



Changing the narrative of discrimination



Exploratory study

The situation of discrimination against Roma and LGBTI+ Roma in Romania

2021



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Foreword

This study was written in the project „INTERSECT – Changing the narrative of discrimination”¹, which aims to put intersectionality and multiple discrimination on the public agenda from the perspective of LGBTI+ Roma people. Being a two-year project (2019-2021), it aimed at bringing people together and strengthen Roma (and) LGBTI+ groups through a series of activities (community meetings to identify the needs of Roma LGBTI+ people, trainings, mentoring/leadership programme, local awareness campaigns in 5 cities developed and implemented by community members, provision of counselling and legal assistance in over 20 cases), but also to draw national attention to the intersectionality of ethnicity, sexual orientation and gender identity through workshops with students, authorities, non-discrimination campaigns and research and policy development.

The project was funded by the Rights, Equality and Citizenship Programme of the European Union (2014-2020) and coordinated by the CLR - Centre for Legal Resources, and implemented in partnership with UCTRR – Civic Union of Young Roma from Romania, MozaiQ LGBT Association and ACTEDO – Equality and Human Rights Action Centre.

In the absence of information about intersectional discrimination against Roma LGBTI+ people, not only in Romania, but also at European level, in the context of the extremely small number of initiatives² and projects regarding them, and the fact that the INTERSECT – Changing the narrative of discrimination project has not been carried out at national level, we consider this approach to be an exploratory study, which informs and attempts to lay the foundations for a structured and informed discussion about intersectional discrimination and high vulnerability to discrimination for people who are, simultaneously, among the most exposed to discrimination and human rights violations communities in Romania.

At the same time, the project collected a lot of information about the direct life experiences and discrimination of Roma (and) LGBTI+ people, directly involving over 120 beneficiaries and collecting a significant number of testimonials.

We hope that this approach, a first study on Roma LGBTI+ discrimination in Romania, will be the beginning of similar approaches and concrete actions for a fair access to the right to non-discrimination, as well as to all other human rights, for Roma, LGBTI+ and Roma LGBTI+ people.

Methods of analysis

The report is based on the following method of analysis: documentary analysis on discrimination and hate speech regarding the Roma minority, the LGBTI+ community and ethnicity-sexual orientation-gender identity intersectionality in Romania, for the period 2019-2020. To this end, requests for public information have also been sent to the authorities holding such data relating to the two years and the replies received were analysed, namely the National Council for Combating Discrimination (NCCD), the

¹ More information about the project is available at <https://www.cri.ro/en/intersect-altfel-despre-discriminare/>

² See Deszo Mate, *The First Sparks of Romani LGBTQ*, University of Sussex – School of Education and Social Work, 2017, available at https://www.academia.edu/34781289/The_First_Sparks_of_Romani_LGBTQ.



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National Audiovisual Council (NAC), the Ministry of the Interior, the Ministry of National Education, the Ministry of Justice, the Ministry of Health, the National Agency for Roma. For the community needs analysis, information obtained through the implementation of project activities was processed (including cases of human rights violations that we documented and where legal advice or assistance was provided, as well as public policy documents developed), testimonies of participants - LGBTI+ Roma life stories, as well as through an online survey of Roma (and) LGBT people to which 215 people responded. A final tool was to conduct 22 semi-structured interviews in 2021 with practitioners and activists in the field as well as community members³. We note that the responses of practitioners and activists served as examples to reinforce or make explicit conclusions that emerged from the analysis of other data and information, the interviews were not the basis for generalising conclusions.

About the study

The study has four chapters. The first one presents concepts and general information about discrimination, multiple and intersectional discrimination, including an analysis of the NCCD's decisions on discrimination according to art. 2 para. 6 of OG 137/2000 - multiple discrimination, from 2012-2020 and a presentation of selected cases from the European Court of Human Rights jurisprudence on Romania. The next two chapters deal with discrimination against Roma and discrimination against LGBTI+ Roma, both including an overview of the situation of discrimination against these two minorities, as it results from the documentary analysis (online sources and responses to public enquiries) and from the experience of the INTERSECT project (identification of needs, implementation of activities and testimonies), as well as specific conclusions and recommendations. The fourth chapter discusses access to justice for Roma LGBTI+ people, presenting other relevant data that emerged from the application of the methodology and finishes with a short conclusion section.

Writing this study was a team effort on the part of all four implementing organisations, each of them signing, as main author, a chapter, namely: Chapter I, CLR: Oana Dodu, Cezara Băceanu; Chapter II, UCTRR: Corina G. Păun, Vasile Gîlbea and Norbert Iuonaş; Chapter III, MozaiQ Association: Roxana Marin; Chapter IV, ACTEDO: Alexandra Columban. Study coordination, CLR: Cezara David.

³ Interviews with Raluca Baci, Vice-President of Pride Romania; lawyer from Cluj Bar Association who wished to remain anonymous; lawyer Anca Vățăsoiu, Bucharest Bar Association; lawyer Iustina Ionescu, Bucharest Bar Association and lawyer of ACCEPT Association; Vasile Hotea-Fernezan, journalist TVR Cluj; representatives of Roma civil society: Costel Bercuș, President ACTEDO Association, Marian Mandache, former Executive Director Romani CRIS, Dan Doghi, former Senior Adviser on Roma and Sinti Issues OSCE-ODIHR, Robert Vaszi, President Roma Antidiscrimination Network RAN, Nicu Ion, human rights activist, Eugen Ghiță, President Roma Just Association, Aurel Pandelea, Roma activist; Andrei Popoviciu, journalist at Are We Europe, I. Pînzariu, social worker, Andrei Șerban, Roma actor and activist, Roma teacher who wished to remain anonymous, Margareta Matache, Director of the Roma Studies Program at Harvard FXB and Harvard instructor, 5 Roma people, including four LGBTI+ Roma who wished to remain anonymous.



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Chapter I. On discrimination, multiple discrimination and intersectional discrimination. Brief considerations

I.1. Concepts

Discrimination is one of the most common violations of human rights and is prohibited by international standards for the protection and promotion of human rights. The principles of equal rights, dignity and the right to non-discrimination are set out in the first two articles⁴ of the Universal Declaration of Human Rights.

At European level, protection against discrimination is provided for both by European Union law and by the Council of Europe's conventional system, in particular by the case law and work of the European Court of Human Rights. In this respect, Article 14 of the Convention stipulates that the rights and freedoms protected by the Convention must „be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Discrimination occurs when a person is treated less favourably than other persons in a comparable situation on the grounds that he or she belongs or is regarded as belonging to a particular group or category of persons and there is no reasonable and objective justification for such treatment. When discrimination is based on more than one characteristic of a person's identity, the concept of multiple discrimination operates; so far, no unified terminology for this concept has been developed in legislative systems or in literature. However, two conceptualisations⁵ of discrimination on more than one criterion are relevant to the study: additive multiple discrimination and **intersectional discrimination**.

Additive multiple discrimination is when a person experiences discrimination on the same occasion but for two reasons - for example, a lesbian woman is harassed because she is a woman (gender) and because she is a lesbian (sexual orientation). This type of discrimination is said to be 'additive' because each of the grounds can be identified independently. Respectively, multiple discrimination occurs when two or more separate criteria operate separately to disadvantage a person.

Intersectional discrimination occurs when a person is discriminated against for two or more reasons that act simultaneously and interact in an inseparable way, producing distinct and specific forms of discrimination⁶. The example in literature is that of a young Roma woman who is discriminated against

⁴ Art. 1 All human beings are born free and equal in dignity and rights; Art. 2 Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

⁵ Sandra Fredman, Intersectional Discrimination in EU gender equality and non-discrimination role, Directorate Justice and Consumers, May 2016

⁶ The author offers the following explanation: 'In particular circumstances, the combination of these factors creates a negative synergy, so that discrimination cannot be fully understood as simply adding criteria. Considered inexperienced and incompetent, women share certain experiences of discrimination with young people; being expected to fit into a traditional role, they share their experiences with other women; and being seen as dangerous, they share their experiences with all Roma, including men. However, for this person, her situation is at the intersection of all these factors.'



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in the labour market because she belongs to one ethnic group while being perceived as "dangerous", because she is a woman and therefore "will have children soon" (and will not work for some time) and because she is young and therefore inexperienced.

1.2. National level

In Romania, the main legal act in the field of combating discrimination is **Government Ordinance no. 137/2000** for the prevention and sanctioning of all forms of discrimination (OG 137/2000), republished. This Ordinance transposes into Romanian law mainly two European Union Directives: **Council Directive 2000/78/EC** of 27th November 2000 establishing a general framework for equal treatment in employment and occupation⁷ and **Council Directive 2000/43/EC** of 29th June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin⁸.

According to OG 137/2000⁹, Article 2 paragraph 1 establishes the definition of DISCRIMINATION as "any distinction, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social status, belief, sex, sexual orientation, age, handicap¹⁰, non-contagious chronic disease, HIV infection, membership of a disadvantaged group and any other criteria which has the purpose or the effect of restriction, elimination of recognition, use or exercise of fundamental human rights and freedoms or of rights recognized by the law in the political, economic, social or cultural field or in any other field of public life."

In Article 2 paragraph 6, OG 137/2000 provides for **DISCRIMINATION ON MORE THAN ONE CRITERIA** as an aggravating circumstance: "Any distinction, exclusion, restriction or preference based on two or more of the criteria set out in paragraph 1 shall constitute an **aggravating circumstance** in determining the liability for an offence if one or more of its components is not covered by criminal law."

The institution responsible for sanctioning discrimination is the **National Council for Combating Discrimination (NCCD)**¹¹. The NCCD has issued **25 decisions**¹² **on discrimination offences according to art. 2 para. 6 of OG 137/2000 - multiple discrimination, in the period 2012-2020**. Seven (7) of these, i.e. more than a quarter, were self-referrals. In the 25 cases of multiple discrimination, the sanctions

⁷ Available at <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A32000L0078>

⁸ Available at <https://eur-lex.europa.eu/legal-content/RO/TXT/?qid=1437665236213&uri=CELEX:32000L0043>

⁹ The use of bold font in the rendering of the articles of the Ordinance is strictly related to the editing of the document by the author, in order to highlight certain elements of the legal text.

¹⁰ The law, adopted in 2000, still uses the term "handicap" and not the one that came into use later (nationally and internationally), in particular through the Convention on the Rights of Persons with Disabilities adopted by the United Nations General Assembly in and ratified by Romania in 2010 through Law 221/2010. Also, the central Romanian authority designated to implement the obligations set out in the Convention on the Rights of Persons with Disabilities is the National Authority for Persons with Disabilities.

¹¹ More about the NCCD and its powers (which include investigating, finding and sanctioning acts of discrimination) at <https://www.cncd.ro/despre-cncd-prezentare-general/>

¹² The decisions included in this analysis are exclusively those indicated by the NCCD as decisions issued during the last 10 years (2011-2020) in which a discriminatory act was found to have been committed on two or more criteria, by address no. 1336/10.03.2021 in response to request for information no. 60/18.02.2021, respectively return for clarifications and additions no. 97/17.03.2021 submitted by the Centre for Legal Resources. One of the 26 decisions indicated does not indicate a sanction according to art.2 para.6 of OG 137/2000, therefore 25 decisions were analysed. Also, the decision no. 465/06.07.2016 indicated is in fact decision no. 463/06.07.2016.



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consisted of 8 warnings and 17 cases of fines (i.e. 19 fines) ranging from 1,000 to 5,000 RON. We note a significant number of warnings for cases of multiple discrimination, which is an aggravating circumstance in the determination of the contravention liability, as well as the fact that the average amount of a fine is about **2,080 RON**¹³, which is **very low** in relation to the possible amount provided for in OG 137/2000 and the typology of cases.

As regards to the areas in which discrimination has occurred, the main area of discrimination in the decisions analysed is the labour field (10 decisions), most of which concern **employment**. The other significant percentage (9 cases, i.e. 1 out of 3 decisions) finds violation of the right to personal dignity, associated with (elements of) hate speech - most of them on the basis of Roma ethnicity. Three (3) of these decisions also find violations of Article 2.5, i.e. harassment.

The criteria most often invoked are ethnicity (predominantly Roma - in 8 decisions, but also Hungarian ethnicity - in 3 decisions), followed by age (in 5 decisions), disability (in 4 decisions), religion and physical appearance (in 3 decisions each). No trends or statistics can be identified, mainly due to the small number of decisions over a long period of time, i.e. 8 years. We can only indicate a number of cases with regard to the criteria of ethnicity and sexual orientation: 2 decisions in which the criteria of Roma ethnicity and religion (other than Orthodox) were found, both of which found a violation of Article 15 of OG 137/2000 (right to personal dignity)¹⁴, and one of which also found a violation of Article 2(5) (harassment)¹⁵; 1 decision on the criteria of Roma ethnicity and gender, on public discourse violating the right to dignity¹⁶, 2 decisions on the criteria of Roma ethnicity and disability (one concerning the right to dignity¹⁷, and the other with a combination of criteria, being the selection criteria in the allocation of social housing in Decision no. 162/3.10.2016 of the Local Council of District 2 Bucharest)¹⁸, 1 decision that notes the ethnic criterion, but does not mention anything about sexual orientation, although the sanctioned speech includes reference to sexual orientation¹⁹ and a decision on a situation of harassment on the basis of physical appearance, sexual orientation assigned and name²⁰.

At least two decisions are unclear on the second criterion of discrimination, as it is not actually specified.

Another worrying aspect is that **a number of institutions and institutional representatives have been sanctioned for multiple discrimination**, having discriminatory practices or rules, discriminatory

¹³ By Emergency Ordinance No. 19/2013, the provisions on the amount of fines were amended and this amount is in force at the time of writing (September 2021). Thus, the content of the previous provisions was amended as follows: "Art. 26 (1) The offences referred to in Art. 2 para. (2), (4), (5) and (7), Art. 5-8, Art. 10, Art. 11 para. (1), (3) and (6), art. 12, 13, 14 and 15 shall be punished by a fine of 1,000 lei to 30,000 lei, if the discrimination concerns an individual, or by a fine of 2,000 lei to 100,000 lei, if the discrimination concerns a group of persons or a community." All the NCCD decisions analysed that include a fine are from the period 2013-2020.

¹⁴ NCCD Decision no. 872/2019

¹⁵ NCCD Decision no. 690/2020

¹⁶ NCCD Decision no. 484/2017

¹⁷ NCCD Decision no. 531/2015

¹⁸ NCCD Decision no. 119/2020

¹⁹ NCCD Decision no. 482/2019

²⁰ NCCD Decision no. 428/2019



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legislation, such as the Local Council of District 2, the Superior Council of Magistracy, the Ministry of Labour, Family and Equal Opportunities and the Ministry of Health, a mayor, a teacher.

From the information provided by the NCCD, only one decision (Decision No. 690/2020) out of the 25 has been challenged and is currently before the Bucharest Tribunal.

- *In Decision No. 484/2017, ethnicity and gender are linked to undesirable behaviour, unacceptable in a modern society. The complainant's statements create a distinction on the basis of ethnicity and gender which has the effect of restricting the equal exercise of the right to dignity. The Board finds that the act specifically targets the dignity of Roma women, thus the distinction is based on two criteria, amounting to multiple discrimination.*
- *In Decision No. 103/2012, by the criteria of ethnicity and socio-professional status, a Roma student suffers multiple discrimination. The Board points out that any natural or legal person is obliged to respect the principles of non-discrimination (Art. 1 para. (4) of O.G. no. 137/2000, republished). Consequently, any service, good or facility must be offered on a non-discriminatory basis.*
- *In Decision No 399/2016, the Board finds that the criteria element consists of age, disability and chronic non-contagious disease. Limiting a child's entitlement to disability on the basis of age constitutes discrimination. Therefore, the lack of individual assessment of children aged 0-18 has discriminatory effects in terms of social service and the right to health.*

Studies on intersectionality show that²¹:

- The use of discrimination criteria independently of each other can lead to the invisibility of a minority within a minority group - both in the public sphere and for that minority group, as they are at risk of discrimination even from the minority group;
- Victims of intersectional discrimination may experience more discrimination than is visible by approaching discrimination criteria independently of each other;
- Victims of intersectional discrimination can suffer from severe forms of discrimination that make them more vulnerable;
- Victims of intersectional discrimination are more exposed to structural inequalities in society, at risk of poverty, social exclusion and marginalisation.

1.3. Romania - case law of the European Court of Human Rights

Multiple discrimination, including intersectional discrimination, is a relatively recent concept which, although widely known nowadays, has not yet been fully introduced into law and legal practices of the Member States. Anti-discrimination legislation and related practice have traditionally taken a one-way perspective by identifying and dealing in an isolated manner with cases of discrimination.

²¹ <https://www.coe.int/en/web/gender-matters/intersectionality-and-multiple-discrimination>, cited in *Anti-discrimination Brochure: Ethnicity, sexual orientation and gender identity from an intersectional perspective*, CLR, 2020, available at <https://www.cri.ro/wp-content/uploads/2021/09/Brosura-INTERSECT-Miniabecedar.pdf>.



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The studies highlighted the lack of data and adequate legal mechanisms to address intersectional discrimination at European level. Research in some areas (such as on women living in disadvantaged communities) has shown that there are indeed many cases of intersectionality in discrimination, and that public policy and practice should take into account all the issues involved.

In analysing the case law database of the European Court of Human Rights, we did not find explicit references to cases of intersectional discrimination. However, there are a few instances where the Court has ruled that the rights of complainants have been violated, which we consider to be cases of intersectional discrimination. By way of example, we cite the case of *N.B v. Slovakia*, where the Court ruled that the forced sterilisation of a Roma woman violated Articles 3 (prohibition of torture) and 8 (right to respect for private and family life). It should be noted, however, that the term does not appear as such in the Court's judgments, which do not recognise this concept.

So far, the case law concerning Romania on the LGBTI+ criterion is rather brief compared to the European progress in this field. However, it is interesting to analyse what these decisions have been and how they affect or impact the field Roma ethnicity-sexual orientation-gender identity intersectionality.

With regard to gender identity, **decision X. and Y v. Romania**²² of 19th January 2021 is relevant as it establishes that there was a violation of Article 8 (right to respect for private life) of the two applicants. In fact, two transgender persons complained about the unreasonableness of the rejection of applications for recognition of their gender identity and for administrative corrections to be made on their birth certificates, on the grounds that, in order to be able to justify this claim, the applicants would have had to provide evidence of gender reassignment surgery. The Strasbourg Court held that the refusal of the national authorities to legally recognise the applicants' gender reassignment, in the absence of evidence of surgery, unduly infringed the applicants' right to respect for their private life. The Court noted that the national courts had placed the applicants, who did not wish to undergo gender reassignment surgery, in an impossible dilemma: either to undergo that surgery against their will - and waive the full exercise of their right to respect for their physical integrity - or to waive recognition of their sexual gender identity, which also falls within the right to respect for private life. The Court held that there had been a disturbance of the fair balance which Party States must maintain between the public interest and the interests of private individuals.

In the matter of sexual orientation, we note that, because of its accessory nature, a violation based on Article 14 can never be assessed in isolation but in conjunction with the other articles of the Convention. As far as Romania is concerned, such violations concerned Articles 2 - Right to life and 3 - Prohibition of torture. We will now analyse some relevant cases.

ACCEPT Association and others v. Romania²³ Case. The events in the case relate to the disruption of a screening of a film about LGBT rights by a group making homophobic slurs. On 1st June 2021, the Court unanimously found a violation of Article 14 (prohibition of discrimination) in conjunction with Article 11 (right to respect for private and family life), and by 5 votes in favour/2 against - a violation of Article

²² Applications No. 2145/16 and 20607/16. Decision available in French at [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-207364%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-207364%22]})

²³ n° 19237/16



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14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life). The Court's considerations state that although the police protected the cinema, it was nevertheless invaded by demonstrators, who allegedly carried signs suggesting membership of far-right groups and verbally abused the audience. Complaints filed by the Association and the other 5 applicants with the public prosecutor's office did not result in any charges. It was later determined in court that there was insufficient evidence to support beyond reasonable doubt that fascist symbols were displayed to the public. The Court finds that police failed to prevent homophobic attacks and to ensure that the event could take place, despite the large numbers of police present at the time. It also considers that reasonable steps were not taken to investigate the homophobic accusations and insults against the applicants. Thus, the applicants' right to privacy was violated by the lack of adequate protection of their dignity, and the lack of an effective investigation led to direct discrimination against the participants in the film screening on the basis of their sexual orientation. The decision is all the more important as it establishes an interference with the right of the complainants to participate in a peaceful assembly, and the authorities must do their utmost to ensure that in the future - and especially during this period known as Pride Month - such events are prevented or suppressed without incident.

The first decision analysed, **M.C. and C.A. v. Romania**²⁴ of 12th April 2016, refers to the events of June 2006, when the applicants participated in the annual LGBTI+ march in Bucharest. On the subway, while walking home, they were attacked by a group of six young men and a woman. The complainants felt that the investigation into their assault was inadequate, claiming that the authorities failed to take into account that the crimes committed against them were motivated by hatred against LGBTI+ people. The Court found a violation of Article 3 (prohibition of torture) in conjunction with Article 14 (prohibition of discrimination) of the Convention, considering that the investigation carried out was not carried out in an effective manner, was of excessive length, was marked by serious shortcomings on the part of the authorities and failed to take account of possible grounds for discrimination.

Also of interest is the forthcoming decision in the case of **Duță v. Romania**²⁵, in which **the applicant, detained in Jilava prison, accuses the national authorities of refusing to authorise conjugal visits by his same-sex partner**. The case alleged violation of his right to privacy (Article 8 of the Convention) and discrimination (Article 14) as opposed to heterosexual prisoners who benefit, without restrictions, from these conjugal visits, according to the national provisions contained in Law 254/2013²⁶.

We note that in none of the cases cited above was the ground of discrimination based on the existence of the grounds of belonging to a national ethnic group (Roma) and on the grounds of gender identity or sexual orientation (LGBTI+).

²⁴ no. 12060/12

²⁵ n° 8783/15

²⁶ "Art. 69: Right to private visits

(1) Convicted persons who meet all the following conditions are entitled to private visits:[...]

(2) A convicted person who is married may be granted private visits only with his or her spouse.

(3) To be granted intimate visits, the partners must have had a relationship similar to the relationship established between spouses prior to the date of admission to the prison."



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In order to ensure the exercise of the rights and freedoms recognized by the Convention without any discrimination, Article 14 lists a number of criteria, such as "sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth", but also specifies "or any other situation". Thus, in future, cases of intersectional or multiple discrimination will be able to be analysed on the basis of this phrase, in conjunction also with the provisions of Protocol No. 12 to the ECHR, which provides general protection against discrimination, as long as the right affected is protected under national law - protection operates even if the "status" violated is not mentioned in the provisions of the Convention.

Finally, it will be interesting to see how the cases concerning Romania that have been brought to the attention of the Court in Strasbourg and the legislation in this field will evolve in order to adapt to cases of discrimination, which take various forms. Emphasis will have to be placed on groups which are affected by multiple and intersectional discrimination. Recognising the importance of analysing the concept of intersectionality is essential, and this will lead to refining and broadening the understanding of discrimination and protecting as many people and communities as possible.



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Chapter II. On discrimination against Roma people

The project highlighted an extremely high level of lack of information about Roma, the history of Roma in Romania and the level of discrimination, abuse and violence to which Romanian Roma continue to be subjected to. Moreover, the history of Roma in Romania is a controversial subject for Romanian society.

II.1. A brief historical and cultural perspective

The history of the Roma in Romania remains unknown and unstudied in society. The project activities showed the acute need of different categories of participants (local authorities, general public), for information about terminology, Roma slavery, Roma Holocaust, Roma history in the communist and post-december period.

Many people living in Romania do not know that the term "gypsy" is a pejorative word and comes from the ancient Greek language, which means "untouchable". The correct self-identification term is „Roma”, which in Romani means „man”. In the Romanian countries, as long as the Roma were documented as slaves (14th-19th centuries, for almost 500 years), the status of "gypsy" accompanied that of "Ruman", i.e. peasant serf. These two social groups represented the lowest level of the feudal social hierarchy. Unlike the serf peasants, who were tied to the land, the gipsy slaves were tied to their masters as their property or chattels. Gypsies were donated to churches, given as dowries, sold.

Case study: "Ioana Rudăreasa and the disrobing process against the House of Brailoiu"²⁷

This case is relevant because the disenfranchisement of the Roma was a complex process that began in Wallachia in 1843 with the liberation of state slaves. The ruler Gheorghe Bibescu approved the Law for the Abolition of Gypsy State Slavery. After the promulgation of this law, many local judges began to receive applications for disenfranchisement from slaves. For example, Ioana Rudăreasa asked for her release from Casa Brăiloiu. Although she did not have a printed bill of disrobement, she asked for help to be represented in court against the aristocratic family she had belonged to for generations, who did not want to respect her and her family's proclaimed right to freedom. The trial lasted ten years, during which time Ioana Rudăreasa did not give up her right to fight for freedom. She succeeded in winning her freedom in court, which is why this Roma woman is an example of a person who has regained her citizenship rights through a continuous struggle.

The impact of the five centuries of Roma enslavement on the cultural identity developed in Romania was colossal. The effects can be seen in today's Roma self-talk. The identifying elements of ancient Roma culture are no longer known. Culturally and socially, the Roma were considered a parasitic "subculture", an excluded social group, not an ethnic identity, with cultural rights corresponding to a fully recognised and respected national minority. The Roma enslavement, the Roma Holocaust in

²⁷ More information on the case documented by Adrian-Nicolae Furtună, available at <https://ikultura.ro/filme-culturale-educationale/ioana-rudareasa/>.



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Romania, communism and democracy were difficult times for the Roma. Policies of identity denial, assimilation and inferiorisation have left deep traces of pain, as testified by survivors.²⁸

It is necessary to recover traditional elements and combine them with what modern Roma culture means. Roma public and private institutions are basic pillars of the development of a Romanian Roma citizen who knows his rights, but also his social and cultural responsibilities. The recovery of the historical past, the recognition of the contribution of Roma to the development of the Romanian state today, Roma literature, classical and modern Roma music, the Roma visual arts, Roma research in various fields of science, Roma technique and technology that adapts traditional Roma crafts and develops new products, Roma public policies are the most important steps towards an inclusive society, where elements of ethnic discrimination are eliminated.

II.2. Data on discrimination against Roma in Romania

This chapter aims to make a brief insight of what has happened in Romania regarding discrimination, but also acts of violence against Roma in the period 2019-2020 and, in particular, during the emergency or state of alert caused by the COVID-19 pandemic. It also seeks to present the work of public authorities, as well as an analysis of the resolution of petitions to the NCCD in which acts of discrimination based on ethnicity were complained.

During the period under review, an opinion poll on public perception of Roma in Romania²⁹ was identified. Without aligning ourselves with the conclusions and formulations used in the study, we will refer to some of the data collected through it, such as: "1 in 3 Romanians is tolerant towards Roma". For 20-30% of respondents, Roma are "dangerous", they have too many rights; they believe that the state can use violence against Roma and that discrimination and hate speech against Roma should not be punished. Roma rights are seen as enough or too many by more than 3 out of 4 Romanians. Nearly 2 out of 3 Romanians confirm the negative impact of the Roma on Romania's image, the dangerous nature of this ethnic group and the justification for the police to intervene forcefully. However, a negative perception of the Roma, a low level of trust, does not exclude the recognition of their discrimination. There is probably also a poor understanding of the term. Even the Roma themselves perceive their discrimination as a problem in only 50% of cases.

According to another survey, specifically for young people, the data is equally worrying, at the level of 2020³⁰: Lack of trust in the respect of human rights in Romania increases compared to 2018; less than half of the young people surveyed believe that universal rights are respected to some extent, while

²⁸ We offer, as a source, a non-exhaustive list of testimonies, available on the website of the National Centre for Roma Culture-Romano Kher, such as "Roma Slavery The Long Road to Freedom", the first docudrama on Roma Slavery in the Romanian Countries, available at <https://ikultura.ro/filme-culturale-educationale/sdavia-romilor-lungul-drum-cat-re-libertate/>, the documentary film "In the name of the state. The Roma Holocaust", available at <https://ikultura.ro/filme-culturale-educationale/film-documentar-in-numele-statului-holocaustul-romilor/>. Also, a testimonial with 2 Roma Holocaust survivors by CLR, available at <https://www.youtube.com/watch?v=3Opqi3bSqlI&t=58s>.

²⁹ Perceptions of Roma during the COVID 19 pandemic, Opinion Survey, Community Development Agency Foundation „Together” and Romanian Institute for Evaluation and Strategy, June 2020, Available at https://ires.ro/uploads/articole/ires_agentia-impreuna_perceptia-romilor-in-timpul-pandemiei-covid-19_2020.pdf

³⁰ According to the Ministry of Youth and Sport, Outlook 2020 - Youth Situation and Expectations, Benchmarking 2018-2020, Final Report, available at http://mts.ro/wp-content/uploads/2020/12/IRES_DIAGNOZA-2020- raport-final-MTS.pdf



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more than one in three young people believe they are respected to a small extent. Roma remain among the most rejected communities, and verbal violence, at school or in the workplace, mainly on the grounds of ethnicity/nationality, illness or disability is the most frequently reported by young people. One of the findings of the survey is that discrimination is an issue that affects the socialisation of young people. As well as young people feeling discriminated against themselves, there are also elements of a culture of rejecting diversity - primarily ethnic diversity and sexual diversity.

NCCD activity in relation to reported cases of discrimination based on ethnicity in the period 2019 - 2020

"When acts of discrimination are committed by influential and financially powerful people, these fines mean nothing to them and do not deter them from committing further acts of discrimination in the future".³¹

In terms of complaints to the NCCD regarding discrimination, it is interesting to note that in 2019 and 2020, of the **43³² Council decisions** sanctioning acts of discrimination against Roma, 38 decisions concerned situations containing elements of hate speech - **discriminatory and offensive speech**. It is possible that the other 5 situations also contained such elements, but they were not included in the referrals to the NCCD or retained by the Council. Given that the NCCD decisions reflect the petitions submitted (often by individuals), we cannot draw general, quantitative conclusions about hate speech and its relationship to other forms of discrimination. However, we can observe that the perpetrators of discrimination in these 38 decisions are more than a third private actors (e.g. security guard, shop owner), but also in a similar percentage representatives of public institutions (mayors, councillors and members of political parties). Last but not least, it is important to note that 5 of the NCCD decisions finding discrimination refer to journalists and non-political public figures.

There is an increase in tensions in Romanian society in 2020, compared to the previous year, in terms of hate speech and discrimination, which has also intensified amidst dissatisfaction with the restrictions and living conditions caused by the COVID-19 pandemic.

An important trend over the period studied is the increasing use of social media platforms as a means of expressing and disseminating hate speech, more than 10 of the decisions involved content published on Facebook. Often, these posts triggered a wave of hatred and even incitement to violence against Roma by third parties. Out of all the decisions based on Roma ethnicity, 21 of them referred to the limits of freedom of expression.

In Decision No. 61/2020, in which the party complained against is a representative of a public institution, the Governing Board finds that the statements made by the party complained against are not such as to contribute to a constructive public debate leading to progress but spread, incite, promote or justify hatred, discrimination or

³¹ Interview with Dan Doghi - former Senior Adviser of Roma and Sinti Issues - OSCE, conducted in May this year for this study.

³² The decisions included in this analysis are exclusively those indicated by the NCCD as the decisions issued in the period 2019-2020, which found discrimination on the basis of ethnicity, by a address no. 2174/22.03.2021 in response to the request for information no. 60/18.02.2021, respectively the return for clarifications and additions no. 97/17.03.2021 submitted by the Centre for Legal Resources.



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hostility towards a particular group. From the perspective of analysing the limits of freedom of expression, the role, the position of the author of the statement under scrutiny is decisive. The party complained of is a public person, local elected official, mayor, politician. As a result of this quality, the party complained against is an opinion-former and through his behaviour influences the attitude of the community he is responsible for. A public person must show good faith in dealing with matters of public interest.

In 7 of the decisions (16%) **the discriminatory behaviour was directed against children**, and in 5 of these judgments the discriminatory acts took place in **a school context**, manifested by **a teacher in 4 cases** or by the school institution in one case (school segregation). All these situations where children are victims of discrimination are extremely serious, given the high vulnerability of a child. It is also extremely serious when discrimination takes place in the school environment, which is an environment that should protect and ensure a child's development.

Decision No. 748/2019 concerning discriminatory behaviour against a student by a teacher. Thus, given that the party complained against is a teacher with duties in training and education, in the supreme interest of the child, as well as in the formation of the generations of a society, such offensive, humiliating and dignity-damaging conduct is particularly serious.

In Decision No. 536/2019, the Governing Board considers it unacceptable to appear before primary school pupils as a teacher and express your own preconceived ideas about a category of people.

There were also 2 decisions related to sports clubs, one related to harassment of a Roma woman by colleagues at work and one related to denying Roma access to a private playground in a shopping mall by posting a notice on the social networking site Facebook.

Decision No. 11/2019: posting a press release with discriminatory and instigating character against a group of tenants of a building; the respondent in his capacity as mayor published a press release on 21.02.2018, with the aim of instigating hatred and discrimination against a group of tenants of Focșani.

Decision No. 148/2019: body check on the complainant's children at the exit of the shop, based on the criterion of belonging to the Roma ethnic group.

Decision No. 429/2019: repeated chanting of "gypsies, gypsies" at the C.S. Dinamo București - A.H.C. Dobrogea Sud football match on 13.12.2018, failure to take any action following the incident; as a result, repeated chants "gypsies, gypsies" constitute discrimination and violate the right to dignity, being a discriminatory behaviour based on the criterion of ethnicity which aimed to create an intimidating, hostile, humiliating environment.

*Decision No. 618/2019: racist and irreverent statements against students; the party complained against - teacher states " (...) I believe that a teacher (anyone) in the world is allowed to hate G*****s or/and other minorities not to put up with them and not to work with them."*

Decision No. 89/2020: segregation of Roma citizens by the dividing wall built in 2011 in Baia Mare municipality, a situation that started with the raising of the dividing wall on Horea Street and continues to this day.



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Decision No. 129/2020: xenophobic-nationalist chants by CSA Steaua București supporters on the occasion of the football match on 14.04.2018; on which occasion the banner "Free from slavery, you moved next to the regie" was displayed.

Decision No. 504/2020: segregation of Roma pupils at Dăgâța School; at 5th grade level.

*Decision No. 690/2020: discrimination against a pupil during the school year by using threats and the names "heathen", "g***y" by the teacher of the college.*

Sanctions

As regards sanctions, for 2019, in 6 of the 19 cases (1 case out of 3) where discrimination was found, the sanction of a warning was applied. The situation of the others is: 10 cases where the sanction of a fine was applied and 3 mixed, warning with fine/fines. The 13 fines ranged from 1,000 to 5,000 RON.

For 2020 and the 24 related decisions, in 12 cases the sanction of a warning was applied (50% of cases), and in the other 12 the sanction of a fine (in two of them two fines were applied). The 14 fines range from 1,000 to 10,000 RON. There is a significant increase in the amount of fines in 2020 compared to 2019. The highest fine levied during this period in the case of NCCD decisions finding discrimination on the grounds of Roma ethnicity was 10,000 RON and was imposed in two cases. The first was awarded to the mayor of a locality who claimed that Roma families had children in order to receive social benefits, denigrated the Roma community for teenage pregnancies and suggested abusive measures such as a mandatory public inquiry of all couples intending to conceive³³. The second was against the vice-president of a political party who published a Facebook post claiming that the old city centre should be 'cleansed' of Roma residents³⁴.

For both years, however, **the amount of the fines is small** and cannot be seen as a deterrent for discriminators to continue committing such acts. Also, the fact that very many decisions of the NCCD's Board of Directors, in which victims of discrimination were Roma - in this case **42%** for the period 2019-2020, have only resulted in **warnings**, may lead other Roma who have suffered from acts of discrimination to stop complaining to the NCCD.

In only 5 of the 43 cases did the NCCD have self-referrals, one in 2019 and four in 2020 - including the two above, with a fine of 10,000 RON. We believe that it would have been and is necessary for the NCCD to self-investigate in more cases, given the high rates of discrimination in Romania.

With regard to **the period** from the date of filing a complaint to the date of issuing the decision, i.e. the date of drafting the decision, it is noted that it is **very long**, reaching up to the longest, 2 years and 2 months (petition no. 3110 of 09.06.2017 for which Decision no. 482 of 12.08.2019 was issued). This duration can only be a deterrent for Roma who might file petitions on discrimination.

³³ NCCD Decision No. 61/2020

³⁴ NCCD Decision No. 90/2020



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For the period under review there was also an increase in the number of petitions based on ethnicity submitted to the Council during 2020, from 48 in 2019 to 92 petitions, but this is still a small number in the context of the data on the extremely high level of discrimination against Roma in Romania³⁵.

Regarding the approach to appeals to the decisions of the NCCD, there were a significant number of 16 appeals (9 to the 2019 decisions and 7 to the 2020 decisions), i.e. **37% of the 43 decisions on the criterion of Roma ethnicity were appealed**. According to the data provided by the NCCD, in May 2021, for 7 appeals the action was rejected at the first instance court; 2 of them are pending before the High Court of Cassation and Justice, and 1 is a final judgment by not filing a second appeal; 2 appeals are pending before the Bucharest Court of Appeal; in 5 appeals the action was admitted at the first instance court; 4 of them are pending before the High Court of Cassation and Justice; in 2 appeals the action was partially admitted; 1 of them is a final judgment by not filing a second appeal.

II.3. Acts of violence by police forces against Roma

In many European countries, Roma have been subject to profiling and criminalisation on ethnic/racial grounds. "Ethnic profiling" is defined as the use by police officers, during search and control, surveillance or investigation operations, of characteristics of race, ethnicity, religion or national origin, without any objective and reasonable justification, instead of actual behaviour, as a basis for making decisions about who has been or might be involved in criminal activity.³⁶

Roma are not only subject to disproportionate use of stop and search procedures, they are also subject to excessive use of force during these procedures.³⁷

During the state of emergency, several abuses committed by police bodies against Roma people were observed in several localities in the country. The pretext was, most of the times, the non-compliance with the rules established by the Government Emergency Ordinance no. 34/26.03.2020 for the modification and completion of the Government Emergency Ordinance no. 1/1999 on the regime of the state of siege and the regime of the state of emergency, namely the rules concerning the application and observance of social distancing and the wearing of the protective mask.

In the documentation carried out by the Civic Union of Youth Roma from Romania (UCTRR), it could be observed that the intervention of the forces of law and order was always disproportionate both in terms of the number of police/gendarmerie workers who intervened, but especially in terms of the violence of the intervention.

³⁵ See NCCD annual activity reports at <https://www.cncd.ro/rapoarte/>

³⁶ See Institute for an Open Society, Police approach to ethnic profiling. Report on the Effective Police Stop and Search Strategies Project, New York 2009, p. 9 cited in OSCE Handbook "Police, Roma and Sinti: Good Practices in Building Trust and Understanding", available at <https://www.osce.org/files/f/documents/e/5/80790.pdf> p. 24

³⁷ According to OSCE High Commissioner on National Minorities, *Report on the Situation of Roma and Sinti in the OSCE Area* [OSCE High Commissioner on National Minorities, *Report on the Situation of Roma and Sinti in the OSCE Area*] (op. cit. note 8), <https://www.osce.org/files/f/documents/7/f/32350.pdf> p. 44.



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Selection of cases documented in the project

Police intervention in Osiris Street, Rahova neighbourhood, Bucharest

Under the pretext of wanting to identify some people who had made a "scandal" in the neighbourhood, several police and gendarmerie teams entered T.V.'s home, where several people, including women and children, were staying, without warning or prevention. During the intervention of the MAI representatives, 3 people were beaten and hit, and as a result of the blows, T.V. suffered a broken hand.

The "Spartacus" case

On 19th April 2020, the police intervened at a building in the Rahova neighbourhood of Bucharest, where an Easter party for Orthodox believers was taking place. The intervention was a forceful one, with a large number of police and gendarmes participating in the action and using tear gas. These primarily affected the children in the courtyard, which led to a conflict between those present and the police. As a result, 37 people, including children³⁸, were detained, 5 of whom were subsequently arrested. Mrs I.M. was one of those detained, together with her minor son. She reported that she and others were beaten, sworn at and humiliated when she arrived at the 19th Police Station³⁹. Intimidation continued in the following days with the use of an impressive number of police patrolling the neighbourhood, including a helicopter belonging to the MAI.

Police intervention in the Roma community in Bolintin Vale, Giurgiu county

On 18.04.2020, in a neighbourhood where Roma citizens live, in the town of Bolintin Vale, Giurgiu county, there was an intervention of the police forces made up of police officers and gendarmes from the special troops. They entered several buildings in the neighbourhood, using physical violence against several Roma people, who had no intention of attacking the police. In a video broadcast in the media, a man who was handcuffed and lying face down on the ground was beaten with a baton by the Bolintin Vale police chief.⁴⁰

II.4. State authorities and legislation to prevent and combat discrimination

Having contacted some central public authorities in Romania on the basis of Law no. 544/2001 on free access to information of public interest, regarding initiatives and/or ongoing programs or actions specifically related to the respect, promotion and affirmation of the rights of Roma people, it is observed that within the institutions there are specific programs and actions in general and specialized training on how to deal with cases of racist and homo/transphobic violence, an analysis of professional practices, legislation and operational procedures in order to form professional attitudes and behaviors in dealing with citizens when training police officers, so that rights and interests are respected and promoted according to legal norms in the staff of the Ministry of Internal Affairs. The following topics

³⁸ <https://www.scena9.ro/article/scandal-rahova-spartacus-abuzuri-politie->

³⁹ Ibidem

⁴⁰ <https://www.digi24.ro/stiri/actualitate/evenimente/video-barbat-culcat-la-pamant-batut-crunt-de-seful-politiei-din-bolintin-vale-a-fost-deschis-dosar-penal-1296657>



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are also included in the training of police officers and sub-officers: the ethnical and confessional structure of Romania; cultural specificity, causes of internal or intercultural conflicts, discriminatory attitudes and behaviours motivated by hatred.⁴¹

As far as the interviewees are concerned, the authorities tell us that Romania has the most advanced legislation in Europe in terms of combating discrimination (if we refer to the OG no. 137/2000) with some notable exceptions regarding certain legal provisions such as the Penal Code.

„At the same time, we must point out that during the pandemic, the Romanian Government, especially the Ministry of the Interior and the Romanian Police, were the main abusers of the Roma, whom they beat, tortured, terrorised and fined abusively.”⁴²

Costel Bercuş also points out that the phenomenon of anti-discrimination must be kept under control in terms of legislative instruments. They must be tougher and firmer.⁴³

The law says that sanctions must be proportionate to the seriousness of the acts committed, and discrimination is a serious violation of human rights that produces serious effects on the person or group.⁴⁴

Law no. 2 of January 4th, 2021 on certain measures to prevent and combat antigypsyism

On 4th January 2021, the Romanian Parliament adopted **Law no. 2/2021 on some measures to prevent and combat antigypsyism**, by which is meant both the perception of Roma expressed as hatred against them and verbal or physical manifestations motivated by hatred against Roma, against institutions/NGOs, but also against Roma community leaders.

"The term antigypsyism is a deeply pejorative one in itself, and the fact that it is used to combat racism in no way changes its character. Legislation to combat anti-Roma racism has not been adequately debated and has significant gaps.”⁴⁵

Considering the response of the interviewees, who did not agree with the use of the term "antigypsyism", but with the change of the term to "anti-Roma" or "romophobia", it can be seen from reading this law that the term that Roma civil society representatives and activists do not agree with is used several times, also reflecting the lack of consultation with them in the drafting of the law. Thus, Roma activists say that it is a necessary law, but that it cannot be enforceable. Hatred towards Roma is on the rise, both nationally and internationally, and this can be seen in the rise to power of extremist parties that gain political capital with anti-Roma discourse (in Romania, Hungary, Austria), but more recently, this hate speech and discrimination is also reaching alarming levels among other groups, such

⁴¹ According to the reply of the Ministry of Internal Affairs - Information and Public Relations Directorate no. 1731122/24.06.2021, following the request of the CLR with exit no. 188/11.06.2021.

⁴² Interview Marian Mandache - former Executive Director Romani CRISS

⁴³ Interview Costel Bercuş - president of the Centre for Education and Human Rights Association

⁴⁴ Interview Dan Pavel Doghi - former Senior Adviser for Roma and Sinti Issues - OSCE/ODIHR

⁴⁵ Interview Marian Mandache - former Executive Director Romani CRISS



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as immigrants⁴⁶. Also, the president of the Civic Union of Young Roma from Romania, Norbert Iuonaş, mentions the lack of debate on the law and the use of the incorrect term in the text of the law.

"... Roma civil society was not consulted on the content of the law. Of course, it is a necessary law for the Roma community, but it needs to be amended and improved so that it truly reflects a law to combat racism and discrimination against Roma in Romania..."

*The use of the term 'antigypsyism' is deeply flawed, as it legitimises the use of the term 'gypsy' and nullifies the decades-long struggle of Roma activists."*⁴⁷

National strategy for preventing and combating anti-Semitism, xenophobia, radicalisation and hate speech

On 13th May 2021, the action plan of *the National Strategy for Preventing and Combating Anti-Semitism, Xenophobia, Radicalisation and Hate Speech for the period 2021-2023*⁴⁸ was approved and published in the Official Gazette with no. 517/19.05.2021.

Under this plan, the National Agency for Roma will develop a uniform methodology for identifying and reporting incidents associated with xenophobia, anti-Roma racism, radicalisation and hate speech targeting the Roma community in Romania, based on the reports received from the public, media and civil society, including a breakdown of these incidents by county and locality.⁴⁹

In the last decade, for the realisation of Roma strategies and plans, but also reports made to the European Commission show insufficient communication between Roma civil society and local and central public institutions which hinders actions against hate speech and anti-Semitism.⁵⁰

Given the current situation, state and European institutions should have stronger mechanisms to monitor and implement national and international anti-discrimination legislation against asylum seekers, foreigners, Muslims, etc. Although there are these European institutions that monitor respect for human rights at European level (FRA, ECRI), they have limited mandates as observers.⁵¹

⁴⁶ Interview Costel Bercus - President of the Centre for Education and Human Rights Association

⁴⁷ <https://stiri.litoral.ro/legea-antitiganism-promulgata/?fbclid=IwAR1vZFYMVyJE2a9IJ1D9PRGUYYKYZ5whHiR9e0OKxdEpwfvCTuN8w9fXM>

⁴⁸ DECISION No. 539 of 13th May 2021 on the approval of *the National Strategy for preventing and combating anti-Semitism, xenophobia, radicalisation and hate speech for the period 2021-2023* available at <http://legislatie.just.ro/Public/DetaliuDocumentAfis/242371>.

⁴⁹ <http://legislatie.just.ro/Public/DetaliuDocumentAfis/242373>

⁵⁰ Interview Aurel Pandelea – Roma Activist

⁵¹ Interview Costel Bercus - President of the Centre for Education and Human Rights Association



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II.5. The media and the Roma during the state of alert

As presented above, with the outbreak of the COVID-19 pandemic, we have seen an increase in hate speech⁵² against the Roma community: the Roma have been portrayed as the main culprits for the spread of the virus and those who do not want to follow the rules imposed by the authorities.⁵³ A number of reports, both on mainstream TV and online, were strongly racist, linking the uncontrolled spread of the virus to Roma.⁵⁴

The fact that the Roma were considered the scapegoats for the spread of the COVID-19 virus created a state of hatred towards the whole community, and discriminatory reactions and racist messages towards the Roma did not cease to appear, which were promoted both by prime-time TV and by various public figures (e.g.. Former President Traian Băsescu⁵⁵, MP Nicolae Bacalbaşa⁵⁶, political scientist Vladimir Tismăneanu⁵⁷)⁵⁸.

A particular situation was that of Roma families in the locality of Țândărei, Ialomița county, the first locality in Romania to enter a total quarantine. TV news broadcasts on the scene showed the impressive deployment of special forces from both the Ministry of the Interior and the Ministry of National Defence.⁵⁹ Local authorities and representatives of the Prefecture Institution presented the Roma who have returned from abroad as the main cause of the spread of the virus in the community.⁶⁰

⁵² Hate speech is used as an umbrella term for a wide range of hostile, demeaning and violent communication. According to the United Nations (UN), **hate speech** is: "**any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor**" See UN, United Nations Strategy and Plan of Action against Hate Speech, May 2019, available in English only at:

<https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>

⁵³ <http://www.crj.ro/minoritatea-roma-tap-is-pasitor-in-vremea-pandemiei/>

⁵⁴ https://adevarul.ro/locale/pitesti/nunta-vremea-covid-19-politia-intervenit-intr-o-comunitate-romi-argh-es-opri-petrecerea-1_5e735f0d5163ec42710923c5/index.html

<https://stirimonedene.fanatik.ro/nunta-cu-pestre-trei-sute-de-invitati-in-plina-epidemie-de-coronavirus-majoritatea-se-a-flau-in-izolare-sau-carantina-petrecerea-a-fost-interrupta-de-mascati-video-18495740>

⁵⁵ <https://www.mediafax.ro/justitie/traian-basescu-a-fost-amendat-de-cnccd-cu-6-000-de-lei-pentru-declaratiile-sale-despre-romi-19157887>

⁵⁶ <https://magnanews.ro/2020/04/rasism-nicolae-bacalbaşa-ii-face-pe-tigani-ciori-vinovati-de-infectarea-romanilor-cu-covid-19/>

⁵⁷ <https://www.hotnews.ro/stiri-esential-23978748-vladimir-tismaneanu-amendat-cnccd-pentru-postarea-ciorile-din-tandarei.htm>

⁵⁸ In all three cases, the NCCD sanctioned the discriminatory acts with fines.

⁵⁹ <https://www.aktual24.ro/armata-intervine-si-in-tandarei-noul-focar-de-covid-19-al-romaniei-800-de-romi-sunt-tinuti-cu-fora-in-case/>

<https://www.g4media.ro/focar-de-infectie-cu-coronavirus-in-tandarei-ialomita-unde-800-de-localnici-intorsi-din-vestul-europei-sunt-paziti-de-armata-sa-nu-iasa-din-casa-orasul-e-celebru-pentru-danurile-de-interlopi-care.html>

⁶⁰ <https://www.europafm.ro/ialomita-prefectul-propune-carantina-totala-la-tandarei/>



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In the period 2019-2020, **the National Audiovisual Council (NAC)** imposed **18 sanctions** for violations of the provisions of the audiovisual legislation on incitement to hatred, discrimination, xenophobia and defamation.⁶¹

NAC is an administrative body that can sanction the media for defamatory content and content that instigates xenophobic and racial hatred, in accordance with the Broadcasting Law (Law no. 504/2002) and the Broadcasting Code, adopted by Decision No. 220 of 24th February 2011. Articles 47 (1), (2) and (3) of the Code prohibit the broadcasting of content inciting hatred, discrimination and crimes against humanity, racist content and content that denigrates a group or community on the basis of gender, race, sexual orientation, ethnicity, among many others.

Following our analysis, we identified **5 NAC decisions in which media actors were sanctioned for broadcasting content that incited hatred, discrimination and/or defamation of Roma.**⁶²

The decisions regarding Roma covered content that denigrated the community in the context of emergency measures during the COVID-19 pandemic and spread stereotypes associating Roma with crime amid law enforcement interventions in several Roma communities.

As an example, during a broadcast on Romania TV, a topic of discussion was the testing for COVID-19 of a Roma community in the west of the country. One of the guests, a well-known political personality, Petre Roman, commented "Look... I want to express... to state what is my opinion and my conviction and that is to be aware that because of these gypsy gangs in the West there is a bad, bad image of Romania, there is a bad perception of Romania... not only because of them, but to a large extent because of these gypsy gangs who rob, steal, commit acts of violence (...) you know very well the importance of image and perception..." (see Council Decision no. 339/2020)⁶³.

*"The media has always linked crime to people's ethnicity, showing lavish parties of Roma families creating the impression that all Roma are rich, which induces a sense of hatred from the majority."*⁶⁴

It should be noted that NCCD decisions have sanctioned various TV channels (Romania TV, Realitatea Plus, Digi TV), demonstrating that this type of discourse is not limited to a single media channel. A regrettable aspect is that hate speech was not only promoted by certain guests, but sometimes actively embraced even by TV presenters.⁶⁵

⁶¹ This information was provided to us by the NAC by address no. 1809RF/ 04.03.2021, in response to information request no. 61/ 18.02.20121 from the Centre for Legal Resources.

⁶² ACTEDO position paper and recommendations to combat hate speech against Roma and LGBT+ people in Romania; authors Iulia Pascu, Ioana Tușă, Alexandra Columban <http://actedo.org/wp-content/uploads/2021/08/Hate-Speech-against-Roma-and-LGBT-2019-2020-ACTEDOs-Policy-paper.pdf> p. 13

⁶³ https://www.cna.ro/IMG/pdf/Dec339_som_Rom_TVsom-64_1b_65c_si_47-3_Cod.pdf (accessed on 12th May 2021).

⁶⁴ Interview with Aurel Pandelea - Roma activist, conducted in May 2021

⁶⁵ Idem 16



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II.6. Conclusions and recommendations

- Institutional social exclusion is a major cause of Roma discrimination, by maintaining social gaps, and the effects are manifested at the social level through the perpetuation of stereotypes fuelled by poverty and marginalization; The lack of public policies to combat poverty in general, leads to keeping the poor population outside society, and the community most affected by poverty is the Roma community;
- As for racism and its effects in Romania, this is a non-existent topic in the public arena. One cannot talk about inclusion and poverty reduction as long as one does not talk about the existence of racism in Romania, poverty being an effect of racism;
- Anti-Roma racism is generated and perpetuated by the education that Roma children receive at home and in school, by the deeply flawed application of anti-discrimination legislation by the Romanian state authorities and by the racist approach of the media;

Some recommendations:

There is a need to change both anti-discrimination legislation with tougher sanctions and the procedures for detecting and sanctioning discrimination. There is also a need for a stronger publicity campaign in the media and on social media on cases where sanctions have been applied in cases of discrimination, as well as in cases of violation of the Broadcasting Law no. 504/2002 regarding hate speech;

Identifying social trends in discrimination and research is needed to see what these trends are;

Increase the role of the National Copuncil for Combating Discrimination and the National Audiovisual Council in preventing acts of discrimination and hate speech; the NCCD should be more active and vocal through media and online campaigns, it should also take a proactive role in educating society in the fight against discrimination; also, the appointment of members of the Board of Directors of both the National Council for Combating Discrimination and the National Audiovisual Council should be based solely on their experience and expertise, not on political criteria;

The Romanian state must provide financial support through various mechanisms to Roma organisations for access to justice for people without financial resources;

A structured dialogue between Roma organisations and state authorities is needed.



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Chapter III. Discrimination against LGBTI+ Roma

III.1. Context

To date, there is no study covering the topic of Roma LGBTI+ realities. While there has been ample writing and public debate on Roma inclusion, and some on LGBTI+ persons' specific needs and vulnerabilities, Roma LGBTI+ remains largely uncharted territory. We hope this study will mark the beginning of a much needed trend in research, project design and policy making, so that the legislation and state mechanisms may begin to serve Roma LGBTI+ Romanian citizens as much as they do non-Roma cis-hetero Romanians.

In January 2020, the Advisory Committee on Equal Opportunities for Women and Men issued an "Opinion on Intersectionality in Gender Equality Laws, Policies and Practices" informing EU member states of a need for intersectional approaches to gender equality. We quote a black lesbian woman:

„[...] developing gender equality policies with an intersectional approach is likely to lead to more targeted and efficient measures, taking into consideration the different situations and needs of marginalised disadvantaged groups in a holistic way. “There is no such thing as a single-issue struggle as we don’t live single issue lives.”

Audre Lorde, feminist civil rights activist.

The lack of an intersectional approach, i.e. maintaining structural barriers, also comes at a huge economic cost to society. A study by the European Parliament estimates that the quantifiable loss in economic terms, (i.e. in terms of GDP loss and loss in tax revenue) is as high as €224–305 billion GDP and lost tax revenue of €88-110 billion in relation to ineffective national implementation of the Racial Equality and the Employment Equality Directives⁶⁶.

Finally, extremely relevant in the current context is that, in January 2021, EHRC issued a decision penalizing Romania for infringing two transgender men's right to intimacy and family⁶⁷. Also in December 2020, Romania's Constitutional Court declared unconstitutional a bill that had been passed by the Chamber of Deputies in summer 2020 and then caught on its way to the Senate by the Romanian President. This bill would have rendered illegal any educational or other programs, public or private, not based on a binary heteronormative approach.

These two decisions from high courts of justice, one European, one national, give us in the Roma LGBTI+ community, the hope that the Romanian authorities will finally meet all of their obligations under the European Convention on Human Rights⁶⁸ and the Istanbul Convention⁶⁹, and finally comply with the obligation to redesign judicial, medical and educational mechanisms and practices to grant

⁶⁶ See Advisory Committee on Equal Opportunities for Women and Men, Opinion on Intersectionality in Gender Equality Laws, Policies and Practices, 2020, available only in English language at https://ec.europa.eu/info/sites/default/files/aid_development_cooperation_fundamental_rights/opinion_intersectionality_2020_en_0.pdf p. 3.

⁶⁷ See footnote no. 22

⁶⁸ Available at https://www.echr.coe.int/documents/convention_eng.pdf

⁶⁹ Available at <https://rm.coe.int/168008482e>



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Romanian Roma and Romanian Roma LGBTI+ citizens all their rights and protections, free from discrimination, harassment and racist, homophobic and transphobic abuse.

This chapter deals with 3 sections:

- LGBTI+ and Roma LGBTI+ realities
- Desk research observations
- Recommendations for public authorities and community organizations

III.2. LGBTI+ and Roma LGBTI+ realities in Romania

An intersectional approach to discrimination is informed by an awareness of the fact that identities are multifaceted, and these facets can simultaneously be discrimination factors. Before presenting our findings and observations, we will lay out some core concepts with which we operated during the trainings, webinars and other project activities.

Gender: When discussing gender equality, men and women are still the only gender identities taken into consideration by the majority of the actors involved in combating gender inequality, whether they be state institutions, the law or nonprofit organizations. This is to the detriment of all other gender identities, from transgender women, transgender men or nonbinary persons. Gender as an identity element and discrimination factor has a substantial, often very negative, impact on the lives of gender-diverse Romanians, but their experiences are simply overlooked. Gender education is essential and it is important that it starts with and by the state agencies and other stakeholders involved in combating gender inequity and discrimination.

Gender equality is about all genders:

we would like to point out that the Romanian gender equity body (ANES), as well as the overwhelming majority of equality programs, organizations, professionals and activists aiming at equal opportunities in education, employment, access to health etc., all consistently overlook that essential fact that gender equality is about people of all genders, not just cis-women and cis-men.⁷⁰

We find this to be a matter of great concern, as it means that the needs and rights of Romanians with gender identities under the trans umbrella (FTM⁷¹, MTF⁷², nonbinary, agender⁷³ and so on) are systematically ignored and violated. Gender diversity is often mis-used as a term including men, women and sexual minorities, thus perpetuating a grave confusion of gender and sex. Gender diversity means people with different genders, not different orientations. The Romanian national equity body has, to date, initiated no programs or campaigns for the mere acknowledgement of gender diversity. As for bridging the equity gap for gender-diverse Romanians, ANES is not expected to acknowledge the elephant in the room any time soon. Any work in this regard is still with a very small number of organizations in Romania (MozaiQ, Accept, Equivox, Identity

⁷⁰ Cisgender persons are men and women who identify with the gender they were assigned at birth, usually by the medical professionals assisting with the delivery.

⁷¹ Men who were assigned the feminine sex at birth, were raised as girls, and lived as 'women' in society, up to a certain time in their lives.

⁷² Women who were assigned the masculine sex at birth, were raised as boys, and lived as 'men' in society, up to a certain time in their lives.

⁷³ Nonbinary persons do not define their gender in relation to the gender binary (men-women), but outside it. Agender persons do not think of themselves as having a gender.



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Education, Rise Out, Pride Romania), none of them funded by the Romanian state or Romanian donors. Feminist organizations and initiative rarely integrate gender-diversity awareness in their programs, their discourse revolving still around patriarchy as the root cause for the oppression of women etc. While this is of course a very important matter, as long as we do not address gender equity for all genders, patriarchy will prevail.

In December 2020 the Constitutional Court of Romania ruled that the modification to Law 1/2011 (National Education Law), proposed in July of the same year and actually passed in one of the Parliament chambers, was unconstitutional. This modification would have rendered any mention of gender identity illegal in all educational institutions, from kindergartens to university. Essentially, this would have made (talking about) being transgender and claiming any transgender rights, illegal. The ruling of the highest court in Romania is an extremely positive landmark, which hopefully marks the beginning of the authorities and all gender equity organizations finally addressing gender diversity correctly and ethically.

As a co-signatory of the European Convention on Human Rights and the Istanbul Convention, to mention only two of the key frames in this discussion, Romania must finally begin to align its laws, agencies and practices with all the principles it vouched to uphold, and this means addressing all genders equally when addressing gender inequalities and inequities.

Orientation: There are 3 key aspects in the discussion on orientation, and only one of them is commonly cited, namely the sexual one. But besides sexual orientation, a person also has a certain romantic orientation, and from this stems also how one projects or desires to be able to have a family. Lesbian, gay, bisexual, asexual or aromantic persons in Romania do not benefit from the same safety as heterosexual Romanians in public spaces when with a partner. Also, growing up in a homophobic society, school system and even family means that they often have to camouflage their true self, which leads to school failure, less qualifications and professional opportunities, as well as alienation and health problems.

Intersectionality: An intersectional approach to discrimination is informed by an awareness of the fact that identities are multifaceted, and these facets can simultaneously be discrimination factors. Ethnicity, gender identity, socio-economic status, formal education, romantic and/or sexual orientation, family status (married, divorced, institutionalized minor), physical ableness, mental health, religion, residence (ID papers, migrant status) - all of these can be essential to a person's identity, or perceived identity, as well as factors leading to discrimination.

'Stereotypes reside in the brain, while prejudice comes from the stomach.'

A stereotype is a cognitive instrument, an information processing tool engraved on our cortex through repetition - not repetition of a certain experience, but rather of a certain image/idea/cliche reiterated by most people in our circle, as well as by the media, teachers, law enforcement actions etc. Though a stereotype is a generalization most often not based on direct experience, it is still something the person is willing to discuss/debate when challenged etc. In the case of prejudice, the person does not think but feels: disgust, irrational fear, anger OR ecstasy, frenetic excitement etc. The reaction is instant and completely irrational. Discussing and debating their prejudice will be perceived as an attack, and may only consolidate the bias.



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Stereotypes embraced unquestioningly can foster prejudice. Both can be positive or negative. Both can be the root cause of discrimination. Through adequate education, social norms and institutional practices, people can learn to self-examine and self-monitor responses and behaviours to people in categories generally perceived as inferior, 'dirty' OR superior, 'holy' etc.

Survey findings

In March-April 2021 a survey was conducted regarding experiences of discrimination, as victims or witnesses. 215 persons responded, of whom 62% identified as LGBTI+. Importantly, 158 of the 215 respondents (**73.5%**) identified themselves as either Roma or LGBTI+ or both; a total of **14 respondents** were **LGBTI+ Roma**.

Of the total number of participants, 172 people answered „yes” to the question whether they had ever been discriminated against. Our observations below will focus mainly on the experiences of those who reported experiencing discrimination, without breaking them down by ethnicity and/or belonging to the LGBTI+ community that respondents reported. The survey was not designed for statistical evidence (it is obviously statistically unrepresentative), but to complement the needs analysis of Roma (and) LGBTI+ people beyond the direct project participants, thus completing the qualitative research.

Some findings that are extremely alarming and which impose with necessity that funding and program design integrate an awareness of these survey results:

- Fifty-one (51) of the 173 respondents who answered the question "On what basis was discrimination applied" indicated only one criterion as a reason for discrimination, namely sexual orientation (17 responses), ethnicity (15 responses), sex (6 responses), gender identity (2 responses), religion (2 responses) and other/unspecified (6 responses). The overwhelming majority of 121 responses, i.e. 70% of respondents **indicated two or more factors of discrimination**, in various associations of ethnicity, sexual orientation, skin colour, age, financial status, gender, etc., and 29 respondents also indicated that there were "**several reasons at the same time**".
- **the school/college** was indicated as **the venue of discrimination** by 63,6% of the 173 persons who answered the question on this topic. This indicates alarmingly high levels of structural homophobia, transphobia and racism in the education system. In addition, 40% of the respondents were discriminated against by their teachers.
- the second most frequent venue of discrimination is **the street and/or public transport**. This points to a high level of social acceptability of racist, homophobic and transphobic behaviours, as well as a lack of concern and effort by public order authorities.
- hate-speech and actions motivated by hate are at extremely high levels: 90% of the respondents were subjected to demeaning and insulting language, 52% to bullying and harassment, and 49% to threats or intimidation. The high incidence of these behaviours means that lgbtqia+ and Roma lgbtqia+ persons are at high risk of abuse and attacks, which has a negative impact on their personal, academic and professional paths.

Journalist Andrei Popoviciu, from Are We Europe, documented Roma LGBTI+ lives in Romania for the queer issue of AreWeEurope (June, 2021) and for this he interviewed Romanian Roma LGBTI+ persons from different walks of life. Recently re-located to Romania after studying and living in the UK and



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France for 6 years, Mr Popoviciu noted an improvement in the visibility of Roma LGBTI+ persons, as well as good steps towards Roma LGBTI+ empowerment: Doua Pupeze Negre is a project by Roma nonbinary activist and performer Bianca Iosif focusing on specific needs and strengths to being Roma and queer⁷⁴.

Social worker I. Pinzariu (Zamfi), however, does not share that optimism. His perspective as a trans professional working in harm reduction as well as trans community organizing, is that the level of empowerment among Roma and queer persons remains very low. Precarity is the norm, rather than the exception. Access to studies and qualifications, health, employment and housing are prevalently on his to-do list with lgb+, trans and Roma queer clients. Public service employees remain largely ignorant in regards to key concepts such as gender versus sex, legal or medical transition, binary versus nonbinary or other nonconforming gender identities. Homophobia, transphobia and racism continue to inform public service employee performance and interaction with lgb+, trans and Roma citizens. Humiliation and aggression by some authorities, including the police, are still frequent occurrences.

Roma actor and activist Andrei Serban, an LGBTI+ ally, is another professional who works closely with Roma as well as queer persons. Mr Serban's plays, co-written and co-directed by his intersectional Roma-queer collective, feature key issues affecting the lives of Romanian Roma and/or gay and/or trans persons. Interviewed on the topic of intersectionality awareness and successful intersectional approaches to combatting discrimination, Mr Serban noted that intersectionality awareness remains largely a Western discussion, in Romania being restricted to feminist, radical feminist and queer circles (nongovernmental organizations, publications, artist and activist collectives). Until teachers, doctors, law enforcement professionals and public servants are trained and monitored for Roma and LGBTI+ awareness, inclusion and social equity will remain distant goals. Institutions such as NAC and NCCD have been indicated by Mr Serban as mere cosmetic devices through which the authorities are eluding their obligation to address structural racism, homophobia and transphobia.

"The state must begin to walk the talk of inclusion and respect, Roma and lgbtqia+ Romanian citizens certainly do not enjoy the same respect, safety and opportunities for a good life that their non-Roma non-queer fellow-citizens have!"

Finally, a Roma professor, LGBTI+ ally, interviewed for this study on how much intersectionality awareness is integrated in curriculum design or teacher training in Romania. The simple answer was that there is no inclusion yet, and that things would be different if, indeed, there was even minimal concern for understanding gender identity, Roma history and culture or the importance of sexual and romantic orientations in social and professional structures. If these things were minimally integrated in teacher training programs, this would corrode the structural racism and homo/transphobia of the education system substantially. Furthermore, this may lead to a better presence of Roma and LGBTI+ content in school curricula and textbooks.

⁷⁴ The Doua Pupeze Negre project was supported within INTERSECT for a period of several months as part of the local anti-discrimination campaign focused on combating discrimination against Roma (and) LGBTQ+ people. More information at <https://www.mozaiqlgbt.ro/2021/02/doua-pupeze-negre/> and <https://www.facebook.com/DouaC4%83-pupeze-negre-108335394195910>.



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“The main issue is that speaking about anything related to sexuality, especially being gay or lesbian, is absolutely taboo. Also, the teacher’s room is filled with racist, homophobic and transphobic jokes at breaktime, and nobody ever says they’re inappropriate.”

III.3. Desk research observations

To date, we have found no record of surveys, academic studies or formal reports documenting Roma LGBTI+ lives in Romania. The reports and studies we have found discuss either Roma only, or LGBTI+ only experiences, issues and needs. Intersectionality is a topic that has penetrated the Romanian academic and project scene, however it is still constrained to women only (and with timid steps even in that direction). We have come upon some relevant contributions to the discussion on Roma women’s experiences, but none on lesbian Roma women - and of course absolutely nothing on Roma gay men, for example.

In this section we will focus primarily on the information provided by NCCD and the National Audiovisual Council in response to INTERSECT queries based on Law no. 544/2001. MozaiQ juridical consultant, human rights and labour rights lawyer Anca Vatasoiu discusses NCCD decisions in 2019-2020 below, with particular attention to the ones related to LGBTI+ persons being discriminated against.

NCCD - Types of petitions admitted

This section includes a brief analysis of the NCCD decisions issued in the period 2019-2020, i.e. decisions finding discrimination on the grounds of sexual orientation.

For the period 2019-2020, a number of 6 (six) NCCD decisions⁷⁵ were identified in which it was found that misdemeanours were committed as provided for by OG no. 137/2000 in relation to persons from the LGBTI+ community. In summary, the following violations were sanctioned:

(a) acts of discrimination manifested by hate speech

In this context, the opinion of the NCCD on the limits of freedom of expression is constantly expressed. In line with ECHR case law, the NCCD holds that freedom of expression is not an absolute right and its exercise may be restricted in order to protect the dignity of the individual.

⁷⁵ The decisions included in this analysis are exclusively those indicated by the NCCD as the decisions issued in the period 2019-2020, which have found discrimination on the grounds of ethnicity and sexual orientation, by address no. 2174/22.03.2021 in response to the request for information no. 60/18.02.2021, respectively the return for clarifications and additions no. 97/17.03.2021 submitted by the Centre for Legal Resource. To the 5 decisions indicated by the NCCD with reference to the sexual orientation criterion, we have included the 6th one, identified following the analysis of all the NCCD decisions from 2020. It finds that the referred aspects (statements made by the complained party regarding persons of Roma ethnicity and LGBTQ+ sexual orientation) fall under the provisions of Art. 2 para. 1, Art. 2 para. 6 and art. 15 of O.G. no. 137/2000 art. 2 para. 1, art. 2 para. 6 and art. 15 of O.G. no. 137/2000. Unfortunately, this decision was not indicated in the NCCD's replies either for multiple discrimination or for the other two criteria, being included in the 2020 decisions, but not quantified from a perspective other than the year in which the decision was issued.



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The practice of the NCCD is confirmed in the sense that names which are in themselves offensive and have a negative connotation, consciously used with the aim of demeaning/humiliating, constitute language with discriminatory effects on the Roma and LGBTI+ communities.

The scope of the notion of "public space" is also analysed, in the sense that the NCCD establishes that the e-mail of an educational institution does not belong to the private sphere, as it is a mailbox that the school uses in the conduct and organisation of administrative and teaching activities to which a large number of teachers have access. Thus, homophobic and xenophobic remarks were directly perceived by other people, while at the same time it is unacceptable for a teacher to express his own preconceptions about a group of people in a way that went beyond the private sphere and entered the public sphere.

- (b) acts of direct discrimination manifested by the refusal of a supermarket to grant a gay couple the right to participate in a promotional campaign

This recognises the right of a person or group of persons to have non-discriminatory access to certain facilities of a commercial nature, even if they are not expressly provided for in the legislation. The NCCD also takes the view that the offender is penalising a restrictive interpretation of the concept of couple, defining it as a couple of the opposite sex. The opinion is important in the context that civil law does not expressly recognise civil partnership between persons of the same sex.

- (c) the manifestation of differential, discriminatory treatment in the sense of preventing an event from taking place on the basis of the sexual orientation of some of the participants
- (d) restricting access to a public place and the right to dignity on the basis of sexual orientation.

Sanctions

The sanctions were divided: warning - in 3 (three) of the cases - and the fines applied in the other 3 (three) cases are at the lower limit of the margins provided for by OG no. 137/2000 (e.g. 1000, respectively 2000 RON). The choice of the penalties imposed indicates a relatively high degree of tolerance on the part of the NCCD towards the acts of discrimination found and sanctioned. Thus, although the NCCD identifies acts of discrimination against LGBTI+ persons and violations of the provisions of OG 137/2000, sanctioning them only with a warning significantly dilutes the effects of the NCCD's decisions on the following levels:

- i) at the level of the sanctioned persons - in the absence of a pecuniary impact on the offender's assets, the offender will not feel the effects of the sanction in a concrete way, with the consequence that neither the punitive nor the preventive role will be fulfilled, as there is no concrete lever through which the offender can be induced not to repeat the sanctioned behaviour
- ii) at the individual social level - the role of preventing other people from committing antisocial acts is not achieved by referring to the example of the offender sanctioned; by applying sanctions that are too lenient it is not possible to discourage the offending behaviour of other members of society



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- iii) at the macro social level - there is a failure to truly protect the social values envisaged by OG no. 137/2000, as the vital importance of respecting fundamental rights such as freedom of expression, human dignity, privacy, etc. is not being properly conveyed. A state of insecurity and fear is also maintained within the LGBTI+ community, which may consider that the protection offered by the legislation is strictly theoretical, as the competent state authorities do not really assume their role to protect the social values and fundamental rights of all citizens.

Recommendations for the NCCD

A template-type way of analysing and reasoning the decisions has been identified, with a mechanical retention of the factual situation and a non-particularised application of principles and standard solutions of the ECHR, respectively of the applicable legal texts.

In this context, it would be advisable to develop the reasoning of the decision, by reference to the particular elements of each individual case, the evidence and the views expressed by the parties.

It is also advisable to apply more severe sanctions (i.e. individualised fines towards the maximum limit provided by law) in order to ensure the fulfilment of the punitive and preventive functions specific to traffic offences and, ultimately, to discourage discriminatory behaviour and to shape society to respect the fundamental rights of members of the LGBTI+ community.

National Audiovisual Council

As mentioned in the previous chapter, during the period 2019-2020, **the National Audiovisual Council imposed 18 sanctions for violations of the provisions of the audiovisual legislation on incitement to hatred, discrimination, xenophobia and defamation. Of these, we identified 5 decisions of the NAC where media actors were sanctioned for broadcasting content that incited hatred, discrimination and/or defamation of Roma, but there are no decisions, for the period analysed, on similar content targeting LGBTI+ persons⁷⁶.**

Other public institutions and their positions on the issue of intersectionality as a necessary approach to combating discrimination against Roma and/or LGBTI+ people in Romania

Requests for information on initiatives, programmes or actions they are carrying out, in the light of the mandates of each institution, with regard to non-discrimination of Roma LGBTI+ persons or with reference to multiple discrimination or intersectional discrimination (based on ethnicity, sexual orientation and/or gender identity) were sent to **the Ministry of Interior (MIA), the Ministry of National Education (MNE), the Ministry of Justice (MJ), the Ministry of Health (MH) and the National Agency for Roma (NAR).**

Unsurprisingly, none of the institutions concerned have anything specific on Roma LGBTI+ people or intersectional discrimination.

⁷⁶ ACTEDO position paper and recommendations to combat hate speech against Roma and LGBT+ people in Romania; authors Iulia Pascu, Ioana Tușă, Alexandra Columban, available at <http://actedo.org/discursul-urii-2019-2020-document-pozitie/>, pag. 13.



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The response of the Ministry of Education⁷⁷ does not provide any new information, except to confirm that it has no inclination to protect children belonging to the most vulnerable groups and no understanding of the phenomenon of discrimination and its consequences, by stating that "it does not centralize data on the ethnicity of pupils or membership of the LGBTI+ community, on the contrary, in order to combat discrimination of any kind, *Ministerial Order no. 6.134/2016 on the prohibition of school segregation in pre-university educational establishments*, which currently constitutes the legal framework that groups and prevents, in a more comprehensive manner, the phenomena of school segregation"⁷⁸.

MIA⁷⁹ (as mentioned in the above chapter where an analysis was also made in parallel with the documentation of cases of violence against Roma) lists a series of training activities on various topics, specifying that the training of police officers includes, both in the general and specialized training component, content on dealing with cases of racist and homo/transphobic violence. It also includes the fact that the Institute for Public Order Studies will resume, from 2021-2022, the training course on "Preventing and combating all forms of discrimination", which covers various aspects, including introductory notions related to LGBT.

The Ministry of Justice⁸⁰ lists several training projects for judges, regarding the Roma community, carried out by the Superior Council of Magistracy (one activity in the project "Training and capacity building in the judiciary" has drawn our attention negatively, namely "a guide on the enforcement of criminal decisions will be produced, taking into account the particularities of the Roma population") and several other projects implemented by the National Administration of Penitentiaries which would also target Roma people - but we would like to point out that the name of some of them or their presentation raises questions about their non-discriminatory content (e.g. project "Improving correctional services in Romania by implementing the principle of normality").

The Ministry of Health reaffirms the Romanian state's commitment to non-discrimination in accessing the right to health and mentions an ongoing call for projects entitled "Improving access to health services especially for vulnerable groups, including Roma"⁸¹

The NRA assumes a recent awareness of the topic of multiple and intersectional discrimination (ethnicity/sexual orientation/gender identity), even though it does not have specific programmes for LGBTI+ Roma, and mentions **the National Roma Inclusion Strategy** for 2021-2027⁸². With the latest text available in draft as of November 2020⁸³, the Strategy has a mention relevant to the issues addressed in this study, regarding combating anti-Roma attitudes and strengthening anti-

⁷⁷ MNE response to CLR request no. registration 91/BCC/14.06.2021.

⁷⁸ For more information on discrimination against Roma and LGBTQ+ students, see the Centre for Legal Resources study available in Romanian language only at https://www.crl.ro/wp-content/uploads/2020/02/Studiu-nediscriminare-in-educatie_final2020-2.pdf, 2020; a summary of this study in English language is available at <https://www.crl.ro/wp-content/uploads/2020/02/Study-on-non-discrimination-English-summary-2020.pdf>

⁷⁹ According to the reply of the Ministry of Internal Affairs - Information and Public Relations Directorate no. 1731122/24.06.2021, following the request of the CLR with exit no. 188/11.06.2021.

⁸⁰ According to the reply of the Ministry of Justice no. 58287 of 24.06.2021 to the request of the CLR no.190/ 11.06.2021

⁸¹ According to the reply of the Ministry of Health No. 580 of 29.06.2021 to CLR request No. 191/ 11.06.2021

⁸² According to the reply of the NRA No. 1051 of 08.07.2021 to CLR request No. 187/ 11.06.2021

⁸³ Available at - http://sgglegis.gov.ro/legislativ/docs/2020/11/152nftks6zbd3vpw8_jr.pdf



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discrimination legislation, namely "Strengthening legislation to effectively address multiple/intersectional discrimination in the legal practice of the NCCD and increasing the dissuasiveness of sanctions applied in cases of multiple discrimination". In the plan of measures related to the strategy⁸⁴, two measures are foreseen: 2.5. Incorporation of the provisions of anti-discrimination legislation in the internal documents of public and private employers, the elements of racial, multiple, intersectional discrimination; 2.6. Creation of a tool for the dissemination of positive practices of public and private employers in the field of combating racial, multiple, intersectional discrimination".

The NRA recalls the European Union Council Recommendation of 12th March 2021 on equality, inclusion and participation of Roma⁸⁵ which states:

"When targeting the Roma population, it is important to recognise the specific needs or vulnerabilities of particular groups (11), including Roma women, Roma youth, Roma children, **Roma LGBTQ people**, Roma older people, Roma with disabilities, Roma who are third-country nationals or stateless persons and EU mobile Roma. This Recommendation therefore takes into account the importance of addressing multiple discrimination⁸⁶. It proposes measures to ensure better protection and inclusion of Roma children, who are particularly vulnerable to discrimination and segregation".

As well as

"2. Member States should step up their efforts to adopt and implement measures to promote equality and to effectively prevent and combat discrimination, antiracist attitudes and social and economic exclusion and their root causes. These efforts should include measures such as: c) measures to combat multiple and structural discrimination⁸⁷ against Roma and in particular Roma women, Roma youth, Roma children and Roma LGBTQ persons, Roma older people, Roma with disabilities, stateless Roma and EU mobile Roma."

Strategies at European level

At the end of 2020, the European Union adopted its own **Equality Strategy for LGBTIQ people 2020-2025**⁸⁸, proposing that Member States reduce discrimination and guarantee the safety and

⁸⁴ Specific measures: Combating discrimination, hate speech and anti-hate speech-generating attitudes available at http://sgglegis.gov.ro/legislativ/docs/2020/11/82xq_g4p0s1dhzrtn65y.pdf

⁸⁵ Available at [https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32021H0319\(01\)&from=RO](https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32021H0319(01)&from=RO)

⁸⁶ In footnote no. 12, the Recommendation defines multiple discrimination: "The term 'multiple discrimination' is used as a general term for all cases of discrimination based on more than one ground of discrimination and manifesting itself in two possible ways. This can take the form of 'cumulative discrimination', where discrimination is based on several grounds of discrimination acting separately, and 'intersectional discrimination', where two or more grounds of discrimination act and interact with each other in such a way that they are inseparable or inextricable. Combating multiple discrimination. Practices, policies and legislation. European Commission Report (2007). Multiple Discrimination in EU Law: Opportunities for Legal Responses to Intersectional Gender Discrimination. European Network of Legal Experts in the Field of Gender Equality. European Commission (2009)".

⁸⁷ Defined in the Recommendation, in footnote no. 18: "Systemic or structural discrimination is understood to be evident in inequalities resulting from legislation, policy and practice, not by intention, but as a result of a range of institutional factors involved in the development, implementation and review of legislation, policy and practice. Roma and Traveller Inclusion: Towards a new EU Framework, Learning from the work of equality bodies, Equinet Perspective, June 2020".

⁸⁸ Available at <https://www.mozaiqlgbt.ro/intersect/>



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fundamental rights of LGBTQ people throughout the EU by adopting legislative measures at European level and encouraging them to develop and implement the action plans mentioned in the strategy at national level. The strategy proposes an intersectional vision in analysing the realities of the LGBTQ community in key areas such as health, education, and places emphasis including at the funding level, encouraging the funding of projects with an intersectional approach.⁸⁹ The Romanian government has not publicly announced the launch of such a public consultation with the social partners. This is the first time that, at EU level, a broad dialogue between European and international institutions, Member States, civil society organisations and the social partners on the issue of sexual minorities, which also takes into account intersectionality issues, has been politically and legislatively recognised and proposed.

Also at EU level, a new **EU Strategic Framework for Roma equality, inclusion and participation 2020-2030**, proposed by the European Commission in October 2020 (COM(2020) 620 final)⁹⁰, was adopted in March 2021. It provides a series of recommendations for Member States to incorporate Roma social inclusion into national policies. It also urges Member States to reflect on the existing diversity among Roma through **an intersectional approach**⁹¹, taking into account how different aspects of identity can combine to accentuate discrimination.

III.4. Conclusions and recommendations

The community consultations and Roma LGBTI+ needs assessment at the onset of INTERSECT project drew over 100 Roma LGBTI+ young people. Their interest in learning about campaign design and community involvement was very high. The main issues participants shared at these community consultations and other community social events by and for the Roma LGBTI+ community, are the following:

- Stigma and internalized stigma for being both Roma and LGBTI+
- Discrimination and aggressions in school, in the street and in their own families for being Roma and/or LGBTI+.
- Poor access to education, health services, protections, housing and employment, due to structural racism, homophobia and transphobia.
- Isolation, marginalization, social and economic precarity.
- Mental health problems such as depression or anxiety.
- Lack of frameworks and safe spaces for LGBTI+ persons, especially Roma LGBTI+, to enjoy safety and community, and seek personal and professional development.

⁸⁹ The European Commission uses, in the document, a definition of intersectionality given by the European Institute for Gender Equality as an "analytical tool for studying, understanding and responding to the ways in which sex and gender intersect with other personal characteristics/identities and how these intersections contribute to unique experiences of discrimination". Read more <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0698&from=EN>

⁹⁰ EU Strategic Framework for Roma Equality, Inclusion and Participation 2020-2030, (SWD(2020) 530 final), available at https://eur-lex.europa.eu/resource.html?uri=cellar:9a007e7e-08ad-11eb-a511-01aa75ed71a1.0001.02/DOC_1&format=PDF

⁹¹ „It takes an intersectional approach, sensitive to the combination of ethnicity with other aspects of identity and the ways in which such intersections contribute to unique experiences of discrimination” (pg. 2)



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- Police abuse and brutalities, especially to Roma, transgender, and Roma transgender members of our community
- Lack of professional knowledge and skills, often doubled by transphobia, in the case of medical and legal professionals who should assist transgender persons with their medical and legal transition.

Roma LGBTI+ persons need to be acknowledged and respected. Community and social events, trainings, mentorship and all the other activities organized as part of INTERSECT project attracted numerous Roma LGBTI+ participants who were excited to have a safe space to discuss, learn and connect with a support community. The social, economic and health precarity and marginalization affecting Roma LGBTI+ persons can only be alleviated through an intersectional approach by all actors involved: the legislators, state authorities, public services, nongovernmental organizations, the media etc.

This study, documenting LGBTI+ and Roma needs and experiences of discrimination in Romania, will conclude with some recommendations:

- It is imperative to implement compulsory training for all professionals in education, health, law and public order enforcement, public servants (here we would include elected politicians too), legal professionals towards zero tolerance to any form of racism, homophobia and transphobia. Key concepts, history and culture, specific needs and vulnerabilities must be considered when working with a Roma and/or LGBTI+ student, patient, victim/perpetrator, client etc.
This can only be accomplished through systemic integration of this information and the inception of the skills needed by the respective professionals to provide adequate services. The Romanian authorities must comply with their obligation to provide equal care and respect for all its citizens. Outsourcing to NGO's can be a solution, but the responsibility must be with the state, not the nonprofit sector⁹².
- Roma LGBTI+ Romanians must be actively supported to enjoy safety and respect in public places. In this sense, we note that multinational companies are starting to create in-company spaces and activities celebrating queer identities, and also to actively support LGBTI+ inclusion on the labour market (IKEA Romania, IBM Romania and other large companies with Romanian branches have actively supported the LGBTI+ community in recent years). Inclusion needs to be actively done, not just verbally promoted, in schools, hospitals, public institutions, theatres, public venues in general. Public television, radio and the press must make space in their grids for LGBTI+ voices, just like with any other minority in Romania. Roma and LGBTI+ festivals, holidays, arts, sport and science must be supported by the local, regional and national authorities.
- All actors must cooperate to ensure that LGBTI+ and Roma LGBTI+ Romanians have equal access to education, health services, social protections, employment and housing. This could be achieved by the state and private donors working cooperatively, allocating funding and

⁹² As long as an endocrinologist, for example, leaves medical school without any notion of HRT or gender affirming surgery, the Romanian state cannot claim to have fulfilled its obligations as a co-signatory of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Istanbul Convention etc.



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making the application processes accessible and transparent, as well as supporting funded initiatives to succeed (rather than police them and overwhelm bureaucratically). Like in the case of systemic training for awareness and zero tolerance to racism, homophobia and transphobia, the state must design these activities with consulting and active involvement of Roma and LGBTI+ organizations committed to an intersectional approach and a track record of expertise in implementing it.



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Chapter IV. Access to justice for Roma (and) LGBTI+ people

As presented in the previous chapters, our research revealed **high rates of hate speech in the public space**, perpetuated by public persons, opinion makers, politicians and authorities, as well as multiple barriers in access to justice for Roma, a problem also highlighted by civil society reports⁹³ and by Romania's numerous convictions at the ECHR (64 in 2020 alone, which places our country in 12th place in terms of number of convictions)⁹⁴. In what follows we present additional data supporting these hypotheses, as they emerge from our qualitative and quantitative research⁹⁵.

The increased vulnerability of Roma and LGBTI+ people to discrimination and even hate crimes also raises additional barriers in their access to justice: reporting of these acts is low, secondary victimisation in relation to judicial authorities is frequent, legal remedies insufficient or inadequate.

The Roma face many problems, some of which are legal or legally solvable: forced evictions, discrimination in access to education and health services, forced evictions, etc. In addition, LGBTI+ people have not achieved equal rights in some areas of life. Iustina Ionescu, ACCEPT's lawyer, reviews the main legal issues of LGBTI+ people, as they emerge from her more than 20 years of experience in litigating cases concerning these minorities, but also from the experience of ACCEPT's beneficiaries:

"LGBTQ people face many problems, such as discrimination in the workplace, lack of any form of legal protection for same-sex families, lack of parental rights for families who have and care for children together or have birth certificates recognised abroad that they cannot match in Romania, and hate speech, harassment and violence from the police. In addition, transgender people face difficulties in legal gender recognition, sometimes the impossibility to find a job because the documents do not correspond to their gender identity, discrimination in access to both general and specific health services needed for transition."

Often, in the case of LGBTI+ Roma, these problems and rights violations or denial of rights are cumulative.

According to the online survey, discrimination against Roma and LGBTI+ people is common: **86.8% of people who are either Roma or LGBTI+ have been discriminated against at least once in their lives.** Roma LGBTI+ people interviewed anonymously for this project describe numerous experiences of

⁹³ Here we recall the 2019 CLR Report, *Targeting, assessing and informing victims of crime: Romania*, available at https://www.crj.ro/wp-content/uploads/2020/01/VICToRIIA_National-Report-Romania.pdf; 2019 ACTEDO Report, *Victims of Crime Implementation Analysis of Rights*, available at http://actedo.org/wp-content/uploads/2019/08/VOCIARE_National_Report_Romania_final-report.pdf; The 2015 position paper of CLR, ACTEDO and Save the Children, *Pro bono advocacy - an indicator of the functioning of the profession in a real democracy*, available in Romanian only at http://actedo.org/wp-content/uploads/2015/12/AVOCATURA-PRO-BONO_fin.pdf (accessed 14th May 2021).

⁹⁴ VeDem Just, *ECHR Report: Romania's 64 convictions last year*, 02.02.2021, available at: <https://vedemjust.ro/cedo2020/> (accessed 14th May 2021).

⁹⁵ From the survey, the decisions of the National Council for Combating Discrimination (NCCD) and the National Audiovisual Council (NAC) from 2019-2020, the life stories of some of the Roma LGBTQ+ people shared in the project and from the interviews with specialists conducted by ACTEDO for this study.



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discrimination - from school to work, in interactions with the police, but especially from ordinary people, who are also seen in the survey as the main perpetrators of discrimination.

George⁹⁶, a gay Roma man, for example, talks about the increased vulnerability of transgender Roma women:

"Some of our female friends, many of those being Roma trans women, have experienced police brutality. They've been beaten, and are victims of hatespeech. Most often, as a result of the discrimination and exclusion they face, trans women are pushed towards sex work or something in this area. And because of that, they usually become victims. If they are also Roma, then this involves the racist and intersectionality aspects, poverty... I know about these kinds of situations and have heard many stories over the course of time."

Interactions with the police are often described by those involved in the project as either traumatic or as experiences that do not lead to resolution. For example, Dora, a non-binary Hungarian Roma person, shared the following:

"The problem that I am most often confronted with and that concerns me the most is how I am treated by the Romanian police. On many occasions I've been stopped on the street and was told that I looked suspicious, without being given a reason – I suppose it is because of my skin colour. [...] Once I filed a complaint because a neighbour physically assaulted me and a friend of mine, but nothing came of it. I guess they „lost” my complaint. In fact, I filed a lot of complaints in my life, but nothing has been resolved. I am used to fighting, but when the police are discouraging you constantly, there's little to be done. [...] There have also been cases of the police confiscating belongings of Roma people because they claim you must prove you bought them. Once, a Roma kid from the orphanage had a scooter and a policeman stopped him on the street to ask him where he got it from. He explained to him a social worker at the orphanage bought it for him, but the policeman refused to let him go and make him call the lady, who confirmed that the scooter was in fact the kid's. The social worker asked the policeman "do you really think that everybody who is Romani steals?". These are just some terrible things..."

Dora adds how she was once wrongly fined for calling the police because she had been kidnapped and verbally assaulted in a taxi for refusing to pay the surcharge demanded by the driver.

Many incidents of discrimination or aggression motivated by hate and prejudice are not reported to the authorities. According to the survey, only 14.5% of respondents had done so, and none of the cases had gone to court, and the NCCD had been referred by only 5 of the respondents subjected to discrimination. Also, only 3 people had gone to the police.

Even if the survey data are not statistically representative given the limited sample and the (self)selection of respondents, the data seem to indicate a **widespread under-reporting of discrimination**, and thus the inability of victims to seek justice. Ralu Baci, Vice-President of PRIDE Romania, confirms this:

⁹⁶ The identity of the LGBTQ+ Roma interviewed in the project is protected, so pseudonyms have been used for them.



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"In Romania we have a culture of non-reporting. The thinking is 'shut up and move on'. But there is a very big fear of going to the police and, unfortunately, it's a well-founded fear. Often the police don't take victims seriously. That goes for domestic violence as well. The same goes for LGBT people. Society in general and the authorities don't understand our [LGBTI+ people's] problems and needs."

The experience of Anca Vătăşoiu, a lawyer specialising in labour law, is similar, as she frequently encounters great reluctance on the part of her clients to report various injustices suffered at work:

"Although legislation requires employers to have policies and complaint mechanisms in place to report any discrimination and harassment, in practice we have identified two main problems. Firstly, people do not have the courage to report cases of harassment or discrimination and put up with it or, even worse, simply resign from their job. Secondly, there are many cases where, although internal complaints are made, they are either blatantly ignored or dealt with superficially and often dismissed as unfounded. It also happens that the person accused of harassment or discrimination is made responsible for dealing with the complaint about their own behaviour, which only makes matters worse. So people do not have the courage to take steps to complain about abusive behaviour, even though they have legal mechanisms at their disposal, both within the employing organisation and in relation to the state authorities and the courts. Their reluctance is often also due to their modest financial situation, which does not allow them to hire a lawyer, and their fear of victimisation and reprisals."

Therefore, under-reporting may be due to fear of repercussions or retribution, fear of coming into contact with or misunderstanding of the justice system, or lack of confidence that the problem will be resolved. In fact, according to the survey, of the cases of discrimination that were reported to the authorities or persons in charge, most have not been resolved. Lack of information and knowledge of one's rights can be a significant barrier in access to justice: a third of respondents to the survey say they do not know their rights sufficiently or at all. There is also widespread alienation and mistrust: **almost 40% of all survey respondents would not trust anyone if they were discriminated against.**

Another problem documented by many studies and also raised by LGBTI+ participants in the project is **secondary victimisation during court proceedings**. Lawyer Anca Vătăşoiu points to the possibility that magistrates' personal prejudices can negatively influence the act of justice:

"If the subject of discrimination against Roma people has been debated for a long time, the LGBTI+ issue is relatively new in Romania. I think that at a social level we are still trying to understand what it is all about, so my reservation at the level of judges is that they need to understand the phenomenon from a human perspective and acquire a sufficient level of acceptance of LGBTI+ people. Otherwise, their personal preconceptions might prevent them from pronouncing legally correct solutions. For example, if a judge has homophobic beliefs, it is very likely that he or she will force the legal arguments so as to rule against the LGBTI+ person."

But what is helpful for victimised people is support from organisations, which results in resolving discriminatory situations that would otherwise have been doomed to failure. For example, Dora says:



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"Just recently I found support in these actions, through NGOs like CLR and MozaiQ, for example, because a while ago I didn't have any support. I couldn't afford a lawyer; I didn't know the laws or my rights. I am glad that I could challenge, with the help of CLR, the fine I received after the incident with the taxi driver, but the trial hasn't concluded yet."

NGOs, for their part, often lack the capacity to initiate and advocate for legal action, either because they do not have lawyers or legal experts on their team, do not have the funds to contract their services, or do not have the necessary legal knowledge. Ralu Baci from PRIDE Romania confirms this:

"So far we have not made any complaints to the NCCD, because it is a difficult process both for the beneficiaries and for us. We want to empower ourselves first."

Under-reporting of discrimination and possibly difficulties in resolving these cases legally may also be due to barriers to proving these facts. A lawyer interviewed for this study, who wished to remain anonymous, said:

"It is very difficult to prove discrimination in court: except in disputes where there are written documents, which are rare, discrimination happens verbally or through actions and attitudes. So unless you have a witness to back up your claims, it's very hard to prove discrimination. Then there is also a reluctance to come forward as a witness, for several reasons: many people see it as time wasted or are afraid to speak out in court or don't see a benefit. [...] What I have noticed is that if there is another ground, other than discrimination, it is retained. Not out of bad faith necessarily, but because it's very hard to prove discrimination, but I can't generalize."

The lawyer also talked about how difficult it is in Romania to specialize in the field of discrimination, which can also be reflected in the quality of legal assistance received by people who experience discrimination:

"In Romania, as a lawyer it is almost impossible to specialise in discrimination. First of all because you can't support yourself, because the beneficiaries usually have limited financial resources. Of course you can work pro bono, but you can't survive on that alone. If you work with NGOs that mediate these cases, it's better, but even they are few and far between, and access to these NGOs for discriminated people, especially Roma, is limited."

However, there is a positive development in terms of LGBTI+ rights in Romania, even if it is slow. Lawyer Iustina Ionescu points to relevant case law:

"I would say that overall the situation has improved since 2000: I would point here to several cases represented by ACCEPT - the Coman-Hamilton case⁹⁷ and the CJEU ruling, the fact that we have rulings by the ordinary courts finding discrimination, the NCCD rulings. There is also

⁹⁷ They are a gay couple, one of whom is Romanian and the other American, married in Belgium. The CCR and the Court of Justice of the European Union ruled in 2020 that the Romanian state must recognise the right of residence in Romania for married same-sex couples. More details at: <https://www.digi24.ro/stiri/actualitate/social/cazul-coman-hamilton-ccr-un-cuplu-format-din-persoane-de-aceiasi-sex-intra-in-sfera-notiunii-de-viata-de-familie-1004118> (accessed on 25 May 2021).



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the ECtHR ruling in M.C. and A.C. v. Romania⁹⁸ and more recently in X and Y v. Romania⁹⁹. Also, another very good ruling is the CCR ruling on gender identity - it is very well argued and valuable for our work. The case of Buhuceanu and Ciubotaru and 20 other couples seeking legal recognition of their families and equal rights is now before the ECHR.¹⁰⁰

At the same time, progress is slow both in tackling hate crime and the retention criteria that increase the vulnerability of some minorities to discrimination, and in winning rights. Iustina Ionescu says:

"On the other hand, we have so far no indictments on hate crimes based on sexual orientation/gender identity, although there are complaints. Unfortunately, all the complaints assisted by ACCEPT end without any favourable outcome, the investigations are ineffective [...] But at the legislative level we see gaps and lack of initiative and support from the government regarding civil partnership, rejected as unnecessary. And the last project, the one initiated by the NCCD, although initially enjoying cross-party support, with almost 40 parliamentarians, did not meet the necessary support at the vote."

Intolerance and hate speech against Roma and LGBTI+ people

Intolerance towards Roma and LGBTI+ people remains high in Romania¹⁰¹. For example, in 2018, 54% of Romanians said they would not want a gay neighbour and 48% would not want a Roma neighbour.¹⁰² Vasile Hotea-Fernezan, a journalist with TVR Cluj, puts Romanians' intolerance down to fear of otherness:

"I think hate speech comes from the training of the Romanian and how he assumes or rejects certain values. Intolerance comes from fear of strangers. As Sartre said: 'hell is the others'. Several studies show that those who have problems with homosexuals also have problems with Roma, Hungarians and so on. And by speaking badly of others, you feel superior, you validate your experiences."

Izabella, a lesbian Roma woman interviewed for the project, says:

⁹⁸ The case of M.C. and A.C. v. Romania concerns the failure of the authorities to take into account the homophobic motivation of a violent attack on participants at the Pride march in Bucharest and the decision not to prosecute. The ACCEPT Association represented the two applicants at the ECHR, and the Court ruled that there had indeed been a violation of Articles 3 and 14 of the European Convention on Human Rights. Read the Judgment of 12 April 2016 in M.C. and A.C. v. Romania, final on 12/07/2016, here: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-161982%22%7D> (accessed 20 May 2021).

⁹⁹ The case, decided in January 2021, concerns forcing transgender people to undergo gender reassignment surgery. The ECHR ruled that this violates privacy and personal autonomy (Article 8 of the Convention), by lacking a clear and predictable procedure for the legal recognition of gender identity. More information at: <https://www.juridice.ro/713141/cedo-hotararea-in-cauza-x-si-y-impotriva-romaniei-lipsa-unei-proceduri-clare-si-previzibile-pentru-recunoasterea-juridica-a-identitatii-de-gen-prof-univ-dr-iulia-motoc-membru-in-completul-de-ju.html> (accessed 20 May 2021).

¹⁰⁰ More information at: <https://www.libertatea.ro/stiri/romania-audiata-de-cedo-pentru-ca-nu-recunoaste-cuplurile-de-a-celasi-sex-2868421> (accessed 20 May 2021).

¹⁰¹ Although there have been some improvements in recent years, as documented by the World Values Survey and the European Values Survey

¹⁰² B. Voicu, *Atlas of Social Values: Romania at 100*, February 2021: <http://www.romanianvalues.ro/in-the-news/AVS-final> (accessed 21 May 2021). The comprehensive study of social values in Romania is forthcoming.



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"Roma persons are being demonized within the public space. Almost everything that's going wrong is because of Roma persons. With these current protests I see more often all kinds of memes of Roma people and ironies such as 'Open the theatres', as if Roma persons don't go to the theatre or like there are no Roma actors or all the cultured people are white, straight and so on. And the LGBT people are harassed [...]"

Incitement to hatred against Roma and LGBTI+ people in the public space, often by well-known personalities in Romania (politicians, members of local and central government, journalists, etc.) therefore remains a problem, and the COVID-19 pandemic seems to have accentuated these tendencies, especially with regard to Roma, who have sometimes been used as scapegoats for the health crisis.¹⁰³

Ralu Baci from PRIDE Romania identifies as the main instigators of hatred and intolerance - according to the results of the survey - the ordinary people, politicians and government officials, the representatives of the Together Platform (former Coalition for Family) and the Church and cults. The media and the press is often not only a channel of hate speech, but even its author, as journalist Vasile Hotea-Ferneza argues:

"There is often implicit racist discourse in the media, but it is latent. Generally there is critical talk about people on welfare, who are unemployed and ethnicity is suggested. [...] Most of the people in Pata Rât work, many in sanitation, they send their children to school as best they can, it was much more difficult after the eviction and they feel they were abandoned. They told me that they had no identity card, they were only wanted by the authorities around elections... When Cluj was nominated as European Capital of Culture, the people who came to investigate the situation were also in Pata Rât and this was one of the reasons why the city was not chosen. And I agree, you can't neglect this part of Cluj. [...] For example, with the LGBTI+ community I started to make materials as a reaction to the media reaction towards them. I felt that journalists have no understanding towards this community: at an event once, when some members of the community pleaded for equal rights, a journalist answered them with quotes from the Bible and told them to treat themselves for what he claimed was a disease."

Of course, there are also positive counter-examples of ethical, responsible and inclusive journalism, and Vasile Hotea-Ferneza refers to journalistic material that debunks the myth that many Romanian citizens, mostly Roma, live on welfare and do not work. It is about the show *Garantata 100%* with Cătălin Ștefănescu, which had as guests Elena Stancu and Cosmin Bumbuț¹⁰⁴ and about the Dela0.ro investigation, "Romania for nothing" does not exist¹⁰⁵.

¹⁰³ The organisations implementing the INTERSECT project, together with Romani CRISS, sent in May 2020 a letter to the Presidency, the Government, the NCCD and the NAC to point out this worrying phenomenon. The letter, entitled Roma minority: scapegoat in the time of the pandemic, can be found here: http://actedo.org/wp-content/uploads/2020/05/Scrisoare-de-pozitie_12mai.pdf (accessed 20 May 2021).

More information in Chapter II.

¹⁰⁴ You can watch the full broadcast, from 18th April 2021, here: https://www.youtube.com/watch?v=KA1uFWYJCj-c&ab_channel=TVR (accessed 21 May 2021).

¹⁰⁵ Read here Dela0's 2018 report, *Figures tell a different story: 'Romania for nothing' does not exist*, by Diana Oncioiu: <https://beta.dela0.ro/cifrele-spun-o-alta-poveste-romania-degeaba-nu-exista/> (accessed 21 May 2021).



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Changing the narrative of discrimination



Although there have been numerous instances of discrimination and hate speech in 2019 and 2020, NCCD has initiated the investigation on its own a few times in situations concerning Roma and never in discrimination against LGBTI+ people, which we find worrying. This may be due to the limited resources of the institution, which may also be a cause of the slowness in resolving cases, a fact identified by two of the lawyers interviewed for the study. Anca Vătăşoiu states, for example, that:

"Unfortunately, we have a problem with the speed with which the NCCD resolves petitions: two years to resolve a harassment complaint is a long time. The main cause is most likely a lack of staff, coupled with an exponential increase in the number of files. The increase in the number of petitions to the NCCD may, from one perspective, be a positive signal in terms of awareness and effective use of legal levers for reporting and remedying deviations from discrimination and harassment legislation. On the other hand, the very long delays experienced by the NCCD may substantially dilute the effect of some decisions confirming acts of harassment and discrimination."

The lawyer who wished to remain anonymous stressed the same point, also raising the issue of the quality of the reasoning of decisions:

"It seems absurd to me that it takes a year to give reasons for a decision and yet the reasons are poor... Plus there were many other criteria on discrimination that they didn't take into account, which is strange, especially as a specialised body on discrimination. Maybe they don't have the legal means and resources to do more or they don't have enough staff. I don't know how they work internally, but from the outside you can see they are slow and the reasoning behind their decisions leaves something to be desired."

The work of the National Audiovisual Council in the area of sanctioning discrimination and hate speech is much less than that of the NCCD. In the period 2019-2020, there were only 5 decisions sanctioning TV channels for broadcasting content that incited discrimination against Roma, but no decisions regarding LGBTI+ people. These decisions concerned content that denigrated Roma, in the context of the emergency measures during the COVID-19 pandemic, and which reinforced prejudices that Roma are mainly responsible for the spread of COVID-19.

We consider this number of decisions and sanctions to be insignificant compared to the channels and TV and radio stations that actively contribute to inciting hatred and intolerance towards these minorities. According to journalist Vasile Hotea-Fernezan, the main causes of the National Audiovisual Council's inefficiency in this area are the politicisation of the institution and the extremely low fines:

"The law on the NAC is good, but unfortunately it is not respected. We can't regulate from below, but I think the NAC should be made up of professionals and should be depoliticised, because now sometimes they don't do their job because they are politically protected. Then, it should work on complaints from anyone, because now you don't get a reply or you get a late reply and the fines are so small that they don't care, because it's 1% of the revenue. So without larger fines it won't work, because that's what hurts them."

Valentin Jucan, member of the NAC, confirms the robustness of the legislation in this area and that the main problem is enforcement. In his telephone intervention on the video podcast "Judecata de Acum"



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of 21st May 2021¹⁰⁶, of the Media Investigation Centre and Dela0.ro, he reveals that some TV channels - such as Antena 1 for the tabloid show "Acces Direct" - build their show's budget taking into account the possible fine from the NAC. In other words, they assume the discriminatory and hateful or violence normalising nature of the material they broadcast, guided only by financial profit. In such situations, we believe that the fines should be proportional to the profits made by these channels, but also that additional measures are needed to limit this phenomenon.

What emerges implicitly from the analysis of Roma (and/or) LGBTI+ access to justice and hate speech is **the need for training - initial and ongoing - of judicial authorities**, police, prosecutors and judges, **as well as journalists** and media personnel in anti-discrimination.

We also consider it necessary to highlight the intersectional aspect of discrimination of those belonging to at least two minorities or groups vulnerable to discrimination and marginalisation, such as LGBTI+ Roma.

Consideration may also be given to the option of clarifying anti-discrimination legislation, in particular OG no. 137/2000, to include intersectional discrimination as distinct from multiple discrimination, to the extent that the legislator deems it appropriate.

In conclusion, we would like to point out aspects related to **the evolution of Romanians' attitudes towards Roma and LGBTI+ people**. As regards ethnic minorities, Romanians' perception remains predominantly negative, as presented in Chapter II. However, the perception of sexual minorities has evolved positively. According to a survey published by the ACCEPT Association in April 2021, 75% of Romanians believe it is important to treat all people with respect, including LGBTI+ people, and 68% of Romanians agree that all families should be protected by law in Romania, including same-sex families.¹⁰⁷ Lawyer Iustina Ionescu says that compared to the 2000s:

"By and large, in the media LGBTI+ people are presented more objectively and friendly, with less prejudice than before, and public opinion has improved a lot in a short time, we are talking about a positive development in society."

Our research, both from interviews and project activities with Roma (and/or) LGBTI+ people and from interviews with specialists, indicated a development, albeit extremely slow, in terms of reporting and activating legal levers in cases of violations of the fundamental rights of Roma and LGBTI+ people. Lawyer Anca Vățăsoiu states that:

"I think we are in a transitional period - we have a developed legal framework, we can sanction various types of discrimination, but I think we are only now at the stage where vulnerable people are starting to become aware of this protection, to understand that legal levers are not just on paper, that there is an authority they can turn to in order to sanction abusive behaviour."

¹⁰⁶ The whole podcast can be watched at <https://www.facebook.com/watch/?v=520440475806323> (accessed 22 May 2021).

¹⁰⁷ Romanian values and perceptions of family and marriage, April 2021. Available at: <https://www.acceptromania.ro/blog/category/comunicat/> (accessed 24 May 2021).



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Last but not least, we believe that public opinion can be educated towards non-discrimination through exposure to activism and cultural productions, which are becoming more and more present in the Romanian space. Journalist Vasile Hotea-Fernezan makes this point:

"The public is a bison, it's an amorphous herd that you direct where you want, you feed it what you want [poor quality material - n.n.] and then you wonder why it doesn't want something else. I'm hopeful that things can improve, though, because through culture and personal stories you reach more people. The Roma feminist theatre Giuvlipen brings a lot of good stories and, for example, I think the film Aferim did more good and helped people understand history much better than if we had simply told people not to discriminate. We more easily empathise and react to particular examples. [...] Public radio and television should take an active role in shaping and addressing issues of this nature."



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Self-esteem and groups vulnerable to discrimination¹⁰⁸

This section was included because self-esteem and the need for well-being were often mentioned throughout the project by Roma (and) LGBTI+ participants, and it is closely related to the right to non-discrimination.

Life opportunities for stigmatised individuals are reduced because of the difficulties they encounter.¹⁰⁹ A low position in society and reduce life opportunities for stigmatised people are confirmed consequences by authors Link Bruce and Jo Phelan, the same authors who connect a low position in wider society with forms of inequality¹¹⁰. Erving Goffman confirms, in his theories, that stigma can be passed from generation to generation, in cases where we talk about 'tribal stigmatisation of race, nation and religion'¹¹¹. This type of situation describes the Roma youth as well.

Other authors define stigma as being 'a characteristic or attribute that passes onto a social identity which, in a social context, is devalued'¹¹² or as a 'sign that ties a person to unwanted characteristics'¹¹³. The definition of stigma also includes elements of labelling, stereotyping, segregation, loss of position and discrimination.¹¹⁴

The impact of stigma on mental health is continuous, particularly regarding low self-esteem and severe depression¹¹⁵. Another consequence of stigmatisation is identified by Goffman and is ambivalence, expressed through excluding an individual from the group, but at the same time denying their belonging to a stigmatised group, transforming 'repulsion in shame and then transforming shame itself into something to be ashamed of'¹¹⁶.

As identified in the INTERSECT project¹¹⁷, the internalisation of stigma is even stronger among LGBTI+ Roma, and consequently their self-esteem may be more affected. Participants in the INTERSECT meetings discussed this repeatedly with reference to their own communities and society as a whole and identified the need to be able to develop a good self-esteem that would enable them to assert their own identity. They also noted that there is a lack of visibility of Roma LGBTI+ people both outside and within their communities. Another need identified is for accurate communication about Roma LGBTI+, emphasising the need to strengthen pride in belonging to the Roma/Roma LGBTI+ minority,

¹⁰⁸ Extract from the policy paper - Discrimination, self-esteem, and Romania's educational system: suggestions for interventions regarding LGBTQ Roma youth and Roma youth, available at https://www.cri.ro/wp-content/uploads/2021/09/Policy-education_EN.pdf

¹⁰⁹ Goffman, E., 1963. Stigma: Notes on the management of spoiled identity, social theory

¹¹⁰ Link, B.G. and Phelan, J.C., 2001. Conceptualizing stigma. Annual review of Sociology, 27(1), pp.363-385

¹¹¹ Goffman, E., 1963. 1991. Stigma: Notes on the management of spoiled identity, social theory.

¹¹² Crocker, J., Major, B., Steele, C., 1998. Social stigma. In Handbook of Social Psychology, ed. S. Fiske, D. Gilbert, G. Lindzey, vol.2, pp.504-53. Boston, MA: McGraw-Hill.

¹¹³ Jones, E.E., 1984. Social stigma: The psychology of marked relationships. WH Freeman.

¹¹⁴ Link, B.G and Phelan, J.C., 2001. Conceptualizing stigma. Annual review of Sociology, 27(1), pp.363-385

¹¹⁵ Williams, R.D. and Williams-Morris, R., 2000. Racism and Mental Health: The African American experience

¹¹⁶ Goffman, E., 1963. 1991. Stigma: Notes on the management of spoiled identity, social theory

¹¹⁷ In the framework of the INTERSECT project implemented by CLR, five workshops were organized with students from five cities (Brasov, Bucharest, Cluj-Napoca, Iasi and Timisoara) on the intersectionality of ethnicity (Roma), sexual orientation, gender identity and non-discrimination. Read more here https://www.cri.ro/wp-content/uploads/2020/12/Comunicat-de-presa_workshopuri-07.12.20.pdf



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with participants talking about an "inability to be yourself, to assert your own identity being restricted by society". Many of the participants were happy with the opportunity of the INTERSECT project to address the intersectionality between ethnicity and belonging to the LGBTI+ community, and were keen to get involved in further activities and considered such discussions much needed.¹¹⁸

Link and Jo introduce, for the first time, power relations when defining stigma, explaining that '**power is needed in order to stigmatise**'. They show that, although for many categories/ groups of people there are labels associated with negative traits, those who belong to a category that can access social, economic, or political power (politicians, lawyers, Wall Street investors, white people), they 'will not end up being a stigmatised group'.¹¹⁹

We understand then that change must occur, first and foremost, within the group that is in power, while the stigmatised ones need support to develop their self-esteem and be empowered in society.

In the last few years, a number of Roma human rights activists have increasingly addressed the topic of LGBTI+ within Roma communities, and LGBTI+ activists approaching anti-Roma racism. The need for information about minorities and about discrimination is significant, given the data which shows the increased level of racism, homophobia, and transphobia in Romanian society as a whole. At the same time, public policies must include intersectionality and the prevention and combating intersectional discrimination which affects the LGBTI+ Roma youth to a great extent.



¹¹⁸ INTERSECT Timisoara meeting report.

¹¹⁹ Link, B.G. and Phelan, J.C., 2001. Conceptualizing stigma. *Annual review of Sociology*, 27(1), pp.363-385.



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Conclusion

The focus on diversity and inclusion has gradually increased in recent decades among scholars (academics), non-governmental organisations, legislators and transnational bodies. In Romania, intersectionality has intervened in the approach to Roma, feminist and LGBTI+ programming and activism for over a decade, while legislators, state institutions and even human rights-based NGOs remain focused mainly on one vulnerability at a time. This may be one of the reasons why, after three decades of democracy and anti-discrimination work, Roma and LGBTI+ people continue to be heavily marginalised and racism, homophobia and transphobia remain the general norm.

The level of information and training on the Roma minority and LGBTI+ community, on discrimination and on what is meant by groups vulnerable to discrimination and hate crimes remains at an alarmingly low level, both at the institutional level and at the level of the general public in Romania. Solutions, recommendations, best practices and, for the most part, legislation exist and Romania's commitments as a democratic state to defend and promote human rights are extremely clear. It is time for all these to be respected and implemented.

The needs of Roma LGBTI+ people in Romania are high in terms of accessing their rights in all spheres of life: education, work, health, justice, etc., and they are frequently exposed and subject to discrimination. Intersectional discrimination shows how vulnerability to discrimination increases exponentially. The project also highlighted institutional racism, homophobia and transphobia.

This study is an important exposé of the Roma LGBTI+ realities in Romania, as well as a strong call to the Romanian authorities to align their practice and discourse with laws, mechanisms and programmes formed with and for the most marginalised communities in Romania.



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