

Romania



Ingrid Baciu, Vera Cîmpeanu, and Mona Nicoara

Romania is one of the few European states that makes homosexuality a crime. Consensual same-sex relations between adults, even if they take place in private, are illegal. A 1994 decision of the Constitutional Court overruled some of these legal restrictions, but maintained a discriminatory age of consent for same-sex sexual relations as compared to heterosexual sex. The Parliament has been reviewing the law for the past two years, but, as of April 1995, no final decision has been made. Moreover, some of the legal formulations under consideration before the Parliament hardly represent a step forward from the current statute. The criminalization of same-sex relations has hampered the development of a lesbian community, much less the development of any lesbian advocacy groups.

Lesbians experience the same disadvantages as all women in Romanian society, and in addition, they are subject to the stigma that the general public attaches to homosexuality.

LEGAL RESTRICTIONS

Same-sex relations are criminalized in Romania under Article 200 of the Penal Code, which specifies that:

Same-sex relations shall be punished by prison from one to five years.

If the deed provided under Para. 1 is perpetrated upon a minor or upon an individual unable to protect him/herself or to express his/her will, or by means of force, the punishment shall be prison from two to seven years.

If the deed provided in Para. 2 results in serious physical damage for the victim, the punishment shall be three to ten years in prison; if the deed results in the death or suicide of the victim, the punishment shall be prison from seven to fifteen years.

Enticing or luring of a person into the perpetration of the deed provided under Para. 1 shall be punished by prison from one to five years.¹

This criminalization violates the provisions of the 1991 Constitution, which, under Article 26, enshrines "the right to intimate, private, and family life" and the binding international human rights documents ratified by Romania.² Further, the criminal code provides for a higher age of consent (Romanian citizens reach legal adulthood at 18) for same-sex relations than for heterosexual sex, for which the age of consent is 14.³

Article 200 of the Penal Code is known to have been enforced in a number of cases. Indeed, as of November 1994, the listings of detainees convicted under Article 200 provided by the Romanian Ministry of Justice showed 56 prisoners, all male, serving sentences under the various

paragraphs of Article 200.

This provision of the Penal Code dates back to 1968, when the version currently in force was adopted. Following the 1989 Revolution, which led to the demise of the communist regime, there have been several attempts to review the whole Romanian penal system. However, only during the past two years has the Parliament taken up the issue in a more systematic way.

Article 200 of the Penal Code has a complicated procedural history. The first attempt to revise the current version of Article 200 dates back to early 1993 when, on the initiative of a Romanian human rights group, the Romanian Helsinki Committee, a deputy forwarded a proposal to amend Article 200 so as to eliminate Paragraph 1 altogether. The proposal was shelved at the level of the Chamber of Deputies, but the debate was revived upon Romania's accession to the Council of Europe. One of the recommendations made by the Parliamentary Assembly at that time was that "Romania will shortly change its legislation in such a way that..Article 200 of the Penal Code will no longer consider as a criminal offense homosexual acts in private between consenting adults."⁴

Thus, in autumn 1993, the Romanian government forwarded the Senate a package reform of the Penal Code and Penal Procedure Code. While increasing the penalties provided under Paragraphs 2-3 of the current formulation of the Penal Code, the bill proposed to amend the wording of the first paragraph, so as to criminalize same sex relations "resulting in a public scandal." This formulation coincides with the one included in the 1938 Penal Code, but would by no means bring a real liberalization of same-sex relations: the vagueness of the notion of "public scandal" would allow for abusive interpretation by law enforcement agencies and national courts. In early 1994, the plenum of the Senate decided upon another major point of concern for human rights activists in Romania, adopting the following wording for the last paragraph of Article 200:

"Enticing or seducing a person with a view to perpetrate the deeds provided in the above paragraphs, as well as propaganda, association, or any acts of proselytizing carried out to the same effect shall be punished by 1 to 5 years in prison."

This provision seriously jeopardized the rights to freedom of expression and association, enshrined both by the Romanian Constitution and by the international documents to which Romania is a party. The bill was submitted to the Chamber of Deputies, which has often shown itself to be more responsive to the human rights organizations advocating the decriminalization of same-sex relations. However, in October 1994, the plenum of the chamber decided to maintain the formulation contained in the Penal Code currently in force, notwithstanding the recommendations of the Council of Europe, and disregarding an earlier decision of the Constitutional Court (see below). Following a letter-writing campaign initiated by Romanian and international human rights groups, the chamber decided to review the vote a week later, maintaining the formulation of the last paragraph of Article 200 and adopting a less vague and somewhat more liberal version for the first paragraph: "Same-sex relations, if perpetrated in public or under conditions of a nature to disturb public order, shall be punished by prison from one to 5 years." The debate is currently continuing over the exact status and wording of the law.

Recently, the constitutionality of the law was challenged by six male defendants prosecuted under the first two paragraphs of Article 200. While the Constitutional Court ruled that the law prohibiting same-sex relations among adults is unconstitutional, the wording of the decision was such that the Court would accept any of the versions of the law currently being circulated. The provisions relating to minors and sexual assault between same-sex parties were upheld by the court.⁵

NEGATIVE PUBLIC ATTITUDES TOWARDS LESBIANS

Prevailing attitudes in Romanian society toward lesbians and gay men are, in general, negative. However, the public and parliamentary debate around Article 200 in Romania seems to have focused almost entirely upon gay men, leaving out lesbians altogether. For instance, the above-mentioned parliamentary debate has concentrated almost exclusively on "homosexuals,"⁶ even though the legislation in question would affect both lesbians and gay men.

This omission is reflective of the relative invisibility of lesbians in Romanian society; while an individual lesbian is likely to encounter condemnation and discrimination, homosexuality in the abstract is most often discussed in male terms. This is in part a reflection of the relative positions of women versus men in Romanian society. In a country where patriarchal values are at the core of the social structure and men are seen as the sole decision-makers, homosexuality among men is more of an issue precisely because it threatens the gendered organization of priorities. Women are much less represented than men in decision-making structures, domestic violence is widely accepted as a fact of life, and women's private lives are supposed to be entirely dedicated to family issues. Indeed, apart from a few educational pieces included among the sex education features of Romanian publications, lesbianism has been visible only in pornographic magazines, displayed for the pleasure of a male viewer.

Prior to the 1989 Revolution, sex education was nonexistent in Romania. The silence surrounding homosexuality within Romanian society made it difficult for girls to consider any alternatives to heterosexuality. I.B., a lesbian activist and journalism student, says: "At the time, I did not even know that words such as 'lesbianism' or 'homosexuality' existed. In a closed society like pre-1989 Romania, the issue was more than a taboo: it simply did not exist. But I had been attracted to women from a very early age and was wondering as to what was happening to me. I was lucky enough to get a hold on the black market of a magazine

featuring two women making love. I realized then that this was what I wanted, but I knew it was hard to get it in a society where you have to pay with your freedom for being attracted to someone of the same sex as you."⁷

The few opinion polls focusing on sexual orientation and the response of the population to homosexuality show equal degrees of intolerance towards lesbians and gay men. A March 1995 poll shows that as many as 53% of the interviewed subjects believe that lesbians should not be accepted into society, whereas only 30% are willing to accept them with no reservations. An additional 10% would accept them with some reservations, while 7% expressed no opinion. Youth and more educated people seem to be most tolerant of lesbians, generally.⁸

Religious beliefs play an important role in determining the attitude of the majority towards gay and lesbian issues (according to the 1992 census, 99.3% of the population declared themselves religious) and are increasingly used to justify conservative political decisions on the issue. Many of the parliamentary factions have used the fact that the majority of their constituents are religious as a rationale to oppose the decriminalization of same-sex relations. Likewise, many religious denominations, and particularly the Romanian Christian Orthodox Church, have been very vocal in opposing the liberalization of same-sex relations. A national Christian Orthodox students' organization, supported by the church and by other student groups, even started a campaign in the summer of 1994 to collect signatures in order to push for a popular legislative initiative to criminalize same-sex relations, in case the Parliament would have decided otherwise.

However, the media are finding stories about homosexuality increasingly marketable. Since 1993, a number of television and radio shows dealing with homosexuality have been produced. The written press is also picking up on the subject, publishing more and more sensational stories. Such features show little serious understanding of the issue.

Often, by presenting lesbians as sensational "others," they perpetuate the negative stereotypes that the public seems to have already formed. The shock value of the subject seems to outweigh journalistic ethics: lesbian activist I.B. was "outed" as a lesbian during a show on Romanian public television in November 1993, even though she had agreed to participate only under the conditions that her face would not be shown and her name would not be disclosed. The producer of the show used sensational tactics and disregarded his agreement to maintain I.B.'s anonymity. As a result, her relations to family and friends have deteriorated, and she has been recognized and harassed on the street numerous times.

M.P., a lesbian, a mother of two, a victim of domestic violence, and a former sex worker, was arrested under the pre-1989 regime for revealing her sexual orientation and refusing to accept propositions made to her by a local political

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leader. She was taken into police custody to be charged under Article 200, but through her family's connections managed to get the charge reduced to "illegal abortion." She was released three months later, never having been brought before the court. She took a job as an accountant after 1989, only to find herself fired for being outspoken about her sexuality and refusing to yield to the sexual advances of a male colleague. She has repeatedly been offered money to have sex with her girlfriend in front of men.⁹

Under such circumstances, revealing one's sexual orientation to friends, family, and co-workers can be extremely difficult. Of the nine lesbians interviewed by the authors only one, C.D. (a high school student), seems to have benefited from a more tolerant family environment. Her family accepts her lesbianism and has not tried to stop her from living with her girlfriend.¹⁰

ADVOCACY AND THE DEVELOPING
LESBIAN COMMUNITY

The battle for the decriminalization of same-sex relations has so far been led by independent human rights groups, such as the Romanian Helsinki Committee (through its legislative advocacy and minorities projects) or the Independent Romanian Society for Human Rights. The Romanian Helsinki Committee has been lobbying the Parliament on the issue for the past two years and has initiated a series of letter-writing campaigns for the Parliament and the Constitutional Court. International organizations, such as Amnesty International, Human Rights Watch/Helsinki, the International Human Rights Law Group, the International Gay and Lesbian Human Rights Commission, and the International Lesbian and Gay Association, have been actively involved in such campaigns.

In 1993, the Independent Romanian Society for Human Rights developed a program for sexual minorities, the only one of its kind among public interest groups. However, despite efforts to promote lesbian issues, the project was not successful in bringing together and organizing lesbians. "My experience has been that lesbians are not visible or active, possibly due to fear. Gay men are more united and have proven to be able to stand up for their rights better than lesbians so far. During my stay in the Romanian Independent Society for Human Rights I have managed to bring together only a few women: some were feminists, others

simply got involved because they had a lot of spare time on their hands. None of them were lesbians, however, and, despite the fact that we publicized our activity throughout the country, no lesbians contacted our project," says I.B.¹¹

No other organizations are known to have addressed lesbian issues. None of the approximately 40 women's groups in Romania has shown any interest in this area. AIDS prevention and education groups have focused primarily on heterosexuals; some have worked covertly with gay men, but none have sought to reach lesbians.

Starting in 1992, a few underground gay and lesbian groups, such as Total Relations and Group 200, functioned, each for a rather brief period of time. An underground lesbian group was reported to exist in Ploiesti, a city 60 kilometers north of Bucharest. The main reason that such groups are forced to remain underground is that the existence of Article 200 makes official registration of any gay and lesbian group virtually impossible. For instance, the leader of Group 200 was requested to present approvals from several ministries before registering the group in court. Several of the ministries refused to do so, based on the provisions of Article 200 of the Penal Code. Without an official registration, these groups cannot open bank accounts, hold assets, or rent an office. Article 200 thus results in serious infringements on free speech and association. Despite these obstacles, as of this writing several gay and lesbian groups, such as the Bucharest Acceptance Group and the Commission for the Rights of Sexual Minorities, are trying to get organized and registered in Bucharest.

The lesbian cultural scene has been no more lively than the organizational history presented above. The only gay and lesbian publication known is *Gay '45*, edited by the director of the sexual minorities project of the Romanian Independent Society for Human Rights. However, apparently due to lack of financial resources and difficulties relating to distribution (few newsstands agreed to carry the magazine), only two issues have been published so far, both in 1993. A

gay and lesbian festival with international participation was prevented from taking place by the Romanian authorities in the summer of 1994; police troops surrounded the building and prevented organizers, performers, and the public from entering. No safe meeting places for lesbians are known. A few regular bars are known to be more popular among lesbians than others, but the vast majority of customers in such places are heterosexual. The absence of a space for debate and consciousness raising among lesbians is one of the major impediments to developing a strong lesbian community.

NOTES

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- 1 All quotations from Romanian statutes and court decisions follow unofficial translations, with the exception of the Romanian Constitution.
- 2 According to Art. 11 and 20 of the 1991 Constitution, international human rights documents ratified by Romania are integral part of the domestic law and prevail over conflicting national legislation. These include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention for the Protection of Fundamental Rights and Freedoms.
- 3 See Art. 197 and 198 of the Romanian Penal Code. The age of consent for women to engage in heterosexual sex is 14 ; Romanian law does not specify an age of consent for men to engage in heterosexual sex.
- 4 "On the Application by Romania for Membership of the Council of Europe," Op. No. 176, Eur. Parl. Ass., 44th Sess. para. 7, 1993.
- 5 The Constitutional Court decision, no. 81/July 15, 1994, reads: "1. [The Constitutional Court of Romania] partially admits the exception of unconstitutionality relating to Art. 200 para. 1 of the Penal Code, invoked by B.O.N., B.O., B.L., S.I.C., H.F.P., and N.G.C. by means of files no. 5298/1993, 5711/1993, and 5943/1993 with the Sibiu Court, and notes that the provisions of this paragraph are unconstitutional to the extent to which they apply to same-sex relations between