



Submission by the Equality and Human Rights Action Centre (ACTEDO) to the 29th Session (Jan 2018) of the Universal Periodic Review State under Review: Romania

Equality and Human Rights Action Centre (ACTEDO) is a human rights non-governmental organisation, established in 2013, in Cluj-Napoca, Romania. ACTEDO's mission is to promote fundamental human rights and to act against human rights violations. In order to reach our objectives, we pursue three strategic directions: Access to Justice, Human Rights Education and Gender Equality. Since December 2014, ACTEDO has coordinated a human rights clearinghouse aimed to facilitate the access to justice of vulnerable groups.

This submission reviews the current situation of access to justice, sexual violence, Roma and LGBT+ rights in Romania and is a result of our direct working experience and of compiling public information. Based on this assessment, we seek to provide guidance to States on third-cycle recommendations that we believe can bring about a positive change to people's lives and advance human rights.

Contacts

Centrul de Acțiune pentru Egalitate și Drepturile Omului/
Equality and Human Rights Action Centre (ACTEDO)
Romania, Cluj-Napoca, Calea Dorobanților no 15, ap. 3
www.actedo.org
info@actedo.org
Iulia Pascu, iulia.pascu@actedo.org

CURRENT SITUATION ON THE ACCESS TO JUSTICE OF VULNERABLE GROUPS

1. During the 2013 UPR Review a few recommendations¹ required the Romanian State to take additional measures to ensure the meaningful access to justice of vulnerable groups. However, little has been done to address the obstacles to access to justice faced by vulnerable groups, which prevents them from exercising other fundamental human rights and freedoms. Romania does not have a national strategy dealing with access to justice, in particular of vulnerable groups, and collects little or no data on this issue.

2. Vulnerable groups continue to face significant barriers in accessing justice. A 2014 study found that the majority of magistrates did not recognize certain groups such as Roma, children, single mothers or people living with HIV/AIDS as vulnerable.² The study emphasizes an “overwhelming assertion among Courts and Central/local authorities and some Bar representatives that the problem of equal access to justice is more or less an individual problem”³, and not a structural problem. Many lawyers have pointed out the lack of professional training in the area of anti-discrimination and human rights, a problem also acknowledged by the Special Rapporteur on the Independence of Judges and Lawyers⁴.

3. Romania has one of the lowest budgets for legal aid in Europe, of approximately 0.084 Euro/capita⁵. This is particularly alarming given that around 40% of the Romanian population was at risk of poverty and social exclusion in 2014.⁶ Public legal aid in civil matters is allotted to people whose net monthly income per family member is below 300 RON (67 euros), which is very low.⁷ Consequently, only a small percentage of legal problems faced by low income people are addressed by the public legal aid, which has a disproportionate impact on those who are most vulnerable in society, such as women, children, minorities, people with disabilities, to name a few.

4. Moreover, victims of discrimination often do not qualify for public judicial legal aid. According to existing regulations “public judicial legal aid can be denied when the applicant claims damages for the undermining of their image, honour or reputation, when they have not suffered any material damage”.⁸ Given that in cases of discrimination one can rarely prove material damages, such victims can rarely benefit from public legal aid.⁹

5. Alternative forms of legal assistance such as pro bono lawyering are discouraged and practiced on a very limited scale. Pro bono legal services are not explicitly regulated in the Romanian legislation. In November 2016, the Bar Association of Romania issued the methodological norm no 1/2016¹⁰, which requires that any lawyer wishing to provide free legal assistance in any given case submit a written request to the county Bar Dean to seek their approval. Such requests are to be approved only in “exceptional cases”, when there is proof that the client “lacks material means” and their rights would be “harmed by the delay”. This professional norm limits the access to justice of vulnerable groups by adding the following barriers:

- a) an additional burden on the beneficiary to prove the lack of financial means and an unnecessary time risk for their situation;

- b) a perpetuation of the lack of understanding of vulnerable groups and an uneven practice across the country;
- c) strongly discourages lawyers from any pro bono activity and hinders the role of lawyers as human rights defenders. For example, at the 2017 Congress of Lawyers the proposal to change this methodological norm was met with allegations of clandestine lawyering based on the fact that “such situations are profitable for those who are disadvantaged”¹¹.

At the 2017 Congress of Lawyers¹², it was decided to remove the mandatory requirement of the approval of the Bar Dean for a pro bono case. However, at the time of this submission no such decision has been formally adopted.

6. There is a huge need for professional legal assistance among vulnerable groups in Romania. In December 2014, ACTEDO initiated a project that set up a human rights clearinghouse. So far, pro bono lawyers have helped over 150 people to defend their rights, which included women affected by violence, Roma, children with disabilities and others. The large majority of our beneficiaries did not have any other means of accessing justice and have used our project as a last resort. A survey among NGOs working with vulnerable groups showed that 23 out of 33 NGOs could not respond to their beneficiaries’ needs for legal aid, which lead to severe consequences, including the cessation of HIV/AIDS treatment, loss of house and lack of protection measures for victims.¹³

7. Recommendations:

- **Design and implement a national strategy on access to justice targeting vulnerable groups, including by establishing a system of data collection on barriers to justice and the legal needs of vulnerable groups, within two years.**
- **Increase the annual budget allocated to public legal aid and establish legal information centres in each county that provide free public legal assistance in an easily accessible and user-friendly manner, until the next Review.**
- **Urgently remove any restrictions to the practice of non-state legal aid schemes, such as pro bono lawyering and university legal clinics, and acknowledge, encourage and finance such programmes as tools to promote human rights.**
- **Immediately organize annual human rights and anti-discrimination training programs for the judiciary, with an emphasis on the experiences of vulnerable groups.**
- **Design and implement a human rights education program in schools until the next Review.**

SITUATION OF VICTIMS OF SEXUAL VIOLENCE IN ROMANIA

8. At the 2013 UPR Review, there were several recommendations¹⁴ on support services for victims of sexual violence and access to sexual and reproductive health.¹⁵ However, little has been done to fully implement them and there are still urgent actions which remain to be taken to ensure compliance with international human rights standards.

9. While almost a third of Romanian women (28.5%) have been victims of physical and/or sexual violence throughout their lives¹⁶, adequate specialized services are profoundly underdeveloped. For example, in November 2014, an 18 year old girl from Vaslui was raped by 7 young men on her way home from school, who continued to intimidate and harass her afterwards. The victim could not apply for a protection order, which can only be issued in cases of domestic violence¹⁷ and could not benefit from integrated specialized services. Unfortunately, this case is not an exception. Victims of sexual violence throughout the country are required to pass through costly procedures¹⁸ and are denied access to shelters, guaranteed only to victims of domestic violence.¹⁹

10. Legal information, as well as psychological support are prerequisites for ending the impunity of gender-based violence perpetrators. When a criminal complaint of sexual violence has been filed, the Probation services could provide free psychological counselling.²⁰ However, such services are often not established or not available. In a letter received from the Probation Service of Cluj, in June 2017, we were informed that “no requests for psychological assistance were registered in the last years”. The Probation Service of Bucharest declared that it does not collect such information. Victims can file requests for legal aid only upon having first reported the facts to the police, public prosecutor or judge, at most 60 days after the date of the assault.²¹

11. Victims of sexual violence do not have access to shelters and even if they did, there are only a few available shelters in the country. According to data collected by WAVE in 2015, 14 counties out of 41 had no shelters and only 9 running shelters had a women’s rights-based approach. Despite existing legislation on domestic violence, programmes and services to prevent and combat domestic violence are scarce and poorly funded. Neither national, nor local budgets include gender specific indicators.

12. Given the severity of this situation, a coalition of NGOs coordinated by ACTEDO initiated in 2015 an intergovernmental working group hosted by the Superior Council for Magistracy. After several meetings, a Governmental Decision was drafted to create integrated support services for victims of sexual violence. These would be located inside the hospitals and include free medical, legal and psychological support. The Decision has yet to be adopted even though the Governance Programme 2017-2020²² envisages the creation of 8 such rape crisis centres. In a letter received from the National Agency for Equal Opportunities, in June 2017, we were informed that a draft order to establish such services was not finalised due to the lack of consensus within the Ministry of Health.

13. According to a 2016 EU survey, 55% of Romanians believe that rape is justified in some cases.²³ In 2017, The European Court for Human Rights criticized the Romanian authorities for failing to hold accountable a man who attacked his wife eight times.²⁴ Victims are often treated with disbelief, including by the police, and/or are blamed for the aggression they had suffered. Consequently, they avoid filing a complaint, which perpetuates the impunity of aggressors.

14. According to Eurostat, 15% of first children are born to teenage mothers in Romania, which is one of the highest rates of teenage pregnancy in Europe. This disproportionately affects vulnerable women and further increases their vulnerability, as many of these girls drop out of school. Sexual education is still not part of the compulsory school curricula and there is no national strategy on reproductive health.

15. Recommendations:

- **Establish integrated support services for victims of sexual violence that include free medical, legal and psychological support, from a human rights perspective, immediately.**
- **Design and implement a national strategy on gender-based violence.**
- **Amend Law 217/2003 on preventing and combating domestic violence to expand its scope to all forms of gender-based violence. Ensure the effective implementation of the Law by providing adequate financial resources, setting up a sufficient number of shelters, including for women affected by sexual violence and other support services.**
- **Provide compulsory training for all specialists dealing with victims of gender-based violence, including by revising the curricula to include intervention guides in dealing with victims of gender-based violence.**
- **Integrate a gender dimension into the state and local budget and increase the annual budget allocated for gender programmes, in order to ensure compliance with the Convention on the Elimination of All Forms of Discrimination against Women, immediately.**
- **Design and implement a national strategy on reproductive health, including by introducing mandatory sexuality education programmes in schools, from a human rights perspective and with a compulsory training component for teachers.**

FORCED EVICTIONS OF THE ROMA

16. The 2013 UPR Review included several recommendations on the housing rights and non-discrimination of the Roma.²⁵ However, national law still does not regulate how local municipalities should conduct evictions.²⁶ Moreover, legislation on public housing mandates local authorities to establish the criteria for allocating social housing, which

results in an uneven practice that most often excludes vulnerable groups. For instance, the local council of the city of Cluj-Napoca awards 45 points for PhD holders and 2 points for each dependent child, which is deeply disproportional. Furthermore, the procedure to apply for social housing is highly bureaucratic and based upon ID documents that many Roma fail to have and, from our legal cases on forced evictions, such procedures lack transparency. In addition, social housing is scarce, given that 97% of real estate in Romania is private²⁷.

17. The forced evictions of the Roma have become a common practice, with severe consequences on their health and safety. There are currently nearly 2,000 individuals subsisting in Pata-Rât,²⁸ near a garbage dump of the city of Cluj-Napoca, 40% of whom are children below the age of fourteen.²⁹ 42% of these individuals were forcibly evicted to the site by local authorities.³⁰ In 2015 several Roma families in Cluj-Napoca, almost 80 people in total, were at risk of being forcefully evicted from their houses.³¹ More recently, in 2016 a pro bono lawyer took on a case of 6 Roma families from Arad county who were evicted by the local authorities and moved to metal containers in an uninhabited area in the proximity of a railway track, with no access to running water, electricity and which also hinders the children's access to school.³²

18. The consequences of evictions are severe for the health and safety of people. In the case of Pata Rât, outbreaks of disease are common at the site, especially in one of the most materially deprived communities known as Rampa. Children experience unexplained rashes and other symptoms, resulting in frequent visits to the emergency room. In the case of the evicted families from Arad county, pulmonary diseases affected the five young children aged between 2 and 9 years. Without access to basic utilities and services running water, evicted people remain in a situation of poverty and social exclusion.

19. Recommendations:

- **Adopt and implement legislation to ensure that evictions are carried out in compliance with international human rights standards and take safeguards against Roma discrimination and marginalisation immediately.**
- **Increase the annual budget allocation for social housing and immediately relocate to safe and sanitary environments those individuals and families who were forcibly evicted and placed in unsuitable living conditions.**
- **Amend law 114/1996 on public housing to establish a clear national framework of allocation of social housing that prioritize vulnerable groups, including Roma people, in line with human rights international standards.**
- **Take immediate measures to ensure the enforcement of Law 116/2002 on social marginalisation at the local administration level.**
- **Implement national programs that provide free access to legal counselling and representation for Roma.**

CURRENT SITUATION OF LGBT+ PEOPLE

20. Since the last UPR Review, we consider there has been a regress in the implementation of the recommendations³³ made to protect SOGI rights.

21. According to a 2013 study, 54% of LGBT people in Romania felt discriminated against in the previous year.³⁴ According to a 2015 survey, one in four high school students consider gays and lesbians to be inferior beings, and almost 20% of respondents would not intervene in an act of violence against an LGBT+ classmate.³⁵ The same survey showed that 61% of LGBT respondents were victims or witnessed an aggression. In our clearinghouse experience, two LGBT applicants withdrew their requests for pro bono assistance because they feared reprisals.

22. More recently in 2017, the freedom of peaceful assembly of LGBT people was threatened when the City Hall of Cluj-Napoca did not approve 20 formal requests made by local NGOs to organize a peaceful march, part of the first edition of Cluj Pride. After pressure and media campaigns, the march was finally approved a week before it was scheduled to take place. A further reason of concern is that The New Right, a far-right, ultra-conservative group, received approval to organize a rally on the same day with the Cluj Pride march.

23. Active Watch, a media monitoring NGO, showed that Roma and LGBT+ people are the main targets of hate speech in Romania.³⁶ In 2016 this was exacerbated when a NGO network entitled the Coalition for the Family called for a referendum to amend the Constitution to specify the legal definition of family as based on the marriage between a man and a woman. The Chamber of Deputies has backed the proposal with 232 votes in favour and 22 against. During the campaign, many public figures displayed high intolerance towards LGBT+ people, with one identifying LGBT people as a threat to national security.³⁷

24. Recommendations:

- **Implement nation-wide awareness campaigns aimed at reducing prejudice, hate speech and discrimination against LGBT+ people, targeting both youth and adults.**
- **Design and implement regular training programmes for police officers in order to reduce secondary victimisation and discrimination of LGBT+ people.**
- **Comply with all the provisions of the United Nations Declaration on Human Rights Defenders, ensuring that those who engage in human rights work, including lawyers, and civil society organisations are able to exercise their rights to freedom of expression, association and movement without obstruction, fear of reprisals or harassment and combat impunity of crimes committed against human rights defenders.**

¹ Report of the Working Group on the UPR of Romania, A/HRC/23/5, second-cycle, rec 109.40 by Viet Nam, rec 109.46 by Egypt, rec 109.77 by Iran, 109.91 by Belarus, rec 109.101 and 109.45 by Australia.

² Superior Council for Magistracy, Ministry of Justice (2014) *Access to justice for vulnerable groups in Romania*, p. 72, available at:
http://www.csm1909.ro/csm/linkuri/26_01_2015_72130_ro.pdf.

³ Superior Council for Magistracy, Ministry of Justice (2014) *Access to justice for vulnerable groups in Romania, Idem*.

⁴ Special Rapporteur on the Independence of Judges and Lawyers, Mission to Romania, 2012, A/HRC/20/19/Add.1.

⁵ European Commission for the Efficiency of Justice (CEPEJ) (2010), *Access to Justice in Europe*, p. 68.

⁶ Eurostat Statistics, available at:
http://ec.europa.eu/eurostat/statistics-explained/index.php/People_at_risk_of_poverty_or_social_exclusion

⁷ Government Emergency Ordinance no. 51/2008 regarding public legal aid in civil matters (OUG no 51/2008).

⁸ Article 17, paragraph (3) OUG no. 51/2008.

⁹ Center for Legal Resources, ACTEDO, Save the Children Iasi (2015) *Avocatura pro bono-indicator al functionarii profesiei intr-o democratie reala*, available at:
http://actedo.org/wp-content/uploads/2015/12/AVOCATURA-PRO-BONO_fin.pdf

¹⁰ Norma metodologică nr. 1/2016 privind procedura aplicării prevederilor art. 71 alin. (2) din Legea nr. 51/1995, available at:
<http://uniuneabarourilor.ro/publicam-norma-metodologica-nr-1-privind-procedura-aplicarii-prevederilor-art-71-alin-2-din-legea-nr-511995-pentru-organizarea-si-exercitarea-profesiei-de-avocat/>

¹¹ *Ibidem*.

¹² National Union Bar Association of Romania, Decision no. 262, 2017, approving the Congress of Lawyers Report, p. 30, available at:
http://uniuneabarourilor.ro/wp-content/uploads/2017/06/Hotarare-Consiliu-262-2017_aprobare-Raport-Congres_comunicata.pdf

¹³ Center for Legal Resources, ACTEDO, Save the Children Iasi (2015) *Avocatura pro bono-indicator al functionarii profesiei intr-o democratie reala, Idem*.

¹⁴ Report of the Working Group on the UPR of Romania, A/HRC/23/5, second-cycle, rec 109.95 by Australia, rec 109.97 by Belgium, rec 109.96 by Liechtenstein, rec 109.37 by Italy.

¹⁵ Report of the Working Group on the UPR of Romania, A/HRC/23/5, second-cycle, rec 109.111 by Netherlands, rec 109.112 by Slovenia.

-
- ¹⁶ European Union Agency for Fundamental Rights, *Violence against Women. An EU-wide survey*, 2014, available at: http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf
- ¹⁷ Law 217/2003 on preventing and combating domestic violence regulates the issue of protection orders.
- ¹⁸ For example, the Forensics Certificate is not free of charge.
- ¹⁹ Law no 217/2003 on preventing and combating domestic violence.
- ²⁰ Law 211/2004 on measures to protect victims of crime.
- ²¹ *Ibidem*.
- ²² Available at: <http://www.cdep.ro/pdfs/oz/Program%20de%20Guvernare.pdf>
- ²³ <http://ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2115>
- ²⁴ Bălșan v. Romania, ECHR.
- ²⁵ Report of the Working Group on the UPR of Romania, A/HRC/23/5, second-cycle, rec 109.137 by USA, rec 109.136 by China, rec 109.144 by Ireland, rec 109.141 by Russia, 109.60 by Chile, 109.63 by the State of Palestine, rec 109.47 by Argentina.
- ²⁶ European Roma Rights Centre, *Parallel Report: By the European Roma Rights Centre Concerning Romania*.
- ²⁷ Amnesty International, *Mind the Legal Gap: Roma and the Right to Housing in Romania*, p.2, available at: <https://www.amnesty.org/en/documents/EUR39/004/2011/en/>
- ²⁸ Cluj-Napoca City Hall, Local Council, and Cluj County Council, "East of West: Cluj-Napoca 2021," *European Capital of Culture, Candidate City, Selection Phase*, (Cluj-Napoca: 2021 European Capital of Culture Association, August 2016), 45. See, <http://www.capitalaculturala2021.ro/Files/bidbook/ClujNapoca/Bid%20book%20Cluj-Napoca%202021.pdf>
- ²⁹ Tonk, Gabriella et al. *Draft Outline to the De-segregation and Social Inclusion Action Plan for Pata Rat for 2014-2023*.
- ³⁰ Vincze, Eniko, *Socio-Spatial Marginality of Roma as Form of Intersectional Injustice*, (*Sociologia* 58.2, 2013), 227.
- ³¹ <http://probono.actedo.org/en/forced-evictions/>
- ³² <http://probono.actedo.org/en/case-24-forced-evictions/>
- ³³ Report of the Working Group on the UPR of Romania, A/HRC/23/5, second-cycle, rec 109.43 by Estonia, rec 109.70 by Belgium, rec 109.71 by Austria, rec 109.39 by Finland.
- ³⁴ European Union Agency for Fundamental Rights, *EU LGBT survey European Union lesbian, gay, bisexual and transgender survey*, 2013, available at: <http://fra.europa.eu/en/publication/2013/eu-lgbt-survey-european-union-lesbian-gay-bisexual-and-transgender-survey-results>

³⁵ Asociația ACCEPT, *A Safe High School for Everybody. Perceptions and Attitudes towards LGBT people in the Romanian Educational Environment*, 2015, available at: <http://www.acceptromania.ro/wp-content/uploads/2016/03/Un-liceu-sigur-pentru-to%C8%9Bi-rezultate-cantitative1.pdf>

³⁶ Active Watch, *Annual Report on Hate Speech in Romania, 2015-2016*, available at: [http://www.activewatch.ro/Assets/Upload/files/Raport%20anual%20cu%20privire%20la%20discursul%20instigator%20la%20ura%202015%202016\(1\).pdf](http://www.activewatch.ro/Assets/Upload/files/Raport%20anual%20cu%20privire%20la%20discursul%20instigator%20la%20ura%202015%202016(1).pdf)

³⁷ *Ibidem.*