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BUCHAREST ACCEPTANCE GROUP
under the patronage of
UNESCO-CEPES

INTERNATIONAL YEAR OF TOLERANCE - 1995

REPORT ON THE SYMPOSIUM

HOMOSEXUALITY: A HUMAN RIGHT?

held on May 31, 1995
at UNESCO-CEPES
Bucharest, Romania

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* ARTICLE 200 OF THE ROMANIAN PENAL CODE

Sexual intercourse between persons of the same sex is punishable by one to five years' imprisonment.

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, it is punishable by two to seven years' imprisonment.

If the act provided for in paragraph 2 causes serious injury to bodily integrity or to health, the penalty is three to ten years' imprisonment.

Propositioning or enticing an individual to an act provided for in paragraph 1 is punishable by one to five years' imprisonment.

* The Constitutional Court of Romania has ruled that the provisions of paragraph 1 are unconstitutional "to the extent to which they apply to sexual relations between freely consenting adults which were not committed



in public or did not produce a public scandal." This decision came into force in January 1995.

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I. FOREWORD

The symposium titled "Homosexuality - A Human Right?" was an attempt to open up dialogue on the vital but sensitive issue of gay and lesbian rights in Romania. Currently, Article 200 of the Romanian penal code declares any consenting same sex relations to be a criminal offence. In the last four years there have been a number of drafts put forth by the Romanian Senate and Chamber of Deputies, though, in essence they maintain the criminality of same sex relations.

In April 1995, the Senate adopted a Bill that would modify the Penal Code. Article 200 of this draft reads:

1. Sexual intercourse between persons of the same sex, taking place in public, or producing a public scandal, is punishable by one to five years imprisonment.
2. If the act provided for in paragraph 1 is committed against a minor, it is punishable by two to seven years imprisonment and the denial of rights.



3. If the act provided for in paragraph 1 is committed under duress or against a person unable to defend himself (or herself) or to express his (or her) will, are punishable with three to ten years imprisonment and the denial of rights.

4. If the acts provided for in paragraphs two or three are causing serious injury to bodily integrity or to health, the penalty is five to fifteen years imprisonment and the denial of rights. If it is followed by victim's death or suicide, the penalty is fifteen to twentyfive years imprisonment and the denial of rights.

5. Propositioning or enticing a person to take part in sexual relations with a person of the same sex, as well as propaganda or association or any other acts of proselytism with the same purpose, is punishable by one to five years imprisonment.

The original text of the criminal code from the Communist period outlawed any same sex relations. In 1994, the Romanian Constitutional Court ruled this definition unconstitutional. Following this, the term, public scandal, was introduced into the text so that "any consenting same sex relations taking place in public or producing public scandal" will be punished with imprisonment from 1 to 5 years. The term public scandal is seen by various human rights workers as dangerous in that there is no definition of a public scandal.

In the past year, various bodies have discussed whether or not Romania should decriminalise homosexuality. These include the Senate, the Chamber of Deputies, the Romanian Orthodox Church and affiliated student groups, as well as gay and lesbian rights organisations, both within Romania and abroad.

The Bucharest Acceptance Group is a non-governmental association made up both of Romanian citizens and expatriates living in Romania. The group was recently created for the defence of the rights of persons with homosexual orientation. The positive reaction over the formation of such a group has led to affiliated "Bucharest Acceptance Groups" being created in The Netherlands and France.

Having in view that the legislation regarding homosexuality in Romania was currently being discussed in the Parliament, the Bucharest Acceptance Group organised, under the sponsorship of the UNESCO-CEPES International Year of Tolerance, a public discussion to address the complex issues of same sex relations in Romania.

The Symposium "Homosexuality: A Human Right?" was a unique attempt to bring opposing points of view together in a single forum. Not just to speak AT



each other, but to listen TO each other; to appreciate opposing points of view, and perhaps even find common ground.

The Symposium was originally organised so that eight speakers would present different aspects of homosexuality in Romania. Though two of the scheduled speakers had not been present, the actual presentations represented different aspects of what may be considered a controversial subject in Romania. Each speaker was given ten minutes for his/her presentation, after which the floor was open for questions.

The discussion was moderated by Father Christopher Newlands of the Anglican Church in Bucharest and Sofia, and the six speakers had been:

- Ms. Carin Berg: Director of the European UNESCO Centre for Higher Education-CEPES, Bucharest; from Sweden and in Romania since 1988;
- Counsellor Octavian Cojocaru: representative of the Ministry of Justice;
- Mr. Andr  Krouwel: Lecturer of Political Science at the Free University of Amsterdam and representative of the Dacia Foundation (Bucharest Acceptance Group - The Netherlands);
- Father Dumitru Radu: Professor of Theology at the University of Bucharest and representative of the Romanian Orthodox Church;
- Mr. Scott Long: Former Fullbright Professor in Romania for two years, teaching American literature; conducted numerous interviews of prisoners in Romania sentenced under Article 200; and East Central European representative of the International Gay and Lesbian Human Rights Commission, San Francisco;
- Deputy Nicu Vintila: Representative of the Romanian Parliament, Chamber of Deputies Juridical Commission.

II. OPENING REMARKS AND PRESENTATIONS OF THE SPEAKER

* Moderator - Father Christopher Newlands

In his opening remarks, Father Christopher Newlands welcomed the participants and stressed that this was an important occasion where we meet for the first time to exchange views as part of a dialogue on the subject of homosexuality in Romania. As many different groups representing the Romanian government and society, as well as groups from abroad, were present, he pointed out that it is clear that we would have different opinions, but he hoped that each would listen patiently and try our utmost to understand what each other's opinions are.

He also expressed his gratitude to the Bucharest Acceptance Group for organising this discussion and to UNESCO for hosting the Symposium.

* Ms. Carin Berg - Director of UNESCO-CEPES, Bucharest

Ms. Berg opened with a brief explanation of the UNESCO initiative incorporating the 1995 International Year of Tolerance. She spoke of different themes of tolerance and specified that "intolerance in a society is the sum of the intolerance of its individual members," and we need to think about intolerance and our own behaviour.

In our everyday life, one may see behaviours that in their essence are intolerant. So-called "harmless jokes" about a neighbouring country, ethnic group or people with different lifestyles is not so innocent; it creates a climate and allows for more violent expressions of intolerance like attacks against individuals, claims for repressive education against certain groups and even armed conflict.

She also pointed out that certain behaviours, such as domestic violence, are to be condemned because they are harmful to members of society. "Harm inflicted on other people" is a rational ground for disapproval.

While a free, open and democratic society means that you have the right to approve or disapprove of various phenomena, it also means that you have responsibilities and disapproval should be expressed in a "democratic dialogue." She stressed that it is with this background that we are meeting here today; not to make propaganda, but to inform, to communicate, to act in a democratic way.

The attitude towards homosexuals, as it is expressed in Romania today, is an attitude of intolerance, and intolerance in any expression is the one thing we must not tolerate. Also, it is our duty as citizens of a democratic society to be informed, to read and to have dialogue.

In closing, Ms. Berg stated that the issue of this symposium challenges us as individuals, and underlined that tolerance is an individual responsibility, it is part of the strategy for creating, in all parts of the society, a climate of tolerance and understanding, as cornerstones of peace.

* Counsellor Octavian Cojocaru - representative of the Ministry of Justice

Mr. Cojocaru began by stating that Romania is attached to the ideals of democracy, in which human rights are guaranteed. In drawing our attention to the Universal Declaration of Human Rights, Counsellor Cojocaru stated that homosexuals do have rights in Romania, but that he believed the new text of the draft and its context is not understood. He commented that the institutions, the church and certainly the vast majority of citizens who respect the society are looking with anxiety at the decriminalisation of

homosexuality.

Human nature, he continued, is "inclined to the romantic," and the "beauty of the Romanian woman" allows us to be biblical and evoke God, who told Adam and Eve to go and spread the kin around the world. It is a matter of Christian morality and the laws of the Bible.

He mentioned that an essential provision of the recent Senate draft of Article 200 is that there are only two conditions which criminalise same sex relations: if it is perpetrated in public and if it creates a public scandal. In every other condition, he continued, each does what he pleases, if they do not jeopardise the other and the human morality. This, he believes, does not infringe upon the Declaration on Human Rights.

In closing, he stated that the new law {draft} harmonises the new freedoms of the individual, only to the extent that it is believed that homosexuality is a human right.

* Mr. André Krouwel: Representative of the Dacia Foundation- The Netherlands, which includes a program for BAG Netherlands; lecturer at the Free University of Amsterdam, department of Political Science.

After expressing his appreciation to BAG-Romania for organising the Symposium, Mr. Krouwel commented that he was stunned by the statement of Counsellor Cojocaru because he never thought of love as something "natural" or "unnatural;" you either love somebody or you don't. He also warned that public scandal is dangerous because people can be offended very easily.

Mr. Krouwel then gave a brief explanation of the gay and lesbian movement in the Western European context. While most people define this as "liberal," homosexuals up to the first half of the 20th century were persecuted, jailed and even killed by political and religious institutions. However, he continued, studies then showed that homosexuality is not a disease or social aberration, resulting in the decriminalisation after W.W.II, in most Western countries. This was followed by the period of sexual liberation in the 1960s-1970s, and now homosexuality is not seen as something private, but something we can express in the public sphere.

Democracy, he believes, is not something put down in legal documents like the Constitution, but means that different social groups are represented at the political level and where people can express their views and lifestyles. Likewise they can be acknowledged as an important social group contributing to society.

Mr. Krouwel concluded in saying that within the European gay community and political parties, there are many people whom are worried about the



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situation in Romania. The Dacia Foundation and other BAG groups will monitor Human Rights here in Romania, particularly those of gays and lesbians, and are pressing their parliamentarians for a change in the penal code of Romania.

* Father Dumitru Radu: Professor at the Faculty of Theology. University of Bucharest and representative of the Romanian Orthodox Church
In opening, Mr. Dumitru thanked the sponsors for organising his presence at this debate over a problem that he believes is not a "right," but a plague. As a priest, as a moral theologian, he continued, he cannot agree with those present for which show homosexuality is a Human Right. Even if we are required to agree with this "sexual deviance," the Orthodox Church will never agree with this "violation of nature."

He continued in saying that even if the Romanian Parliament legalised same sex relations, it is not natural and it is none of our business. It is a violation of nature, and it will turn against those who practice it. This, he said, is how we can explain the plagues around the world. "If you cannot consider the Bible for your own reason, for sound reason, you are doomed."

The Romanian Orthodox Church, he explained, thinks that homosexuality is a sin. They understand sinners and hope to convert them, but cannot leave sins unpunished. This is a sin against God because human beings were created for family life, and such actions against nature and society come back to haunt people. Further, homosexuals should not be allowed to teach people that one's own body is his/her own business, for we know God does not forgive sinners. God is waiting for sinners to come back to him, to sanction and to punish.

Father Radu specified that some may say homosexuals will not harm society, but they can influence and attract youth, and this will result in a sick youth. "As you see," he continued, "we have many sick youths already. In cases of this sexual deviance, the spiritual aspect of the human is lower to the biological aspect; senses are lost and major elements to the human being are lost."

He closed by saying that he is completely against this sexual deviance, against this sin. The Church must educate people in the sense to bring sinners back to their nature. Tolerance is not unlimited.

* Mr. Scott Long: Former Fullbright Professor in Romania for two years, teaching American literature; conducted numerous interviews of prisoners in Romania sentenced under Article 200; and East Central European representative of the International Gay and Lesbian Human Rights Commission, San Francisco

In relating the principles of protecting youth and families, as mentioned by

Father Radu, Mr. Long told the audience of two incidents which he has researched:

one involving a group of youth from Sibiu suspected of being homosexuals. The youths were bullied into confessions, placed in jail and charged with homosexuality and all of their families were publicly exposed and forced to pay bail.

The second involves selective administration of justice, where a man, believed to be a homosexual, was beaten, raped and robbed by two men. In complaining, he was told "you are homosexual, you must have wanted it," and in the end he was imprisoned for consensual homosexual acts.

Mr. Long stated that homosexuality has become an issue of debate in Romania, and many common terms heard today are symbolic of the perceptions of Romania's relationship with Europe: inside - outside; authentic - cosmopolitan... These, he said, tend to be false; homosexuality is a Romanian phenomenon; there are many homosexuals in Romania and only oppression, fear and the law has prevented them from coming on this panel today and speaking for themselves.

In commenting on the statements of Romanian Orthodox Church, he said that while he respects these it is part of a modern democracy to separate law from religious morality. Also, the "embracing ambition" of the Ministry of Justice to set forth an enforcement of not only the criminal code, but the laws of biology and even the law of God, seems both impractical for the actual agencies of law enforcement and ultimately destructive for the creation of civil society.

He pointed out that Bulgaria, with a strong Orthodox Church, decriminalised same sex relations almost 30 years ago, Russia in 1993 and Serbia last summer. The effect of the law in Romania and, it seems the intent of the law, is in fact to deny gays and lesbians the right to organise, the right to assemble, the right to communicate with each other and society at large, and the right to be seen. Mr. Long specified that a democracy simply cannot do this.

He concluded by saying, "Who can contribute to Romanian society and democracy in this hour of construction? The intent of this law appears to create limits on who can contribute, can participate and this seems to be wrong, to be dangerous, and from the perspective of Romania's future, to be self-destructive."

* Deputy Nicu Vintila: Juridical Commission of the Chamber of Deputies

In opening, Deputy Vintila stressed that his statement represents his own

personal point of view; different from the Chamber of Deputies, and there is currently no draft bill before it. However, last year when the draft bill was debated and rejected, it was debated very seriously.

He stressed the different pressures placed on Parliament and how it is difficult to know the "truth." He explained how they had received many letters and visits representing Romanian society, and most were referring to maintaining the criminalisation of same sex relations. On the other hand, international bodies such as the European Organisation of Lesbians and other wrote letters and brought delegates, asking us to accept this "biological form." Thirdly, there is the Romanian Orthodox Church, and in each state, the Church is rather important; they have a say when it comes to morals and legal statutes. Deputy Vintila then showed a letter, signed by the Church and various Metropolitans, asking the Parliament not to decriminalise same sex relations.

Maybe the article should be improved, he commented, but in this point in time this is pretty much acceptable for the Romanians. Many have come to ask us to decriminalise same sex relations, but it was his opinion that the society cannot accept same sex relations, and this article allows for enough latitude.

III. QUESTIONS AND ANSWERS

There were a number of questions and issues raised from the floor. Lawyer Anca Paduraru asked Counsellor Cojocaru if, under the regulation of "public scandal," the current draft of Article 200 is not a double criminality or law with respect to Article 321 - "outrage of order.., deeds or gestures, words and acts which affect good mores.., or produce public scandal..", which are punishable with imprisonment for 3 months to 2 years. Ms. Paduraru also pointed out that this is a much smaller penalty than that for Article 200. Moreover, the present Penal Code incriminates heterosexual rape and sexual relations between adults and minors. Further, Mr. Long asked why can't there be a single law?

In responding, Cojocaru stressed that these are two different concepts and two different crimes. Deputy Vintila also commented that this should be taken slowly, and that in the West there were stages and we should not be forced to hurry.

APADOR-CH representative Renate Weber stressed that when referring to decriminalisation, we first must erase intolerance. Although understanding the position of the Romanian Orthodox Church, Ms. Weber specified that Romania is a lay state and attention should be directed toward the Constitution and the legislative parliament; the law making bodies not the



Church. Also there is the issue of non-discrimination based on sex; in Article 200, only men are victims, but what about women?

Razvan Scortza from the BBC asked if homosexuals in Romania, according to the new draft, would be able to speak out, if only to fight discrimination and intolerance?

Mr. Cojocaru commented that homosexuals can speak in public if they are not proselytising or making propaganda. Our function, he added, is to see how we can tolerate each other, but we are not able to let things go unpunished if they produce a scandal.

Mr. Long specified that one cannot tolerate people if they are not there. "To say I tolerate you as long as you are not near me, don't express yourself, are not seen.., is not tolerance. Public scandal," he added, "prevents people meeting and tolerating each other face to face."

Questions were raised concerning the actual Symposium and its legality if the current draft were law. Would this meeting qualify as "association" and even "proselytising?" asked Dr Eric Gilder, U.S. lecturer in Romania. He proposed that if the concern is over propaganda, why not strike association out of the phrase "association and propaganda," and, likewise, if the issue is the public, why not strike public scandal and merely say "perpetrated in public."

Deputy Vintila again expressed the difficult position of the parliament, but added that he agreed paragraph 5 is too tough and does not belong in the criminal code. Counsellor Cojocaru also said that he did take note of the apprehensions over paragraph 5 and would speak with his colleague Ms. Iliescu and decide to what extent these could be changed.

In closing, Moderator Christopher Newlands stated that it is clear that not all questions have been answered, thus this type of forum is important to express questions representing all of these groups. Likewise, that is of great concern that a just solution be found; a solution respecting Human Rights, freedom to us all, morality and the freedom to choose God or not.

IV. LIST OF PARTICIPANTS

(incomplete)

Father Christopher Newlands (Moderator), Anglican Church

Jennifer K. Tanaka (Rapporteur), Bucharest Acceptance Group

Mona Nicoara (Simultaneous translator), Romanian Helsinki Committee (APADOR-CH)

Dr. Bonny Wassing, Lecturer of Dutch, University of Bucharest, Bucharest



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