

## **ROMANIA**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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### **Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

The measures recently adopted by the Government introduced a number of new principles and measures aimed at combating discrimination on grounds of sexual orientation or gender identity. For this purpose the objectives included in legislation aim to ensure the promotion of gender perspective in social life, media awareness campaigns regarding the equality between men and women, promoting gender perspective in social life, introducing gender perspective in formal/informal education.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

The current legislative measures in the field of combating discrimination cover a wide sphere of issues, providing efficient methods for the identification of generators, directly or indirectly discriminatory actions based on any of the prohibited grounds of relevant legislation, including on grounds of sexual orientation or gender identity. Revisions and updates of this legislation occur systematically, depending on changes in socio-economic and political Romanian landscape.

Law no. 73/1993 on the establishment, organization and functioning of the Legislative Council states its permanent powers and the main activities it carries out.

Some tasks of the Legislative Council include the development of systematic studies on its own initiative or of the Chamber of Deputies or the Senate for the unification and coordination of the laws, by submitting proposals to the Parliament and Government and tracking the way that public authorities put in execution the laws, ordinances and decisions of the Government, in order to operate an uniform and coordinated legal system.

In the process of approval, which is his current activity, the Legislative Council aims to achieve its main objectives, including harmonization of legislative solutions proposed by the European Union regulations and international conventions to which Romania is a party, and by his activity of reviewing the previous legislation, it examines the conformity of normative acts with the Constitution and the regulations issued thereafter, making appropriate proposals to the Parliament or to the Government. As it can be seen, there is a legal system that ensures harmonization of existing legislation through revisions and systematic updates, activity that is not within the competence of the National Council

for Combating Discrimination. This statement is based on the number of legislative proposals addressed to the N.C.C.D. about the special terms regarding non-discrimination and equal treatment.

Are there measures in place to redress any such discrimination?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

In most of the cases, the identified problem generates a legislative measure, a solution of the legal framework which is governing that situation. For the implementation of any law, a procedure must be designed for the application of those legal rules. For solving complaints and notifications in order to apply the legislative regulation in practice which the case of G. O. no. 137/2000, it is adopted an internal Procedure.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross – sectorial working groups for its implementation)?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

Romania has undergone an extensive legislative amendment process which resulted in the adoption of four new codes. Consequently, the discrimination phenomenon enjoys protection also under the new criminal legislation (Law no. 286/2009). To this end, the following provisions are relevant:

- article 77, letter h) – aggravating circumstances
- article 282 – torture
- article 297 – misconduct in public office
- article 369 – incitement to hatred or discrimination
- article 439 – crimes against humanity

Romania can provide details about the reglementation of the discrimination based on sexual orientation (among other criteria) in the specific legislation for the activity of the National Council for Combating Discrimination since 2000.

The Ordinance of the Government no. 137/2000 on preventing and sanctioning all forms of discrimination published in Official Gazette no. 781 of 2 September 2000 is the legislative act in the field of combating discrimination, that transposes two directives: the Directive 2000/78/EC establishing a general framework for equal treatment in respect of employment and the Directive 2000/43/EC on implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin.

According to art. 1 par. 2 and par. 3 of G.O.no. 137/2000, republished, the principle of equality among citizens with the exclusion of discrimination and all privileges in the exercise of guaranteed rights refers to people in comparable situations.

The concept of discrimination is defined in art. 2 par. 1 of G. O. no. 137/2000, by referring to some criteria as provided in a non-exhaustive list of prohibited grounds as race, nationality, ethnic origin, language, religion, social category, beliefs, sex, **sexual orientation**, age, disability, chronic non-infectious disease, HIV infection, being part of a disfavored category, **as well as any other**

**criterion** aiming to or resulting in the restriction or elimination of the recognition, use or exercise, in conditions of equality, of human rights and fundamental liberties or of rights granted by law in the political, economic, social and cultural field or in any other domains of public life.

Although the criterion of gender identity is not expressly provided by the G. O. no. 137/2000, it can be assimilated by the phrase "and any other criteria", which is equally protected by this law.

To achieve its objectives in 2002-2006, the National Council for Combating Discrimination (NCCD) has carried out preventive activities for any form of discrimination based on a National Action Plan for Combating Discrimination. This Plan was developed following the establishment of the National Alliance against Discrimination, after identifying specific problems by human rights NGOs operating in certain areas or representing the interests of certain groups vulnerable to discrimination. Basically, the National Action Plan for Combating Discrimination was the starting point in preventing discrimination and was permanently improved until 2004 when it was approved by Government Decision published in the Official Gazette.

However, since the independence of the institution has been clarified, with the approval of Law no. 324/2006 and the passage from the authority of the Government to the Parliamentary control, N.C.C.D. needed to act strategically structured, integrated and targeted.

Therefore, it was implemented the National Strategy for implementation of measures for preventing and combating discrimination between 2007-2013 as a result of consultations with NGOs working in the field. The strategy was adopted by the Board of Directors, approved by the President of N.C.C.D. no. 286/2007 published in the Official Gazette no. 6 from October 3, 2007.

National Strategy for implementation of measures for preventing and combating discrimination between 2007-2013 is an important contribution that supports the practice of the National Council for Combating Discrimination in the activity of development of programs planned to prevent and combating all forms of discrimination in Romania. The aim of the strategy is to establish guidelines for action in preventing and combating discrimination and to develop an inclusive and intercultural society, based on policies that promote interaction, equality, mutual understanding and respect.

In this regard it was designed a set of five major objectives: **Protection:** the intensification of protection against discrimination, including victimization, harassment or incitement to discrimination;

**I. Inclusion:** the assurance of inclusion and equality in the economic activity in terms of employment and profession;

**II. Promotion:** the assurance of equality in access, participation and results regarding public and private services addressed to the public;

**III. Recognition:** the recognition and strengthening of respect in a culture of diversity, in promotion of interaction and mutual understanding;

**IV. Prevention:** strengthening the efforts of prevention and application of a zero level of tolerance towards the discriminatory manifestations within Romanian society.

Each objective has several priorities, which NCCD pursued each year in the planning and development of programs and projects. The numerous projects undertaken by the National Council for Combating Discrimination over the years of activity for the accomplishment of the objectives from the National Strategy for implementation of measures for preventing and combating discrimination are widely exposed in the reports of the Council's activity.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices:

N.C.C.D. made no surveys analyzes and reports regarding the way legislative measures adopted in Romania have influenced discrimination on grounds of sexual orientation or gender identity.

In the last five years, the Council has not been requested by the initiators of advisory opinion of the amendments of the laws linked to sexual orientation or gender identity.

Although, N.C.C.D. has made "comments and suggestions" at the request of the Department for Relations with the Parliament, in a single case in the last 5 years on legislative proposals amending Law no. 23/1999 for amending and supplementing certain provisions of the Family Code and the Law no. 119/1996 on civil status. Throughout these legislative proposals, it was seeking the solution of removal of any explicit interpretations regarding the preparation of civil act in the meaning of celebration of same-sex marriage. In this case, N.C.C.D. has expressed its point of view argued by announcing that the Council does not support legislative proposals concerned.

Since 2008, the National Council for Combating Discrimination has been performing a survey on discrimination in Romania, in collaboration with an institute specialized in sociological research.

The data collected through these surveys indicated that the group of sexual minority meets the most prejudices; therefore, we can talk about an important potential homophobia in the population of Romania. In the years 2008 - 2009 84% and 90.5% of the people interviewed said they would feel disturbed if they would find out that a family member is gay. Subsequently, in the years 2010 and 2011 survey showed that 55% or 61% of people felt some discomfort on daily interaction with a homosexual. Also, a percentage of 56% would not dine with a homosexual, and 85% of people would not want to drink from the same cup from which a homosexual drank.

The data obtained during the last years clearly indicated that the high percentage of people who reject people of different sexual orientation is generated by some stereotypes deeply embedded in the collective mentality.

As the National Council for Combating Discrimination strengthens its institutional network and affirms its social role as the competent authority in the field of combating discrimination, the public opinion sees it more believable and consequent in fulfilling its duties, as it is shown in the opinion polls within the past five years

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

At the national level there is a complex legislative system that provides various remedies against acts of discrimination.

For each provision of the Romanian state regulations, there are prescribed institutions authorized to apply punitive or coercive measures, so that victims of such illegal acts could have effective legal remedies available to remedy the situation. Thus, there are 3 systems of sanctions for discrimination acts established by contraventional law, civil law and criminal law.

By G.O. no. 137/2000 the national legislature established various forms of sanctions: the civil penalty, appropriate to the civil liability, with her function of repairing (consisting in the obligation of the active subject of discrimination to repair the damage caused, or reinstatement and eliminate all consequences of discrimination) and the administrative-contravention sanction that has a repressive and coercive, punitive role.

G.O. no. 137/2000 establishes penalties for any act or action that can be analyzed as discrimination by a decision of the Steering Board; this is a judicial administrative act likely to be challenged in administrative proceedings generally under judicial censure. These issues are stipulated by the provisions of art. 16 (independent body issuing the document), art. 20 (special procedure), art. 20 par. 6 (adversarial principle and the right of defense), art. 20 par. 7 (mandatory motivation of the act), Art. 20 par. 9 (appeal proceedings before the administrative court) of GO no. 137/2000 republished.

As sanctions in accordance with G.O. no. 137/2000, in conjunction with G.O.2/2001 which is the legal regime of contraventions, the Council may impose a warning or a fine. Through art. 26 par. (1) there are established the facts that may be sanctioned with fines from 400 lei to 4,000 lei, if the victim is an individual, and from 600 lei to 8,000 lei if the action is directed against a group of people or a community. The sanctions stipulated by G.O. no. 137/2000 are also applicable to legal persons guilty of discrimination acts.

Subsequently, the national legal framework expressly establishes the civil sanction, for an effective and proportionate repairing to the victim of an act of discrimination, sanction that may be applied separately or as a result of a decision issued by the College Board.

The sanction of warning applied in main cause is also effective, dissuasive and proportionate with the degree of social danger of the act; this sanction is applied in written and is usually accompanied with the instruction to follow the laws, or to take all necessary measures to eliminate the effects of crime.

For the period 2002 – 2010, from an amount of 4453 complaints addressed to the N.C.C.D., about 50 complaints were registered on grounds of sexual orientation.

The Labor Code expressly prohibits any distinction in employment, labor relations based on the criteria specified in art. 5 of this act, including sexual orientation.

The Romanian Criminal Code sanctioned the offense of incitement to discrimination, which is punished with imprisonment from 6 months to 3 years, or a fine. The Romanian Criminal Code also established as an aggravating circumstance of committing other crimes on the prohibited acts under Romanian law.

In the application of G.O. no. 137/2000 and the application of effective remedies it was approved by Council's Order no. 144 of 11 April 2008, the internal procedure for resolving complaints and allegations, which states, among others, the followings: people who can make a complaint to the Council, the required elements for that complaint, how to manage samples and whose task is the burden of proof, and the procedure of handling a complaint, the required elements for the judicial administrative act and how it can be challenged before the courts.

This procedure has always been and is continuously communicated to the public through the Council's website, in brochures distributed on conferences, round tables, projects, partnerships, training and any other action where the Council is involved.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

The National Council for Combating Discrimination has not encountered in the implementation of the Recommendation with any obstacles.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The National Council for Combating Discrimination is not aware of the translation of the Recommendation CM / Rec. (2010) 5 and its Annexes, or of the dissemination of these documents by governments or other institutions of representative organizations in this field.

## Section II – Implementation of the specific provisions in the Appendix

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

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

- Law no. 218 from 23rd of April, 2002 regarding the organizing and functioning of Romanian Police, Articles: 2 , 26

- Law no.360/2002 regarding the status of the police employees, Article 41, letters: a and b

Good practices:

In order to ensure impartial evidence, the specific investigation activities are carried by the police officers under the prosecutor coordination.

During the Gay Fest 2008 the Gendarmerie forces legally reacted against groups with opposite views which incited to intolerance and violence. Since 2008, no incidents occurred in the lawful development of the respective rallies.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

- Government Ordinance no. 27/2002 regarding the petition solving activity's regulation, approved through Law no. 233/2002
- Romanian Criminal Procedure Code, Article 221 (Informing the criminal investigation bodies)
- In application of these provisions, within the Ministry of Internal Affairs there are in place secretariat units with clear responsibilities on solving petitions.

Measures/Good Practices

- The notice boards of the structures of the Romanian Police contain samples of requests that the persons filing petitions must fill in, as well as the list of persons leading the respective unit and their audiences programme.
- The Romanian Gendarmerie encourages all participants to Gay Fest rallies to immediately report situations that occur during the events.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

MEASURES/GOOD PRACTICES

- In the curriculum of all Ministry of Internal Affairs schools were introduced themes that deal with this topic. The most important aims are: to combat discrimination in the field of sexual orientation or gender identity; to eliminate negative practices and attitudes that might exist at the level of employees; be aware about the need to apply the standards that guarantee the respecting of human rights and fundamental freedoms.

Examples/ Good Practices

- Educational project: training course on: Preventing and combating all forms of discrimination

Location: Public Order Studies Institute (it belongs to the Ministry of Internal Affairs)

Period: 2010-2012

Beneficiary: 178 police officers

Issues: awareness of sexual minorities, disadvantaged groups and the defense and promotion of human rights according to the Romanian Constitution and the international treaties to which Romania is party.

- Project: Monitoring and Approaching Hate Crimes against LGBT people

Partners: Romanian Police, Danish Institute for Human Rights and Accept Association

Period: 2010-2012

Results: 2,600 leaflets with the message: "Stop Hate Crimes against LGBT Persons – Guidelines for Policemen" were distributed to police stations in Bucharest

- Educational project: training courses on tracking and approaching Hate Crimes against LGBT people

Partners: Romanian Police and Danish Institute for Human Rights

Period: 2010-2012 (2 sessions: 27-29 September 2010, 11-12 April 2012)

Beneficiary: 24 police officers within the General Police Directorate of Bucharest Municipality

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Legal Framework

- Romanian Criminal Code, Article 57;
- Criminal Procedure Code, Article 160;
- Law no. 275/2006, Article 32 ;
- Government Decision no.1897/2006, Article 80 (with reference to special categories of detainees).

Measures

- In order to respect the rights of persons with a higher degree of vulnerability, Romanian Police - Independent Service for Detention took specific measures.

Good Practices

The Ministry of Internal Affairs already signed protocols with NGOs.

- Among them, we can mention:
- the protocols signed between General Inspectorate of Romanian Police and NGOs, such as: European Association for Supporting Human Rights and Combating Corruption and Discrimination (Asociația Europeană pentru Susținerea Drepturilor Omului, Combaterea Discriminării și Corupției – A.E.P.S.D.O.C.D.C.); National and International League Association Protecting Human Rights (Asociația Liga Națională și Internațională pentru Apărarea Drepturilor Omului – A.L.N.I.A.D.O.); Association for Human Rights in Romania – Helsinki Committee (Asociația pentru Apărarea Drepturilor Omului în România – Comitetul Helsinki – A.P.A.D.O.R. – C.H.); European Movement - Organization for Human Rights (Organizația “Mișcarea Europeană” pentru Apărarea Drepturilor Omului – O.M.E.P.A.D.O.); Romanian Independent Society of Human Rights (Societatea Independentă Română a Drepturilor Omului - S.I.R.D.O.); Romanian Harm Reduction Network association – R.H.R.N.). In accordance to these protocols, representatives of NGOs are able to make visits to the police detention units. The principal aims of the activities made by these NGOs are: to track how are respected the rights of detainees, to check the detention conditions of Romanian police detention centres, to prevent any act of torture or discrimination. For example, during 2011-2012 it was made 10 visits to the detentions units in Bucharest.
- the partnerships between Romanian Gendarmerie and Accept Association which is a trusted partner in respect to the organization of Gay Fest rallies and a consultant in the matter.

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

To establish guidelines for actions in preventing and combating discrimination the "National Strategy to implement measures to prevent and combat discrimination" was adopted for the



period 2007 - 2013 and, for this, a specialized department for international relations from the Council (N.C.C.D.), has put into practice information programs, protection, prevention, education and training in all areas.

Courses and seminars were held and also cultural events and information campaigns aimed the five major objectives of the Strategy: 1<sup>st</sup> Objective - Effective protection and remedies against discrimination; 2<sup>nd</sup> Objective - Ensure inclusion and equal opportunities in economic and in employment and career goal; 3<sup>rd</sup> Objective - Ensure equality of access, participation and outcome in terms of public and private services to the general public; 4<sup>th</sup> Objective - Increase awareness of diversity recognition and targeting media, culture and sport; 5<sup>th</sup> Objective - Focusing by applying a policy of zero tolerance for any form of discrimination in Romanian society.

When the subject of a claim is any kind of affirmation which affects the human dignity of a person belonging to a minority group such as the LGBT, the Steering Board can state the perpetration of a discrimination deed or of any other act which affects the human dignity, fining the perpetrator with a fine or with a warning.

Where the social danger of the crime is low or you do not meet all the elements of an offense provided in the Ordinance 137/2000, but still there is a place where the offense was committed or the message may conduct to interpretations or associations, a recommendation shall be issued to the perpetrator, to avoid such statements in the future because of its association with some prejudgments of the society.

Recommendations issued by N.C.C.D. do not have the legal force of the coercive sanctions. But in the event of repeated offense, the College will take notice the perpetrator has already received a recommendation.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

The freedom of association is one of the rights protected by the O. G. no. 137/2000; its violation can be sanctioned in accordance with the specific legislation.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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17. Have measures been taken to ensure that non-governmental organizations defending the of 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?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The non-governmental organizations defending the human rights are informed and implicated in many actions regarding the National Council for Combating Discrimination (NCCD)'s activity; therefore, the annual survey is subject to a public debate, where are invited to attend both public institutions and bodies with responsibility for human rights, NGOs, media and other persons willing to come into contact with this field and knowing the reality of the Romanian society. The Council also presents and publishes his annual activity report, report which is later submitted to the Parliament of Romania.

Preparation, organization and carrying out of specific projects for prevention of discrimination in different social backgrounds have been made often in cooperation with non-governmental organizations in many protocols of cooperation. This public-private partnership has resulted in a better knowledge of the institution's activity by non-governmental organizations, to the understanding of organizational and financial aspects, to the achievement of better results.

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

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

19. Do 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?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

- Romanian Police and NGOs cooperate in view to identify the best solutions to defend the human rights of lesbian, gay, bisexual and transgender persons.

- In view to prevent the incidents during the Gay Fest, all participants are protected by Romania Gendarmerie against all violence and intolerance that can occur during the event. As a result of this good cooperation the number of the Gendarmerie forces for the Gay Fest continuously decreased (in 2007 - 800 gendarmes; in 2012 – 260 gendarmes). Since 2008, no incidents occurred in the lawful development of the respective rallies. Nevertheless reserves have been always provided.

- The National Council for Combating Discrimination has an active involvement by supporting campaigns and programmes carried out under the National Strategy to implement measures to prevent and combat discrimination.
- The Council has attended and sustained in recent years activities for the manifestations of sexual minorities.

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

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

- Law no. 677/2001 on the Protection of Individuals with Regard to the Processing of Personal Data and the Free Movement of Such Data, amended and completed; it applies to the processing of personal data carried out by automated means and / or manuals, which are part of a record system or intended to be included in such a system.
- Law no. 238/2009 regulating the processing of personal data by the structures and units of the Ministry of Administration and Interior in the activities of prevention, investigation and counter crime and maintaining public order republished; it applies to the processing of personal data carried out on public policy.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Putting in legality of an individual with civil status and identity documents is conditioned by the existence of a final and irrevocable judgment regarding the gender reassignment.

#### **LEGAL FRAMEWORK**

Concerning the right to identity the transgender:

- Law no.119/1996 on the acts of civil status, modified and supplemented by Law no. 117/2006 (Article 43, letter i);
- Government Ordinance no. 41/2003 on the acquisition and administrative change of the persons names, approved by Law no. 323/2003, with subsequent modifications and additions (Article 4. (2), letter i);

After completing these two legal proceedings, the person may request for the legal identity document.

The costs and deadlines for issuing identity document are common, as for the other reasons.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Yes, a person can marry, using birth certificate and identity document obtained as mentioned above (see answer no. 22) following gender reassignment procedures.

24. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

## **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

- i) Access to employment
  - a. ☒ b. ☐ c. ☐ d. ☐ e. ☐
- ii) Promotion, dismissals, pay and other working conditions
  - a. ☒ b. ☐ c. ☐ d. ☐ e. ☐
- iii) Prevention and punishment of harassment
  - a. ☒ b. ☐ c. ☐ d. ☐ e. ☐
- iv) Protection of privacy of transgender persons  
(in accordance with paragraph 30 of the Appendix to the Recommendation)
  - a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Law no. 76/2002 on the unemployment insurance system and employment stimulation, amended and supplemented – art.4 :

(1) Any kind of discriminations for criteria such as politics, race, nationality, ethnic origin, language, religion, social category, beliefs, sex and age shall be excluded in the application of the present law.

Law no. 53/2003 - Labor Code, republished §  
– art. 5 :

(1) Within the work relationships, the principle of the equal treatment for all employees and employers shall apply.

(2) Any direct or indirect discrimination towards an employee, based on criteria such as sex, sexual orientation, genetic characteristics, age, national origin, race, color of the skin, ethnic origin, religion, political options, social origin, disability, family conditions or responsibilities, union membership or activity, shall be prohibited.

– art. 6 :

(1) Any employee who performs work shall benefit from adequate work conditions for the activity carried out, social protection, labor safety and health, as well as the observance of his dignity and conscience, with no discrimination.

(3) For equal work or work of equal value it shall be forbidden any discrimination for criteria such as sex with regard to all remuneration elements and conditions.

– art. 159 :

(3) When establishing and granting the wages, all discrimination shall be prohibited for criteria such as gender, sexual orientation, genetic characteristics, age, national origin, race, color of skin, ethnic origin, religion, political options, social origin, disability, family situation or responsibility, trade union membership or activity.

Government Ordinance no. 129/2000 on adults vocational training, republished – art. 2:

(1) Adults have equal access to vocational training, without discrimination on criteria of age, sex, race, ethnic origin, political or religious. Training programs can be realized both in Romanian and in minority languages or in a foreign language.

The provisions of the Framework Law no.284/2010 on unitary public pay system don't contain payment differences based on gender.

From the perspective of the Equality Body - National Council for Combating Discrimination - In the process of analyze each act of discrimination, the Steering Board corroborate the provisions of Chapter I, "*Principles and definitions*" with the provisions of Cap. II: "*Special Provisions*".

According to section 1 from G. O. 137/2000, "equality in economic activity and in employment and occupation" (art. 5-9), access to employment, promotion, dismissals, pay and other working conditions are protected.

An act of harassment is analyzed by the Steering Board by corroborating the provisions from art. 2 par. 5 with provisions from cap. II.

## **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

i) Anti-discrimination training or support and teaching aids

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

ii) Information, protection and support for pupils and students

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

iii) Objective information on sexual orientation and gender identity in school curricula ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

iv) School equality and safety policies and action plans

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

For 27) The Education Law includes the principle of access to education without discrimination. Also all existing regulations and documents include the principle of non-discrimination and equal access to education.

For i), ii), iii) Have been conducted or are underway a number of projects and programs that have as their target group different categories of students belonging to vulnerable groups. Most of them include a teacher training component.

For iv) According The National Strategy on Preventing and Combating Violence in Schools, approved by OMECT nr.1409/2007, in each school unit is made operational plans to ensure the safety and equality of pupils.

In education, the National Council for Combating Discrimination envisages the following measures from the National Strategy to implement measures to prevent and combat discrimination:

A. Organization of awareness campaigns on the issue of discrimination and its consequences in all the fields covered by the legislation (education, health, access to public services, freedom of expression, employment, economic activity, employment, etc.).

B. Organizing round tables, debates, workshops, seminars on human rights with emphasis on the principle of equality and non-discrimination;

C. Organizing and conducting programs and projects at the national, regional and local levels to address the situation of vulnerable groups to the phenomenon of discrimination, focusing on the effects and action to prevent discrimination;

D. Strengthening the N.C.C.D. information by developing the website of N.C.C.D., continuously updating its materials on the institution's activity, enabling public awareness on the issue of nondiscrimination.

One of the priorities of the strategy is that which refers to "strengthen public education on formal and non-formal nondiscrimination processes". The context for this is: Education is one of the most important means of combating discrimination and of developing a multi-ethnic society, multicultural and inclusive. Through appropriate educational strategies, pupils, students, youth and

the general public must be able to appreciate the importance of cultural diversity and be supported to recognize and oppose prejudgments and discrimination at all levels.

Educational process must relate to the promotion of intercultural discrimination, diversity and tolerance. This is necessary as training specialists and organizing training courses at all levels of formal and non-formal education in order to promote non-discrimination.

In line with the evolution of Romanian society and in line with European practices, N.C.C.D. has developed in recent years a number of projects and programs aimed at areas of interest and impact in society, for a better implementation of antidiscrimination principles and a better reception in society. The NCCD actions covered the entire area of issues established through the objectives of the National Strategy.

Since 2010, we can mention some of the programs developed in the field of education: "Youth speak", "Children talk about discrimination and about their rights", "Stop discrimination in schools 2010", "We have the same rights", "Non-discriminatory school III – training of trainers", "The National Campaign - to be yourself", "Are otherwise? They are talented".

## **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to art. 1 para. (2) of G.O. no. 137/2000 "(2) The principle of equality among citizens, the elimination of all privileges and discrimination shall be guaranteed, in particular with regard to the exercise of the following rights:

...

e) Economic, social and cultural rights, in particular:

...

(iv) the right to health, medical care, social security and social services

...."

National Council for Combating Discrimination has developed in recent years a number of projects and programs aimed at areas of interest and impact in society – health. We can mention the program "Treatment without discrimination", developed in partnership with The Association for development and social inclusion and other schools and which consisted in the organization of training and courses.

29. Has homosexuality been removed from the national classification of diseases?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐
30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

According to patient's rights law, article 2: "patients have the right to medical healthcare of the highest quality available, according to existing financial, material and human resources."

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The access to adequate housing is one of the rights protected by the G.O. no. 137/2000; its violation can be sanctioned in accordance with the specific legislation.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to art. 1 para. (2) of G.O. no. 137/2000 "(2) The principle of equality among citizens, the elimination of all privileges and discrimination shall be guaranteed, in particular with regard to the exercise of the following rights:

...

e) Economic, social and cultural rights, in particular:

...

(Vi) the right to participate, on an equal participation in cultural activities and sports

..."

Since 2009, N.C.C.D. in partnership with other public institutions and non-governmental organisations has organized lacrosse "Vivicitta" under the slogan "Unity through Sports". This action had the propose to draw public attention to the importance of discrimination and promote diversity and provide a framework through which citizens interact and participate together with the message of the need of social dialogue, of tolerance and diversity awareness.

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



34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**LEGAL FRAMEWORK**

- Law no. 122/2004 on asylum in Romania, Article 23 (1)
    - o Refugee status may be granted, upon request, to an alien who, based on a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is away from his country of origin and is unable, or, due to such fear, unwilling to be under the protection of that country, as well as to stateless persons who are outside their country of usual residence due to the same reasons mentioned above and who are not able or, due to such fear, are unwilling to return.
  - Government Ordinance no.1251/2006 Article 10 (d)
    - o a group shall be considered to form a particular social group where in particular:
      - i) members of that group (share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
      - (ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;
      - iii) depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation.
- Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member State: gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article;

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**LEGAL FRAMEWORK**

According to Law no. 122/2006 and Government Ordinance no. 1251/2006 (Romanian asylum legislation) refugee status is granted to asylum applicants if there is a reasonable possibility to be exposed to persecution on grounds of membership of a particular social group (which includes sexual orientation or gender identity) in their country of origin.

## **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The Ordinance of Government no. 137/2000 on preventing and sanctioning all forms of discrimination, published in Official Gazette no. 781 of 2 September 2000, on art. 23 para. 1 states that the National Council for Combating Discrimination is a specialized body of the central public administration, subordinated to the Government.

In order to transpose the *acquis communautaire* and subsequently, to remove the constant criticism of the European Commission, European Commission against Racism and Intolerance, the Advisory Committee of the Framework Convention on National Minorities and other international institutions, the Romanian legislator has regulated institutional aspects and brought National Council for Combating Discrimination, in terms of its Statute, in accordance with international standards.

Thus, due to the changes brought by Law no. 324/2006, the National Council for Combating Discrimination is investigating the punishable acts of discrimination, as an autonomous legal personality, under parliamentary control, and also as the guarantor of enforcement of the principle of non-discrimination in accordance with law and the international documents to which Romania is a party.

The Council develops and implements public policies in the field of non-discrimination. In this regard, the Council consults public authorities, NGOs, trade unions and other legal entities for the protection of human rights or a legitimate interest in combating discrimination.

In exercising its powers, the National Council for Combating Discrimination operates independently, without being restricted or influenced by other institutions. In order to combat acts of discrimination, the National Council for Combating Discrimination exercises his duties in the following areas: prevention of discrimination, mediation acts of discrimination, investigate, finding and sanctioning discrimination; monitor cases of discrimination specialized assistance to victims of discrimination.

Changing the status of the National Council for Combating Discrimination in specialized body of the central public administration, subordinated to the Government, as the authority autonomous under parliamentary control, meet the standard of independence as defined in European legislation on non-discrimination in accordance with the conclusions of the European Commission.

The activity of the Council is not limited to the two criteria specified in the Committee of Ministers' Recommendation CM/Rec(2010)5, or sexual orientation and gender identity, but is much broader, encompassing all the criteria enumerated in art. 2 para. (1) and even more (the criteria of "any other criteria"). With reference to these criteria the Council is competent to carry out prevention, mediation, investigation, sanctioning and monitoring of acts of discrimination committed in Romania and in different fields.

It can be seen therefore that the Council's work is complex; it is empowered to establish, to sanction or remedy any discriminatory act or action having based on a criteria that puts a person in a less favorably position than another person in the same or comparable position.

The campaigns conducted by the National Council for Combating Discrimination over the years in order to accomplish the objectives set out in the National Strategy for the implementation of measures to prevent and combat discrimination are found widely exposed in the annual report of the Council.

We believe that through his activity, the National Council for Combating Discrimination has achieved the objectives set and offered role in Romanian society in protecting vulnerable groups, regardless of the criteria considered forbidden, against all forms of discrimination.

People's Advocate - Ombudsman

In order to fulfill his constitutional and legal role, the People's Advocate receives, examines and solves, within the conditions of the law, the petitions addressed by any physical entity, regardless of citizenship, age, gender, political affiliation or religious beliefs. The petitions addressed to the People's Advocate will be formulated in writing and sent by mail, including electronic mail, by telephone, fax or directly through hearings, which represent the main means for dialogue with the citizens.

In order to solve the problems brought to his attention, the People's Advocate has the right to compel the public administration authority in question to take the measures necessary for defending the rights and freedoms of the physical entities, as well as to notify the public authorities hierarchically superior about the lack of reaction of the individuals who are compelled to take the necessary measures. Likewise, the People's Advocate can make investigations and formulate recommendations.

The People's Advocate has the power to intervene whenever a person notifies the discriminatory act or fact based on sexual orientation or gender identity.

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

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

## **Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.