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Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1280 meeting (7-9 March 2017) (DH)

Communication from a NGO (ACCEPT) (20/12/2016) and reply from the authorities (04/01/2017) in the case of M.C. and A.C. against 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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Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1280 réunion (7-9 mars 2017) (DH)

Communication d'une ONG (ACCEPT) (20/12/2016) et réponse des autorités (04/01/2017) dans l'affaire M.C. et A.C. contre 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.



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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

Bucharest, 20 December 2016

Dear Madam or Sir,

We are writing on behalf of ACCEPT Association with the aim of contributing with information for the process of execution of the judgment in the case of *M.C. and A.C. v Romania*, judgment of 12 April 2016, application no.12060/12 (hereinafter "*M.C. and A.C. Case*"). This letter is based on "Rule 9 submissions".

ACCEPT is a non-governmental organization in Romania promoting human rights for LGBT persons. ACCEPT supported the applicants in the *M.C. and A.C. Case* and we have a longstanding experience of working on combating hate-crime in Romania. Based on our work, we are currently in dialogue with the Government's Representative for the European Court of Human Rights (*Agentul Guvernamental al României pentru Curtea Europeană a Drepturilor Omului*) with the aim of contributing to the content of the Action Plan in the above-mentioned case. However, we do not have a result of discussions, yet.

In this letter, we would like to support the Department with information on two issues: (I) reasons why the case should be reviewed under the level "enhanced", (II) evidence on the progress of the Member State in executing the judgment, notably on the impact in practice of the legislative measures adopted by Law 278 of 4 July 2006 on the amendment of the Criminal Code.

I. Enhanced review

We are respectfully asking the Department to treat the case under enhanced rather than standard review because the case involves major structural and complex problems existing at the level of the law enforcement in Romania. These are the predominance of stereotypes and prejudice among the law enforcement officials, corroborated with lack of political will to address hate-crimes. People working in the law enforcement structures consider criminal offences committed out of hate and prejudice concerning certain groups such as (Roma, LGBT persons, religious minorities) not serious enough to be addressed as criminal offences, not to say about treating them with priority and sensitivity (see *M.C. and A.C. Case*, paras. 106, 124). The following evidence are illustrative:

1. *M.C. and A.C. Case* falls in **a series of cases** under the ECtHR that deal with the same structural and complex problem of the law enforcement, that we mentioned above. We refer to the ECtHR judgments in the cases of:

- *Moldovan and Others v. Romania* (no. 2)(2005), nos. 41138/98 and 64320/01,
- *Cobzaru v. Romania* (2007), no. 48254/99,
- *Stoica v. Romania* (2008), no. 42722/02,
- *Ciorcan and Others v. Romania* (2015), nos. 29414/09 and 44841/09.



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The investigations in the cases mentioned above were carried out before and after the entry into force of the Law 278 of 4 July 2006 amendments of the Criminal Code. The facts in the case of *Ciorcan and Others v Romania* occurred after the entry into force of this legislation.

The law enforcement officials continue to adopt the same **disengagement** and carry out **ineffective investigations**:

- For example, a case is pending before the ECtHR concerning hate incidents that took place at the Museum of the Romanian Peasant in Bucharest; the law enforcement closed the case and treated the facts as a differed of opinions between the organizers of a cultural gay event and a group of protesters to the event happening in a national museum (*Asociația ACCEPT and Others v. România*, no. 19237/16).
- The criminal investigation in another case of hate-crime against a gay theatre director was closed without making accountable anyone, even though the perpetrators were police officers and the facts occurred on the premises of the Police Section No.10 Bucharest (File no. 13301/P/2011, Prosecutor's Office by the First Instance Court of the Third District Bucharest).

2. The general atmosphere in the society regarding LGBT persons in Romania is **hostile**:

- Homosexuals are in the first three most discriminated groups in the Romanian society, according to surveys published by the National Council for Combating Discrimination from 2004 up until today.¹
- In November 2015, a citizenship initiative to amend the definition of family in the Constitution (explicitly mentioning that "family" is restricted to marriage between a man and a woman), largely supported by the Romanian Orthodox Church, was introduced on the public agenda and in the Parliament fuelling hatred and discrimination against LGBT persons.² The political parties accepted it during electoral campaign under undue influence by the church and other civil society actors. They are planning to organize a referendum in 2017 on this topic, which will be another situation when the risks of further hate incidents against LGBT persons will raise.

II. Impact in practice of the Law 278 of 4 July 2006

The amendments in the field of hate-crimes adopted by the Law 278 of 4 July 2006 are not applied in practice. The following evidence is illustrating the current situation. In the same time, they constitute recommendations of concrete measures that are needed for the execution of the judgment in the *M.C. and A.C. Case*.

1. Data collection as an important component of drafting public policies

Currently, the data collected by the police, prosecutor's offices and criminal courts cannot be compared because the data collection systems are not harmonized. Romania is the only country in the EU that does not collect data on hate-crimes segregated by the ground of discrimination. This data is necessary for understanding the real dimensions of the hate-crime phenomenon.

¹ The surveys are available at <http://cncd.org.ro/publicatii/Sondaje-4/>, http://www.cncd.org.ro/files/file/Sondaj_discriminare_2008_CNCD.pdf, <http://www.cncd.org.ro/files/file/Enomenul%20discriminari%202009.pdf>, http://www.cncd.org.ro/files/file/Raport%20de%20ceccetate%20CNCD_Discriminare.pdf, http://www.ires.com.ro/uploads/articole/ires_cncd_pereceptii-si-attitudini-privind-discriminarea-2013.pdf.

² Information about a recent case of hate-crime against a LGBT activist protesting against the Citizens' initiative is available here <http://www.acceptromania.ro/blog/2016/11/24/activist-gay-amenintat-cu-moartea-dupa-ce-datele-sale-de-contact-au-fost-circulate-de-coalitia-pentru-familie/>.



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Proposed measure: Amending the systems of data collection on hate-crimes in order ensure harmonization between police, prosecutor's offices and criminal courts.

Concrete steps to consider:

- Adopting a joint methodology for collecting and using data based on consultations between the National Authority for Supervising Personal Data Collection (*Autoritatea Națională pentru Supravegherea Prelucrării Datelor cu Caracter Personal*), the General Inspectorate of the Romanian Police (*Inspectoratul General al Poliției Române*), the Ministry of Justice, the General Prosecutor's Office and the Superior Council of Magistracy (*Consiliul Superior al Magistraturii*). These consultations should draw a balance between the need for protection of the victim and the need to know and understand the phenomenon of hate-crime.
- Include in the data collection the data recorded by the police and the judiciary, plus the data collected by social and medical assistance services and non-governmental associations supporting victims of hate-crimes, to have a wide picture of the entire phenomenon of hate incidents, not only the cases that are reported to official authorities.
- Data collection systems should consider to avoid global collection of data on criminal offences sanctioned by a certain article of the Criminal Code or by an entire law when the provisions specific for hate-crimes are stipulated in only one of the several paragraphs of the respective article (for example Article 297 *Abuse in service* of the *Criminal Code* – the provisions sanctioning hate-crimes are stipulated in paragraph 2) or they differ depending on the article of the law (for example *O.U.G. nr. 31/2002 privind interzicerea organizațiilor și simbolurilor cu caracter fascist, rasist sau xenofob și a promovării cultului persoanelor vinovate de săvârșirea unor infracțiuni contra păcii și omenirii*).

2. Making more efficient the investigations of hate crimes

Currently, the victims of hate incidents are confused regarding the competence of investigating their cases – between the National Council for Combating Discrimination and the law enforcement (police and prosecutors). The facts fall under hate crimes or the Anti-discrimination Law depending on how the gravity of facts is assessed. Once one of the two categories of institutions assess the gravity and decide that it is the other law that applies, the complaint is rejected and not referred to the other institution. In some cases, this leads to the time-limit for introducing the complaint to the other institution to pass, leaving the victim without any remedy.

Proposed measures:

Amending the Anti-discrimination Law (OG 137/2000 privind prevenirea și combaterea tuturor formelor de discriminare) and the Criminal Procedure Code.

Ensuring coordination between the National Council for Combating Discrimination, the General Prosecutor's Office and the Ministry of Internal Affairs (concluding protocols of cooperation)

Concrete steps to consider:

- Amending the Anti-discrimination Law and the Criminal Procedure Code in the sense of obliging the law enforcement to request an opinion from the National Council for Combating Discrimination when there are indications that a criminal offence is based on hate.



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- Amending the Anti-discrimination Law in the sense of obliging the National Council for Combating Discrimination to send to the law enforcement carrying out criminal investigation the complaints addressed initially to the NCCD that were assessed as reporting facts of a more serious nature (criminal offence).
 - Amending the Anti-discrimination Law in the sense of obliging the law enforcement carrying out criminal investigation to communicate the solutions in cases where an opinion from the NCCD was requested, included cases where the facts may fall under the Anti-discrimination Law.
 - Establishing a collaboration protocol between the NCCD, the General Prosecutor's Office and the Ministry of Internal Affairs with the aim of ensuring cooperation between these institutions in cases that present the elements of acts of discrimination or hate crimes, including referring to the NCCD the cases that do not fulfil the conditions of hate crimes, but may fall under the Anti-discrimination law.

3. Amending the law to introduce guarantees and create a mechanism for increasing the number of complaints and protect the victims of hate-crimes

The victims of hate-crimes and other specific categories are more likely to be re-victimized or to be again subjected hate-crimes, intimidation and retaliation. They need special attention, risk assessment of future victimization, and special protection measures. Because of this vulnerability, hate-crimes are under-reported.

Proposed measures: Organize training programs for law enforcement officials and other professional categories, such as NGOs, doctors, psychologists, medical assistants, etc, that enter in contact with victims of hate-crimes.

Provide information regarding the rights of victims of hate-crimes in various places, such as hospitals, medical offices, community organizations, etc.

Concrete steps to consider:

- Establishing a reporting and recording system of hate-crimes and hate incidents aimed at victims and witnesses, that is handled by the Police. This system should ensure that the reporting can take place in other locations than police stations, including online 24/7.
- The police and other institutions and organizations should adopt a set of standards on ways of interacting with victims of hate-crimes.
- Establishing support services necessary for victims of hate-crimes, as prescribed by the Directive 2012/29/ UE (see below).

4. Introducing support services for victims of hate-crimes

Closely connected to training professionals and offering information to victims of hate-crimes, practitioners need to refer victims of hate-crimes to adequate support services. A working referral system at the level of the police is at the basis of an effective support mechanism. In some EU Member States, the organizations providing support for victims operate either directly in police stations or in their neighborhood.

There are no support services in place by the State and the NGOs no longer have financial capacity to provide support for victims of hate-crimes.



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Proposed measure: Establishing, building capacity, and financing support services adapted to the specific needs of victims of hate-crimes.

5. Initial and continuous training on hate-crimes for legal professionals

Victims of hate-crimes are persons who belong to groups that are in general exposed to discrimination in the society; without adequate training, legal practitioners interacting with these victims may display treatment that is illustrative of this discrimination existing in the society. The investigation of hate-crimes requires certain knowledge about communities that is not usually imparted in police schools or law schools in Romania.

The police organized scarce training on hate-crimes in cooperation with NGOs or the NCCD. However, these trainings are not part of permanent programs, therefore attendance is still limited to a few tens of police officers per year.

Proposed measure: Ensure initial training and continuous training on hate-crimes within police academies, law schools, and other training institutions for police officers, lawyers, prosecutors, judges.

Concrete steps to consider:

- Raising awareness training on the needs of victims, in particular victims of hate-crimes for law enforcement officials.
- Specific classes on hate-crime law and practice introduced in the initial training of police officers and all legal professions.
- Addressing the issues regarding hate-crimes in relevant subjects, such as Criminal Law, Human Rights Law, Criminology, Forensics, in law schools, police academies, and other training institutions (in particular on identifying hate-crimes, collecting and presenting evidence, protecting and defending the fundamental rights of victims of hate-crimes).
- Mandatory training on hate-crimes for police officers and members of the judiciary; in cooperation with the NCCD and civil society organizations.

6. Strengthening the relation between the police and the communities exposed to hate-crimes

There is a clear connection between hate-crimes and grounds of discrimination, resulting in certain groups who are at higher risk of violence and victimization. Therefore, the law enforcement should pay special attention to these groups and to working with their communities.

**Proposed measures: Developing and increasing the attendance and the financing available for trainings for police officers on non-discrimination, equality and communicating with community members where they perform their job.
Cooperating with non-governmental organizations representing victims of hate crimes.**

In conclusion, please consider the evidence we provided in this letter and do not hesitate to contact us in case you need further information or clarifications.

Yours Sincerely,
Florin Buhuceanu
Executive President





MINISTÈRE DES AFFAIRES ÉTRANGÈRES

AGENT DU GOUVERNEMENT
AUPRES DE LA COUR EUROPEENNE DES DROITS DE L'HOMME

M.C. et A.C. c. Roumanie (12060/12)
La réponse du Gouvernement à la lettre des organisations non-gouvernementales

Le Gouvernement a pris bonne note de la lettre du 20 décembre 2016 adressée au Comité de Ministres par l'association ACCEPT. La lettre indiquée a été transmise aux autorités compétentes pour évaluation.

En ce qui concerne la demande de l'association visant à l'inclusion de l'affaire dans la procédure soutenue, le Gouvernement estime que la présente affaire ne requière pas des mesures de caractère individuel urgentes et ne relève non plus des problèmes structurels importants. Partant, le Gouvernement considère que la demande mentionnée est mal fondée.

Le Gouvernement tiendra le Comité de Ministres informé sur les conclusions des évaluations des autorités compétentes et il réitère qu'il présentera un plan d'action, au plus tard le 12 janvier 2017.