



Center for Legal Resources

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Review

State under review concerned: Romania

The Centre for Legal Resources is a non-governmental, non-profit organization established in 1998 which actively advocates for the establishment and operation of a legal and institutional framework that safeguards the observance of human rights and equal opportunities, free access to fair justice and which contributes to the capitalization of its legal expertise for the general public interest.

The present submission refers to the implementation of the main anti-discrimination law on its sanctioning component and to the general acceptance of discrimination within the Romanian society with a particular focus on high-level discriminatory speech. The submission is based on the working experience of the Centre for Legal Resources and the monitoring it has conducted.¹

1. Perceptions of vulnerable groups in Romania

1. According to various polls commissioned by the Romanian equality body the groups most vulnerable to discrimination in Romania are persons with a mental disability, HIV/AIDS affected persons, Roma ethnics and LGBT persons. According to a 2012 poll², 46% of respondents would feel little and very little comfortable around a Roma person, 46% consider the Roma to be lazy, 45% see them as aggressive and 35% as dishonest. 73% of respondents would feel bothered and very bothered to find out that a member of their family is gay, and 53% to see two men holding hands on the street, 56% would feel little and very little comfortable around an HIV/AIDS infected person. According to a 2009 poll,³ 46.9% of respondents would not agree to have a working colleague with a mental disability and 19.7% would not agree to have a person with a physical disability as working colleague.

2. Effective remedies for discrimination

2. Someone who considers himself/herself discriminated against has two legal avenues according to the main law in the matter, Government Ordinance 137/2000 on the prevention and sanctioning of all forms of discrimination republished: the equality body (National Council for Combating Discrimination-NCCD), and the court of law. If the equality body finds discrimination, it can administer an administrative fine of up to approximately 890 EUR if the victim is a person and of up to 1,775 EUR if the victim is a group of people or a community.⁴ The sums go to the state budget. The NCCD decisions can be contested in a court of law. If the person chooses the court of law directly (in can choose both avenues in parallel), a court can award damages and reestablish the situation before discrimination occurred or can annul the situation created through discrimination.⁵ The term for introducing an action before the NCCD is one year, and three years before the court.⁶ When a discrimination complaint is introduced, the court must call on the NCCD to appear in the case.⁷

3. Absent relevant court statistics, the NCCD is the only source of information, though also a very limited source. In 2010, the NCCD appeared in 1196 cases. Courts admitted 45% of the cases and rejected 55%. 61% regarded financial rights and 39% labour conflicts, annulment of

¹ The translations from Romanian materials indicated as reference are ours.

² TSN CSOP, *Research report. Perceptions and attitudes with regards to discrimination in Romania*. Beneficiary: National Council for Combating Discrimination, available at: http://www.cncd.org.ro/files/file/Raport%20de%20cercetare%20CNCD_Discriminare.pdf (accessed at: 09.07.2012)

³ INSOMAR, *The discrimination phenomenon in Romania: perceptions and attitudes*, 2009, research conducted at the request of the national Council for Combating Discrimination, available at: <http://www.cncd.org.ro/files/file/Fenomenu!%20discriminari!%202009.pdf> (accessed at 09.07.2012)

⁴ Art. 26 of Government Ordinance 137/2000

⁵ Art 27 of Government Ordinance 137/2000

⁶ Art 20 and 27 of Government Ordinance 137/2000

⁷ Art 27 of Government Ordinance 137/2000

administrative fines, termination of contracts, refusal to solve requests, etc....⁸ No further information is available but the activation of the anti-discrimination legislation before courts of law seems to be in the big majority confined to the labour field and in relation to salary rights.

4. There is no further data as to damages awarded by courts, but the number of cases reaching the media where courts awarded what can be called dissuasive sanctions for discrimination does not surpass a handful.

5. Regarding the NCCD, the anti-discrimination legislation clearly states that, when discrimination is found, the sanction is an administrative fine. No further provisions are mentioned. Yet, the NCCD also gives written warnings and/or recommendations when it finds discrimination, without any fine.

6. In the case of the warning, the NCCD usually applies Government Ordinance 2/2001 on the legal status of contraventions⁹ which states that the administrative fine is prescribed 6 months after the deed (article 13)¹⁰ or makes use of the provision of Art. 7 (3) of GO 2/2001 stating that the warning can also be applied in the case where the legal act establishing and sanctioning the contravention does not provide for this sanction.¹¹

7. With regards to the ground of race/ethnicity/nationality, in the period 2003-2010, the NCCD received approximately 823 complaints, and found discrimination in approximately 129 cases. It administered 61 warnings, 29 fines, 27 recommendations, in 5 cases it just found discrimination but did nothing further, in 4 cases it applied both a warning and a recommendation, in 2 cases a fine and a warning and in 1 case a fine and a recommendation.¹²

8. In its 2009 Annual Report, the NCCD explained that: “The Committee [NCCD Steering Committee] issued recommendations to the party accused in 61% of the cases, decided on sanctioning with a warning in 37% of the cases and decided on the sanctioning with a fine in 15% of the cases. (...) The majority of recommendations formulated by the Committee in the cases where discrimination was found were addressed to authorities or public institutions (17), to firms and private companies respectively (9). Although in a smaller percentage, the sanctions with a warning were decided for both public institutions (9) and firms or private companies (7). The administrative sanctioning with a fine was decided in particular against individuals.”¹³

9. We consider that giving warnings and recommendations instead of fines (especially to authorities and public institutions or legal persons) does not provide for an effective remedy. Furthermore, if the term for filing a petition with the NCCD is one year, removing the possibility of sanctioning after six months, especially since this limitation is done on the basis of provisions which can be found in general legislation and not in the special anti-

⁸ NCCD Annual Report 2010, p. 32-33, available at: http://www.cncd.org.ro/files/file/RAPORT%202010_web1.pdf (accessed at: 09.07.2012)

⁹ In the report on the implementation of the framework directive EC/78/2000, the NCCD stated that: “In some cases, due to the fact that the term of prescription or other objective causes, no administrative fines were administered”

¹⁰ See for example descriptions of cases in NCCD report on the implementation of Directive EC/78/2000 in Romania, where some of the case descriptions mention the fact that, since the deed occurred 6 months have passed, the sanctioning term was prescribed. Yet, not all cases described where a warning was given have this mention.

¹¹ For example, in Decision 368/2007, the NCCD specifically mentioned Art. 7 (3) Government Ordinance 2/2001 for giving a warning.

¹² NCCD Report on the implementation of the race directive in Romania, 2003-2010, p. 32, available at: http://www.cncd.org.ro/files/file/Raport%20D43_2000_CNCD_final.pdf (09.07.2012)

¹³ NCCD Annual Report 2009, pp. 22-23. In some of the cases the recommendation probably accompanied a fine or a warning.

discrimination law, and in addition the regular complainant thus also not being aware of the real term for sanctions, also infringes on the right to an effective remedy. Despite Art. 7.3. of GO 2/2001, the legal principle of the special law taking precedence over the general law should apply in the case of sanctions.

10. In the case of recommendations where discrimination was found, there is no dissuasive element, quite to the contrary, one can argue that recommendations create an atmosphere of impunity for discrimination.

11. Although the NCCD has the possibility to initiate *ex officio* investigations, these are very small in numbers. In 2009, the NCCD received 529 complaints, administered 673 decisions (also on files from 2008) found discrimination in 49 and had 15 *ex officio* investigations.¹⁴

12. Several decisions of the Romanian Constitutional Court regarded the status of the NCCD as part of the Romanian system. One of them looked in particular at Art. 20 (3) of GO 137/2000 in relation to the effects of a decision of the NCCD:

“Through the request introduced according to para. (1), the person who considers herself discriminated against has the right to ask for the removal of the consequences of discrimination and the reestablishment of the situation previous to discrimination.”

13. The Constitutional Court ruled that:

“the provisions of art 20, para. 3 of Government Ordinance 137/2000 are unconstitutional to the extent that they are interpreted in the sense that they give the National Council for Combating Discrimination the competence to, within its jurisdictional activity, annul or refuse the implementation of normative acts with the power of law, considering them as discriminatory, and to replace them with norms created through judicial means or with provisions included in other legal acts.”¹⁵

14. Since this Decision, the NCCD has interpreted that it can no longer issue decisions on discrimination stemming from normative acts or provisions and dismissed petitions falling in this category. Nonetheless, the NCCD also has another role established through GO 137/2000, under Art. 18 (1): “The Council is responsible for the implementation and control of the respect of the provisions of the present law in its field of activity, as well as in what regards the harmonization of provisions included in other legal or administrative acts which run counter to the principle of non-discrimination.”

15. Recommendations:

- **Increase the fines for discrimination provided for in G.O. 137/2000;**
- **The NCCD refrain from only issuing recommendations where it finds discrimination;**
- **Amend the Government Ordinance 2/2001 on the legal status of contraventions to add an exception in Art. 7 (3) with regards to the field of discrimination;**
- **Clarify the role of the NCCD with regards to legal norms by introducing an obligatory opinion of the NCCD on all draft laws affecting vulnerable groups, and by introducing into G.O. 137/2000 a provision clearly stating that the NCCD must issue a point of view (not a decision) in cases where the petitions received concern legal norms.**¹⁶

¹⁴ NCCD Annual Report 2009, pp. 19-27.

¹⁵ Romanian Constitutional Court Decision 997/2008

¹⁶ So as to avoid simply dismissing cases on grounds of not being allowed to issue decisions on such petitions.

2. High-level discriminatory speech and the state of impunity

16. The past years have seen a large number of high-level discriminatory statements, especially in what regards the Roma minority. The authors of such statements come from all parties.

17. Relevant examples since 2008 include:

18. In February 2010, the Minister of Foreign Affairs, Teodor Baconschi, speaking about Romanian citizens in France declared: "We have some physiological, natural problems of criminality amongst some Romanian communities, especially among the communities of Roma ethnic Romanian citizens".¹⁷

19. In February 2010, at a conference for the launch of an evaluation of the Romanian Roma Strategy, President Basescu declared with regards to the Roma: "Equally, I know how much reluctance there is in very many Roma families to send their children to school. And I'm not saying this out of stories, but from my own experience, and here, in the room, there are people who can confirm this (...) Let us be honest: we have a big image problem. Go to Paris, go to Oslo, go to Rome, go to Milan, the Roma minority is present at every corner, in front of every museum, and not to enter the museum. So, we either admit a double responsibility, of the state and of the minority, for a positive evolution of the minority, I assure you that all governmental and European projects are doomed to failure (...) I can tell you that another big problem is becoming evident, more serious. Due to the positive birth rate which exists in the Roma community, the problem of housing is getting more serious. More and more live at the outskirts of cities, in improvised shelters and illegal on top of it. We will not be able to continue endlessly with the idea that the state will have to, in the end, build houses for this category. (...) The big problem is in the lack of engagement of the whole community in progressing and in their lack of conviction that school is the key to future prosperity"¹⁸

20. In November 2010, President Basescu declared, in an official visit to Slovenia: "I must tell you something essential – very many important politicians are making a confusion when it comes to the Roma. We cannot speak of all the Roma. (...) What we have not managed is connected to the integration of nomadic Roma (...) We have another problem which must be said and which makes the integration of nomadic Roma difficult – very few of them want to work. Many of them, traditionally, live off what they steal."¹⁹

21. In May 2012, the Romanian Minister of Foreign Affairs, Andrei Marga, declared during a TV talk show, when asked how he is going to solve the issue of the "scandal with the beggars in London": "We have this problem. (...) In London there was a pretty embarrassing situation. There were recorded, at least by the British press, many Roma buying vodka, enjoying themselves and sitting on the clean streets of London for the passersby to see them." The Minister continued explaining that social workers and police officers have been sent to

¹⁷ Mediafax.ro, Baconschi: Cuvântul "fiziologică" sublinia că rata infracționalității e similară altor comunități [Baconschi: The word physiological was underlining the fact that the criminality rate is similar to other communities], 23.02.2010, available at: <http://www.mediafax.ro/social/baconschi-cuvantul-fiziologica-sublinia-ca-rata-infracionalitatii-e-similara-altor-comunitati-5600317> (Date of access: 09.07.2012)

¹⁸ Presidency.ro, Transcript of the *Discursul președintelui României, Traian Băsescu, la conferința de lansare a Raportului asupra Strategiei Naționale de îmbunătățire a situației romilor: "Vocea comunităților"* [Speech of the Romanian President, Traian Basescu, at the launching conference of the report on the National Strategy for the improvement of the situation of the Roma: "Voice of the community"], 22.02.2010, available at: <http://www.presidency.ro/?RID=det&tb=date&id=11883&PRID=ag> (Date of access: 09.07.2012)

¹⁹ Mediafax.ro, Băsescu: Mulți dintre romii nomazi, "în mod tradițional trăiesc din ce fură" [Basescu: many of the nomadic Roma live off what they steal], 03.11.2010, available at: <http://www.mediafax.ro/social/basescu-multi-dintre-romii-nomazi-in-mod-traditional-traiesc-din-ce-fura-7689349/> (Date of access: 09.07.2012)

support London authorities in order to keep the problem under control, adding: “It is understood that the London Olympics is now attracting, and many people, not only from Romania, from this level of the society, is heading towards London. Let us hope that we will be able to keep under control. Certainly, our concern is, if you like, very intense in this direction. Why? An accident, an incident in this area would endanger our effort, more persistent than ever, to close the Schengen file, to get access to other facilities, such as the American visas, etc., etc.”²⁰

22. Some of these statements have been brought before the NCCD, others have not. When the statements are made, they only determine some NGO protests and an NCCD sanction at most. No resignation ever followed, and the political class does not condemn such statements. It was a first and a surprise when, in the recent actions of impeachment of President Bănescu, the authors of the document also mentioned among the reasons invoked: “repeated insults addressed to the Roma community”,²¹ followed by the President expressing his regrets for the statements made and agreeing that such statements should never be made by any political figure, let alone the head of state.²²

23. Despite this notable exception, such statements are generally not condemned in Romania, but they have become almost commonplace. This situation in fact legitimizes local level actions as well as the discriminatory attitudes of the general population.

24. In the summer of 2011, local authorities of Baia Mare, a city in North West Romania, built a wall separating a series of blocks of flats inhabited mostly by Roma.²³ The decision adopted by the municipal council to build the wall was strongly criticized by human rights groups such as Amnesty International and Romanian NGOs.²⁴

25. According to media and NGOs accounts, on June 1st 2012, the local authorities from Baia Mare have relocated a Roma community to a building belonging to the former Cuprom factory, a building where recipients with toxic substances from the former factory had been left behind. A certain number of the persons relocated, primarily children, had to be taken to the emergency room, presenting health problems.²⁵ The case determined the reaction of the US Embassy to Bucharest²⁶ and of the Council of Europe Commissioner for Human Rights²⁷.

²⁰ The recording of the show *Realitatea la Raport* (Reality under review), moderated by Andreea Cretulescu and Adrian Cioroianu, from 17.05.2012, is available at: <http://www.realitatea.net/realitatealaraport.html#emisiune17Mai2012-2130> (accessed at: 29.05.2012). See also: Center for Legal Resources and Romani CRISS Press statement: *The Center for Legal Resources and Romani CRISS condemn the racist statements of MoFA Andrei Marga*, 21.05.2012, available at: <http://www.crj.ro/EN/News/The-Center-for-Legal-Resources-and-Romani-CRIS-condemn-the-racist-statements-of-MoFA-Andrei-Marga/> (accessed at: 09.07.2012)

²¹ Request addressed to the presidents of the two Parliament Chambers on the impeachment of Romania’s President, Traian Bănescu, available at: <http://www.politicaromaneasca.ro/files/image/grafica/suspendare200357223000.pdf> (09.07.2012)

²² Realitatea.net, *Regretul președintelui Traian Bănescu exprimat în parlament [The regret of President Bănescu expressed in Parliament]*, 06.07.2012, available at: http://www.realitatea.net/regretul-presedintelui-traian-basescu-exprimat-in-parlament_961635.html (accessed at: 09.07.2012)

²³ International Media reporting on the topic : Deutsche Welle News Story at: http://www.youtube.com/watch?v=G8qxew_W56s (uploaded on 13.10.2011) and AFP News Story at: <http://www.youtube.com/watch?v=COs7f4VPGt0> (published on 01.08.2011) accessed at 09.07.2012.

²⁴ Romani CRISS, Amnesty International and Sanse Egale Association Open Letter *Stop Baia Mare’s Municipality’s actions to Roma ghettoisation*, 29.06.2011, available at : http://www.romanicriss.org/Open%20letter_wall_Baia_Mare.pdf (accessed at: 09.07.2012)

²⁵ Andrei Trif, *Intoxicație în masă printre locatarii blocului social amenajat la Cuprom Baia Mare* (Mass intoxication among the inhabitants of the social block of flats arranged at Cuprom Baia Mare), in eMaramureș, 02.06.2012, available at: <http://www.emaramures.ro/Stiri/67195/ULTIMA-ORA-Intoxicatie-in-masa-printre-locatarii-blocului-social-Cuprom-Baia-Mare> (accessed at: 09.07.2012) and Bogdan Eduard, *Exclusiv EVZ: Auschwitz-ul de la Baia Mare. 2000 de romi mutați în Uzina Morții de primarul Cherecheș “Chimicul”* (Exclusive EVZ: the Auschwitz from Baia Mare. 2,000 Roma moved from the Death Plant by mayor Cherecheș, the “Chemical”), in Evenimentul Zilei, 04.06.2012, available at: <http://www.evz.ro/detalii/stiri/exclusiv-evz-auschwitz-ul-de-la-baia-mare-2000-de-romi-mutati-in-uzina-mortii-de-primar-984719.html> (accessed at: 09.07.2012)

²⁶ US Embassy to Bucharest, *US Embassy Statement on the Roma Housing Situation in Baia Mare*, 06.06.2012, available at: <http://romania.usembassy.gov/policy/media/pr-06062012.html> (accessed at: 09.07.2012)

In the June 10th 2012 local elections, incumbent mayor Cherecheș of Baia Mare, who spearheaded the actions regarding the Roma, won the elections with an 86% score, apparently the highest score in Romania.²⁸

26. The housing situation of the Roma is known to be poorer than that of the majority community, as a result of the effects of continued structural discrimination and the general lack of a history of property ownership combined with poverty. Yet, as already documented,²⁹ the past years have seen a trend in local authorities relocating certain poor Roma communities from state owned property to the outskirts of cities, in segregated areas, lacking access to services and utilities, next to the city waste collection site or to other environmentally hazardous places. Despite such actions of authorities being a very serious abuse against their own citizens, a state of impunity seems to persist,³⁰ since such communities remain in these places for years, in a state close to destitution, while the relocation trend continues.³¹

27. Recommendations:

- **The NCCD start more ex officio investigations, in particular on public cases, in order to fulfil its preventive role and send a dissuasive message;**
- **Romanian Political parties adopt the ECRI Charter of European Political Parties for a Non-Racist Society;**
- **End the state of impunity of local authorities who implement discriminatory actions.**

Conclusion:

28. In general, from the point of view of effective implementation of non-discrimination, there are too few mechanisms, aside from the equality body, for sanctioning discrimination and equality promotion within different fields, meaning that mainstreaming is largely missing from the legal, policy and administrative systems. A clause on the provision of specific services without discrimination has been introduced in various laws with impact on vulnerable groups, but this is not enough in a society where non-discrimination and equality on the relevant grounds are largely not perceived as the norm, but rather as an exception. An assumed role of all authorities in all fields is needed for effectively combating discrimination and promoting equality in Romania.

29. General recommendations:

- **The Romanian state go beyond the GO 137/2000 and take active measures to mainstream equality in specific fields;**

²⁷ Council of Europe, Commissioner for Human Rights, *Romania: Commissioner concerned about the relocation of Roma in a toxic building*, 07.06.2012, available at: http://www.coe.int/t/commissioner/News/2012/120607BaiaMare_en.asp (accessed at: 09.07.2012)

²⁸ Radu Marinaș, *Roma relocation scores Romania mayor a major vote win*, Reuters, 14.06.2012, available at: <http://www.reuters.com/article/2012/06/14/romania-roma-idUSL5E8HE6F020120614> (accessed at: 09.07.2012)

²⁹ Other cases of abuse on Roma from Romania have been documented and reported on, among others, by Amnesty International, *Mind the legal gap. Roma and the right to housing in Romania*, 23.06.2011, available at: <http://www.amnesty.org/en/news-and-updates/report/romania-legal-system-condemning-roma-poor-housing-2011-06-23> (accessed at: 09.07.2012).

³⁰ Such cases have been brought before the NCCD which sanctioned on various occasions, but the NCCD sanctions have evidently not been dissuasive enough.

³¹ Amnesty International, *Romania: Roma families forcibly evicted in Cluj-Napoca still waiting for justice and adequate housing a year on*, 16.12.2011, available at: <http://www.amnesty.org/en/library/info/EUR39/013/2011/en> (accessed at: 09.07.2012)

- **Create and/or clearly spell out equality duties (and sanctions for non-fulfilment) at local level;**
- **Equality and non-discrimination as a separate subject and/or lesson become part of the compulsory curricula for every grade, while ethics and non-discrimination become part of the university curricula for all universities which train professionals who would at any point work in fields affecting vulnerable groups.**