiciare in cursul procesului penal [Decision for the approval of the Regulations on application of the Law on the execution of punishments and other measures decided by the judiciary during criminal case], (16.01.2007).

[300] Response No.15582 –DSDRP – 03.02.2010 of Romania/ Administraţia Naţională a Penitenciarelor, on file with national FRALEX expert.

[301] Romania, National Administration of Penitentiaries (*Administraţia Naţională a Penitenciarelor*), Letter No.200006/DSDRP of 05.02.2014 to the Centre for Legal Resources, on file with the NFP.

[302] Romania, National Administration of Penitentiaries (*Administraţia Naţională a Penitenciarelor*), Letter No.200006/DSDRP of 05.02.2014 to the Centre for Legal Resources, on file with the NFP.

2004-2005.[303] In December 2006, T.M. introduced a civil action seeking compensation for moral damages regarding the lack of effective protection on the part of the authorities against rape and discrimination. On 16 November 2010, the first instance court (Judecatoria Sectorului 2 Bucuresti) decided in favour of the applicant and ordered the National Administration of Penitentiaries to pay 50 000 EUR compensation for moral damages.[304] The court found that in the case of the applicant there are enough circumstances corroborating to prove a violation of Article 3 of the Convention with respect to NAP's lack of reasonably expected measures to avoid the realization of an immediate risk to the physical integrity of the applicant which NAP knew of or should have known of. However, the higher courts overturned this decision,[305] finding NAP responsible only for the lack of medical care and not taking the measures necessary to prevent self-mutilation of the applicant; they dismissed any connection to sexual orientation and alleged rape, motivating that the applicant did not prove beyond reasonable doubt that the sexual abuses happened and that protection from the State could not have been ensured without filing a written or oral complaint. In June 2013, T.M. filed an application to the European Court of Human Rights arguing violations of Articles 3, 6, 8, 13, 14 and Protocol 12 of the ECHR. The case has not been communicated, yet.[306]

H.5. Incidents of surfaced institutional homophobia

Article 462 of the new Civil Code explicitly prohibits adoption of children by two persons of the same sex.[307] In 2010, Oficiul Român pentru Adopţii [Romanian Office for Adoptions] proposed a new law regulating adoptions which included the explicit prohibition of adoption by two persons of the same sex. Nevertheless, this bill never reached the Parliament so it was not discussed by it, neither adopted. The express prohibition proposed, without any feasibility study or scientific research to justify this legal solution, indicates institutional homophobia.[308] This prohibition is questionable given that the current Adoptions' Law specifically prohibits both simultaneous and consecutive multiple adoptions, except in case of married couples, making adoption by same sex couples impossible.[309] Ironically, the Romanian Office for Adoptions justified the need for a new legal framework on the fact that Romania signed on March 4th 2009 the Council of Europe European Convention on the Adoption of Children (Revised).[310]

The ROI reported that during the asylum procedure it does not apply the tests known as 'phallometry' or 'phallometric testing'.[311]

No legislation or draft legislation sanctioning public information or campaigns related to homosexuality were reported recently. A draft amendment to the Law 60/1991 proposing prohibition of public events associated with homosexuality was rejected in February 2008 by the Parliament.

[303] Romania, Bucharest Court of Appeal (*Curtea de Apel Bucureşti*) Civil Decision No.2333R of 14.12.2012.
[304] Romania, Bucharest District 2 Court (*Judecătoria Sectorului 2 Bucureşti*), Civil Judgment No.11198 of 16.11.2010.
[305] Romania, Bucharest Tribunal (*Tribunalul Bucureşti*), Civil Decision No.402 A of 18.04.2012
[306] ECHR, *T.M. v Romania,* Application No.39940/13.
[307] Romania/Oficiul Român pentru Adopţii, Proiect de modificare a legii privind regimul juridic al adopţieiavailableat http://www.adoptiiromania.ro/documente_dezbatere.aspx (01.01.2010).
[308] Response No.SSPEA/LV/169/29.01.2010 of Romania/ Oficiul Român pentru Adoptii, on file with national FRALEX expert.
[309] Art.7 of Romania/Lege 273 /2004 privind regimul juridic al adopţiei [Law 273/2004 on the legal regime of adoption](21.06.2004).
[310] Art. 7 of the Revised European Convention provides that 'States are free to extend the scope of this Convention to same sex couples who are married to each other or who have entered into a registered partnership together. They are also free to extend the scope of this Convention to different sex couples and same sex couples who are living together in a stable relationship.'
[311] Response 2396807 of the Romanian Office for Immigration, 24.02.2010, on file with national FRALEX expert.

H.6. Sexual and reproductive rights

In 2005, the Constitutional Court issued a decision on the draft law on reproductive health and medically assisted reproduction.[312] Among other infringements of the Constitution, the Court also discussed the discriminatory nature of the draft law which excluded individuals who were not in an established relationship from accessing medical reproductive services and reproductive assistance.[313]

In September 2009, another draft law on medically assisted reproduction was introduced in the Parliament, containing the same restrictions for single women which were previously declared unconstitutional. Although the bill received negative opinions from all parliamentary commissions and from the Government, it passed the Senate by tacit adoption procedure (Art.75 (2) of the Constitution). The bill is presently being debated in the Chamber of Representatives.[314] On 19 October 2010, the Chamber of Representatives of the Romanian Parliament rejected the 2009 draft law on the ground that the text of the bill is not clear and there are important gaps that will hinder the enforcement of the law and potentially violate the Constitution.[315]

The new Civil Code adopted in 2009 stipulates a number of legal provisions regarding medically assisted reproduction involving a third-party donor.[316] The Civil Code focuses primarily on parental rights and mentions that the regulation of the actual medically assisted reproduction procedures will be addressed in a special law. Article 441 of the Civil Code stipulates that the beneficiaries of these technologies may be single women and heterosexual couples; there is no requirement that the procedure be medically necessary or a matter of personal choice. Therefore, in principle, lesbian women (who are single) should qualify for medically assisted reproduction services according to the Civil Code.

Since the adoption of the Civil Code, two draft laws have been introduced for debate in the Parliament. Both bills are intended exclusively for persons that resort to medically assisted reproduction for health reasons. Therefore, they implicitly exclude lesbian women who choose artificial insemination to become pregnant, a restriction that was challenged as being discriminatory on the ground of sexual orientation by a non-governmental organization that filed a memo to parliamentarian commissions regarding the first bill.[317] The first draft law, proposed by the Ministry of Health in October 2011 was tacitly approved by the Senate in April 2012 and ever since it is waiting to be reviewed by the Chamber of Representatives.[318] The second law, proposed by a group of MPs was approved by the Senate and it is currently reviewed by the Chamber of Representatives.[319] Protocol 12 to ECHR was not invoqued explicitly in the parliamentarian

[312] Romania/ Proiect de lege privind sănătatea reproducerii şi reproducerea umană asistată medical, L334/2004, available at: http://80.97.216.132/senat.proiect.asp?cod=9290&pos=0.

[313] Romania/ Curtea Constituţională, DECIZIE 418 din 18 iulie 2005 asupra sesizării de neconstituţionalitate a Legii privind sănătatea reproducerii şi reproducerea umană asistată medical, published in Romania/ Monitorul Oficial nr.664/26 iulie 2005, point 5. See case in Annex 1.

[314] Romania/ Proiect de lege privind sănătatea reproducerii şi reproducerea umană asistată medical,L407/02.09.2009, available at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=10681.

[315]Romania, Romanian Parliament, Family and Health Commission, Report No.28/ 212 of 8 September 2010, available at http://www.cdep.ro/comisii/sanatate/pdf/2010/rp690_09.pdf.

[316]Romania, Law 289/2009 on the Civil Code , (Lege 289/2009 privind Codul Civil) of 17 July 2009), Articles 441-447.

[317]Interview with Dana Ududec, Campaign Manager, Euroregional Center for Public Initiatives, 24.04.2014.

[318]Romania, Romanian Parliament, Draft law regarding the medically assisted human reproduction (*Plx. nr.462/2013 Lege pentru reproducerea umană asistată medical*), available at http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=12651 (last visit 17.02.2014).

[319]Romania, Romanian Paliament, Draft law regarding the medically assisted human reproduction (*Plx. nr.462/2013 Lege pentru reproducerea umană asistată medical*), available at http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=13733 (last visit 17.02.2014).

debates. The bills have not been adopted, yet. Therefore, no challenge regarding the potential unconstitutionality of the limitation may be introduced, yet.

I. Good practices

I.1. Pro-active interventions by the authorities

First, the initiation of *ex officio* cases on the ground of sexual orientation by the NCCD contributed to the increased visibility of this institution in the LGBT community and to increased trust among potential victims.[320]

Secondly, the 2005 public interventions of government officials (including the President of Romania, Traian Băsescu, the Minister of Justice at the time, Monica Macovei, and the NCCD[321]) who asked the mayor of Bucharest to reconsider his decision not to authorise a gay march led to respect for freedom of assembly but also to increased understanding of the issue.

Thirdly, a positive practice consists of the presence of local police and gendarmerie during the marches organised in 2005-2009, the effective collaboration with ACCEPT (the NGO organising the marches) and the protection secured for participants against mobs of neo-Nazi youngsters, hooligans from football clubs and religious extremists who organised a counter- demonstration entitled Normality March.[322]

I.2. Non-discriminatory access to goods and services

According to the Anti-discrimination Law, the protection against discrimination based on sexual orientation is guaranteed in all fields of the social sphere, including in relation to access to goods and services. Based on this legal provision, ACCEPT developed three strategic litigation cases both with the NCCD and with the civil courts securing jurisprudential confirmation.[323]

I.3. Good practices in 2010-2013

There are no good practices to report for the period 2010-2013.

[320] Romania/CNCD/ Tarom decision, Decision 39, (01.03.2005). See also, Romania/CNCD/ ACCEPT v. the Ministry of Health for the National Institute of Haematology, Decision 337, (21.11.2005) and Romania/CNCD/ ACCEPT v. the Ministry of Health, Decision 260, (29.08.2007).

[321] The NCCD issued a press release disapproving of the local authorities' decision and expressing support for the event. The NCCD started an ex officio investigation against the mayor's office to determine whether the decision was discriminatory on the ground of sexual orientation.(www.cncd.org.ro)

[322] ACCEPT, Press release, Marsul diversitatii inca un pas spre toleranta (05.06.2006) available at http://accept-romania.ro/index.php?option=com_content&task=view&id=52&Itemid=75 (13.02.2008).

[323] See in Annex 1: TAROM Case, DZ v. Distrigaz Sud Case and the Case ACCEPT v. the Ministry of Health on blood donation.

J. Intersex

Intersex people are not specifically mentioned in non-discrimination legislation, case-law or policies. No research is available about the situation of intersex people in Romania. If a case arises, courts and/or the NCCD may include intersex people within the scope of discriminations definitions under the national law, which are open-ended, similarly to gender identity. In its response to our request for information for the 2010-2013 update of this report, the NCCD apparently conflated the concept of intersex with that of sexual orientation.[324] With reference to the latter, it stated that was a specifically protected ground under national anti-discrimination law. The authors of this study were not able to obtain detailed information related to the questions regarding the surgical and medical interventions performed on intersex people in Romania, or the requirments of consent to such interventions. In order to obtain information on these aspects we contacted in writing the NHIH, the DEPABD, the NCCD, in addition to undertaking desk research.

In the absence of specific legislation governing medical interventions on intersex people, general legislation in the area will apply. Thus, the Law on Patients' Rights guarantees the right of the patient to refuse a medical intervention.[325] Where the patient has a legal representative, their consent will be sufficient, with the provison that the patient has to be involved in the decision-making process to the extent possible considering their capacity.[326] The Law on the protection and promotion of children's rights does not include any supplementary provisions on informed consent to medical interventions on children. [327]

A new birth is initially certified within three days after taking place, by a standard document issued by the local pediatrics hospital ("certificat constator al nașterii") on the basis of a statement made by the parent/s.[328] The local population registry office will register the birth on the basis of a statement made by the parents within 14 days after birth, joined by the certificate issued by the hospital, stating inter alia the newborn's sex, and other personal documents. A birth declared after the term prescribed by law may be registered on the basis of a special dispensation issued by the mayor, or of a final court judgment.

The DEPABD stated that all children are registered on the basis of a medical certificate certifying the birth, which must include the newborn's sex. If the certificatedoes not include the gender marker, the birth will not be registered. The DEPABD did not state if it encountered any such cases.[329] The NILM stated that in the period since 1990, it gave a positive recommendation for undertaking genital surgery in a case of "hermaphroditism" concerning an adult person.[330]

The NHIH made a single remark regarding intersex people, in the context of health insurance coverage of costs associated with medical interventions, which implies that medical interventions

[324] National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării*), Letter No. 657/28.02.2014 to the Center for Legal Resources, on file with the NFP..
[325]Romania, Law no. 45/2013 on Patients' Rights (*Legea nr. 46/2003 a drepturilor pacientului*) of 21 January 2003, Art. 13.
[326]*Ibid*., Art. 16.
[327] Romania, Law no. 272/2004 on the protection and promotion of children's rights (*Legea no. 272/2004 privind protecţia şi promovarea drepturilor copilului*) of 23 January 2004.
[328] The procedure for registering a newborn is detailed in Romania, Law concerning civil status acts no. 119/1996 (Legea nr. 119/1996 cu privire la actele de stare civilă), of 11 November 1996.
[329] Romania, Directorate for Persons Record and Databases Management (Direcţia pentru Evidenţa Persoanelor şi Administrarea Bazelor de Date) Letter No. 2578/10 February 2014 to the Center for Legal Resources, on file with the NFP, citing Art. 14(1) of Romania, Law on civil status documents, republished (*Lege nr. 119/1996 cu privire la actele de stare civilă, republicată*) of 18 May 2012.
[330] Romania, National Institute of Legal Medicine (*Institutul Naţional de Medicină Legală*) Letter No. A8/172/2010/2014 to the Centre for Legal Resources, on file with the NFP.

on intersex people do take place in Romania.[331] Thus, the NHIH sought to make a distinction between gender reassignment treatment benefiting people over 18 years old, where entitlement to coverage varied depending on the intervention involved, and "reconstruction procedures" which were covered based on the therapeutic decision of the doctor providing the treatment.

[331]National Health Insurance House (*Casa Națională de Asigurări de Sănătate*, NHIH) Letter No. 70/7 February 2014 to the Center for Legal Resources, on file with the NFP.

Annex 1 – Case law

Chapter A, the interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 1

Case title	ACCEPT on behalf of B.R. v. A. V., M. I. and Regia Autonoma Piete, Agrement si Salubritate Oradea; Regia Autonoma de Piete, Agrement si Salubritate Oradea (employer), Decision 29 of the NCCD.
Decision date	07.09.2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	Consiliul Naţional pentru Combaterea Discriminării [National Council on Combating Discrimination]
Key facts of the case (max. 500 chars)	Mr R. B. was harassed and ill-treated by his superiors Mr A. V. and Mr M. I. on the grounds of his presumed homosexuality. Mr M. I. discussed R. B.'s presumed sexual orientation with his colleagues, asked the plaintiff to resign as he was gay and started sanctions against Mr R. B. Mr R. B. filed a complaint with the NCCD with the support of an NGO but, following the investigation visit organised by the NCCD, he was punished and transferred from his work post (Oradea Zoo) to work in the grave yard.
Main reasoning/argumentation (max. 500 chars)	The NCCD found that the defendants created a hostile and intimidating environment on the grounds of presumed sexual orientation and retaliated against the plaintiff following the investigation by the NCCD.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Discrimination in employment; creating a hostile and intimidating environment on the grounds of presumed sexual orientation; victimisation following the complaint to the NCCD.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Defendants punished with a fine of 400RON and 1,000 RON (111 Euro and 278 Euro)and an administrative warning was issued to the employer (the local public authority).

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 2

Case title	B. R. Case Sentinta Civila [Civil Judgement] No.620/L.M./2007, File No.6094/111/2006; Tribunalul Bihor Applicant: B. R. represented by ACCEPT; respondents: A. V., administrator of the Oradea Zoo, M. I., human resources manager at the Romania/ Regia Autonoma de Piete, Agrement si Salubritate Oradea, and Romania/ Regia Autonoma de Piete, Agrement si Salubritate Oradea (employer)
Decision date	01.10.2007. The judgement is not final. The appeal is pending before the Oradea Court of Appeal.
Reference details (type and title of court/body; in original language and English)	Romania/ Tribunalul Bihor [Bihor Tribunal], acting as court of first instance in a labour dispute.
Key facts of the case (max. 500 chars)	B. R. was subjected to discrimination and victimisation by his superiors and by his employer because of his supposed sexual orientation. The acts of discrimination included discriminatory remarks in the presence of his colleagues; B. R. was asked to resign; B. R. was given a disciplinary sanction because he lodged a complaint of discrimination with the equality body (NCCD) which conducted an investigation at his workplace; B. R. was removed from his position at the Zoo and sent to the cemetery, also in the administration of the employer.
Main reasoning/argumentation (max. 500 chars)	B. R. was subjected to discrimination, harassment and victimisation by the employer through its representatives (A. V. and M. I.). This was demonstrated by the decision of the NCCD and by the declaration of one witness. The disciplinary sanction and the removal from his position at the Zoo are illegal and void. These behaviours created serious suffering for B. R. which open the way to compensation.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Harassment: a systematic treatment, including discriminatory remarks and administrative measures taken against a person because of his alleged sexual orientation. Victimisation: disciplinary sanctioning of an employee when a complaint of discrimination was introduced and the employer indirectly refers to it. The application to the discrimination cases of the civil responsibility principle: the acts of the employees perpetrated at work or in relation to their work fall under the responsibility of the employer.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The labour decisions sanctioning the plaintiff were declared illegal and void. The payment of 3,000 lei (900 Euro) compensation (for moral damages). Injunction upon the employer to end all discrimination, harassment and victimisation and to present public apologises in front of the Zoo's employees. 50 lei (around 1.50 Euro) civil fine for each day of delaying the injunctions. Since the employer is a public company, the case can be used to lobby the government to include standards of non-discrimination within public companies.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 3

Case title	Tarom decision, Decision 39
Decision date	01.03.2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	Consiliul Naţional pentru Combaterea Discriminării [National Council on Combating Discrimination]
Key facts of the case (max. 500 chars)	The NCCD started an ex officio case subsequently joint with a complaint file by two NGOs (ACCEPT and CRL) following the advertisement of a Valentine's Day promotion for services for couples issued by the national flight carrier TAROM. The terms of the promotion specified that only two partners of the opposite sex can buy one ticket and get the second ticket free for selected destinations, as mentioned in an internal note sent by TAROM to all its agents.
Main reasoning/argumentation (max. 500 chars)	The NCCD found that, by establishing as a condition that only heterosexual couples can benefit from the promotion, TAROM unjustifiably created an exclusive treatment in relation to homosexual couples and refused access to transportation services. The NCCD noted that, even if there was no intention to discriminate against homosexual couples, the effects of the restriction lead to discrimination.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Ex officio NCCD procedures; access to services; relation between intention to discriminate and effect of discriminatory actions.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Administrative fine of 5,000,000 ROL (143 Euro) and recommendation for the company to organise training on equal opportunities and anti-discrimination principles.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 4

Case title	Asociatia Attitude v. Silviu Manastire, *Gazeta de Cluj,* Decision No. 207
Decision date	14.07.2003
Reference details (type and title of court/body; in original language and English [official translation, if available])	Consiliul Naţional pentru Combaterea Discriminării [National Council on Combating Discrimination]
Key facts of the case (max. 500 chars)	The plaintiff is an NGO with a mission to protect and promote the rights of LGBT people in Romania. The plaintiff complained against an article published in the local newspaper *Gazeta de Cluj* with the title: 'Homosexuals from Cluj debauch in spaces belonging to the Vatican' which followed another article, 'Public Danger – the Bar Harley Davidson'.
Main reasoning/argumentation (max. 500 chars)	The NCCD found that the article established a hostile, degrading and humiliating environment which was hostile to homosexuals and emphasised and repeated debauchery as a way of life for homosexuals, and considered that the author misused his freedom of expression.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Creating a hostile, degrading and humiliating environment in the media; abusing freedom of expression through discriminatory messages.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Administrative fine of 2,000,000 ROL (57 Euro).

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 5

Case title	SA v. Ziarul Atac, Decision 231
Decision date	29.08.2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	Consiliul Naţional pentru Combaterea Discriminării [National Council on Combating Discrimination]
Key facts of the case (max. 500 chars)	The tabloid *Atac* published pictures of the plaintiff naked under the title 'Satana with bare penis' and with a comment stating that it is important 'to reveal such a guy who is actually a little girl' and emphasising the need to disclose all homosexuals as dangerous.
Main reasoning/argumentation (max. 500 chars)	The NCCD found that the article promotes a degrading picture of homosexuals by stating that they should be unmasked and that it infringed the right to dignity and the right to privacy of the plaintiff as its aim was to reveal the sexual orientation of the plaintiff.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The right to dignity and the right to privacy can be invoked as a justifiable limitation for the freedom of expression.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The NCCD issued an administrative warning against the tabloid *Atac*.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 6

Case title	ACCEPT and CRL on behalf of PMG v. priest IS, Decision 16
Decision date	18.01.2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	Consiliul Naţional pentru Combaterea Discriminării [National Council on Combating Discrimination]
Key facts of the case (max. 500 chars)	ACCEPT and CRL filed a complaint on behalf of the victim who worked as a singer in the church choir of Biserica Adormirea Maicii Domnului, Braila County. After the religious service, the local priest presented a local newspaper with an announcement of a young gay man seeking a partner, claiming that the announcement belonged to PMG. PMG complained to the Bishop but the priest started to spread rumours in the community that PMG 'goes after men' and convened a local council to investigate the private life of PMG.
Main reasoning/argumentation (max. 500 chars)	The NCCD found that the deeds of the priest had the effect of excluding PMG from the local community and from his position as a singer in the church choir and that the priest spread rumours with the effect of restricting the right to privacy and the right to dignity. The NCCD noted that the statements of the defendant were issued nome proprio, after the religious service and did not represent the position of the Orthodox Church, noting that the hierarchy of the church tried to intervene and mediate in the dispute. In the dissenting opinion, it was underlined that the priest acted as a representative of the Orthodox Church which considers homosexuality as a sin and that the priest is under a religious oath all the time.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Autonomy of religious denominations as resulting in observance of internal canon law and anti-discrimination procedures. Analysing the social context in order to assess the impact of discrimination.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Administrative fine of 10,000,000 ROL (278 Euro).

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 7

Case title	ACCEPT v. the Ministry of Health for the National Institute of Haematology, Decision 337
Decision date	21.11.2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	Consiliul Naţional pentru Combaterea Discriminării [National Council on Combating Discrimination]
Key facts of the case (max. 500 chars)	The NCCD started an ex officio case following an article published by *Adevarul* quoting the protestations of an NGO, ACCEPT, on the discrimination of sexual minorities in access to health services (denial to donate blood by the National Institute of Haematology). The National Institute of Haematology confirmed that 'donors with other sexual orientations are considered a risk group and are permanently excluded from blood donation'.
Main reasoning/argumentation (max. 500 chars)	The NCCD found that the permanent exclusion of gay men from donating blood, though objectively justified by a legitimate aim, is illegal as the means chosen are not adequate and necessary.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Ex officio NCCD procedures; access to health services; reasonable limitation; limitation of rights should be objectively justified by a legitimate aim and the means to reach that particular aim must be both adequate and necessary.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The NCCD found discrimination on the grounds of Article 2 of GP 137/2000 but decided that, given the public interest pursued by the defendant, it would issue an administrative warning and recommended to the Ministry of Health that it eliminate all discriminatory provisions from the practice of the National Institute for Haematology and other institutions. The NCCD was supposed to monitor for 90 days the change in practice by the defendant. The case re-emerged in 2007 in the form of a draft Order of the Ministry of Health listing homosexuals among the risk groups prohibited from donating blood and including a questionnaire for prospective blood donors inquiring about whether they have had homosexual relations.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 8

Case title	ACCEPT v. the Ministry of Health, Decision 260
Decision date	29.08.2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	Consiliul Naţional pentru Combaterea Discriminării [National Council on Combating Discrimination]
Key facts of the case (max. 500 chars)	The NCCD started an ex officio case, subsequently joint with a complaint file by ACCEPT, based on a draft Order of the Ministry of Health on blood donation which mentioned in the questionnaire specific questions for men (whether they had had sexual relations with other men) and for women (whether their partners had had sexual relations with other men) and establishing criteria for permanent exclusion from blood donations: the Order states that homosexuals are permanently excluded from blood donations as 'their sexual behaviour poses them in a group of high-risk for dangerous infectious diseases'.
Main reasoning/argumentation (max. 500 chars)	The NCCD found that the permanent exclusion of gay men from donating blood is not objectively justified by a legitimate aim. The donated blood is tested and sexual orientation of the donor is irrelevant. In this particular context, the sexual habits are more relevant.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Ex officio NCCD procedures; access to health services; reasonable limitation; limitation of rights should be objectively justified by a legitimate aim.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The NCCD found discrimination on the grounds of Article 2 of the GP 137/2000 but did not issue an administrative warning. However, it recommended that the Ministry of Health eliminate all discriminatory provisions in the draft of the Order on blood donations.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 9

Case title	C-81/2012, *Asociația ACCEPT v Consiliul Național pentru Combaterea Discriminării*
Decision date	25.04.2013
Reference details (type and title of court/body; in original language and English [official translation, if available])	Court of Justice of the European Union (CJUE)
Key facts of the case (max. 500 chars)	In the main proceedings, ACCEPT complained to the NCCD against the unofficial owner of a football club, who stated that he would never hire any homosexuals to play in his team. The NCCD held that the statement did not fall within the scope of an employment relationship. The Bucharest Court of Appeal, seized with the appeal lodged by ACCEPT, referred the case to the CJEU, with questions regarding the scope of Directive 2000/78 and the provisions in national law regarding the burden of proof and the statute of limitations available to the NCCD for applying sanctions in cases of discrimination.
Main reasoning/argumentation (max. 500 chars)	The CJEU ruled that statements such as those at issue in the main proceedings might constitute a prima facie case of discrimination, notwithstanding the fact that its author was not formally entitled to represent the club, considering that he was publicly perceived to do so. The CJEU also held that the reversal of the burden of proof would not would not require evidence impossible to adduce without interfering with the right to privacy, and also that the rules in place in Romania preventing the application of fines in certain circumstances were in breach of Article 17 of Directive 2000/78.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Scope of Articles 2(2) and 10(1) of Council Directive 2000/78/EC; burden of proof, effective, proportionate and dissuasive sanctions
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	n/a

Chapter B, Freedom of movement, case law relevant to Directive 2004/38/EC - no case law is available.

Response 2150194 of the Romanian Office for Immigration, 25.01.2008, on file with FRALEX and Letter No. 2597819/11.02.2014 of the Romanian Inspectorate for Immigration (*Inspectoratul Român pentru Imigrări*) to the Centre for Legal Resources, on file with the NFP.

Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC.- very difficult to identify cases

Response 2150194 of the Romanian Office for Immigration, 25.01.2008, on file with FRALEX and Letter No. 2597819/11.02.2014 of the Romanian Inspectorate for Immigration (*Inspectoratul Român pentru Imigrări*) to the Centre for Legal Resources, on file with the NFP. One case on which information was provided by the NGO Romanian National Council for Refugees is mentioned in text under the relevant chapter.

Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC, case 1

Case title	N.E.S. v. Romanian Office for Immigrations, Dosar 6848/285/2008, Decizia 347
Decision date	01.07.2009
Reference details (type and title of court/body; in original language and English [official translation, if available])	România/Tribunalul Suceava,

Key facts of the case (max. 500 chars)	N.E.S appealed with the support of two NGOs against the rejection of his asylum application which was initially rejected by ROI. In its rejection, ROI acknowledged that the asylum seeker invoked fear of persecution due to his homosexuality and due to the fact that homosexuality was criminalized and the Cameroons' authorities were aware of his status as he stated that he was prior arrested for two weeks but found that 'the number of such indictments (for homosexuality) is reduced and, as for any other crime, the accusations must be proved.' The ROI decision proceeds to find that 'the fact that the applicant was released (after two weeks), without any documentation shows that there was not enough evidence to lead to an indictment for being guilty and that because of this, practically there is no rick for him to be condemned for this reason.' When assessing the country of origin information the ROI decision concluded that 'from the information we have, it is clear that there are enough legal guarantees in Cameroon for a fair trial, observing access to justice related rights and the presumption of innocence.' The ROI did not assess how the risk of persecution applies in the personal case of the applicant - a person already arrested for homosexuality and only noted that 'in such cases persons are convicted only if caught in action' and mentioned that 'rthe applicant is not a public person and relocation to 'another city where he is not known and not sanctioned by the public is a real possibility.' The decision also stated that 'the applicant is aware of the legal regime of homosexuality (criminal sanction) and of the possibility of being liable and he basically takes his risk (when engaging in homosexual conduct).' The ROI decision was attacked by the applicant represented by an appointed lawyer but the court of first instance maintained the ROI decision.

Main reasoning/argumentation (max. 500 chars)	The appeal court looked at the country of origin information (provisions of Cameroons' Criminal Code sanctioning homosexual conduct) and at the personal situation of the applicant (being arrested for two weeks after being spotted by the neighbours while hugging a foreigner in his car) and concluded that 'in case of return in his country of origin, the applicant runs the risk of being condemned for his sexual orientation, hence the conditions for protection as refugee under the Romanian law are met.'
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Sexual orientation as reason for invoking justified fear of persecution; assessment of country of origin information
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The tribunal decided in favour of the applicant, quashed the ROI decision and granted asylum.

Chapter C, Asylum and subsidiary protection, case law relevant to art 2/h of Council Directive 2004/83/EC - no case law is available.

Response 2150194 of the Romanian Office for Immigration, 25.01.2008, on file with FRALEX and Letter No. 2597819/11.02.2014 of the Romanian Inspectorate for Immigration (*Inspectoratul Român pentru Imigrări*) to the Centre for Legal Resources, on file with the NFP.

[1].

Chapter D, Family reunification, case law relevant to art 4/3 of the Council Directive 2003/86/EC - no case law is available. Response 2150194 of the Romanian Office for Immigration, 25.01.2008, on file with FRALEX.

Chapter E, Freedom of assembly – relevant case law

Case title	Case of Asociaţia Pro Vita pentru Copii Născuţi şi Nenăscuţi – Filiala Bucureşti v. Primăria Municipiului Bucureşti şi Asociaţia ACCEPT, Sentinţa Civilă [Civil Judgement] nr.2807/24.10.2008 of the Romania/ Tribunalul Bucureşti [Bucharest Tribunal]; File No.18838/3/CA/2008
Decision date	24.10.2008
Reference details (type and title of court/body; in original language and English [official translation, if available])	Romania/ Tribunalul Bucuresti [Bucharest Tribunal]
Key facts of the case (max. 500 chars)	On 19 May 2008, Asociaţia Pro Vita filed an administrative complaint for an injunction against the gay march and for the annulment of the authorization issued by Bucharest Mayor's Office to ACCEPT Association in the form of a protocol of collaboration between the two entities allowing for the organization of the march. The administrative complaint was introduced a few weeks before the gay march was scheduled. Due to procedural reasons related to lack of written evidence provided before the court, the Bucharest Tribunal reviewed the case on its merits after the gay march took place.
Main reasoning/argumentation (max. 500 chars)	The limitations on freedom of assembly were argued, the plaintiffs invoking allegedly infringing ethical and moral norms, as well as the right to private and family life. According to the plaintiff, the gay march is aiming to promote sexual relations between same-sex persons which breach the human rights of others. The plaintiff invoked *Dudgeon* case arguing that sexuality can be legitimately limited by the authorities, as defending children's moral and spiritual integrity was one of the legitimate aims advanced by the plaintiff.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The case recognizes the right to freedom of assembly in the case of the gay march. The court stated clearly that the protection of the ethical and moral norms, the right to private and family life and the children's moral and spiritual integrity are not legitimate aims that justify a denial of authorisation. The court stated that the authorisation of a gay march alone is not susceptible of violating the right to private life of others. The court found *Dudgeon* jurisprudence not to apply in the matters of this case. The court relied on *Baczkowski v Poland*.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	First, the court dismissed the request for an injunction as the claim was not valid anymore at the time of the decision, the gay march already took place. Second, the court justified the dismissal of the claim regarding the annulment of the protocol on substantive grounds related to pluralism and ensuring the exercise of the right to freedom of association and assembly (Art.11 of the ECHR), according to *Baczkowski v Poland*. The judgment became final after the appellate court upheld the decision of the first instance court.

Casetitle	2006 Metrou Case; M.C. and A.C. v Romania,Application No.12060/12
Decisiondate	The case is pending
Referencedetails(typeand title ofcourt/body;inoriginallanguage andEnglish[officialtranslation if	European Court of Human Rights
Keyfactsofthecase (max.500chars)	On3 June 2006, in the metro train on their way back home from the annual gay march, six young women and men had been attacked by a group of young men who were shouting at them insults regarding their alleged homosexuality.A preliminary criminal investigation was opened upon victims' complaint with the police. The victims provided medical evidence of their injuries and pictures of the attackers; they also identified one man who was in the group of attackers. The police started a preliminary investigation and carried out scarce criminal investigation actions in the first month after the attack. Afterwards, the investigation was discontinued for almost a year due to the police station being closed down. More than five years after the attack the prosecutor terminated the investigation because it became time-barred. The court upheld the
Main reasoning/argumentation(max.500chars)	The applicants complain before the ECtHR under Articles 3 and 8 of the Convention about the failure to investigate adequately their criminal complaints concerning acts of violence motivated by hatred against homosexuals and more generally about the lack of adequate legislative and other measures to combat hate-crimes directed against LGBT persons. They point out that the investigation took too long and failed to identify the culprits despite the concrete evidence brought to them. They also complain that the State breached its positive obligations under Article 11 of the Convention by failing to conduct effective investigations into an attack that was connected to their exercise of the freedom of assembly. Invoking Article 13 of the Convention together with Articles 3, 6, 8, 11, and 14 of the Convention, the applicants complain that they had no effective remedy at their disposal to complain either regarding the hate-crimes or about the fact that the criminal investigation lasted too long and was inefficient.

Keyissues(concepts, interpretations)clarifiedbythecase(max.500chars)	The case raises the issue of effective investigation into hate-crimes and the content of positive obligations of the State to investigate allegations of crimes connected to the participation to a public event that is an expression of the freedom of assembly.

Results(sanctions)andkey consequencesorimplicationsofth ecase(max.500chars)	The preliminary criminal investigation in this case was terminated by the prosecutor for becoming time-barred, a decision that was upheld by the judge. The case is currently pending before the European Court of Human Rights.

Chapter F, Hate speech - no case law was available before 2010.

Response of the General Prosecutor No. VIII-1 from 25.01.2008, response of the Supreme Council of Magistrates No. 28517/1154/2007 from 15.01.2008 and response of the Ministry of Justice No.146817 from 21.12.2008, on file with FRALEX.

Casetitle	Bogdan Georgescu v. Romania, Application No.67772/13
Decisiondate	On 13 March 2014, the case was declared inadimissible
Referencedetails(typeand title ofcourt/body;inoriginallanguage andEnglish[officialtranslation,if	European Court of Human Rights
Keyfactsofthecase (max.500chars)	In the morning of 27 July 2011, the applicant alleges beingassaulted and insulted by several police officers in the courtyard of a police station in the center of Bucharest in connection to his alleged homosexuality. A preliminary criminal investigation was openend upon the applicant's complaint with the police. The applicant also introduced a complaint of discrimination with the national equality body against the police officers. The complaint was declared inadmissible rationae materiae, a decision that was upheld by the Bucharest Court of Appeal. In response to this complaint, four months after the incident, the applicant was fined by one police officer for allegedly insulting her in the morning of 27 July 2011. After a period of one year and a half during which the applicant did not receive any solution to his complaint, he filed a complaint with the criminal court for unreasonable delay by the law enforcement. The court dismissed the complaint for being inadmissible since there is no legal basis for introducing such a complaint in court in Romania. In the meanwhile, on 30 May 2013, the prosecutor issued a Resolution not to start the criminal investigation against any police officer for Abusive behaviour (Article 250 of the Penal Code) because there is reasonable doubt in the case. The applicant unsuccessfully appealed this resolution to the Prim Procuror and in January 2014, the judge upheld the decision of the prosecutor.
Main reasoning/argumentation(max.500chars)	The applicant alleges that the treatment to which he was subjected to by the police officers constituted degrading treatment and breached his private life. Moreover, the State failed to carry out an effective investigation in reasonable time, which amounts to a violation of the procedural limb of Article 3 and 8. The applicant also raises that his right to an effective remedy was breached because in the two years period until the preliminary criminal investigation was finalized by the prosecutor he did not have access to an effective remedy against the investigators' handling his complaint ineffectively, with unreasonable delay. Finally, the applicant complained that the police officers discriminated against him on the ground of sexual orientation and that the law enforcement did not fulfil their procedural obligation to investigate the unlawful bias that motivated the assault committed against him by the police officers, which amounts to a violation of Article 1 of Protocol 12 and Article 14 in conjunction with Articles 3 and 8 of he Convention.

Keyissues(concepts, interpretations)clarifiedbythecase(max.500chars)	The case raises the issues of effective investigation into hate-crimes and access to effective remedies against law enforcement's unreasonable delay in the criminal investigation.
Results(sanctions)andkey consequencesorimplicationsofthecase(max.500chars)	The European Court of Human Rights declared the case inadmissible in the preliminary phase, without giving any reasoning for its decision.

Chapter G, Applicability of legislation on transgender issues.

Chapter G, Name change and/or sex change of transgender people, relevant case law, case 1

Case title	Case of D. Sentinta Civila [Civil Judgement] nr.1656/23.02.2006 of the Romania/Judecatoria Sectorului 2 Bucuresti [Bucharest Second District's First Instance Court]; File No.1338/300/2004 (Old number 1721/2004)
Decision date	23.02.2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	România/Judecătoria Sectorului 2 Bucureşti [Bucharest Second District's First Instance Court]
Key facts of the case (max. 500 chars)	D. wanted to change her sex from female to male. She introduced a civil case in 2001 which was not successful. In 2004 she introduced another civil case against Bucharest Second District's Local Council asking for the authorisation for the sex change and the change of her name accordingly. The court asked for an expert report from the National Institute of Legal Medicine (NILM). The expert report was provided after five months. It stated that, taking into consideration D's situation, the sex-change operation is not the only treatment for her condition. Consequently, it issued a series of recommendations to be observed for a period of one year and after that the NILM allowed a re-evaluation. In 2006, the re-evaluation report allowed the sex-change operation. Consequently, the court decided in this sense.
Main reasoning/argumentation (max. 500 chars)	The request for a sex change and change of name is based on the following legal provisions: Article 26 paragraph (2) and Article 34 of the Constitution, Article 44, letter (i) and Article 57-58 of the Law 119/1996, Article 8 of the European Convention on Human Rights.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The nature of the case is contradictory – the respondent is the local council in the area of the person's domicile. The court based its decision on forensic medical expertise. This expertise could only be provided by the NILM. The commission of experts recommended the person a period of time to think about the decision etc without having clear, scientific standards to be used or a predictable procedure to be observed. During this time the case was pending before the court.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The court authorised the sex change and the change of name. The court asked the Bucharest Second District's Local Council to make the modifications in the civil status documents of D. The civil case took two years.

Chapter G, Name change and/or sex change of transgender people, relevant case law, case 2

Case title	Civil decision no. 384/A/2011
Decision date	27 September 2011
Reference details (type and title of court/body; in original language and English [official translation, if available])	Cluj Tribunal [Tribunalul Cluj]
Key facts of the case (max. 500 chars)	The claimant, a transgender man, lodged a request that the gendered information included in his entry in the civil status registry, including the first name, the gender marker and the personal identification code, be changed to reflect his self-identified gender identity. He had been diagnosed with gender identity disorder and lived publicly as a man, but had not undertaken genital surgery. The first instance court partially rejected his request, insofar as concerned to the change of his first name, on the basis that he had not had genital surgery.
Main reasoning/argumentation (max. 500 chars)	The Cluj Tribunal fully allowed the claimant's request for legal gender recognition. In doing so, the Tribunal stated that self-identified gender identity formed an integral part of human personality, and constitutes a fundamental aspect of dignity, liberty and self-determination. Nobody may therefore be forced to undergo any medical procedures, including surgical, as a prerequisite for legal gender recognition.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Medical treatment may not be imposed as a prerequisite to the legal recognition of gender identity.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The gendered information in the claimant's entry in the civil status registry was changed to reflect his self-identified gender identity as a man.

Chapter H, Miscellaneous, relevant case law 1

Case title	T. M. v Ministry of Justice, National Administration of Penitentiaries, Ministry of Administration and Internal Affairs, General Inspectorate of the Romanian Police, Constanţa County Inspectorate of Police
Decision date	Civil Decision No.2333R of 14.12.2012 (final), File No. 19148/300/2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	Civil action – request for compensation and general measures; Curtea de Apel Bucuresti [Bucharest Court of Appeal] Applicant: T. M. Respondents: Ministry of Justice, National Administration of Penitentiaries, Ministry of Administration and Internal Affaires, General Inspectorate of the Romanian Police, Constanta County Inspectorate of Police. Third-party intervention: ACCEPT.
Key facts of the case (max. 500 chars)	T. M. was in detention during 2004-2005 in several penitentiaries. In some of them he claims to have been subjected to ill treatment by inmates who abused him sexually and by the staff who did not protect him against such treatment. Although T. M. alleges complaining to one of the supervisors regarding this treatment, there was no official registration of the complaint and no measures were taken. According to his medical records, T. M. repeatedly mutilated himself during detention and needed surgery twice within one month. He was also diagnosed with mental suffering (‘tulburare de adaptare’).
Main reasoning/argumentation (max. 500 chars)	The Court of Appeal rejected T.M.’s claims that he suffered physical and moral damage amounting to inhuman and degrading treatment because of the lack of action on the part of the authorities in the context of a systematic failure of the authorities to ensure their positive obligation to protect him as a homosexual and a victim of rape. The Court found a violation of Article 3 of the ECHR but only with regards to the penitentiary’s lack of action to protect T.M. against self-mutilation and to provide him with the mental health treatment recommended by the doctors.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Key issues introduced by the Applicant: the lack of effective complaints procedures within the penitentiary system seriously infringes human rights. Sexual minorities are at particular risk in such a system. The segregation, discrimination and abuse against sexual minorities or people allegedly associated with homosexuals are tolerated by prison staff which amounts to infringements of various human rights. The penitentiary system is not adapted to address rapes and sexual violence inflicted between inmates, affecting in particular homosexual men.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The first instance court found there are enough circumstances corroborating to prove a violation of Article 3 of the Convention with respect to NAP's lack of reasonably expected measuresto avoid the realization of an immediate risk to the physical integrity of the applicant which NAP knew of or should have known of. However, the higher courts overturned this decision, finding NAP responsible only for the lack of medical care and not taking the measures necessary to prevent self-mutilation of the applicant; they dismissed any connection to sexual orientation and alleged rape motivating that the applicant did not prove beyond reasonable doubt that the sexual abuses happened and that the protection from the State could not have been ensured without filing a written or oral complaint. In June 2013, T.M. filed an application to the European Court of Human Rights arguing violations of Articles 3, 6, 8, 13, 14 and Protocol 12 of the ECHR. The case has not been communicated, yet.

Chapter H, Miscellaneous, relevant case law, case 2

Case title	Reproductive Rights Case - Romania/ Decizie nr. 418/18.07.2005 asupra sesizării de neconstituţionalitate a Legii privind sănătatea reproducerii şi reproducerea umană asistată medical [Decision No.418/18.07.2005 on the notification of non-compliance with the Constitution of the Law on reproductive health and medically assisted reproduction]; Constitutional Review of a Draft Bill at the request of the President of Romania – File No.545A/2005.
Decision date	18.07.2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	Romania/ Curtea Constituţională a României [Constitutional Court of Romania].
Key facts of the case (max. 500 chars)	In 2005 the Parliament adopted a draft law on reproductive health and medically assisted reproduction containing many provisions that were not in compliance with fundamental rights stated in the Romanian Constitution. One of the issues referred to the subjects of the right to access reproductive medical services and assistance recognised by the law. Though in the general part of the draft this right was recognised to any person, the rest of the draft only referred to couples, denying the right in the case of people who are not in a couple.
Main reasoning/argumentation (max. 500 chars)	The draft creates a privilege for individuals who are part of a couple and, at the same time, discrimination against individuals who are not in a couple. This amounts to a violation of the principle of equality before the law and before the public authorities stated in Article 16 of the Constitution. The existence of an agreement between the couple to access medically assisted reproduction services is an essential condition for the existence of the right to access this service which is against Article 16.(1) of the Constitution.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Court recognises: the right of access to medically assisted reproduction services and assistance as a right according to the bill; the marital/couple status as a ground of discrimination in access to medically assisted reproduction services; that the requirement to have an agreement between the couple is in itself excluding the exercise of the right for a category of people – those who are not in a couple.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Two thirds of the provisions of the bill were found to be in violation of the Constitution. The Court returned the draft to the Senate for amendments to make it comply with the Constitution. Because the violations affected the philosophy of the law in itself, the bill was rejected by the Senate.

Chapter I, Case law relevant to the impact of good practices on discrimination on the ground of sexual orientation, case 1

Case title	D. Z. v. Distrigaz Sud, Decision 4222 in File no.710/4/2006
Decision date	August, 1st, 2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	Judecătoria sectorului 4 Bucureşti [First instance court No.4, Bucharest]
Key facts of the case	The plaintiff complained of being subjected to discriminatory conduct based on his affiliation to an NGO defending the rights of LGBT people in Romania (ACCEPT Bucureşti). The plaintiff is employed by the NGO and when he went to pay the monthly bill to the defendant, employees of the defendant subjected him to degrading remarks. The plaintiff sought civil damages and asked the court to order the defendant to take institutional measures to preclude discriminatory behaviour in the future, to include in its internal norms a specific prohibition of discrimination on all grounds and to train its employees on anti-discrimination provisions.
Main reasoning/argumentation	The court defined 'interest' in conjunction with 'the practical gain obtained'. The interest must exist, be personal, real and actual and legal. The plaintiff proved the existence of the facts entailing an act of discrimination but the defendant did not prove that the facts proved are not discriminatory.
Key issues (concepts, interpretations) clarified by the case	The court clarified the concept of the liability of the employer for the actions of its employees under the anti-discrimination legislation in conjunction with the provisions of the Civil Code for torts. The court also discussed the issue of system remedies such as the institutional measures on combating discrimination and diversity management policies or the training requested by the plaintiff as a possible remedy. In deciding, the court also offered an explanation of the concept of reversal of the burden of proof, linking it to accessibility of evidence.
Results (sanctions) and	The defendant was ordered to pay 1,000 Euro in civil damages but the Court considered that there was no interest for

key consequences or implications of the case	the plaintiff to request institutional measures on combating discrimination in the workplace. The decision was appealed both by the defendant and by the plaintiff.

Annex 2 – Statistics

Chapter A, Implementation of Employment Directive 2000/78/EC in relation to sexual orientation

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Total complaints of discrimination on the ground of sexual orientation (equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	N/A	N/A	1	5	6	9	6	7: 3 personal dignity, 3 access to public services, 1 employment	6: 5 person al dignit y, 1 emplo yment	6: 5 personal dignity, 1 employme nt
Total finding of Discrimination confirmed (by equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	N/A	N/A	0	1 : use of discrimin atory language	0	3: 1. use of discrimina tory language, 2. access to services, 3. discrimina tory language	1 (employment)	1 (harassment by the gendarmerie)	1	1

						in the media				
National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	N/A	N/A	0	1 : fine of 2,000,000 ROL (55 Euro)	0	1. Fine of 5,000,000 ROL (143 Euro), 2. fine of 10,000,000 ROL (286 Euro) and 3. administrative warning	Fines of 400 (111 Euro) and 1,000 RON (278 Euro) against two perpetrators and warning against the public authority in charge	Warning	1 fine of 4.000 RON (900 EURO)	1 fine of 500 RON (125 Euro)
National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	N/A	N/A	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A

	2010	2011	2012	2013	

Total complaints of discrimination on the ground of sexual orientation (equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	4, of which 2 on the right to dignity, 1 on access to employment, 1 on access to health services*	6, of which 4 on the right to dignity, 1 on access to employment, and 1 on access to banking services	5, of which 3 on the right to dignity, and 2 on access to public places	12 all concerning the right to dignity	
Total finding of Discrimination confirmed (by equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	2, both concerning the right to dignity	1, concerning the right to dignity	concerning the right to dignity	2,	
National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	2, of which one a warning, and one a recommendation,	1, a warning,	1, a recommendation	2 both fines (one of 400 RON and one of 2000 RON, divided between two defendants respectively)	

National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)		N			

*According to Letter No. 657/28.02.2014 of the NCCD to the Center for Legal Resources, on file with the NFP.

Chapter B, Freedom of movement of LGBT partners

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC (i.e., LGBT partners having exercised their freedom of movement as granted to family members of EU citizens, whether under Directive 2004/38/EC or under previous instruments)	-	-	-	-	-	-	-	-	-	-
Number of LGBT partners who claimed their right to residence but were denied this right	-	-	-	-	-	-	-	-	-	-

	2010	2011	2012	2013
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC (i.e., LGBT partners having exercised their freedom of movement as granted to family members of EU citizens, whether under Directive 2004/38/EC or under previous instruments)	-	-	-	-
Number of LGBT partners who claimed their right to residence but were denied this right	-	-	-	-

Chapter C, Asylum and subsidiary protection, protection due to persecution on the grounds of sexual orientation

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of LGBT individuals benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation.	N/A*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Number of LGBT individuals who were denied the right to asylum or to subsidiary protection despite having invoked the fear of persecution on grounds of sexual orientation	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

** Response 2150194 of the Romanian Office for Immigration, 25.01.2008, on file with FRALEX.*

	2010	2011	2012	2013	2014
Number of LGBT individuals benefiting from asylum/ subsidiary	unknow	unkno	unkno	unkno	unkno wn
Number of LGBT individuals who were denied the right to asylum or to subsidiary protection despite having invoked the fear of persecution on	unknow n	unkno wn	unkno wn	unkno wn	unkno wn

Chapter C, Asylum and subsidiary protection, protection of LGBT partners

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of LGBT partners of persons enjoying refugee/ subsidiary protection status residing in your country falling under Art 2/h Directive 2004/83/EC	-	-	-	-	-	-	-	-	-	-
Number of LGBT partners of persons enjoying refugee/subsidiary	-	-	-	-	-	-	-	-	-	-
protection status who were denied the possibility to stay with their partner										

** Response 2150194 of the Romanian Office for Immigration, 25.01.2008, on file with FRALEX.*

	2010	2011	2012	2013
Number of LGBT partners of persons enjoying refugee/ subsidiary protection status residing in your country falling under Art 2/h Directive	unknown	unknown	unknown	unknown

Chapter D, LGBT partners benefiting family reunification

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of LGBT partners of third country nationals residing in your country benefiting from family reunification.	-	-	-	-	-	-	-	-	-	-
Number of LGBT partners of third country nationals residing in your country who were denied the right to benefit from family reunification	-	-	-	-	-	-	-	-	-	-

	2010			
Number of LGBT partners of third country nationals residing in your country benefiting from family reunification.	unknown	unknown	unknown	Unknown
Number of LGBT partners of third country nationals residing in your country who were denied the right to benefit from family reunification	Unknown	Unknown	Unknown	Unknown

Chapter E, LGBT people enjoyment of freedom of assembly

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of demonstrations in favour of tolerance of LGBT people, gay pride parades, etc	0	0	0	0	0	1	1	2	1	1
Number of demonstrations against tolerance of LGBT people.	0	0	0	0	0	2	2	2	2	2

Chapter F, Homophobic hate speech

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of criminal court cases regarding homophobic hate speech initiated (number of prosecutions)	N/A	N/A	N/A	N/A	N/A	N/A	0 They do not make a distinction on grounds of discrimination.	0	NReg	NReg
Number of convictions regarding homophobic hate speech (please indicate range of sanctions ordered)	N/A	N/A	N/A	N/A	N/A	N/A	Not registered by the authorities (NReg.)	NReg	NReg	NReg
Range of sanctions issued for homophobic hate speech	N/A	N/A	N/A	N/A	N/A	N/A	NReg.	NReg.	NReg	NReg
Number of non-criminal court cases initiated for homophobic statements	NReg.	NReg.	NReg.	NReg.	NReg.	NReg.	NReg.	NReg.	NReg.	NReg.
Number of non-criminal court cases initiated for homophobic statements which were successfully completed (leading to a decision in favour of the plaintiff, even if no sanctions other than symbolic were imposed)	NReg.	NReg.	NReg.	NReg.	NReg.	NReg.	NReg.	NReg.	NReg.	NReg.

Chapter F, Homophobic motivation of crimes as aggravating factor

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of criminal court decisions in which homophobic motivation was used as an aggravating factor in sentencing	N/A	N/A	N/A	N/A	N/A	N/A	Not registered by the authorities (NReg.)	NReg.	NReg.	NReg.

Chapter G, Transgender issues

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of name changes effected due to change of gender	1	1	0	0	1	0	1	2	2	2
Number of persons who changed their gender/sex in your country under the applicable legislation	Non response from the authorities (NR)	NR	NR	NR	NR	NR	NR	NR	NR	NR

According to information provided by the DEPABD, between 2010 and 10 February 2014 five persons changed the gender in their identity documents. [332]

[332] Directorate for Persons Record and Databases Management (*Direcţia pentru Evidenţa Persoanelor şi Administrarea Bazelor de Date*), Letter No. 2578/10 February 2014 to the Center for Legal Resources, on file with the NFP.

Table 1: Requirements for rectification of the recorded sex or name on official documents

	Intention to live in the opposite gender	Real life test	Gender dysphoria diagnosis	Hormonal treatment/ physical adaptation	Court order	Medical opinion	Genital surgery leading to sterilisation	Forced/ automatic divorce	Unchangeable	Notes
AT	✓	✓	✓	✓		✓	✗ court decision	✗ court decision		Legal changes expected to confirm court decisions
BE	✓			✓		✓	✓			Rectification of recorded sex
BE	✓			✓		✓				Change of name
BG				?	✓	✓	?	✓	✓ (birth certificate)	Only changes of identity documents are possible (gap in legislation)
CY						✓	✓	?		
CZ	✓	✓	✓	✓		✓	✓	✓		These requirements are not laid down by law, but are use by medical committees established under the Law on Health Care
DE	✓		✓		✓	✓				Small solution: only name change
DE	✓		✓	✓	✓	✓	✓	✗ court decision and law		Big solution: rectification of recorded sex
DK	✓	✓				✓	✓	?		Rectification of recorded sex
DK			✓			✓				Change of name
EE	✓	✓				✓	✓	?		
EL					✓	✓	✓	?		
ES			✓	✓		✓				
FI	✓	✓	✓			✓	✓	✓		Name change possible upon simple notification, also before legal recognition of gender reassignment
FR			✓	✓	✓	✓	✓	✓		Requirements set by case law, legal and medical procedures uneven throughout the country
HU						✓		✓		No explicit rules in place. Requirements descend from praxis, but unclear what is necessary in order to obtain a medical opinion. After 1 January 2011 a marriage can be transformed into a registered partnership

IE									✓ (name change possible by Deed Poll and under Passports Act 2008)	Further changes expected following court case *Lydia Foy* (2007)
IT			✓	✓	✓	✓	✓	✓		
LT									✓ (personal code)	Legal vacuum due to lack of implementing legislation, courts decide on an ad hoc basis.
LU										No provisions in force, praxis varies.
LV						✓	✓ Change of name is possible after gender reassignment			Medical opinion is based on an intention to live in the opposite gender and on a diagnosis of gender dysphoria. For rectification of the recorded sex, currently the Ministry of Health decides case-by-case (parameters not specified). Amendments to the law were proposed but not adopted.
MT	✓	✓	✓	✓	✓	✓	✓	(only unmarried, divorce not possible)		Requirements unclear, decided by Courts on an ad hoc basis
NL	✓	✓	✓	✓	✓	✓	✓			According to Article 28a of the civil code, the requirement of physical adaptation does not apply if it would not be possible or sensible from a medical or psychological point of view. Changes are underway, forced sterilisation might be removed.
PL				✓	✓	✓	✓	✓		No legislation in place, requirements set by court practice
PT	✓		✓	✓	✓	✓	✓			Case-by-case decisions by courts, new act expected
RO	✓	✓	✓	✓	✓	✓	✓			
SE	✓	✓			?	✓	✓	✓		Decision issued by forensic board
SI										No formalities for change of name
SK							✓	?		Change of name granted simply upon application accompanied by a confirmation by the medical facility.
UK										Change of name requires no formalities

UK	✓	✓	✓			✓		✓		Rectification of the recorded sex

Notes: This is not a table about the requirements for accessing gender reassignment treatment. This means, in particular, that gender dysphoria diagnosis might be in practice required by medical specialists as a pre-condition for a positive opinion. This situation is not captured by this table, which illustrates the conditions for legal recognition of gender reassignment.

✓= applies; ?=doubt; ✖=removed; change since 2008

RO: These requirements are included in a document issued by the National Institute for Legal Medicine (NILM), setting out the steps that a person has to follow to obtain authorisation for genital surgery, which in turn may be considered as a prerequisite for legal gender recognition. However, in practice trans persons have been known to be able to circumvent the procedure before the NIML, and change their documents without having to prove compliance with all requirements, including genital surgery (see main report update April 2010 - December 2013, for details).

Table 2: Discrimination on grounds of sexual orientation in legislation: material scope and enforcement bodies

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED[333]	All areas of RED*		
AT		✓		✓	Two of nine provinces have not extended protection to all areas covered by RED: Vorarlberg and Lower Austria. Vorarlberg extended protection to goods and services in 2008.
BE			✓	✓	
BG			✓	✓	
CY	✓			✓	
CZ			✓		New anti-discrimination legislation adopted
DE			✓	✓	
DK	✓			✓	New equality body set up
EE	✓			✓	New anti-discrimination legislation adopted
EL	✓			✓	
ES			✓		
FI		✓			
FR	✓			✓	
HU			✓	✓	
IE		✓		✓	

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Employment discrimination is prohibited in all EU Member States as a result of Directive 2000/78/EC. Directive 2000/43/EC (Racial Equality Directive) covers, in addition to employment and occupation, also social protection (including social security and healthcare), social advantages, education and access to and supply of goods and services which are available to the public, including housing.

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED[333]	All areas of RED*		
IT	✓				
LT		✓		✓	
LU		✓		✓	
LV		✓		✓	
MT	✓				
NL		✓		✓	
PL		✓			Despite the adoption of new anti-discrimination legislation, discrimination on grounds of sexual orientation is not prohibited in all areas specified in Racial Equality Directive.[334]

[334] Poland, The Act on implementation of the European Union's provisions concerning equal treatment (*Ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania.*), 3 December 2010, available at: http://isap.sejm.gov.pl/DetailsServlet?id=WDU20102541700

As regards sexual orientation, Article 8.1 of the law stipulates as follows:

"It is prohibited to treat unequally persons on the grounds of sex, race, ethnic origin, nationality, religion, belief, creed, disability, age or sexual orientation with regard to:
1) access to vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience
2) conditions for access to and carrying out of self-employment or access to occupation or employment
3) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.
4) access and conditions of using of labour market instruments regulated in the law from 20 April 2004 on promotion of employment and labour market institutions, that are offered by labour market institutions and labour market instruments and labour market services offered by other entities that act for employment, development of human resources and counteracting unemployment."

Other areas of RED (including social security and healthcare), social advantages, education and access to and supply of goods and services which are available to the public, including housing, are not covered. Moreover, the Ombudsperson who is the national equality body has limited competences to intervene in the case of a conflict between private parties.

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED[333]	All areas of RED*		
PT	✓				
RO			✓	✓	
SE			✓	✓	
SI			✓	✓	
SK			✓	✓	
UK			✓	✓	The Equality Act 2010 replicates the sexual orientation protection offered in the Equality Act (Sexual Orientation) Regulations 2007 and the Employment Equality (Sexual Orientation) Regulations 2003 and expands protection in a number of ways. The new Equality Act is expected to enter into force October 2010.
TOTAL	**9**	**7**	**11**	**20**	

Note: ✓ = Applies; **?** = doubt; **x** = removed; **change since 2008**

Table 3: Discrimination on grounds of gender reassignment or identity in national legislation

Country Codes	Form of "sex" discrimination	Autonomous ground	Dubious/unclear	Comments
AT	✓			Legal interpretation and explanatory memorandum
BE	✓			Explicit provision in legislation or *travaux préparatoires*
BG			✓	
CY			✓	
CZ	✓			The new Antidiscrimination Act makes reference to 'gender identification'.
DE			✓	Constitutional amendment proposal by opposition ('sexual identity')
DK	✓			Decisions by the Gender Equality Board
EE			✓	The Gender Equality and Equal Treatment Commissioner has dealt with one application and took the view that the Gender Equality Act could apply to 'other issues related to gender'.
EL			✓	
ES			✓	The Constitutional Court held that gender identity is to be read in among the prohibited grounds of discrimination in Article 14 of the Constitution. Together with the adoption of several regional laws, a trend can be noted towards the protection of gender identity.
FI	✓			Committee for law reform proposes to explicitly cover transgender discrimination in equality legislation.
FR	✓			Case law and decisions by the equality body
HU		✓		
IE	✓			The Employment Equality Act 1998-2004 is interpreted in accordance with the case law of the Court of Justice of the EU.
IT			✓	
LT			✓	
LU			✓	
LV			✓	
MT			✓	
NL	✓			Case law and opinions of the Equal Treatment Commission

Country Codes	Form of "sex" discrimination	Autonomous ground	Dubious/unclear	Comments
PL	✓			Discrimination on grounds of gender reassignment is considered 'sex' discrimination i.e. by labour courts. The judgments are not available in official court databases. This information was obtained from NGOs monitoring such court cases . In no legal act are gender reassignment or identity autonomous grounds.
PT			✓	
RO			✓	
SE	✓	✓		Discrimination on grounds of gender reassignment is still considered 'sex' discrimination. The new ground 'transgender identity or expression' now covers other forms of gender variance, regardless of gender reassignment.
SI			✓	The Act Implementing the Principle of Equal Treatment contains an open clause of grounds of discrimination.
SK	✓			Explicit provision in legislation
UK		✓		The Equality Act 2010 replicates the 'gender reassignment' protection offered in the Sex Discrimination Act since 1999, but removes the requirement to be under "medical supervision" and expands protection in several ways. The new Equality Act is expected to enter into force in October 2010.
TOTAL	**10**	**3**	**15**	

Note: ✓ = applicable; positive development since 2008

Table 4: Criminal law provisions on 'incitement to hatred' and 'aggravating circumstances' covering explicitly sexual orientation

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
AT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
BE	✓	✓	
BG			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
CY			General provisions could extend to LGBT people.
CZ			New Criminal Code in 2009 contains no explicit recognition of homophobic hate crimes. LGBT could fall under the category 'group of people', but as the law entered into force in January 2010 there is no case law yet. The explanatory report of the law also does not define the term.
DE			Hate speech legislation does not explicitly extend to homophobic motive, but extensive interpretation has been confirmed by courts.
DK	✓	✓	
EE	✓		
EL		✓	Article 23 of Law 3719/2008 provides for an aggravating circumstance in cases of hate crime based on sexual orientation.
ES	✓	✓	
FI		✓	According to the pertinent preparatory works, LGBT people could fall under the category 'comparable group'. A working group has proposed that the provision on incitement be amended to explicitly cover sexual minorities (2010).
FR	✓	✓	
HU			LGBT people could fall under the category 'groups of society'. Penal Code was amended to include hate motivated crimes against 'certain groups of society'. Case law has shown this includes the LGBT community.
IE	✓		Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
IT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
LT	✓	✓	Homophobic motivation was included in the list of aggravating circumstances in June 2009.

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
LU			General provisions could extend to LGBT people.
LV			Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
MT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
NL	✓	✓	The 2009 Public Prosecution Service's Bos/Polaris Guidelines for Sentencing recommend a 50% higher sentence for crimes committed with discriminatory aspects.
PL			General provisions could extend to LGBT people
PT	✓	✓	
RO		✓	Article 369 of the Criminal Code on incitement to hatred does not mention sexual orientation explicitly, but covers incitement against a 'category of persons', without further specification. Article 77.(h) of the Criminal Code stipulates explicitly the aggravating circumstance of committing a crime on the ground of sexual orientation, among other grounds. The new Criminal Code was adopted in 2009 and entered into force on 1 February 2014.
SE	✓	✓	
SI	✓		Article 297 of the new Penal Code concerning provoking or stirring up hatred, strife or violence, or provoking other inequality explicitly includes sexual orientation. Homophobic intent is only considered an aggravating circumstance in the case of murder.
SK			LGBT people could fall under the category 'group of people'
UK (N-Ireland)	✓	✓	
UK (England & Wales.)	✓	✓	The Criminal Justice and Immigration Act 2008, extending provisions on incitement to racial or religious hatred to cover the ground of sexual orientation, came into force on 23.03.2010. It applies to Scotland as well.
UK (Scotland)	✓	✓	In June 2009, the Offences (Aggravation by Prejudice) (Scotland) Act was passed, entry into force on 24 March 2010, also indicating homo- and transphobic motive as an aggravating circumstance.

Note: ✓= applicable; positive development since 2008

Table 5 - Definition of 'family member' for the purposes of free movement, asylum and family reunification

Country Codes	Free movement[335]		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
AT		✓		✓		✓	Article 59 of the Registered Partnership Act (BGBl. I, No. 135/2009) modifies Article 9 of the Settlement and Residence Act, which now stipulates that the definition of 'family member' includes a registered partner. Article 57 of the Registered Partnership Act modifies Article 2/1 of the Asylum Act [Asylgesetz], which now stipulates that the definition of 'family member' includes a registered partner, provided that the registered partnership had already existed in the country of origin. Same-sex spouses are likely to be treated as registered partners.
BE	✓	✓	✓	✓	✓	✓	
BG							Article 7 of the new Family Code (01.10.2009) confirms that marriage is a mutual agreement between a man and a woman.
CY							
CZ		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DE		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DK	✓	✓	✓	✓	✓	✓	
EE							The new Family Law Act (entry into force 01.07.2010) defines marriage as a different-sex institution only and considers marriage between persons of the same sex invalid. Family reunification possible when the partner can prove that he/she is economically or socially dependent.
EL							
ES	✓	✓	✓	✓	✓	✓	Organic Law 2/2009 of 11 December (Spain/Ley Orgánica 2/2009 (11.12.2009)) has modified Organic Law 4/2000 in order to grant couples who have an affective relationship similar to marriage the right to family reunification. Implementing regulations to this law have not been adopted, thus the meaning of the requirement that the 'affective relationship' be 'duly attested' remains to be clarified. Article 40 of the Law 12/2009 of 30 October on the right to asylum and subsidiary protection [del derecho de asilo y de la protección subsidiaria] replaces Law 5/1984 of 26.03.1984 and, by transposing the EU acquis, confirms the notion that a family member includes the de facto partner having an affective relationship similar to marriage.
FI	✓	✓	✓	✓	✓	✓	
FR	?	?	?	?	?	?	As a result of the entry into force on 14.05.2009 of a new Article 515-7-1 of the French Civil Code, inserted by law 2009-526 of 12.05.2009, foreign registered partnerships are recognised in France; the repercussions of this change for the purposes of free movement of EU citizens are still unclear. Family reunification of third country nationals depends upon the authorities' discretion, which may require additional conditions. No information available on refugees.
HU		✓		✓		?	Entry and residence rights for free movement are also granted for the unmarried *de facto* partner, subject to conditions.
IE		✓		✓		✓	Adoption of Civil Partnership Act in 2010. Immigration, Residence and Protection Bill not yet enacted, but the government intends to treat registered partners in the same way as spouses.

[335] In the vast majority of the Member States, no clear guidelines are available concerning the means by which the existence either of a common household or of a 'durable relationship' may be proven for the purposes of Art. 3 (2) of the Free Movement Directive.

Country Codes	Free movement[335]		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
IT							
LT							
LU		✓		✓		✓	The new law on free movement and immigration (29.08.2008) recognises as a family member a spouse or registered partner provided the conditions set forth in article 4 of the partnership law (09.07.2004) are fulfilled. Rights concerning family reunification and asylum are restricted to registered partnerships. Same-sex spouses are likely to be treated as registered partners.
LV		✓					Article 3.4 of the Cabinet of Ministers Regulation No. 586 on Entry and Residence includes in its definition of family member a person who is a dependant of a Union citizen or his or her spouse and who has shared a household with a Union citizen in their previous country of domicile.
MT							
NL	✓	✓	✓	✓	✓	✓	
PL							
PT	✓	✓	✓		✓		Allows same-sex couples to enter into a marriage since June 2010.
RO	✓	✓	✓		✓		The Civil Code (2009) includes a prohibition of same-sex partnership and marriage, including denial of recognition of partnerships and marriages concluded in other countries, but specifically exempts free movement rights from its ambit. No cases of same-sex partners or spouses seeking residence, asylum or family reunification rights in Romania have been reported so far.
SE	✓	✓	✓	✓	✓	✓	Allows same-sex couples to enter into a marriage since May 2009.
SI							Provides a legal scheme for registered partnership in domestic law, but without granting entry and residence rights to registered partners
SK							Family reunification possible when the partner can prove economic or social dependence.
UK	✓	✓	✓	✓	✓	✓	
TOTAL	**8**	**15**	**8**	**13**	**8**	**12**	

Note: ✓= applicable; ? = doubtful/unclear; positive changes since 2008; other developments since 2008.