

*Permanent Mission of Romania
to the Office of the United Nations
and the International Organizations
in Switzerland*



*Mission Permanente de la Roumanie
auprès de l'Office des Nations Unies
et les Organisations Internationales
en Suisse*

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The Permanent Mission of Romania to the United Nations Office in Geneva presents its compliments to the Office of the UN High Commissioner for Human Rights and has the honour to refer to the note verbale of 17 January 2008 regarding the contribution of the Government of Romania to the „Report of the Human Rights Council on the preparations for the Durban Review Conference”, following the UNGA resolution A/C.3/62/L.66 of 20 November 2007.

The Permanent Mission of Romania to the United Nations Office in Geneva has the honor to submit its answer on policies and measures taken by the Government of Romania to implement the Durban Declaration and Plan of Action, to the OHCHR Anti-Discrimination Unit.

The Permanent Mission of Romania to the United Nations Office in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights its highest consideration.



Geneva, 14 March 2008

The Office of the UN High Commissioner for Human Rights

In Town

Question 1: Can you assess the implementation of the Durban Declaration and Programme of Action in your country?

Romania has made considerable efforts in order to translate into practice the Durban Declaration and Programme of Action, especially in the field of prevention and combating racial discrimination.

These efforts materialized, on the one hand, in the adoption of a comprehensive and coherent legislative framework, and, on the other hand, in the establishment of several institutions with competences in combating racism, racial discrimination, xenophobia and any other forms of intolerance.

A series of strategies and public policies have been developed and implemented in order to promote diversity and equal opportunities, as well as to prevent and combat any form of discrimination, poverty and marginalization. These strategies contain specific measures for disadvantaged or vulnerable groups, including positive actions (for more details please refer to question number 3).

Therefore, Romania has made important steps in the process of implementation of Durban Declaration and Programme of Action, creating a functional anti-discrimination legal and administrative framework. DDPA offered a generous framework of action, helping us better organise and prioritize our activities in this field. As any other country, Romania is not free of instances of racial discrimination, racism or xenophobia and will continue to work on the basis of DDPA. The 2009 Review Conference will provide the opportunity to share good practices in the fight against discrimination.

Question 2: Can you assess contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance as well as initiatives in this regard with a view to eliminating them in your country?

According to Romanian legislation, all forms of discrimination are unacceptable. The victim of discrimination can resort, for legal protection and remedy, to a vast network of judicial, quasi-judicial and other institutions. Every person is entitled to bring cases before the courts for the defense of his/her legitimate rights, liberties and interests. Any person can also file a complaint to the National Council for Combating Discrimination (NCCD) or to the Ombudsman.

At present, we consider that, in Romania, racism and racial discrimination do not represent a phenomenon in itself. There have been isolated public manifestations of this kind in the context of certain sportive events (football games). Also, attitudes of intolerance and discriminatory manifestations towards the members of the Roma minority still exist.

Cases of discrimination based on ethnicity hold a significant share in the statistics of the National Council for Combating Discrimination (a similar trend is registered in the Ombudsman's statistics). For instance, the situation of complaints filed at NCCD in the period 2002-2007 having as object alleged acts of discrimination against persons belonging to the Roma minority is as follows: 25% in 2002 from the total amount of 473 complaints, 13% in 2004 from the total amount of 353 complaints, 24% in 2005 from the total amount of 382 complaints, 16% in 2006 of 432 complaints and 10% in 2007 from the total amount of 836 complaints. They cover situations manifested in different fields of activity.

Other more frequent discriminatory criteria are social status, beliefs, gender, sexual orientation, nationality, age, disability. Race is not included in this category (the number of complaints received by NCCD during 2003-2007 which related to discrimination on the grounds of race is 5.

Two administrative sanctions were applied for violations of race-related anti-discrimination provisions).

Question 3: Please identify concrete measures and initiatives for combating and eliminating all manifestations of racism, racial discrimination, xenophobia and related intolerance in order to foster the effective implementation of the Durban Declaration and Programme of Action.

I. Domestic legislation

The **Romanian Constitution**, as revised in 2003, states the principle of equality among citizens, without any discrimination based on race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin. It also states that citizens are equal before the law and public authorities, without any privilege or discrimination. According to article 20, the Constitution or national laws will take precedence over international regulations in the field of human rights when they comprise more favorable provisions.

Ordinance no. 137/2000 (as subsequently modified) on the prevention and sanctioning of all forms of discrimination represents the landmark piece of legislation in the field of anti-discrimination. It offers a comprehensive definition of the concept of "discrimination" as any distinction, exclusion, restriction or preference based on race, nationality, ethnic origin, language, religion, social origin, beliefs, gender, sexual orientation, age, disability, chronic non-infectious disease, HIV infection, social status (being part of an disadvantaged category) or any other criteria which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The Ordinance defines the principle of equality and non-discrimination among citizens, prohibits and sanctions the discriminatory acts committed by natural and legal persons. Such forms of discrimination punishable by law are: a) *Direct discrimination*; b) *Indirect discrimination*; c) *Harassment*; d) *Multiple discrimination*; e) *Order to discriminate*; f) *Victimisation*. Discriminatory acts are sanctioned as contraventions, unless they fall under the incidence of criminal law.

This law covers the following 5 main areas: 1) equality in the economic activity in terms of employment and professional work; 2) access to legal, administrative and public health services, as well as to other services, goods and facilities; 3) access to education; 4) freedom of movement, choice of residence and access to public places; 5) the right to personal dignity.

The principle of equality among citizens and the elimination of all privileges and discriminations are guaranteed, in particular with regard to the exercise of the following rights: the right to equal treatment before courts and any other jurisdictional bodies; the right to personal security and to be granted state protection against violence and mistreatment perpetrated by any individual, group or institution; political and civil rights; economic, social and cultural rights; the right of access to all public places and services.

The Ordinance also prohibits and sanctions any public behaviour with a nationalistic-chauvinist character, any incitement to racial or national hatred, or any behaviour aiming to prejudice a person's dignity or to create a hostile, degrading, humiliating or offending atmosphere, perpetrated against a person, a group of persons or a community, including on the grounds of race, nationality, ethnic origin.

The **Penal Code** contains specific provisions on this matter. The offence "incitement to discrimination" (any incitement to hatred on the grounds of race, nationality, ethnic origin, language, religion, gender, sexual orientation, opinion, political membership, beliefs, possession,

social origin, age, disability, chronic non-infectious disease or HIV infection) is punishable by a term of imprisonment between 6 months and 3 years or by fine.

The Government adopted the **Emergency Ordinance no. 31/2002 prohibiting organisations and symbols with fascist, racist and xenophobic character and the personality cult of those found guilty of committing crimes against peace and humanity**. This special penal law defines the above-mentioned categories of organisations and symbols, establishes a set of criminal offences and sets the applicable sanctions. Further amendments to the Ordinance offer an extended definition of the Holocaust so as to include the Roma ethnics.

The **new Code of Labour**, approved by Law no.53/2003, with subsequent modifications, defines and bans direct and indirect discrimination. Employees have the right to benefit from adequate work conditions and payment, without any discrimination. The internal regulations of the employer must include the observance of the principle of non-discrimination.

Law 202/2002 on equal opportunities between women and men establishes the legal framework in the field of equal opportunities between women and men. The law is based on the concept of multiple discriminations, which covers all grounds of discrimination, including gender and race.

According to the **Audio-Visual Law no. 504/2002**, it is forbidden to broadcast programs which contain any form of incitement to hatred, including on the basis of race, nationality, religion. Furthermore, the 2006 Code of regulations on the audio-visual content details the general legal provisions on anti-discrimination in the audio-visual field.

Law no. 14/2003 on political parties regulates the topic of political representation and participation in the public life in conditions of equality and non-discrimination among citizens. The law ensures the representation of all 20 national minorities existing in Romania in the Parliament.

The organizations of persons belonging to national minorities have the same status as political parties regarding the electoral procedures. **National minorities** also benefit from **governmental and local participation and representation**. Since 1996, the Democratic Alliance of Hungarians in Romania (UDMR) has been co-opted in the governing and parliamentary coalitions. During 1996-2000 and 2004-present, UDMR has been part of the governing coalition, while during 2000-2004 UDMR has been part of the parliamentary coalition. UDMR representatives were appointed in high ranking offices, such as minister positions (3), secretaries of state (13), presidents of various state agencies. After the 2004 elections, the organizations of persons belonging to national minorities have obtained a significant number of mayor, local counselor and county counselor seats.

The Governmental Decision no.1209/2003 on the organisation and development of civil servant's career mentions the equality of chances as one of the underlying principles in the organisation and development of the civil servant's career. Furthermore, the **Code of Conduct of Civil Servants** establishes the principle of equal treatment of all citizens by public institutions and authorities.

Law no. 116/2002 on the **prevention and combating of social marginalisation** aims to guarantee real access of all persons and, in particular, the young people to fundamental rights such as the right to work, the right to housing, the right to medical insurance and the right to education.

According to **Law no.122/2006 regarding the asylum in Romania**, the legal framework for foreigners applying for a form of protection or benefiting of a form of protection in Romania applies without discrimination. Foreigners benefiting of a form of protection defined by law can

enjoy their rights in the same conditions as the Romanian citizens. At the same time, the **Governmental Ordinance no. 44/2004 regarding the social integration of foreigners who obtained a form of protection in Romania** stipulates that the integration programs for foreigners who obtained a form of protection in Romania are worked out and implemented based on the needs of the beneficiaries, without discrimination. **The Governmental Decision no. 194/2002 regarding the status of foreigners in Romania** stipulates the obligation for public institutions to ensure the protection of foreigners against all forms of discrimination.

II. Institutional framework

Governmental Decision no. 1194/ 2001 established the **National Council for Combating Discrimination (NCCD)**, a specialized body of the central public administration empowered to guarantee and supervise the implementation of the principle of equality and non-discrimination among citizens. The Council is an autonomous public institution, with legal personality, under parliamentary control and is responsible for the enforcement and observance of anti-discrimination legislation, in particular the G.O. no.137/2000. NCCD is qualified to investigate, establish and sanction cases of discrimination. The sanctions applied by NCCD can be summons or contraventional fines.

The **National Agency for Roma (NAR)** was created in 2004 as a specialized body of the Romanian Government, with legal personality, in charge with elaborating, coordinating, monitoring and evaluating public policies for Roma minority in Romania. It is also the main governmental body responsible for the implementation of the Strategy for the Improvement of Roma Situation.

The **Ombudsman** (created by Law no. 35/1997 modified by Law no. 233/2004) is an autonomous institution, acting independently from any other public authority. The Ombudsman exercises its duties *ex officio* or upon request by the persons whose rights and freedoms have been infringed by the public administration, issues recommendations in cases of real human rights violations and submits special reports to the Parliament and the Government.

The **Department for Inter-Ethnic Relations** (created in 2001 and reorganized in 2005) functions as a specialized body of the central public administration, within the Romanian Government. DIR has 6 territorial offices. It promotes specific programmes for the purpose of enhancing understanding and dialogue between the majority and the national minorities.

The **Council of National Minorities (CNM)** is a consultative body of the Romanian Government and works under DIR's coordination. CNM ensures a permanent relation with the organisations of persons belonging to national minorities as it is composed of representatives of all national minority organizations represented in the Parliament

Law no.504/2002 created the **National Council of the Audio-Visual (NCAV)** an autonomous public institution, under parliamentary control, which is authorized to adopt normative decisions, issue public summons and apply contraventional sanctions in support of its role to ensure the application of anti-discrimination policies in the field of audio-visual. Between 2002 and 2007, the National Council of the Audio-Visual applied 15 sanctions for breaches of the legal provisions regarding discrimination based on nationality, race, religion, gender or sexual orientation and ethnicity – 13 to TV stations and 2 to radio stations.

National Agency for Equal Opportunities between Women and Men (created by Law no. 202/2002 regarding equal opportunities between women and men) is the central public administrative institution responsible for promoting the principle of equal opportunities between women and men through the elaboration and implementation of gender policies.

National Authority for the Protection of the Rights of the Child, established in 2005, is the state authority responsible for monitoring the observance of the rights of the child. One of the underlying principals of its activity is the equality of opportunities and non-discrimination.

III. Public policies and other measures

The National Council for Combating Discrimination designed a **National Strategy for Implementing Measures on Preventing and Combating Discrimination (2007-2013)**, establishing guidelines in the field of preventing and combating discrimination, with the aim to develop a society which is inclusive, intercultural and based on policies facilitating interaction, equality, mutual understanding and respect.

The Strategy sets 5 main objectives, as follows: 1) Protection against acts of discrimination (victimisation, harassment, incitement), 2) Inclusion and equality in the economic activity and in the field of employment, 3) Promotion of equality with regard to access public or private services, 4) Recognition of the importance of respect and mutual understanding in a culture of diversity, 5) Prevention of discriminatory practices by implementing a zero-tolerance policy. Each objective has a set of implementation priorities.

The implementation of the Strategy focuses on 3 groups which were identified as the most frequent victims of discrimination, one of them being composed of members of the Roma minority (especially in relation with law enforcement agencies). There are several key actors involved in the process, namely the central and local specialized institutions, non-governmental organizations and any other entities with a manifest interest in preventing and combating discrimination. Vulnerable groups will be involved at all stages in the development and implementation of the Strategy (coordination with the institutional actors, dissemination of information, monitoring and review of the Strategy etc.).

The Romanian Government adopted, in 2001, the **Strategy for the Improvement of Roma Situation**. The Strategy is a governmental initiative that has a comprehensive approach to the problems of the Roma population and aims to ensure that this minority enjoys its rights on equal footing with the rest of the population. Subsequently, the Government designed a General Master Plan of Measures, approved by Decision 522/2006, to speed-up the implementation of the Strategy over the next two years. In addition, Romania participates in the initiative entitled "The Decade of Roma Inclusion", adopted in 2004, for the period 2005 – 2015, by eight Central and Eastern European countries with the support of the international community, representing the first collaborative effort of this magnitude dedicated to the improvement of the situation for the Roma minority.

Upon the adoption of the National Strategy to improve the situation of Roma, the General Inspectorate of The Romanian Police worked out and applied "**The Program regarding the contribution of the Romanian Police to the improvement of the situation of Roma**", having as objective, amongst others, the prevention of discriminatory acts that can be perpetrated by police officers. Relevant regulations have been included in the Police Officer Code of Conduct and Deontology. A special attention was given to providing an adequate professional training to law enforcement officials in the area of human rights and anti-discrimination. The General Inspectorate of the Romanian Police also implemented, with good results, a program aiming to encourage the enlistment in the force of persons belonging to national minorities, as well as their enlistment to entrance exams organized by police schools. The National Institute of Magistracy organized a series of seminars for **magistrates** on issues related with discrimination, including the obligations assumed by Romania under international conventions, in the period 2001-2007.

The Government of Romania set up a Commission for Anti-Poverty and Promotion of Social Inclusion, which developed a **National Anti-Poverty and Social Inclusion Plan (NAPinc)**,

approved by the Decision no. 829/2002. In Chapter 14, NAPinc deals specifically with the reduction of poverty and social exclusion of the Roma.

The **2006 – 2009 National Strategy and Plan of Action for Equal Opportunities between women and men** contain actions to improve the situation of vulnerable categories, including those that are the most exposed to marginalisation and social exclusion, because of multiple discriminations.

Given the occurrence of discriminatory behaviors and attitudes in football, numerous awareness-raising and prevention campaigns have been carried out to fight such phenomenon, with the support of the NCCD and football clubs. In addition to that, Romania started its active participation in the annual European campaign “**Action Week against Racism in Football**” organised by the FARE network (Football against Racism in Europe).

The Ministry of Culture and Religious Affairs has launched several **cultural and educational programmes** such as „Pro-ethniculture” and „Roma together for Europe” with the aim to ensure equal chances to all communities of national minorities in Romania in promoting their values and cultural traditions. Romania has also joined European anti-discrimination campaigns (e.g. “All Different, All Equal” campaign, “The European Year of Equal Opportunities for All - 2007”).

All national minorities in Romania benefit of TV and radio programmes/stations, publications (books, magazines, newspapers), theatrical and artistic companies in their mother tongue. The Ministry of Culture and Religious Affairs and the Department for Inter-Ethnic Relations (DIR) support these activities, including financially.

The Government allocates every year a **special budgetary fund**, run by DIR, for programmes against racism, anti-Semitism, xenophobia and intolerance. A part of this fund goes to the organizations of persons belonging to national minorities in support of their activities. In 2004, DIR carried out approximately 60 interethnic programs and projects aimed at combating intolerance. In 2005, DIR initiated or supported about 100 projects proposed by different NGOs and in 2006 – about 130 projects. In 2007, the number of projects reached 120 (70 at the initiative of various NGOs and 50 at the DIR's own initiative). The areas covered by these projects included education, culture, youth, awareness-raising, promoting intercultural dialogue, enhancing public participation, consolidating the socio-political integration of minorities. This activity continues in 2008.

The Law on **education** grants all Romanians equal access to all levels and forms of education, “regardless of social origin and financial situation (...) race, nationality”. Denying the access of a person or a group of persons to the public or private education system of any kind, degree or level, based, inter alia, on race, nationality, ethnicity constitutes contravention according to O.G. 137/2000. Members of national minorities are entitled to study and receive instruction in their mother tongue at all levels and forms of education. Priority has been given to preventing and combating school abandonment of the Roma children and those coming from socio-economic disadvantaged areas, as well as the cases of segregation. Topics related to multiculturalism and combating discrimination (at all levels of education) have been inserted in the school curricula.

Question 4: How would your Government assess the effectiveness of the existing Durban follow-up mechanism and other relevant UN mechanisms dealing with the issue of racism, racial discrimination, xenophobia and related intolerance in order to enhance them?

In the aftermath of the Durban Conference, there has been a significant increase in the number of UN mechanisms dealing with racism and racial discrimination. Without ever questioning the importance of combating these scourges and the dedication of experts involved in the exercise, the proliferation of these mechanisms may have the opposite effect of undermining the effectiveness of this process, by dissipating energies and undermining its visibility. The difference in terms of mandates and objectives was not always clear, generating the risk of

duplication and overlap. Sometimes it proved difficult to ensure proper national participation to all WG.

It is important to use the Durban Review Conference to evaluate and streamline all these mechanisms, in line with key priorities and remaining challenges in the DDPA implementation. Therefore, all our efforts in this phase should focus on the preparations for the 2009 Review Conference.

Question 5: What are the steps taken by your Government to ratify and/or implement the International Convention on the Elimination of All Forms of Racial Discrimination and give proper consideration of the recommendations of the Committee on the Elimination of Racial Discrimination?

Romania became party to the International Convention on the Elimination of All Forms of Racial Discrimination in 1970. In 2002, Romania submitted a declaration, in accordance with article 14 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination, recognizing the competence of the Committee on the Elimination of Racial Discrimination (CERD) to receive and consider complaints from persons within its jurisdiction claiming to be victims of a violation by Romania of any of the rights set forth in the Convention.

The adoption of anti-discrimination legislation, the development of public policies, as well as the establishment of new human rights institutions were carried out with due regard to the requirements set out by the UN Convention and following the recommendations of CERD. In our opinion, the Convention maintains its pertinence in relation to nowadays forms of discrimination and racism.

Thus, following the recommendations contained in para. 15 of the Concluding Observations of CERD on Romania's fifteenth periodic report to the UN Convention (CERD/C/304/Add.85), the Government adopted in 2001 the Strategy for the Improvement of Roma Situation. Also, the relative large percentage of NCCD cases involving ethnic discrimination indicates an increased awareness of the population of the existence of available legal remedies and of the protection against racial discrimination provided by the Convention, as suggested at para.13 of CERD/C/304/Add.85. The adoption of Emergency Ordinance no. 31/2002 prohibiting organisations and symbols with fascist, racist and xenophobic character responds to the recommendation contained in the second part of the para. 12 of CERD/C/304/Add.85.

Romania will submit its sixteenth to nineteenth periodic reports due under article 9 (1) of the Convention very shortly (by the beginning of April 2008).

Question 6: Please identify and share good practices achieved in the fight against racism, racial discrimination, xenophobia and related intolerance in your country.

Discrimination is especially caused by the existence of stereotypes and prejudices and it can only be eliminated in time through information and education, including by constantly developing prevention and awareness campaigns. The efficiency and impact of national anti-discrimination campaigns increased in the last four years, including in terms of media visibility (e.g. anti-discrimination spots were broadcast by TV and radio stations). All relevant ministries and agencies are involved in such programmes and initiatives.

The role of national NGOs became more prominent. Two important anti-discrimination projects born out of the partnership between the civil society and the public authorities are the Roma health mediators and the Roma local experts.

The Roma health mediator (RHM) project was designed to address the complex health issues faced by the Roma minority, in particular Roma women. The role of the RHMs is to facilitate the communication between members of Roma community and the health personnel, to facilitate access of Roma people to health care services and to educate them on health related issues. RHMs are women with completed mandatory education, selected on the basis of community leaders' recommendations and employed by the Public District Health Offices.

Local Roma Experts are the main mediators between Roma communities and the local public administration. They are responsible with organizing, planning, coordinating and running different activities in order to accomplish aims and tasks set out by the Governmental Strategy to Improve the Condition of the Roma. The Local Roma Experts must have good knowledge on problems of the local Roma community and represent them in relation with the Municipality. They are employed by the Municipalities and are subordinated to the Mayor but also to the Roma County Offices.