

An overview on hate crime and hate speech

Country profile: ROMANIA

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Executive Summary

Subject matter

This report has been drafted in the framework of the project “eMore –Monitoring and reporting online hate speech in Europe”. The report aims to inform policy and decision makers as well as people already involved in the antidiscrimination field (NGOs, victim groups, legal professionals, etc...) – in Romania as well as in other EU member states – about the phenomena of hate speech and hate crime in Romania. Thus, the report contains an analysis of the relevant national legal framework, the presentation of hate crime data which is publicly available in Romania, as well as of measures to prevent and combat discrimination, hate speech and hate crime.

Methods of analysis

The report is drafted based on the following method of analysis: desk review. The desk review activity entailed collecting data and information about hate crime and hate speech from online sources, as well as sending public information requests to authorities who process data about hate crime and speech, these authorities being mainly those in charge of investigation, prosecution and eventual conviction.

Findings

- Romania sanctions acts of discrimination through civil or administrative means and acts of hate crime or serious hate speech through criminal means. There is no official legal definition of hate crime and hate speech in the Romanian legal and institutional framework, but crimes and acts of discrimination which could fall in these categories are sanctioned through the legislation. In the public sphere, it is mostly NGOs that speak about these topics, and they use international human rights definitions, such as those provided by the OSCE or the Council of Europe.
- There is no systemic data collection regarding hate crime and hate speech by the Romanian authorities, so as to be able to consistently follow the number of cases and according to specific bias motivations, from the moment when a complaint is lodged to when it reaches a court if it does so. This aspect, criticized for many years now by international and EU human rights organisations and bodies, as well as national NGOs, has not led to Romanian authorities actually establishing an adequate data collection system. This situation impedes accountability and indicates that policy making in this area is not a matter of concern in Romania.
- Romania also lost several cases before the European Court of Human Rights for inadequate investigations into cases involving brutality (in some cases police brutality) against the Roma or the LGBT community.
- NGO reports show the Roma and the LGBT to be the most common targets of discrimination and hate. Anti-Semitism is also highly present, particularly in the form of

Holocaust denial (denying that it happened in Romania) and the glorification Antonescu Government which was responsible for the Holocaust in Romania or of the country's Legionnaire past (a Romanian inter-war extreme-right, fiercely anti-Semitic movement also part for a while in the Antonescu Government) .

- In spite of numerous reports which point to prevalent racism, homophobia, anti-Semitism or other type of discrimination in the country, reports which come from international human rights bodies or NGOs, and in spite of ECtHR convictions against Romania in cases involving hate crimes which were inadequately dealt with by the Romanian justice system, the country does not have a Governmental policy (general country program/strategy) aimed specifically at combating hate speech, hate crime or discrimination.
- While there are a number of NGOs which monitor hate speech incidents and react, particularly to highly visible incidents, the capacity of NGOs to take legal action is extremely limited, no NGO is able to do wide victim support in this area on a regular basis mainly due to insufficient funds, while state provided legal aid is fraught with bureaucratic hurdles.

Conclusion:

- In spite of the fact that Romania has largely transposed the EU acquis and standards sanctioning discrimination and hate-based violence or speech, implementation is inadequate and necessary accompanying policies are missing. Civil society combating discrimination is too weak to determine wide change and lack the resources needed to provide support, even less legal support, for more than a few victims, although the level of discrimination in society, particularly against certain groups, is very high.

Recommendations for policy and decision makers

- To ensure a systemic data collection process regarding hate crime and speech, through the creation of specific indicators as well as through the harmonisation of hate crime and speech data collection systems of the different law enforcement, administrative and justice public authorities. The data collection process must, at the same time, respect data protection laws and procedures and make sure that public case law databases anonymize where appropriate.
- To include hate crime and speech as well as anti-discrimination legislation in the compulsory initial and continuous training for all law enforcement and legal professionals. Such topics must also be taught in the context of international and European standards on the protection of freedom of speech.
- To strengthen the relationship with the communities which are most at risk of being victims of hate crime and speech. To strengthen the relationship with the NGOs which work with vulnerable groups. To ensure efficient legal aid for victims, including through the promotion of *pro bono* lawyering within the profession.
- To adopt and finance policies specifically aiming to prevent and combat discrimination and hate-based violence and speech in various relevant sectors of life (education, labour,

housing, health, services in general, justice etc.). Such policies must include, in particular, adequate training of professionals, and must be implemented by line ministries and various authorities, as opposed to a single authority. In other words, non-discrimination and combating hate must be mainstreamed, based on the philosophy that preventing and combating discrimination is and should be everybody's business.

- Media professional associations should adopt and implement ethical standards in relation to human rights reporting, while journalism faculties should introduce non-discrimination courses and better/more teaching on the effects of racist/homophobic etc. speech on the one hand, and on the role of journalism in building democratic societies on the other.
- More NGOs should consider strengthening their legal capacity and playing a visible watchdog role. At the same time, civil society financing should include watchdog activities and legal services for victims.

Limitations and challenges of the report

Romania is a young democracy, this also entailing that its human rights protection system is still too weak, and that the need to combat discrimination and hate-based phenomena is not understood and assumed at decision-making level and within the public system in general. This inevitably entails, at least with regards to some aspects, that there is a lack of data, or insufficient data. Particularly at the level of state authorities from the justice making system, the data collected on hate crimes is inconsistent and largely irrelevant to be able understand the phenomenon.

List of abbreviations

AVC	Audio-Visual Council of Romania
CLR	Centre for Legal Resources
ECtHR	European Court of Human Rights
EU	European Union
FDSC	The Foundation for the Development of Civil Society
FRA	European Union Agency for Fundamental Rights
GEO	Government Emergency Ordinance
GIRP	General Inspectorate of the Romanian Police
GO	Government Ordinance
INSHR-EW	National Institute for the Study of the Holocaust in Romania “Elie Wiesel”
MoJ	Ministry of Justice
NCCD	National Council for Combating Discrimination
NGO	Non-governmental organisation
OSCE	Organization for Security and Co-operation in Europe
OSCE-ODHIR	OSCE Office for Democratic Institutions and Human Rights
PO	Prosecutor’s Office
SCM	Superior Council of Magistracy

I. Hate crime and hate speech in the Romanian legal framework

The Romanian legal framework does not have a definition for hate crime or hate speech. Rather, there are legal criminal, civil or administrative provisions which fall under the categories of hate crime and hate speech, based on their specific content.

The word “hate” is mentioned in the Romanian legal framework, namely once in the Criminal Code, where the crime of *Incitement to hatred or discrimination* is sanctioned. However, the precise meaning of the term “hatred” is not expressly defined in the criminal legislation. Similarly, “hate” is also mentioned once in the Audio-visual Law no. 504/2002, in the provision prohibiting the incitement to hatred through broadcasting programmes (art. 40).

Relevant legislation

A. Hate crime

In the criminal legal framework, the bias motivation can be found either as a penalty enhancement or as a component of substantive offences.

Penalty enhancement

The bias motivation was first introduced as an aggravating circumstance clause (penalty enhancement) in the Romanian legal criminal framework through Law no. 287/2006, which added to the now repealed Criminal Code. The New Criminal Code, which became applicable in 2014, kept the same legal approach and, in addition, opened the list of grounds which can be considered when establishing the bias motivation for crimes.

Hate crime as an aggravating circumstance clause, provided in art.77, h) in the Criminal Code: *“The following constitute aggravating circumstances: (...) h) the offense was committed for reasons related to race, nationality ethnicity, language, gender, sexual orientation, political opinion or membership, possessions, social origin, age, disability, chronic non-communicable disease or HIV/AIDS status, or for other reasons of the same type, considered by the offender to cause the inferiority of an individual from other individuals.”*

The aggravating circumstance clause increases the penalty for the base offense, when it is confirmed by a court of law that the crime was committed with a bias motivation (according to art. 78 of the Criminal Code). In this case, the penalty for the base offence can be set at the special maximum level¹. If the court considers that the maximum special level is insufficient, then the court can apply a supplementary penalty of 2 years imprisonment in the case of a prison sentence (without exceeding 1/3 of the special maximum), or a supplementary penalty of maximum 1/3 of the special maximum penalty provided in the case of a financial penalty (fine).

¹ The special maximum level is the highest penalty provided for a specific crime in the Criminal Code, as opposed to the general maximum.

Substantive offences

Apart from the aggravating circumstance provision, the bias motivation component is found in the definition of substantive offences in the Criminal Code or in special criminal laws. In this version, the bias motivation can be part of the *typical version* of the offence, the *aggravated version* of the offence (the typical version is provided with a higher penalty if the bias motivation is confirmed) or a *circumstantiated version* of the offence (which has the same penalty as the typical offence, with the difference that the bias motivation is added to the typical offence).

From the point of view of the legislative technique, hate crime in the form of substantive offences can be found either in stand-alone articles or as distinct paragraphs in an article of law. For example, incitement to hatred or discrimination is a stand-alone article (art. 369 Criminal Code), whereas the torture based on discrimination is a paragraph of an article which refers to torture (par.1d of art. 282 Criminal Code).

The substantive offences which fall under the category of hate crime, provided in the Criminal Code²:

Incitement to hatred or discrimination (art. 369 Criminal Code)	<i>Inciting the public, using any means, to hatred or discrimination against a category of individuals shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine.</i>
Abuse of office, in the version based on discrimination (art. 297, par. (2) Criminal code)	<i>The same punishment applies to the action of a public servant who, while exercising their professional responsibilities, limits the exercise of a right of a person or creates for the latter a situation of inferiority on grounds of race, nationality, ethnic origin, language, religion, gender, sexual orientation, political membership, wealth, age, disability, chronic non-transmissible disease or HIV/AIDS infection.*</i> *This provision is the circumstantiated version of the offense, which has the same statutory penalty as the typical version - no less than 2 and no more than 7 years of imprisonment and the ban from exercising the right to hold a public office.
Torture based on any form of discrimination (art. 282, par. (1), d) Criminal	<i>(1) The act of a public servant holding an office that involves the exercise of state authority or of other person acting upon the instigation of or with the specific or tacit consent thereof to cause an individual pain or intense suffering, either physically or mentally: (...) d) for a reason based on any form of discrimination, shall be punishable by no less than 2 and no more than 7</i>

² The translation of the legal provisions is based on the Official translation of the Romanian Criminal Code, published by the Romanian Ministry of Justice, available here:

<https://www.google.ro/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjN6oqlyP3RAhUhEJoKHafECsMQFggaMAA&url=http%3A%2F%2Fwww.just.ro%2Fwp-content%2Fuploads%2F2016%2F01%2FNoul-cod-penal-EN.doc&usq=AFQjCNFUtZEGnsT8gVRZZFIPj1idAVDicg>

Code)	<i>years of imprisonment and a ban on the exercise of certain rights.</i>
Preventing the freedom to practice religion (art. 381 Criminal Code)	<p><i>(1) The act of preventing or disturbing the freedom to practice any ritual specific to a religion, which was organized and operates according to the law, shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by a fine.</i></p> <p><i>(2) The act of compelling a person, by coercion, to take part in the service of any religion or to perform a religious act related to the practice of a religion shall be punishable by no less than 1 and no more than 3 years of imprisonment or by a fine.</i></p> <p><i>(3) The same penalty shall apply to compelling an individual, by violence or threats, to perform a religious act forbidden by the religion, organized according to the law, to which they belong.</i></p>
Desecration of places or objects of worship (art. 382 Criminal code)	<i>The desecration of a place or object of worship belonging to a religious denomination which is organized and operates according to the law, shall be punishable by no less than 6 months and no more than 2 years of imprisonment or by a fine.</i>
Desecration of corpses or graves, in certain situations and when the biased motivation is confirmed** (art. 383 Criminal Code)	<p><i>(1) The theft, removal, destruction or desecration of a corpse or of the ashes resulting from its cremation shall be punishable by no less than 6 months and no more than 3 years of imprisonment.</i></p> <p><i>(2) The desecration, by any means, of a grave, of a funeral urn or of a funereal monument shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by a fine.</i></p> <p>**The substantial offence can, theoretically, be committed without a bias motivation, for example if the desecration is committed for the purpose of stealing goods, irrespective of the religious bias.</p>

In addition, hate crimes are also provided in the criminal special law entitled **Government Emergency Ordinance (GEO) 31/2002 banning fascist, Legionnaire, xenophobic organisations, symbols and deeds and the promotion of the cult of persons guilty of genocide and war crimes** (recently amended by Law no. 217/2015) The GEO criminalises different types of behaviour in connection to xenophobia, racism, anti-Semitism and fascism:

- Initiating or establishing an organisation which has a fascist, xenophobic or racist character, as well as joining or supporting in any manner such a group is a crime and is punished with imprisonment between 3 and 10 years (art. 3, par. 1)
- Manufacturing, selling, distributing, as well as being in possession with intent to distribute fascist, racist or xenophobic symbols is punished with imprisonment between 3 months and 3 years (art. 4, par. 1). The same punishment applies to the public use of

such symbols (art. 4, par. 2). Distributing or offering public access to such symbols is punished with imprisonment between 1 year and 5 years (art. 4, par. 3). The GEO 31/2002 exempts criminalisation those situations where such symbols are used in the interest of art, science, research, education or public interest debate (art. 4, par. 4)

- Publicly promoting the cult of persons guilty of crimes of genocide and war crimes is punished with imprisonment from 3 months to 3 years (art. 5)
- Publicly promoting ideas, concepts and doctrines which are fascist, legionnaire, racist or xenophobic is punished with imprisonment from 3 months to 3 years (art. 5)
- Publicly denying, contesting, approving, justifying or manifestly minimalizing, through any means, the Holocaust and its effects is punished with imprisonment from 6 months to 3 years or a criminal fine (art. 5). The same punishment applies to publicly denying, contesting, approving, and justifying or manifestly minimalizing genocide, crimes against humanity and war crimes is punished with imprisonment from 3 months to 3 years (art. 6). The punishment is higher if the aforementioned crimes are done through the means of an IT system.
- Threatening a person or a group of persons, through an IT system, with committing a crime for which the law provides a minimum punishment with imprisonment for 5 years, based on race, colour, descent, national or ethnic origin or religion, is punished with imprisonment between 1 and 3 years (art. 6¹)
- The law also forbids the use of the names of persons guilty of genocide, war crimes or crimes against humanity in naming streets or legal entities (art. 13)

Public authorities usually collect data regarding the cases based on GEO no. 31/2002; however, data is collected globally for this piece of legislation, although GEO 31/2002 contains provisions for different types of offences which promote xenophobia, fascism and racism. This means that authorities only collect data using the whole GEO 31/2002 as an individual indicator, in spite of the fact that the law is made up by articles which establish separate crimes. Thus, when analysing official administrative data on the incidence of acts prohibited by GEO 31/2002, it is impossible to establish a connection between the figures and the different acts provided in the law.

In 2015, GEO 31/2002 was amended by Law no. 217/2015 from 23 July 2015³ – a legislative change which met with serious opposition and sparked an intense public debate in the Romanian media, much of it motivated by nationalistic discourse and anti-Semitism. This debate took place against a background where the country has not actually and effectively assumed its role in the Holocaust, and thus there is no real education on the Holocaust and on the Holocaust in Romania, in particular in the Romanian public education system. The argument put forward by the initiators of the legislative change referred to the lack of application of GEO 31/2002 by the prosecuting authorities. The prosecuting authorities usually rendered decisions not to prosecute in cases based on this regulation, interpreting that the law does not cover the speech and acts referring to the specific fiercely anti-Semitic fascist inter-war movement, the

³ The legislative process that brought to the adoption of Law n. 217/2015 can be followed on the website of the Chamber of Deputies, available here:

http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=14131

Legionnaire Movement also known as the Iron Guard, and the Holocaust which took place on the territory under Romanian administration at the time. For this reason, the legislative change provided a more clear definition of what “the Holocaust on the Romanian territory” means, and included the Legionnaire movement under the purview of GEO 31/2002.⁴

B. Hate speech

Hate speech does not have a specific legal definition in the Romanian legal framework, but rather specific illegal behaviours that are committed through speech can fall under this category. In the Romanian legal framework, hate speech can be sanctioned in the administrative, criminal or civil systems.

For example, a legislative provision which shows that hateful incidents and speech can have administrative, civil or criminal consequences is Law n. 60/1991 on public assembly. In art. 9, pt. a), the law forbids public assemblies propagating ideas of fascist, communist, racist, chauvinistic, totalitarian ideas. In the chapter on sanctions, the law provides that the violation of its provisions can trigger disciplinary, administrative, civil or criminal sanctions (art. 25). Thus, the system of sanctions is interpreted based on the severity of the acts and speech and of their specific form of manifestation.

B.1. Administrative approach to hate speech

Hate speech can fall under the Anti-discrimination Law (Government Ordinance (GO) n. 137/2000) or the Audio-visual Law (Law n. 504/2002) and take the form of a misdemeanour. Thus, hate speech can be considered as a form of discrimination, harassment or violation of the right to personal dignity (which are misdemeanours provided in the GO 137/2000) or as a violation of the audio-visual service provider’s obligation to refrain from promoting content which is discriminatory, racist, incites to hate or infringes on human dignity (misdemeanours provided in Law n. 504/2002).

Administrative remedies cannot offer damages or other types of compensation to victims of hate speech. The administrative bodies such as the National Council for Combating Discrimination (NCCD) or the Audio-visual Council (AVC) issue decisions which can impose administrative financial penalties (fines) on offenders, at the most. The financial penalties paid by offenders form part of the State Budget. If victims of discrimination wish to obtain compensation, then they must resort to civil law remedies (see section B.3. below).

⁴Explanatory memoranda to the bill, available at: <http://www.cdep.ro/proiecte/2014/100/90/3/em288.pdf> and National Institute for the Study of the Holocaust in Romania, *Press statement – GEO 31/2002 on banning fascist symbols and ideologies – 15 years from adoption*, 27 March, 2017, available at: <http://www.inshr-ew.ro/ro/presa/comunicate-de-presa/405-comunicat-de-presa-15-ani-de-la-adoptarea-oug-31-2002-privind-interzicerea-simbolurilor-si-ideologiilor-fasciste.html>

The following table offers examples of provisions which impose administrative sanctions for hate speech⁵:

Anti-discrimination law - Government Ordinance (GO) n. 137/2000	
Direct discrimination	<p><i>Art. 2, par. (1) According to the present ordinance, discrimination is understood as any differentiation, exclusion, restriction or preference, based on race, nationality, ethnic origin, language, religion, social category, opinions, sex, sexual orientation, age, disability, chronic non-communicable disease, HIV/AIDS status, membership to a disadvantaged category, as well as any other criterion which has the purpose or effect the restriction, removal of the recognition, use or exercise, on equal terms, of human rights and fundamental freedoms or rights recognized by law, in the political, economic, social and cultural domains, or any other domains of public life.*</i></p> <p>*Hate speech can constitute direct discrimination, depending on the circumstances of the case.</p>
Harassment	<p>Art.2, par. (5) <i>Any behaviour on the basis of race, nationality, ethnic origin, language, religion, social category, opinions, gender, sexual orientation, membership to a disadvantaged category, age, disability, refugee or asylum seeker status or any other criterion which leads to the creation of an intimidating, hostile, degrading or offensive environment, represents harassment and is administratively sanctioned.*</i></p> <p>*Harassment in mentioned here, inasmuch as harassment can be committed through hate speech.</p>
The right to personal dignity	<p>Art. 15 <i>It represents an administrative offence, according to the present ordinance, if the law does not fall under the incidence of criminal law, any behaviour manifested in public, having the characteristics of national-chauvinistic propaganda, of instigation to racial or national hatred, or that behaviour which has the purpose or targets the violation of dignity or creates an intimidating, hostile, degrading, humiliating or offensive atmosphere, directed against a person, a group of persons or community, based on their affiliation to a certain race, nationality, ethnicity, religion, social category or disadvantaged category, or opinions, sex or sexual orientation.</i></p>
Sanctions for discrimination	<p>Art. 26 of G.O. 137/2000 provides the sanctions that can be applied by the National Council for Combating Discrimination.</p> <p>The pecuniary sanction is:</p> <ul style="list-style-type: none"> • a fine of minimum RON 1,000 (approx. EUR 222) and maximum RON 30,000 (approx. EUR 6,653), if the discrimination targets a natural person • a fine of minimum RON 2,000 (approx. EUR 444) and maximum

⁵ The legal provisions provided in the table are based on unofficial translations done by the authors.

	<p>RON 100,000 (approx. EUR 22,175), if the discrimination targets a group of persons</p> <p>Complementary sanctions include:</p> <ul style="list-style-type: none"> • the obligation on behalf of the persons responsible for discrimination to publish, in the mass-media, a summary of the administrative decision where discrimination was confirmed <p>The general law on administrative sanctions, G.O. 2/2001, provides an additional administrative sanction which can be applied even if the special legislation (in this case, G.O. 137/2000) does not expressly mention it: the administrative warning (art. 5, par. 2, pt. a). The administrative warning is a verbal or written notification of the offender about the social danger of the offence, accompanied by the recommendation to respect the law (art. 7, par. 1). The administrative warning is applied to the least serious offences (art. 7, par. 2).</p>
The Audio-visual Law no. 504/2002	
The obligation of media providers to respect pluralism and diversity	Art. 3, par. 1 <i>The broadcasting and relay of programming services achieve and ensure the political and social pluralism, the cultural, linguistic and religious diversity, the informing, education and entertainment of the audience, with the respect of fundamental human rights and freedoms.</i>
Requirements for commercial audio-visual communications (advertisements)	Art. 29, par. 1 <i>Audio-visual commercial communications broadcasted by different media services providers must respect the following conditions: ... c) to refrain from violating human dignity; d) to refrain from including any form of discrimination on the basis of race, ethnic origin, nationality, religion, belief, disability, age, sex or sexual orientation; e) to refrain from offending the religious or political opinions of viewers and listeners; ...</i>
The prohibition of incitement to hatred in broadcasting programmes	Art. 40 <i>The broadcasting of programmes containing any form of incitement to hatred based on race, religion, nationality, sex or sexual orientation is prohibited.</i>
Sanctions for violating the Audio-visual Law	The financial sanction provided in the Audio-visual Law no. 504/2002, art. 90, par. 2, is a minimum of RON 10,000 (approx. EUR 2,226) and a maximum of RON 200,000 (approx. EUR 44,528).
Transposition of the Audio-visual Law in the Audio-visual Council administrative	The provisions regarding the prohibition of discrimination are transposed and detailed through the Audio-visual Council (AVC) administrative regulations. More precisely, the AVC Decision no. 220 from 24 February 2011 regarding the Audio-visual Content Regulation Code reiterates the obligations of audio-visual services providers to refrain from

regulations	discrimination (arts. 30, 32, 40, 47, 48, 64, 66, 70 and 93).
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B.2. Criminal approach to hate speech

Hate speech, although not defined as such, is also regulated through the criminal law, in certain specific situations.

Specifically, acts such as incitement to hatred or discrimination (art. 369 Criminal Code), desecration of places or objects of worship and of graves done through symbols/drawings (arts. 382 and 383 Criminal Code), fall in the broad category of hate speech.

B.3. Civil approach to hate speech

In the civil law framework, victims of hate speech can claim compensation for the damage they suffered. Thus, based on the Civil Code, any person can file with a court of justice a claim for compensation if his/her rights have been violated. In criminal trials also, victims can file for civil compensation for the damages incurred.

At the same time, victims of discrimination can choose **a civil remedy, based on the special Anti-discrimination Law (G.O. 137/2000, art. 27, par. 1)**, without the prerequisite to initiate administrative proceedings with the NCCD. However, if a civil action based on G.O. 137/2000 is initiated, then the NCCD must be subpoenaed for submitting an expert point of view in the trial (art. 27, par. 3).

Typology

In the Romanian legal framework there are three types of sanctions for illegal behaviour which apply to hate crime and hate speech:

- *Civil sanctions*
- *Administrative sanctions (for misdemeanours)*
- *Criminal sanctions*

Thus, depending on the means of committing the crime and on the type of remedy chosen by the victim, the civil or administrative or criminal law might be applicable. However, there is no official legal definition of hate crimes and hate speech *per se*: different acts and incidents might fall in these categories, depending on the circumstances.

Implementation of the laws on hate crime and hate speech

The application of the laws on hate crime and hate speech is done by administrative bodies, law enforcement authorities and courts of law – depending on the typology of the legal provisions and the specifics of the offences.

Administrative bodies

In the case of hate speech, when the administrative remedy was chosen, administrative bodies such as the National Council for Combating Discrimination (NCCD) and the Audio-visual Council (AVC) have the power to analyse and sanction the offence.

The NCCD⁶ is an administrative body which has jurisdictional activity – it can either receive petitions from persons or groups victims of discrimination, from NGOs, or it can initiate *ex officio* proceedings. The procedural rules⁷ which govern the NCCD activity have a distinctive nature, in the sense that the proceedings are adversarial (similar to the trial before a court of law). This means that the alleged victim of discrimination (the petitioner) is subpoenaed together with the person accused of discrimination (the defendant) to be heard before the NCCD. Both parties have the right to submit evidence and formulate defences against the contentions of the adversary. The administrative decision of the NCCD can be appealed before the Courts of Appeal in a time limit of 15 days.

The most recent publicly available activity report of the NCCD is the “Activity Report for 2015”. In 2015, the NCCD received 752 petitions. The NCCD reports that the most frequent discrimination criterion invoked in the petitions received in 2015 was membership to a “social category” (318 petitions) and the less frequent criteria invoked were sexual orientation (3 petitions), HIV/AIDS status (4) and chronic non-communicable disease (5). As regards to the social domain where the alleged discrimination took place, the most frequently invoked was “access to employment and profession” (362), followed by “access to public services” (178). The NCCD reports that in 2015, the institution solved 680 petitions: 379 were rejected (approx. 56%), in 193 cases the NCCD invoked the lack of jurisdiction over the petition and dismissed it (approx. 28%), in 102 cases the NCCD confirmed the discrimination (15%) and 6 cases were dismissed because of material errors.

The NCCD, as a remedy for discrimination, is accessed primarily by persons living in urban settings (93,6% of the petitions). Considering that 56.4% of the Romanian population lives in the urban areas⁸, it results that a large part of the people living in rural settings did not have access to the remedy provided by the NCCD.

The NCCD report does not expressly mention any activity related to hate speech. Moreover, it is almost impossible to ascertain, based on the data provided in the report, which petitions referred to hate speech, since hate speech can fall under different types of anti-discrimination provisions such as direct discrimination, harassment or violation of the right to personal dignity.

An additional challenge regarding the implementation of the anti-discrimination legislation (including the sanctioning of hate speech) is the legal provision which regulates the time-frame in which the NCCD solves petitions. The Anti-discrimination Law (GO 137/2000) expressly provides that the administrative decision which solved the petition of the NCCD is adopted in a

⁶ The activity of the NCCD is governed by the Antidiscrimination Law (G.O. 137/2000).

⁷ The procedural rules of the NCCD are provided in the Order of the NCCD President, no. 144 from 11 April 2008.

⁸ Data provided by the National Institute of Statistics for 1 January 2015, available at: <http://www.insse.ro/cms/files/publicatii/pliante%20statistice/Populatia%20Romaniei%20pe%20localitati%20la%201%20ian%202015.pdf>

time limit of 90 days from the filing (art. 20, par.7). The Romanian Supreme Court (the High Court of Cassation and Justice, HCCJ) produced consistent jurisprudence⁹ which interprets art. 20, par. 7, in the sense that the 90 day time-limit is not mandatory for the NCCD because there is no sanction provided by law if the time-limit is exceeded. The party before the NCCD proceedings can only claim compensation if the delay in solving the petition has caused them moral or material damage, which must be proven before a court of law. In conclusion, there is no specific legal remedy in the situation when the NCCD delays the adoption of an administrative decision and no specific legal mechanism for determining the NCCD to speed up the administrative proceedings. This impunity for delays has a negative influence on the implementation of the anti-discrimination legislation in cases of hate speech, because it undermines the effectiveness of the remedy itself.

The AVC is an administrative body which has the exclusive power to issue regulations in the audio-visual in the area of audio-visual media services. The AVC also has the power to solve petitions regarding the audio-visual service providers' compliance with the audio-visual legislation. As opposed to the NCCD, the AVC does not examine petitions based on an adversarial procedure. Rather, the authority receives notifications (in written via post/email or directly online on the AVC website¹⁰) about audio-visual programmes which violate the audio-visual legal framework. Subsequently, the AVC analyses the notification and the programme indicated by the petitioner, and decides whether to impose an administrative penalty on the audio-visual service provider. The administrative decision of the AVC can be appealed before the Courts of Appeal in a time limit of 15 days.

With regards to the implementation of the audio-visual legislation to cases of hate speech promoted by audio-visual services providers, the AVC communicated¹¹ that between 01.01.2015-30.06.2016 it sanctioned and fined 7 audio-visual service providers for discriminatory speech on the following subjects: hate speech against the Islamic religion, anti-Semitic and racist speech, anti-Roma speech, hate speech against the Hungarian minority in Romania, speech targeting the Pentecostal religion in Romania. In each case, the AVC applied a financial penalty ranging between RON 10,000 (approx. EUR 2,200) and RON 50,000 (approx. EUR 11,000)¹².

According to the AVC communication, the institution did not implement any public policies or other types of activities to approach hate speech in the time-frame between 01.01.2015-30.06.2016. The AVC also states that, for the same time-frame, it did not apply any other measures to systematically monitor audio-visual communications which are discriminatory.

⁹ See, for example, HCCJ Decision no. 3796/2010, Decision no. 1051/2014.

¹⁰ The online forms for reporting the violation of the audio-visual legislation, on the AVC website, can be found here: Romania, Audio-Visual Council, Reply no. 7054 RF of 03.08.2016.

¹¹ Romania, Audio-Visual Council, Reply no. 7054 RF of 03.08.2016.

¹² It must be underlined that in some cases, the hate speech was analysed together with other violations of the audio-visual legislation, which might explain the higher level of the financial penalty.

Law enforcement authorities

Hate crime falls under the scope of the Romanian criminal law system and such incidents are investigated initially by law enforcement authorities such as the Police and the Prosecution services. The Romanian Police is part of the structure of the Ministry of Internal Affairs and is governed by Law no. 218/2002 on the organisation and functioning of the Romanian Police. The prosecutors are magistrates (together with judges) and work in Prosecutors' Offices (PO), attached to the Courts of Law. Prosecutors function based on the principle of hierarchic subordination, meaning that the order of the Chief prosecutor of the PO is mandatory for the subordinated prosecutors, and that the POs are subordinated to the hierarchically superior PO in the same jurisdiction.

For the purpose of this report, Police and the Prosecution services are considered to be "gatekeepers" of the criminal law enforcement system, based on their legal powers to register hate crime complaints and investigate such incidents.

The **criminal investigation** represents the first phase of the criminal trial and has the legal objective of gathering evidence regarding the offence, identifying the offenders and establishing their criminal responsibility, in order to decide if the case should be sent to the a court of law for examination (art. 285, Criminal Procedure Code).

Victims of hate crime, witnesses or law enforcement authorities (based on *ex officio* procedures) can register a criminal complaint. Before it is sent to a court of law for examination, the complaint is registered by the Police or directly by the PO and a criminal investigation is open in the case. Not all complaints are followed by a criminal investigation and not all criminal investigations are followed by an indictment. Thus, the proceedings can be discontinued in any phase of the investigation, if the Police or Prosecuting services confirm the existence of a legal impediment (expressly listed in art. 16 of the Criminal Procedure Code). This, in turn, influences the indicators used by law enforcement to gather data on some crimes which constitute hate crimes. For example, the Police collect data on the cases reported to the Police, and cases which were referred to the POs, as well as cases solved by the Police. The POs collect data on cases which are pending (the criminal investigation is still being conducted), and cases which are solved (through decisions not to prosecute, decisions to wavier the investigation or through indictments).

Courts of law

If the prosecutor solves the criminal investigation through a decision to prosecute, then an indictment is drafted and the case is sent to be heard before a court of law. The court examination is provided as a distinct phase of the criminal trial, where the following solutions can be rendered: conviction of the offender, waiver of the sentence, postponement of the sentence, acquittal or discontinuation of the criminal trial (art. 396 Criminal Procedure Code).

Recent communications¹³ by the Ministry of Justice indicate that since 3 April 2015, the official justice database (ECRIS) has started collecting data on the aggravating circumstance of bias motivated crimes (Criminal Code art.77, pt.h). This indicator was not previously used by the MoJ for recording data. However, this hate crime indicator is only collected in relation to a certain substantive offences from the Criminal Code (50 articles from the Code), as opposed to all crimes where the bias motivation could appear.¹⁴

The changes in data collection at the level of the MoJ represent an improvement for monitoring the hate crime phenomenon in Romania. Thus, there is emerging data about substantive offences where the courts of law confirmed the bias motivation and applied the aggravating circumstance clause. However, the image of the hate crime phenomenon which reaches the Romanian courts of law is not complete if the data is not disaggregated according to the individual bias criteria. This means that it is impossible to ascertain, based on the administrative data communicated by the MoJ, which groups were targeted by hate crime.

The collection and publication of hate crime data is highly relevant for assessing the implementation of the hate crime legal framework. Without the data collection, it is impossible to measure the hate crime phenomenon and adopt appropriate measures for preventing and sanctioning hate crimes, as well as protecting the most vulnerable categories. However, presently, in Romanian there is only quantitative administrative data available in hate crime, meaning that there are no official victimisation surveys conducted, in order to ascertain the dark figure of hate crime and appreciate what percentage of the incidents are not reported to the police.

¹³ Romania, Ministry of Justice, Reply no.67039/05.08.2016, 5 August 2016.

¹⁴ The data communicated by the MoJ for the period between 2012 and the 1st semester of 2016 is presented in Section II.1. of this report.

II. Data on hate crimes and speech available for Romania

According to the European Union Agency for Fundamental Rights (further referred to as FRA), Romania is the only country in the EU which does not administratively collect case-related data on hate crimes, disaggregated according to grounds of discrimination.¹⁵ Administrative data exists regarding individual crimes which might fall under the category of hate crime, but authorities do not desegregate such data according to bias motivations. Therefore, since the definition of these crimes includes all grounds of discrimination, collecting data based on the crime as such, without further detailing the specific grounds from the definition of the crime, is not useful for one to be able to learn something about which groups are being victimised.

However, according to various national and international human rights reports, European Court of Human Rights case-law on Romania, data from NGOs or surveys, the groups most vulnerable to discrimination and hate crime remain the Roma minority, LGBTI, persons with disability, particularly mental or intellectual disability, HIV/AIDS affected persons.¹⁶ In spite of only a few thousands of Jewish people left in the country, anti-Semitism is very high.¹⁷ Serious phenomena which illustrate widespread discrimination against the Roma include: school segregation of Roma children,¹⁸ police brutality¹⁹ or forced evictions of most vulnerable communities.²⁰ Persons with mental health problems or intellectual disabilities who are institutionalized are particularly vulnerable to abuse.²¹ Other groups are also subject to discrimination and societal

¹⁵European Union Agency for Fundamental Rights, *Making hate crime visible in the European Union: acknowledging victims' rights*, 2012

¹⁶ National country report within eMore project and National Opinion poll commissioned to TNS CSOP by the National Council for Combating Discrimination (Romanian equality body), 2015, available at: <http://cncd.org.ro/2015-09-15-sondajul-perceptiei-si-atitudinii-ale-populatiei-romaniei-fata-de-strategia-nationala-de-prevenire-si-combatere-a-discriminarii-> (accessed at: 10.03.2017);

¹⁷ Anti-Defamation League, *Global 100 Survey*, 2015, results for Romania available at: <http://global100.adl.org/#country/romania/2015>

¹⁸ European Roma Rights Centre and Roma Center for Social Intervention and Studies, *Open Letter to EU Commission DG Justice on Breaches of Directive 2000/43 resulting from segregation of Romani children in the Romanian educational system*, 30 May, 2016, available at: <http://bit.ly/2mrGSM1> (accessed at: 10.03.2017);

¹⁹ European Roma Rights Centre, Written Comments of the European Roma Rights Centre (ERRC) Concerning Romania for Consideration by the United Nations Committee Against Torture at its 54th Session (20 April – 15 May 2015), available at: <http://bit.ly/2m8x6g2>, (accessed at: 10.03.2017) and the US Department of State Romania Country Report on Human Rights Practices for 2016, available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265464> (accessed at: 10.03.2017);

²⁰ Amnesty International, *Mind the Legal Gap: Roma and the Right to Housing in Romania*, 2011, available at: <https://www.amnesty.org/en/documents/EUR39/004/2011/en/> (accessed at: 10.03.2017);

²¹ UN Committee Against Torture, *Concluding observations on the second periodic report of Romania*, 5 June, 2015 (CAT/C/ROU/CO/2), pt. 14, available at: <https://daccess-ods.un.org/TMP/502458.140254021.html> (accessed at: 10.03.2017);

exclusion. The country does not have many refugees or migrants and the recent refugee movements have not come through Romania, but anti-refugee feelings are high in the country.²²

II.1. Administrative information regarding hate crime and hate speech

A crime is recorded in the criminal legal system firstly through a report, which is filed²³ with the Police or Prosecutor's office. The next steps are the investigation, the indictment and the criminal trial. Thus, if all authorities used the same types of indicators and data collection system, a researcher could follow the different types of crimes as they are processed by the criminal justice authorities.

However, the data collected by Romanian authorities are not always complying with each other and can be difficult to corroborate. As it will be shown in the following sub-sections, the police authorities, the prosecutors' offices and the courts of justice collect data using different systems. Moreover, one authority may choose to focus on a particular group of crimes, whereas the other authorities do not collect the same data.

NGOs and other institution researching the issue of hate crime and hate speech can find administrative data mainly through the following two methods: analysing general reports published by State authorities; or sending public information requests to these authorities²⁴. The following section presents the administrative data on hate crime and hate speech in Romania, publicly available up to August 2016.

II. 1.a. Hate crime and speech recorded by the Police

The first level of administrative data pertains to the Police, where victims or witnesses of hate crimes and hate speech report these incidents for the first time. In other words, the Police usually act as a gate keeper to the criminal justice system. However, the official number of incidents reported and recorded by the Police does not offer an accurate image of the pervasiveness of the hate crime phenomenon in Romania (the dark/hidden figures of crime). Some victims or witnesses do not report the incidents to the police, for reasons such as procedural obstacles or the lack of trust in the public authorities for reporting hate crimes and speech²⁵, the Romanian administrative data does not show an accurate image of this phenomenon.

²² US Department of State Romania Country Report on Human Rights Practices for 2016, available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265464> (accessed at: 10.03.2017);

²³ A report can be registered either based on the complaint of the victim, the denunciation of a witness or the *ex officio* investigation of the police or prosecutor, according to the Criminal Procedure Code.

²⁴ The Romanian Law n. 544/2001 regulates the access to public interest information.

²⁵ The European Union Agency for Fundamental Rights, EU-MIDIS European Union Minorities and Discrimination Survey, Data in Focus Report 1: The Roma, 2009.

For example, the 2009 European Union Minorities and Discrimination Survey (EU-MIDIS) ²⁶, which included Romania in the research²⁷, shows that 79% of the Roma people who considered themselves victims of crime did not report the incidents to the police. The most frequent indicated answer for not reporting was the lack of trust that anything will happen or change after alerting the authorities.²⁸ The results of the second wave of minorities and discrimination surveys, EU-MIDIS II (2016)²⁹, show that on average, „only 12 % of the respondents who felt discriminated against because of their Roma background at least once in the preceding 12 months reported the last incident to an authority or filed a complaint”.³⁰ The EU-MIDIS II 2016 report also points out that, compared to the 2009 survey results, „no improvement in reporting discrimination or filing a complaint can be discerned”.³¹

In addition, the Romanian Police does not collect data disaggregated on the grounds of discrimination with regards to hate crime and speech. In other words, it is impossible to corroborate hate crime figures with the protected grounds. Although specific examples of cases can be found in legal databases or the case file records published by NGOs, there are no official statistics showing which groups are targeted by hate crime. In a reply to a public information request³², the Romanian Police confirmed that in the criminal files registry there are no mentions of the race, nationality, ethnic origin, language, religion, gender, sexual orientation, opinion or political affiliation, possessions, social origin, age, disability, chronic non-communicable disease or HIV/AIDS status of suspects or victims and no indicators to collect such data, because the data protection legal framework would, in the opinion of the Police, forbid such collection.

The following tables contain figures on hate crime in Romania communicated by the Police through replies to public information requests.

Data for the year 2015 and the 1st semester of 2016, as communicated to the Centre for Legal Resources :³³

Hate crime	2015	2016, 1 st semester
Torture motivated by discrimination (Criminal Code, art.282, para.1, pt.d)	No available data	1 (reported to the Police and referred to the PO)
Abuse of office based	146 (reports) ³⁴	73 (reports)

²⁶ The European Union Agency for Fundamental Rights, EU-MIDIS *European Union Minorities and Discrimination Survey, Data in Focus Report 1: The Roma*, 2009 (further referred to as FRA EU-MIDIS 2009), available at: http://fra.europa.eu/sites/default/files/fra_uploads/413-EU-MIDIS_ROMA_EN.pdf

²⁷ Together with Bulgaria, the Czech Republic, Greece, Hungary, Poland and Slovakia.

²⁸ FRA EU-MIDIS 2009, p. 6.

²⁹ The EU Member States surveyed are: Bulgaria, Czech Republic, Greece, Spain, Croatia, Hungary, Portugal, Romania, Slovakia.

³⁰ The European Union Agency for Fundamental Rights, EU-MIDIS II *Second European Union Minorities and Discrimination Survey. Roma – Selected findings*, 2016, p. 40, available at:

http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-eu-minorities-survey-roma-selected-findings_en.pdf

³¹ *Idem supra*.

³² Reply No. 471934/02.08.2016 of the General Inspectorate of the Romanian Police (*Inspectoratul General al Poliției Române*), 2 August 2016.

³³ Data extracted from Reply No. 471934/02.08.2016 of the General Inspectorate of the Romanian Police (*Inspectoratul General al Poliției Române*), 2 August 2016.

on a discriminatory motive (Criminal Code, art.297, para.2)	17 (reported to the Police and referred to the Prosecutor's Office - PO) ³⁵	8 (reported to the Police and referred to the PO)
Incitement to hatred and discrimination (Criminal code art.369)	25 (reports) 1 (reported to the Police and referred to the PO)	31 (reports)
Preventing the freedom to practice religion (Criminal Code art.382)	13 (reports)	5 (reports)
Desecration of places or objects of worship	7 (reports)	3 (reports)
Desecration of corpses or graves (Criminal Code art.383)	343 (reports) 3 (reported to the Police and referred to the PO)	140 (reports)
Crimes provided in the GEO 31/2002 banning fascist, Legionnaire (Romanian inter-war version of fiercely nationalist, extremist, Anti-Semitic movement), xenophobic organisations, symbols and deeds and the promotion of the cult of persons guilty of genocide and war crimes	15 (reports) 1 (reported to the Police and referred to the PO)	6 (reports) 1 (reported to the Police and referred to the PO)

As for the number of hate crimes cases solved by the Police, the administrative data shows the following:

Hate crime	2015	2016, 1st semester
Abuse of office based on a discriminatory motive (Criminal Code, art.297, para.2)	3	No available data
Incitement to hatred and discrimination (Criminal code art.369)	4	No available data
Preventing the freedom to practice religion (Criminal Code art.382)	3	No available data
Desecration of places or objects of worship	0	No available data

³⁴ Here, „reports” means the hate crime incidents which were reported to and registered by the Police authorities.

³⁵ Here, the GIRP uses the term “referred” in order to indicate the number of cases which were recorded by the Police and were subsequently sent to the Prosecutor's Office, with a proposal to initiate criminal investigations or to terminate criminal investigations.

Desecration of corpses or graves (Criminal Code art.383)	50	No available data
Crimes provided in the Government Emergency Ordinance no. 31/2002 on banning the fascist, racist or xenophobic organizations and symbols and the promotion of the cult of persons guilty of committing crimes against peace and humanity	2	No available data

II. 1.b. Data on criminal files regarding hate crime and speech at the level of the Prosecutors' Offices

After a crime is reported to the Police, the file is sent to the Prosecution Office (PO), accompanied by a proposal from the police to prosecute or not to prosecute. The Prosecutor makes the final decision regarding the criminal file, through a procedural act entitled "Ordinance". In some situations, the crime is reported directly to the Prosecutor's Office or is immediately referred to the PO by the Police – usually depending on the seriousness of the crime.

The administrative data regarding the number of criminal files related to hate crime and speech at the level of the PO is relevant because it shows how many cases reach a level higher than the Police and are decided on by a Prosecutor.

Data for the year 2015 and the 1st semester of 2016, as communicated to the Centre for Legal Resources³⁶

Hate crime	2015	2016, 1 st semester
Torture (Criminal Code art. 282 – all cases of torture, not only those based on discrimination)	The PO did not mention data on torture crime based on discrimination, thus the data communicated are not considered relevant.	
Abuse in office (Criminal Code art.297 – all cases of abuse in service, not only those based on discrimination)	The PO did not mention data for abuse in office related crime based on discrimination, thus the data communicated are not considered relevant.	
Incitement to hatred and discrimination (Criminal code art.369)	57 cases pending 29 cases solved (out of which 3 cases solved by wavier of investigation and 26 cases solved by decisions not to prosecute)	62 cases pending 15 cases solved (out of which 15 cases solved by decisions not to prosecute)
Crimes against the freedom of religion and the respect owed	824 cases pending 236 cases solved (out of which 4	711 cases pending 119 cases solved (out of which 3

³⁶ Romania, Public Ministry, Reply no.1340/VIII-3/2016, 8 August 2016.

to the deceased (Criminal code arts. 381-384)³⁷	cases solved by decision to send the file to court, 77 cases solved by wavier of investigation and 155 cases solved by decisions not to prosecute)	cases solved by decision to send the file to court, 37 cases solved by wavier of investigation and 79 cases solved by decisions not to prosecute)
Crimes provided in the Government Emergency Ordinance no. 31/2002 on banning the fascist, racist or xenophobic organizations and symbols and the promotion of the cult of persons guilty of committing crimes against peace and humanity	66 cases pending 24 cases solved (out of which 5 cases solved by decision to send the file to court, 4 cases solved by wavier of investigation and 15 cases solved by decisions not to prosecute)	42 cases pending 12 cases solved (out of which 0 cases solved by decision to send the file to court, 1 cases solved by wavier of investigation and 11 cases solved by decisions not to prosecute)

In addition, the PO communicated that between 2015 and the 1st semester of 2016, **there was no criminal file with the application of the aggravating circumstance of committing the crime based on a discriminatory reason** (Criminal Code art.77, pt.h).³⁸ The PO confirmed that they do not collect disaggregated data regarding the discrimination criteria or data regarding the reason for adopting a solution to waive or terminate the investigation.

Hate crimes as reflected in the Public Ministry 2015 Activity Report

The annual activity Report published by the Public Ministry (the representative of the public prosecutors) in 2015³⁹ does not mention the concept of hate crime. The report mentions general data on crimes provided in the Criminal Code, out of which it cannot be ascertained which of these crimes fall under the category of hate crime. Only the special law on xenophobia is mentioned as a separate indicator (O.U.G. no. 31/2002), with 6 criminal files being sent to court in the year 2015, as opposed to only 1 criminal file being sent to court in 2014 and 0 files for the period 2009-2013.

II. 1.c. Data on criminal files that reach the courts, collected by the Ministry of Justice

The Ministry of Justice (MoJ) announced that since 3 April 2015, the official justice database (ECRIS) has started collecting data on the aggravating circumstance of bias motivated crimes (Criminal Code art.77, pt.h). However, this hate crime indicator is only collected in relation to a limited number of crimes. Naturally, the aggravated circumstance can further appear only in some of these cases, which is what the data below presents. Similar to the Police (GIRP) and the PO, the MoJ does not collect data on the individual hate motives.⁴⁰

Data from first instance courts and tribunals provided by the MoJ for the period between 03.04.2015 - 31.12.2015, with regard to the crimes where the aggravating circumstance

³⁷ As opposed to the Police, the PO collects bulk data on these crimes.

³⁸ Romania, Public Ministry, Reply no.1340/VIII-3/2016, 8 August 2016.

³⁹Romania, Public Ministry, Activity Report for theyear 2015, available at: http://mpublic.ro/presa/2016/raport_activitate_2015.pdf

⁴⁰ Romania, Ministry of Justice, Reply no.67039/05.08.2016, 5 August 2016.

of committing the crime based on a discriminatory reason (Criminal Code art. 77, pt.h) was applied (data communicated to the Centre for Legal Resources):

Crime	Cases (pending and new)	Cases solved
Murder (Criminal Code art.188)	18	8 solved by conviction 2 other solutions
Aggravated murder (Criminal Code art.189)	5	1 solved by conviction 1 other solution
Battery and other acts of violence (Criminal Code art.193)	68	29 solved by conviction 13 solved by the termination of the criminal trial 1 solved by admission of complaint 1 solved by rejection of complaint 11 other solutions
Bodily harm (Criminal Code art.194)	5	2 by conviction 3 other solutions
Battery and bodily harm causing death (Criminal Code art.195)	2	1 solved by conviction 1 other solutions
Domestic violence (Criminal Code art.199)	85	3 solved by conviction 3 solved by the termination of the criminal trial 2 other solutions
Illegal deprivation of freedom (Criminal Code art.205)	2	2 other solutions
Threats (Criminal Code art.206)	2	1 solved by conviction
Trafficking in human beings (Criminal Code art.210)	1	1 solved by conviction
Rape (Criminal Code art.218)	3	2 solved by conviction
Trespassing (Criminal Code art.224)	6	2 solved by conviction 1 other solutions
Theft (Criminal Code art.228)	28	10 solved by conviction 3 solved by the termination of the criminal trial 1 solved by rejection of complaint 5 other solutions
Aggravated theft (Criminal Code art.229)	45	15 solved by conviction 2 solved by the termination of the criminal trial 1 solved by admission of complaint 5 other solutions
Stealing for personal use (Criminal Code art.230)	1	1 solved by the termination of the criminal trial
Robbery (Criminal Code art.233)	12	7 solved by conviction 3 other solutions

Aggravated robbery (Criminal Code art.234)	12	6 solved by conviction 1 solved by admission of complaint 1 solved by rejection of complaint 2 other solutions
Destruction (Criminal Code art.253)	15	3 solved by conviction 1 solved by admission of complaint 7 other solutions
Creating false documents (Criminal Code art.321)	1	0
Use of false documents (Criminal Code art.323)	4	2 other solutions
False statements (Criminal Code art.326)	1	0
Government Emergency Ordinance no. 31/2002 on banning the fascist, racist or xenophobic organizations and symbols and the promotion of the cult of persons guilty of committing crimes against peace and humanity	4	1 solved by conviction

Data from first instance courts and tribunals provided by the MoJ for the period between 01.01.2016 – 30.06.2016, with regard to the crimes where the aggravating circumstance of biased-motivated crime (Criminal Code art.77, pt.h) was applied (data communicated to the Centre for Legal Resources):

Crime	Cases (pending and new)	Cases solved
Murder (Criminal Code art.188)	8	6 solved by conviction TOTAL: 6
Aggravated murder (Criminal Code art.189)	3	3 solved by conviction TOTAL: 3
Battery and other acts of violence (Criminal Code art.193)	15	8 solved by conviction 1 solved by acquittal 1 solved by admission of complaint 1 other solution TOTAL: 11
Domestic violence (Criminal Code art.199)	210	22 solved by conviction 55 other solutions TOTAL: 77

Illegal deprivation of freedom (Criminal Code art.205)	2	2 other solutions TOTAL: 2
Threats (Criminal Code art.206)	1	0
Rape (Criminal Code art.218)	1	1 solved by conviction
Trespassing (Criminal Code art.224)	3	1 other solution
Theft (Criminal Code art.228)	11	5 solved by conviction 4 other solution Reported TOTAL: 8 Actual TOTAL: 9
Aggravated theft (Criminal Code art.229)	20	7 solved by conviction 3 solved by termination of criminal trial 6 other solutions TOTAL: 16
Robbery (Criminal Code art.233)	2	2 solved by conviction
Aggravated robbery (Criminal Code art.234)	5	2 solved by conviction 2 other solutions TOTAL: 4
Creating false documents (Criminal Code art.321)	1	0
Use of false documents (Criminal Code art.323)	2	0
False statements (Criminal Code art.326)	1	0
Government Emergency Ordinance no. 31/2002 on banning the fascist, racist or xenophobic organizations and symbols and the promotion of the cult of persons guilty of committing crimes against peace and humanity	4	1 other solution

II. 1.d. Data on hate speech according to the Audio-Visual Council

The Audio-Visual Council of Romania (AVC) is an administrative body which has, among others, the legal duty to analyse petitions and sanction audio-visual services providers who violate the Audio-Visual Law (Law no. 504/2002).

The AVC mentions that between 01.01.2015-30.06.2016 it sanctioned and fined 7 audio-visual service providers for discriminatory speech. The following table summarises the AVC decisions:

Decision no.	Date	Facts of the case	Sanction and fine
1	13.01.2015	The facts occurred in a late-night TV show. The host of the TV show used hate speech against the Islamic religion. The AVC found, <i>inter alia</i> , the violation of art. 40 of Law n. 504/2002 (forbidding the dissemination of programs containing incitement to hatred) on the audio-visual and art. 40, par. 3 (providing the obligation of TV moderators to refrain from using or allowing guests to use offensive language and incitement to violence) and art. 47, par. 2 (forbidding discrimination in audio-visual programs) of Decision n. 220/2011 on the regulation code for the audio-visual content.	20,000 RON fine (approx. 4,436 EUR)
22	12.02.2015	In several evening and late night shows, racist and anti-Semitic language is used. The AVC found, <i>inter alia</i> , the violation of art. 40, par. 3 and art. 47, par. 1 (forbidding the dissemination of anti-Semitic or xenophobic manifestations in audio-visual programs), art. 47, par. 2 of Decision n. 220/2011 on the regulation code for the audio-visual content.	50,000 RON fine (approx. 11,000 EUR)
23	12.02.2015	In a TV show about celebrities, racist anti-Roma language is used. The AVC found, <i>inter alia</i> , the violation art. 47, par. 2 of Decision n. 220/2011 on the regulation code for the audio-visual content.	40,000 RON fine (approx. 8,900 EUR)
192	07.04.2015	The facts occurred in a late-night TV show. The host of the TV show used hate speech against the Islamic religion. The AVC found, <i>inter alia</i> , the violation art. 47, par. 1 of Decision n. 220/2011 on the regulation code for the audio-visual content.	30,000 RON fine (approx. 6,600 EUR)
224	28.04.2015	A late night TV show host expressed hate speech against the Hungarian minority. The AVC found, <i>inter alia</i> , the violation of art. 47, par. 2 of Decision n. 220/2011 on the regulation code for the audio-visual content.	20,000 RON fine (approx. 4,436 EUR)
53	14.01.2016	In a news-type TV segment, the speakers bring unfounded accusations against the Pentecostal religious group in Romania. The AVC found, <i>inter alia</i> , the violation art. 47, par. 1 of Decision n. 220/2011 on the regulation code for the audio-visual content.	10,000 RON fine (approx. 2,200 EUR)
206	17.03.2016	The facts of the case concern the racist anti-Roma language used by the speakers in a radio show.	50,000 RON fine (approx. 11,000 EUR)

		The AVC found, <i>inter alia</i> , the violation of art. 40 of Law n. 504/2002 on the audio-visual and art. 47, par. 1 of Decision n. 220/2011 on the regulation code for the audio-visual content.	
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II. 1.e. Data on hate speech at the level of the National Council for Combating Discrimination

The National Council for Combating Discrimination (NCCD) is an administrative body which has, among others, the legal duty to analyse petitions and sanction any person (natural or legal, public or private) who violates the Antidiscrimination Law (Government Ordinance no. 137/2000).

According to administrative data collected by Active Watch (a Romanian NGO working on the topic of the freedom of expression), for the **years 2014-2015**, the NCCD registered 53 petitions concerning hate speech (in the form of the violation of the right to personal dignity, G.O. 137/2000, art.15). The most targeted groups were Roma persons, members of the Hungarian minority, people with disabilities and members of the Jewish community. For the same period, the NCCD registered 19 petitions against hate speech purported by politicians, against the Hungarian and the German minorities. The NCCD also registered 10 petitions against hate speech by journalists, against the Hungarian and the Roma minorities.⁴¹

II. 1.f. Information from the Romanian National Institute for the Study of the Holocaust in Romania “Elie Wiesel”

The National Institute for the Study of the Holocaust in Romania “Elie Wiesel” (INSHR-EW) is an autonomous public institution established in the year 2005 through Government Decision n. 902 of 4 August 2005. The objective of INSHR-EW is the historical research of the Holocaust in Romania, the publication of scientific papers and organisation of educational programs. At the same time, the INSHR-EW reacts publicly when G.E.O. 31/2002 is breached. Recently, the INSHR-EW has also been a victim of anti-Semitic hate speech and crime. The types of crimes reported either as a victim of hate crime or as a third party denouncing anti-Semitic hate crime and speech.⁴²

Typologies of cases include the a variety of instances where the apology of persons guilty of war crimes/crimes against humanity in relation to the Holocaust in Romania is made, where the Holocaust is publicly denied, or where there is public display of fascist symbols.

- (2015) *Criminal notification regarding an online store which sells merchandise with the picture of a person condemned for war crimes*. The ISHR-EW notified the authorities

⁴¹Romania, Active Watch, Romani CRISS, *Raport anual cu privire la discursul instigator la ură din România 2014-2015*, 2016, available at: [http://www.activewatch.ro/Assets/Upload/files/Raport%20anual%20cu%20privire%20la%20discursul%20instigator%20la%20ura%202014%20-%202015\(1\).pdf](http://www.activewatch.ro/Assets/Upload/files/Raport%20anual%20cu%20privire%20la%20discursul%20instigator%20la%20ura%202014%20-%202015(1).pdf)

based on Emergency Government Ordinance n. 31/2002 *on banning the fascist, racist or xenophobic organizations and symbols and the promotion of the cult of persons guilty of committing crimes against peace and humanity*. The Prosecutor's Office issued a decision not to prosecute in this case, based on the argument that the owner of the online store did not know about the condemnation for crimes of war of the person whose image is being printed on the merchandise.

- (2011) *Criminal notification regarding a press release by a political party who denies the responsibility of a state leader condemned for war crimes*. The ISHR-EW complained that the political party is promoting the cult of a person condemned for war crimes, contrary to Emergency Government Ordinance n. 31/2002 *on banning the fascist, racist or xenophobic organizations and symbols and the promotion of the cult of persons guilty of committing crimes against peace and humanity*. The PO issued a decision not to prosecute in this case, based on the argument that publishing the press release by the political party is not sufficient to be considered as "propaganda".
- (2012) *Administrative notification regarding the presence of a group of fascist commemorative symbols placed near a public road*.
- (2013) *Criminal complaint regarding the public display of a banner and flag containing symbols of a fascist organisation*. The criminal complaint was rejected in court based on the argument that the fascist character of the organisation is still a controversial issue and there is no consensus on this topic.
- (2014) *Criminal complaint against an author of online articles denying the Holocaust*. The PO issued a decision not to prosecute in this case, based on the argument that the Emergency Government Ordinance n. 31/2002 does not refer to the Holocaust happening on the territory of Romania.
- (2014) *Criminal complaint against a person who displayed a fascist salute and uniform in front of the ISHR-EW headquarters*. The superior PO issued a decision to re-open the criminal investigation which was previously closed, based on the argument that the inferior PO did not ascertain all the elements of the crime and the repeated character of the crime.
- (2015) *Administrative complaint against a local administration unit who awarded the title of citizen of honour to a person condemned for war crimes*. The complaint was argued in court, where the ISHR-EW's complaint was admitted and the decision to award the title of citizen of honour was quashed.

II. 2. Data from international organisations

II. 2.a. The OSCE-ODHIR

The OSCE-ODHIR collects information about hate crime using the following three indicators: year, number of hate crime recorded by the police, number of prosecutions and sentences. It also uses a more strict definition of hate crime, which does not cover all types of crimes which could qualify as hate crime in the Romanian legislation.

Some data is also available from OSCE-ODHIR, starting with 2009.⁴³ In 2009 the available information is that 1 case of hate crime was prosecuted. In 2013 there is no available information on the number of hate crimes recorded by the police or the number of sentences; however, the number of hate crimes prosecuted is 4. In the year 2014, in Romania there have been 25 hate crimes recorded by the police, 20 prosecuted that year and no available information regarding sentences. For the year 2015, the Romanian State informed the OSCE that 15 hate crimes were recorded by the Police, 24 prosecuted and 59 sentenced. It is not clear what types of crimes are included under these figures. At the same time, the OSCE-ODHIR refers to cases of hate crime reported by civil society organisations on Romania. In 2014, NGOs from Romania reported a total of 16 cases of hate crime that were brought to their attention, mainly based on anti-Semitism, bias against Christians and members of other religions and against LGBT people. Incidents against people with disability were additionally reported in 2015.

II. 2.b. European Court of Human Rights

When the victims of hate crime and speech are not satisfied with the decisions of the courts and/or the investigations at the national level, they can file an application with the European Court of Human Rights. Romania ratified the European Convention of Human Rights in the year 1994.

Cases heard before the European Court of Human Rights (ECtHR) are an important source of information about how hate crimes and speech are approached in Romania, because they usually highlight systemic issues and shortcomings in the criminal investigations and trials.

A non-exhaustive list of ECtHR cases of hate crimes judgments between 2005 and 2015 related to Romania is reported below⁴⁴:

- **Moldovan and Others v. Romania** (n. 2) (2005) – discriminatory attitude of the public authorities against the Roma applicants;
- **Cobzaru v. Romania** (2007) – ineffective investigation on hate crime against a Roma person, discriminatory attitude of investigative authorities;
- **Stoica v. Romania** (2008) – ineffective investigation on hate crime against a Roma person, discriminatory attitude of investigative authorities;

⁴³ OSCE-ODHIR, *Hate crime reporting*, available at: <http://hatecrime.osce.org/>

⁴⁴Centre for Legal Resources *Combating hate crimes. Guide for practitioners and decision-makers*, available at:

- **Ciorcan and Others v. Romania** (2015) – use of force against Roma population and lack of relevant investigation;

Another case from 2015 is **Ion Bălăsoiu v Romania**⁴⁵. The applicant and his son are of Roma origin. The applicant complained about the investigation in the death of his son which occurred in Police custody. The ECtHR criticised the superficial investigation into the case.⁴⁶

In 2016, the ECtHR ruled on a case concerning LGBT hate crime in Romania – **M.C. and A.C. v Romania**.⁴⁷ The case concerned the ineffective investigation of the violence against two participants to the 2006 Bucharest Pride march. The applicants were beaten in the underground train by a group of anti-LGBT extremists. Following the attack and the filing of a formal criminal complaint, the police authorities delayed the investigation for 5 years and issued a proposition to terminate the investigation based on the expiration of the statutory time limitation.

*...the Court considers that the authorities did not take reasonable steps with the aim of examining the role played by possible homophobic motives behind the attack. The necessity of conducting a meaningful inquiry into the possibility of discrimination motivating the attack was indispensable given the hostility against the LGBTI community in the respondent State (see paragraph 46 above) and in the light of the applicants' submissions that hate speech, that was clearly homophobic, had been uttered by the assailants during the incident. The authorities should have done so – despite the fact that incitement to hate speech was not punishable at the time when the incidents occurred (see paragraph 40 above) – as the crimes could have been assigned a legal classification that would have allowed the proper administration of justice. The Court considers that without such a rigorous approach from the law-enforcement authorities, prejudice-motivated crimes would inevitably be treated on an equal footing with cases involving no such overtones, and the resultant indifference would be tantamount to official acquiescence to, or even connivance with, hate crime (see *Identoba and Others*, cited above, § 77; and, *mutatis mutandis*, *Ciorcan and others*, cited above, § 167). Moreover, without a meaningful investigation, it would be difficult for the respondent State to implement measures aimed at improving the policing of similar peaceful demonstrations in the future, thus undermining public confidence in the State's anti-discrimination policy (see *Identoba and Others*, cited above, § 80 in fine) - **M.C. and A.C. v Romania**, par. 124.*

II. 2.c. The Council of Europe Commissioner for Human Rights

Between 31 March and 4 April 2014, the Council of Europe (CoE) Commissioner for Human Rights, Mr. Nils Muižnieks, carried out a field visit to Romania. The Commissioner's report includes findings and recommendations on the issue violence and discrimination against Roma

⁴⁵ Application no. 70555/10, available at: <http://hudoc.echr.coe.int/eng?i=001-152537>

⁴⁶ Further details can be found in the press release of Romani CRISS, the NGO which supported the applicant before the ECtHR:

<http://www.romanicriss.org/PDF/Comunicat%20de%20presa%20Tg%20Carbunesti.pdf>

⁴⁷ Application no. 12060/12, available at: <http://hudoc.echr.coe.int/eng?i=001-161982>

through hate speech, hate crime and segregation. The Commissioner also points out the issue of public figures such as politicians promoting hate speech against the Roma⁴⁸.

The following concerns have been expressed by the Commissioner, in connection to the topic of hate crime and speech in Romania:

- The issues of *“long-standing, institutionalised anti-Gypsyism in Romania, characterised by virulent, anti-Roma rhetoric in public discourse, including at the highest political level”* (2014 Report, p. 4-5). The Roma are stigmatised in public discourse, where they are portrayed as engaging in criminal activities and lacking the capacity to integrate in the society, according to the Report (2014 Report, par. 166). The Report also mentions the attempts to *“change the use of the term “Roma” to “țigan”, which is generally considered as carrying a pejorative undertone”*, which were supported some politicians and the media (2014 Report, par. 167).
- The underestimation of the hate crime incidence in Romania. The Commissioner observes that *“the Romanian authorities appear to underestimate the incidence of racist hate crime in the country, which primarily affects Roma. Despite continued reports on racist crime by NGOs and the media, in 2013 the courts did not record any case concerning such crimes”* (2014 Report, p. 4-5).
- The inadequate implementation of the ECtHR judgments. *“The Commissioner is concerned by the very slow pace of execution by Romania of the Court’s judgments concerning racist violence against Roma.”* (2014 Report, p. 4-5).

II. 2.c. The European Commission against Racism and Intolerance

On 3 June 2014, the **European Commission against Racism and Intolerance (ECRI)** published a report⁴⁹ on Romania where it expressed the following observations and concerns:

- The discrimination of Roma people in public discourse.
- The initiatives to change the official name of Roma to “țigan”.
- Incidents of racist slurs and chanting during football matches.
- The phenomena qualified as “serious” by the ECRI, referring to school segregation and discrimination towards Roma pupils.
- Racially motivated incidents against the Roma, such as violence and destruction of property.
- The repeated public denial of the Holocaust.
- The lack of comprehensive system for the collection of data regarding social groups of interest for the ECRI.

⁴⁸Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Romania, from 31 March to 4 April 2014, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2613895&SecMode=1&DocId=2191194&Usage=2>

⁴⁹European Commission against Racism and Intolerance (ECRI), ECRI Report on Romania (fourth monitoring circle), 3 June 2014, available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Romania/ROM-CbC-IV-2014-019-ENG.pdf>

II. 2.e. UN Committee on Economic, Social and Cultural Rights

On 28 November 2014, the **UN Committee on Economic, Social and Cultural Rights (CESCR)** issued a report where it expressed its concern about the situation of the Roma people in Romania, in particular about the “*widespread discrimination and social exclusion*” and the “*prevailing hostility of public opinion towards the Roma*”(par.9).⁵⁰

II.3. Data collected by NGOs

In Romania there are NGOs who gather data about hate crime and hate speech, either as a result of working closely with groups targeted by these incidents, or by using unofficial surveys and media monitoring methods to measure the hate crime and speech phenomenon. NGOs publish qualitative data on hate crime and speech in Romania.

In the following section, we offer examples of some recent quantitative and qualitative data collected and published by human rights NGOs from Romania.

II. 3.a. Data related to targeted groups

There are various NGOs which have collected and report data on hate crimes against the Roma or LGBTI mainly because they also offer legal assistance in such cases (Romani CRISS or Association Accept). These NGOs and others have also looked at hate speech issues, done social media/internet monitoring (eg. on Antisemitism) or have conducted media monitoring exercises.

The Association ACCEPT promotes and protects the rights of LGBT (lesbian, gay, bisexual, trans) persons in Romania. The Association ACCEPT in 2016 published the results of a survey on the perceptions of discrimination against LGBT students in the Romanian high schools⁵¹.

The questionnaire was submitted to 613 students from 10 different schools. The main results of the survey are presented below.

- 1 in 4 students considers that gays and lesbians are inferior human beings
- 2 in 5 students think that gay men and lesbian women should not teach in schools
- 1 in 2 students would be bothered to have a gay schoolmate and 1 in 3 students would not agree to have a lesbian schoolmate
- 2 in 5 students think that boys with more feminine behaviour should feel ashamed about the way they act
- More than 50% of the students consider that gender reassignment treatment is morally condemnable

⁵⁰Concluding observations on the combined third to fifth periodic reports of Romania, 9 December 2014, available at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fROU%2fCO%2f3-5&Lang=en

⁵¹Asociația ACCEPT, LGBT youth – victims of violence and harassment in the high school, available at:

<http://www.acceptromania.ro/blog/2016/03/01/tinerii-lgbt-victime-ale-violentei-si-hartuirii-la-liceu/>

- 3 in 5 students reported that they would do anything to avoid being attracted to someone from the same sex
- Only 5% of the students said that they would seek the help of school staff if they would be witnesses of scene where a mate is attacked because of his/her sexual orientation
- 96% of the responders consider that the words “homosexual” and “lesbian” are mainly used in their derogatory meaning

The responses of LGBT students show that:

- 7 in 10 LGBT students consider that young LGBT people are not safe at school
- 6 out of 10 LGBT students said that they are the victim or witness of a verbal or physical aggression, because of their sexual orientation or gender identity

The Centre for Monitoring and Combating Anti-Semitism in Romania (MCA Romania) publishes yearly reports on anti-Semitic incidents and speech in Romania. MCA Romania published a report summarising the results of the organisation’s activity of monitoring Anti-Semitic incidents between the years 2009 and 2014.⁵² The following is a brief presentation of the main findings presented in the report.

- For the reporting period, (2009-2014) MCA Romania identified 65 websites which are considered the main source of disseminating anti-Semitism and discrimination; out of these, 27 websites are active and frequently updated.
- The majority of websites promoting nationalistic, xenophobic and anti-Semitic hate speech are hosted on servers found in the United States of America (USA), and thus out of the Romanian jurisdiction.
- In December 2013, an extremist organisation (called, after the inter-war fascist movement Legiunea Arhanghelul Mihai – Garda de Fier – Archangel Michael Legion – The Iron Guard) obtained the permission from the Bucharest municipality for a public manifestation. With this occasion, several of the organisation’s members photographed themselves performing the Nazi salute in front of several public institutions buildings, including the Elie Wiesel Institute for the Study of the Holocaust. The photos were then published online.
- MCA Romania reports numerous occasions when historical anti-Semitic figures (such as leaders of the fascist Legionnaire) were celebrated by extremist organisations between 2009 and 2014.
- According to a press article cited in the MCA Report, in Romania there are 25 streets named after Ion Antonescu, who was the leader of the Romanian pro-Nazi State and condemned as a war criminal.
- MCA Romania observed a rise in anti-Semitic online hate speech in the period between 2009 and 2014
- News website moderators generally approve anti-Semitic comments

Anti-Roma hate speech is one of the most violent in Romania, in sync with the fact that Roma remain one of the most discriminated against groups. Roma are also the most common target of

⁵² Centre for Monitoring and Combating Anti-Semitism in Romania (MCA Romania), Monitoring Report 2009-2014, available in Romanian language only at: <http://antisemitism.ro/wp-content/uploads/2015/05/MCA-Romania-Raport-de-Monitorizare-2009-2014.pdf>

Romanian politicians using scapegoating mechanisms.⁵³ In 2007, former Romanian President Traian Băsescu, while shopping in a supermarket, apparently irritated by the presence of journalists, snatched the phone of a woman journalist calling her "birdie". The phone was returned later, but while in the President's possession, it continued recording, and the President, talking to his wife in the car, referred to the woman journalist as "filthy gypsy". When the phone was returned, the recording was also retrieved and made public.⁵⁴ The same President, on an official visit to Slovenia in 2010 declared about nomadic Roma that "many of them traditionally, live off what they steal".⁵⁵ Also in 2010, then Minister of Foreign Affairs Teodor Baconschi declared on the margin of a meeting with a French diplomat that "we have some physiological, natural problems of criminality" especially among Romanian Roma communities in France.⁵⁶

II. 3.b. General data collected by NGOs

Active Watch

Active Watch is a Romanian NGO working on the topic of freedom of expression. Active Watch collected general data – both administrative and alternative – on hate speech in Romania for the period between October 2014 and October 2015 or presented older cases with specific legal outcomes (usually sanctions administered by the Romanian equality body). The report offers examples of discriminatory speech purported in public (online, in the media, in public gatherings) in many cases by elected or appointed officials, mainly targeting Roma, LGBTI, Hungarians, and Jewish people.⁵⁷

Active Watch also reports on the proposal for a bill to change the official name "Roma" to "Gipysy" (*țigan*, in Romanian). The information about the bill appeared on the initiator's blog on 26 April 2015 – Mr. Bogdan Diaconu, Member of Parliament. The proposal was followed by a public manifestation on 18 July 2015 to support the name change, organised by the Association of Romanians in Sweden and the Save the Romanian Identity group. The Bill was finally rejected by the Romanian Parliament.⁵⁸ This was not the first attempt to make such a change, as two

⁵³ A case-study on high-level discriminatory speech in Romania, covering incidents from 2007 until 2012 was compiled by the Centre for Legal Resources as part of the EU funded RED project (Monitoring Extremism – European Hate Crime Early Warning System). See Red Network, *High level discriminatory speech*, available at <http://www.red-network.eu/?i=red-network.en.items&id=721> (cases updated until May 2012).

⁵⁴ Red Network, *Romanian President calls a journalist "filthy gypsy"*, available at: <http://www.red-network.eu/?i=red-network.en.items&id=709> (case description updated until May 2012)

⁵⁵ Red Network, *President Băsescu on nomadic Roma: many of them, traditionally, live off what they steal*, available at: <http://www.red-network.eu/?i=red-network.en.items&id=727> (case description updated until May 2012)

⁵⁶ Red Network, *Romanian Minister of Foreign Affairs Teodor Baconschi makes racist statements*, available at: <http://www.red-network.eu/?i=red-network.en.items&id=523> (case description updated until May 2012)

⁵⁷ Romania, Active Watch and Romani CRISS, *Raport anual cu privire la discursul instigator la ură din România 2014-2015*, 2016, available at: [http://www.activewatch.ro/Assets/Upload/files/Raport%20anual%20cu%20privire%20la%20discursul%20instigator%20la%20ura%202014%20-%202015\(1\).pdf](http://www.activewatch.ro/Assets/Upload/files/Raport%20anual%20cu%20privire%20la%20discursul%20instigator%20la%20ura%202014%20-%202015(1).pdf)

⁵⁸ Romanian Chamber of Deputies: http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?idp=14897

other similar Bills were registered with the Romanian Parliament in 2008⁵⁹ and 2011⁶⁰, and were subsequently rejected. These bills are mainly motivated by the discriminatory idea that, on account of name similarity (Roma/Romanian) Romanians are associated/ confused with Roma abroad, something Romanians want to avoid.

The Foundation for the Development of Civil Society (*Fundația pentru Dezvoltarea Societății Civile* - FDSC)

FDSC conducted a study on hate speech in Romania, during the second half of the year 2013, entitled *Hate speech in Romania (Discursul instigator la ură în România)*⁶¹. The FDSC publication does not contain data regarding the incidence of the hate speech phenomenon, but can be used to understand some aspects of the historical and institutional context relevant to the subject of hate speech in Romania

II.4. Surveys on discrimination

The “Elie Wiesel” Institute for the Study of the Holocaust in Romania (an independent public research institute) commissioned a survey on the Romanian Holocaust and the perceptions of the Romanian population on inter-ethnic relations.⁶² According to the results of this survey:

- Almost 20% of respondents identified Roma people as a threat to the country;
- 11% consider that the Hungarian minority is a threat;
- 40% consider that the Roma population is a problem for Romania, 20% consider that the Hungarian minority is a problem;
- Towards Roma people and Arabs is the longest social distance measured in the survey
- Only 25% of the respondents agreed that the Holocaust also took place in Romania

The NCCD - the autonomous administrative authority that sanctions discrimination in Romania - commissioned a survey in August 2015⁶³, also regarding the perception and attitudes of the Romanian population on discrimination:

- 2 out of 3 respondents answered that discrimination is a problem in Romania;

⁵⁹ Romanian Chamber of Deputies:

http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=9369

⁶⁰ Romanian Chamber of Deputies:

http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=11279

⁶¹ Romania, **The Foundation for the Development of Civil Society** (*Fundația pentru Dezvoltarea Societății Civile*), *Hate speech in Romania (Discursul instigator la ură în România)*, 2014, available at:

⁶² Study available at: http://www.inshr-ew.ro/ro/files/proiecte/Sondaje/Sondaj_opinie-INSHR-iunie_2015.pdf

⁶³ The National Council for Combating Discrimination, *Percepții și atitudini ale populației României față de Strategia națională de prevenire și combatere a discriminării [Perceptions and attitudes of the Romanian people towards the National strategy for preventing and combating Discrimination]*, 2015, available at: http://api.components.ro/uploads/1d3a0bf8b95391b825aa56853282d5da/2016/10/Sondaj_TNS_CNCD_2015.pdf

- Social groups in Romania considered to be the most discriminated against: people with HIV (65%), persons consuming drugs (57%), persons with disabilities (56%), Roma people (49%), “persons with other sexual orientations” (49%), and institutionalised children⁶⁴ (48%), Romanians in places where they are in the minority (48%).

The NCCD did not address hate crimes and speech in the survey.

II.5. Other data

The **U.S. Department of State** International Religious Freedom Report – Report on Romania, for 2015⁶⁵ includes considerations with regards to hate crime and speech in Romania:

- The report mentions a series of Anti-Semitic incidents, as well as acts of vandalism which have been reported on in the Romanian media. The U.S. Department of State was informed by national NGOs about instances of participants in television talk shows and in internet discussions expressing Anti-Semitic views and attitudes. Events organised by extreme right movements to commemorate historical legionnaire figures have taken place in public.
- The report points to the Anti-Muslim sentiment which was ignited by the government decision to allocate a piece of land in Bucharest to the Muslim community for the construction of a mosque. Following this decision, an individual buried two frozen pigs and released live pigs on the premises where the mosque would be built.
- The report mentions incidents of hate crime in the form of vandalism against Seventh-day Adventist Churches.

⁶⁴ Institutionalised children here refers to children who live in residential child protection services.

⁶⁵U.S. Department of State, Bureau of Democracy, Human Rights and Labor, International Religious Freedom Report for 2015, Romania, available at:

<http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=256233&year=2015#wrapper>

III. Measures to prevent and combat hate crimes and speech

This chapter provides examples of measures taken by public authorities or NGOs, to address hate crime and hate speech in Romania. The information is based on replies to public information requests sent to public authorities, as well as public online sources.

III.1. Training activities

Training on the specific topic of hate crime among relevant legal professions is mostly project-based (usually part of EU, or EEA grants), rather than compulsory and mainstreamed.

The Public Ministry (representative of public prosecutors) reports⁶⁶ that in 2015 it has been a participant and partner to projects that included the principle of non-discrimination only in the area of domestic violence. The Public Ministry also reports that the initial professional training of the public prosecutors (the National Institute of Magistracy) approaches the issue of discrimination.

The **Institute for the Study of Public Order** (*Institutul de Studii pentru Ordine Publică*, ISOP) reported that for the educational year 2015/2016, it delivered a training program entitled *Preventing and combating all forms of discrimination*, which approached the subject of hate crimes. The program had 17 participants from the Police, the Military and other contractual staff.⁶⁷ The program duration was 5 days (30 hours) and the duration allocated to discussing hate crimes was 100 minutes.⁶⁸

The **National Institute for the Study of the Holocaust in Romania “Elie Wiesel”** signed a Memorandum of Understanding with institutional and academic partners, on 20-24 September 2016. The memorandum has the objective of ensuring training on the topic of the Holocaust history and remembrance, for civil servants from the central and local administration as well as for representatives of the political parties.⁶⁹

In 2016, the National Institute for Magistrates participated in a project together with the National Council for Combating Discrimination where 139 magistrates (judges and prosecutors) were trained in the field of hate crimes. Also, 44 prosecutors participated in a two day conference organized as part of Romania’s Chairmanship of the International Holocaust Remembrance Alliance which specifically tackled the topic of hate crime and anti-Semitic hate crime. Second year students at the National Institute of Magistrates are trained by the National Council for Combating Discrimination in anti-discrimination legislation. As part of professional

Public Ministry, Activity Report (2015), available at:
http://mpublic.ro/presa/2016/raport_activitate_2015.pdf

⁶⁷ Romania, Institute for the Study of Public Order (Institutul de Studii pentru Ordine Publică, ISOP), Reply No. IP.4693652 from 29 July 2016.

⁶⁸ Romania, Institute for the Study of Public Order (Institutul de Studii pentru Ordine Publică, ISOP), Reply No. IP.4693653 from 13 September 2016.

⁶⁹International Holocaust Remembrance Alliance, *Holocaust education for civil servants*, 04.10.2016, available at: <https://holocaustremembrance.com/media-room/news-archive/holocaust-education-civil-servants>

training, in 2015, 81 judges, 50 prosecutors and two experts from the General Prosecutor's office as well as one Supreme Court assistant magistrate and five lawyers participated in training seminars part of a Norwegian mechanism funded project called: "Improving access to justice for Roma and other vulnerable groups. An integrated approach".⁷⁰

The **Institute for the Research and Prevention of Crimes** (*Institutul de Cercetare și Prevenire a Criminalității*, ICPC) reported that in 2015 and the first semester of 2016 it did not perform any studies or activities regarding hate crimes.⁷¹

During 2012-2016, with Swiss funding and partners, the Romanian Police implemented the project: "Promoting the concept of proximity police in rural areas, particularly in Roma communities and other communities disadvantaged from a socio-economic perspective". Among others, the activities included the training in Romani language of 320 police agents, and the establishment of a Centre for Romani language within the Slatina "Nicolae Golescu" Police Training Centre.⁷²

III.2. NGO initiatives

NGOs mainly run project-based activities to combat hate crimes/hate speech or discrimination. The availability of state-provided legal aid is very restrictive for victims due to bureaucratic hurdles and specific conditions,⁷³ while pro bono lawyering is hardly practiced in Romania. Also, extremely few NGOs which service people vulnerable to discrimination also offer legal services with a majority of them not being able to offer such assistance when needed.⁷⁴

A promising project started in 2015, called "Pro bono network for human rights", implemented by the Action Centre for Equality and Human Rights in three counties of Romania. The NGO built a network of human rights lawyers who offer free legal services to groups vulnerable to discrimination.⁷⁵

On 18 June 2015, the **Centre for Legal Resources (CLR)** launched the publication "*Combating hate crimes. Guide for practitioners and decision-makers*" and organised a one-day training for Police, Prosecutors and Judges.⁷⁶

⁷⁰ National Institute of Magistrates, Reply No. 3573 from 3 August, 2016.

⁷¹ Romania, Institute for the Research and Prevention of Crimes (*Institutul de Cercetare și Prevenire a Criminalității*, ICPC), Reply no. 2460345 from 01 August 2016.

⁷² Agerpres, *General Inspectorate of the Romanian Police Press release*, 23.06.2016, at:

<http://www.agerpres.ro/comunicate/2016/06/23/comunicat-de-presa-igpr-15-37-47>

⁷³ Save the Children Romania-Iași Branch, Action Center for Equality and Human Rights, Center for Legal Resources (2015), *Pro bono lawyering: an indicator for the functioning of the profession in a real democracy*, pp. 3-6, at: www.crj.ro/wp-content/uploads/2015/01/AVOCATURA-PRO-BONO_final.pdf

⁷⁴ *Ibid.* p. 9

⁷⁵ See more about the project here: <http://actedo.org/the-pro-bono-network-for-human-rights/>.

⁷⁶ Romania, Centre for Legal Resources, Press release available at: <http://www.crj.ro/combaterea-infractiunilor-motivate-de-ura-in-romania/>

Active Watch – the , implemented the following projects: Awareness campaign regarding the effects of negative stereotypes against ethnic Roma persons, entitled “Roma children dream what we let them dream” (2012);⁷⁷ Awareness raising event in partnership with academia: “Media against racism in sports.” (2012).⁷⁸

The Centre for Independent Journalism (*Centrul pentru jurnalism independent*) –CJI implemented in 2011 a project aimed at eliminating anti-Roma stereotypes from the media: “Colorful but colorblind”.⁷⁹

The **No Hate Speech campaign in Romania**⁸⁰ was launched in 2013 as part of the wider Council of Europe No Hate Speech Movement project.

⁷⁷More details about the campaign can be found at the following address:

<http://www.profesionistiro.ro/campanie/despre/despre.html>

⁷⁸Romania, Active Watch, Press release: „MARS – Media against racism in sports” [*MARS: Media împotriva rasismului în sport*], May 2012, available at:

<http://www.activewatch.ro/Assets/Upload/files/%20RO%20-%20NME%20JMTL%20Romania%20Final%20Report%20270712.pdf>

⁷⁹ Romania, Centre for Independent Journalism, *Colorful but colorblind*, 18 March 2018, available at:

<http://www.cji.ro/1214/>

⁸⁰ Website: <https://nuuriionline.wordpress.com/>