

**Andreea Sinziana Carstocea**  
PhD candidate  
GASPPECO- Université Libre de Bruxelles

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**Interest politics in Post-communist democracies**

Nieves Pérez-Solórzano

[n.perez-solorzano@uea.ac.uk](mailto:n.perez-solorzano@uea.ac.uk)

Jean-Michel De Waele

[jmdewael@ulb.ac.be](mailto:jmdewael@ulb.ac.be)

**Homosexuality: a measure for democratization. Negotiation and mediation  
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## Introduction

The collapse of the communist regime in 1989, followed by the transition to democracy, opened a period of systemic change at all levels of society. Building a new order out of wreckage implies structural reforms, economic developments, the reorganization of institutions, and transformations of the legal framework, but also the emergence of new forms of mobilization and the development of new interests.

At the European level, over the last half century, interest groups defending LGBT rights became more and more defined and organized, succeeding to mobilize resources and support, and to exercise their influence in the policy process. In the post-communist countries, however, the past decade has only seen attention drawn to the “homosexuality issue” and little more. Transition from communism towards democracy implies various and quick reforms, and the human rights sector has been one key area for reform.

The attempt of this paper is to explore the conditions leading to the creation of this new interest in Romania, LGBT rights. Largely through the use of a case study from the Bucharest based organization ACCEPT, this paper will focus on LGBT rights from the context of the political arena, explore the meanings developed to affirm and defend these rights, and discuss concrete accomplishments: the prominent law reversal, namely the decriminalization of homosexuality and a legal framework for combating discrimination.

This contribution argues that the articulation of this new interest in post-communist Romania has to be examined in relation to the opportunities and democratic conditions European institutions opened in this country. Therefore, we’ll take a closer look to the concrete actions involving domestic mediation of European pressure and the successful use of European standards in local gay activism. In this logic, we have to consider the support of international intermediaries not only in terms of external pressure and European conditionality, but also in terms of mobilizing resources from abroad.

Taking these ideas as directory lines, this paper is organized in two main sections: the **first** section aims to understand the general context in which the subject of homosexuality becomes an issue in the Romanian local political arena. In a very conservative society, with an Orthodox Church very assertive politically, legal provisions regarding same sex couples were slow to make the transformation: a decade after the regime changed, they were still enforced. In the **second** section we will pass from a

general context to the actual articulation of this new interest in the Romanian case, mainly by taking a closer look at the initiation of the first gay and lesbian human rights associations in Bucharest. The main activities these associations have led since 1994 in order to facilitate the transformations regarding legal provision on same sex relationships constitutes our focus. Some concluding observations will round out this paper.

Before we proceed to this plan, a few factual clarifications are needed: in the section below we are going to briefly point out the actual changes of the legal provisions concerning same-sex relationships

### **Legal provisions concerning homosexuality: the facts**

During the communist years, all consensual sexual relations between adults of the same sex were forbidden and a number of homosexuals were sent to prison. Considered inexistent by the official reports, homosexuals had to be kept away from the public space; sending them to prison or using their “stigma” as an instrument of blackmail were ways of dealing with this issue, based on a specific article of the Penal Code, Article 200 – which criminalized all consensual homosexual acts<sup>1</sup>.

The subject of homosexuality becomes an issue in the parliamentary debates following the Government’s proposal to amend the Penal Code. After several reformulations and “forwards” and “backwards” between the two chambers<sup>2</sup> of the Parliament, this law project was finally adopted in 1996, the first Penal Code reform after the communist regime collapsed. Vividly contested by the majority of the political parties and the Orthodox Church, this project constitutes the first intervention on the article concerning same sex relationships: the first paragraph decriminalizes private homosexual conduct,

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<sup>1</sup> Under this article: “1). Sexual relations between same sex persons shall be punished by a prison sentence of one to five years. 2). If the act provided for in paragraph 1 is committed under duress, or against a minor, or against a person unable to defend himself or to express his/her will, the punishment shall be a prison sentence of two to seven years. 3). If the act provided for in paragraph 2 results in serious injury to physical integrity or to health, 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 a prison sentence of seven to fifteen years. 4). Enticing or luring of a person into the perpetration of the act provided under paragraph 1 shall be punished by prison sentence of one to five years.”, Codul Penal cu completările, modificările și abrogările până la 2 oct 1992, editie coordonata, sistematizata și îngrijita de Iulian Peoanru, Editura neprecizata, 1992

<sup>2</sup> Bills or legislative proposals passed by one Chamber shall be sent to the other Parliament Chamber. If the bill or legislative proposal is rejected in the latter, it shall be sent back, for a new debate, to the Chamber that had passed it. A second rejection is final. If one of the Chambers has passed a bill or legislative proposal, in a different wording from that approved by the other Chamber, the Presidents of both Chambers shall initiate a mediation procedure, by parity Committee.

but in fact this reform didn't bring any improvement to the legal environment in Romania: homosexuality is still illegal if it leads to "public scandal"<sup>3</sup> and, more, homosexual people don't have the right to express themselves or to act in a specific associations<sup>4</sup>.

Following this reform, five years passed before the antihomosexual legislation was amended. During this period, two essays aimed at modifying this article resulted in failure. It wasn't until 2001 that a real change occurred when legal provision sanctioning discrimination based on same sex orientation was adopted and, shortly after, all punitive laws regarding homosexuals were abolished. For almost one year the Romanian legislation had two contradictory provisions: one sanctioning same sex relationships and forbidding gay associations as well as freedom of expression of homosexual persons, and the other criminalizing all discriminatory action against homosexuals. Article 200, the legal text criminalizing homosexuality, was abolished only in 2001 by Government Ordinance. Today same sex relationships are no longer a matter of criminal law and Romania possesses an elaborate legal framework for combating discrimination.

After this brief overview of the concrete legal changes operated in the Romanian legislation with regard to the same sex relationships, we are going to examine now the general conditions allowing LGBT rights to become a matter of interest in the political arena in this country.

### **The European Institutions' democratic conditionality**

In different other post-communist countries (for example Bulgaria<sup>5</sup> or Russia<sup>6</sup>) formal decriminalization of homosexuality took place without too long controversy; even though

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<sup>3</sup> Under the new formula of Article 200, "Sexual relations between same sex persons, if performed in public or if they have resulted in public scandal, shall be punished by prison from 1 up to 5 years". Codul Penal al Romaniei, Editura Lumina Lex, 1997. "In public" is defined by Article 152 of the Penal Code: "The deed is considered to be committed "in public" when committed: a) in a place that by its nature or purpose is always accessible to the public, even if no one is present there; b) in any other place accessible to the public, if two or more persons are present; c) In a place inaccessible to the public, with the intention that the deed be seen or heard and if this consequence occurs before two or more persons; d) in a meeting of two or more persons, except for meetings that can be considered family meetings due to the nature of the relationships between the participating persons; e) through any means by which the actor has knowledge that the occurrence may reach the public." The term "public scandal", however, is not defined anywhere in the Romanian penal legislation.

<sup>4</sup> Paragraph 5 of Article 200 stated: "The practice of tempting or urging others in order to practice homosexual relations, as well as the propaganda or association, or any other acts of proselytism performed for this goal, is punishable by imprisonment from 1 to 5 years", op. cit.

<sup>5</sup> The Bulgarian Penal Code from 1968 decriminalized consensual homosexuality between adults.

the absence of legal provisions against same sex consensual relationships didn't lead to their social acceptance, one could remark certain traits of gay and lesbian subculture, with organizations, mobilization, publications, and centers. In Romania, on the contrary, the process of decriminalization of homosexuality covered almost ten years of debates and arguments, and an incipient form of organization dates only from the second half of the 90s<sup>7</sup>.

Our interest for this stage of the discussion is mainly to explore the conditions allowing the revocation of antihomosexual legislation. Several aspects sustain aligning legal transformations concerning homosexuality and the European Institutions' influence, and they will make our subject matter thereafter.

In the years following the collapse of the communist regime, the priority for Romanian governments had been the relations with the Council of Europe. 1993, when the country joined the Council of Europe<sup>8</sup>, marked an important accomplishment. Once Romania received the European Commission's Opinion on its application for EU membership<sup>9</sup> in 1997, and the accession process was formally launched<sup>10</sup>, attention turned mainly towards the EU.

The Copenhagen criteria, established at the European Council meeting in 1993, included the rule of law and stable democratic institutions as well as human rights and respect for minorities. More so, the EU's criteria have moved increasingly from procedural conditions to include also criteria of substantive democracy: entrant countries have to satisfy various basic requirements, of which the democracy test is of high importance.

Indeed, following the demand to become a member of these European institutions, Romania received series of visits from European representatives who reviewed the application for membership and determined progress in implementing the reform. *Rapporteurs* from the Council of Europe visiting Romania in April 1993 to investigate its

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<sup>6</sup> The old Penal Code had been repealed, and the antihomosexual article also ceased to be valid, in 1993.

<sup>7</sup> For the present discussion we are going to focus mainly on the legal changes taking place in Romania, living aside the social changes occurred in this period. These will be only mentioned to illustrate our point, without a detailed insight on the matter.

<sup>8</sup> Romania became member of the Council of Europe in October 7, 1993.

<sup>9</sup> Romania applied for EU membership in June 22, 1995.

<sup>10</sup> On 30 March 1998, by a meeting of the Ministers for Foreign Affairs of the fifteen EU Member States, the ten Central and East European applicant states and Cyprus.

human rights record raised the issue of homosexuality. Based on these reports<sup>11</sup>, between other recommendations, the Parliamentary Assembly affirms its expectation 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<sup>12</sup>.”

Modifying the law concerning homosexuals as a condition for adhesion to the Council of Europe is considered a key factor in opening the debates on judicial reform. The Romanian Government’s initiative to introduce a program of reform for the Penal Code and Code of Criminal Procedure (including revisions of antihomosexual articles) is connected with the Council of Europe’s requirement to Romanian authorities to modify this law in order to meet European standards.

After joining the Council of Europe, Romania ratified the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>13</sup> and also signed Protocol 12 (prohibiting discrimination), which became referential instruments in the years of arguments that followed.

While formally accepting the strategy of membership, at local level the Romanian political authorities pursued a path that progressively conflicted with the EU’s democracy test: the Government’s proposal to amend the discriminatory legislation encounters a major resistance from almost all political parties in the Parliament<sup>14</sup>. More, the strong reactions from the Orthodox Church echoed loudly in the political debates, the main idea resulting from the discussions emphasizing homosexuality as an offence to the moral and religious conscience of the great majority of the population, a modern vice that Romanians don’t have to embrace in order to be recognized as Europeans. Cultural and

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<sup>11</sup> See Doc. 6901, commission report on political matters, rapporteur M. Friederich Köning, 19 July 1993 ; Doc. 6918, commission opinion on judicial matters and human rights, rapporteur M. Gunnar Jansson, 20 Septembre 1993 ; Doc. 6914, commission opinion on relations with countries non members, rapporteur : M. Theodoros Pangalos, 16 September 1993.

<sup>12</sup> AVIS No 176 (1993) 1 concerning Romanian’s demand to join the Council of Europe, text adopted by the Parliamentary Assembly of the Council of Europe on 28 September 1993 (46<sup>th</sup> sitting).

<sup>13</sup> Convention is ratified and becomes effective on 6 June 1994.

<sup>14</sup> Especially at the beginning of the debates, it would be impossible to bring into light the parties’ positions on the matter, being that they have never agreed on an official one and most of the Parliament members have intervened on a personal position; still we could mention clearly against the reform: Great Romania Party, right wing party, National Peasant Christian Democrat Party, or National Union Party (the last two no longer in the Parliament). Even though very reluctant at the beginning, Liberal Party, Social Democrat Party of the Social Democrat Party arrived at less radical positions towards the end of the period, still with very loud voices expressing dissension. On the contrary, the Democrat Union of Hungarians in Romania clearly expressed their agreement with the reform and the abolition of article 200.

historical patterns should be taken into consideration by the European institutions and the country's values should be respected. Therefore, the Parliament failed to reform the Penal Code and antihomosexual provisions remain into force.

The European Institutions' conditionality also implied the political monitoring of domestic developments; during the years following the accession to the Council of Europe and the demand to EU membership, the progress of the country on democratic reform constitutes a constant focus at the European level.

For that matter, the *Resolution 1123/1997 on the honouring of obligations and commitments by Romania*<sup>15</sup> noted that Romania had made considerable progress towards the fulfillment of her obligations and commitments since joining the Council of Europe, but also stated that "certain provisions of the Penal Code now in force are unacceptable and seriously imperil the exercise of fundamental freedoms, especially Article 200 on homosexual acts...<sup>16</sup>" The Parliamentary Assembly requested that the Romanian authorities "amend without delay the provisions of the Penal Code... which are contrary to fundamental freedoms as set forth in the European Convention on Human Rights" and decided to stop monitoring Romania<sup>17</sup>, saying that the procedure could be reopened if the conditions stated are not fulfilled within a year.

On the other hand, the European Commission, after examining the Romanian application for EU membership, published "Agenda 2000 - Commission Opinion on Romania's Application for Membership of the European Union." The document analyzed the Romanian case according to the "political" criteria for accession formulated for the candidate countries in Central and Eastern Europe<sup>18</sup>. Section B of this document refers to the political conditions, and human rights and the protection of minorities; from this point of view, the Commission observes that: "As regards equality before the law, homosexuals are exposed to abuses by the vagueness of the term "public scandal"<sup>19</sup>" as applied to homosexual acts by Article 200 of the Penal Code<sup>20</sup> ,.

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<sup>15</sup> Text adopted by the Parliamentary Assembly of the Council of Europe on 24 April 1997 (14<sup>th</sup> Sitting).

<sup>16</sup> Paragraph 9.

<sup>17</sup> Procedure opened under Order no 508/1995.

<sup>18</sup> Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

<sup>19</sup> "In public" is defined by Article 152 of the Penal Code: "The deed is considered to be committed "in public" when committed: a) in a place that by its nature or purpose is always accessible to the public, even if no one is present there; b) in any other place accessible to the public, if two or more persons are present; c) in a place inaccessible to the public, with the intention that the deed be seen or heard and if this consequence occurs before two or more persons; d) in a meeting of two or more persons, except for meetings that can be considered

The same issue was mentioned in November 1998, when the European Commission presented the first “Regular report from the Commission on Romania’s progress towards accession”. In this document, the Commission observed that “in July 1998, a comprehensive reform of the Penal Code dealing with issues such as homosexuality, libel, insult and offense to authorities, was rejected by Parliament and sent back to Government<sup>21</sup>.”

Significantly for our approach are also the two Directives<sup>22</sup> banning discrimination adopted in 2000, requiring all Member States of the European Union, existing and future, to review their legislation and make the necessary changes in order to ensure effective implementation of these laws.

These arguments allow us to affirm that the European Union accession agenda allowed the decriminalization of homosexuality to become an issue at local level. With human rights as one of the criteria for entry into EU and the constant attention of these institutions, the initiative to repeal the discriminatory legislation found an opportunity to become a matter of interest in a nationalist country, with an Orthodox Church constantly trying to acquire a better place in the political life and very involved in the political decisions.

The attempts to honor the European institutions’ expectations remained with no concrete results for a long period of time. Nevertheless, these institutions’ conditionality transformed the topic of homosexuality into a sensitive point for the Romanian integration. This context allowed at local levels a certain mobilization around this issue. The specific ways of using this opportunity will be our main interest for the next section of this paper.

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family meetings due to the nature of the relationships between the participating persons; e) through any means by which the actor has knowledge that the occurrence may reach the public.” The term “public scandal”, however, is not defined anywhere in the Romanian penal legislation.

<sup>20</sup> DOC/ 97 /18, B.1.2, p.16.

<sup>21</sup> Regular report from the Commission on Romania’s progress towards accession, November 1998, p.11.

<sup>22</sup> Directive 2000/43/CE implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the Racial Equality Directive) and Directive 2000/78/CE (the Employment Equality Directive). Member States are under an obligation to complete implementation of the first Directive by 19 July 2003) and the second one by 2 December 2003 while the new Members by May 2004.



## Gay rights activism

### 1. “Homosexuality - an abhorrent Western import”<sup>23</sup>? Seizing a new interest

After the communist regime collapsed, the situation didn't seem to change much; people thought to get involved in homosexual conduct continued to get arrested, brutally interrogated, and sent to prison<sup>24</sup>. On the contrary, the topic of homosexuality, subject taboo before 1989, begins to get more and more attention from the media. While feminine homosexuality starts to get used as an instrument in the heterosexual phantasmagoria of men, the newspapers systematically present masculine homosexuality as related to criminality, public scandal, iniquity, as a symptom of a decadent society. Besides, the Romanian homosexuals remain a mystery: invisible on the public stage, very few gays and lesbians assume their sexual orientation and no public coming out is encountered. The sexual minorities in post-communist Romania are less structured, lacking the main attributes of their identity: historical consciousness, organizations, a spectrum of shared behaviors and common knowledge. Homosexuality appeared in this context as a negative import from occidental societies, a negative effect of opening towards the West, a bad external influence.

Representatives from three different international organizations have undertaken during May 1992 a mission aimed to investigate the situation of gays and lesbians in Southeastern Europe: Russ Gage of International Gay and Lesbian Human Rights Commission (IGLHRC), Kurt Krickler of the International Lesbian and Gay Association (ILGA), and Henning Mikkelsen of the World Health Organization traveled through Serbia, Hungary, Romania and Bulgaria, trying to get in touch with local activists and to scope out the legal and societal situation of sexual minorities in this part of Europe. At that time, in Romania there was no association defending human rights for gay men and lesbians, nor human rights organization willing to work with sexual minorities.

Due to the Penal Code provisions against homosexuality plus the general lack of informal organization of gays and lesbians, two attempts to create a group for defending sexual minorities' rights failed without leaving any mark<sup>25</sup>. *Total relations* and *Group 200*

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<sup>23</sup> We quote here Carl Stychin, *Same-Sex Sexualities and the Globalization of Human Rights Discourse*, in McGill Law Journal, Vol. 49, 2004, pp. 951-968, p. 956.

<sup>24</sup> The last case of imprisonment for homosexuality dates from 1997.

<sup>25</sup> Exploring this issue is to be considered. There are only two references to this issue that we could find: I. Baci, V. Cimpeanu et M. Nicoara, « Romania », in ROSENBLUM, Rachel (ed.),

(named after the Penal Code article), were two social circles with a very short existence that vanished shortly after they were founded<sup>26</sup>. One particular person<sup>27</sup>, with close collaboration of Scott Long<sup>28</sup>, advocacy coordinator and European regional specialist for the IGLHRC, persuaded a human rights group<sup>29</sup> to let him operate a Gay and Lesbian Human Rights Commission under its auspices; as a result from this collaboration a publication, “Gay 45”, had one issue and then it disappeared, as well as the whole project. In these conditions, the activities launched during the year 1993 by a prestigious human rights organization - Romanian Helsinki Committee – are of certain uniqueness and more important, continuity.

Romanian Helsinki Committee (hereafter APADOR-CH, from the Romanian “Asociatia pentru Apararea Drepturilor Omului in Romania –Comitetul Helsinki”), established in 1990, with the purpose of promoting and protecting human rights and fundamental freedoms, launched the program “Ameliorarea drepturilor omului prin intermediul legislatiei” (Improving human rights through legislation). The main idea of this action is the transparency of Parliament’s work and one of the accomplishments is establishing an open dialog with the Parliament members on the constitutionality of the bills, the respect for international treaties and the European standards concerning human rights. At that time draft laws discussed in the Parliament were not publicized, and the matters under debate in the commissions or plenary sessions of the two chambers were not publicly announced; therefore, APADOR-CH started regularly sending members of the association to witness the debates, in order to allow the analysis of the legal texts and examine their constitutionality and adequacy to international human rights regulations. As part of this program, jurists from APADOR studied the Government’s draft bill to amend the Penal Code and submitted to the members of the specialized parliamentary

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*Unspoken Rules – Sexual Orientation and Women’s Human Rights*, International Gay and Lesbian Human Rights Commission, San Francisco, USA, 1995, report prepared for United Nations Fourth World Conference on Women. An interview with Vera Cimpeanu in 2004 could not achieve to more information on the subject, neither other interviews with former or actual members of Accept. The second one, S. Long, “Gay and Lesbian Movements in Eastern Europe. Romania, Hungary, and Czech Republic”, in B. Adam, J. W. Duyvendak, A. Krouwel, *The Global Emergence of Gay and Lesbian Politics. National Imprints of a Worldwide Movement*, Temple University Press, Philadelphia, 1999, p. 245.

<sup>26</sup> We’re talking here obviously about an informal foundation; S. Long, representative of Gay and Lesbian Human Rights Commission, mentions “corruption allegations against the leaders” as the cause of these groups’ disappearing.

<sup>27</sup> Namely Razvan Ion; at this stage of our research we couldn’t get in touch with him.

<sup>28</sup> Former Fulbright Professor in Romania, he spent two years in the country teaching American literature.

<sup>29</sup> Societatea Independenta a Drepturilor Omului – Romanian Independent Society for Human Rights

commissions and to the leaders of the parliamentary parties a series of comments and observations regarding limitations of this bill<sup>30</sup>. One of the most important critics concerns the criminalization of same sex relations: the analysis of this issue underlines the inconsistency of these legal provisions with the respect of the private life and intimacy, and mentions the Constitution as well as the European Convention as referential instruments for this case.

The association has taken two other important steps on the path of defending the human rights for LGBT people: on the one hand, a very significant initiative implied a public press release<sup>31</sup> sent to the major newspapers and electronic media underlying the major human rights infringements existent in the Government's draft bill, on the other hand, an important action constitute the close collaboration with the Human Rights Watch and the IGLHRC for providing expertise in a Constitutional Court case regarding the unconstitutionality of Article 200 of the Penal Code<sup>32</sup>. If in the first case the results were not significant, the second one represents an important step forward in the process of the reform: the Constitutional Court ruled that the first paragraph of Article 200 was unconstitutional, violating protection for privacy stated in the Romanian Constitution<sup>33</sup>.

There was for the first time that a Romanian association proceeded to actions regarding human rights for LGBT people; however, this doesn't dissipate the general assumption of homosexuality as an external influence, an imported problem, not an indigenous issue. APADOR-CH is nevertheless a member of International Helsinki Federation for Human Rights, organization seeking to promote compliance with human right provisions of the Helsinki Final Act and its follow-up documents, with international legal obligations undertaken in the Council of Europe, the United Nations, and with human rights norms promoted by the European Union. Members of the association collaborated on regular basis with representatives of international organizations (as Human Rights Watch or

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<sup>30</sup> "It is obvious that it is not the individual and his rights that is at the centre of the penal policy the Government wishes to promote, but the tendency is to continue a repressive penal policy stressing the punishment and the concentration of the force in the hands of the state and of the authorities representing it" concludes the APADOR- CH rapport on the Government's draft bill. See APADOR-CH annual rapport 1993.

<sup>31</sup> Press release from November 19, 1993

<sup>32</sup> The Constitutional Court had to rule on the case of six young men from Sibiu, repeatedly arrested under Article 200, paragraph 1, and interrogated about their sexual orientation as well as about different other possible partners. The case is largely presented in *Public Scandals. Sexual Orientation and law in Romania*, Human Rights Watch, International Gay and Lesbian Human Rights Commission, 1998/

<sup>33</sup> Decizia N° 81, Curtea Constitutionala, 15 July 1994.

IGLRHC), offering assistance and translators<sup>34</sup> for obtaining information to prove that Article 200 was still enforced. Moreover, the financial support for their activities comes at the moment exclusively from abroad<sup>35</sup>.

The conditions of the European integration offered at national level an opportunity to develop activities on a sector ignored since then: sexual minorities' issues, as part of human rights matters, become a new interest. As a result of their collaboration with international organizations, Romanian Helsinki Committee, a domestic structure, apprehended the new structure of opportunity and launched their activities on this field. Still, the actors involved in these activities remain for the moment detached from the cause: the Romanian homosexuals appear into this equation only as victims, but with no voice. This situation will slightly change during the next interval analyzed here: 1994-1996, and will significantly improve after the first intervention on the Penal Code in October 1996.

## **2. Bucharest Accepting Group: the daybreak of mobilization**

Acknowledging gays' and lesbians' rights infringements in Romania gave rise to a series of reactions at international and European level. As we could see, ILGA Europe, Human Rights Watch, ILGHRC have closely monitored the situation, getting to collaborate with a prestigious local human rights association – APADOR-CH. Their collaboration, plus a few foreign citizens living in Bucharest<sup>36</sup> interested in the topic will constitute the basis for a first effective group to be born: Bucharest Acceptance Group, an informal group gathered around the objective to work towards the moment when Romanian society will accept an individual regardless of his or her sexual orientation.

Their weekly meetings hosted by APADOR-CH aimed at offering a friendly space for socializing as well as at a common reflection for finding a suitable formula of functioning:

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<sup>34</sup> For example Ion Iacos, Manuela Stefanescu, Renate Weber.

<sup>35</sup> The programs of APADOR-CH are funded by: The German Marshall Fund of the United States; the Dutch Government, through the Netherlands Helsinki Committee; Institute for Democracy in Eastern Europe from the US; Agir Ensemble pour les Droits de l'Homme from France; and J.M. Kaplan Fund from the US.

<sup>36</sup> Christopher Newlands, David St. Vincent, Guido R. Spaanbroek, Jennifer Tanaka, Bonny Wassing are some of the persons involved in the project.

at the time, launching an LGBT organization clearly contravened the law<sup>37</sup> and a formal structure was needed for the financial management. For a period of almost two years they've been looking for a suitable formula of functioning and for the means to activate for their goal. Progressively, Romanian gays and lesbians joined the initial group, due to several activities meant to increase their visibility and, most of all, the awareness of sexual minorities' issues in the Romanian society.

For instance, in 1995: as part of the "Year of Tolerance", Bucharest Acceptance Group, with support from the Romanian Helsinki Committee and UNESCO-CEPES (the European Centre for Higher Education/le Centre Européen pour l'Enseignement Supérieur) organized a conference in Bucharest, under the title "Homosexuality – a Human Right?"

Amongst the allies of the organizers - the Royal Netherlands Embassy in Bucharest, the United Kingdom Embassy, the Embassies of Norway and Denmark, Dacia Foundation Amsterdam, International Gay and Lesbian Human Rights Commission San Francisco, Soros Foundation – Open Society Institute. The Romanian Government allowed the events to go ahead even though the Penal Code clearly outlawed them. Almost 45 people were present to this event, mainly representatives of the sponsors, but also of the Center for Urban and Regional Sociology, of the media – Romanian or international. Aiming to open the dialog on the topic of homosexuality, several points of view were presented, which constituted the departure point for discussions. Two representatives of the Government were present - Deputy Nicu Vintila from the Juridical Commission of the Chamber of Deputies and Counsellor Octavian Cojocaru - representative of the Ministry of Justice. Both underlined the pressure from the Orthodox Church and the fact that the Romanian society is not prepared to accept same sex relations.

That same year in September, another seminar, financed by the Dutch government took place in Sinaia. If the first one aimed to get the officials' attention, this second one was designated to bring together Romanian gay people. One of the concerns of the organizers – members of newly born Bucharest Acceptance Group - was the need of Romanian representatives. Indeed, on the list of participants from the group at the first event, only one Romanian is present. Mostly gay ex-patriots living in Bucharest or

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<sup>37</sup> The Law 21 from 1924 (and still in force in 2000!) ruled on founding an association, demanding amongst others a ministry's agreement on the objectives of the association; being the Article 200 of the Penal Code, registering an LGBT association would have been against the law.

straight people members of Helsinki Committee, they encountered the problem of lack of representatives<sup>38</sup>. Another concern regarded finding a modality for the group to function in the future: on the one hand, there was one stream considering a better formula to remain an informal group with a main objective to find a way to socialize and offer the possibility to gays around Romania to meet in a safe environment; on the other hand, voices in the group claimed the impossibility of doing so as long as Article 200 was still part of the Romanian legislation. For these last ones, the main goal was getting together for making a change and in order to do so, a more structured organization was needed. The event in Sinaia mobilized over 60 persons<sup>39</sup>, from all over Romania, impressed by the work of the small group ACCEPT and willing to participate in an active pressure group. This is in fact the branch that wins over and, and one year latter, with the support of N.V.I.H. COC Netherlands<sup>40</sup> and following the model of this organization, ACCEPT will become an association legally enrolled as defending human rights<sup>41</sup>.

While ACCEPT tries to find the bases for founding an association and activate for defending human rights, another actor mobilized its forces and became very preeminent in the context: the Romanian Orthodox Church. Claiming the allegiance of 87 percent of Romanians, the ROC is very active in trying to occupy a better place in Romanian society. The issue of decriminalizing homosexuality constituted for ROC a handy instrument in exercising its influence on the political scene in Romania. On several occasions, the ROC denounced the danger represented by an eventual legalization of homosexual acts. Patriarch Teoctist himself condemned homosexuals as “abnormal and

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<sup>38</sup> “We felt like we needed someone to fight for. None of us was directly touched by the problems we wanted to solve... The Romanians were straight and the gays were not Romanians. We needed Romanian gay people”, says Vera Cîmpeanu, answering the question “what was their goal when they organized the seminar in Sinaia”, interview on May 4<sup>th</sup>, 2004.

<sup>39</sup> The number of participants varies accordingly with the testimonies: Vera Cîmpeanu, one of the organizers, remembers of 68 persons, which she considers a quiet important number for the times and the legal provisions till enforced ; (interview on May, 4<sup>th</sup>, 2004). Dennis van der Veur, participant and representative of COC Netherlands, the sponsor, says « almost 60 » (interview on March 28<sup>th</sup>, 2003) ; Tom Gallagher, appreciates « more than 50 people », Tom Gallagher, « Looking For Acceptance », *Gay Community News*, (Dublin) February 1996. Scott Long, also participant in the event, mentions in his article “Gay and Lesbian Movement in Eastern Europe. Romania, Hungary and Czech Republic”: “forty Romanian gays (all men)”.

<sup>40</sup> C.O.C. meant *Cultuur en Ontspannings-Centrum*, or Centre for Culture and Leisure, a reminder of the pseudonym the organisation initially adopted after its foundation in 1946. COC is the oldest Lesbian, Gay, Bisexual and Transgender organization in the world.

<sup>41</sup> The tension between the two possible directions – building a community or functioning as a pressure group – is also observed by Scott Long in his article: “The group will probably be unable to organize effectively against the law; that effort must come from abroad. Its real task is the gradual creation of the absent community that its rhetoric invokes”, op. cit., p. 246.

unnatural”, on a regular basis, not only in sermons given at services, but in petitions addressed to the Parliament, especially during the debates concerning the Penal Code reform.

The ROC benefited from support by ASCOR (Asociatia Studentilor Crestin-Ortodocsi din Romania), an association of students who mobilized their forces against the abolition of Article 200. Between their activities, the conference organized in Bucharest in 1995 under the title: “Homosexuality – propaganda of human degenerates”, an event that gathered a series of speeches claiming the danger of homosexuality. With the intention to demonstrate the necessity to keep the Article 200 unchanged in the Penal Code, several disciplines were brought together to express their point of view: theology, sociology, medicine, judicial. Signed by the Patriarch, by all bishops and archbishops of the ROC and by representatives of certain Christian organizations, the brochure issued after the conference was presented as a petition to the Parliament, opposing the decriminalization of homosexual acts.

As we’ve noticed earlier, the tension between the European conditionality and the traditional religious beliefs, the influence of the Church guidelines on the politics found its expression in the new formula of Article 200 after the reform in 1996. Trying to honor the obligations assumed as a member of the Council of Europe and not to introduce unpopular reforms that would contradict the “majority orthodox spirit”, the Romanian politicians arrived at a compromise that fully expressed the inability to accept homosexuality as a matter of personal choice, a human right.

### **3. ACCEPT us! Lobby and advocacy for the Romanian gay community**

Efforts aimed at registering Bucharest Acceptance Group as an official organization were especially complicated and the Penal Code reform in 1996 did not ease the way. However, in 1996 Bucharest Acceptance Group did registered as a non profit, non governmental, human rights association, under the name ACCEPT. The solution to avoid the restriction formulated in the last paragraph of article 200 was to set a larger objective – “fundamental rights and liberties, as guaranteed by the Romanian Constitution and the international treaties ratified by Romania” and not specify LGBT right.

In the new formula, ACCEPT tried to capture the two different directions pre-existing the organization; their goals are clearly lobby and advocacy for human rights, but also increasing group solidarity among the LGBT community members. Therefore, among their objectives we find:

- to create a better society for the LGBT in Romania,
- to change the negative social attitude towards the LGBT in Romania;
- to educate the public and the media on LGBT;
- to organize activities to promote the observance of the rights and liberties of LGBT people;
- to collaborate with organizations that promote the rights of minorities;
- to develop services that address the specific needs of the LGBT in Romania.<sup>42</sup>

To attain such aims the organization will start negotiations with different partners in order to obtain sponsorships<sup>43</sup> which allowed its existence.

Looking at the way the association's programs were accomplished, we can say the main focus of the association has been working with foreign organizations and individuals to increase pressure from abroad on Romanian authorities in order to abolish Article 200 of the Penal Code. The second objective, establishing the basis for a Romanian gay "community", had less interest and less significance on regular basis, this objective not being completely ignored. For instance, the association always offered different special programs directly addressed to the beneficiaries: the documentation center created, hosted and constantly improved offers information on topics as legislation or HIV prevention, but also a number of gay magazines, films or simply literature. On the other hand, the association provides legal, medical and psychological consultancy ever since the beginning and is involved in HIV prevention programs, which imply direct work with its beneficiaries. Despite all these, the image of the association remains that of a structure less involved in the community, not able to respond to the community's needs,

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<sup>42</sup> These are the objectives as defined in the association's status.

<sup>43</sup> ACCEPT is sponsored by various international organizations, among them: the Dutch Ministry of Foreign Affairs (through the MATRA program); Cooperating Netherlands Foundations for Central and Eastern Europe; the Royal Embassy of Holland in Bucharest; the Finnish Embassy in Bucharest; the Canadian Embassy in Bucharest; UNAIDS (The Joint United Nations for HIV/AIDS) and UNDP (United National Development Program); the Open Society Institute; ASTRAEA; and the Kimeta Society of Toronto, Canada, , ILGA-Europe, Amnesty International, Human Rights Watch, IGLHRC.



somehow “rigid and too official”; the Romanian gays and lesbians don’t find the support they would need<sup>44</sup>.

Several examples will be called to examine the greater implication for making the legislative change possible: among them, the collaboration of ACCEPT with ILGHRC for the report “Public Scandals” or hosting ILGA conference in 2000 in Bucharest. They are the ones discussed hereafter.

In June and July 1997, ACCEPT took active part in the research mission organized and financed by Human Right Commission and IGLHRC in Romania to investigate the situation of gays and lesbians under the new article 200. Members of ACCEPT together with representatives of the two organizations, visited fifteen penitentiaries and interviewed prisoners as well as members of the Parliament, representatives of the ministries and local prosecutors, and police. The final report published in English and translated into Romanian presents systematic abuses of homosexuals in penitentiaries. Titled “Public Scandals: Sexual Orientation and Criminal Law in Romania”, on 15 January 1998, the report made the object of a meeting of Scott Long<sup>45</sup> and Jeri Laber<sup>46</sup> with then president of Romania, Emil Constantinescu. Following the discussion based on this report, the President promised to pardon all prisoners convicted under article 200, paragraph 1 and 5 and stated that his gesture should send a message to the Romanian public and authorities<sup>47</sup>.

The events taking place at European level underline the importance of this report, as the dates are much closed to launching the process of the country’s accession to the European Union. As we mentioned before, after the Romanian application for EU membership, the progress of the country on democratic reform constitutes a continuous concern. As a result to recommendations of the *Resolution 1123/1997 on the honoring of obligations and commitments by Romania*, the Government presented to the Parliament in 1999, a new proposal, under the title: Law project for modifying and

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<sup>44</sup> Several discussions with ex-members of Accept or gay people brought up this image, that has been contradicted though by representatives of ACCEPT at the period we consider in this section. Later developments of the association confirm this idea, in 2005 one of the main problems of the board being the lack of legitimacy and the gap between the association and the gay community.

<sup>45</sup> advocacy coordinator of the International Gay and Lesbian Human Rights Commission

<sup>46</sup> senior adviser to Human Rights Watch

<sup>47</sup> “Homosexuality is the last remaining human rights problem we have to address in Romania, and we will address it.” President Constantinescu said, according to ILGA Euro-letter no 57/February 1998.

completing the Penal Code in order to comply with the requirements of Resolution 1123/1997. The proposal included the total elimination of Article 200 from the Romanian Penal Code, to which, as we mentioned before, the Resolution specifically referred, with the clearly expressed reason to comply to European standards. This time, the parliamentary debates were far from the vivid mobilization witnessed before the reform in 1996. At the time almost all parties in Parliament found resources for the fight and brought up arguments against the change. On this occasion, however, several voices claimed the necessity to accept the change, mainly because of the commitments made at the European level. The project at last succeeded in passing in the Deputies Chamber<sup>48</sup> in June 2000, but the Senate never had the chance to discuss it<sup>49</sup>.

The Deputies Chamber decision received a strong reaction from the ROC, who, in a public letter addressed to the Parliament, expressed its “sadness by the abolition of article 200 by the Chamber of Deputies”, calling on the parliament “not to vote for laws contrary to the Christian moral, to the law of nature, to the dignity and the vocation of family<sup>50</sup>”.

Not long after, another significant moment demonstrating ACCEPT’s implication on the European scene occurred, in October 2000<sup>51</sup>. The Romanian organization hosted in Bucharest the 22<sup>nd</sup> European Conference of ILGA, under the title “ACCEPTing diversity”, occasioned for ILGA to call on the Romanian Parliament to repeal article 200 of the Penal Code. ACCEPT considered the annual conference of the European organization as a way to demonstrate and underline the constant attention of European institutions on the Romanian authorities and their respect for the international obligations assumed. <sup>52</sup>

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<sup>48</sup> Law project for modifying and completing the Penal Code in order to comply with the requirements of *Resolution 1123/1997* receives 180 votes, 14 votes against and 40 abstentions ; point 9 of the project, concerning the abrogation of article 200 receives 122 votes, 63 votes against and 17 abstentions ; Session of the Chamber of Deputies on 28 June 2000, published in the Official Journal no. 100/2000.

<sup>49</sup> . The project arrives to the Senate on 26 November 2002, when the Government Ordinance 89/2001 already abrogated the article 200.

<sup>50</sup> Petition addressed by the Holy Synod to the Senators and Deputies on 13 September 2000.

<sup>51</sup> ACCEPT considered the event as a great success, being that article 200 was not yet abolished and a sign of tolerance, compared for example with a few years ago, in 1996, when Jehovah's Witnesses (a neo-evangelical church) weren't able to hold their annual congress in Bucharest because all officials, ranging from the Romanian Government to the Patriarchy leaders, agreed that such "pagans" had no business meeting on Romanian territory.

<sup>52</sup> “The European Conference of ILGA can be seen as an exercise of correct information, which raises the awareness to the situation and rights sexual minorities enjoy in the member states of the European Union and in accession countries. The fact that this conference takes place in Bucharest has a special significance: it demonstrates the constant concern of this international organisation for the way Romania commits itself to respect the rights of minorities, democratic

On the other hand, the list of participants counts only 6 people coming from Romanian, as host country, compared to 14 participants from Germany or 9 from the Netherlands. More, none of the political representatives did answer to the invitation to participate to this conference; on the contrary, several international figures were present: Joke Swiebel, member of the European Parliament and chair person of the European Intergroup on Gay and Lesbian Rights, Boris Dittrich, member of the Netherlands Parliament, Kursad Kahramanoglu, General Secretary of ILGA or James Rosapepe, the USA ambassador in Romania at the time. Contacts established with this occasion with organizations all over Europe, the opportunities for fund raising and the increase of visibility and credibility of the Romanian NGO at European level are the strengths of the event. Indeed, shortly after the conference, ACCEPT initiated several projects aiming a regional movement, mainly with NGOs from Bulgaria and Moldova. Meanwhile, the collaboration with the new Romanian association ATTITUDE! from Cluj<sup>53</sup> goes through a conflicting phase, and ACCEPT refuses the partnership with this organization: the group from Cluj proposed to be established as a local subsidiary association, which was not a valid option for the main association, ACCEPT.

Incidentally, the European Conference occurred not long after the first change accomplished in the Romanian legislation: in August 2000, willing to take a step forward on fulfilling the European recommendation, the Romanian Government assumed the responsibility of the first anti-discrimination legislation: the Ordinance on Preventing and Punishing All Forms of Discrimination. Issued as Ordinance 137/2000, the new legal framework forbids any discrimination based on “race, nationality, ethnic origin, language, religion, social status, belief, sex or sexual orientation, denunciation to a disfavored category or any other criterion”. The law also provides for the establishment of an independent body<sup>54</sup>, the National Council against Discrimination (Consiliul National pentru Combaterea Discriminarii - CNCD), whose functions are to receive complaints and punish violations of the anti-discriminatory provisions. Effective from November 2000, the Ordinance is considered the main achievement of the organization ACCEPT,

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requirements and the reform of the legal framework” Florin Buhuceanu, representative of ACCEPT, stated at the press conference.

<sup>53</sup> ATTITUDE! is an organization created in July 1999 in Cluj, with the explicit purpose to defend gays’ and lesbians’ rights in Romania and fight against homophobia.

<sup>54</sup> The text is still unclear in relation to the agency's status within the government; CNCD is intended to be independent and autonomous, though it is established by a decision of the government and not by a law adopted by the Parliament. More, CNCD is supposed to be a public administration agency, but it depends on the Government.

the basis for repealing Article 200, clearly contradictory with the new framework. The Government will be slow to act in this direction, and almost one year later, in June 2001, article 200 is abolished by Emergency Ordinance 89/2001. The process for adopting anti-discriminatory laws is completed in January 2002, when the Parliament approved the final bills that the Government previously adopted and the Official Journal published the texts<sup>55</sup>. The association ACCEPT attains its main objective: decriminalizing homosexuality.

### **Concluding thoughts**

For over a decade, same sex relationships have been a controversial issue: alternatively claimed as a matter of human rights by the international standards and representatives within Romanian society embracing global discourse of human rights, or as a matter of morality and national integrity by the political majority and the Orthodox Church, homosexuality is finally decriminalized in Romania. More a question of diplomacy and a response to European conditionality, the new legal framework is the result of a close collaboration between internal, international and transnational organizations. This paper focused mainly on the circumstances leading to this result: from severe legal provisions against homosexuality to LGBT rights.

This analysis reported in the first section on the concrete changes affected on the legal framework, in a chronological development: in 1996 a first intervention on the Article 200 operated a compromise, decriminalizing private homosexual acts, but bringing limitations on freedom of expression and association; the second step towards equal rights brought sanctioning discrimination based on same sex orientation and, shortly after, the abolition of all punitive provisions regarding homosexuals.

The main body of this paper concentrates on two issues: European Institutions' democratic conditionality and the articulation of LGBT rights as a new interest in Romania. As we could see, the external pressure from the European institutions transformed the homosexuality issue into a key factor in the process of country adhesion. The acceptance of European values has been explicitly affirmed as a

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<sup>55</sup> OG 137/2000 becomes the Law 48/January 16, 2002, published in the *Official Journal* N° 69/January 31, 2002. EOG 89/2001 becomes the Law 61/January 16, 2002, published in the *Official Journal* N° 65/ January 30, 2002.

precondition for joining the Council of Europe and the European Union and the EU politicians clearly stated their recommendations to modify the legal provisions concerning homosexuality. Antihomosexual laws become distinctly incompatible with those European values, which greatly served the internal strategies.

During the first years after the communist regime collapsed, any incipient form gathering around the homosexuality issue quickly failed; criminalization of homosexuality prevented any informal assemblage to resist and function as a group. In this context, the first consistent exploit of the new opportunity offered by the European integration belongs to a human right association – Romanian Helsinki Committee. This organization's activity and its collaboration with international human rights and LGBT rights international organizations sowed the seeds of the first LGBT association – Bucharest Acceptance Group, later enrolled as ACCEPT. This association arises and functions as a domestic mediating factor, using the external influence to legitimate its existence and its objectives. On the one hand, the main activity of this association focused on the relationships with the European institutions: encouraging and fostering the pressure from the EU institution has been the main tool of their strategy. Providing up to date information about the infringements of LGBT rights in Romania, calling to state positions on the transgression of EU recommendations, sending letters to EU Parliament Members to outline the LGBT situation in Romania were some of the tactics developed. On the other hand, the association privileged the collaboration with external partners, namely several international organizations for human rights or, specifically LGBT rights: ILGA, Human Rights Watch, IGLHRC, COC Netherlands are the most important. ACCEPT benefited from their active support in terms of "savoir faire", but also in terms of resources and funding.

This external input had several consequences: Over a relatively short period, the homosexuality issue overturned from an "abhorrent import" into a "cause", symbolic of the country's democratization and its advancements on the integration path. The question of LGBT rights consequently emerged as a new interest at a local level, a matter of political concern. The Romanian Helsinki Committee seized this interest and started to develop activities on the topic. Furthermore, a remarkably rapid transformation concerns the persons involved in these activities. Romanian activists experienced a radical switch: from a fragmented and denied existence as homosexuals, with no authentic gay past, with neither history, nor identity, they succeeded in operating on several registers simultaneously, from local to transnational and global levels. Still,

focusing mainly on the external partners, hindering the relations with other local organizations and not very closed to the “community” itself, the association ACCEPT failed (during the period we take into account) to transform LGBT rights into a collective interest, which would accumulate strength and mobilize the homosexual population.

This paper provided a brief overview on the articulation of LGBT rights as a new interest in Romania. Largely the result of European Institutions’ developments and recommendations, creating an LGBT human rights association to defend this interest had nothing but a vacuum to begin with. Dealing with some particulars of Romania's post-communist society hasn’t eased the task. Severe antihomosexual legal provisions, moral conservatism, as well as religious authority constituted major impediments to affirming a gay identity and transform it into a political identity. This is by no means a definitive account on this topic; there is scope for more research, empirical and mostly theoretical.