



July 30, 2009

His Excellency Mr. Traian Basescu, President of Romania

Your Excellency:

We are writing to you on behalf of ACCEPT, ILGA-Europe, and the International Gay and Lesbian Human Rights Commission (IGLHRC) to express our disappointment with the new Civil Code adopted recently and its provisions that discriminate on the basis of sexual orientation, including Article 277 on the interdiction or equating of forms of living together with marriage, Article 462 on simultaneous adoption, Article 258 on family, and Article 259 on marriage. Not only do these laws violate the rights to nondiscrimination, privacy and the freedom of movement under international and European law and policy, but they also generate societal prejudices against lesbian, gay, bisexual, and transgender (LGBT) people and non-traditional heterosexual families.

### **Right to Nondiscrimination**

Discrimination on the basis of sexual orientation is prohibited under Article 14 of the ECHR (see, *Karner v. Austria*, 2003) and Articles 2 and 26 of the International Covenant on Civil and Political Rights (see, *Toonen v. Australia*, 1994). Despite the inclusion of a provision in line with these international standards, explicitly prohibiting discrimination on the basis of sexual orientation under the new Civil Code (Article 30), the new provisions defining family and adoption include concrete discrimination that denies the existence of LGBT and other non-traditional heterosexual families and create social stigma and discrimination.

### **Freedom of movement**

Articles 277, 258, and 259 of the new Civil Code violate the right to freedom of movement under Article 2 of Protocol 4 of the European Convention of Human Rights and Fundamental Freedoms (ECHR), the Directive 2004/38/EC on the right of citizens of the European Union and their family members to move and reside freely within the territory of the Member States, Article 28 of the European Economic Area (EEA) Agreement, as well as several United Nations treaties.<sup>1</sup> By categorically denying recognition to partnerships and same-sex marriages legally formed in other states, Romania impedes the right to freedom of movement of those couples because they must limit their movement or else face discriminatory access to partner benefits<sup>2</sup> and flouts international private law provisions on marital status.

### **Right to Privacy**

Article 462 on simultaneous adoption violates the rights to nondiscrimination and privacy under the ECHR and the recommendations in the revised European Convention on Adoption of Children of the

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<sup>1</sup> Universal Declaration on Human Rights, Art. 13; International Covenant on Civil and Political Rights, Art. 12; International Convention on the Elimination of Racial Discrimination, Art. 5(d)(i); Convention on the Elimination of All Forms of Discrimination Against Women, Art. 15(4); and the Convention on the Rights of the Child, Art. 10(2).

<sup>2</sup> The Catania Report calls on the European Commission to ensure that "Member States apply the principle of mutual recognition for homosexual couples, whether they are married or living in a registered civil partnership, in particular when they are exercising their right to free movement under EU law." Committee on Civil Liberties, Justice, and Home Affairs, European Parliament, *Report on the situation of fundamental rights in the European Union 2004-2008* (The Catania Report) A6-0479/2008 (May 12, 2008) para. 76.

Council of Europe. The European Court of Human Rights has stated that domestic authorities that make distinctions based on consideration of sexual orientation in the authorization of an application of a single person to adopt a child are discriminating on the basis of sexual orientation (*E.B. v. France*, 2007). If the law does not prohibit single people from adopting children, adoption cannot be denied based on sexual orientation. This principle logically extends also to adoption by same-sex couples. Though Article 462(1) in theory does not make a distinction based on the sex of the unmarried couple prohibited from adopting, the practice is that different-sex couples may get married and therefore are not prohibited from adopting children categorically. Because same-sex couples cannot have their relationships recognized in Romania, regardless of their partnerships formed outside the country, the prohibition on adoption by unmarried couples in Art. 462(1) and the prohibition on adoption for same-sex couples in Art. 462(3) are discrimination on the basis of sexual orientation under *E.B.*

### **Increased stigma**

The effect of these provisions in the new Civil Code includes increased social stigma and discrimination for all people and families who do not follow the traditional heterosexual model. Under the old Civil Code there was no recognition of marriage between persons of the same sex, civil partnerships, or simultaneous adoption of children by same-sex couples, though the code did not include such provisions that specifically restricted same-sex couples. The animus against gay, lesbian, and bisexual people is particularly visible in the fact that these new provisions are redundant.

The inclusion of these provisions perpetuates discrimination against lesbian, gay, bisexual, and transgender people and their families. The Civil Code of Romania must protect the human rights of all people. We ask you to support all efforts to repeal these provisions and to ensure nondiscrimination on the basis of sexual orientation in all areas of the law.

Sincerely,

Cu sinceritate,



Cary Alan Johnson  
Executive Director, IGLHRC



Florentina Bocioc  
Executive Director, ACCEPT

Evelyne Paradis  
Policy Director, ILGA-Europe

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ACCEPT is the first human rights NGO in Romania that defends and promotes the rights of LGBT people at the national level. [www.accept-romania.ro](http://www.accept-romania.ro)

The International Gay and Lesbian Human Rights Commission's mission is to advance human rights for everyone, everywhere to end discrimination based on sexual orientation, gender identity, and gender expression. A non-profit, non-governmental organization, IGLHRC is based in New York, with offices in Cape Town and Buenos Aires. [www.iglhrc.org](http://www.iglhrc.org)

ILGA-Europe is the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA). ILGA-Europe is working for human rights and equality for lesbian, gay, bisexual and transgender people at European level. [www.ilga-europe.org](http://www.ilga-europe.org)

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## **Appendix: Excerpts from Romanian civil code, adopted June 22, 2009**

Translation from Romanian by ACCEPT and the International Gay and Lesbian Human Rights Commission (IGLHRC)

### Article 277: Interdiction or equating of forms of living together with marriage

1. Same sex marriage is forbidden.
2. Same sex marriage contracted abroad whether between Romanian citizens or by foreign citizens are not recognized in Romania
3. Civil partnerships between opposite sex persons or same-sex persons, whether by Romanian citizens or foreign citizens are not recognized in Romania
4. Legal provisions regarding free movement in the territory of Romania of citizens from the EU member states and the EEA, are valid.

### Article 258: Family

1. Family is based on free consenting marriage between spouses, on their equality and on the right and obligation of parents to ensure the upbringing and education of their children.
2. Family has the right to protection by society and the state
3. The state is obliged to support through economic and social measures the making of marriage, and the development and consolidation of the family
4. In the context of the current code, spouses mean man and woman united through marriage

### Article 259: Marriage

1. Marriage is the freely consented union between one man and one woman made according to the law
2. The man and the woman have the right to marry in order to constitute a family/have a family
3. The religious marriage can happen only after a civil marriage
4. The conditions to enter or nullify the marriage are established through this code
5. Marriage is undone through the death or through the judicial statement regarding the death of one of the spouses
6. Marriage can be undone through divorce according to the law

### Article 271: Consent to marriage

Marriage is performed between the man and the woman through their personal and free consent.

### Article 462. Simultaneous adoption

1. Two people cannot adopt together nor simultaneously, or consequently except if they are husband or wife
2. However a new adoption can be approved when
  - a. The adopter or the adoptive spouses passed away, the prior adoption is considered undone while the court decision to approve the new adoption is still valid
  - b. The prior adoption ceased for whatever reason
3. Two persons of the same sex cannot adopt together.