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# Discrimination

National legal framework - Romania

## DISCRIMINATION

In Romania, the legal framework against discrimination is Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination. This ordinance was originally effective since November 1, 2000, republished in February 08, 2007 and then modified on March 6, 2014 being replaced by the republication in the Official Gazette since March 7, 2014<sup>1</sup>.

Gender equality laws were supplemented by new European Union laws in 2000, when discrimination on other criteria was banned. Based on these new laws, it is illegal to discriminate against a person based on:

- Racial and ethnic origin
- Religion and beliefs
- disability
- Sexual orientation
- Age

All EU member countries are obliged to adopt these equality rules. Countries joining the EU must also abide by these rules. EU legislation on equal treatment sets minimum levels of protection that apply to all people living and working in the European Union. Countries can go further and take stronger and more legal measures, which is why Romanian anti-discrimination law must abide to the European law<sup>2</sup>.

In its first part, this law dwells on the principle of equality between citizens. The exclusion of privileges and discrimination are guaranteed in particular in the exercise of the following rights:

- a) The right to equal treatment before the courts and any other judicial body;
- b) The right to the security of the person and to obtaining the protection of the state against violence or ill-treatment by any individual, group or institution;
- c) Political rights, namely electoral rights, the right to participate in public life and to have access to elective office;
- d) Civil rights

In the following part of the law, in the second article, the definition of discrimination is detailed. Therefore, according to this ordinance, discrimination means any distinction, exclusion, restriction or preference, based on race, nationality, ethnicity, language, religion, social category, beliefs, sex, sexual orientation, age, disability, chronic non-contagious disease, HIV infection, belonging to an

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<sup>1</sup>Ordonanța nr. 137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare  
<https://lege5.ro/Gratuit/gezdiobqgu/ordonanta-nr-137-2000-privind-prevenirea-si-sanctionarea-tuturor-formelor-de-discriminare>

<sup>2</sup> Combaterea discriminării la locul de muncă  
<https://ec.europa.eu/social/main.jsp?catId=158&langId=ro>

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underprivileged category, as well as any other criterion whose purpose or effect is to restrict, remove the recognition, use or exercise, on an equal basis, of human rights and fundamental freedoms or rights recognized by law, in the political, economic, social and cultural field or in any other area of public life<sup>3</sup>.

In case of a person being a victim of discrimination, a complaint can be registered at the National Council for Combating Discrimination. This Council is an autonomous state authority, under parliamentary control, which carries out its activity in the field of discrimination. It guarantees the observance and application of the principle of non-discrimination, in accordance with the national legislation in force and with the international documents to which Romania is a party.

**The Council exercises its powers in the following areas:**

- Prevention of discrimination by conducting information campaigns, awareness of human rights, effects of discrimination, principle of equality, training courses, information, projects and programs at local, regional and national level, studies, reports etc.
- Mediation of the facts of discrimination of the parties involved in the case of discrimination, in the presence of the representatives of the National Council for Combating Discrimination. The National Council for Combating Discrimination aims to reduce and eliminate the facts of discrimination and not to impose fines.
- Investigating, finding and sanctioning the facts of discrimination. In order to analyze cases as accurately as possible and to take decisions in the case of received petitions or self-assessments, the Board of Directors has measures to investigate the cases, after which it ascertains the existence or not of the discrimination and, as the case may be, its sanction.
- The granting of specialized assistance to the victims of discrimination by explaining the legislation of those interested by the legal advisers of the Council, by the assisted guidance regarding the activity of filing the petition and additional information arising from this procedure<sup>4</sup>.

At the workplace, the Labour Code covers also discrimination against sexual orientation. According to this code all employees deserve equal treatment. Any direct or indirect discrimination against an employee, based on gender, sexual orientation, genetic characteristics, age, national affiliation, race, skin colour, ethnicity, religion, political option, social origin, disability, family situation or responsibility, belonging or trade union activity, is forbidden according to article 5, paragraph 2 of the Labour Code<sup>5</sup>.

In case of workplace discrimination, The Labour Inspection can be contacted. The Labour Inspection is a specialized body of the central public administration, subordinated to the Ministry of Labour, Family and Social Protection and ensures the exercise of control in the fields of labour relations, safety and health at work and market surveillance<sup>6</sup>.

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<sup>3</sup> ORDONANȚĂ nr. 137 din 31 august 2000 (\*\*republicată\*\*) <http://legislatie.just.ro/Public/DetaliiDocument/24129>

<sup>4</sup> Consiliul Național pentru Combaterea Discriminării <https://cncd.ro/>

<sup>5</sup> Ordine Interioară – Discriminarea la Locul de Muncă <https://legislatiamuncii.manager.ro/a/6128/ordine-interioara-discriminarea-la-locul-de-munca.html>

<sup>6</sup> ORDONANȚA nr. 27 din 30 ianuarie 2002 <http://legislatie.just.ro/Public/DetaliiDocument/33817>

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Romania's public opinion regarding rights of LGBT people is generally conservative. Therefore, people in these categories may face different legal impediments compared to the rest of the citizens, such as being unable to get married. The Romanian Civil Code stipulates that the act of marriage can only be concluded between persons of the opposite sex.

ACCEPT is an organisation which promotes the rights of LGBT people. Research done by them concluded that in Romania, two thirds of gay people hide their sexual orientation, in order to minimize discrimination and acts of violence<sup>7</sup>.

However, a revolutionary step took place on June 5<sup>th</sup> 2018 when a couple composed of a Romanian man and an American man, who had married in 2010 in Bruxelles, asked for the right to be recognized as a married couple in Romania. The Court of Justice of the European Union decided to grant the right of having same-sex marriages that had become official in the EU, to be recognized in Romania. However, this does not mean that same-sex marriages can become official in Romania at the present time<sup>8</sup>.

As for adopting children, since same-sex marriages are not legalised, single homosexual people can adopt. Law 273/2004 on the adoption procedure in Romania does not specify the condition that the adopter should be heterosexual, therefore, according to the domestic law, a homosexual could claim to adopt a child.

At European level, the Grand Chamber of the Strasbourg Court ruled that authorities' refusal to allow a person to adopt a child on the basis of sexual orientation creates a difference between treatment incompatible with human rights, as it is forbidden to discriminate against a person with regard to his or her private and family life<sup>9</sup>.

Except for the legal limitations previously presented, elderly LGBT people can be victims of the public opinion's discrimination of them and can also be victims of other types of violence, such as the ones presented Article 4 of Law 174 of July 13, 2018. Here we can find out about the following types of violence:

- Psychological violence - imposing personal will or control, provoking states of tension and psychological suffering in any way and by any means, by verbal threat or in any other way
- Physical violence - bodily harm
- Sexual violence - sexual aggression, harassment, intimidation
- Economic violence - the prohibition of professional activity, deprivation of economic means, including lack of means of primary existence, such as food or medicine
- Social violence - imposing isolation
- Spiritual violence - underestimating or diminishing the importance of satisfying the moral-spiritual needs

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<sup>7</sup> Analiză. Au gay-ii căsniciii fericite în România? <http://romanalibera.ro/actualitate/fapt-divers/analiza--au-gay-ii-casnicii-fericite-in-romania--232204>

<sup>8</sup>Curtea de Justiție a Uniunii Europene - COMUNICAT DE PRESĂ nr. 80/18 - Luxemburg, 5 iunie 2018 <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-06/cp180080ro.pdf>

<sup>9</sup> Homosexualitatea și referendumul <https://blog.avocatoo.ro/homosexualitatea-si-referendumul/>

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In case any of these types of domestic violence take place, protection order shall be deemed urgent and, in any case, their resolution may not exceed a period of 72 hours from the submission of the application. The applications are judged in the council chamber, the participation of the prosecutor being compulsory<sup>10</sup>.

According to a report on the social situation concerning homophobia and discrimination on grounds of sexual orientation in Romania done in March 2009 by The Danish Institute for Human Rights, The Criminal Code was amended in 2006 in order to introduce discriminatory intent as an aggravating circumstance in the commission of a criminal offence. However, since hate crimes against LGBT people are not clearly defined by law, it is difficult to categorize a crime as a hate crime. A crime is considered as a hate crime or hate speech only judging by their specific content.

However, in The New Criminal Code, which became applicable in 2014, Hate crime appeared for the first time in Romanian law as aggravating circumstance clause, provided in art. 77:

*“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<sup>11</sup>.”*

According to the NGO Accept, hate crimes against LGBT people are a common occurrence but they are not reported. Also, research done by them indicates that LGBT persons are often intimidated and harassed by police in meeting places especially designed for gay men. Since they fear the rest of society knowing the truth about their orientation, victims pay bribes and do not legally denounce the harassment or hate crimes that they endured.

Furthermore, political speeches are protected from hate speech legislation and cannot be sanctioned. Thus, unfortunately, parliament members are immune from this type of prosecution<sup>12</sup>.

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<sup>10</sup> LEGE nr. 217 din 22 mai 2003 (republicată) pentru prevenirea și combaterea violenței în familie <http://legislatie.just.ro/Public/DetaliiDocumentAfis/191896>

<sup>11</sup> An overview on hate crime and hate speech. Country profile: ROMANIA <http://www.crj.ro/wp-content/uploads/2018/04/eMore-country-profile-Romania-website.pdf>

<sup>12</sup> The social situation concerning homophobia and discrimination on grounds of sexual orientation in Romania [https://fra.europa.eu/sites/default/files/fra\\_uploads/389-FRA-hdgs0-part2-NR\\_RO.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/389-FRA-hdgs0-part2-NR_RO.pdf)

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## **INSTITUTIONS DEALING WITH LGBT/ELDERLY IN ROMANIA**

As a discriminated LGBT person in Romania, these are some go-to solutions to receive help:

### **ACCEPT Association**

As one of the first associations advocating for LGBT people in Bucharest, Romania, they offer psychological, legal and health counselling, and additionally, support groups. ACCEPT offers legal advice to discriminated people on the basis of sexual orientation and gender identity. If you have problems with the police or are discriminated against in the workplace, at school or in the family, because of your sexual orientation or gender identity, they can provide legal assistance, including help in initiating court proceedings.

Schedule: Monday - Friday: 09.30 - 17.30

Contact person: Carolina Marin, [carolina@acceptromania.ro](mailto:carolina@acceptromania.ro)

Telephone:

+4 021 252.56.20

+4 021 252.16.37

+4 021 252.90.00

### **Anti-discrimination Coalition**

<http://www.antidiscriminare.ro/consiliere-juridica-online>

Here is a useful link to submit a request for online legal counselling. The answer time is supposed to be within 5 days since submitting the request.

<http://www.antidiscriminare.ro/scrie-o-sesizare>

Here is another useful link from the same coalition where you can submit a discrimination situation that you have been a victim of.

### **National Council for Combating Discrimination**

Telephone

+4 021 312.65.78

+4 021 312.65.79

<https://cncd.ro/contact>

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Email: [support@cncd.org.ro](mailto:support@cncd.org.ro)

The Council can be notified by petition by the injured person. The petition can be formulated in writing and sent to the Council by one of the legal means (mail, e-mail, fax) or it can be formulated orally, by means of an audience note (when the injured person appeals to the Council hearing service).

The Council can self-report on any situation, announcement or event, where there are indications of facts that imply the act of discrimination.

### **National Council of Elderly Persons**

<https://www.cnpv.ro/>

Telephone:

+4 021 312.44.31

+4 021 312.44.45

Email: [secretariat@cnpv.ro](mailto:secretariat@cnpv.ro)

This Council proposes to the Government programs regarding the continuous improvement of the living conditions of the elderly persons and follows the application of the legal regulations regarding the elderly and notifies the competent bodies about the deviations found. They also conduct research regarding the improvement of the standard of living of the elderly; It approves drafts of normative acts concerning the elderly, the opinion being consultative.

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