

Mandates of the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls

REFERENCE:
OL ROU 3/2020

11 September 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to education; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on violence against women, its causes and consequences; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 44/3, 43/4, 42/16, 41/18, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **proposed bills that reportedly (i) prohibit sexuality education unless there is parental written consent, and (ii) impose a blanket ban on a discussion regarding "gender theory or opinion" in Romanian educational establishments.**

According to the information received:

1. Amendment to the Law on the Protection and Promotion of the Rights of the Child Nr. 272/2004

On 5 June 2020, the Romanian Senate adopted the bill "Law amending and supplementing Law no. 272/2004 on the protection and promotion of children's right". This bill was proposed by representatives of major parties, such as the Social Democrats Party (PSD) and the National Liberal Party (PNL).

The proposal includes wording under which sexuality education would be available to children only under the condition of parental written consent. The bill would also replace the term "sexual education" with "health education". The wording is reportedly as follows:

Article 10 amended article 46 (3) In schools, with the written consent of parents or children's legal representatives, life education programs, including health education, will be carried out to prevent the contracting of sexually transmitted diseases and the pregnancy of minors.

Furthermore, the sanctions which may be imposed in case of non-compliance are not clear/specified.

This could be understood as the result of a misconception about sexuality education among those who pushed this amendment forward.

In response to this proposal, 24 NGOs sent a joint letter to the members of Parliament who initiated the amendment. On 24 June, the President of Romania refused to sign the bill and sent it to the Constitutional Court. The President explained that it is unclear whether the amendments aim at preventing sexually transmitted diseases and the pregnancy of minors. He also added that the bill does not specify at what stage of the procedure the written consent is required

This case is being registered at the Constitutional Court (Nr. 795A/2020) and the examination is scheduled to take place on 16 September 2020.

2. Amendment to the Law on National Education Nr. 1/2011

On 16 June 2020, the Romanian Senate adopted the bill L87/2020, “Legislative proposal to modify and complete the Law regarding National Education Nr. 1/2011”. The bill was proposed by two senators and gained a large majority of support by senators from the PSD, the Alliance of Liberals and Democrats (ALDE) and the People’s Movement Party (PMP).

The proposal includes the following wording that prohibits any discussion on “gender identity theory or opinion” in schools and other educational entities in Romania:

Art.7 (1) In all education entities and institutions and all spaces that are assigned for education and professional training, including entities that provide extracurricular education, there are strictly forbidden:

e) activities aimed at spreading gender identity theory or opinion, understood as the theory or opinion that gender is a concept that is different from the biological sex and the two are not always the same;

If approved, the bill would prevent teachers and any other individual who teaches at educational and training facilities (such as, school counsellors, academics, doctors, social or health workers, non-government organizations, professional trainers) from addressing topics related to gender, gender equality, and transgender issues.

Furthermore, the sanctions which may be imposed in case of non-compliance are not clear.

In response to this bill, 80 NGOs, as well as more than 45,000 people through an online petition, urged the President of Romania to send the bill back to the Parliament for re-examination. All the major Romanian universities and student organizations also joined this course of action.

On 24 June, a number of Members of the European Parliament also urged the President of Romania not to promulgate the bill. They denounced that “this bill may have a catastrophic impact on the lives of trans persons, who are already victims of intense discrimination in Romania”. They further noted that the bill would violate Romania’s obligations under the Istanbul Convention to prevent and combat gender-based violence and domestic violence, as well as the obligations under the European Convention on Human Rights to uphold the principle of non-discrimination.

On 10 July, the President of Romania refused to sign the bill and sent it to the Constitutional Court. He explained that the bill would violate the Romanian Constitution, including Article 29 (freedom of belief), Article 16 (1) (the principle of equality) in conjunction with Article 32 (right to access to education) and Article 49 (protection of children and the youth), Article 32 (6) (academic autonomy), Articles 30 (1) and (2) (freedom of expression and the prohibition of censorship), Articles 1 (4) (the principle of separation of powers) and 61 (1) (Parliament role as the sole legislative authority), and Articles 1 (3) and (5) (the rule of law).

The President further noted that the bill was incompatible with international human rights treaties to which Romania is a member, including Articles 6 and 14 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which in turn violates Article 20 of the Constitution (the priority of international treaties on human rights). In addition, he claimed that the bill contravened the National Strategy for promoting equal opportunities between women and men, preventing and combating domestic violence between the years 2018-2021 and Article 4 of the Law Nr.202/2002 (Law on Equal Opportunities between Women and Men).

This case is in the process of registration at the Constitutional Court (Nr. 959AI/2020) and its examination is scheduled to take place on 30 September 2020.

We are concerned that, if adopted, the bills would violate not only a number of provisions in the Romanian Constitution as listed above but also the following international human rights principles.

Rights to health, sexuality education and freedom of expression

We express our concern that the proposed bills are inconsistent with the principle of non-discrimination in conjunction with the right to education and the right to the highest attainable standard of physical and mental health, including sexual and reproductive health, through the denial of access to information and education. Further, we are also concerned that sanctioning anyone who teaches about gender, gender equality and gender identity appears to represent an undue infringement on his/her rights to freedom of opinion and expression, as well as his/her academic freedom.

The Committee on Economic, Social and Cultural Rights states that the right to sexual and reproductive health, combined with the right to education (Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), ratified by Romania on 9 December 1974) and the right to non-discrimination and equality between men and women (Articles 2 (2) and 3 of ICESCR), entails a right to education on sexuality and reproduction that is comprehensive, non-discriminatory, evidence-based, scientifically accurate and age-appropriate (E/C.12/GC/22, para. 9). All individuals and groups, including adolescents and youth, have the right to evidence-based information on all aspects of sexual and reproductive health (*Ibid.*, para.18). Such information must be provided in a manner consistent with the needs of the individual and the community, taking into consideration, for example, age, gender, language ability, educational level, disability, sexual orientation, gender identity and intersex status (*Ibid.*, para.19). States violate the obligation to fulfil when they fail to take measures to ensure that up-to-date, accurate information on sexual and reproductive health is publicly available and accessible to all individuals, in appropriate languages and formats, and to ensure that all educational institutions incorporate unbiased, scientifically accurate, evidence-based, age-appropriate and comprehensive sexuality education into their require curricula (*Ibid.*, para. 63).

Providing and receiving sexuality education without fear of persecution is protected under the freedom of opinion and expression under Article 19 of the International Covenant on Civil and Political Rights (“ICCPR”) (ratified by Romania on 9 December 1974). The right includes the absolute freedom to hold opinions of any kind, and the concurrent absolute prohibition on restricting the rights of individuals based on their opinions. The freedom of expression under article 19 (2) includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. Restrictions to the rights enshrined in Article 19 (2) must comply with the requirements under Article 19 (3). That is, restrictions must pursue one of the exhaustively enumerated legitimate aims, it must be provided by law and it must be necessary and proportionate to achieve its protective function. The State has the burden of proof to justify the compatibility of any restriction with the ICCPR. With regards to restrictions based on morals, the Human Rights Committee has generally affirmed that “this ground should not be used to protect understandings of morality deriving exclusively from a single social, philosophical or religious tradition and any such restrictions must be understood in the light of the universality of human rights, pluralism and the principle of non-discrimination” (CCPR/C/GC/37, para. 46). The permissibility of restrictions to the freedom of expression based on morals is consequently limited to justifications which would be compatible with other rights protected under international human rights law, such as the rights of the child, the right to health, the principle of equality.

Also, Article 13 of ICESCR provides that education should be aimed at the full development of the human personality and the sense of its dignity and should strengthen respect for human rights and fundamental freedoms. The Committee on Economic, Social and Cultural Rights emphasized that the right to education can only be enjoyed if staff and students throughout the education sector are entitled to academic freedom (E/C.12/1999/10, para. 38). Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and

ideas, through research, teaching, study, discussion, documentation, production, creation or writing (*Ibid.*, para. 39). Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor (*Ibid.*).

Further, Article 12 (1) of ICESCR provides that States recognized the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In its General Comment 14, the Committee on Economic, Social and Cultural Rights interprets the right to health as an inclusive right, which extends not only to timely and appropriate health care but also to access to health-related education and information, including on sexual and reproductive health (E/C.12/2000/4, para. 11). Accordingly, States are under an obligation to refrain from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, as well as abstaining from preventing people's participation in health-related matters (*Ibid.*, para. 34). Obligations further include the promotion of health education, as well as information campaigns, in particular with respect to sexual and reproductive health (*Ibid.*, para. 36).

In this regard, we would like to draw your attention to the Concluding Observations of 9 December 2014 of the Committee on Economic, Social and Cultural Rights, in which it called upon Romania to adopt a national strategy on sexual and reproductive health, including the implementation of a comprehensive and mandatory programme on sexual and reproductive health in schools (E/C.12/ROU/CO/3-5, para. 22).

The Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW") (ratified by Romania on 7 January 1982) guarantees women and girls' right to access specific educational information to help to ensure the health and well-being of families, including information and advice on family planning (Article 10 (h)). The Committee on the Elimination of Discrimination against Women recommended that States develop and introduce age-appropriate, evidence-based, scientifically accurate mandatory curricula at all levels of education covering comprehensive information on sexual and reproductive health and rights in order to curtail violence against girls and women associated with educational institutions and schooling thereby protecting their right to be treated with respect and dignity (CEDAW/C/GC/36, para. 69 (i)). In its General Recommendation 24, the Committee further recommends that States parties also place a gender perspective at the centre of all policies and programmes affecting women's health (A/54/38/Rev.1, para. 31 (a)), and ensure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health, and, in particular, allocate resources for programmes directed at adolescents for the prevention and treatment of sexually transmitted diseases, including HIV/AIDS (*Ibid.*, para. 31 (b)).

In its General Recommendation No. 19 on violence against women, the Committee clarified that discrimination against women, as defined in Article 1 of the Convention, included gender-based violence, that is "violence which is directed against a woman because she is a woman or that affects women disproportionately", and that it constituted a violation of their human rights (para. 6). In its General

Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, the Committee notes that in order to prevent gender based violence against women States should ensure the integration of content on gender equality into curricula at all levels of education, both public and private, from early childhood onwards and into education programmes with a human rights approach (CEDAW/C/GC/35, para. 35 (a)). The content should target stereotyped gender roles and promote the values of gender equality and non-discrimination, including non-violent masculinities, and ensure age-appropriate, evidence-based and scientifically accurate comprehensive sexuality education for girls and boys (*Ibid.*).

In this regard, we wish to recall Your Excellency's Government the Concluding Observations of 24 July 2017 of the Committee on the Elimination of Discrimination against Women, in which it recommended Romania to introduce mandatory age-appropriate education on sexual and reproductive health and rights in school curricula (CEDAW/C/ROU/CO/7-8, para. 33 (b)).

The Committee on the Rights of Child underscored that there should be no barriers to commodities, information and counselling on sexual and reproductive health rights, and particular efforts need to be made to overcome barriers of stigma and fear experienced by, inter alia, lesbian, gay, bisexual transgender, and intersex ("LGBTI") adolescents, in gaining access to such services (CRC/C/GC/20, para. 60). All adolescents should have access to free, confidential, adolescent-responsive and non-discriminatory sexual and reproductive health services, information and education, available both online and in person (*Ibid.*, para. 59). Therefore, it urged States to adopt comprehensive gender and sexuality-sensitive sexual and reproductive health policies for adolescents, emphasizing that unequal access by adolescents to such information, commodities and services amounts to discrimination (*Ibid.*). It further noted that age-appropriate, comprehensive and inclusive sexual and reproductive health education, based on scientific evidence and human rights standards and developed with adolescents, should be part of the mandatory school curriculum and reach out-of-school adolescents (*Ibid.*, para. 61).

In this regard, we further wish to draw attention to the Concluding Observations of 13 July 2017 of the Committee on the Rights of Child, in which it urged Romania to expand the scope of the National Programme for Sexual and Reproductive Health (2013-2017) to provide comprehensive, age-appropriate education on sexual and reproductive health (CRC/C/ROU/CO/5, para. 36 (d)).

The Special Rapporteur in the field of cultural rights stressed that, concerning Article 15 1 (b) of ICESCR (the right to enjoy the benefits of scientific progress and its applications), access to scientific knowledge increases the range of available options to choose a life with dignity, thereby strengthening people's capacity for self-determination and empowerment (A/HRC/20/26, paras. 19-20). The right to have access to scientific knowledge implies a right to science education, understood as a right to be introduced to and informed about main scientific discoveries and their applications, regardless of frontiers. It also entails education instilling a spirit of scientific inquiry (*Ibid.*, para. 27).

Similarly, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health stressed that lack of

access to safe reproductive health services and information contributes to adolescent girls being among the most at risk of dying or suffering from serious or lifelong injuries associated with early pregnancies and childbirth (A/HRC/32/32, para. 5). He recommended States to introduce measures to raise adolescents' awareness of their rights to sexual and reproductive health and to services and goods at the family, school and community levels and insisted that age-appropriate, comprehensive and inclusive sexuality education, based on scientific evidence and human rights, should be part of the mandatory school curriculum, with special attention given to relationships, sexuality, gender equality and identity and sex characteristics, including non-conforming gender identities, responsible parenthood and sexual behaviour, and preventing early pregnancy and sexually transmitted infections (*Ibid.*, para. 91).

The Working Group on discrimination against women and girls highlighted the need for access to unbiased, quality education, including evidence-based, comprehensive sexuality education, to ensure access to health care (A/HRC/32/44, para. 95). The Working Group emphasized that States have an obligation to allow information about health matters to flow freely, without State interference on moral or other grounds, and to allow non-State actors to disseminate information, including in relation to sexuality and sexual and reproductive health services (*Ibid.*, para. 96).

In this regard, we further wish to recall Your Excellency's Government the Working Group's end of mission statement on the visit conducted in Romania in 2020. It expressed concern that there is no comprehensive national strategy on sexual and reproductive health has been put in place in Romania, and that there are significant gaps in relation to sexuality education. Therefore, it concluded that comprehensive, human rights based and age appropriate sexual education urgently needs to be guaranteed to all children.

Furthermore, the United Nations High Commissioner for Human Rights acknowledged that limiting or obstructing information related to sexuality or using materials that contain stereotypes and prejudices can contribute to violence and expose young lesbian, gay, bisexual, and transgender ("LGBT") persons to health risks. Therefore, he recommended States to provide comprehensive age-appropriate sexuality education, since it is part of the right to education and can be a tool for combating discrimination (A/HRC/29/23, paras. 57 and 79 (f); A/HRC/19/41, para. 61).

Finally, we would like to refer to the last Report of the Working Group on the Universal Periodic Review of Romania (A/HRC/23/5), drawing special attention to the recommendations in paragraph 109.43, which states: "Intensify even further its efforts undertaken in regard to initiatives and awareness-raising programmes on gender equality and the protection of LGBT rights" and in paragraph 109.70, which states: "Ensure an adequate publicity and carry out awareness campaigns in order to increase the understanding among the population on the rights of LGBT persons", which were accepted by Romania. Also, we would like to refer to the recommendation in paragraph 109.112, which states: "Provide comprehensive and age-appropriate sexuality education, including on prevention of unwanted pregnancies", which was accepted by Romania.

Negation of trans and gender-diverse people

We further wish to express our grave concern that prohibiting any discussion regarding gender or gender identity in educational facilities may reinforce gender-based discrimination and exacerbate ignorance and negation of trans and gender-diverse people in Romania. Under international human rights law, everyone has the right to recognition as a person before the law, including persons of diverse gender identities. This principle is enshrined in Article 6 of the Universal Declaration of Human Rights, Article 16 of ICCPR, Article 15 CEDAW, and Article 8 of the Convention on the Rights to Child (ratified by Romania on 28 September 1990).

The Committee on the Rights of Child acknowledged that transgender adolescents face persecution, including abuse and violence, stigmatization, discrimination, bullying, exclusion from education and training, as well as a lack of family and social support, or access to sexual and reproductive health services and information. In extreme cases, they face sexual assault, rape and even death. These experiences have been linked to low self-esteem, higher rates of depression, suicide and homelessness (CRC/C/GC/20, para. 33). In light of this, the Committee urged States take effective action to protect transgender adolescents from all forms of violence, discrimination or bullying by raising public awareness and implementing safety and support measures (*Ibid.*, para. 34).

The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity stressed that trans and gender diverse people are subject to various forms of violence, discrimination or social exclusion (A/HRC/38/43, paras. 40-44). In this regard, he urged States to adopt all measures necessary to eliminate the social stigma associated with gender diversity, including the development, implementation and evaluation of an education and sensitization campaign, and in particular, all measures necessary to protect trans and gender-diverse children from all forms of discrimination and violence, including bullying, by raising public awareness and implementing safety and support measures (*Ibid.*, paras. 96, 97 (a)-(d), A/73/152, para. 79 (b)).

The United Nations High Commissioner for Human Rights similarly highlighted that States have obligations to address discrimination against LGBT children and young persons (A/HRC/29/23, para. 17). Therefore, he recommended States to support public education campaigns to counter homophobic and transphobic attitudes (*Ibid.*, para 79 (j)).

In this regard, we would like to draw your attention to the Concluding Observations of 11 December 2017 of the Human Rights Committee, in which it called upon Romania to take measures to eliminate discrimination and combat stereotypical attitudes and prejudices against LGBTI persons (CCPR/C/ROU/CO/5, para. 16).

In view of the aforementioned observations, we respectfully urge your Excellency's Government to take the necessary action to revoke these bills so that anyone can freely provide and receive sexuality education without fear of persecution. Further, we respectfully urge your Excellency's Government to adopt all measures necessary to eliminate the misconception and stigma against trans and gender-diverse persons and to protect them from all forms of violence and discrimination.

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/or comment(s) you may have on the above-mentioned information.
2. Please explain measures taken by your Excellency's Government to ensure that all individuals and groups have access to comprehensive sexuality education, including non-discriminatory, evidence-based, scientifically accurate and age-appropriate information on all aspects of sexual and reproductive health, including diversity in gender identities or expressions.
3. Please provide information on measures taken by your Excellency's Government to protect trans and gender diverse people from violence and discrimination in educational facilities, including bullying, harassment, stigmatization, and ostracization.
4. Please provide information on the measures your Excellency's Government has taken to tackle misconception and stigma against trans and gender-diverse persons, to raise awareness about diversity in sexual orientations and gender identities, and to foster acceptance and inclusion.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations. We would also appreciate it if your Excellency's Government could bring this letter to the attention of the Constitutional Court.

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

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Special Rapporteur on the right to education

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