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£Romania
@Update on the revision of Article 200 of the penal code

Amnesty International's Concern: Amnesty International has on several occasions expressed its concern to the Romanian authorities about Article 200, paragraphs 1 and 4, and called for the release of prisoners who were charged or convicted under this law which allows for the arrest, prosecution and imprisonment of consenting adults engaging in homosexual acts in private. In February 1994 Amnesty International wrote to the Constitutional Court of Romania expressing its position and urging the abolition of Article 200, paragraphs 1 and 4. In March the organization criticized a draft law revising Article 200 which had been adopted by the Romanian Senate (see *Romania: Criminal law reform on the wrong track*, AI Index: EUR 39/01/94).

Background: On 27 April 1994 the Juridical Commission of the Chamber of Deputies debated the draft law revising Article 200. The debate was interesting for it reflected how this issue crossed the political divide and led to unlikely alliances. Some members of parliament referred to homosexuality as an "aberration" or a "genetic accident" and stressed that no laws could force a country to "violate its national will or Christian morals". R_zvan Dobrescu, MP of the major opposition party, the National Peasant Party - Democratic Convention, argued that a change in present law would undermine family as "a basic cell of society" because homosexual spouses would desire to adopt children. Also if persons holding public position were allowed to manifest openly their homosexual orientation they would make the heterosexual majority feel like second class citizens.

Other participants in the debate pointed out that Romania was not forced to adhere to the European Convention on Human Rights but did so with dedication to its principles. Abolishing Article 200 paragraph 1, it was mentioned, would facilitate AIDS education and prevention among a high-risk category. Aurel Stirbu, MP of the ruling Social Democratic Party of Romania, appealed that the debate on traditional morals should be set aside and stressed that without respect for the rights of others who are not like the majority there can be no effective protection of human rights.

In the end the commission adopted the following proposal to modify Article 200, paragraph 1:

"Sexual relations between persons of the same sex committed **in public** are punishable by one to five years' imprisonment".

The commission also decided to modify the proposed paragraph 5 of the same article with the following:

"Enticing or seducing a person to practice acts proscribed by preceding paragraphs is punishable by one to five years' imprisonment."

These proposals will also be discussed in the Commission for Human Rights, Religious Affairs and National Minorities, before a general debate in the Chamber of Deputies. If a draft law adopted by the Chamber of Deputies differs from the version adopted in the Senate then the presidents of both chambers of the Parliament will initiate "a mediation procedure through the intermediary of a joint commission with equal representation of both sides" (Article 76, paragraph 1 of the Romanian Constitution). If this commission does not reach an agreement or if one of the chambers does not approve the mediation report the disputed texts will be submitted for discussion to both chambers in a joint session which will approve the final text by a majority vote (Article 76, paragraph 2 of the Romanian Constitution).

Parallel to the legislative revision of Article 200 is the process of this law's judicial review. On 5 May 1994 the Constitutional Court of Romania held its first public hearing in this case. Judge Victor Dan Zl_tescu presided over the three-judge panel, which included also Antonie Iorgovan, the judge-rapporteur, and Viorel Mihail Ciobanu. Court proceedings began with a judge-assistant presenting the case in brief. In spite of the fact that neither the defendants, charged under Article 200 in Sibiu, nor their legal counsels came to the hearing, the court decided to proceed as scheduled. Ioan Griga, Deputy Prosecutor General, presented his position and cited the following information from the judge-rapporteur's report (available only to the parties involved in the case):

- The Government asked for postponement so that the solution would not only be just, but also "in accordance with traditional and moral beliefs of Romania". The Government referred to Article 26, paragraph 2, of the Romanian Constitution¹ and considered the plea of the unconstitutionality of Article 200 unfounded. The Government also noted that penalizing homosexual acts does not contravene Article 8, paragraph 2, of the European Convention on Human Rights (ECHR).
- The Parliament (it was not specified which body or which house had replied to the Constitutional Court) also requested the Constitutional Court to postpone its decision until the adoption of the Draft Law on the Revision of Penal Code which also includes Article 200.
- Three law faculties in Bucharest, Ia_i and Cluj, gave their position on Article 200 which coincided with the Government proposals for the revision of this law. The Sibiu Law School thought that the plea of unconstitutionality should not be admitted.
- The churches² also expressed their views in favour of retaining Article 200. The Patriarch of the

¹ Article 26 states the following :

"Public authorities shall respect and protect private and family life.

An individual has the right to do what he wants to do, as long as he does not violate the rights and freedoms of other persons, public order and moral standards."

² It was not mentioned how many were asked to express their opinion but unofficially Amnesty International learned that only the Hungarian Reformed Church stated that "although they did not

Romanian Orthodox Church stated "We must preserve our specific morals and traditions and national features". He thought that such a position is allowed by European policies which call for preservation of the diversity of member states³.

After the intervention of the Deputy Attorney General the Court withdrew to deliberate and later announced their decision to adjourn the hearing until 5 July 1994.

support the repeal of Article 200 the church should not interfere in state legislation".

³ He referred to a European Union meeting held in Freiburg on 15 April 1994.