

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

REFERENCE:
AL ROU 4/2018

5 October 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolutions 34/18, 34/5 and 32/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the use of force against protestors and the constitutional referendum to change the definition of family, raising concern about the protection for the exercise of fundamental rights in Romania.

According to the information received:

On the use of force against peaceful protests

On 10 August 2018, over 100 000 people took part in a peaceful protest in Bucharest expressing their dissatisfaction with legislative changes concerning the laws of justice and the penal code.

The Gendarmerie reportedly responded with use of force against the demonstrators, using tear gas, shrapnel projectiles and water cannons. Among the injured were four Israeli tourists and eight journalists, including reporters from the Austrian public television and a German newspaper. As a result of the use of force, a reported 452 individuals needed medical care and 70 individuals were transported to hospitals. 35 police officers required medical care and 11 police officers were taken to hospital. 8 individuals were subsequently subject to criminal proceedings while 23 individuals were fined. One policeman supporting the protests has subsequently been sent to a psychologist and may be subject to disciplinary action.

On 11 August, the Ministry of Internal Affairs declared that the use of force was legitimate and that the gendarmes acted in self-defense to restore public order.

Subsequently, the Prime Minister sent a letter to the EU Commission, alleging that other politicians, including President Klaus Iohannis, had tried to "violently remove a legitimate government".

On the referendum of 6 and 7 October 2018

In 2015, a citizens' initiative launched by *Coalitia pentru Familie* (the Coalition for Family), gathered three million signatures in support of a referendum to change the definition of "family" in the Constitution.

At present, the Constitution defines the family as marriage "between spouses". The initiative seeks to change the definition into "a union between a man and a woman".

The initiative was approved by the Senate on 11 September 2018. A constitutional referendum has been scheduled for 6 and 7 October 2018, about whether to change the definition of the family as provided by Article 48 of the Constitution, to constitutionally prohibit same-sex marriage. If approved, the referendum would make same-sex marriages unconstitutional in Romania.

In September 2018, Amnesty International, the European Commission on Sexual Orientation Law and ILGA-Europe filed a challenge with the Constitutional Court against the amendment. On 17 September 2018, the Court decided to allow the referendum to take place.

On 28 September 2018, the Constitutional Court ruled that same-sex couples have the same equal rights to a private and family life as heterosexual couples.

We express concern at the reported use of force against demonstrators and journalists, leading to severe injury of several of them. We express equal concern at the disparaging statements by Government officials who appear to justify the police actions. We urge the authorities to investigate the use of force by police officers, as well as any obstruction of journalists' activity. Furthermore, we express concern at the subject of the referendum scheduled for 6 and 7 October 2018.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide details, and where available, the results of any investigation and judicial or other inquiry undertaken in relation to the allegations of use of force in the context of the above-mentioned demonstrations. If no

inquiries have taken place, or if they have been inconclusive, please explain why.

3. Please provide information about measures taken to ensure that the constitutional referendum does not violate the equality of individuals before the law and does not violate the right to non-discrimination.
4. Please indicate what measures have been taken to ensure that human rights defenders, including protestors, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

Victor Madrigal-Borloz
Independent Expert on protection against violence and discrimination based on sexual
orientation and gender identity

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to articles 2, 19, 21 and 26 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Romania on 9 December 1974, guaranteeing the right to freedom of opinion and expression; the right to peaceful assembly; and the right to non-discrimination and equal protection of the law.

Articles 19 and 21 of the ICCPR, guaranteeing the rights to freedom of expression and freedom of peaceful assembly. Article 21 states that the right of peaceful assembly should be recognized, and that no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

We would also like to refer to Human Rights Council resolution 24/5 (operative paragraph 2), in which the Council "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, article 5 (a), establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: to meet or assemble peacefully.

We would also like to refer to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2006 (A/61/312), where the Special Representative urges States to ensure that law enforcement officials are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies and to

investigate allegations of indiscriminate and/or excessive use of force by law enforcement officials.

The right to non-discrimination is protected by article 2 of the Universal Declaration of Human Rights as well as the non-discrimination provisions of core international human rights treaties. We wish to refer your Excellency's Government to the jurisprudence, general comments and concluding observations of United Nations treaty bodies that consistently held that sexual orientation and gender identity are prohibited grounds of discrimination under international law. In addition, the special procedures of the Human Rights Council have long recognized discrimination on these grounds.

On the basis of international human rights norms and standards and the work of the United Nations human rights treaty bodies and special procedures, the United Nations High Commissioner for Human Rights has emphasized that States have a positive obligation to provide legal recognition to same-sex couples and their children, ensuring that benefits traditionally accorded to married partners – including those related to benefits, pensions, and taxation and inheritance – are accorded on a non-discriminatory basis (A/HRC/29/23), para. 79(h).