

# Report

## on implementation of the Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity by Romania

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The opinions expressed in document do not necessarily reflect official positions of ILGA-Europe.

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## I. Executive summary

Main Romanian characteristic is the huge gap between existing legislation protecting the rights of LGBT citizens and actual measures taken by the authorities to apply these legal provisions. Many of the official responses collected in the documentation phase of this study stated generous principles of equality and non-discrimination and quoted Romanian legal provisions prohibiting and sanctioning discrimination, hate crime, hate speech. However, when invited to indicate actual steps taken by each authority in the spirit of these principles, the respondents could rarely name any concrete activity.

The fact that the CMCE recommendations have not been translated and disseminated speaks in itself about the way in which Romanian Government understands to apply these recommendations and similar national legal provisions. The authors of this study could not identify any difference in authorities' interest related to combating discrimination on sexual orientation and gender identity criteria, after the CMCE recommendations have been adopted.

The effectiveness and accessibility of existing legal provisions in sanctioning discrimination on sexual orientation or gender identity criteria is seriously questioned by the fact that the National Council Combating Discrimination, between 2009-2011, has received no complaint on gender identity and only 18 complains on sexual orientation. During the three years, the NCCD has issued one (!) fine for discrimination on sexual orientation ground. This, in spite of the fact that public surveys indicate LGBT people as one of the most rejected groups in Romania.

Similar consideration can be made regarding hate crime, hate speech and incitement to discrimination legislation. There is no public information on perpetrators being identified and punished, no public system of support for victims, no measures taken by authorities in order to encourage reporting of crimes.

Most recurrent and worrying situation indentified during the elaboration of this report is the generalized failure to address trans issues; most respondents completely ignored questions related to transgender, some even mistook "gender identity" with "gender", and provided information on equal opportunities for women. Moreover, state authorities were not able to provide information regarding transitioning process. Information on this subject included in this report is based on ACCEPT experience in assisting trans members and it was obtained during legal representation of trans people in court, in years of trial and error strategy in finding the necessary health experts and available procedures, and through tens of information requests sent to all authorities and institutions that could have an influence in transitioning process. Although rudiments of procedures were identified and some trans people succeeded to completely update their identity papers, and access some medical services, the procedures are by no means predictable, accessible, quick or transparent.

Other domains that need quick and substantial attention are health and education. Homosexuality is still presented as pathology in some instances, at academic level, and the Ministry of Health response was remarkable for its lack of consistence and clarity for all aspects covered by CMCE. We could indentify no actions taken by authorities or state institutions related to medical services for LGBT people.

The Education Ministry response also stands out from the others as they have managed to respond to several questions related to sexual orientation and gender identity almost without using in their response the phrases "sexual orientation" and "gender identity". No action was indicated in any of these fields: teachers training, school policies, school campaigns and cultural events, support to LGB or T students, bullying prevention.

During the past years, there had been various legal proposals that were aimed to exclude LGBT, some of them even being adopted by the Parliament. The New Civil Code adopted in 2009 (entered into force on 1 October 2011), introduced a restrictive definition of family, understood exclusively as heterosexual marriage, and the exclusion of all legal recognition for same-sex

marriages or civil partnerships carried out legally abroad. Same sex couples are discriminated against, compared with different sex ones, and the state totally dissociates itself from providing solutions to the everyday problems to which this discrimination give rise.

Public officials and state representatives avoid taking stands against transphobic and homophobic hate speech. With the notable exception of the National Council Combating Discrimination, who has repeatedly issued such messages, ACCEPT was able to identify only a few other isolated instances during the last three years when state representatives have promoted tolerance for LGBT people, each time during events organized by ACCEPT.

## II. Recommendations to the Romanian Government for priority actions towards implementation of the CMCE

Translate this CMCE recommendation, including its appendix, and disseminate it as widely as possible throughout public administration, law-enforcement structures (including the judiciary) and penitentiary system, to national human rights protection structures, throughout the educational system, health-care system, to representatives of public and private sector employees and employers, to the media etc.

1. Ensure that the police and judiciary possess the knowledge and skills to identify hate crimes and incidents and provide victims and witnesses with adequate assistance and support, through dedicated training programs and procedures.
2. Investigate and prosecute those responsible for the attacks on peaceful activists and ensure that future LGBT gatherings, including the annual GayFests, are both permitted and protected by the Romanian authorities
3. Create special units within police, tasked specifically with investigating crimes and incidents linked to (a) sexual orientation and (b) gender identity.
4. Ensure that the gender identity of the trans individual is respected in regard to interactions with prison staff such as body searches and also particularly in the decisions taken on the placement of a prisoner in a male or female prison.
5. Improve systematic data collection on hate-motivated crimes related to homophobia and transphobia. Data on homophobic and transphobic crimes should be clearly disaggregated from other hate-motivated crimes.
6. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.
7. Elaborate and disseminate guidance encouraging public officials and state representatives to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities
8. Review prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, in order to remove abusive requirements.
9. Update existing legal provision in order to make possible the change of name and gender in official documents including birth certificates, identity papers, driving licences, passports, social insurance cards and numbers, electoral, land and text registers in a quick, transparent and accessible way.
10. Consider the implementing of legal or other means to address the practical problems arising from the lack of recognition of same-sex couples.
11. Elaborate and update equality and safety policies, codes of conduct and handbooks for educational staff to ensure that LGBT pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment.
12. Provide information on sexual orientation and gender identity in school curricula and sex and health education classes in respectful and objective manner.
13. Issue a recommendation to Romanian faculties of medicine to review textbooks and curricula with the purpose to remove formulations which describe homosexuality as a disease, mental disorder, sexual perversion etc.

14. Take necessary measures to ensure that no one is forced to undergo any form of treatment, protocol or medical or psychological test or confined in a medical institution because of their sexual orientation or gender identity.
15. Ensure effective access to appropriate gender reassignment services for transgender persons, including psychological, endocrinological and surgical expertise.
16. Take necessary measures to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events.

### **III. Introduction**

#### **Background**

On 31 March 2010 the Committee of Ministers of the Council of Europe adopted its Recommendation to member states “on measures to combat discrimination on grounds of sexual orientation or gender identity”.

It was an historic moment. The Recommendation is, as Council of Europe Secretary-General, Thorbjørn Jagland recognised, the world's first international legal instrument dealing specifically with discrimination on these grounds, which he described as "one of the most long-lasting and difficult forms of discrimination to combat".<sup>1</sup>

In broad terms the Recommendation does three things:

- It emphasises the key principle, that human rights are universal and apply to all individuals, including therefore LGBT persons;
- It acknowledges the fact of the centuries-old and continuing discrimination experienced by LGBT persons on account of their sexual orientation or gender identity;
- It recognises that specific action is required to ensure the full enjoyment of human rights by LGBT persons, and sets out the measures required of member state governments.

The Recommendation was agreed unanimously by the 47 Council of Europe member states. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the member states, which therefore have a clear duty to implement its main elements.

The Recommendation has three parts: first, a preamble, which sets out the background to its adoption, and the key principles guiding it; second, the operative section of the Recommendation, which is very brief, listing broad measures to be taken; and thirdly, an Appendix which sets out specific measures to ensure enjoyment of rights and combat human rights violations across a wide range of areas, including hate crimes, hate speech, freedom of association, expression and assembly, right to respect for private and family life, employment, education, health and housing, sports, the right to seek asylum, and discrimination on multiple grounds. It also includes a section on the role of national human rights structures.

The Recommendation is supported by an Explanatory Memorandum, which documents the international human rights instruments and legal precedents on which the individual measures in the Recommendation and the Appendix are based.

#### **The purpose of this report**

The purpose of this report is to assess what progress has been made by the Romanian authorities in implementing the Recommendation, and to highlight the areas where further action is needed. By documenting which measures have, and which have not been completed, it provides a base line against which to measure further progress in implementing the Recommendation in the coming years.

The report has two main target audiences. First, at national level, the political leaders and civil servants who are responsible for implementing the Recommendation. And secondly, the Committee of Ministers of the Council of Europe, which agreed, on adopting the Recommendation, that it would conduct a review of progress towards its implementation in March 2013. It is intended that this report will contribute to that review.

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<sup>1</sup> “Council of Europe to advance human rights for lesbian, gay, bisexual and transgender persons”

<https://wcd.coe.int/ViewDoc.jsp?id=1607163&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE>

## **Methodology**

The report's assessment of progress is based on a checklist of specific detailed measures required by the Recommendation. This list of measures is derived from the text of the Recommendation and its Appendix, supplemented by additional details set out in the Explanatory Memorandum.

This checklist, and the data which ACCEPT has compiled in order to assess progress in implementation of the individual measures of the Recommendation, are set out in Appendix III to this report, entitled "the Compliance Documentation Report".

The data used to assess progress in implementation have been obtained from a number of sources:

- Responses from 18 central authorities to letters from ACCEPT listing the relevant checklist questions, and asking for comments on actions taken to implement the related measures.
- Information from published sources, such as the reports on Romania commissioned by the Council of Europe Commissioner for Human Rights as documentation for his report, "Discrimination on grounds of sexual orientation and gender identity in Europe".
- Research and documentation assembled by ACCEPT.
- Information available through Romanian mass media and Internet.

## IV. Findings

### The Recommendation

The operative text of the Recommendation includes four main steps: a review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity, introduction of effective measures to combat such discrimination, ensuring that victims have access to effective legal remedies, and ensuring that the recommendation is translated and disseminated as widely as possible. It also requires that member states be guided by the principles and measures contained in the Appendix to the Recommendation.

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“The Romanian Government Ordinance No.137 of 2000 regarding the prevention and combating all forms of discrimination (GO 137/2000), covers employment and labour related issues, access to services, access to health, education etc and goes beyond the standards of the Employment Directive and the Race Directive, 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.

Regarding gender identity, there are no explicit legal provisions put in place in Romania. Nevertheless, Romanian anti-discrimination legislation covers gender identity and gender expression, by the phrase “any other criterion”.

However, in spite of existing anti-discriminatory legal provisions and although “sexual minorities represent the group that is most affected by prejudice<sup>2</sup>”, during 2009-2011 the NCCD received no petition on gender identity criterion and only 18 petitions on sexual orientation criterion. From these 18 petitions, during the three years, the NCCD decided that 5 cases were discriminatory situations, issued 1 fine, 2 administrative warnings and 2 recommendations. This extremely low number of petitions is a clear indicator for the lack of effectiveness of existing legal remedies for discrimination victims.

As for the duty to review existing legislation in order to eliminate discrimination based on sexual orientation or gender identity, this was expressed by the competent institutions only at declaratory level.

The Anti-discrimination Coalition of NGOs working in the field of non-discrimination in Romania was never consulted by any public institution with regards to such an initiative of reviewing the existing legislation. Furthermore, the authors of this report could not indicate one legal amendment put forward by the public authorities in order to create equality for LGBT. On contrary, in the past years, there had been various legal proposals that were aimed to exclude LGBT, some of them even being adopted by the Parliament. For example, the New Civil Code adopted in 2009 (entered into force on 1 October 2011), introduced a restrictive definition of family, understood exclusively as heterosexual marriage, and the exclusion of all legal recognition for same-sex marriages or civil partnerships carried out legally abroad (except for purposes of free movement of EU citizens within the EU Member States)<sup>3, 4</sup>.

The evidence presented in the Compliance Documentation Report indicates that the state authorities have not carried out essential responsibilities, like the translation and dissemination of the Recommendation, so that at the date of this report neither a translation nor the original of the Recommendation has been made public on a government website or through any other medium.

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<sup>2</sup> National Council for Combating Discrimination, Response No 4826/04.10.2012

<sup>3</sup> Further details are available at Section XXXX.....

<sup>4</sup> See Art.258 and Art.277 of the Law No.287/2009 regarding the Civil Code.

## Appendix to Recommendation CM/Rec(2010)5

### i. Right to life, security and protection from violence

#### a. “Hate crimes” and other hate-motivated incidents

The Section i.a. of the Appendix covers aspects pertaining to legal provisions to combat and sanction hate crimes related to sexual orientation and gender identity, competence of police officers, judiciary and prison staff to identify and investigate hate crimes, existence of special units and procedures that encourages hate crimes reporting and provides assistance and support to victims and. Member states are also required to gather and analyse data on the prevalence and nature of discrimination in this field. In total, 17 measures are identified under this heading in the Compliance Documentation Report.

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Romanian Criminal Code contains provisions that incriminate incitement to discrimination and that state hate motivation for a crime as aggravating circumstance. Sexual orientation is explicitly covered. Also, codes of ethics of prisons staff forbid discrimination on any grounds, measures aiming to minimise the risk of physical assault are in place and there are procedures allowing inmates to report hate crimes, including to independent bodies or to human rights NGOs.

In spite of existing legislation and of positive steps registered in training police workers and prison staff in subjects related to combating discrimination and human rights issues, no training explicitly addressing hate crimes were indicated in the responses provided by Ministry of Administration and Interior (MAI), and by National Administration of Penitentiaries (NAP). There are no specialized units within police tasked with investigating crimes and incidents linked to sexual orientation and gender identity, no liaison officers, no preoccupation for victims support, and no accessible system allowing anonymous or third party reporting.

Moreover state authorities did not indicate evidences showing effective implementation of existing legislations, while ACCEPT has information only of situations when the state failed to identify or sanction the authors of violent hate incidents against LGBT persons.

Statistic data collected on hate crimes does not distinctly record bias against sexual orientation or gender identity as motivation, and are not made public.

No reference to gender identity was made within the MAI response; the NAP indicated regulations relevant for gender issues - not linked to transgender, confirming the fact that trans people who have not completely updated their identity papers are considered to belong to their birth gender and treated accordingly.

#### b. “Hate speech”

Section I.B. of the Appendix requires measures to combat “hate speech” on grounds of sexual orientation or gender identity, including laws penalising such “hate speech”, promotion of good practice within media organisations and by internet service providers, public disavowal of such speech by government officials, and guidelines to government officials to refrain from such speech and promote respect for the human rights of LGBT people. In all, nine measures are identified under this heading in the Compliance Documentation Report.

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A similar situation to “hate crime” section was identified. Romanian legislation contains provisions sanctioning incitement to discrimination, public incitement and condoning crime, prohibiting fascist, racist and xenophobic organizations and symbols, and forbidding media organizations to broadcast programmes containing hate speech. Sexual orientation is explicitly mentioned as one of followed criteria, while no legal provisions refers to gender identity.

The legislation has not been tested yet for homophobic or transphobic hate speech; ACCEPT could not identify any case when these legal provisions were used to sanction hate speech against LGBT or against other groups.

Public officials and state representatives avoid taking stands against transphobic and homophobic hate speech. With the notable exception of the National Council Combating Discrimination, who has repeatedly issued such messages, ACCEPT was able to identify only a few other isolated instances during the last three years when state representatives have promoted tolerance for LGBT people, each time during events organized by ACCEPT.

In April 2011 outdoor billboards with the message “Sexual orientation is not an illness and it is not a choice”, picturing a newborn baby wearing a bracelet that could read “homosexual”, were displayed in several cities of Romania. Homophobic reactions were common among local authorities’ representatives and MPs. Mr M. Dugulescu, who at that time was not only MP, but also the Vice President of the Human Rights Committee (!) of the Deputy Chamber, had several public interventions against the campaign [*“minorities have spread abjections in public space”*]. In some cities the posters were immediately removed at mayors’ request.

## **ii. Freedom of association**

Section II of the Appendix requires member states to take appropriate measures to ensure that LGBT organisations can gain official registration, are able to operate freely, are involved on a partnership basis when framing and implementing public policies which affect LGBT persons, and are able to access public funding earmarked for LGBT issues; also, that LGBT human rights organisations are protected effectively from hostility and aggression.

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The evidence presented in the Compliance Documentation Report indicates partial compliance with these requirements. LGBT organisations being able to obtain official registration, to cooperate with other human rights institutions and to participate to international human rights events.

Law enforcement entities have provided for LGBT human rights organizations protection from hostility and aggression. However, the vulnerability of LGBT activists in relation to possible violent homophobic reactions is often used by authorities as an argument to request a decreased visibility of public actions related to LGBT rights

Regarding public consultation, there was not even a single case in the last three years when ACCEPT, the only Romanian organization specialized in the defence and promotion of LGBT human rights, was consulted prior the adoption of measures that may have impact on the human rights of LGBT people.

## **iii. Freedoms of expression and peaceful assembly (Section III of the Appendix)**

This section of the Appendix requires member states to guarantee freedom of expression and peaceful assembly to LGBT people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, encouraging pluralism and non-discrimination in the media, protection of lawful assemblies, and condemnation by public authorities of any interference with the exercise of the right to freedoms of expression and peaceful assembly by LGBT people.

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The evidence presented in the Compliance Documentation Report indicates partial compliance with these requirements. Freedom of expression and freedom of peacefully assembly are guaranteed by Romanian legislation. Discrimination in the media is forbidden, still there are no measures pro-actively encouraging pluralism and non-discrimination.

Regarding peaceful demonstrations, law enforcement structures ensured effective protection of the participants to the Bucharest LGBT marches. Police acted with integrity and respect towards LGBT people. In the same time, in the cases of anti gay public manifestations, authorities do not enforce legal provisions prohibiting use of slogans inciting discrimination and violence against LGBT people.

Moreover, since 2008 the Bucharest local authorities have no longer allowed spectators to join the LGBT march. For allegedly safety reasons, the march is authorized on a route that allows complete control of people who enter the marching area, a route much shorter and less visible than the route for the anti-gay manifestation that takes place earlier the same day. Spectators are allowed to enter the area of the LGBT march only if they declare they want to participate to the LGBT march.

In 2012 the Bucharest Municipality not only imposed the same invisible route for the gay pride, but also used institutional bureaucracy to avoid releasing the march authorisation until the last moment.

#### **iv. Respect for private and family life (excluding specific transgender issues) (Section IV, paras. 18, 19, and 23-27 of the Appendix)**

These paragraphs of section IV of the Appendix address criminalisation of same-sex sexual acts, collection of personal data, and discrimination in access to the rights of couples and parenting.

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Romanian legislation does not criminalize same sex sexual act. The age of consent is the same for heterosexual and homosexual contact- 15 years old. ACCEPT has anecdotic reports, however, of situations when men involved in sexual acts with other men who were between 15-18 years old of range, have been investigated for child pornography or for alluring a child to consent to sexual acts. Although the legislation is explicit that same provisions apply no matter the gender of persons involved, ACCEPT is not aware of criminal investigations involving similar heterosexual couples. Although the Ministry of Justice indicated that there are no provisions in the national criminal law that due of the wording or scope are likely to be applied in a discriminatory manner regarding sexual orientation or gender identity, ACCEPT is aware of at least one situation when a gay men is under criminal investigation for “perversion” (which is sanctioned by Art. 201, Criminal Code), after being caught during a homosexual act, performed in public space.

National legislation contains provisions prohibiting collection and storing of personal data, with explicit reference to “sexual life” as one of the areas protected by law. Unfortunately this legislation is often used by authorities to defer information requests sent by NGOs on statistic data regarding hate crimes against LGBT, number of trans people who asked for new identity papers etc. In the same time, gay men who have requested legal assistance from ACCEPT reported occasionally that law enforcement authorities were particularly interested in their sexual orientation and behaviour, requesting information that seemed to have no relevance for the case.

#### **v. Respect for private and family life and access to health care – specific transgender issues (Section IV of the Appendix, paras. 20, 21 and 22, and Section VII, paras. 35 and 36)**

These paragraphs of Section IV of the Appendix require member states to guarantee the full legal recognition of a person's gender reassignment in a quick, transparent and accessible way, to remove any prior requirements for legal recognition (including any of a physical nature) that are abusive, and ensure that transgender persons are able to marry once gender reassignment has been completed.

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Romania does not comply with the requirements concerning legal recognition of a person's gender reassignment; although rudiments of procedures are in place and some trans people succeeded to completely update their identity papers, the procedures are by no means predictable, accessible, quick or transparent.

The law on civil registration data and the law on the procedures for identity documents offer indirect guidance on the procedure for name and gender change in the official documents. The legal provisions state that for sex change in the civil status acts there is a need of a final judgement issued by a civil court. Both legal provisions do not clarify procedures. A forensic medical act stating person's sex might be needed but 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 (National Institute for Legal Medicine). NILM refused to inform ACCEPT on the criteria used when assessing someone's sex claiming that this is not public information. In practice this can lead to dramatic situation.

A.K. a trans man<sup>5</sup> who obtained a final court decision allowing him to update his identity papers, underwent several surgical interventions (ovarectomy, hysterectomy and mastectomy) and then requested the forensic medical act stating his sex. The expert evaluating A.K. decided that his gender was “female”, in spite of the surgery and of the fact that AK had been living as a man for years, commenting that AK continued to have “female secondary sexual characteristics”.

Moreover, existing case law is contradictory and just adds to the uncertainties of the procedures. ACCEPT has either represented in court or provided legal assistance in 9 cases in the last three years. Each case followed a distinct parcourse, leading sometimes to opposite decisions for identical cases. In terms of time needed to get a final court decision, it goes from one year to more than 2 years.

There is no special legislation regulating the transitioning process. This leads to possible exaggerated and un-realistic requests, and this is the situation with the procedures followed by the National Institute of Legal Medicine. According to NIML, a trans person should accommodate for NIML’s evaluation at least three years, after requesting, in court, the authorisation for gender reassignment. The court decision should be taken only after NIML evaluation is over. This evaluation process involves mandatory hospitalisation, mandatory psychotherapy, social enquiry<sup>6</sup>, real life test for at least one year, proofs that the trans person “has lived in environments dominated by the people of his/her desired gender” (!). Also, the trans person should be in direct contact with both trans people who have undergone surgical interventions and trans people who changed their mind (this is a highly unrealistic request; is not within the control of the trans person to identify and establish direct contact with the two categories). Hormonal treatment is compulsory in the last phase of the three years process, and in case the endocrinologist decides that the trans person has health conditions that make impossible hormonal treatment, then “the process of sex change will be stopped”.

In the same time, the limited existing case law indicates that in some circumstances the courts considered sterilisation to be mandatory prerequisites, while in others the decision admitting the change of the identity papers contains no medical pre-conditions.

An outstanding evidence of Romanian authorities’ lack of awareness on trans issues is provided in almost all responses received by ACCEPT. Most of the time authorities and institutions did not address the questions related to gender identity, and did not use the phrase “gender identity” in their letters. In a few situations, gender identity was completely misunderstood as “gender”, and authorities provided information on measures taken to assure equal opportunities for women.

## **vi. Employment**

Section V of the Appendix requires Member States to provide effective protection against discrimination on grounds of sexual orientation and gender identity in employment, including legislation prohibiting discrimination, other policy related measures to combat discrimination, and specific measures in relation to the armed forces and transgender persons.

Romanian anti-discrimination legislation encompasses the areas protected by the EU Employment Directive. Once more, gender identity is not explicitly mentioned.

However, while Romanian laws prohibit discrimination explicitly, little is known about practices specific for certain professions or occupations. For example, in 2003, when antidiscrimination legislation was in place, ACCEPT identified a Joint Order issued by the Ministry of Education and the Ministry of Health, that stated that homosexuality was incompatible with teaching. The regulation was repealed in the same year, following lobbying efforts of ACCEPT, but in 2006 a new

<sup>5</sup> AK was juridical assisted by ACCEPT, in 2010.

<sup>6</sup> A NIML employee provided verbally clarifications about the “social enquiry” stating that it involves interviews with the neighbors and work colleagues of the trans person

joint order by the two ministers once again mentioned homosexuality on the lists of conditions triggering the prohibition to work as a teacher.

Considering the low level of awareness on LGBT issues expressed by most of Romanian authorities, it is possible that similar regulations or procedures exist and remain not-identified as discriminatory provisions.

Regarding active measures to combat discrimination, harassment and victimisation, the Ministry of Employment failed to address these aspects in its response. ACCEPT could identify no evidence of any such measures taken by the Romanian authorities specifically in the interest of LGBT persons.

As for combating discrimination against trans people,, not only are there no measures designed to combat trans discrimination in employment, but, in practice, the situation of trans persons can become dramatic, with few employment opportunities. ACCEPT provided assistance to trans people who no longer had identity papers; others had identity papers that, although valid, did not conform to their expressed gender. The inexistence of clear and effective procedures that would allow trans people to obtain adequate identity papers, leaves trans people in a highly vulnerable situation. As one employer expressed it “It would be a nuisance to explain each time that you, a woman, are the person hired with the contract made in the name of a man.”

## **vii. Education**

Section VI of the Appendix requires member states to ensure that the right to education can be enjoyed without discrimination on grounds of sexual orientation or gender identity, including measures to provide protection from bullying and social exclusion such as equality and safety policies, codes of conduct and training programmes for staff, and measures to promote mutual tolerance and respect in schools, including objective information in school curricula and educational materials, specific information and support for LGBT pupils and students, and measures to meet the special needs of transgender students.

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As set out in the Compliance Documentation Report, Romania does not comply with the above requirements.

Ministry of Education, Research, Youth and Sports did not indicate any single specific measure targeting educational staff in order to ensure a safe environment for the LGBT pupils.

Neither the Education Law, nor the Operational and Management Regulations for Pre-University Schools (the other legal provision indicated by the Education Ministry as relevant) contain any reference to sexual orientation or gender identity. The Education Ministry stated that the schools have the right to extend the provisions of the above Rules as they consider adequate – which, in itself, is an indicator of the absence of a systematic approach aiming to create a safe environment for LGBT pupils. Moreover, Education Law does not include provisions related to teachers’ competence to detect and respond to discrimination. In the same time teachers who have applied to training courses organized by ACCEPT on LGBT issues, have expressed the urgent need of information that would allow them to adequately handle issues faced by LGBT pupils, and stated that ACCEPT’s training course was the only educational resource on this topic they were able to identify.

Regarding trans pupils, the Education Ministry stated that “there are no cases of transgender pupils in pre-university schools”. Similar beliefs – “there are no gay pupils in our school”- have been often expressed by teachers and school counsellors during various encounters with ACCEPT staff. Needless to say that there are LGBT pupils in Romanian schools. Their invisibility is a clear indicator for the absence of information, support and protection that could enable LGBT pupils to live in accordance with their sexual orientation and gender identity.

## **viii. Health**

Section VII of the Appendix require member states to ensure that the highest attainable standard of health can be enjoyed without discrimination on grounds of sexual orientation or gender identity. Measures proposed include taking account of the specific needs of LGBT people in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses, permitting patients to identify their "next of kin" without discrimination, withdrawing medical textbooks and other documents that treat homosexuality as a disease, and ensuring no one is forced to undergo any medical treatment because of their sexual orientation or gender identity.

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Although the national classification of diseases is in accordance with the WHO standards, and homosexuality should be de-pathologised, there are no actions taken in order correct outdated textbooks or to balance the information provided by professors who continue to present homosexuality as a disease to students in medicine or psychology. ACCEPT identified situations when homosexuality continues to be presented as pathological, during medical academic studies.

Regarding training available for health professionals and health services adequated to LGBT needs, the Health Ministry did not mention any specific evidence supporting their existence. We are not aware of any treatment programmes and services that respond to the needs of LGBT people, in the area of sexual and reproductive health, other than the ones developed by NGOs. Same situation with training courses targeting medical professionals, health surveys for LGBT people etc

Regarding trans situation, we can for sure affirm that there is no effective access to gender reassignment health services. ACCEPT has direct experience of overwhelming difficulties in identifying health professionals who are competent or at least interested to expand their expertise in order to provide gender reassignment services. Same experience is reported by trans people approaching ACCEPT for assistance. Repeated information requests sent to various institutions and authorities in the last 5 years regarding both existing services and protocols yielded only too vague and contradictory information.

Same vague and confusing information was provided by Health Ministry in its current response. ACCEPT send a second letter requesting clarifications of Ministry's response and copies of the therapeutical protocols that they had declared to be in place for trans people. The request remained un-answered.

## **ix. Housing**

Section VIII of the Appendix requires that adequate housing can be enjoyed without discrimination on the grounds of sexual orientation or gender identity through such measures as prohibiting discrimination in the sale or rent of housing, in the provision of loans for purchase of housing, in the recognition of the rights of a tenant's partner, and evictions; also, the provision of related information to landlords and tenants, and measures to ensure non-discriminatory access to shelter and emergency accommodation, and to address the risks of homelessness faced by LGBT people, including young persons excluded by their families.

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The Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination explicitly prohibits discrimination on the grounds of sexual orientation, for sale or rent of housing, and forced eviction. However, disparities appear due to the fact that same sex unions are not recognised in Romania. For example "social houses" are to be distributed by the local councils according to several priorities, first of all being the newly married couples whose both members are younger than 35 years old. Even more visible are the consequences associated with the rights that both spouses have in case of rent contracts signed by one of the members of a married couple, or related to property succession for married couples.

There is no information of sanctioned discrimination cases based on sexual orientation or gender identity, regarding housing issues. ACCEPT has received over the years requests for legal assistance from tenants that were abusively evicted when landlords found out that tenants were homosexuals or lesbian- but none of these have been taken to the court or to NCCD. Fear of subsequent stigmatization and lack of trust in effective solutions are the main reasons mentioned by ACCEPT beneficiaries for not pursuing legal resolutions for discriminatory situations

Romania does not comply with the requirements for awareness raising campaigns targeting housing agencies, actions taken at governmental level to decrease homelessness risks faced by LGBT persons, or measures for non discriminatory access to shelters and emergency accommodation for LGBT citizens.

#### **x. Sports**

Section IX of the Appendix requires member states to combat sexual orientation or gender identity discrimination in sports through measures to counteract and punish the use of discriminatory insults, codes of conduct for sports organisations, encouragement of partnerships between LGBT organisations and sports clubs, and anti-discrimination campaigns, and to put an end to the exclusion of transgender persons from sports activity.

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The information presented in the Compliance Documentation Report indicates that the Romanian authorities have not taken most of the above measures.

Although the existing anti-discrimination legislation covers sport activities, homophobic reactions are seldom sanctioned and measures initiated at governmental level to prevent the risk of exclusion for LGBT sport people are, obviously, inexistent. Moreover, the Ministry of Education, Research, Youth and Sport stated in their response, that the ministry is coordinating only sports for the large masses and that “until now, cases of the types you mentioned<sup>7</sup> in your questions have not been indentified or recorded.” The Ministry seems to not be aware of the possibility that LGBT people would participate in sports, and of subsequent risk of exclusion. Also, the Ministry of Education seems to have difficulties in using words like gender identity or sexual orientation.

#### **xi. Right to seek asylum**

Section X of the Appendix requires member states to recognise a well-founded fear of persecution based on sexual orientation or gender identity as a valid ground for the granting of refugee status and to ensure that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment on grounds of sexual orientation or gender identity. It also requires that asylum seekers be protected from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training in the specific problems encountered by LGBT asylum seekers.

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Romanian law recognizes well founded fear based on the status of “belonging to a certain social group” as a valid ground for the granting of refugee status and asylum. Sexual orientation is given as example of a characteristic that can lead to “social group” forming. The law states also that “gender related issues can be encompassed by *sexual orientation* notion.

Romanian Immigration Office (RIO) stated that national legislation on combating discrimination is applicable to foreigners while on Romanian territory, and conditions in accommodation facilities meet legal standards. <sup>8</sup> No specific measure was mentioned.

RIO was unable to indicate whether asylum requests are turned down on the ground that the claimant can escape persecution in the country of origin by keeping his or her sexual orientation or gender identity secret, stating they do not have statistics on reasons invoked by asylum seekers.

In 2009 ACCEPT received a request for assistance for a person who had been already arrested for homosexuality in Cameroon and whose asylum request was rejected on grounds that the applicant was not a public person and could relocate to another city where he was not known. In July 2009 a court quashed the decision of the Romanian Immigration Office.
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<sup>7</sup> Words underlined by report’s authors.

<sup>8</sup> See Romanian Immigration Office, Response No. 2431561/26.06.2012, p.3.

## **xii. National human rights structures**

Section XI of the Appendix requires member states to ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity, and in particular should be able to make recommendations on legislation and policies, raise awareness amongst general public, and – as far as national law provides – examine individual complaints and participate in court proceedings.

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The National Council for Combating Discrimination, in accordance with the provisions of GO 137/2000 regarding the prevention and punishment of all forms of discrimination, is mandated to address discrimination 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”. Although the law does not explicitly mention gender identity, this ground can be covered under “any other criterion”.

According to the law, the NCCD is requested within its mandate to propose draft laws in the field of combating discrimination and to initiate acts to ensure that equality and non-discrimination principles are included in existing legal provisions. NCCD has also the mandate to conduct awareness-raising activities among the general public, to mediate between parties, provide support for the victims of discrimination, investigate and sanction discrimination. In court discrimination cases, the law requests mandatory hearing of NCCD.

In practice, when enquired about specific recommendations NCCD made on legislation and policies, NCCD indicated that they have not elaborated any legal measures related to sexual orientation or gender identity.

In the last 5 years, NCCD was consulted by the initiators of new legal proposals that included aspects related to sexual orientation in only one instance – regarding proposed modifications of Family Code so that it would explicit states that marriage is the prerogative of different-sex couples. The modifications were adopted in spite of a negative notice given by NCCD.

Until 2008, the NCCD was competent to review individual cases of discrimination that involved the examination of general provision from various laws in force in the country. The NCCD issued several decisions that impacted large categories of people, for example in the field of salaries of judges and prosecutors. However, no case addressed issues related to discriminatory provisions regarding LGBT. This competence was taken out of the NCCD’s legal mandate by the Constitutional Court. In the Constitutional Court Decision No.997 of 7 October 2008 the Court decided that the NCCD is no longer competent to examine cases where the law has discriminatory provisions

No awareness raising activity focused specifically on sexual orientation or gender identity was identified by ACCEPT or indicated by NCCD. According to 2010 Annual Report of NCCD, the subject of sexual orientation was mentioned in a project against discrimination targeting high school pupils in Iasi County and in an educational program developed together with National Institute of Magistracy.

NCCD is the only state actor that has been present over the years at Bucharest Diversity Marches; some of NCCD members have responded positively to invitations to debates on LGBT issues, and have publicly expressed support of the exercise of rights by LGBT people.

**Recommendation CM/Rec(2010)5  
of the Committee of Ministers to member states  
on measures to combat discrimination on grounds of sexual orientation or gender  
identity**

*(Adopted by the Committee of Ministers on 31 March 2010  
at the 1081st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim may be pursued, in particular, through common action in the field of human rights;

Recalling that human rights are universal and shall apply to all individuals, and stressing therefore its commitment to guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) (hereinafter referred to as "the Convention") and its protocols;

Recognising that non-discriminatory treatment by state actors, as well as, where appropriate, positive state measures for protection against discriminatory treatment, including by non-state actors, are fundamental components of the international system protecting human rights and fundamental freedoms;

Recognising that lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, transphobia and other forms of intolerance and discrimination even within their family – including criminalisation, marginalisation, social exclusion and violence – on grounds of sexual orientation or gender identity, and that specific action is required in order to ensure the full enjoyment of the human rights of these persons;

Considering the case law of the European Court of Human Rights ("hereinafter referred to as "the Court") and of other international jurisdictions, which consider sexual orientation a prohibited ground for discrimination and have contributed to the advancement of the protection of the rights of transgender persons;

Recalling that, in accordance with the case law of the Court, any difference in treatment, in order not to be discriminatory, must have an objective and reasonable justification, that is, pursue a legitimate aim and employ means which are reasonably proportionate to the aim pursued;

Bearing in mind the principle that neither cultural, traditional nor religious values, nor the rules of a "dominant culture" can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity;

Having regard to the message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons, adopted on 2 July 2008, and its relevant recommendations;

Bearing in mind the recommendations adopted since 1981 by the Parliamentary Assembly of the Council of Europe regarding discrimination on grounds of sexual orientation or gender identity, as well as Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the

Council of Europe on “Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons”;

Appreciating the role of the Commissioner for Human Rights in monitoring the situation of lesbian, gay, bisexual and transgender persons in the member states with respect to discrimination on grounds of sexual orientation or gender identity;

Taking note of the joint statement, made on 18 December 2008 by 66 states at the United Nations General Assembly, which condemned human rights violations based on sexual orientation and gender identity, such as killings, torture, arbitrary arrests and “deprivation of economic, social and cultural rights, including the right to health”;

Stressing that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by measures targeted both at those who experience such discrimination or exclusion, and the population at large,

Recommends that member states:

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;
4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;
5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

### ***Appendix to Recommendation CM/Rec(2010)5***

#### **I. Right to life, security and protection from violence**

##### **A. “Hate crimes” and other hate-motivated incidents**

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.
2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.
3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the

necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.

## **B. “Hate speech”**

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

## **II. Freedom of association**

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

## **III. Freedom of expression and peaceful assembly**

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

#### **IV. Right to respect for private and family life**

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

## **V. Employment**

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

## **VI. Education**

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

## **VII. Health**

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

## **VIII. Housing**

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

## **IX. Sports**

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

## **X. Right to seek asylum**

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

#### **XI. National human rights structures**

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

#### **XII. Discrimination on multiple grounds**

46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.

## Glossary

**Gender identity** refers to a person's deeply felt individual experience of gender, which may or may not correspond with the sex assigned at birth, and includes the personal sense of the body and other expressions of gender such as dress, speech, mannerisms. "Gender" is different from "sex". The term "sex" primarily refers to the biological difference between men and women, "gender" also includes the social aspect of the difference between genders in addition to the biological element. Gender identity is not the same as sexual orientation, and transgender persons may identify as heterosexual, bisexual or homosexual.

**Gender reassignment treatment** is also called "transitioning" and it refers to different medical and non-medical treatments which some transgender persons may wish to undergo to alter their birth sex. This process includes some or all of the following cultural, medical and legal adjustments: coming out to one's family and friends, changing one's name and/or sex on legal documents, hormone therapy and possibly undergoing gender reassignment surgery (most commonly chest and/or genital alteration).

**Harassment** constitutes a form of discrimination when unwanted conduct related to any prohibited ground (ethnic belonging, race, sexual orientation, gender, gender identity, age, handicap, religion) takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment can consist of a single incident or several incidents over a period of time and can take many forms, such as threats, intimidation or verbal abuse, unwelcome remarks or jokes.

**Hate crime** towards LGBT persons refers to any criminal offense, including offences against persons or property, where the victim, premises or target of the offence, are selected because of their real or perceived connection, attachment, affiliation or support of LGBT group. Hate crimes include intimidation, threats, property damage, assault, murder or any other criminal offence.

**Hate-motivated incident** are manifestations of intolerance committed with a bias motive that may not reach the threshold of hate crimes, due to insufficient proof in a court of law for the criminal offence or bias motivation, or because the act itself may not have been a criminal offence under national legislation.

**Hate speech** against LGBT people refers to public expressions which spread, incite, promote or justify hatred, discrimination or hostility towards LGBT people.

**Homophobia** is defined as an irrational fear of, and aversion to, homosexuality and to lesbian, gay, bisexual and transgender persons based on prejudice and stereotypes.

**Intersex people** are persons who have genetic, hormonal and physical features that are neither exclusively male nor exclusively female and do not correspond to the given standard of "male" or "female" categories as for sexual or reproductive anatomy. This word has replaced the term "hermaphrodite", which was extensively used by medical practitioners during the 18th and 19th centuries.

**LGBT people** or **LGBT persons** is a collective term for lesbians, gay, bisexuals and transgender persons. Sometimes LGBT is extended to include intersex and queer persons (LGBTIQ).

**Multiple discrimination** refers to discrimination on more than one ground. This concept recognizes the fact that a person can be discriminated against on more than one aspect of his/her identity in any given situation.

**NGO** is the abbreviation for "non-governmental organisation".

**Sexual orientation** refer to each person's capacity for profound emotional, affectional and/or sexual attraction to individuals of a different gender (heterosexual) or the same gender (homosexual, lesbian, gay) or more than one gender (bisexual).

**Transgender** is a collective term for people whose gender identity or gender expression occasionally or always differs from the norm for the sex established at their birth. This umbrella term includes: transsexual persons (those who intend to undergo a process of gender reassignment), transvestite/cross-dressing persons (those who, occasionally or always, wear clothes that are traditionally associated with the other gender) androgyne/polygender persons (those who have non-binary identities and do not identify as male or female) and others who define

themselves as gender variant. The word **transgenderism** refers to the fact of possessing a transgender identity or expression. Transgender persons are diverse in their sexual orientation, so gender identity must not be confused with sexual orientation.

**Transphobia** is a collective term used about any negative belief, opinion, attitude and/or behaviour based on irrational fear of, and aversion to, transgender persons or gender non-conformity. Just like homophobia, transphobia often manifests itself in hate speech or hate crime incidents or other discriminatory practices against transgender people or others who define themselves as gender variants.

**Monitoring Implementation of  
the Council of Europe Recommendation to member states  
on measures to combat discrimination on grounds of sexual orientation  
or gender identity (the “CMCE Recommendation”)**

**Compliance Documentation Report**

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As a part of the monitoring process ACCEPT Association wrote information enquiries to the state bodies responsible for implementing the different parts of the Recommendation, requesting their comments on the extent to which they consider they have completed the checklist questions (corresponding sections of the checklist were attached to every letter), and their responses are mentioned in the report

All inquired state bodies responded to the enquiries for information: Ministry of Justice, Ministry of External Affairs, Ministry of European Affairs, National Council Against Discrimination, National Administration of Penitentiaries, Romanian Office for Immigration, Ministry of Administration and Interior, General Inspectorate of Romanian Police, Ministry of Labour, Ministry of Tourism and Development, Ministry of National Defence, Health Ministry, Education Ministry, Romanian Office for Adoption, National Audio-Visual Council, Romanian Institute for Human Rights, Superior Council of Magistracy, Prosecution Office attached to the High Court of Cassation and Justice.

The copies of all letters to state bodies and replies of those, used in the course of preparation of this report, are available at ACCEPT and may be provided on request.

### **Recommendation**

- 1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;**

*Has a review been conducted of existing legislative and other measures which could result directly or indirectly in (a) sexual orientation or (b) gender identity discrimination?*

1.i.

Only at declaratory level do the competent institutions express understanding of their duty to review existing legislation in order to eliminate discrimination based on sexual orientation or gender identity. Moreover, according to Art18.(1) of the Government Ordinance No.137 of 2000 regarding the prevention and combating all forms of discrimination (GO 137/2000), this review duty is part of the legal mandate of the National Council for Combating Discrimination. However, none of these institutions indicated in their replies any concrete initiative of reviewing the legislation.

The Ministry of Justice replied that “the legal framework in the field of equality and non-discrimination was and is permanently reviewed including from the point of view of the evolution of the European and treaty regulations.”<sup>1</sup> The National Council for Combating Discrimination stated that they review and update the legislation in a systematic manner depending on the developments of the society.<sup>2</sup>

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<sup>1</sup> See Ministry of Justice, Response No.56076/25.06.2012, p.1, point.1.1 [hereinafter MoJ Response].

<sup>2</sup> See National Council for Combating Discrimination, Response No.3283/8.07.2012, p.1, point 1.1.

The Anti-discrimination Coalition of NGOs working in the field of non-discrimination in Romania was never consulted by any public institution with regards to such an initiative of reviewing the existing legislation. Furthermore, the authors of this report could not identify one legal amendment put forward by the public authorities in order to create equality for LGBT. On contrary, in the past years, there had been various legal proposals that were aimed to exclude LGBT, some of them even being adopted by the Parliament. For example, the New Civil Code adopted in 2009 (entered into force on 1 October 2011), introduced a restrictive definition of family, understood exclusively as heterosexual marriage, and the exclusion of all legal recognition for same-sex marriages or civil partnerships carried out legally abroad (except for purposes of free movement of EU citizens within the EU Member States)<sup>3, 4</sup>.

*Are processes in place to ensure that the discrimination thus identified is redressed?*

1.ii.

Yes. There are a series of processes in place to ensure that the discrimination, when identified in existing legislation, is redressed.

First, the Ministry of Justice indicated that, according to Art.20.(2) of the Constitution, when a legal provision is not in compliance with the provisions from the human rights treaties or conventions, these provisions prevail. Such a rule would mean in practice that an individual could ask the judge to apply directly the provisions of the human rights treaties and conventions (that are more favorable) instead of the internal legislation (that is discriminatory).<sup>5</sup> In practice, in one case regarding the legal recognition of a transgender person, ACCEPT invoked directly Articles 8, 14 and Protocol 12 of the European Convention on Human Rights because the existing legislation allegedly was discriminatory - it did not cover the transition process of a trans person. The appeal judge rejected this reasoning. In this case, Art.20 of the Constitution did not work.<sup>6</sup> The appeal on the points of law was also rejected by the Court of Appeal Bucharest. The decision is final.

Second, another mechanism pointed out by the Ministry of Justice in its reply is the so-called exception of non-compliance with the Constitution ("exceptia de neconstitutionalitate").<sup>7</sup> In the case of discriminatory legal provisions, this mechanism would mean that an individual complains to an ordinary court about the discriminatory nature of the legal provision that damaged him/her and the judge sends a preliminary question to the Constitutional Court whether that provision is or not in compliance with specific articles of the Constitution. After the preliminary rule is given by the Constitutional Court, the judge takes a decision on the merits of the case.<sup>8</sup> The authors of this report could not indicate any case where such an exception was accepted by the Constitutional Court to generate changes in the law regarding LGBT.

Third, the Ombudsman was also indicated by the Ministry of Justice as a defender of human rights. One of the competences of the Ombudsman is to bring a case to the Constitutional Court when a legal provision of an existing law is allegedly not in compliance with the Constitution.<sup>9</sup> The authors of this report could not indicate any case where the Ombudsman ex officio initiated such a case to support equal rights for LGBT.

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<sup>3</sup> Further details are available at Section XXXX.....

<sup>4</sup> See Art.258 and Art.277 of the Law No.287/2009 regarding the Civil Code.

<sup>5</sup> See MoJ Response *supra* note 1, p.1, point 1.1.

<sup>6</sup> See Case T.D.M. v Local Council of the Third District Bucharest, Bucharest Tribunal, Decision No. 8054/30.05.2011.

<sup>7</sup> Art 146 of the Constitution and Art. 29 of the Law No. 47/1992 regarding the organization and functioning of the Constitutional Court.

<sup>8</sup> Verifica modificarile din Legea Curtii Constitutionale daca s-au facut doar in penal sau sunt generale.

<sup>9</sup> See Art. 13 (f) of the Law No. 35/1997 regarding the organization and functioning of the Ombudsman.

Fourth, until 2008, the NCCD was competent to review individual cases of discrimination that involved the examination of general provision from various laws in force in the country. The NCCD issued several decisions that impacted large categories of people, for example in the field of salaries of judges and prosecutors. However, no case addressed issues related to discriminatory provisions regarding LGBT. This competence was taken out of the NCCD's legal mandate by the Constitutional Court. In the Constitutional Court Decision No.997 of 7 October 2008 the Court decided that the NCCD is no longer competent to examine cases where the law has discriminatory provisions.<sup>10</sup>

With regards to tools of reviewing and amending draft laws that contain discriminatory provisions, the Ministry of Justice pointed out that all ministries and public institutions that initiate draft laws are obliged to send the draft to the Ministry of Justice that issues an advice of compliance or non-compliance with the principles of legality, including equal opportunities. This is prescribed in the Government Decision No.561/2009.<sup>11</sup> However, the Ministry of Justice did not indicate any such draft law where they assessed the text from the point of view of sexual orientation or gender identity non-discrimination.

**2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;**

*Has legislation against discrimination on the grounds of (a) sexual orientation and (b) gender identity covering employment, social security and health care, education, access to and supply of goods and services, including housing, been introduced?*

“The Government Ordinance No.137 of 2000 regarding the prevention and combating all forms of discrimination (GO 137/2000), covers employment and labour related issues, access to services, access to health, education etc and goes beyond the standards of the Employment Directive and the Race Directive, 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”<sup>12</sup>.

Regarding gender identity, there are no explicit legal provisions put in place in Romania and all authorities contacted for this study avoided to comment on trans topic.<sup>13</sup> Nevertheless Romanian anti-discrimination legislation covers gender identity and gender expression, by the phrase “any other criterion”.

*Has a comprehensive strategy, including long-term education and awareness raising programmes, aimed at tackling discriminatory or biased attitudes and behaviour within the general public and correcting prejudices and stereotypes, been implemented?*

The question was included in the information requests sent to Ministry of Justice and National Council for Combating Discrimination. While Ministry of Justice omitted to address

<sup>10</sup> Constitutional Court, Decision No.997 of 7 October 2008.

<sup>11</sup> See MoJ Response *supra* note 1, p.3, point 1.2.

<sup>12</sup> Art 3, Government Ordinance no 137/2000, and subsequent modifications.

<sup>13</sup> See Ministry of Justice, Response No.56076/25.06.2012, p.1, point.2.1.

<sup>13</sup> See National Council for Combating Discrimination, Response No.3283/8.07.2012, p.1, point 2.1.

this subject in their response<sup>14</sup>, the NCCD provided information about the National Strategy for Implementations of Measures for Combating and Preventing Discrimination, 2007-2013, adopted through the NCCD Order no 286/2007. Although the document states generous priorities based on principles of equality and prohibition of discrimination, the fact that no other authority contacted made any reference to the National Strategy is an indicator that the strategy is not influencing national policies and has not been integrated by other authorities and institutions except for the NCCD.

**3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;**

*Do effective legal remedies for victims of (a) sexual orientation or (b) gender identity discrimination exist at national level?*

In compliance with the Government Ordinance No.137 of 2000 regarding the prevention and combating all forms of discrimination, the person who feels discriminated against is entitled to request the removal of all the consequences of discriminatory acts and the restoration of the situation previous of the discrimination. The NCCD can issue administrative sanctions: administrative warnings and fines.

Moreover, according to article 27 of the Anti-discrimination law, a person who feels discriminated against can file a complaint for civil damages, requesting moral and pecuniary damages, or nullifying the situation established as a result of the discrimination, according to civil law.

According to Romanian Penal Code<sup>15</sup> the deed of Incitement to discrimination is punishable by imprisonment from 6 months to 3 years or a fine.

*Are there effective procedures to make victims aware of, and able to access, such remedies, even where a violation is committed by a person acting in an official capacity?*

NCCD pointed out that their decisions are continuously communicated to the public by posting them on the NCCD's website, through brochures distributed at round tables, projects, partnerships, training and any other action in which the NCCD is involved.<sup>16</sup> Also, NCCD indicated that every person has the obligation to respect the law, including persons acting in an official capacity.

In the same time one can notice that in the last three years there were no fines applied by NCCD to persons discriminating in an official capacity, but only administrative warnings.

*Are the remedies effective, proportionate and dissuasive?  
Do the remedies include, where appropriate, adequate reparation for victims?*

In spite of existing anti-discriminatory legal provisions and although "sexual minorities represent the group that is most affected by prejudice", during 2009-2011 the NCCD received no petition on gender identity criterion and only 18 petitions on sexual orientation

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<sup>14</sup> National Council for Combating Discrimination, Response No 4826/04.10.2012

<sup>15</sup> See Art.317 of the Law No. 286/2009 regarding the Penal Code.

<sup>16</sup> See National Council for Combating Discrimination, Response No.3283/8.07.2012, p.1, point 3.2.

criterion. From these 18 petitions, during the three years, the NCCD decided that 5 cases were discriminatory situations, issued 1 fine, 2 administrative warnings and 2 recommendations<sup>17</sup>.

**4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;**

[no action]

**5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible**

*What steps have been taken to ensure as wide as possible dissemination of the Recommendation and its appendix?*

The NCCD indicated that they had no information about any steps taken for the dissemination of the Recommendation.<sup>18</sup>

*Have the Recommendation and its appendix been translated?*

No. The Ministry of External Affairs pointed out the lack of human and financial resources necessary to ensure the translation of the Recommendation, taking into consideration the multitude of resolutions, decisions and recommendations the international forums take.<sup>19</sup>

Unofficial translation was made by ACCEPT and was provided to all authorities approached with information requests. While the Ministry of External Affairs stated their belief that the contribution of civil society is very important, on issues related to educating the public about protection and promotion of human rights, by the end of December 2012 ACCEPT was yet not able to identify any official version of the Recommendation or of its appendix.

*Have they been disseminated:*

- *within the lesbian, gay, bisexual and transgender communities?*
- *throughout public administration?*
- *throughout law-enforcement structures, including the judiciary and penitentiary system?*
- *to national human rights protection structures (including equality bodies)?*
- *throughout the educational system?*
- *throughout the health-care system?*
- *to representatives of public and private sector employees and employers?*
- *to the media?*
- *to relevant non-governmental organisations?*

No.

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<sup>17</sup> National Council for Combating Discrimination, Response No 4826/04.10.2012

<sup>18</sup> NCCD Response, see supra note 17.

<sup>19</sup> See Ministry of External Affaires, Response No.C2-1/2169/19.07.2012, p.1.

## Appendix to Recommendation CM/Rec(2010)5

### I. Right to life, security and protection from violence

#### A. “Hate crimes” and other hate-motivated incidents<sup>20</sup>

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.

*Does the training of police officers ensure that they are aware of the need to make special efforts to investigate any (a) homophobic or (b) transphobic connotations in hate crimes or hate motivated incidents effectively, promptly and impartially, particularly where violence is involved?*

Although the Ministry of Administration and Interior (MAI) has mentioned 12 themes related to human rights protection that are part of bachelor curricula and several others included during master studies in the field of police education, no specific information was provided about training focused on homophobic and transphobic hate crimes. The only explicit reference to sexual orientation is in connection with a training programme provided by the Institute of Studies for Public Order (education structure of MAI, providing lifelong learning for police officers and agents), a “Course on the prevention and fighting of all discrimination forms”.

The MAI states in its response that existing training should lead both to eliminate negative practices and attitudes that might exist and make police officers to be more aware about the necessity to implement standards that guarantee the respect for human rights and fundamental freedoms<sup>21</sup>.

In spite of these diverse and multi-level educational themes, it is not clear if any of these interventions approach hate crime, in general, or homophobic and transphobic incidents. Authors of this report have no information about any sanction ever applied for hate crimes motivated by homophobia or transphobia (information requests sent in 2012 to Ministry of Justice and to General Inspectorate of Police provided no data). Moreover, ACCEPT has encountered an inexplicable investigation failure in a case of violence motivated by hate against LGBT people, a case that was assisted by ACCEPT.

In 2006, 6 gay pride participants were beaten in the metro by a group of young men. They filed a complaint to the police, provided pictures of the perpetrators, allegedly identified at the police station two of the perpetrators and had medical certificates confirming the injuries suffered. They did not hear back from the police. In reply to 3 info requests by ACCEPT between 2006-2011, police said the case was still pending. In August 2011, after a new info request, the police responded that in June 2011 they forwarded to the prosecutor the proposal to close the case because of the 5 years statute of limitations.

*Is there an independent and effective machinery for receiving and investigating reports of hate crimes or hate motivated incidents allegedly committed by law-*

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<sup>21</sup> See Ministry of Administration, Response No.4357953/10.07.2012, p.1.

*enforcement staff, particularly where sexual orientation or gender identity constitute one of the motives?*

No. Although reporting procedures are in place, there is no independent and specialized unit, focusing on hate motivated incidents or crimes allegedly committed by law-enforcement staff. MAI has indicated that any complaint regarding the commission of a criminal offense or criminal conduct of a police officer may be made to the police station on which jurisdiction the offense was committed, to the police station where the police officer belongs, or to a central unit of police. Also, it is mentioned that people have the possibilities to submit petitions and complains online, on MAI website.

**2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.**

*Do legislative measures to combat “hate crimes” and other hate motivated incidents exist? Do these measures recognise (a) sexual orientation and (b) gender identity as a possible motive in such crimes or incidents?*

Yes, there are legislative measures that specifically recognise **sexual orientation** as possible motive for hate crime or for incitement of discrimination. As Ministry of Justice pointed out, in the Penal Code<sup>22</sup>, there is an article that incriminates the offense of incitement to discrimination. This article states out that the incitement to hatred on grounds of race, nationality, language, religion, gender, **sexual orientation**, opinion, political affiliation, belief, wealth, social origin, age, disability, non-contagious chronic disease or HIV / AIDS is punishable with imprisonment from 6 months to 3 years or a fine.<sup>23</sup>

There is no specific reference to **gender identity** in either of the cited article.

*Does this legislation ensure that a bias motive related to (a) sexual orientation (b) gender identity may be taken into account as an aggravating circumstance when determining sanctions?*

The Ministry of Justice indicated the existence of an article in the Penal Code<sup>24</sup> that states among the aggravating circumstances committing a crime on the grounds of sexual orientation<sup>25</sup>. Again, gender identity is not mentioned by the ministry and there is no legislative provision that specifically mentions gender identity as an aggravating circumstance.

**3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the**

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<sup>22</sup> See Art.317 of the Law No. 286/2009 regarding the Penal Code.

<sup>23</sup> See Ministry of Justice, Response No.56076/25.06.2012, p.6, point. 2.1, 2.2.

<sup>24</sup> See Art.75 (c^1) of the Law No. 286 /2009 regarding the Penal Code.

<sup>25</sup> See Ministry of Justice, Response No.56076/25.06.2012, p.6, point. 2.1, 2.2.

**necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.**

*Has a simple and comprehensible definition of “hate crimes”, which includes the motive of (a) sexual orientation and (b) gender identity been disseminated to the general public?<sup>26</sup>*

No available answers. The question was included in the info request sent to the Ministry of Justice; the response did not include any specific answer. One can only presume that the answer is “no”.

*Do training programmes and procedures ensure that the police and judiciary possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?*

The question was included in the info requests sent to the Ministry of Justice and to the Ministry of Administration and Interior. The MAI listed a series of courses on topics that could cover hate crimes and incidents, however judging from the titles of the courses provided, hate crime was not explicitly included..

*Do training programmes and codes of conduct for the police and judiciary ensure that LGBT persons are treated in a non-discriminatory and respectful manner so that they feel safe to report hate crimes or other hate motivated incidents, whether as victims or witnesses, in relation to their (a) sexual orientation and (b) gender identity?*

The Ministry of Justice responded that the legal procedures of complaint do not contain any provision that could generate discriminatory situations on any criterion. The Ministry states that according to the Code of Ethics for judges and prosecutors, these "are obliged to respect the equality of citizens before the law, ensuring them non-discriminatory legal treatment, to respect and protect the dignity, physical and moral integrity of all persons involved, in any capacity, in judicial proceedings."

Prohibition of discrimination is a principle enshrined in relation to the activity of enforcement.<sup>27</sup>

The Ministry also states that according to art. 5 of Law no. 275/2006 on execution of punishments and measures ordered by the judicial authorities in criminal proceedings "during the execution of punishment is prohibited any form of discrimination based on race, nationality, ethnicity, language, religion, gender, **sexual orientation**, opinion, political, belief, wealth, social origin, age, disability, contagious chronic disease, HIV / AIDS or other grounds ", and the violation of these provisions is punishable under criminal law. Discrimination is also the basis of the work of probation. According to art. 4 of Ordinance no. 92/2000 regarding the organization and operation of probation, they operate without any discrimination on grounds of nationality, citizenship, race, ethnicity, language, religion, sex, political or other opinion, political affiliation, wealth, social or other similar grounds.

No reference to gender identity was made within collected responses.

*Are units within the police tasked specifically with investigating crimes and incidents linked to sexual orientation and (b) gender identity?*

*Are there special police liaison officers tasked with maintaining contact with local LGBT communities in order to foster a relationship of trust?*

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<sup>26</sup> e.g. through police websites or leaflets distributed in the community.

<sup>27</sup> See Ministry of Justice, Response No.56076/25.06.2012, p.6, point. 3.2.

The questions were included in info request sent to Ministry of Administration and Interior. The Ministry did not provide answers. During pilot training courses implemented by ACCEPT in 2011 with law enforcement workers from Bucharest police, the participants stated that there are no special units to investigate crimes affecting LGBT people and no special officers responsible with maintaining contact with local LGBT communities.

*Is there a system of anonymous complaints or on-line complaints, or using other means of easy access, which allow reporting by third parties in order to gather information on the incidence and nature of these incidents?*

Official responses contained no reference to this question. Again, anecdotic evidence previously collected by ACCEPT indicated that anonymous complains or third parties reporting are not taken into consideration according to existing crime reporting procedures.

**4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.**

*Do training programmes and codes of conduct for prison staff ensure that prisoners are treated with respect and without discrimination in relation to their (a) sexual orientation and (b) gender identity?*

The National Administration of Penitentiaries (NAP) stated that the Code of ethics for the staff working in the prison system stipulates that all workers in the prison system, have the obligation, in relation to detainees, to abstain themselves and prevent any action that involves discrimination against persons deprived of their liberty, regardless of ground. They also point out that the training programmes for the prison staff are based on and in compliance with existing legal and ethical provisions and that the administration show a constant concern in the direction of training and professional development of prison staff, strict adherence to the law, professional conduct of employees, and integrity, objectivity, transparency, responsiveness and encouraging professional responsibility are central elements of their organizational culture.<sup>28</sup>

No reference to gender identity was made within the response of the National Administration for Penitentiaries.

*Are there effective measures to minimise the dangers of physical assault, rape and other forms of sexual abuse, including effective procedures for determining the disciplinary or criminal liability of those responsible, including for failure of supervision?*

The NAP indicated two ways to minimise physical assault, rape and other forms of sexual abuse in prison.<sup>29</sup> First, is the existence of the delegated judge for the execution of freedom

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<sup>28</sup> See National Administration of Penitentiaries, Response No.48905/10.07.2012, p.1.

<sup>29</sup> See National Administration of Penitentiaries, Response No.48905/10.07.2012, p.2.

depriving punishments<sup>30</sup>(who supervises and controls to ensure the legality of the execution of custodial sentences) and second, is the existence of inner and outer sections where prisoners belonging to vulnerable groups can be accommodated, at their request.<sup>31</sup> In support of the second possibility, NAP indicates that “for duly justified reasons, functional areas can be defined within detention facilities, in order to protect detainees belonging to vulnerable groups such as sexual minorities or other categories of persons protected by antidiscrimination law.”<sup>32</sup>

The NAP shows that these measures are detailed in specific legal provisions, but they do not provide information on if these institutions actually exist and are functional.

Regarding the existence of effective procedures for determining the disciplinary or criminal liability of those responsible for such abuses, NAP replies that according to the law<sup>33</sup>, breaches of duty by the prison staff, constitutes disciplinary misconduct, if the facts do not attract criminal liability.<sup>34</sup>

In 2007, the Romanian Helsinki Committee (APADOR-CH) implemented together with ACCEPT, a program monitoring detention facilities. Although positive steps were obvious, some of the findings were alarming: there were sex abuses in prisons conducted by inmates and ignored by the guards; the complaint procedures in case of rape were not efficient; homosexuals were discriminated against by their fellow inmates and this treatment was tolerated by the management<sup>35</sup>; there was no possibility for trans people to be accommodated with inmates having the same gender identity; there was no possibility for trans people to continue hormonal treatment while imprisoned<sup>36</sup>. ACCEPT continues to receive complains.

T.M. was in detention during 2004-2005 in several penitentiaries. In some of them he claims to have been subjected to ill treatments, by inmates who abused him sexually and by the staff who did not protect him against such treatment. Although 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.

T.M. initiated a civil action in 2006, requesting for compensation and general measures. Respondents: Ministry of Justice, National Administration of Penitentiaries, Ministry of Administration and Internal Affairs, General Inspectorate of Romanian Police, Constanta County Inspectorate of Police. Third party intervention: ACCEPT<sup>37</sup>.

Six years later, in December 2012, T.M. obtained a definitive court decision and is entitled to 10,000 Euro in civil damages. The decision has not been elaborated, by the end of 2012; key consequences and implications of the case are still to be found out.

*Is there an independent and effective machinery for receiving and investigating reports of such crimes by prison staff?*

<sup>30</sup> See Art.6 (1, 3, 4) of the Law No. 275/2006 regarding the execution of punishments and measures ordered by the judicial bodies during trial.

<sup>31</sup> See Art. 11 (4) of the Law No. 275/2006 regarding the execution of punishments and measures ordered by the judicial bodies during trial.

<sup>32</sup> See Art. 7 (5) of the Government Decision No. 1897/2006 for the application of the Law No. 275/2006 regarding the execution of punishments and measures ordered by the judicial bodies during trial.

<sup>33</sup> See Art. 60 (1, 2,3, 4) of the Law No. 293/2004 regarding the statute of civil servants with special status from the National Administration of Penitentiaries..

<sup>34</sup> See National Administration of Penitentiaries, Response No.48905/10.07.2012, p.3.

<sup>35</sup> Iordache, R. E., and Ionescu, I. *Legal Study in Homophobia and Discrimination on Grounds of Sexual Orientation- Romania*. Issue brief. Bucharest: FRA, 2008.

<sup>36</sup> Monitoring Report - Targor Penitentiary, ACCEPT, 2008

<sup>37</sup> Iordache, R. E., and Ionescu, I. *Legal Study in Homophobia and Discrimination on Grounds of Sexual Orientation- Romania*. Issue brief. Bucharest: FRA, 2008

The National Administration of Penitentiaries replies that there are measures for receiving and investigating reports of abuses; first of all, the detainees have the right to ask, in writing, to be examined by a forensic doctor. If the doctor finds that the inmate shows signs of violence, he or she is required to notify the Director of the prison. In case the doctor establishes that the inmate was subjected to torture, inhuman or degrading treatment or other ill-treatment he or she will notify a prosecutor.<sup>38</sup> The NAP says that in order to ensure proper organization and function of each place of detention, there are inspections, and regular as well as unexpected controls. These controls are realized either ex officio or on the basis of complaints and, among other things, have the roll of assessing and verify the situation of people belonging to vulnerable groups. Findings, conclusions, and recommendations are put into reports which are communicated to the Minister of Justice and to the NAP.<sup>39</sup>

*In the case of transgender prisoners, are there procedures to ensure that the gender identity of the individual is respected in regard to interactions with prison staff such as body searches and also particularly in the decisions taken on the placement of a prisoner in a male or female prison?*

The NAP indicated that, according to the law<sup>40</sup> the body searches are made by same-sex staff in a non-offensive way and with respect for the person's right to privacy. Also according to the law<sup>41</sup> the accommodation of sentenced persons is made in special areas, where women are separated from men, and juveniles are separated from adults.<sup>42</sup>

The Administration of Penitentiaries also states that "the current legal framework on the execution of custodial sentences, facilitates the connection between detainees and any public institution or NGO with responsibilities for verifying any aspects of violations of their rights."<sup>43</sup>

Considering the information provided it is possible that the NAP mistook "transgender/gender identity" with "gender". No actual references were made that could indicate the understanding of issues related to transgenderism. From the NAP response it is clear that trans people who have not obtained sex reassignment confirmation in the identity documents, will be treated as belonging to their birth gender.

**5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on "hate crimes" and hate-motivated incidents related to sexual orientation or gender identity.**

*Is there research into the nature and causes of hostile and negative attitudes to LGBT people, with a view to developing effective policies to combat these phenomena?*

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<sup>38</sup> See Art. 32 ( 1, 2, 3) of the Government Decision No. 1897/2006 for the application of the Law No. 275/2006 regarding the execution of punishments and measures ordered by the judicial bodies during trial.

<sup>39</sup> See National Administration of Penitentiaries, Response No.48905/10.07.2012, p.3.

<sup>40</sup> See Art. 200 ( 3, 4) of the Government Decision No. 1897/2006 for the application of the Law No. 275/2006 regarding the execution of punishments and measures ordered by the judicial bodies during trial.

<sup>41</sup> See Art. 29( 3) of the Government Decision No. 1897/2006 for the application of the Law No. 275/2006 regarding the execution of punishments and measures ordered by the judicial bodies during trial.

<sup>42</sup> See National Administration of Penitentiaries, Response No.48905/10.07.2012, p.4.

<sup>43</sup> See National Administration of Penitentiaries, Response No.48905/10.07.2012, p.5.

*Are there regular surveys into levels of social acceptance of / hostility towards LGBT people?*

*Is there an effective system for recording and publishing statistics on hate crimes and hate-motivated incidents related to (a) sexual orientation and (b) gender identity?*

The questions were included in info requests sent to Ministry of European Affairs, to National Council Combating Discrimination and to Ministry of Justice. The Ministry of European Affairs did not address any of these questions in their answer. .

The NCCD indicated that although they have not elaborated studies or reports focusing on LGBT issues, the Council is coordinating a yearly public survey on discrimination phenomena in Romania. “*Sexual minorities group faces most prejudices, and one can assess that there is an important level of homophobia between Romanian population*”. The results of the survey are publicly presented each year during public debates having representatives of NGOs, institutions, authorities and media, as participants<sup>44</sup>.

Regarding recording and publishing statistics on hate crimes and hate motivated incidents, the Ministry of Justice indicated in their response that statistical data collected do not contain information circumstantial to sexual orientation<sup>45</sup>.

## **B. “Hate speech”<sup>46</sup>**

- 6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.**

*Do legislative measures penalising “hate speech” on certain grounds exist? Do these measures penalise (a) homophobic and (b) transphobic “hate speech”?*

Yes. The Ministry of Justice has indicated that the national law incriminates incitement to discrimination, and one of the listed criteria of discrimination is sexual orientation<sup>47</sup>. Also Art. 324 of the Criminal Code<sup>48</sup> penalizes public incitement and condoning crime (*instigare publica si apologia infractiunilor*), which is the act of urging the public by speech, writing or by any other means, not to respect the laws, or of committing acts constituting crimes; these acts are punishable by imprisonment from 3 months to 3 years, but not exceeding the penalty prescribed by law for the offense the commission of which was instigated.<sup>49</sup>

There are no legal provisions on transphobic hate speech and the Ministry of Justice made no reference to transphobic “hate speech” in their response.

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<sup>44</sup> NCCD, Response 4826/04.10.2012

<sup>45</sup> Ministry of Justice, Response no 75040/17.08.2012

<sup>46</sup> See Explanatory Memorandum for definition of “hate speech”

<sup>47</sup> See Art.317 of the Law No. 286 /2009 regarding the Penal Code.

<sup>48</sup> See Art.324 of the Law No. 286/2009 regarding the Penal Code.

<sup>49</sup> See Ministry of Justice, Response No.56076/25.06.2012, p.7, point. 6.1, 6.2.

Other criminal offences in the field of hate speech are sanctioned by the law *prohibiting fascist, racist and xenophobic organisations and symbols and the encouragement to veretate persons guilty of crimes against peace and humanity*. (OU 31/2002).

The legislation has not been tested yet for homophobic or transphobic hate speech. ACCEPT could not identify any case when these legal provisions were used to sanction hate speech against LGBT or against other groups.

*Are media organisations, including those operating on the internet, encouraged to promote in their own practices (e.g. through codes of practice):*

- *a culture of respect, tolerance and diversity, and*
- *to avoid negative and stereotyped representations of LGBT people?*

The National Audiovisual Council (NAC) has quoted in their response the Audiovisual Law<sup>50</sup> and NAC Decision referring to Audiovisual Code<sup>51</sup>, both forbidding media organizations working in the audiovisual environment to broadcast programmes containing hate speech on race, religion, nationality, sex, **sexual orientation** and ethnicity criteria.

The National Audiovisual Council (NAC) has indicated that “*editorial independence of the media service provider is recognized and guaranteed*”<sup>52</sup>. *In other words, media organizations have complete freedom to promote, under the law, a culture of respect, tolerance and diversity.*<sup>53</sup>”.

Moreover, the NAC indicated that they had not identified homophobic hate speech in the monitored programmes and that they had received no complaints regarding hate speech situations.

The Deontological Code of Journalist, endorsed by media organizations who are members of the Romanian Press Club, contains no reference to tolerance, diversity, or stereotyped representations of people.

The NAC does not cover internet media and so far there is no legislation

*Has legislation for criminalising “hate speech” on the internet been implemented, and does this cover (a) homophobic and (b) transphobic “hate speech”?*

The NAC does not cover internet media and so far there is no legislation incriminating hate speech on the internet.

*Have internet service providers been encouraged to take measures to prevent the dissemination of (a) homophobic and (b) transphobic material, threats and insults?*

The question was included in info request sent to Romanian Press Club and to National Audiovisual Council of Romania. The Romanian Press Club did not answer; the NAC, although provided a complex answer, did not include specific response to this question. ACCEPT could not identify an institution or authority in charge with preventing dissemination on internet of homophobic and transphobic materials. One can only presume that no measures have been taken in this respect.

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<sup>50</sup> Art 29, 40 of the Law no 504/2002, on audiovisual

<sup>51</sup> Art 47, NAC Decision no 220/2011, regarding the Audiovisual Code

<sup>52</sup> See Art.6 (2) of the Law No. 504/2002 regarding the broadcasting.

<sup>53</sup> See National Audiovisual/Broadcasting Council, Response from 03.07.2012, p.2.

*If there are incidents of “hate speech”, are they publicly disavowed by leading public officials?*

Romanian leading public officials have not disavowed publicly hate speech against LGBT, not even in situation when well known politicians made public statements or following homophobic discourses generated during public gay events.

**7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.**

*Have guidelines been issued or other measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from such statements?*

The question was included in the information request sent to NCCD, but received no answer. ACCEPT was not able to identify such guidelines or any other measures aiming to raise awareness of public authorities and institutions of their responsibility to refrain from such statements.

*Have there been cases of statements by representatives of public authorities and institutions which may reasonably be understood as legitimising such hatred or discrimination?*

Several Members of Parliament have either occasionally or recurrently expressing homophobic statements. In November 2011 the Deputy M Spanu<sup>54</sup> was explaining how paedophilia is a branch of homosexuality, while Mr .G Becali, former Member of the European Parliament, current member of the Romanian Senate, has been repeatedly expressing homophobic opinions. In April 2011 when outdoor posters have been displayed in several cities of Romania with the message “Sexual orientation is not an illness and it is not a choice”, picturing a newborn baby wearing a bracelet that could read “homosexual”, homophobic statements and actions were common among local authorities’ representatives and MPs. In some cities the posters were immediately removed at mayors’ request. Media<sup>55</sup> cited “child protection” authorities in Timisoara protesting against the campaign. Mr M. Dugulescu, who at that time was not only MP, but also the Vice President of the Human Rights Committee (!) of the Deputy Chamber, had several public interventions against the campaign [“*minorities have spread abjections in public space*”].

**8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.**

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<sup>54</sup> <http://www.gandul.info/politica/video-senatorii-i-au-castrat-pe-pedofili-deputat-pdl-foarte-multi-dintre-copiii-abuzati-sexual-devin-homosexuali-nu-este-normal-sa-fii-homosexual-9012922> [video; (...) very many of the children who are sexually abused become homosexuals- it is not normal to be homosexual]

<sup>55</sup> <http://www.ziare.com/stiri/eveniment/un-panou-publicitar-cu-un-bebelus-homosexual-starneste-proteste-la-timisoara-1088810> [a billboard with a homosexual baby raises protests in Timisoara]

*Has guidance been issued to public officials and state representatives in this respect?*

The questions was included in the information requests sent to several authorities, but received no answer. ACCEPT was not able to identify such guidance or any other similar measures.

*If so, is there evidence of public officials and other state representatives promoting tolerance for LGBT people in their dialogue with civil society, and encouraging the use of responsible and non-violent speech?*

With the notable exception of the National Council Combating Discrimination, who has repeatedly issued such messages, including during very public events like press conferences launching the yearly LGBT festival, ACCEPT was able to identify only a few other isolated instances during the last three years when state representatives have promoted tolerance for LGBT people. Bucharest Police and the Institute of Studies for Public Order took positive stands against LGBT discrimination and hate crime during public events organized in partnership with ACCEPT, and a Prime Minister counsellor who for the first time expressed a message of support for LGBT rights during the 2012 LGBT festival.

## **II. Freedom of association**

- 9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, this including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.**

*Are organisations whose publicly stated purpose is to work for the well-being of LGBT people, whether for their human rights, or in other ways, prevented from gaining official registration?*

*If so, is this through the use of discriminatory administrative procedures, through restrictions based on public health, public morality or public order, or through other means?*

*Are there examples of measures taken to:*

- ensure that LGBT organisations can operate freely,*
- defend their interests when necessary,*
- facilitate and encourage their work?*

Organizations aiming to work in the benefit of LGBT people can register and operate freely, according to the Government Ordinance no 26/2000, regarding associations and foundations.

*Are LGBT organisations involved on a partnership basis when framing and implementing public policies which affect LGBT persons?*

The co-operation between Romanian authorities and LGBT organizations takes place to a limited extent and has been always initiated by the NGOs. Organizations working for HIV prevention for MSM are members of the Country Coordinating Mechanism on HIV/AIDS and Tuberculosis, and have been involved in elaboration of national HIV strategies. However, the last HIV/AIDS National Strategy endorsed by the Romanian Government is the one for the period 2003-2007. NGOs contribution is once more taken into account only at a declaratory level.

Other example of co-operation is the work developed by ACCEPT with the Bucharest Police-related to hate crime investigation and prevention.

Scarce, punctual and NGO-initiated cooperation cannot qualify as involvement of LGBT organization on a partnership basis.

**10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.**

*Is public funding earmarked for NGOs accessible to LGBT organisations without discrimination?*

In the last years little or no public funds have been earmarked for human rights, in Romania. "Youth in action" projects encourage applicants to include between beneficiaries people vulnerable to discrimination, and "sexual orientation" criterion is explicitly mentioned.

*Has such funding been made available to LGBT organisations?*

Theoretically yes, but the situations were isolated and limited to very small scale youth projects, or to HIV/AIDS prevention..

Romanian authorities have so far completely ignored the human rights component of NGO work and have never allotted public funds specifically for LGBT rights.

**11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.**

*Does the state provide effective protection from hostility and aggression for LGBT human rights organisations?*

*Are there examples of measures taken by the state to create an environment conducive to the work of such organisations, enabling them freely to conduct their activities, and promoting respect for their work?*

Although in the case of gay marches, for example, police mobilization was to a large extent efficient, the vulnerability of LGBT activists in relation to homophobic reactions is often used as an argument, by law enforcement authorities, to request a decreased visibility of public actions related to LGBT rights. State officials have never made encouraging statements directed to the LGBT movement. Moreover, police and prosecution seem to be ineffective in their investigation work, and aggressors remain un-identified and, therefore, not punished. The case of six victims aggressed after the 2006 gay march was closed after offenders could

not be identified during the next 5 years- although the situation was an exceptional one, when a photographer who was able to take photos of the aggressors during the incident, came as a witness in this case.

*Are LGBT human rights organisations able to work with*

- *national human rights institutions and ombudsmen,*
- *the media,*
- *other human rights organisations?*

Yes.

*Are they able to take part in training sessions, international conferences and other human rights activities?*

Yes.

**12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.**

*Are LGBT organisations consulted on the adoption and implementation of measures affecting the rights of LGBT persons?*

No. There was not even a single case in the last three years when ACCEPT, the only Romanian organization specialized in the defence and promotion of LGBT human rights, was consulted prior the adoption of measures that may have impact on the human rights of LGBT people.

*Have there been such consultations regarding the implementation of this Recommendation?*

No.

### **III. Freedom of expression and peaceful assembly**

**13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.**

*Have the authorities ensured the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, including:*

- *activities that support the human rights of LGBT persons*
- *publication of material*
- *media coverage*
- *organisation of/participation in conferences*
- *dissemination/access to information on safe sexual practices?*

*Or, on the contrary, have there been cases where restrictions have been placed on freedom of expression?*

Authors of this study are not aware of any restrictions placed by central authorities on freedom of expression. However, in the case of some billboards that were displayed in

several Romanian cities, promoting the message that homosexuality is neither an illness nor a choice, there were situations when local authorities requested their immediate removal<sup>56</sup>.

*Have the authorities encouraged pluralism and non-discrimination in the media in respect of issues of (a) sexual orientation or (b) gender identity?*

Although the National Audiovisual Council provides explicit references for legal provisions prohibiting discrimination on sexual orientation criterion in the media, in respect of measures aiming to encourage pluralism, the NAC indicated that according to the Audiovisual Law, the editorial freedom of the providers of audiovisual media services is recognized and guaranteed. Therefore, “media organizations have complete freedom to promote, according to the law, a culture of respect, tolerance and diversity.”<sup>57</sup>

ACCEPT has no information about any actions initiated by authorities in order to encourage pluralism and non-discrimination in the media.

**14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.**

*Have the authorities ensured freedom of peaceful assembly for LGBT people?*

Article 39 of the Romanian Constitution guarantees freedom of any peaceful assembly. All assemblies taking place on a public road, in public squares or in other places outdoors, need to be notified to the mayor's office. The request must be filed at least three days in advance. A commission formed from the local administration and police officials is convened by the mayor and gives its opinion on the request. The mayor takes the final decision.<sup>58</sup>

Gay marches have been organised annually in Bucharest, since 2005, together with various other cultural or political public events.

**15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.**

*If there has been hostility to LGBT freedom of assembly events, have the law enforcement authorities taken reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully?*

Every year a so-called Normality March is organised by extreme right wing groups, sometimes together with the Romanian Bucharest Church. In spite of consistent use of slogans inciting discrimination and violence against LGBT people, the authorities do not enforce legal provisions prohibiting such behaviour.

*In particular, have the police protected participants in peaceful LGBT demonstrations effectively?*

*Have the police acted with integrity and respect towards LGBT people and their supporters when policing LGBT freedom of assembly events?*

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<sup>56</sup> Personal communication, Tudor Kovacs, PSI Romania, Coordinator of the campaign, May 2011.

<sup>57</sup> National Audiovisual Council, response to ACCEPT request, sent on 27 June 2012

<sup>58</sup> Iordache, R. E., and Ionescu, I. *Legal Study in Homophobia and Discrimination on Grounds of Sexual Orientation- Romania*. Issue brief. Bucharest: FRA, 2008.

Law enforcement structures ensured effective protection of the participants to the LGBT marches. Police acted with integrity and respect towards LGBT people, during the march.

**16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.**

*Have the authorities placed restrictions on freedom of assembly events? If so, what have been the grounds?*

*Have conditions been placed, for example, with regard to the route or timing of demonstrations, which are not generally applied to other demonstrators?*

*Since 2008 the Bucharest local authorities have no longer allowed spectators to join the event. For allegedly safety reasons, the march is organized on a route that allows complete control of people who enter the marching area, much shorter and less visible than the route for the anti-gay manifestation that takes place earlier the same day. Spectators are allowed to enter the area of the LGBT march only if they declare they want to participate to the LGBT march.*

*In 2012 the Bucharest Municipality not only imposed the same invisible route for the gay pride, but also used institutional bureaucracy to avoid releasing the march authorisation until the last moment:*

- ignoring for two months of the request for authorization of the march;
- repeated refusal to schedule a meeting between representatives of the organizers and those of the city hall;
- failing to include the organization on the agenda of the commission responsible for advising the march;
- ACCEPT Association was put in a position to pay a processing fee for emergency of the request- although the delay happened because the city hall failed to respond to the authorization request;
- the authorization received from the Technical Committee for Traffic was stopping the traffic for a period which was less than the duration of the march;
- the last notice required was released only in the day before the march.

*If restrictions have been placed on freedom of assembly events, has it been possible to challenge them in the courts or through other independent review mechanisms?*

The only explicit restriction was related to the 2005 march, which was initially refused authorisation, but subsequently authorised.

**17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.**

*If there have been unlawful interferences with the right to freedom of expression and peaceful assembly,*

- a. Has there been encouragement to public authorities to condemn such interferences?*

*b. Have public authorities actually condemned such interferences?*

*Where there has been public hostility towards the exercise of freedom of assembly by LGBT people, have the authorities upheld this right publicly?*

*Or, on the contrary, have the authorities endorsed or supported hostility towards LGBT freedom of assembly events?*

ACCEPT is not aware of any encouragement to public authorities to condemn interferences with the right to freedom of expression. Moreover, no public authorities condemned such interferences, in the last three years.

#### **IV. Right to respect for private and family life**

**18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.**

*Does legislation criminalise same-sex sexual acts? Are there any differences in the age of consent? If either applies, what steps are the authorities taking to repeal the legislation?*

No. Romanian legislation does not criminalize same sex sexual act. The age of consent is the same for heterosexual and homosexual contact- 15 years old.

ACCEPT has anecdotic reports, however, of situations when men involved in sexual acts with other men who were between 15-18 years old of range, have been investigated for child pornography or for alluring a child to consent to sexual acts. Although the legislation<sup>59</sup> is explicit that same provisions apply no matter the gender of persons involved, ACCEPT is not aware of similar criminal investigations involving heterosexual couples.

*Are there any criminal law provisions which, because of their wording or scope are liable to be applied in a discriminatory manner regarding (a) sexual orientation or (b) gender identity?*

*If so, what steps are the authorities taking to remedy this situation?*

The Ministry of Justice indicated that there are no provisions in the national criminal law that due of the wording or scope are likely to be applied in a discriminatory manner regarding sexual orientation or gender identity.<sup>60</sup>

However, ACCEPT is aware of situations when police workers considered same-sex sexual acts as “acts of perversion”. Perversion acts are sanctioned with imprisonment, under the article 201 of the Criminal Code<sup>61</sup>.

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<sup>59</sup> Art 202 (3). Criminal Code.

<sup>60</sup> See Ministry of Justice, Response No.56076/25.06.2012, p.7, point. 18.2.

<sup>61</sup> Art 201, Criminal Code: “Sexual perversion acts performed in public, or if they generated public scandal, are punished with imprisonment from 1 to 5 years.”

Although the High Court of Cassation and Justice<sup>62</sup> has clarified in 2005 the meaning of “perversion” and stated explicitly that homosexual acts are not to be considered perversions:

- A gay man, U.M., was subject of criminal investigation for “perversion performed in public”, after he was caught having sex with another man in a park (case legally assisted by ACCEPT).
- A police chief declared in a central newspaper<sup>63</sup>, in August 2011, that homosexual acts performed in public are to be sanctioned according with article 201 of the Criminal Code.

The General Police Inspectorate confirmed in a letter addressed to ACCEPT that Police was aware of the judicial meaning of “perversion”; eventual situations when homosexual sex was considered perversion by police workers, if existed, they were isolated cases. It was also mentioned that the decision of the High Court of Cassation and Justice had been communicated to Police employees to avoid future misunderstandings. In spite of this reassurance, in December 2012, after more than a year of investigation, UM’s case had not been closed yet.

**19. Member states should ensure that personal data referring to a person’s sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.**

*What steps have been taken to ensure that public authorities comply with this requirement, in respect of (a) sexual orientation and (b) gender identity particularly with regard to records held by law enforcement authorities?*

*What steps have the authorities taken to ensure that existing records are destroyed?*

*Have these steps been effective?*

*Is there any evidence of:*

- *the continued existence of such records*
- *the continuing collection of such data?*

The above questions were included in the info request sent to Ministry of Justice. The Ministry did not provide any information.

National legislation<sup>64</sup> contains provisions prohibiting collection and storing of personal data, with explicit reference to “sexual life” as one of the areas protected by law. This legislation is often used by authorities to defer information requests sent by NGOs on statistic data regarding hate crimes against LGBT, number of trans people who asked for new identity papers etc. In the same time, gay men who have requested legal assistance from ACCEPT reported occasionally that law enforcement authorities were particularly interested in their sexual orientation and behaviour, requesting information that seemed to have no relevance for the case. In one circumstance when D.H., a gay man, was involved in a violent incident not related to his sexual orientation, a police worker made comments about a previous situation in which D.H. needed police assistance, with references to his sexual orientation.

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62 Decision of the High Court of Cassation and Justice no III, of 23.05.2005, published in Official Monitor no 867/27 Sep 2005.

63 *Adevărul de Seară*, 24 August 2011

64 Law no 667 of 21/11/2001 on the Protection of Individuals with Regard to the Processing of Personal Data and the Free Movement of Such Data, amended and completed

**20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.**

*Has a review of such prior requirements been conducted?*

The question was included in info request sent to Ministry of Justice. The Ministry omitted to answer. Considering the absence of the answer and the generalized lack of awareness of authorities on gender identity issues, it is highly unlikely that any review had been conducted.

*Are there still requirements which might be considered disproportionate or even abusive,<sup>65</sup> such as:*

- *irreversible sterilisation,*
- *hormonal treatment,*
- *preliminary surgical procedures, or proof of a person's ability to live for a long period of time in the new gender?*

Again, the Ministry of Justice was not able to address this question.

There is no special legislation regulating the situation of transgender people. However, the procedures followed by the National Institute of Legal Medicine- NIML<sup>66</sup> (Institutul National de Medicina Legală) provide some information regarding prior requirements for gender reassignment. According to NIML, a trans person should accommodate for NIML's evaluation at least three years, after requesting, in court, the authorisation for gender reassignment. The court decision should be taken after NIML evaluation is over. This evaluation process involves mandatory hospitalisation, mandatory psychotherapy, social enquiry<sup>67</sup>, real life test for at least one year, proofs that the trans person "has lived in environments dominated by the people of his/her desired gender" (!). Also, the trans person should be in direct contact with both trans people who undergone surgical interventions and trans people who changed their mind (this is a highly unrealistic request; is not within the control of the trans person to identify and establish direct contact with the two categories). Hormonal treatment is compulsory in the last phase of the three years process, and in case the endocrinologist decides that the trans person has conditions that make impossible hormonal treatment, then "the process of sex change will be stopped".

In the same time, the limited existing case law indicates that in some circumstances the courts considered sterilisation to be mandatory prerequisites, while in others the decision admitting the change of the identity papers contains no medical pre-conditions.

**21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular**

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<sup>65</sup> The Explanatory Memorandum draws attention to Committee of Ministers Recommendation Rec(2007) 17 on gender equality standards and mechanisms, which affirms that "both women and men must have a non-negotiable right to decide over their own body, including sexual and reproductive matters. Such acknowledgement must be reflected in the development, implementation, access to, monitoring and evaluation of health-care services and in research priorities."

<sup>66</sup> Letter to ACCEPT no A8/4584/03.05.2011

<sup>67</sup> A NIML employee provided verbally clarifications about the "social enquiry" stating that it involves interviews with the neighbors and work colleagues of the trans person

**by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.**

*Are there procedures in operation which ensure the full legal recognition of a person's gender reassignment?*

*Do these make possible the change of name and gender in official documents including birth certificates, identity papers, driving licences, passports, social insurance cards and numbers, electoral, land and text registers in a quick, transparent and accessible way?*

The questions were included in info request sent to Ministry of Justice. The Ministry omitted to answer.

The law on civil registration data<sup>68</sup> and the law on the procedures for identity documents<sup>69</sup> offer indirect guidance on the procedure for name and gender change in the official documents. The legal provisions state that for sex change in the civil status acts there is a need of a final judgement issued by a civil court. Both legal provisions do not clarify procedures. According to the Ordinance 41/2003 [art 2. (2) I.] a trans person can apply for an administrative procedure to change the individual's surname and the identification documents only after the approval of sex change has been given in 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<sup>70</sup>. Moreover there are no details on criteria to be used when assessing someone's sex and NILM refused to inform ACCEPT on the criteria claiming that this is not public information. In practice this can lead to dramatic situation.

A.K. a trans man<sup>71</sup> who obtained a final court decision allowing him to update his identity papers, underwent several surgical interventions (ovarectomy, hysterectomy and mastectomy) and then requested the forensic medical act stating his sex. The expert evaluating A.K. decided that his gender was "female", in spite of the surgery and of the fact that AK had been living as a man for years, commenting that AK continued to have "female secondary sexual characteristics".

Moreover, existing case law is contradictory and just adds to the uncertainties of the procedures. ACCEPT has either represented in court or provided legal assistance in 9 cases in the last three years. Each case followed a distinct parcours, leading sometimes to opposite decisions for identical cases. In terms of time needed to get a final court decision, it goes from one year to more than 2 years.

Although rudiments of procedures are in place and some trans people succeeded to completely update their identity papers, the procedures are by no means predicable, accessible, quick or transparent.

<sup>68</sup> Law no 119/1996 regarding civil status documents.

<sup>69</sup> Government Ordinance no 41/2003, and subsequent modifications

<sup>70</sup> Iordache, R. E., and Ionescu, I. *Legal Study in Homophobia and Discrimination on Grounds of Sexual Orientation- Romania*. Issue brief. Bucharest: FRA, 2008.

<sup>71</sup> AK was juridical assisted by ACCEPT, in 2010.

*Are there procedures to ensure corresponding changes in key documents originated by non-state actors, such as*

- *diplomas,*
- *certificates of employment, and*
- *insurance or banking documents?*

*If yes, do these procedures include the protection of the person's private life, so that no third party can become aware of the gender reassignment?*

The questions were also included in info request sent to Ministry of Justice, but remained unanswered.

In practice, although there are no specific procedures, it is possible for a trans person who managed to change her/his identity paper, to change other documents. The lack of dedicated procedures leads sometimes to absurd situations. A trans man received a new study diploma, with his new name on it and with his former name and gender, specified, in brackets: [“formerly Mrs X<sup>72</sup>”].

**22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.**

*Is the right of a legally recognised transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?*

Again, Ministry of Justice did not provide an answer to this question.

There is no legal provision forbidding trans people to marry a person of the sex opposite to their reassigned sex, once gender reassignment has been legally recognised. However, this right is not effectively guaranteed either.

**23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.**

*Does legislation confer rights and obligations on unmarried couples? If so, have steps been taken to ensure that these rights and obligations apply to same-sex couples?*

The national legislation does not confer rights to unmarried different sex couples, except for the right to be recognised as parents in case of assisted human reproductions, with third party donor: “parents, in the understanding of the current section, can be only a man and a woman, or a single woman”<sup>73</sup>.

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<sup>72</sup> Copy of the diploma on file, with ACCEPT.

<sup>73</sup> Art 441 (3), of the Law 287/2009, Civil Code

The Ministry of Justice states that according to Law no. 287/2009 of the Civil Code in Romania, the only form of recognized cohabitation is marriage: "the family is based on the consensual marriage of the spouses, on their full equality and the right and duty of parents to ensure the upbringing and education of their children."<sup>74</sup>

The Ministry also indicates that "spouses are male and female joined in marriage"<sup>75</sup>, and by the provisions of art. 277 (1) of the new Civil Code marriage between persons of the same sex was expressly prohibited.<sup>76</sup>

**24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.**

*Does legislation recognise registered same-sex partnerships? If so, have steps been taken to ensure that their legal status and rights and obligations are equivalent to those of heterosexual couples?*

Romanian legislation provides no recognition to same sex partnerships. Moreover, provisions of the new Civil Code make it explicit that Romania does not recognize partnerships or marriages between same-sex persons concluded abroad (art. 277 para. (2) and (3) of the Law no. 287/2009 of the Civil Code). Although the fourth paragraph of the art 277 states also that "legal provisions pertaining to the freedom of movement of the citizens belonging to EU Member States and European Economic remain applicable", the Ministry of Justice was not able to provide any clarification regarding the practical consequences of the art. 277 (4).<sup>77</sup>

**25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.**

*If same-sex couples enjoy no rights or obligations, either through access to registered partnership or through their status as unmarried couples, have the authorities considered the possibility of implementing legal or other means to address the practical problems arising from this lack of recognition?*

Although the question was included in info request sent to Ministry of Justice, the Ministry did not address it

The changes of Romanian legislation were made in the direction of forbidding any recognition to same sex couples- even if this meant that different sex couples are also deprived of legal means to obtain the recognition of their union.

It must be said that the old Family Code used to define family in gender-neutral terms, "based on marriage between spouses", as provided for by the Article 48 of the Constitution. Though the definition of marriage had not excluded same sex marriage, it had never been used for this purpose as practitioners agree that the interpretation of the old Family Code

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<sup>74</sup> See Art.258 of the Law No. 287/2009 regarding the Civil Code.

<sup>75</sup> See Art.258 (4) of the Law No. 287/2009 regarding the Civil Code.

<sup>76</sup> See Ministry of Justice, Response No.56076/25.06.2012, p.7, point. 23-25.

<sup>77</sup> See Ministry of Justice, Response No.56076/25.06.2012, p.7, point. 23-25.

limited the institution of marriage to heterosexual couples<sup>78</sup>. In spite of these limitations, the new Civil Code was modified so that now it reinforces the prohibition of same-sex marriages.

**26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.**

*What steps have been taken to ensure that decisions regarding the parental responsibility for, or guardianship of a child, are taken without discrimination based on (a) sexual orientation or (b) gender identity?*

*In practice, are such decisions taken on a non-discriminatory basis?*

Ministry of Justice failed to address these questions.

Legal provisions pertaining to the parental responsibility for, or guardianship of a child contain no references to sexual orientation or gender identity; decisions regarding these issues are to be taken according to the child's best interest.

However, as long as homosexuality is still seen as a disease by some health professionals it is likely that, in the absence of clarifying legal provisions, some people will genuinely assess that it is in the best interest of a child to be in the care of a heterosexual person.

ACCEPT was requested in several, punctual, cases to provide legal counselling to women who were afraid that during divorce they would lose the custody of their children, because of their sexual orientation. In all cases the requests were received by email, or phone and were anonymous and the mother's final decision was to deny any allegations related to their sexual orientation. One of the findings of the *Eurobarometer 2012 on perceptions of discrimination in the EU*, is that only 2% of Romanians are aware to have ever met a LGBT person. This situation enforces the stereotype beliefs about LGBT and therefore help those who are not out to remain unspotted. In this situation it is understandable that LGBT parents will not disclose, or will deny their sexual orientation or gender identity.

**27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.**

*What steps have been taken to ensure that decisions regarding adoption of a child by a single person (where such adoption is permitted by national legislation), are taken without discrimination based on (a) sexual orientation (b) gender identity?*

The Romanian Office for Adoptions indicated that according to the law<sup>79</sup> the adoption of a child can be made by an unmarried person, without any relevance of their sexual orientation or gender identity. The ROA also states that the Romanian authorities have taken measures in order to ensure that decisions regarding adoption of a child are taken without

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<sup>78</sup> Iordache, R. E., and Ionescu, I. *Legal Study in Homophobia and Discrimination on Grounds of Sexual Orientation- Romania*. Issue brief. Bucharest: FRA, 2008.

<sup>79</sup> See Art. 7 of the Law No. 273/2004 regarding the legal status of adoption.

discrimination: one is not including sexual orientation or gender identity issues within impediments to adopt and the second one is not mentioning in the working tools used in the adoption procedure aspects about sexual orientation or gender identity of persons that want to adopt, for the reason that these aspects do not represent criteria or conditions for the adoption of a child.<sup>80</sup>

*In practice, are such decisions taken on a non-discriminatory basis?*

The Romanian Office for Adoptions replied that they estimate that in practice, adoption decisions were taken on a non-discriminatory basis, as their institution has no records about claims or complaints regarding the discrimination of a potential adopter, on grounds of sexual orientation or gender identity.<sup>81</sup>

However, article 461 (1) of the Civil Code states that the adopter “has to meet moral and material guarantees”. As mentioned above, homosexuality is still seen as a disease by health professionals, and vocally portrayed as a sin by the influential Orthodox Church. It is likely that, in the absence of explicit legal provisions, some people will genuinely assess that it is not in interest of a child to be in the care of a LGBT person.

**28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.**

*What steps have been taken to ensure that access by single women to assisted reproductive treatment (where permitted by national legislation), is without discrimination based on sexual orientation?*

*In practice, is such access granted on a non-discriminatory basis?*

Ministry of Justice failed to address these questions.

A draft law on medically assisted reproduction with third donor presently under debate in the Parliament imposes on single women the condition of being infertile in order to have access to the medical procedures. This implicitly excludes lesbians.<sup>82</sup>

## **V. Employment**

**29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.**

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<sup>80</sup> See Romanian Office for Adoptions, Response No.5892/05.07.2012, p.1.

<sup>81</sup> See Romanian Office for Adoptions, Response No.5892/05.07.2012, p.1.

<sup>82</sup> Proiectul de lege privind reproducerea umană asistată medical cu tert donator (înregistrat la Camera Deputatilor cu nr.63/10.04.2012)

*Does legislation<sup>83</sup> exist which prohibits discrimination in employment in the public and private sector on grounds of (a) sexual orientation and (b) gender identity?*

*Does it cover:*

- *access to employment (including recruitment); promotion,*
- *dismissals,*
- *pay,*
- *harassment and other forms of victimisation?*

Romanian anti-discrimination legislation encompasses the areas protected by the Employment Directive<sup>84</sup>. As about shifting the burden of proof onto the defendant, Romanian law introduces the concept of “sharing the burden of proof”. “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.”<sup>85</sup>

Ministry of Labour<sup>86</sup> stated that work relations are based on the principle of equal treatment for all employees and employers, and quoted in its response the Romanian Labour Code: “any direct or indirect discrimination against an employee, based on (...) sexual orientation (...) is prohibited”<sup>87</sup>.

Gender identity is not explicitly mentioned in the Labour Code, or in the Anti-discrimination Law. However, the antidiscrimination law is applicable to any “disadvantaged category<sup>88</sup>”, which can also cover gender identity.

*Have the authorities promoted other measures to combat discrimination, harassment and victimisation, in both the public and private sectors, for example:*

- *adoption of codes of conduct for both employers and employees;*
- *training and awareness raising programmes for both employers and employees;*
- *distribution to employees of materials explaining their rights, complaints mechanisms and remedies;*
- *recruitment efforts directed at LGBT persons;*
- *the adoption of non-discrimination policies explicitly referencing sexual orientation and gender identity;*
- *co-operation with and support for employee groupings of LGBT persons?*

The Ministry of Employment failed to address these aspects in its response. ACCEPT could identify no evidence of any measures taken by the Romanian authorities specifically in the interest of LGBT persons.

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<sup>83</sup> Under the European Social Charter this legislation should cover both direct and indirect discrimination. It should also provide for the burden of proof in discrimination cases to rest with the employer. (See the Digest of Case Law of the European Committee of Social Rights -- Interpretation of the Different Provisions -- Article 1 - right to work -- [http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf)). The EU Employment Directive provides the following definition of indirect discrimination: "where an apparently neutral provision, criterion or practice would put persons having a ..... particular sexual orientation at a particular disadvantage compared with other persons .....".

<sup>84</sup> Art 1 (2), Art 3 (a), Art 5, 6, 7, 8- Government Ordinance no 137/2000 with the subsequent modifications

<sup>85</sup> Art 20(6), Art 27 (4), Government Ordinance 137/2000

<sup>86</sup> See Ministry of Labor, Response No.183336/28.06.2012, p.3.

<sup>87</sup> See Art. 5 (2) of the Law No. 53/2003 regarding the Labor Code

<sup>88</sup> Art 4. GO 137/2000

*Have steps been taken to abolish laws, regulations and practices which discriminate on grounds of (a) sexual orientation and (b) gender identity in access to and career advancement within certain professions and occupations, including particularly the armed forces?*

The Ministry of Defence stated in their response<sup>89</sup> that there have not been identified laws or practices that discriminate or might discriminate on grounds of sexual orientation or gender identity in access and promotion in the military career.

Information on regulations and practices related to career advancement within the armed forces is not available to ACCEPT.

However, while Romanian laws prohibit discrimination explicitly, little is known about practices specific for certain professions or occupations. For example, in 2003, when antidiscrimination legislation was in place, ACCEPT identified a Joint Order issued by the Ministry of Education and the Ministry of Health<sup>90</sup>, that stated that homosexuality was incompatible with teaching. The regulation was repealed in the same year, following lobbying efforts of ACCEPT, but in 2006 a new joint order by the two ministers once again mentioned homosexuality on the lists of conditions triggering the prohibition to work as a teacher.

Considering the low level of awareness on LGBT issues expressed by most of Romanian authorities, it is likely that similar regulations or procedures exist and remain not-identified as discriminatory provisions.

*Specifically in relation to the armed forces:*

- *Have measures been taken to provide protection for LGBT persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment?*
- *Do codes of conduct and training address the need to combat discrimination against LGBT persons and promote tolerance and respect?*

The Ministry of Defence stated that there are no people that publicly identify as LGBT within the ministry; this is why no evidence of LGBT persons is kept and, “consequently, it was not necessary to take measures to protect these persons from any ill-treatment.”<sup>91</sup>

Except for the above statement, the rest of the response provided by Ministry of Defence contains examples about regulations and actions aiming to promote equal opportunities for women; we assume that the Ministry has mistaken gender with gender identity..<sup>92</sup>

*Do measures designed to combat discrimination in employment fully and effectively cover transgender persons?*

*Have employment programmes focusing specifically on employment opportunities for transgender persons been developed?*

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<sup>89</sup> See Ministry of Defence, Response from 09.07.2012, p.1.

<sup>90</sup> Iordache, R. E., and Ionescu, I. *Legal Study in Homophobia and Discrimination on Grounds of Sexual Orientation- Romania*. Issue brief. Bucharest: FRA, 2008.

<sup>91</sup> See Ministry of Defence, Response from 09.07.2012, p.1.

<sup>92</sup> See Ministry of Defense, Response from 09.07.2012, p.1.

No. The Ministry of Labour completely omits to refer to “gender identity”, while Ministry of Defence covers issue related to gender (not gender identity) in their responses- which in itself is an indication of complete absence of such measures.

Not only that there are no measures designed to combat trans discrimination in employment, but, in practice, the situation of trans persons can become dramatic, with absent employment opportunities. ACCEPT provided assistance to trans people who no longer had identity papers; others had identity papers that, although valid, did not conform to their expressed gender. The inexistence of clear and effective procedures that would allow trans people to obtain adequate identity papers, leaves trans people in a highly vulnerable situation. As one employer expressed it “It would be a nuisance to explain each time that you, a woman, are hired with a contract made in the name of a man.”

**30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.**

*Have measures been taken to avoid disclosure of transgender persons' gender history or former name in the context of employment?*

Employment Ministry failed to address this question. Considering the lack of awareness about trans issues, it is not realistic to assume that any steps have been taken in order to avoid disclosure of transgender persons' gender history in the context of employment.

## **VI. Education**

**31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.**

*Have*

- *equality and safety policies,*
- *codes of conduct and*
- *handbooks*

*for educational staff been introduced or updated to ensure that LGBT pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment?*

No. Although the Ministry of Education, Research, Youth and Sports indicated that the new Education Law<sup>93</sup> is based on principles like equity, equal opportunities, freedom of thought,

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<sup>93</sup> See Art. 3 (a,j,n,o,r) of the Law No. 1/2011 regarding the national education

social inclusion and health education, they did not indicate any specific measure targeting educational staff in order to ensure a safe environment for the LGBT pupils.<sup>94</sup>

Neither the Education Law, nor the Operational and Management Regulations for Pre-University Schools<sup>95</sup> (the other legal provision indicated by the Education Ministry as relevant) contain any reference to sexual orientation or gender identity. The Education Ministry indicated that the schools have the right to extend the provisions of the above Rules as they consider adequate – which, in itself, is an indicator of the absence of a systematic approach aiming to create a safe environment for LGBT pupils.

*Do initial and in-service training programmes for teachers and other educational staff address the need for them to*

*a. treat their LGBT pupils and students with respect*

*b. be able to detect, analyse and effectively respond to and combat discrimination on these grounds in schools?*

Once again the Education Ministry has indicated a law<sup>96</sup> that contains only principles and basic requirements for teachers' training; Education Law does not include provisions related to teachers competence to detect and respond to discrimination. In the same time teachers<sup>97</sup> who have applied to training courses organized by ACCEPT on LGBT issues, have expressed the urgent need of information that would allow them to adequately handle issues faced by LGBT pupils, and stated that ACCEPT's training course was the only educational resource on this topic they were able to identify.

*Is there support for the mounting of school campaigns and cultural events against homophobia and transphobia, including the participation, where appropriate, of representatives of LGBT organisations?*

The Ministry of Education, in their response, expressed the support for projects, programs and educational campaigns that promote non-discrimination, tolerance, multiculturalism and diversity.<sup>98</sup> The Ministry has avoided, again, to use the *sexual orientation* and *gender identity* terms in its response. No information about possible specific actions was provided. One can assume that school campaigns or cultural events against homophobia and transphobia can only incur in isolated circumstances, not as a consequence of national, coordinated actions.

**32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and**

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<sup>94</sup> See Ministry of Education, Response No. 18506/27.07.2012, p.1.

<sup>95</sup> Minister Order no 4925/2005 – *Regulament de organizare si functionare a unitatilor de invatamant preuniversitar.*

<sup>96</sup> Education Law, no 1/2011

<sup>97</sup> Application forms- with ACCEPT.

<sup>98</sup> See Ministry of Education, Response No. 18506/27.07.2012, p.2.

**teaching aids. Such measures should take into account the rights of parents regarding education of their children.**

*Is information on*

*a. sexual orientation*

*b. gender identity*

*provided in school curricula and sex and health education classes?*

The Ministry of Education replied that “sexual orientation and gender identity issues are addressed in the curriculum for the health education discipline, in the chapter about reproductive and family health”. They also indicated that this information is provided in a rigorous scientific way, respecting the principles of objectivity and veracity.<sup>99</sup>

However, health education is an optional subject, studied at the decision of the school principle. According to the curriculum, there is only one lesson on sexual orientation, planned to take place in the 12<sup>th</sup> grade (for pupils who are 18-19 years old).

*Is it provided in a respectful and objective manner?*

Between 2005-2009, ACCEPT has repeatedly requested more information about the content of Health Education class. The Ministry was never able to provide more information than data included in current reply. Also, ACCEPT could identify no text books on health education covering the subject of sexual orientation or gender identity.

*Are LGBT pupils and students provided with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity?*

No. Ministry of Education has not provided a response to this question, but stated later on in their letter that “there are no cases of transgender pupils in pre-university schools”. Similar beliefs – “there are no gay pupils in our school”- have been often expressed by teachers and school counsellors during various encounters with ACCEPT staff. Needless to say that there are LGBT pupils in Romanian schools. Their invisibility is a clear indicator for the absence of information, support and protection that could enable LGBT pupils to live in accordance with their sexual orientation and gender identity.

*Are measures taken to adequately meet the special needs of transgender students in their school life, for example with regard to change of name or gender in school documents?*

While the Ministry of Education replied that there were not identified cases of transgender students<sup>100</sup>, ACCEPT has provided legal or psychological assistance to several trans pupils and/or their tutors in the last two years. Trans pupils, who have difficulties in conforming to the expected gender identity, often end up facing the consequences of homophobia and transphobia. In spite of this, there is no awareness of trans needs and there are no measures in place at national level to respond to these specific needs of trans students.

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<sup>99</sup> See Ministry of Education, Response No. 18506/27.07.2012, p.2.

<sup>100</sup> See Ministry of Education, Response No. 18506/27.07.2012, p.2.

## VII. Health

- 33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.**

*Do*

- a. the design of national health plans,*
  - b. health surveys,*
  - c. suicide prevention programmes,*
  - d. medical training programmes,*
  - e. training courses and materials*
  - f. the monitoring and quality assessment of health-care services*
- take into account specific needs in relation to (a) sexual orientation and (b) gender identity?*

*Do training programmes for health professionals enable them to deliver the highest attainable standard of health-care to all persons, with full respect for (a) sexual orientation and (b) gender identity?*

*Are education, prevention, care and treatment programmes and services in the area of sexual and reproductive health available to LGBT people, and do they respect their needs?*

Health Ministry responded<sup>101</sup> to these questions indicating anti-discriminatory provisions included in Law on the Reform of Health System, no 95/2006: the public social insurance system provides universal, equitable and non-discriminatory protection for those included in the system (art 3), emergency medical assistance is provided with no discrimination for all citizens (art 98), medical professionals cannot refuse to provide medical assistance to anyone on “ethnic, religious and sexual orientation criteria, or on other discriminatory criteria that are forbidden by law” (art 652).

The Ministry did not mention any services or programmes that take into account specific needs in relation to sexual orientation or gender identity.

We are not aware of any treatment programmes and services that respond to the needs of LGBT people, in the area of sexual and reproductive health, other than the ones developed by NGOs. Same situation with training courses targeting medical professionals, health surveys for LGBT people etc.

*Are health professionals and social workers encouraged to create an environment that is reassuring and open to young LGBT persons, for example through information campaigns?*

No response was provided by Health Ministry and ACCEPT could not identify any initiatives of this type.

*Are patients in hospital or otherwise the subject of medical emergencies, free to identify their "next of kin", and are rules on issues regarding "next of kin" applied without discrimination on grounds of (a) sexual orientation and (b) gender identity?*

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<sup>101</sup> Health Ministry, Response no CV1795/03.08.2012

No response was provided by Health Ministry. Romanian legislation does not recognize the patient right to identify their “next of kin”.

**34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.**

*Has homosexuality been removed from the national classification of diseases?*

Yes, the national classification of diseases is in accordance with the WHO standards.

*Have all policy documents, medical textbooks and training materials which may previously have treated homosexuality as a disease been corrected or withdrawn?*

The Health Ministry has not provided an answer to this question. We can only assume that there are no actions taken in order correct outdated textbooks or to balance the information provided by professors who continue to present homosexuality as a disease to students in medicine or psychology.

The curricula<sup>102</sup> for psychiatry of the “**Carol Davila**” **Medicine and Pharmacy University of Bucharest**, for example, states “homosexuality” and “transsexualism” under the topic “*Behaviour and Personality Disorders in Adult Age (pathological personalities)/ Personality disorders from sexual perspective: homosexuality, bisexuality, transsexualism, transvestism.*” In the same time, the code of ethics of Carol Davila University contains specific reference to sexual orientation (art 3), within the listed discrimination criteria. This is good exemplification of the inadvertences that commonly appear between Romanian anti discriminatory legislation/provisions and actual institutional practices.

A reference book on Clinical Sexology<sup>103</sup>, published by the Printing House of the Romanian Academy, is also presenting homosexuality under the “Pathological Sexuality” chapter, within “major sexual deviations (sexual perversions)”, together with paedophilia, necrophilia, zoophilia, etc.

*Are measures in place to ensure that no one is forced to undergo any form of treatment, protocol or medical or psychological test or confined in a medical institution because of their sexual orientation or gender identity?*

No. The Health Minister did not provide an answer to this question and ACCEPT has not been able to identify any measure of this type. In the same time we have collected anecdotic data from ACCEPT’s volunteers and beneficiaries who, occasionally, were subjects of medical or psychological interventions aiming to change their sexual orientation.

As about transgender people, some medical professionals and institutions request short term hospitalization in psychiatry and endocrinology wards as prerequisites for Gender Identity Disorder diagnosis; the evaluation can include also IQ tests and detailed body examinations.

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<sup>102</sup> <http://www.umf.ro/index.php/ro/facultati/facultatea-de-medicina/departamente/discipline/421-psihiatrie-sp-clinic-al-obregia.html> , in Romanian (online on 17 December 2012)

<sup>103</sup> *Sexologie Clinica*. Bucharest: Romanian Academy, 2009. Vasile Nitescu. Table of Contents available in English; checked on Web. 17 Dec. 2012. <[http://vasilenitescu.ro/aparitii\\_editoriale.php](http://vasilenitescu.ro/aparitii_editoriale.php)>.

- 35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.**

*Do transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise?*

The Health Ministry did not provide a specific answer to this question but mentioned<sup>104</sup> that there are therapeutic protocols in place, based on the protocols of European Community and of USA. The Ministry did not answer ACCEPT's second letter asking for further details and clarifications, and was not able to provide a copy of the above mentioned protocols.

ACCEPT has direct experience of overwhelming difficulties in identifying health professionals who are competent or at least interested to expand their expertise in order to provide gender reassignment services. Same experience is reported by trans people approaching ACCEPT for assistance. Repeated information requests sent to various institutions and authorities in the last 5 years regarding both existing services and protocols yielded only to vague and contradictory information. For gender reassignment surgery, the only Romanian surgeon that publicly admits to have expertise in this domain (5 trans patients who undergone gender reassignment surgery until 2011) declares<sup>105</sup> that he has 20 trans people on his waiting list, and that people have to wait between 2- 5 years before surgery.

*If it was the practice to make transgender persons undergo therapy to accept their birth gender, has this practice now been abandoned?*

Health Ministry did not answer this question. Trans people assisted by ACCEPT report that most common approach of the health professionals is to recommend psychotherapy or psychiatrically assistance in order to accept their birth gender.

*Have measures been adopted to ensure that no child has their body irreversibly changed by medical practices designed to impose a gender identity without his or her full, free and informed consent, in accordance with his or her age and maturity?*

In its response<sup>106</sup> to this question the Health Ministry indicated two laws regulating medical assistance for children: Law of Patients Rights ( Law no 46/2003) and Law for Child Rights Promotion and Protection (272/2004). None of these contain any reference to children gender identity and related medical practices.

- 36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.**

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<sup>104</sup> Health Ministry, Response no CV1795/03.08.2012

<sup>105</sup> "The sixth Romanian to be operated for sex change. The intervention will be covered by state" Newspaper Article. *Gandul* [Bucharest] 1 June 2011. *Gandul.info*. Web. 02 Jan. 2013. <<http://www.gandul.info/news/al-saselea-roman-a-fost-operat-pentru-schimbare-de-sex-interventia-va-fi-decontata-de-statul-roman-o-operatie-similara-costa-in-strainatate-60-000-de-euro-8303240>>.

<sup>106</sup> Health Ministry, Response no CV1795/03.08.2012

*Where legislation provides for the coverage of necessary health-care costs by public or private social insurance systems, is such coverage for gender reassignment treatment ensured?*

*If yes, is it ensured in a reasonable, non-arbitrary and non-discriminatory manner?*

Health Ministry response<sup>107</sup> is not clear in this respect- however the Ministry states that some of the services are covered by public social insurance systems. Regarding medical services that require hospitalisation, the Ministry indicated that they are covered according to WHO classification of diseases, and “transgenerity” is not a diagnosis mentioned in ICD 10 AM.

A second letter was sent by ACCEPT requesting clarification regarding health services that are covered by public social insurance, and stating that “transsexualism” is indeed a diagnosis in ICD 10. However it should be considered that the term transgender was also explained in the first info request sent to the ministry. The fact that a Secretary of State designated to respond on behalf of Health Ministry to a information request on trans issues was not able to place correctly transgenderism within the WHO classification of diseases, as well as their impossibility to provide further clarification when requested, is a an indication of a probable generalised lack of expertise on trans issues at ministry’s level.

A previous request of information send by ACCEPT in 2010 to the National House for Health Insurance yielded two different responses from the House- confirming the image of generalized lack of interest and awareness of trans issues.

In practice, although the vast majority of trans people cannot identify health professionals that are able to provide assistance during transitioning process, there are also a few situations when trans people managed to have access to health services, including surgical interventions, with costs entirely covered by the public insurance system.

In conclusion, although medical services seem to be entirely covered by public system, this is not an option accessible for most trans people. Institutions, authorities and medical professionals provide contradictory information regarding costs, procedures to be followed and availability of services.

## VIII. Housing

**37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.**

*Does legislation prohibit discrimination in such areas as:*

- *the sale or rent of housing;*
- *the provision of loans for purchase of housing;*
- *the recognition of the rights of a tenant's partner;*
- *evictions*

*on the grounds of (a) sexual orientation and (b) gender identity?*

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<sup>107</sup> Health Ministry, supra note 74

The GO 137/2000 regarding the prevention and the punishment of all forms of discrimination explicitly prohibits discrimination on the grounds of sexual orientation, for sale or rent of housing, and forced eviction.<sup>108</sup>

As Ministry of Regional Development and Tourism stated in their response<sup>109</sup>, the Housing Law (Law 114/1996) does not mention any prohibition or discrimination in the area of housing.

However, disparities appear due to the fact that same sex unions are not recognised in Romania. For example "social houses" are to be distributed by the local councils according to several priorities, first of all being the newly married couples whose both members are younger than 35 years old<sup>110</sup>. Even more visible are the consequences associated with the rights that both spouses have in case of rent contracts signed by one of the members of a married couple, or related to property succession for married couples.

*Are provisions in place to ensure non-discriminatory access to shelter and other emergency accommodation is provided in regard to (a) sexual orientation and (b) gender identity?*

Ministry of Regional Development and Tourism mentioned in response to this question that existing Housing Law ensures non-discriminatory access to emergency accommodation.

No specific reference was provided regarding non discriminatory access to shelters and emergency accommodation for LGBT citizens. ACCEPT is not aware of any legal provision in this respect that takes into account the existence of same sex couples or of transgender people who have not updated their identity papers.

*Is information available to landlords and tenants aimed at preventing such discrimination?*

No, ACCEPT is not aware of any sort of awareness campaign against discrimination targeting landlords and tenants.

*Are adequate and effective legal or other remedies available to victims of such discrimination?*

There is no information of sanctioned discrimination cases based on sexual orientation or gender identity, regarding housing issues. ACCEPT has received over the years requests for legal assistance from tenants that were abusively evicted when landlords found out that tenants were homosexuals or lesbian- but none of these have been taken to the court or to NCCD. Fear of subsequent stigmatization and lack of trust in effective solutions are the main reasons mentioned by ACCEPT beneficiaries for not pursuing legal resolutions for discriminatory situations.

*Are any awareness raising campaigns conducted among housing agencies in order to level-up their knowledge on anti-discrimination provisions?*

ACCEPT is not aware of any awareness raising campaigns targeting housing agencies, not to mention campaigns focused on antidiscrimination.

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<sup>108</sup> Art 10 (c), art 13 (1), Government Ordinance 137/2000

<sup>109</sup> Ministry of Regional Development and Tourism, Response no 57234/02.08.2012

<sup>110</sup> Art 43, Housing Law 114/1996

**38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.**

*Have social programmes, including support programmes, been established to address factors which increase the vulnerability to homelessness of LGBT people, especially children and young people, including schemes of neighbourhood support and security?*

*Have the relevant agencies been provided with training and awareness-raising programmes to ensure that they are aware of and sensitive to the needs of LGBT people facing homelessness, particularly young persons?*

Information was requested from the Ministry of Labour and Social Protection, however their response<sup>111</sup> contained no reference to the above questions. One can infer that no actions have been taken at governmental level to approach homelessness risks faced by LGBT persons.

## **IX. Sports**

**39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.**

**40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.**

*What measures have been taken to prevent the risk of exclusion from participation in sports on grounds of (a) sexual orientation and (b) gender identity?*

*By encouraging, for example:*

- *the drawing up and dissemination of codes of conduct on questions relating to sport and sexual orientation or gender identity for sports organisations and clubs,*
- *partnerships between associations representing lesbian, gay, bisexual and transgender persons and sports clubs,*
- *anti-discrimination campaigns in the sports world,*
- *support for sports clubs set up by lesbian, gay, bisexual and transgender persons themselves.*

The Ministry of Education, Research, Youth and Sport stated, in response to these questions, that the ministry is coordinating only sports for the large masses and that “until now, cases of the types you mentioned in your questions have not been identified or recorded.”<sup>112</sup> The Ministry seems to not be aware of the possibility that LGBT people would

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<sup>111</sup> Ministry of Labor and Social Protection, Response no 18336/21.06.2012

<sup>112</sup> See Ministry of Education, Research, Youth and Sports, Response No. 18506/27.07.2012, page 2.

participate in sports, and of subsequent risk of exclusion. Measures initiated at governmental level to prevent this risk are, obviously, inexistent.

Especially when football is concerned, homophobic situations have been mentioned by media. An extensive article on the subject "homophobia in sport" in a central newspaper has quoted several sport people (sport club managers and trainers included)<sup>113</sup>- some of them expressing openly homophobic perspectives: "*I don't discuss this. Let the physicians talk about it. It's not my business. I don't have anything with them but I don't understand them. It's like they don't exist for me.*", Mitica Dragomir, the President of the Professional Football League. No other discouraging reactions have incurred than the ones of ACCEPT, the organization defending the LGBT rights.

*Have effective measures been taken to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events?*

Although not effective, some measures have been taken by National Council for Combating Discrimination to punish the use of discriminatory insults during and in connection with sport events, usually with discrimination against Roma.

George Becali, the main donor of *Steaua Bucharest Football Club*, declared in the media that he will not hire a football player because he is allegedly gay. ACCEPT raised two claims at the National Council for Combating Discrimination (NCCD): discrimination in declarations that infringe upon dignity rights of LGBT group and discrimination in employment on the ground of sexual orientation. In November 2010: NCCD admitted the first claim and gave a written warning to George Becali. It rejected the second on the basis of ECJ case law (Feyrin and Bossman). ACCEPT has appealed to Bucharest Court of Appeal, raising four preliminary questions to be referred to the Court of Justice of the European Union (CJEU), dealing with the scope of Directive 2000/78/CE as to declarations regarding employment requirements for football players, shift of the burden of proof in cases of alleged discrimination on the ground of sexual orientation, *prima facie* evidence and the proportionality of sanction. In May 2012, ACCEPT sent written submissions to the CJUE. The case is pending at CJUE

*In particular:*

- *Has homophobic and transphobic chanting at or around sports events been made a criminal offence?*

Although there is no evidence of sanctioned homophobic or transphobic chanting, discriminatory chanting around sports events has been sanctioned by NCCD.

- *Have the relevant provisions of the European Convention on Spectator Violence and Misbehaviour at Sports Events,<sup>114</sup> the European Sports Charter<sup>115</sup>*

<sup>113</sup> Romania Libera, 4.11. 2011, "Gay Romanian Sport People? Inacceptable!"

<sup>114</sup> <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=120&CL=ENG> – see particularly Articles 2 ("Domestic coordination"), 3 ("Measures"), 5 ("Identification and treatment of offenders").

<sup>115</sup>

[https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(92\)13&Sector=secCM&Language=lanEnglish&Ver=rev&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(92)13&Sector=secCM&Language=lanEnglish&Ver=rev&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75);

See particularly: Article 1.I (to enable every individual to participate in sport, in a safe environment); Article 3 (close co-operation with the non-governmental sports organisations); Article 4.1 (non-discrimination); Article 4.2 & 4.4 (accessed by disadvantaged persons).

- *and ECRI's General Policy Recommendation No.12<sup>116</sup> been implemented in respect of (a) sexual orientation and (b) gender identity?*

*Have specific appropriate measures been taken to:*

- *put an end to the exclusion of transgender persons from sports activity or competitions,*
- *remove the obstacles encountered by them in participating in sport (dressing room access),*
- *recognize their preferred gender?*

No. They were not mentioned by any institution/authority in their answers and ACCEPT have no information on such measures.

**41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.**

*Have steps been taken to encourage dialogue with, and support for sports associations and fan clubs in*

- *developing awareness-raising activities*
- *condemning homophobic and transphobic behaviour during and in connection with sports events?*

No. They were not mentioned by any institution/authority in their answers and ACCEPT has no information on such steps.

## **X. Right to seek asylum**

**42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.**

*Is a well founded fear of persecution based on (a) sexual orientation and (b) gender identity recognized as a valid ground for the granting of refugee status and asylum?*

Romanian law<sup>117</sup> recognizes well founded fear based on the status of “belonging to a certain social group” as a valid ground for the granting of refugee status and asylum. Sexual orientation is given as example of a characteristic that can lead to “social group” forming. GO 1251/2006 states also that “gender related issues can be encompassed by *sexual orientation* notion.<sup>118</sup>

<sup>116</sup> [http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N12/e-RPG%2012%20-%20A4.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N12/e-RPG%2012%20-%20A4.pdf): Although this document relates specifically to racism and racial discrimination in the field of sport, the detailed measures set out in it are just as relevant to combating sexual orientation and gender identity discrimination in sport. Of the three documents listed above, this is the most useful in practical terms.

<sup>117</sup> Art. 23. para. 1 of the Law 122/2006 regarding asylum in Romania,.

<sup>118</sup> Government Ordinance no 1251/2006, Art 10, letter d (iii) – implementing regulations for the Law no 122/2006

*Are staff responsible for processing asylum requests provided with training in the specific problems encountered by LGBT refugees or asylum seekers?*

The Romanian Immigration Office (RIO) pointed out that staff responsible for processing asylum applications receives specific training, addressing issues related to belonging to certain social groups, including related to sexual orientation.<sup>119</sup> No specific information about contents and duration of this training was provided.

*Are asylum requests turned down on the ground that the claimant can escape persecution in the country of origin by keeping his or her sexual orientation or gender identity secret?*

The Romanian Immigration Office was unable to provide an answer, stating they do not have statistics on reasons invoked by asylum seekers.<sup>120</sup>

However, in 2009 ACCEPT received a request for assistance for a person who had been already arrested for homosexuality in Cameroon and whose asylum request was rejected on grounds that the applicant was not a public person and could relocate to another city where he was not known. In July 2009 a court quashed the decision of the Romanian Immigration Office.

**43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.**

*What procedures are in place to ensure compliance with this obligation?*

The Romanian Immigration Office stated that within the standard procedure they analyze the applicant's statements about the problems faced in their country of origin, person's credibility and the situation in the country of origin, including protection provided by the state, existing legislation and its application.

Asylum seekers have the right to stay in Romania until the asylum procedure is completed and if they are granted a form of protection they can't be returned to their country of origin, ROI states that "in case a form of protection is granted to a foreigner it means that the person cannot benefit from the protection of the country of origin, being exposed to serious risks and persecution."<sup>121</sup>

*Are there documented cases where asylum seekers have been returned to such a country?*

We have no information about such a case.

**44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment**

<sup>119</sup> See Romanian Immigration Office, Response No. 2431561/26.06.2012, p.2.

<sup>120</sup> See Romanian Immigration Office, Response No. 2431561/26.06.2012, p.2.

<sup>121</sup> See Romanian Immigration Office, Response No. 2431561/26.06.2012, p.2.

**against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.**

*What measures have been taken to comply with this requirement?*

RIO replied that national legislation on combating discrimination is applicable to foreigners while on Romanian territory, and conditions in accommodation facilities meet legal standards. <sup>122</sup> No specific measure was mentioned.

*In particular, have the staff of administrative detention centres, police and medical staff and voluntary organisations with access to such cases, received appropriate training and information on issues regarding (a) sexual orientation and (b) gender identity?*

No details on specific training or informative materials were provided. According to RIO, the staff of administrative detention facilities takes appropriate measures in case of incidents, including reporting the police <sup>123</sup>.

## **XI. National human rights structures**

**45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.**

*Are national human rights structures clearly mandated to address discrimination on grounds of (a) sexual orientation or (b) gender identity?*

The National Council for Combating Discrimination, in accordance with the provisions of GO 137/2000 regarding the prevention and punishment of all forms of discrimination<sup>124</sup>, is mandated to address discrimination 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”. Although the law does not explicitly mention gender identity, this ground can be covered under “any other criterion”.

*In practice do they*

- *make recommendations on legislation and policies,*
- *conduct awareness-raising among the general public*
- *examine individual complaints*
- *participate in court proceedings*

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<sup>122</sup> See Romanian Immigration Office, Response No. 2431561/26.06.2012, p.3.

<sup>123</sup> See Romanian Immigration Office, Response No. 2431561/26.06.2012, p.3.

<sup>124</sup> See Art. 2, of Romania/ Government Ordinance 137/2000 regarding the prevention and punishment of all forms of discrimination

- *speak out in support of the exercise of rights by LGBT people, for example, when freedom of assembly events are opposed, in relation to (a) sexual orientation or (b) gender identity?*

According to the law<sup>125</sup>, the NCCD is requested within its mandate to propose draft laws in the field of combating discrimination and to initiate acts to ensure that equality and non-discrimination principles are included in existing legal provisions. NCCD has also the mandate to conduct awareness-raising activities among the general public, to mediate between parties, provide support for the victims of discrimination, investigate and sanction discrimination.

In court discrimination cases, the law requests mandatory hearing of NCCD.<sup>126</sup>

In practice,

When enquired about specific recommendations NCCD made on legislation and policies, NCCD indicated that they have not elaborated any legal measures related to sexual orientation or gender identity<sup>127</sup>.

In the last 5 years, NCCD was consulted by the initiators of new legal proposals that included aspects related to sexual orientation in only one instance – regarding proposed modifications of Family Code so that it would explicit states that marriage is the prerogative of different-sex couples. The modifications were adopted in spite of a negative notice given by NCCD<sup>128</sup>.

No awareness raising activity focused specifically on sexual orientation or gender identity was identified by ACCEPT or indicated by NCCD. According to 2010 Annual Report of NCCD, the subject of sexual orientation was mentioned in a project against discrimination targeting high school pupils in Iasi County and in an educational program developed together with National Institute of Magistracy.

NCCD is the only state actor that has been present over the years at Bucharest Diversity Marches; some of NCCD members have responded positively to invitations to debates on LGBT issues, and have publicly expressed support of the exercise of rights by LGBT people.

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<sup>125</sup> See Art. 2 (1) of the Government Ordinance Law No. 1194/2001 regarding the organization and functioning of the National Council for Combating Discrimination

<sup>126</sup> See Art 27 (3), Government Ordinance 137/2000, regarding the prevention and punishment of all forms of discrimination

<sup>127</sup> See National Council for Combating Discrimination, Response N 4826/04.10.2012, page 3, point 1.4

<sup>128</sup> See National Council for Combating Discrimination, Response No.4826/04.10.2012, page 2, point 1.2.



**ACCEPT Association**  
**www.acceptromania.ro**

**Mission**

The protection and promotion of the rights of the LGBT persons in Romania as human rights.

**Objectives**

Defending by all legal means the persons whose fundamental rights and freedoms, as specified in the Romanian legislation and the international treaties ratified by the Romanian state, were infringed upon;

Educating society and the media with regard to LGBT;

Organizing activities to promote the rights and freedoms of LGBT people;

Enhancing group solidarity among the LGBT community members;

Developing services that address the specific needs of the LGBT in Romania.

**History of ACCEPT**

In 1994 Bucharest Acceptance Group was founded, aiming to promote an open, reasonable dialogue on the complex topic of same-sex relationships.

On October 25, 1996 ACCEPT was officially registered as a human rights non-governmental organization.

In 1997 ACCEPT launched a national and international campaign for the repeal of Article 200 of the Romanian Penal Code, which incriminated same-sex relationships. As a result of this campaign, the legislative process leading to the repeal of article 200 was completed on January 30, 2002.

In 2004 ACCEPT organized a first LGBT festival; the festival became a tradition and starting to be organized yearly. First pride took place in 2005.

**Advocacy, information, collaboration**

Advocating equal rights for the LGBT, without any discrimination whatsoever, whether because of sexual orientation, gender or any other criterion, such as HIV positive status, non-contagious chronic disease, refugee/asylum-seeker status.

Maintaining ACCEPT's Information and Documentation Centre, the first library in Romania specialised in sexual identity and sexual orientation issues.

Collaborating with other partner organizations, institutions and independent experts in order to attain the social inclusion of the LGBT. Training provider on LGBT issues.

**Social and cultural activities and services**

Legal counseling for people discriminated because of their sexual orientation, gender identity or HIV positive status.

Psychological counseling for LGBT people and other persons in their family and social environment.

Pre- and post-HIV test counseling, information on the HIV test, testing opportunities, fees, making appointments and accompanying clients to testing centres, information on HIV/STIs transmission, etc.

Meetings and debates on issues relevant to the LGBT.

Cultural and social activities designed to strengthen self-confidence and a sense of belonging to the LGBT community (GayFest, LGBT History Month etc).