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Contact: Zoë Bryanston-Cross
Tel: 03.90.21.59.62

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Meeting: 1419th meeting (December 2021) (DH)

Communication from an NGO (Anti-Discrimination Coalition of Romania) (18/11/2021) in the case of M.C. and A.C. v. Romania (Application No. 12060/12).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1419^e réunion (décembre 2021) (DH)

Communication d'une ONG (Anti-Discrimination Coalition of Romania) (18/11/2021) relative à l'affaire M.C. et A.C. c. Roumanie (requête n° 12060/12) **[anglais uniquement]**.

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

Council of Europe

DGI- Directorate General of Human Rights and Rule of Law

Department for the Execution of Judgments of the ECHR

dgi-execution@coe.int

DGI

17 NOV. 2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Bucharest, 17 November 2021

Ref: Follow-up letter on Case *M.C. and A.C. v. Romania*

(Application no.12060/12, Judgment of 12 April 2016, final on 12 July 2016)

Please receive this letter on behalf of the Anti-Discrimination Coalition of Romania¹, an informal network of NGOs active in the field of combating and preventing discrimination, hate speech and hate crime in Romania. The conveyor of the Anti-Discrimination Coalition is ACCEPT Association, a human rights group focused on LGBTI equality who filed several Rule 9.2 submissions on 20 December 2016, 6 March 2017, 13 March 2019, aiming to support the Department for the Execution of Judgements of the ECHR with relevant information in the supervision of case *M.C. and A.C. v. Romania*. The present submission is also supported by Roma rights groups Agenția pentru Dezvoltare Comunitară Împreună, E-Romnja and Platform Aresel. Our letter contains follow-up information on the main points presented by the Government in the Communication concerning the case of *M.C. and A.C. v. Romania* submitted to you on 14 October 2021. This letter comes in addition to previous letters submitted by ACCEPT and is also based on Rule 9.2 of the Rules of the Committee of Ministers.

We salute the steps taken in regards to the execution of the aforementioned judgement by Romanian authorities, and we encourage the continued cooperation between state authorities and ACCEPT Association. However, we are concerned that Romania has not made major progress in executing the judgment and the fact that there is no coordination and leadership from relevant authorities to implementing the measures put forward in the Revised Action Plan of 24 August 2018, especially noting the lack of active involvement in Governmental authorities, including the Ministry of Justice and the Ministry of Internal

¹ The members of the Anti-Discrimination Coalition are: Asociația ACCEPT, Asociația pentru Apărarea Drepturilor Omului în România - Comitetul Helsinki (APADOR-CH), Asociația ActiveWatch, Centrul Euroregional pentru Inițiative Publice (ECPI), Centrul de Dezvoltare Curriculară și Studii de Gen - FILIA, Institutul pentru Politici Publice (IPP), Fundația Centrul Parteneriat pentru Egalitate, Centrul European pentru drepturile Copiilor cu Dizabilități (CEDCD), Centrul pentru Inovare Publică (CIP), Societatea Academică din Romania (SAR) și Liga Pro Europa.

Affairs. Therefore, we stress the need that this case should be further analyzed under the level “enhanced” – enhanced supervision.

Five years after the European Court of Human Rights’ judgement in *M.C. and A.C.*, no hate crime against an LGBTI person has been prosecuted and the perpetrator punished in Romania. Many of the measures assumed by the Romanian State in the Revised Action Plan of 24 August 2018 have not been implemented, and the situation of victims of hate crimes has not improved. Despite the training that various national authorities claim to implement, there are complaints filed by victims of hate crimes that go unanswered, ineffective law enforcement investigations and even abuses by law enforcement called to protect victims. The measures implemented so far by the Romanian State still lack a concrete impact on preventing, combating and punishing hate crimes, and we encourage the Ministers to foster a stronger commitment of national authorities in this field.

In this letter, civil society organizations would like to support the Department with information on several issues related to the execution of *the M.C. and A.C.* judgment. Following our monitoring, there is no improvement in criminal law in the field of hate crimes (Section 1), nor any common methodology for investigating hate crimes (Section 3). Moreover, the national authorities with competences in the field do not have a strategy for collecting data on hate crimes, which would serve a purpose of analyzing this phenomenon. (Section 2) Despite the fact that a number of trainings are mentioned in the Government's response, there is no real improvement for educating professionals in the field of hate crimes (Section 5). Victims of hate crimes are not taken into account when measures are taken by national authorities (Section 4). In section 6 we present a series of complaints of hate crimes against the LGBTIQ+ community that remain unsolved and hate speech statements by political leaders, who should adopt effective legislation in this field.

1. The lack of commitment to amend the legislation leads to the same result: ineffective investigation and protection against hate-crime

From 2016 until now, Romania has failed to change the legislation on hate crimes, and this is due to a lack of commitment at the legislative level. In order to achieve this objective, the Parliament should meet in a serious legislative effort, which we do not see possible in the next period, considering that sometimes even the Romanian parliamentarians themselves use hate speech in the public space. Despite the fact that there have been attempts to amend Article 369 of the Criminal Code - Incitement to hatred or discrimination, criminal law faces the same problems identified over time, including lack of clarity and predictability, which makes it difficult for the law enforcement bodies when investigating this type of crime.

First, in the Communication concerning the case of *M.C. and A.C. v. Romania* sent to the Committee of Ministers on 14.10.2021, the Government of Romania presents a

certain form of the Article 369 of the Criminal Code, which contains the list of protected grounds of the crime of incitement to hatred or discrimination. This variant of Article 369 is presented as being adopted by the Parliament, only that the Romanian Government did not mention anywhere that the form cited in the Communication is only the form adopted by the Senate on March 22, 2021.² The form adopted by the Chamber of Deputies³, the decision-making chamber for this bill, doesn't contain the list of protected grounds and doesn't solve the problem of clarity and predictability of this criminal offence. As a result, the Romanian Constitutional Court, that was notified by the President of Romania to review the constitutionality of the adopted bill, declared the bill unconstitutional, identifying the same issues signaled over time by ACCEPT and supported by civil society in an amicus curiae from the Anti-Discrimination Coalition.

Thus, by Decision No.561 of September 15, 2021, the Constitutional Court ruled that the legislator must establish the list of grounds of discrimination protected by this criminal offence, in order to ensure a precise and predictable criminal legislation: "Analyzing the norm that incriminates the act of incitement to hatred or discrimination from a historical perspective, the Court observes that, if until the adoption of the Criminal Code, on February 1, 2014, the material element of the crime had a determined and determinable normative meaning in terms of grounds hatred or discrimination (race, nationality, ethnicity, language, religion, gender, orientation, opinion, political affiliation, beliefs, wealth, social background, age, disability, chronic non-communicable disease or HIV / AIDS infection), currently, by removing these grounds, the material element of the crime is extremely general, including in the sphere of criminal wrongdoing any discriminatory manifestation. The Court notes that the constitutional standard for the protection of individual liberty requires that its limitation be achieved within a normative framework which, on the one hand, expressly establishes the cases of limitation of this constitutional value and, on the other hand, provides for a clear, precise and predictable way for these cases. The Court considers that the legislator has the obligation, in the act of legislating, regardless of the field in which he exercises this constitutional competence, to show increased attention in respecting the principle of clarity and predictability of the law."⁴ (para.23)

The Constitutional Court has also ruled that the extremely general definition of the crime of incitement to hatred or discrimination, which can lead to confusion between criminal law and administrative offense, regulated by the article 15 of the Government Ordinance no. 137/2000 regarding the prevention and combating all forms of discrimination: "The Court notes that the reporting of judicial bodies to an extremely wide, unspecified

² Law amending art. 369 of Law no. 286/2009 on the Criminal Code - Romanian Senate, available at <http://www.cdep.ro/proiecte/2021/100/30/4/se120.pdf>

³ Law amending art.369 of Law no. 286/2009 on the Criminal Code – Chamber of Deputies, available at http://www.cdep.ro/pls/proiecte/docs/2021/cd134_21.pdf

⁴Constitutional Court of Romania, Decision no.561 of September 15 2021, available at https://www.ccr.ro/wp-content/uploads/2021/10/Decizie_561_2021.pdf

sphere, which may include, in addition to the criteria listed in the previous Criminal Code, any other criteria that may delimit social categories, has an influence on the objective side of the crime by extending it to any discriminatory action, based on criteria that are not provided in normative acts of primary regulation. In other words, since the legislator did not regulate the grounds that may generate violence, hatred or discrimination, if the act was committed intentionally, it can be qualified as a crime regardless of the reason on which the danger of violence, hatred or discrimination is based. This is due to the fact that, as previously indicated, the legislator has identified and regulated outside the criminal legislative level the levers necessary to remove the consequences of acts that, although according to current regulations may fall under the definition of the criminal offence of inciting violence, hatred or discrimination, they do not present the degree of intensity necessary for the application of a criminal punishment. Thus, comparatively analyzing the regulation of the criminal offence in the Criminal Code with the provisions of Article 15 of Government Ordinance no. 137/2000, which establish a form of contravention liability, the Court notes that, although not identical, they are similar to an extent that determines the possibility that both criminal liability and outside-criminal liability, because the legislator of the criminal law did not specify the discrimination criteria nor did it regulate the need for the actual causing the state of danger provided for by the respective incriminating legal provision.” (para.32)⁵

Second, given that legislative problems have not been corrected, the issue of effective investigation of hate crimes continues to exist at the level of criminal prosecution bodies. According to the data provided by the General Inspectorate of the Romanian Police in 2020, there were 96 reports based on Article 369 of the Criminal Code, of which only 10 of them were sent to the Prosecutor's Office for investigation because the police declined its competence *rationae personae* or *rationae materiae*.⁶ Also, according to the General Prosecutor's Office's response⁷ in 2020, 215 hate crimes were to be solved (either crimes to which the aggravating circumstance provided by Art. 77 letter h of the Criminal Code was applied or to which the hate element is part of the constitutive content of the crime Art.369, Art.297.(2) of the Criminal Code, etc). Of these, only 5 were resolved by indictment (sending to court). According to the Ministry of Justice⁸ not even one person was definitively convicted between 01.01.2018-31.12.2020 for committing the crime of incitement to hatred or discrimination (Art.369 of the Criminal Code) or for crimes under the law prohibiting fascist organizations and symbols (GEO 31/2002).

Considering all these aspects, we can conclude that Romania has not transposed the measures assumed as a result of the *M.C. and A.C.* decision in the criminal

⁵Constitutional Court of Romania, Decision no.561 of September 15 2021, available at https://www.ccr.ro/wp-content/uploads/2021/10/Decizie_561_2021.pdf

⁶ The answer of the General Inspectorate of the Romanian Police no. 176743 of February 24, 2021 to the ACCEPT Association

⁷ The answer of the Prosecutor's Office attached to the High Court of Cassation and Justice no. 235/VIII-3/2021 to the ACCEPT Association

⁸ The answer of the Ministry of Justice no.6.721/01.02.201 to the ACCEPT Association

legislation, because the criminal legislation in the field of hate crimes is lacking in predictability, which is a premise for law enforcement to conduct effective investigations and for the judiciary to convict perpetrators of hate crimes and protect victims.

2. Underreporting of hate crimes is not being addressed by the authorities

An essential way to combat hate crimes is by addressing the phenomenon of under-reporting of hate crimes. According to *FRA EU LGBTI survey II. A long way to go for LGBTI equality*, only 4% of the LGBTI victims of crimes went to the police in Romania to report physical or sexual attacks, compared to 14% across the EU-28.⁹ ACCEPT comes in contact with many more victims of hate crimes than the number of cases reported to the police and we see in our work a lack of trust in the law enforcement by the victims and fear of re-victimization by the police as a result of filing a criminal complaint.

Despite the worrying trend described above, the authorities did not plan any measures to strengthen the citizen's trust in the judicial system, in particular by developing closer communication with the communities that are exposed to hate crime and promptly addressing their needs, for example by carrying out effective investigations of hate crimes. On the contrary, in the 2017-2021 period ACCEPT Association or activists of the LGBTIQ+ community submitted a series of criminal complaints that have not been resolved until now. We will give some examples in the following:

- In June 2017, a young man was sexually harassed by a public transport control agent working at the local public transport company in Bucharest (RATB) because he was perceived as being gay. After almost two years, he did not receive any information about the status of his complaint or any resolution to his criminal complaint filed with the Police Force for the Public transport Bucharest (Serviciul de Poliție pentru Transportul Public de Suprafață).

- In November 2016, a gay activist from Bucharest filed a criminal complaint to the Police Station No.1 Bucharest for receiving telephone calls containing death threats from an unidentified person after organizing a public demonstration for gay rights. After more than two years, the complainant did not receive any information about the status of his complaint or any resolution to his complaint.

- In July 2017, a trans woman activist filed a complaint to the Police Station No.25 Bucharest for the abusive behavior of two police officers who refused to use feminine pronouns in conversation with her despite several requests and explanations, but insistently and deliberately used masculine pronouns and the masculine pronoun from her ID papers on various occasions. The prosecutor issued a resolution on 28 December 2018, stating that the facts do not fall under Article 297 paragraph 2 second thesis of the Penal Code. She motivated

⁹ FRA, EU LGBTI survey II. A long way to go for LGBTI equality. Country data. Romania, page 2, available at https://fra.europa.eu/sites/default/files/fra_uploads/lgbti-survey-country-data_romania.pdf.

that it is unclear what is understood by the criminal offence of Abuse of public office by creating a situation of inferiority based on sex and how it can be distinguished from the administrative offence of Breaching the dignity of the person, stipulated by Article 15 of the Government Ordinance No.137/2000 regarding the prevention and combating all forms of discrimination.¹⁰ The complainant contested the resolution but she did not receive any answer in due time from the First Prosecutor of the Prosecutor's Office of the District 6 Bucharest.

- In September 2018, a young man filed a complaint to the Police Station No.22 Bucharest for discriminatory behaviour of a police woman who stopped and searched him and his life partner two times in September 2018 and January 2019. The first time, the police woman told him that she has something against homosexuals once she saw the rainbow flag symbol on his bag. The second time, the police woman stopped the two men without any reason and asked them where they live, threatening them that she has authority in that area of the city. The young man filed a complaint to the Internal Affairs Department of the Police of District 6 (Biroul Control Intern) for misconduct in the exercise of police authority. He gave audio recordings of the conversations with the police woman and indicated the name of a witness. However, on 1 February 2019, the Internal Affairs Department of the Police of District 6 rejected his complaint as unfounded without hearing the witness or motivating its decision.¹¹

- In the summer of 2019, ACCEPT Association filed two criminal complaints filed with the Police Station number 8 against a neighbour near the headquarters of our organization who threatened and harassed LGBTIQ+ people who came to community support groups. In one case, the perpetrator partially destroyed the car of a transgender woman. For one of the two complaints, we were called, together with the victims of hate crimes, for police hearings only this year, and for the second complaint we did not receive any answer.

- In December 2020, ACCEPT Association filed two criminal complaints with Police Station number 8. One of the complaints was made as a result of the vandalization of the rainbow mural that the association's volunteers drew on the ACCEPT headquarters building, and the second complaint of was made as a result of an e-mail received on the official address of the organization that contained death threats: "if I catch you on the street I come with a sword and a clan from Craiova to cut you, hand, foot by foot and after I take your organs to sell them on the deep web for cannibals that they don't deserve to reach the bodies of normal people". Neither of these two criminal complaints has moved the authorities in any way to investigate who is the perpetrator of these hate crimes.

- In August 2020, the Social Democratic Party's candidate for Local Council of Sector 2 in Bucharest launched a public campaign to incite hatred and discrimination against the LGBTI community. He made and distributed in the public space a video showing a group of about 5 men playing the role of transgender women. This role was a mocking one, the characters wore molded jeans, cut under the buttocks, some having written on the buttocks

¹⁰ Prosecutor's Office of the District 6 Bucharest, Resolution of 28.12.2018 in File No.6424/P/2017.

¹¹ Sectorul 6 Poliție, Biroul Control Intern, Decision No.1275029/31.01.2019.

the acronym of the Save Romania Union (political party associated with the LGBTIQ + community). In the video, the group is verbally and physically assaulted by people standing on the side of the street, pushing them, threatening them, pulling their clothes. ACCEPT Association filed a complaint for the crime of hatred and discrimination at the Prosecutor's Office attached to the Buftea Court, but this complaint was not resolved in any way.¹²

ACCEPT is aware that a police project, PDP 3 Combating hate crimes and violent extremism, particularly against Roma population, and increasing the quality of police service Project (funded by the EEA and Norway Grants), to combat hate crimes includes the component addressing under-reporting of hate crimes by implementing a public campaign, but we did not see such a campaign in the public sphere nor any consultation about such a campaign¹³. Moreover, in the Recovery and Resilience Plan for Romania there are no funds allocated for systemic actions of public information campaigns needed to strengthen the response of the Romanian State to hate crimes and intolerance caused by racism, xenophobia, homophobia, transphobia.¹⁴

3. Lack of coherence of the authorities in the field of data collection

At this moment there is no coordinated action of the national authorities (Ministry of Justice, General Prosecutor's Office attached to the High Court of Cassation and Justice and General Inspectorate of the Romanian Police) in order to collect unitary data in the field of hate crimes, and the few existing data at this time do not serve a purpose of analysis in order to combat this type of crime. At the beginning of 2017, when the authorities established the working group for the implementation of M.C. and A.C. judgment, the Ministry of Justice declared for the first time that they will introduce some changes in the ECRIS database in order to improve data collection regarding hate crimes. Almost five years down the line, the State is declaring the same intentions, without providing an exact timeline and clear budgetary allocations.

The Ministry of Justice mentions that regarding the number of cases before the courts, in which final and irrevocable criminal sentences were issued for committing hate crimes, the database managed by the ministry does not allow disaggregation of data

¹² Mihai Roman, G4Media, "Fake campaign clip attributed to USR PLUS, with alleged gay volunteers. The alliance accuses PSD of intoxication and says that the filming is done near the Voluntari City Hall, led by Florentin Pandele, 28.08.2020
<https://www.g4media.ro/video-clip-fake-de-campanie-atribuit-usr-plus-cu-presupusi-voluntari-gay-alianta-acuza-psd-de-intoxicare-si-spune-ca-filmarea-e-facuta-langa-primaria-voluntari-condusa-de-florentin-pandele.html>

¹³ EEA Grants official website, available at: <https://eeagrants.org/archive/2014-2021/projects/RO-HOMEAFFAIRS-0003>

¹⁴ Ministry of European Investment and Projects, Recovery and Resilience Plan for Romania, available at <https://mfe.gov.ro/pnrr/>.

according to the type court decision (final decision or decision that can be appealed), nor the disaggregation of data regarding ground of discrimination on which the hatred element of the criminal offence was founded on (race, nationality, ethnicity, language, religion, gender, sexual orientation, opinion or political affiliation, wealth, social origin, age, disability, chronic non-contagious disease or HIV/AIDS infection or other similar circumstances). The Ministry, in its Reply to ACCEPT No.6721 of 01.02.2021 or No.13.983/13.02.2020, made absolutely no mention that it would like to improve its data collection system in the field of hate crimes.

Also, the Ministry of Justice states in its answers to the Accept Association (No. 13.983 / 13.02.2020 and No. 6721 of 01.02.202) that it wants to introduce new statistical attributes to highlight separately the circumstances provided by art.77 letter h of the Criminal Code and that it envisages the implementation of a new version of the ECRIS application, but without assuming an exact timetable for this goal and without consulting the dialogue partners in the civil society working with vulnerable groups exposed to hate crimes (LGBTIQ + community, Roma people, Hungarian ethnic minority, Jewish minority, etc.)

The General Prosecutor's Office indeed changed the methodology for data collection at the level of prosecutors' offices so that data regarding hate-related offences indicate the discriminatory reason, too. However, given that the method of collection involves filling in the statistical forms by certain persons designated in the ECRIS application, and these data are subsequently centralized at the Prosecutor's Office attached to the High Court of Cassation and Justice, a unitary methodology must be created to fill in these forms and afterwards introduce them in ECRIS application. However, the Ministry of Justice cannot include this data in the ECRIS application because it needs to be updated accordingly.

The General Inspectorate of Romanian Police, in response no. 176743 of 24 February 2021 to ACCEPT Association, mentions that it has no evidence of incidents that were based on prejudices motivated by the sexual orientation of the victim. At the same time, there is no indication of the intention or a specific timetable for the elaboration of statistical data regarding the aggravating circumstances mentioned: race, nationality, ethnicity, language, religion, sexual orientation, sex, etc. It is also important to mention that the ACCEPT Association so far has not been consulted by the General Inspectorate of the Romanian Police regarding the development of means of collecting data on hate crimes, in the framework of activities proposed by a EEA Grants-funded project. We remain available in the development of such a methodology of data collection, and strongly suggest to Romanian authorities to involve multiple organizations that work with victims of hate crime to be included in the development of monitoring and data collection at the time of reporting to police a hate crime.

In conclusion, in order to be able to collect real data on hate crimes, it is necessary to coordinate between the national authorities with competences in the field, to assume a concrete calendar for the development of data collection capacity, to allocate

budget from the Romanian state funds, as well as consult with civil society when adopting mechanisms and guidelines for data collection.

4. Lack of a unitary methodology for investigating hate-crime

For the implementation of the *M.C. and A.C.* decision, the Romanian state has assumed the development of a common methodology for investigating hate crimes at the level of the Romanian Police and the General Prosecutor's Office. However, this objective has not been met 5 years after the pronouncement of the decision. Even if the General Prosecutor's Office attached to the High Court of Cassation and Justice adopted Order No. 184/30 October 2020 for the approval of the Methodology for the investigation of hate crimes, this is not enough to reach an effective investigation of this type of crime, for the reasons that we will develop below.

The Government recognizes in its Communication that the General Inspectorate of the Romanian Police doesn't intend to adopt a common methodology for investigating hate crimes, considering the relationship between the criminal investigation bodies of judicial police and the prosecutor and the fact that the Police will apply the investigation Methodology developed by the General Prosecutor's Office. The Police did not advance any reason why they refuse to adopt the Methodology jointly with the General Prosecutor's Office, like they did in case of domestic violence, for example¹⁵, or at least to adopt the same text of the Methodology, at the level of Romanian Police. This raises serious concerns because police officers are hierarchically and administratively bound by the internal rules and procedures of the police not of the General Prosecutor's Office – to put it simply: police officers may receive indications from prosecutors in regards to what to look for in an investigation of a hate crime, but only the prosecutors have the guidelines in front of them, not the police officers.

According to the Code of Criminal Procedure for the vast majority of crimes, the criminal investigation bodies of the judicial police carry out the criminal investigation, the prosecutor having a role of supervising the investigation carried out by the judicial police. The judicial police is in charge with: the first contact with the victim of the hate crime, the identification of the context in which the crime was committed, the existence of a potential criterion of discrimination, but also the elements necessary to find the perpetrator, collecting evidence, interviewing the victim, the witnesses, the suspects, drafting the proposal for the classification of the facts in a certain criminal offence, drafting the proposal for indictment or to close the case. Under these circumstances, it is especially important that the judicial police

¹⁵Order no.146/2.578/2001 on how to manage cases of domestic violence by police officers, available at <http://legislatie.just.ro/Public/DetaliuDocumentAfis/209455?fbclid=IwAR3NmjPKTWgHxuYZR95ABu9egbWlNoMbfQsUuWxsxhxrDYG908eXRr5Ednc>

and the prosecutors both have the same understanding and are bound by the same internal rules and procedures regarding the details of carrying out an effective investigation of hate crimes.

According to the answer of the General Inspectorate of the Romanian Police to the ACCEPT Association No. 176743 of February 24, 2021, in 2020 for Art. 297.(2) of the Criminal Code (Abuse of office motivated by discrimination) out of 50 criminal notifications, only 3 were solved and declined to the Prosecutor's Office, out of 96 criminal notifications for the crime of Incitement to hatred or discrimination, only 15 were solved and declined to the Prosecutor's Office, and out of 13 criminal notifications based on Government Ordinance No. 31/2002 on the prohibition of fascist organizations and symbols, racist or xenophobic only one case has been solved. Additionally, at the level of the Prosecutor's Offices in 2020, only 5 hate crimes were solved by indictment, out of a number of 150. The very low rates of cases solved and of cases indicted show that the judicial police do not carry out an efficient investigation in the field of hate crimes and do not send to the prosecutor sufficient evidence for indictment of hate crimes.

Considering the architecture of the criminal procedure in the national system, it is necessary to adopt a common methodology developed through the cooperation of the Prosecutor's Office attached to the High Court of Cassation and Justice and the General Inspectorate of the Romanian Police in order to establish effective methods for investigating hate crimes.

5. Unaddressed gaps in the protection of victims of hate-crimes

None of the Romanian authorities with competences in the field seems to consider the victims of hate crimes, to analyze their specific needs and to implement measures and practices for people facing homophobic and transphobic harassment or violence. The Romanian authorities do not seem to have any plans in the field of services that victims of hate crimes should benefit from. This can also be seen from the fact that the Romanian Government did not mention anything about the specific needs of victims of hate crimes in the Communications sent to you.

According to the study of the Centrul pentru Resurse Juridice (CRJ) "Combating hate crimes. Practical guide for practitioners and decision makers" in order to fight hate crimes it is necessary to increase the trust of the victims in the authorities. Thus, the solutions identified for this objective refer to: "Recruitment of persons belonging to minorities in the police structures within a strategy of promoting a wider diversity and at the same time publicly assumed by the police schools and the Police Academy; Establishing, at the level of the Romanian police, a platform or working group to discuss ways to prevent and reduce the

phenomenon of hate crimes. This platform should include, in addition to law enforcement and other relevant authorities, members of groups vulnerable to hate crimes, more specifically groups that face discrimination in general and are members of minority or working communities with and for the benefit of minority communities.”¹⁶ It is also important that the state provide guarantees for the protection of victims of hate crimes, “by establishing a police reporting system and recording hate incidents and crimes against victims and witnesses. This should include the ability to report to locations other than police stations, as well as online and via a mobile application. This possibility should be available 24 hours a day, the elaboration by the police together with other relevant authorities, especially those in the field of health and the implementation of standards and recommendations on how to interact with victims of hate crimes, and the establishment of the necessary support services, starting from the need to implement in effectively Directive no. 2012/29 / EU laying down minimum rules on the rights, support and protection of victims of crime.”¹⁷

Also, according to Law no. 211/2004 on some measures to ensure the protection of victims of crime, free legal assistance is granted, upon request, to persons who have been victims of the following categories of crimes: attempted murder or aggravated murder, injury bodily injury, an intentional crime that resulted in bodily injury to the victim, rape, sexual assault, sexual intercourse with a minor, sexual corruption of minors if the victim notifies the prosecuting authorities within 60 days from the date of the crime. The authorities should include on the list of these crimes victims of hate crimes so that they receive free legal advice, because on the one hand they often belong to economically and socially disadvantaged minorities, and on the other hand this measure would lead to an increase in the number of complaints and reports of this type of crime.

Victims of human trafficking benefit according to Law no. 678/2001 on preventing and combating human trafficking from a series of services that should be extended to victims of hate crimes: protection of privacy and identity, the right to their recovery physical, psychological and social, psychological support, temporary accommodation in care centres, compulsory and free legal assistance. Additionally, according to law no. 217/2003 for the prevention and combating of domestic violence, victims of domestic violence benefit from a series of rights: the right to special protection, the right to counselling services, rehabilitation, social reintegration, free medical assistance, reception centres in emergency mode. Given the fact that the victims of hate crimes come from vulnerable backgrounds, having a precarious economic and social situation, we believe that such services and rights should be provided for victims of such crimes by the Romanian state.

¹⁶ <http://www.crj.ro/wp-content/uploads/2015/01/Combaterea-infractiunilor-motivate-de-ura.Ghid-pentru-practicieni-si-decidenti.pdf> “Combating hate crimes. Practical guide for practitioners and decision makers”

¹⁷ Idem 8

All these services should take into account the particularities of the vulnerable group the victims of hate crimes belong to. For example, confidentiality should also be one of the basic principles of law enforcement in interacting with victims and witnesses of hate crimes. Especially for young people who are part of the LGBTIQ + community, this confidentiality must be maintained, given that the disclosure of sexual identity or sexual orientation to third parties can cause very strong material and emotional damage. Also, in the case of transgender people who are victims of hate crimes, their gender identity must be taken into account and not their biological sex. For example, in the case of a transgender woman who can benefit from placement in night shelters, she cannot be accommodated in men's rooms. Otherwise, the victim of the hate crime will be subjected to new verbal and physical abuse in night shelters which can lead to revictimization.

Another important element in combating hate crimes is the information campaigns on the rights of victims and the procedure for notifying the criminal prosecution bodies in these cases. The victims of the hate crime must be correctly informed about the relevant actors they can turn to, for example: national authorities, civil society organizations, etc. An example of incomplete information from the Romanian authorities in the field of victims' rights is represented by the information managed on the European Justice website (www.e-justice.europa.eu). In the section of non-governmental organizations to which victims can turn, on the one hand there is a section dedicated to victims of hate crimes, and on the other hand non-governmental organizations that provide legal assistance such as ACCEPT Association, Center for Legal Resources, Equality and Human Rights Action Centers are not included in this information. Each member of the European Union is responsible for this content.¹⁸

Another important topic that the national authorities ignore in the context of hate crimes refers to a particular sub-group exposed to homophobia and hate-crimes – LGBTIQ + young people in Romania who suffer from violence at school. The ACCEPT Association, as a non-governmental organization that offers free legal assistance services for LGBTIQ+ young people in Romania, is facing these problems more and more often, and the State did not take into account the issue and has no plans to address it in the future. According to a survey conducted by the ACCEPT Association « A safe high school for everyone. Perceptions and attitudes towards LGBT people in the Romanian educational environment », ¹⁹ there is a high degree of homophobia and transphobia among students. 1 in 2 high school students dislikes having a gay classmate, and 1 in 3 does not agree having a lesbian classmate. Also, 1 in 2 high school students believe that gender affirmation surgeries are morally

¹⁸European e-Justice Portal, Information on Victim's Rights regarding services offered in Romania, available at: https://e-justice.europa.eu/171/RO/victims_rights_by_country?ROMANIA&action=maximizeMS&clang=ro&idSubpage=9&member=1#tocHeader3

¹⁹Study A safe high school for everyone. Perceptions and attitudes towards LGBT people in the Romanian educational environment, ACCEPT Association, available at <http://www.acceptromania.ro/wp-content/uploads/2016/03/Un-liceu-sigur-pentru-to%C8%9Bi-Sumarul-cercetarii.pdf>

reprehensible, and 3 in 5 high school students say they reject profoundly the idea of them being attracted to people of the same sex. At the same time, the survey shows that LGBTIQ + young people face numerous cases of physical or verbal violence in educational institutions. 71% of LGBT students believe that young people in the community are not safe at school, especially emotionally, while 61% of LGBTI respondents have been victims or witnesses of aggression, and 65% of LGBTI students and their allies say teachers make homophobic remarks in class. The teachers and the educational system more generally is not prepared to respond to such bullying, on the contrary there is data showing that the teachers themselves are discriminating in school against certain students such as LGBT students and they do not take a stand when discrimination takes place in their class. According to a 2021 survey on perceptions and attitudes regarding discrimination in schools, published by the National Council for Combating Discrimination and the NGO Institute for Public Policies, discrimination in schools is a reality that respondents acknowledged: 49% of teachers interviewed declared that discrimination is a problem in school and 39% remember assisting to cases of discrimination inflicted by other teachers in their school, 1 in 3 teachers declare they intervene only when there is a serious case of discrimination, and not to prevent or combat such incidents.²⁰ There are very high rates of intolerance especially among parents regarding certain minority groups such as Roma people, homosexuals and immigrants, and lower but important rates among teachers (for example 46% of parents, compared to 23% of teachers agree or partially agree with the statement that “the majority of Roma breach the law”). Verbal abuse from other pupils is the main form of discrimination identified by the respondents, but they also identified discrimination inflicted by the teachers such as lowering the grades, ignoring the pupils, and verbal abuse.²¹ The State must take proactive measures to combat prejudice against LGBT persons from the level of school years to ensure that future generations of law enforcement, teachers, public officials, workers, etc. reject intolerance, taking the form of discrimination, hate speech and hate crime.

The existing legal provisions in the field of combating bullying in schools lack important elements to ensure the effective implementation of protection. For example, Law no. 221/2019 for amending and supplementing the National Education Law no. 1/2011, by which bullying is prevented and combated in spaces intended for education, does not contain sanctions or any notification procedure in case of psychological violence, which is oftentimes the insidious way in which bullying grows in the school community. The Order of the Minister of Education and Research no.4.343 / 2020 regarding the approval of the Methodological Norms for the application of Law no.221 / 2019 establishes the obligation to form at the level

²⁰ Romania, National Council for Combating Discrimination and Institute for Public Policies, Survey Perceptions and attitudes regarding discrimination in schools (Sondaj Percepții și atitudini privind discriminarea în școli), 24 September 2021, available at http://www.ipp.ro/wp-content/uploads/2020/12/IPP_Sondaj_discriminare_2021.pdf. The survey took place during May-June 2021, by telephone and online interviews with parents (611 interviews), teachers (689 interviews) and representatives of the county school inspectorates (131 interviews), having a margin of error of +-4% at the 95% confidence level.

²¹ Romania, Institute for Public Policies, Profs against discrimination – presentation, available at <http://www.ipp.ro/profsagainstdiscrimination/>.

of each educational unit an anti-bullying action group with the role of prevention, identification and solution of bullying. However, the ACCEPT Association has so far not been able to identify such action groups in the cases of bullying faced by LGBT beneficiaries to whom we provided legal assistance.

Given all these aspects, we can ask ourselves: how do national authorities want to implement the *M.C. and A.C.* and to combat hate crimes, in the context in which they take measures without taking into account the needs of victims of hate crimes or without implementing support services for them, customized for each vulnerable group?

6. Lack of a coherent strategy in the field of trainings

In our previous communications with the Department, ACCEPT provided extended comments on the information provided by the Government regarding the issue of training of law enforcement and judges and prosecutors in the field of hate-crime. Those observations are relevant today as there is still no systematic training program in this field and no concrete plans to adopt a public policy in this field in the future. Also, for an effective enforcement of the decision of *M.C. and A.C.* it is not enough to carry out a few trainings for the law enforcement, without a systematic planning of how many law enforcement and magistrates are going to be trained on this topic, the timeline and the budgetary allocations for this program.

Regarding the initial training of magistrates, according to public information on the website of the National Institute of Magistracy²² in 2018-2019, for both academic years there is no special course on hate crimes. The only subject that could introduce relevant issues for judges and prosecutors regarding LGBTIQ+ people (but there is no indication that it actually does so) is the module "Combating discrimination" with a duration of 3 hours, in the second year. There is no form of evaluation needed to complete this module. The same situation is registered for the second year of study in 2020, the information for the first year not being available online.²³

As to the initial training of police officers, unlike in 2019, there is no public information about the curriculum either within the Septimiu Muresean School of Police Officers, or within the Vasile Lascar School of Police Officers. While the curriculum for the Police Academy Alexandru Ioan Cuza is not publicly available, the website of the institution hosts the undergraduate exam bibliography, which enables recruits to become police officers.

²² Information available on the official website of National Institute of Magistracy
http://inm-lex.ro/fisiere/d_2457/Program%20de%20formare%20initiala%202019.pdf

²³ Information available on the official website of National Institute of Magistracy
<http://inm-lex.ro/wp-content/uploads/2020/01/Program-de-formare-initiala-an-II-2020.pdf>

The bibliography does not mention investigating or preventing hate crime, issues related to non-discrimination, dealing with complex diversity or creating competences regarding working with minorities or vulnerable groups. Furthermore, it does not reference *MC and AC v. Romania* as a study topic.²⁴ As a result, we can conclude that the authorities consider that these are not essential competencies for graduating police recruits- that it is not important to them for police officers to have basic awareness regarding LGBTI issues and combating hate crime.

The program of continuous professional training for the staff of the Ministry of Internal Affairs, carried out by the Institute of Studies for Public Order, does not contain any customized course for hate crimes. The only topics that can approach this topic is the training course "Preventing and Combating All Forms of Discrimination", which is a week-long.²⁵ Civilian recruits are able to go through a fast track training in order to obtain executive positions in police units, in accordance with article 5 paragraph (1) letter b from Annex 4 of the Order of the Minister of Internal Affairs No.140/2016 regarding the management of human resources in police units.²⁶ The training of these recruits lasts for only 480 hours (3 months), and is handled by the National Institute for Public Order Studies. In 3 months of training one cannot learn how to manage the interaction with any type of crime victims, and poor training can lead to abuses on vulnerable groups. We will continue to see police stopping and harassing same-sex couples who simply go about their usual activities, such as kissing or holding hands.

Regarding the continuous trainings mentioned by the Romanian Government in the communication, they are not detailed in the field of hate crimes or on the specific problems of the LGBTIQ + community. Also, the Government does not indicate how many people have benefited or will benefit from these trainings, there is no planning to show that there is any intention to train as many magistrates and law enforcement as possible even in the trainings mentioned in the Government communication. The national authorities do not put forward an exact timetable for the training of an exact number of professionals who have responsibilities in the field of hate crimes. Furthermore, the Romanian state does not allocate funds from the state budget for the training and development of magistrates or police officers in the field of hate crimes, the funding for these trainings that the authorities are currently boasting about was brought by the ACCEPT Association.

According to the Government Communication, The General Inspectorate of the Romanian Police transmitted that during March-April 2021 they were involved together with the ACCEPT Association in a new project titled "Human Rights – National

²⁴ See information on the official website of Police Academy
<https://www.academiadepolitie.ro/ultima-ora/2020/Hotarare-73-25-mai-2020.pdf>

²⁵ Information available on the official website of Institute of Studies for Public Order
http://isop.mai.gov.ro/wp-content/uploads/2021/invatamant/Grafic_2021-2022.pdf

²⁶ Order of the Minister of Internal Affairs number 140/2016 regarding the management of human resources in police units, available at
<https://www.prolex.ro/2016/09/15/ordinul-nr-1402016-privind-activitatea-de-management-resurse-umane-unitatile-de-politie-ale-mai/>.

Implementation” of the Programme, “Local Development, Poverty Reduction and Increase of Roma Inclusion” funded by the EEA and Norway Grants 2014-2021 and managed by the Romanian Social Development Fund (FRDS). Although ACCEPT launched the invitation to the IGPR to participate in the project proposal of the previously mentioned project, they were not able to provide the required project documents to become a collaborator (a partner without budget supplying participants to training activities) given the short deadlines involved. However, we rely on the cooperation with police authorities and their commitment to participate in training activities developed in the framework of this project.

In conclusion, the execution of the case of *M.C. and A.C.* involves the initial and ongoing training of magistrates and of law enforcement in the field of hate crimes and specific LGBTIQ + community issues. This objective will never be achieved without a financial allocation from the state budget, without a commitment and a coherent strategy from the authorities in order to establish an exact timetable for the training of as many professionals in the field of hate crimes.

7. List of recent cases showing how these systematic failures perpetuate discrimination

There is no improvement in the situation on the ground regarding State response to hate crime. The competent national authorities either actively contribute to the discrimination of LGBTIQ + people or remain passive when such crimes occur. Not only does the LGBTIQ + community face a lack of effective involvement of prosecutors and police officers in the investigation of hate crimes, but all vulnerable groups (Roma people, Hungarians ethnic, etc) are affected by this lack of adequate response. We will present below examples of recent filed with the authorities with civil society support to illustrate these conclusions:

- In October 2021, the ACCEPT Association and the Rise OUT Association (an LGBT non-governmental organization from Iasi) filed a criminal complaint for committing the crime of abuse of office committed by the Mayor of Iasi, Mihai Chirica. He refused to approve the conduct of the Iasi PRIDE March, despite the fact that all other members of the Public Assembly Committee had expressed their agreement to conduct the LGBT event. Mihai Chirica motivated his repeated refusals for organizing the Iasi PRIDE march on alleged spiritual sensitivities of the city’s population, a reference to an Orthodox religious procession taking place at the beginning of October in Iași and complaints filed

by people who opposed the LGBT march.”²⁷ A month after we introduced the complaint, we have no development in the file.

- In June 2021, the European Court of Human Rights convicted Romania in the *ACCEPT Association and Others Case* for violating Article 14 in conjunction with Article 8 and Article 14 in conjunction with Article 11 of the European Convention on Human Rights. In 2013, ACCEPT Association organized a film screening on the subject of a gay family in a public cinema on the premises of the National Museum of the Romanian Peasant, in Bucharest. The screening was interrupted by people who verbally assaulted the participants, shouted “death to homosexuals”, and used fascist symbols. Different than in *M.C. and A.C.*, in this judgment, the ECtHR found that national authorities failed to provide protection to the organizer and participants of LGBTIQ+ events and to conduct an effective investigation due to prejudice and stereotypes, with the authorities failing to take reasonable steps to investigate whether the verbal assaults were motivated by homophobia. This reasoning of the Court is still relevant 8 years later, because the State did not take a systematic approach to execute the ECtHR judgments in the field of hate crimes and combat structural discrimination.
- In December 2020, a criminal complaint of abuse in the exercise of authority was filed against a Bucharest Police crew for abusing a transgender woman physically and psychologically. The conflict began with transphobic and homophobic insults that a group of three cisgender women addressed to the victim at a bus stop. To avoid the conflict, the victim took a bus, but was followed by the three aggressors, who continued the humiliation and verbal harassment for several stations. The police intervened at the request of other people from the bus. However, as videotaped by one traveller, instead of protecting the victim of harassment and installing calm and security, the police assaulted the transgender woman, who was forcibly removed from the bus, knocked to the ground, immobilized, handcuffed and forcibly put in a police car. The complainant also reports that on the way to the station, the police threatened her, humiliated her, hit her continuously to the station and even took pictures of her while she was humiliated by several police officers.
- In April 2020 several police officers, including the local police chief, assaulted a group of 10 Roma men in Bolintin Vale, a village close to Bucharest, with the alleged reason that they had a barbecue outside of their yard during pandemic restrictions. According to video recordings from the scene, the authorities ordered the men to come out of their homes, told them to stay on the ground and continuously beat them, even if the men did not show any signs of

²⁷ Flavia Drăgan, News Week, “Scandal in Iasi on the LGBTQ march, endorsed by CL. Mayor Chirica opposes, asking them to “be discreet”, 01.10.2021
<https://newsweek.ro/social/scandal-la-iasi-pe-marsul-lgbtq-lasat-fara-aviz-chirica-nu-va-fi-o-problema-daca-sunt-discreti>

resistance and were screaming in pain. While beating them, the police yell: “stay the fuck home” and “you thought you were though, making live [facebook] videos?” Videos of the beating circulated online and in the national press.²⁸ Although it has been publicly announced that the Bolintin Vale Local Police Chief has been fired and an investigation is being launched against him, he still holds the aforementioned position, and the outcome of the investigation is unknown.²⁹

- In April 2020, mass media reported clashes between police and several people living in a Roma neighborhood, after a Roma man, Vasile Badea, who calls himself “Spartacus”, started a party near his apartment building despite the coronavirus-related restrictions. In a live video on Facebook, he “invited” the police to come and stop the party. Upon police arrival, several people began throwing stones and other objects towards the police officers, who ended up arresting several people at the event. A few hours after the incident, “Spartacus” posted a message on his Facebook account saying that he is sorry for what he did, along with a picture with his face beaten up. It is unclear why his face was beaten or how he posted the message on Facebook, since he was supposedly in prison at the time. Roma activists believe police officers might have asked him to post the message and photo on his Facebook account in order to humiliate him.³⁰
- In April 2020, a policeman stopped and searched a group of Roma people who were eating from the trash in front of a supermarket. He took them to the police station, where he threatened to give them a lesson and afterwards took them back to the supermarket to allegedly “reconstitute” the scene, in fact he took pictures of them eating from the trash which exposed their faces and posted them on his facebook account.³¹
- In April 2020, the police were searching to sanction a man in a Roma neighborhood in Hunedoara because he was not respecting the corona-virus isolation restrictions, when people from the neighborhood, both Roma and non-Roma, came to his defense and attacked the police cars. Allegedly, the

²⁸ Cătălin Tolontan, Denisa Dudescu, Libertatea, “IMAGES OF THE MILITARY JOINT. How the Romanian Police punishes a group of men from Bolintin. Roma people lying on the ground with their hands behind their backs and beaten.”, 23.04.2020 <https://www.libertatea.ro/stiri/imagini-de-junta-militara-operatiune-de-pedepsire-a-politiei-romane-la-adresa-unor-barbati-din-bolintin-romi-culcati-pe-jos-cu-mainile-la-spate-si-batuti-2968180>

²⁹ Digi24, “Bolintin Vale Police Chief who brutally beat a man already lying on the ground, still in office”, 22.07.2020 <https://www.digi24.ro/stiri/actualitate/evenimente/seful-politiei-din-bolintin-vale-care-a-batut-crunt-un-barbat-deja-culcat-la-pamant-in-continuare-in-functie-1341908>

³⁰ George Andrei Cristescu, Adevarul, “Spartacus, the man who instigated violence in the Capital, on Easter day, was arrested on remand”, 21 aprilie 2020 https://adevarul.ro/news/eveniment/spartacus-barbatul-instigat-violenta-capitala-ziua-pasti-fost-arestat-preventiv-1_5e9e9b375163ec4271f79a3c/index.html

³¹ Scena9, “Our beating didn’t hurt as much as what it did hurt us.”, 08.04.2020 <https://www.scena9.ro/article/nici-bataia-nu-ne-durea-cum-ne-o-durut- ceea-ce-ne-o-facut-cand-criza-ne-scoate-rasismul-la-lumina>

police returned to take revenge and a man and a 14 year old child were beaten by police, police entered several apartments without a warrant, used tear gas inside, including against an 11 year old child, two men were beaten by police officers when they tried to go to the police station to denounce the abuse.³²

- In April 2020, the police were called about an alleged disturbance involving some young men in the common spaces of a building in Ferentari, a poor, predominantly Roma neighborhood in Bucharest. Upon police arrival, people living in the area started insulting police officers. The police were using tear gas against them in and around the building. According to mass media reporting from the scene, the conflict escalated up to the point that a policeman wanted to use his fire weapon, special police forces were deployed and many people were beaten up, including innocent people who were in their homes at the time of the incident. At least two children were taken to the hospital because of tear gas intoxication. Activists point out to the excessive force used, including against people who were in their homes and had nothing to do with the initial incident.³³

Likewise, hate speech and discriminatory speech against the LGBTIQ+ community is not monitored and sanctioned in Romania. Most often the authors of homophobic and transphobic discourses are Romanian decision makers who are the ones that should adopt normative acts, public policies and regulations to protect the LGBTIQ+ community.

- In August 2021 a judge, former president of the Timis Tribunal, on the occasion of the Pride festival in Timisoara wrote on her social media account: "A handful of beardless, who do not grow a beard and who do not decide whether or not to wear a bra, have seized the planet. In the name of a misunderstood freedom, we are called to stand firm in the face of specimens that, if they had lived in prehistory, would have been the breakfast of a more prized animal."³⁴
- In September 2021, on the occasion of the rejection of a bill that would regulate the civil partnership between persons of the same sex, but which was rejected by the Chamber of Deputies, the deputy of the National Liberal Party, Daniel Gheorghe declared: "The civil partnership was built as a way to fool

³²Hunedoara Libera, "Breaking News: Incidents in the Micro 6 neighborhood of Hunedoara", 18.04.2020 <http://hunedoaralibera.ro/breaking-news-incidente-in-cartierul-micro-7-din-hunedoara-video/>

³³Digi 24, "Spark intervention of the Capital Police in Ferentari. Law enforcement officers were cursed when they arrived at the scene.", 30.04.2020 <https://www.digi24.ro/stiri/actualitate/social/interventie-cu-scantei-a-politiei-capitalei-in-ferentari-oamenii-legii-au-fost-injurati-cand-au-ajuns-la-fata-locului-1300107>

³⁴ Alin Ionescu, G4Media, "A judge's skidding of the LGBTQ community. Former president of the Timis Tribunal, Adriana Stoicescu: "A handful of beards, whose beards do not grow and who do not decide whether or not to wear a br, has got their hands on the planet.", 9.08.2021 <https://www.g4media.ro/derapaj-al-unei-judecatoare-la-adresa-comunitatii-lgbtq-fosta-presedinta-a-tribunalului-timis-adriana-stoicescu-o-mana-de-imberbi-carora-nu-le-creste-barba-si-care-nu-se-hotarasc-daca-sa.html>

society for same-sex marriages. It is an initiative that undermines marriage and the family. But what are the basics? I'll tell you some interesting things. I can tell you about the decline of the Roman Empire. And the decline did not occur because of the Germanic invasions but because of the moral decline. And this moral decline was stopped by Christianity through the Christian family, through Christian moral values.”³⁵

- In December 2020, Claudiu Tarziu, member of Parliament, of the Alliance for the Union of Romanians party, declared the following about homosexuality: "Imagine that a drug addict would demand legalization of drugs or a drunk would ask to be allowed by law to come drunk to work, or a mentally insane person would insist that the legislator declare him healthy and be treated as such, or, finally, a zoophile would claim the right to start a "family" with the hen, sheep, or cow with which he "fell in love." Do you think these are forced hypotheses? Well, 20 years ago, homosexuality was treated the same way. No man with his head on his shoulders referred to homosexuals except as out of place, as some who are out of the ordinary either because of an illness or a vice. ”³⁶

In June 2021 on the occasion of the adoption of the Matic Report³⁷ which aims to defend and promote the sexual and reproductive rights of women in the Member States of the European Union, without discrimination, in a complete and accessible way, Romanian politicians have made the following transphobic and homophobic statements:

- The deputy of the National Liberal Party, Pavel Popescu said: “My wife and her friends will vote for Dacian Cioloş in the 2024 presidential elections. That's because after the vote of Renew Europe in the European Parliament, we fathers, we can share with you mothers, today, the burden of breastfeeding. Some went crazy. P.S. Do you know where I can find calming balm for nipples in Bucharest?”³⁸

³⁵Digi 24, PNL deputy: The decline of the Roman Empire, due to homosexuals. The Chamber of Deputies rejected the civil partnership”, 28.09.2021

<https://www.digi24.ro/stiri/actualitate/politica/deputat-pnl-declinul-imperiului-roman-din-cauza-homosexualilor-camera-deputatilor-a-respins-parteneriatul-civil-1683043>

³⁶ Diana Meseşan, Libertatea, “Who is Claudiu Tirziu, one of the leaders of the AUR party? Homophobic and anti-abortion statements, legionary sympathies”, 07.10.2020

<https://www.libertatea.ro/stiri/claudiu-tarziu-lider-partid-aur-3315204>

³⁷ European Parliament resolution of 24 June 2021 on the state of health sexual and reproductive rights and related rights in the EU, in the context of women’s health (2020/2215 (INI))

https://www.europarl.europa.eu/doceo/document/TA-9-2021-0314_RO.pdf

³⁸ Hotnews, “Can men give birth? What does, in fact, provide for the Matic Report adopted by the European Parliament and which has caused controversy in Romania as well.”, 26.06.2021

<https://www.hotnews.ro/stiri-meetyourmep-24883041-pot-barbatii-nasca-prevede-fapt-raportul-matic-adoptat-parlamentul-european-care-starnit-controverse-romania-document-complet.htm>

- Ben Oni Ardelean, deputy of the National Liberal Party: “Unfortunately, the Matic Report passed with 378 votes in favor, 255 against and 42 abstentions. I thank the PNL MEPs for voting against this harmful project! Both we and the rest of the member states have made the mistake of sending people without fear of God to the European Parliament. Ideological neo-Marxism, disguised as progressivism and globalism, is growing alarmingly in Europe. With each step, we witness the restriction of civil rights, freedoms, and the principles that laid the foundations of the European construct - all under the pretext that it is for our good. If this is the "new world", I prefer to stay "old-fashioned". As long as I work in the public sphere, and not only, I will campaign for a society built on healthy, Christian-conservative values and principles. We remain united! God, succeed!”³⁹
- The Romanian MEP, Cristian Terhes, member of the group of European Conservatives and Reformists, declared: “The report also argues that men can give birth and should, I quote, benefit from birth measures and childbirth care. Point. Supporting such a statement makes the European Union laugh at the turkeys around the world.”⁴⁰

In addition, in July 2021, representatives of the Popular Hungarian Party of Transylvania and representatives of the Hungarian Civic Party stated that they intend to propose in the Romanian Parliament a bill similar to the anti-gay law adopted by Viktor Orban in Hungary. Immediately, the Alliance for the Union of Romanians announced that they want to introduce a bill against "homosexual propaganda".⁴¹

These statements represent awful examples of homophobic and transphobic speech from the highest level of political leadership. However, even more serious and grave are institutional positions depicting LGBTI people as anomalies and threats to society, because they back with the solemnity of the instruction personal prejudice of people in positions of power. Such examples show how utterly important the surveillance and leadership of the Committee of Ministers remains in this and all SOGI cases in relation to Romania. On point, in the context of the anti-gender movement taking root in Romania, and a proposal to ban so-called gender ideology in Romanian education, the President of the

³⁹Hotnews, “Can men give birth? What does, in fact, provide for the Matic Report adopted by the European Parliament and which has caused controversy in Romania as well.”, 26.06.2021

<https://www.hotnews.ro/stiri-meetyourmep-24883041-pot-barbatii-nasca-prevede-fapt-raportul-matic-adoptat-parlamentul-european-care-starnit-controverse-romania-document-complet.htm>

⁴⁰Tamara Ceaicovschi, Mediafax, “The controversial Matic report. Vehementa reaction from Cristian Terhes who states that the right is given to “men to be able to give birth””, 26.06.2021

<https://www.mediafax.ro/externe/controversatul-raport-matic-reactie-vehementa-din-partea-lui-cristian-terhes-care-afirma-ca-se-da-dreptul-barbatilor-sa-poata-naste-20158940>

⁴¹Hotnews, “AUR wants to initiate an anti-LGBT law on the model of Hungary / Party supporters, surveyed on social networks”, 27.07.2021

<https://www.hotnews.ro/stiri-politic-24943363-aur-vrea-initieze-lege-anti-lgbt-modelul-din-ungaria-simpatizantii-partidului-chestionati-retele-socializare.htm>

Senate, Robert Marius Cazanciuc, submitted on behalf of the Senate of Romania an official opinion to the Constitutional Court in case file no. 959A / 2020, referring to an objection of unconstitutionality regarding the Law amending article 7 of the National Education Law no.1 / 2011:

*“So what does the legislator forbid? University research and scientific explanation of the characteristics of the gender theory, or activities that by their nature are not intended to call into question the academic study of concepts, **manifestations, behaviors and options related to the biological identification of a person’s sex, but only to prevent the spread of social manifestations of deviant sexual behavior?**”*

...

*The educational activity is considered an accessory attribution of the state, which it recognizes and assigns to a specialized unit and which does not have the right to evade the interests of the state. The entity that carries out educational and teaching activity and benefits from autonomy in its organization and functioning, does not evade state control. Even Law no. 1/2011 provides in article (2) that university autonomy entitles the university community to establish its own mission, institutional strategy, structure, activities, organization and functioning, management of material and human resources, but in strict compliance with the legislation in force, and the legislation is established by the state through its specialized component: **The Parliament. It shows, therefore, that the Parliament, as a state body regulating social relations of general interest, also lays down restrictive rules in education, in order to defend desirable values in relation to the development and education requirements for young people.** In the light of these considerations, the objection of unconstitutionality formulated by the President of Romania regarding article 7 paragraph (1) letter e) of the criticized law is without any basis and to be rejected.*

...

*We consider that the reporting of the interdiction regulated by the legislator in the criticized law is forced, to the content of art. 29 of the Constitution. Rather, the inherited legal text is related to the normative conception of the Constituent Assembly which underlies the constitutional freedom of expression, enshrined in article 30, paragraph (7) of the Constitution: **the defense of public morals and good morals by the state.**”*

Thus, we see here a depiction of transgender people in Romania as immoral, sexual deviants, and a threat to children. This stance belongs in a far right party, not in an official position of the Romanian Senate to the Constitutional Court of Romania. This position shows the fragility of democratic institutions and their consistent failure of protecting LGBTI persons from human rights violations, while encouraging prejudice and hate through the blatant denial of the humanity of trans people, and indeed LGBTI people in general.

In order to address the issues raised by our submission, we propose the establishment of a permanent working group on the execution of ECHR judgments finding human rights violations in relation to the treatment of LGBTI people in Romania, and we

urge the Governmental Agent to be a permanent guest and support the participation of relevant national authorities. Moreover, we consider such working groups essential in the implementation of provisions pertaining to all ECHR judgements addressing the situation of people vulnerable to discrimination, hate speech and hate crime. Civil society organization are permanently available and constitute an important source of expertise and can foster trust between communities and national authorities.

We attach to this Communication:

- The response of the Ministry of Justice to the request of the ACCEPT Association no.6.721/01.02.2021;
- The response of the Prosecutor's Office attached to the High Court of Cassation and Justice to the request of the ACCEPT Association no.235/VIII-3/2021 of 29 January 2021;
- The response of the General Inspectorate of Romanian Police to the request of the ACCEPT Association no.176743 of 24 February 2021;
- The response of the Ministry of Justice to the request of the ACCEPT Association no.13.983/13.02.2020;
- The response of the Prosecutor's Office attached to the High Court of Cassation and Justice to the request of the ACCEPT Association no.327/VIII-3/2020 of 13 March 2020;
- Amicus curiae submitted by the Anti-Discrimination Coalition within the exception of unconstitutionality raised by the President of Romania regarding the amendment of Article 369 of the Criminal Code;
- Decision no.561 of September 15, 2021 regarding the objection of unconstitutionality of the provision of Article I of the Law for the amendment of Article 369 of Law no.286/2009 on the Criminal Code, the Romanian Constitutional Court;
- The opinion of Robert Marius Cazanciuc at the Constitutional Court in the case file no. 959A / 2020, referring to an objection of unconstitutionality regarding the Law amending article 7 of the National Education Law no.1 / 2011 in Romanian and in English;
- Video recordings from the brutal intervention of the Romanian police and gendarmerie on a transgender woman who had been the victim of transphobic insults by young cisgender women in December 2020;
- Video recordings from the brutal intervention of the Romanian police and gendarmerie which assaulted a group of 10 Roma men in Bolintin Vale;
- Video recordings that show the Voluntari Social Democratic Party campaign that show a group of about 5 men playing the role of transgender women.

In conclusion, it is our hope that evidence we provided in this letter will inform the Department on the need that this case be further monitored under the level “enhanced” – enhanced supervision. Please do not hesitate to contact us in case you need further information or clarification.

Yours Sincerely,

Teodora Roseti Ion Rotaru
Executive Director
ACCEPT Association

A circular blue ink stamp is positioned behind the signature. The stamp contains the text "ASOCIATIA ACCEPT" in the center, with "BUCHURESTI" at the top and "ROMANIA" at the bottom. A handwritten signature in blue ink is written over the stamp.

DGI

18 NOV. 2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Ref: Follow-up letter on Case M.C. and A.C. v. Romania

(Application no.12060/12, Judgment of 12 April 2016, final on 12 July 2016)

Please receive this letter submitted by ACCEPT Association on behalf of Romanian human rights organizations containing follow-up information on the main points presented by the Government in the Rule 8.2a - Communication from the authorities dated 12/10/2021. This letter comes in addition to our previous letters of 20 December 2016, 6 March 2017, 13 March 2019 and it is also based on Rule 9.2.

Please find attached our letter. Annexes in Romanian, including videos pertinent to hate incidents, are available for download [here](#). PDF and Word documents have been attached to this email. The annexes are drafted in Romanian, and serve to substantiate our assessment of the current state of the execution.

Kind regards,

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Teodora Ion-Rotaru
Coordonatoare de programe

(+4)0723503162

ACCEPT

Str. Lirei nr. 10, Sector 2
Bucuresti, Romania
Tel./Fax: (+4)021 252 5620
www.acceptromania.ro
www.antidiscriminare.ro