



REPORT

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Romania: The Status of Lesbian, Gay, Bisexual and Transgender Rights

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Introduction

In this submission, ACCEPT (Romania),ⁱ IGLHRC,ⁱⁱ and ILGA-Europeⁱⁱⁱ provide information under sections B, C, and D of the General Guidelines for the Preparation of Information under the Universal Periodic Review^{iv} in regards to the human rights situation of lesbian, gay, bisexual, and transgender (LGBT) people in Romania. The report presents the relevant normative and institutional frameworks, assesses their implementation as regards LGBT people, and identifies achievements and challenges, together with recommendations for improving the human rights of LGBT people in Romania.

In 2002,^v Romania fully repealed its criminal penalties against same-sex relations between consenting adults. This came as a result of significant pressure on the Romanian government at the domestic level and from abroad, including from the United Nations,^{vi} the Council of Europe (requirements for membership and the jurisprudence of the European Court of Human Rights on the right to private life and right to nondiscrimination), and the European Union (on the basis of the Copenhagen political criteria for EU enlargement and through the

mechanism of EU-accession). As regards the social situation, the percentage of respondents who would not like a homosexual among their neighbors decreased from 86% in 2000^{vii} to 61% in 2007.^{viii} While this shows a positive change of attitude in a relatively short time, it also indicates the need for continued intervention to further reduce prejudice among more than half of Romania's population.

Relevant normative and institutional frameworks

International obligations: Romania acceded to the main United Nations human rights treaties, including the ICCPR, and to the European Convention on Human Rights, being subject to the respective case law. In addition, as a member of the European Union, Romania is subject to EU regulations, including the two Council Directives on anti-discrimination ("race" and "employment" directives).^{ix} Art. 11.2 of the Romanian Constitution provides that treaties ratified by parliament are part of national law, while Art. 20.2 of the Romanian Constitution established the priority of international human rights regulations over national laws, unless the latter are more favorable.

The Constitution of Romania stipulates two main principles in regards to the protection of human rights: the universality of human rights (Art. 15) and human rights equality (Art. 4 and Art. 16). Several rights reviewed in this report that are particularly relevant to LGBT people are specified in the fundamental law as follows: the right to life, physical and psychological integrity (Art. 22.1), the right not to be tortured or be subjected to inhuman or degrading treatment (Art. 22.2), the right to intimate, family, and private life (Art. 26), the freedom of expression (Art. 30), the right to information (Art. 31), the right to health (Art. 34), the freedom of assembly (Art. 39), the freedom of association (Art. 40), the right to inheritance (Art. 46), and the right to marry (Art. 48). On July 4, 2007, the *Constitutional Court* found unconstitutional a citizens' initiative to introduce a same-sex marriage ban in the Constitution. The decision was based on procedural grounds (the initiative did not respect the number and geographical representation of the people signing the petition).^x

The constitutional principle of human rights equality is implemented through government ordinance 137/2000 on preventing and combating all forms of discrimination (as completed and amended by subsequent legislation) and law 202/2002 on equal opportunities for women and men.^{xi} According to Art. 2(1) of ordinance 137/2000, discrimination entails, “*any difference, exclusion, restriction or preference based on race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, belonging to a disfavored 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. [emphasis added].” The nondiscrimination grounds in the antidiscrimination law include sexual orientation but not gender identity and expression, and the law on equal opportunities between women and men does not cover transgender status. As a result, transgender people are not explicitly protected in Romanian law.*

The institutional mechanisms set up by these two laws consist of the *National Council to Combat Discrimination* and the *National Agency on Equal Opportunities between Women and Men*.

The National Council to Combat Discrimination was set up to implement the antidiscrimination law.^{xii} Its role is: to prevent discrimination (through methods such as through education campaigns); to serve as a mediator to reduce and eliminate discrimination in concrete situations; to investigate and apply sanctions (warnings or fines) in cases of discrimination, including both those cases it identifies itself and those filed by individuals or organizations; to monitor parties involved in a discrimination case; and to provide assistance in filing a discrimination complaint with the council. The decisions of the council can be appealed in court. The council's national action plan to combat discrimination has also been adopted by the executive branch.^{xiii} Several legal amendments have also improved the antidiscrimination mechanism, including making the council accountable to parliament (as opposed to the executive government, as stipulated in the initial law). A respected human rights advocate was also appointed to the council in 2007, as a representative of civil society.^{xiv}

The council has applied sanctions in a number of situations related to discrimination on the basis of sexual orientation. The first such decision was taken in February 2005, when the council fined *Tarom*, the Romanian airline, for denying a same-sex couple access to its Valentine's Day specials for couples.

Recommendations: The national antidiscrimination mechanism should be strengthened through the following measures:

1. Include *gender identity and expression* among the grounds for nondiscrimination in ordinance 137/2000 to ensure that transgender people are explicitly protected from discrimination.
2. Improve the impact of the *National Council to Combat Discrimination* by:
 - Adopting criteria for a *prima facie* selection of petitions to increase the efficiency of the system and avoid delays;
 - Increasing the transparency of the decision-making process in order to encourage potential victims to use the petition system, either with or without legal assistance;
 - Improving public campaigning and expanding the council's network of local offices around the country to increase knowledge about and access to the antidiscrimination mechanism;

- Developing an institutional mechanism to ensure implementation of the council's decisions;
- Reducing the politicization of the appointment process for members of the council by adopting selection criteria based on human rights competency.

The right to equality and nondiscrimination and the right to work, as they relate to sexual orientation and gender identity and expression

Discriminatory regulation of LGBT teachers: A 2003 legal regulation from the Ministries of Education and Health required the psychological evaluation of teachers, stating that homosexuality was incompatible with teaching. This prompted ACCEPT to file an administrative complaint and successfully lobby for the regulation's repeal. However, a 2006 legal regulation^{xv} once again introduced discrimination on the basis of sexual orientation and gender identity. Both ministries agreed to clarify the meaning of the regulation to eliminate discrimination, and created a working group to address the issue that included ACCEPT. However, the working group has yet to meet. While the discriminatory 2006 regulation was recently repealed on technical, rather than substantive grounds, the possibility that discriminatory measures will be reintroduced cannot be ruled out.

Recommendations: The government should protect the right to work and take measures to combat discrimination—including on the basis of sexual orientation and gender identity and expression—against teachers and other individuals who work in the fields of education and health. These measures should include the development and implementation of relevant training and awareness programs.

Discrimination preventing men who have sex with men (MSM) from being blood donors: A regulation of the Ministry of Health^{xvi} effectively excludes MSM from being blood donors, by listing homosexuals among the risk groups prohibited from donating blood and by questioning prospective blood donors about whether they have had homosexual relations. The European Commission has recognized that risk comes from unsafe sexual behavior, as

opposed to membership in particular groups and declared that, “any discrimination of homosexual men based on their sexual orientation only is unacceptable.”^{xvii} In response to a petition from ACCEPT, the *National Council to Combat Discrimination* has affirmed the same view.^{xviii} At the time of writing, the Ministry of Health has eliminated homosexuals from its list of high-risk groups. It has also agreed that questions on same-sex relations should be removed from the donor questionnaire. A Ministry of Health order to this effect is to be finalized.

Recommendations:

1. The Ministry of Health's order removing discriminatory questions about same-sex relations from the blood donor questionnaire should be enacted.
2. The Ministry of Health should collect accurate data about the prevalence of HIV/AIDS in Romania to assess the proportion of the population that is at risk, respecting human rights during the data-collecting process.

The rights to free assembly, association, and expression, and the right to the security of the person in the context of LGBT public marches

Authorizing marches: In 2005, the mayor of Bucharest initially refused to authorize an LGBT march in his city, but an international campaign by ACCEPT and public intervention by government officials (including the President of Romania, Traian Basescu, Minister of Justice, Monica Macovei, and the *National Council to Combat Discrimination*) prompted the mayor to change his mind and authorize the march in 2005, as well as in 2006 and 2007. However, during the 2006 and 2007 marches the neo-fascist group Noua Dreapta, the Conservative Party (represented in parliament), and the New-Generation Party participated in parallel “Normality Marches.” Moreover, in 2006 and 2007 the government tolerated the display of neo-Fascist symbols, although they are banned in Romania.

Police protection: Although police protected marchers and consulted with ACCEPT about their preparatory plans, violent incidents still occurred and some have not been successfully investigated. In 2006, four Romanians and two foreigners were physically and verbally assaulted

in the subway after the march by a group of homophobic youth. The victims filed a complaint with the police in June 2006 and provided photographs to identify the perpetrators. However, the police did not initiate an investigation until April 2007, and it remains inconclusive. In 2007, police arrested about 100 violent opponents to the march, five of whom were charged with possession of homemade smoke bombs, while 50 others, including 20 minors (under 18 years of age), were fined for disturbing the public order. A few days before the 2007 march, two men leaving a theater known for its gay film festival were verbally and physically assaulted by a group of homophobic youth. The police arrested one of the men, however no further actions have been taken.

Recommendations:

1. Effective police protection at the march needs to be accompanied by police follow up to complaints about violence. When appropriate evidence is found, those responsible should be prosecuted, tried, and duly punished; victims should be provided with appropriate remedies and redress, including compensation.^{xix}

2. Local and central government officials should undertake public education campaigns aimed at the general public as well as at actual and potential perpetrators of violence, to combat prejudice underlying violence related to sexual orientation and gender identity^{xx} and ensure that LGBT people can enjoy their rights in an environment that is not dominated by fear, violence, and homophobia.

The right to privacy, the right to nondiscrimination, and the right to recognition before the law for transgender people

Access to surgery: Several people in Romania have undergone hormonal treatment and sex-reassignment surgery. However, there is no legislation that specifically addresses the steps necessary to change a person’s sex. Legislation about the procedures necessary for name changes

refers to the obligation to get a final court decision before changing one’s sex.^{xxi} However, law and procedure are unclear beyond this and consequently people seeking to change their sex undergo a long and painful process. Courts customarily require an expertise report from the Institute for Legal Medicine stating a person’s actual sex but the Institute’s personnel do not have the expertise necessary to provide this in-depth analysis.

Name changes in identification documents: The secondary legislation adopted by the executive branch addressing name changes creates a convoluted process for transgender people to legally change their name.

In 2005 F.B., a female-to-male transgender person, was not permitted to sign an individual employment contract as a tenor at an opera house because the opera house required tenors to designate their sex as “male” on their government-issued ID. F.B. asked either for this provision to be eliminated as a requirement for employment, or to be allowed to designate his sex as “male.” Without this contract, F.B. was denied access to social and health benefits.

Recommendations:

1. The Ministry of Health should issue regulations to determine the procedure for sex-reassignment surgery and establish an expert body to authorize these procedures and issue related instructions to physicians. Courts do not have the medical competence to make such decisions; their intrusion into such cases often violates the right to privacy of transgender people.

2. Medical procedures and treatment for sex-

reassignment surgery should be supported by public health insurance, especially for minors.

3. The Ministry of Justice should amend the secondary legislation for the application of law no. 119/1996 regarding civil status documents and government ordinance no. 41/2003 regarding administrative changes of name. The role of the court should be to recognize the name change—nothing more—to ensure that transgender people have legal recognition of their chosen gender identity.^{xxii}

Freedom from torture and cruel, inhuman or degrading treatment or

punishment; the right to security of the person, and the right to treatment with humanity while in detention

Rape, physical assault, and degrading treatment: ACCEPT has received several complaints from individuals in detention who are perceived to be gay or transgender and as such are subjected by other inmates to rape, physical assault, and degrading treatment. However, when such inmates complain, prison authorities rarely take immediate measures to ensure their safety or prosecute the perpetrators. ACCEPT visited the Jilava penitentiary on November 30, 2007, and learned that there is no clear procedure for inmates to report sexual abuses while in detention. ACCEPT has provided assistance in several cases of inmates seeking civil remedies from the government. However, prison authorities have regularly refused to testify about the identity of prison guards or other inmates involved in the alleged violence, effectively preventing the petitioners' access to civil remedies. Inmates typically do not initiate criminal proceedings; they often fear repercussions from other inmates, as prison authorities do not necessarily remove them from the cells where they were abused.

Recommendation: the Ministry of Justice and the National Authority of Penitentiaries should prevent abuses in detention by systematically educating prison personnel about human rights, sexual orientation, and gender identity issues; by monitoring prison facilities for such abuses; by adopting regulations to facilitate complaints from inmates about sexual abuse; and by providing medical examinations, written records of the complaint, and professional psychological support for the victim. The penitentiary should promptly follow up on complaints to secure the safety of inmates and prevent their further victimization, referring perpetrators to the prosecutor.

Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation

and gender identity are integral to each person's dignity.^{xxiii}

Rights deriving from the legal recognition of same-sex relations

Several rights are accessed by couples through the institution of marriage in Romania. These include the right to inheritance, joint property rights, immigration rights and others. Please see a more elaborated roster of rights and relevant Romanian legislation in Appendix 1.

In the existing legal framework, the right to marry is provided for in the Romanian Constitution (Art. 48) without specifying the sex of the spouses. The Family Code (Art. 1.3) refers

On September 11, 2007, S.T.L. was raped by a fellow inmate while others watched. The rapist hit S.T.L.'s hands with a stick and knifed his leg in order to force him to have sex. S.T.L. reported the abuse, but when he asked the guards to move him to another cell they refused and hit him. A few days later, four other inmates raped S.T.L. To humiliate him, they shaved his head and inserted a stick into his anus. Although the guards eventually moved S.T.L. to another cell, they prevented him from reporting the incidents to the head of the penitentiary.

to marriage in gender-neutral terms, and Romanian antidiscrimination legislation explicitly guarantees equal rights including in relation to the right to marry and to choose one's partner,^{xxiv} listing sexual orientation among the grounds for nondiscrimination.^{xxv} But in practice only opposite-sex couples can marry. Furthermore, legislators and citizens alike make attempts to restrict marriage to opposite-sex couples in Romanian law. In addition to the citizen's initiative described above, 27 members

of parliament introduced a legal proposal to this end, which was approved by the legal committee of the Senate in February, 2008.^{xxvi}

In accordance with existing legal provisions and the constitutional principles of human rights equality and the universality of rights, LGBT people cannot be excluded from the legal recognition of their same-sex relationships and from benefiting from the rights accessed currently through the institution of marriage.

Recommendation: adopt legislation to recognize the relationship between two partners, irrespective of their sex, ending the current discriminatory situation and ensuring equal access to the rights listed in Appendix 1.

Appendix 1 – Information on rights accessed through marriage in Romania**1. Patrimonial rights:**

1.1 Joint property acquired during marriage, Art. 30 and Art. 35 of the Family Code, together with the provisions on the division of joint property in case of divorce, Art. 36 of the Family Code

1.2 Joint debt, Art. 32 and Art. 33 of the Family Code

1.3 The right of spouses to receive financial support from each other, and the right of the child to receive financial support from its parents, Art. 86 of the Family Code, together with the criminal offence of family abandonment as regards financial obligations, Art. 305 of the Penal Code

1.4 Legal inheritance for the surviving spouse, according to the changes brought to the Civil Code through law no. 319/1944 regarding the inheritance right of the spouse versus the rights of other inheritors, the right over the domestic household and wedding gifts, and the right of occupancy

1.5 Donations between spouses can be revoked, Art. 937 of the Civil Code

1.6 The right to take over a rental lease from a deceased spouse or a spouse who leaves the dwelling, Art. 27 of law no. 114/1996 on housing

1.7 The right to indemnification in case a spouse dies, according to jurisprudence on civil responsibility

1.8 The right to social security survivors pension, as per Art. 67 et al. from law no. 19/2000 on the public system of pensions and other social security rights, as well as per other special laws (such as employees of the Romanian Information Service, border guards, police officers, and heroes of the revolution)

1.9 Patrimonial rights of the spouse surviving a war veteran, as per law no. 44/1994 on war veterans, and some rights of invalids and war widows

1.10 The calculation of minimum wages, Art. 2 et al. from law no. 416/2001 on minimum wages

2. Non-patrimonial rights:

2.1 The right for spouses to have joint last names, Art. 27 of the Family Code and provisions of law no. 119/1996 on civil status documents

2.2 The right of European Union (EU) and European Economic Area (EEA) citizens and their families to travel freely, as well as to permanent residency on Romanian territory, provisions of the government emergency ordinance no. 102/2005 on free travel on the Romanian territory for citizens of the member states of the EU and EEA

2.3 Shorter residency requirements for obtaining Romanian citizenship, Art. 8 from law no. 21/1991 on Romanian citizenship

2.4 The right of not be called as a witness, Art. 189 of the Civil Procedure Code and Art. 80 of the Penal Procedure Code

2.5 Incompatibilities in regards to appointments to certain public offices or certain activities (such as judge, public prosecutor, legal expert, civil servant, conflict of interest)

2.6 The defense against bigamy, Art. 303 of the Penal Code, or adultery, Art. 304 of the Penal Code

2.7 Special protection, including for the criminal offence of domestic violence, provisions of law no. 217/2003 on preventing and combating domestic violence

2.8 Parenting rights in regards to children born in the context of a marriage, Art. 53 et al. from the Family Code

2.9 Adoption, provisions of law no. 273/2004.

ENDNOTES

ⁱ ACCEPT is the first Romanian nongovernmental organization that defends and promotes the rights of lesbian, gay, bisexual, and transgender people at the national and international level.

www.accept-romania.ro

ⁱⁱ The International Gay and Lesbian Human Rights Commission (IGLHRC) is a US-based NGO working to secure the full enjoyment of the human rights of all people and communities subject to discrimination or abuse on the basis of sexual orientation or expression, gender identity or expression, and/or HIV status.

www.iglhrc.org

ⁱⁱⁱ ILGA-Europe, the European Region of the International Lesbian and Gay Association, works for human rights and equality for lesbian, gay, bisexual and transgender people at European level. It enjoys ECOSOC consultative status and participative status at the Council of Europe. ILGA-Europe has more than 240 national and local lesbian, gay, bisexual and transgender member organizations in 47 European countries.

www.ilga-europe.org

^{iv} Human Rights Council Decision 6/102 of September 27, 2007.

^v Emergency Ordinance of the executive government no. 89 of June 21, 2001, published in the Official Gazette no. 338 of June 26, 2001; adopted by Parliament through Law no. 61 of January 16, 2002, published in the Official Gazette no. 65 of January 30, 2002.

^{vi} Human Rights Committee review of Romania's compliance with ICCPR (CCPR/C/79/Add. 111, July 28, 1999 para 16).

^{vii} Open Society Foundation Romania, Public Opinion Barometer, quoted in ILGA-Europe, *Equality for Lesbians and Gay Men, a Relevant Issue in the EU Accession Process*, Brussels, November 2001, 60.

^{viii} Open Society Foundation Romania, Public Opinion Barometer, October 2007, 85.

^{ix} Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

^x "Constitutional Court Rejects Ban on Gay Marriage," *Romania Libera*, July 17, 2007.

^{xi} The two antidiscrimination laws took into account requirements set in the European Union anti-discrimination directives on race, employment, and equal opportunities for women and men.

^{xii} Government Ordinance 137/2000 Art. 19, as amended. www.antidiscriminare.ro

^{xiii} Government Decision no. 1258, 13 August 2004, on appointing the National Action Plan to Combat Discrimination

^{xiv} Istvan Haller was appointed to the Council as civil society representative in February 2007, following a campaign co-organized by ACCEPT and supported by 59 NGOs

^{xv} 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

^{xvi} Ministry of Health Order No. 1193/2007

^{xvii} The European Commission found that "under the Directive 2002/98/EC of 27th January 2003, the deferral criteria for safe blood donation are based not on sexual orientation, but on sexual risk behavior. Therefore any discrimination of homosexual men based on their sexual orientation only is unacceptable." Answer by the European Commission No E-4492/06EN of 30th November 2006 to question from members of European Parliament. Quoted in Marta Abramovicz, Campaign Against Homophobia, and Lambda Warsaw, *Situation of bisexual and homosexual persons in Poland*, Warsaw, 2007.

^{xviii} Decision No. 260, August 29, 2007; <http://www.cncd.org.ro/presa/Comunicat-de-presa-6/>

^{xix} Yogyakarta Principle #5 on the right to security of the person, para D.

^{xx} Yogyakarta Principle #5 on the right to security of the person, para E.

^{xxi} Article 44 point i of the Law no. 119/1996 regarding civil status documents, and Article 4 para. 2 point I of the Government Ordinance no. 41/2003 regarding the administrative change of the name of a person.

^{xxii} Please see more information on the right to recognition before the law in Yogyakarta Principle #3.

www.yogyakartaprinciples.org

^{xxiii} Yogyakarta Principle #9 on the right to treatment with humanity while in detention

^{xxiv} Government Ordinance 137/2000 Art. 1.2.d (iv).

^{xxv} Government Ordinance 137/2000 Art. 2.1.

^{xxvi} The legislative proposal approved by the Legal Committee of the Senate would explicitly restrict marriage to opposite-sex couples by amending the Family Code and the law 119/1996 and 23/1999 on marriage documents.