

**In the matter of the constitutionality of the proposed revision of Article 48 (1) of
the Constitution of Romania**

Before the Constitutional Court of Romania

Written Submissions on behalf of

Amnesty International

ECSOL (European Commission on Sexual Orientation Law) and

**ILGA-EUROPE (European Region of the International Lesbian, Gay, Bisexual,
Trans and Intersex Association).**

Amici

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I. INTRODUCTION

1. These written submissions are presented by Amnesty International, ECSOL (European Commission on Sexual Orientation Law) and ILGA-Europe (European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association) (“**Amici**”).¹
2. In the present case, this Court is called upon to examine – and ultimately determine – the constitutionality of the proposed revision of Article 48 (1) of the Constitution of Romania to be submitted to a referendum.² If passed into law, the proposed revision will enshrine in the Constitution the exclusive recognition and protection of only one type of “family”, i.e. a family founded on the marriage of a man and a woman to one another.³
3. In determining whether the proposed constitutional revision would be consistent with the Romanian Constitution, this Court should consider and be guided by Romania’s relevant international human rights and European obligations including : (i) the Convention for the Protection of Human Rights and Fundamental Freedoms (“**ECHR**”), as expounded by the European Court of Human Rights (“**ECtHR**”) in its jurisprudence⁴, (ii) the Charter of Fundamental Rights of the EU (“**Charter**”) and the free movement obligations under European Union (“**EU**”) law.
4. In light of these, the amici submit that the proposed constitutional revision constitutes a violation of the following human rights enshrined in the ECHR: (i) the right to equality before the law and equal protection of the law,⁵ (ii) the right to respect for private and family life,⁶ and (iii) the right to enjoy one’s rights without discrimination and not to be subject to unjustified discrimination by a public authority, including on the ground of sex and sexual orientation.⁷ Second, the proposed constitutional revisions triggers contradiction with EU law and the Charter rights equivalent to those cited above. In the recent *Coman*

¹ See Annex 1 for a description of each of the organizations.

² Article 48(1) of the Romanian Constitution reads as follows: “The family is founded on the freely consented marriage of the spouses, their full equality, as well as the right and duty of the parents to ensure the upbringing, education and instruction of their children.” The interveners understand that the proposed constitutional revision would see the words “the spouses” replaced with the terms “a man and a woman”.

³ Increasingly, various UN bodies have called for recognition of “diverse forms of families” including “single-parent families; families headed by women; intergenerational families including, among others, grandparents; families headed by children, such as orphans or street children; families comprising lesbian, gay, bisexual, transgender and intersex (LGBTI) persons; extended families; ... families without children; families of divorced persons...”, see, *inter alia*, the Report of the Working Group on the issue of discrimination against women in law and in practice, 2 April 2015, A/HRC/29/40; see also OHCHR Report: Protection of the family: contribution of the family to the realization of the right to an adequate standard of living for its members, particularly through its role in poverty eradication and achieving sustainable development, paras 24-27.

⁴ Romania is a party to all major European and international human rights treaties and the Romanian Constitution guarantees that constitutional provisions concerning the rights of citizens shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, the covenants and other treaties to which Romania is a party. Article 20 of the Constitution also provides for the primacy of international treaty provisions where any inconsistencies exist between treaties on fundamental human rights to which Romania is a party and national law, unless the Constitution or domestic legislation provides greater protection. Article 20 states: “(1) Constitutional provisions concerning the citizens’ rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to. (2) Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favorable provisions.” In addition, the second paragraph of Article 152 of the Romanian Constitution, which concerns constitutional revisions, provides that, “no revision shall be made if it results in the suppression of the citizens’ fundamental rights and freedoms, or of the safeguards thereof.”

⁵ ECHR, Protocol 12, preface.

⁶ ECHR, Article 8.

⁷ ECHR, Protocol 12 and Article 1.

case, the CJEU ruled that the term “spouse” in the Citizens Directive includes same-sex marriages for the purposes of freedom of movement within the EU.⁸

5. The amici therefore submit first, that Romania is bound by its obligations under international law to respect the rights of same-sex persons; second, that the constitutional revision to be put to a referendum would infringe Romanian citizens’ fundamental rights; and third, that such an interference with fundamental rights cannot be justified.

II. THE PROPOSED CONSTITUTIONAL REVISION VIOLATES HUMAN RIGHTS

A. Romania is bound to protect fundamental human rights by its obligations under international law

i) Romania shall prevent violation of human rights

6. Under international human rights law, when States become parties to human rights treaties, they undertake to respect, protect and fulfill the rights guaranteed by those instruments. For example, the Contracting Parties’ obligation under Article 1 of the ECHR is to take all necessary measures to secure for everyone within their jurisdiction the rights and freedoms defined therein. Similarly, Article 2(1) of the International Covenant on Civil and Political Rights (“**ICCPR**”) provides that each State Party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized therein, without distinction of any kind, such as sex.
7. The obligation to respect human rights means that States must refrain from conduct – whether by acts or omissions – that would interfere with or curtail the enjoyment of human rights. Thus, States shall neither commit human rights violations nor adopt conduct that would impair the enjoyment of human rights. The latter includes the adoption of legislative measures.
8. It is therefore a requirement that States shall ensure equal treatment in law and practice. The protection of the rights to equality before the law, equal protection of the law and freedom from discrimination is a fundamental State obligation under international law⁹. States shall thus prohibit and prevent discrimination in private and public spheres, and diminish conditions and attitudes that cause or perpetuate such discrimination.¹⁰
9. While neither the ICCPR nor International Covenant on Economic, Social and Cultural Rights (“**ICESCR**”) explicitly mentions sexual orientation or gender identity as prohibited grounds for discrimination, they both contain an inclusive ‘other status’ clause which has been interpreted as including sexual orientation¹¹. The General Comment No.18 (2005) of the UN Committee on Economic, Social and Cultural Rights (ICESCR Committee) on the

⁸ Case C-673/16 *Coman, Hamilton, ACCEPT v. Inspectoratul General pentru Imigrari*. EU:C:2018:385.

⁹ For example, Article 26 of the ICCPR states: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Similarly, the preamble of Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides for a general prohibition of discrimination, recalls, inter alia, “the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law”.

¹⁰ OHCHR Discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23, para. 16; see also CCPR/C/PER/CO/5, para. 8; E/C.12/GC/20, paras 7-11; CEDAW/C/GC/28, para. 18.

¹¹ Human Rights Committee, *Toonen v. Australia*, 1994.

Right to Work highlighted that Article 2(2) and 3 prohibit any discrimination in access to and maintenance of employment on the grounds of ‘sexual orientation’. In addition, according to the ICESCR Committee General Comment No.20 (2008) on non-discrimination in economic, social and cultural rights, Article 2(2) ICESCR listing prohibited grounds of discrimination under ‘other status’ is not exhaustive and includes thus ‘sexual orientation’ and ‘gender identity’.

10. The interpretation of human rights is an evolving concept and the human rights bodies have consistently expressed the need to interpret provisions in the light of the social and legal developments¹², including the legal recognition by some States of registered partnerships or de facto unions.¹³ United Nations Committee on Elimination of all forms of Discrimination against Women (CEDAW Committee) has acknowledged that families take many forms and has underscored the obligation of equality within the family¹⁴. ICESCR Committee has stated that “the concept of ‘family’ must be understood in a wide sense”.¹⁵ The Human Rights Committee has acknowledged the “various forms of family”.¹⁶ The United Nations Secretary-General also confirmed that “families assume diverse forms and functions among and within countries”.¹⁷
11. UN Treaty bodies have repeatedly urged States to tackle both direct and indirect discrimination against all persons, including lesbian, gay, bisexual, transgender and intersex (LGBTI) people.¹⁸ They have called on States to ensure that laws, policies and programmes executed by State authorities do not discriminate against these individuals.¹⁹
12. In light of this, the amici submit that Romania should refrain from holding a referendum on the adoption of the proposed constitutional revision given that such a revision would place Romania in contravention of its obligations under international law. Such a revision, as well as the referendum campaign itself, would contribute to increasing discrimination, stigmatization and exclusion from Romanian society of same-sex couples and more generally of individuals based on their real or imputed sexual orientation and/or gender identity (“SOGI”).

ii) Romania shall adopt all necessary measures to protect human rights, including the protection of LGBTI persons from violence by non-State actors

13. States are required to take all necessary measures to protect human rights, including measures of protection adopted with a view to ensuring that non-State actors, such as private individuals and corporations or religious groups, do not interfere with or abuse the human rights of others, for example by subjecting them to discrimination on SOGI grounds. States are also responsible for acts of violence committed by private individuals motivated

¹² For example, *X and Others v. Austria*, No. 19010/07, Eur. Ct. H. R., para. 139 (2013)

¹³ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 29: General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Economic consequences of marriage, family relations and their dissolution)*, para. 6, U.N. Doc. CEDAW/C/GC/29 (2013) [hereinafter CEDAW Committee, *Gen. Recommendation No. 29*].

¹⁴ CEDAW Committee, *Gen. Recommendation No. 29*, para. 16; Committee on the Elimination of Discrimination against Women, *General Recommendation No. 21: Equality in marriage and family relations*, (13th Sess., 1994), para. 13, U.N. Doc. A/49/38 (1994)

¹⁵ Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, (6th Sess., 1991), para. 6, U.N. Doc. E/92/23 (1991)

¹⁶ Human Rights Committee, *General Comment No. 28*, para. 27

¹⁷ Social development, including questions relating to the world social situation and to youth, ageing, disabled persons and the family. Observance of the International Year of the Family. Report of the Secretary-General, U.N. Doc. A/50/370, para 14

¹⁸ See E/C.12/GC/20, paras 7-11; and CCPR/C/PER/CO/5, para. 8.

¹⁹ OHCHR Discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23, para 41.

in whole or in part by SOGI-based discrimination where the State has known – or ought to have known – that individuals were at risk, and failed to take appropriate steps to prevent, investigate or prosecute such acts of violence²⁰. Most violence against LGBTI people is neither perpetrated by State actors nor by non-State actors whose conduct is attributable to the State. However, while the State itself will not typically be directly responsible for violence against LGBTI individuals that arises from the conduct of non-State actors, it remains responsible for taking measures to ensure that persons under its jurisdiction are protected from threats to the enjoyment of human rights brought about by the conduct of non-State actors. Under contemporary international human rights law, this obligation is categorized as an obligation to protect. The measures to be employed by States extend to preventing and stopping abuses, but also to ensuring that those subjected to such abuses can access effective remedies and reparation and that those responsible are held to account.

14. The amici submit that, by adopting the proposed constitutional revision, Romania would be introducing legislative provisions that are discriminatory against people based on their real or imputed SOGI and, as such, constitute a violation of Romania's obligation to respect the ECHR and other human rights treaties to which Romania is bound. Adopting the proposed constitutional revision would prevent many people from enjoying a whole range of other rights, such as their rights to housing and social security; would foster stigmatization of individuals and of same-sex relationships based on real or perceived SOGI grounds; and it would give the green light to private actors to subject an already at-risk population to further prohibited discrimination and other human rights violations.
15. As noted in the 2015 "Country report - Non-discrimination – Romania" prepared for the European Commission of the European Union (EU) by the European network of legal experts in gender equality and non-discrimination: "Though expressly protected by the Anti-discrimination Law, sexual minorities remain the group most under attack, with legislative proposals aiming to restrict their rights and acts of aggression every year during NGO events, attacks which remain uninvestigated and free of sanctions. The new Civil Code, in force since 2011, includes a specific prohibition of same-sex partnership and marriage, including denial of recognition to partnerships and marriages legally registered abroad (even when contracted between foreigners)."²¹ Most recently in 2016, the ECHR held in the case of *M.C. and A.C. v. Romania* that, "the LGBTI community in [Romania] finds itself in a precarious situation, being subject to negative attitudes towards its members."²² The Court held that Romanian authorities failed to effectively investigate the attack against participants of the annual gay march in Bucharest in 2006: the investigation lasted too long, was marred by serious shortcomings, and failed to take into account possible discriminatory motives.²³
16. The organization of a referendum prohibiting same-sex marriage would be likely to expose LGBTI people in Romania to further acts of hostility. There is a real risk that such a referendum would heighten hostility towards LGBTI individuals, and would place an already marginalized group of people at a heightened risk of verbal and physical violence, and discrimination. The organization of such referenda often increases hate speech and bias-motivated crimes.²⁴

²⁰ *M.C. and A.C. v. Romania*, no. 12060/12, European Court of Human Rights, judgment of 12 April 2016.

²¹ See the 2015 "Country report – Non-discrimination – Romania" prepared for the European Commission of the European Union (EU) by the European network of legal experts in gender equality and non-discrimination, reporting period 1 January 2014 – 31 December 2014, executive summary, pp. 5-6.

²² *M.C. and A.C. v. Romania*, no. 12060/12, European Court of Human Rights, judgment of 12 April 2016, para. 118.

²³ *M.C. and A.C. v. Romania*, para. 125

²⁴ For instance, the research report 102 of the Equality and Human Rights Commission on the causes and motivations of hate crime in 2016, p. 21, available at

B. The restricted notion of “marriage” proposed in the constitutional revision infringes the principles of equality before the law and equal protection of the law, the right to be free from discrimination and the right for private and family life

17. Regarding the concept of “spouse”, the right to respect for private and family life as enshrined in Article 7 of the EU Charter is of fundamental importance. In accordance with Article 52(3) of the Charter, the right guaranteed by Article 7 of the Charter establishes the same level of protection as Article 8 of the ECHR.
18. Furthermore, the principles of equality before the law and equal protection of the law and the right to be free from discrimination are core values that the ECHR seeks to guarantee. They are enshrined in Article 14 of the ECHR, which sets out the right to the enjoyment of ECHR rights without discrimination.²⁵ Sexual discrimination is a concept covered by Article 14 of the ECHR. The ECtHR has repeatedly held that, just like differences based on sex, treating people differently based on sexual orientation requires “particularly convincing and weighty reasons.”²⁶ Where a difference in treatment is based on sex or sexual orientation, the State’s margin of appreciation is narrow ... Differences based *solely on considerations* of sexual orientation are unacceptable under the Convention ...²⁷.
19. In the case of *Alekseyev v. Russia* the ECtHR held that “where a difference of treatment is based on sex or sexual orientation the margin of appreciation afforded to the State is narrow, and in such situations the principle of proportionality does not merely require the measure chosen to be suitable in general for realising the aim sought; it must also be shown that it was necessary in the circumstances. Indeed, if the reasons advanced for a difference in treatment were based solely on the applicant’s sexual orientation, this would amount to discrimination under the Convention.”²⁸
20. These principles also find expression in EU law. In ruling in *Coman* that the relationship of a same-sex couple may fall within the notion of ‘private life’ and ‘family life’ in the same way as the relationship of a heterosexual couple in the same situation, the CJEU referred to two judgments of ECtHR : (i) *Vallianatos v Greece*²⁹ and *Orlandi v Italy*.³⁰
- i) *Vallianatos v Greece***
21. On 7 November 2013, the ECtHR ruled that the blanket exclusion of same-sex couples living in Greece from registering a “civil union” violated rights protected under Article 14 in conjunction with Article 8 ECHR. Article 14 ECHR guarantees the enjoyment of the rights protected by the ECHR without being subject to discrimination

<https://www.equalityhumanrights.com/sites/default/files/research-report-102-causes-and-motivations-of-hate-crime.pdf> (last visited on 11/09/2018).

²⁵ Article 14 provides that, “[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

²⁶ See *Smith and Grady v United Kingdom*, Applications no. 33985/96 and 33986/06, judgment of 27 September 1999, para. 90; *Vallianatos v Greece*, Applications no. 29381/09 and 32684/09, judgment of 7 November 2013, para 77.

²⁷ *X v. Austria* [GC], nos. 19010/07, judgment 19 February 2013, para 99

²⁸ *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/09, judgment, 21 October 2010, § 108. “Where a difference of treatment is based on sex or sexual orientation the margin of appreciation afforded to the State is narrow, and in such situations the principle of proportionality does not merely require the measure chosen to be suitable in general for realising the aim sought; it must also be shown that it was necessary in the circumstances”, *X v. Turkey*, § 50. Indeed, “[d]ifferences based solely on considerations of sexual orientation are unacceptable under the Convention”, *Pajic v. Croatia*, no. 68453/13, judgment, 23 February 2016, § 59.

²⁹ Applications no. 29381/09 and 32684/09, judgment of 7 November 2013.

³⁰ Application no. 26431/12, judgment of 14 December 2017.

22. In 2008, Greece adopted a law providing for an official form of partnership, known as “civil union”, which was distinct from marriage. Only different-sex adults could enter into a civil union, whereas same-sex couples had no form of legal recognition of their relationship open to them. The applicants argued that this restriction violated their right to respect for their private and family life as enshrined in Article 8 ECHR and amounted to unjustified discrimination between different-sex and same-sex couples under Article 14 ECHR.
23. At paragraph 73, the Grand Chamber of the ECtHR re-stated that sexual and intimate relationships fall within the notion of private life and family life under Article 8 ECHR. The ECtHR further did not see any basis for distinguishing between same-sex couples who live together and those who – for professional or social reasons – do not. The ECtHR ruled that “*same-sex couples are just as capable as different-sex couples of entering into stable committed relationships*” and are “*in a comparable situation to different-sex couples as regards their need for legal recognition and protection of their relationship*”.³¹ By citing this case, the CJEU highlighted the comparability of the family life of same-sex couples and heterosexual couples.

ii) *Orlandi v Italy*

24. The case concerned a complaint by six same-sex couples that they had been unable to have their marriages, which they had contracted abroad, registered or recognised in any form as a union in Italy. They alleged, among other things, discrimination on the grounds of their sexual orientation. The ECtHR found that there had been a violation of the couples’ rights after they had married abroad because Italian law had not provided any legal protection or recognition for them before 2016 when legislation on same-sex civil unions had come into force.
25. The lack of any recognition of their relationships had left the couples in a legal vacuum, which had failed to take account of their social reality and left them facing obstacles in their daily life. No prevailing community interest had been put forward to justify a situation in which the applicants’ relationships had been devoid of any recognition and protection. According to the Court, Italy could not disregard their situation, which corresponded to family life within the meaning of Article 8, without offering a means to safeguard their relationship. The Court concluded that the State had failed to strike a fair balance between the competing interests and that there had been a violation of the couples’ Article 8 rights. It decided that there was no need to examine the complaints under Article 14 in conjunction with Article 8 or Article 12: the denial to the applicants of any form of legal recognition for their relationship violated their right to family life, independently of whether or not they had also faced discrimination.
26. By citing the two above cases, the CJEU confirmed that the principle they enshrine, namely that the relationship between same-sex couples falls within the notion of “family life” and is entitled to protection, is a fundamental principle of EU law. It also confirms that the content of that principle is the same under the EU Charter as under the ECHR.
27. Additionally, in *Schalk and Kopf v. Austria*,³² the ECtHR held that while Article 12 of the ECHR did not require Contracting Parties to provide access to marriage to same-sex couples. However, it ruled that it “would no longer consider that the right to marry enshrined in Article 12 must in all circumstances be limited to marriage between two persons of the opposite sex”.³³

³¹ Para. 78.

³² *Schalk and Kopf v. Austria*, no. 30141/04, judgment of 24 June 2010.

³³ *Schalk and Kopf v. Austria*, para. 61 (emphasis added).

28. The Court explicitly articulated that it was artificial to maintain the view that, in contrast to a different-sex couple, a same-sex couple cannot enjoy “family life” for the purposes of Article 8³⁴. Consequently, the relationship of the applicants, a cohabiting same-sex couple living in a stable *de facto* partnership, falls within the notion of “family life”, just as the relationship of a different-sex couple in the same situation would. The Court noted an emerging European consensus towards legal recognition of same-sex couples which has developed rapidly over the past decade³⁵. Even in the absence of a finding of a violation of the applicants’ rights, the Court clearly held that this issue falls under the scope of Article 8 in conjunction with Article 14.

C. In any event the proposed constitutional revision cannot be justified

29. In *Lustig-Prean and Beckett v. the United Kingdom* and *Smith and Grady v. the United Kingdom*³⁶, the ECtHR ruled that any interference concerning the most intimate part of an individual’s private life should provide for particularly serious reasons’ before they can satisfy the requirements of Article 8 § 2 of the Convention³⁷.

30. The justification advanced before the ECtHR was that the ban had been introduced “solely upon the negative attitudes of heterosexual personnel towards those of homosexual orientation” (para. 89). The ECtHR held nevertheless that:

“To the extent that they represent a predisposed bias on the part of a heterosexual majority against a homosexual minority, these negative attitudes cannot, of themselves, be considered by the Court to amount to sufficient justification for the interferences with the applicants’ rights outlined above, any more than similar negative attitudes towards those of a different race, origin or colour” (para. 90).

Ultimately, the ECtHR ruled, *inter alia*, that “convincing and weighty reasons have not been offered by the Government to justify the policy against homosexuals in the armed forces or, therefore, the consequent discharge of the applicants from those forces” and, accordingly, that there had been a violation of Article 8 of the Convention.

31. In the present case, the amici submit that the protection of “the family” cannot be a legitimate reason for the proposed constitutional revision. Introducing a discriminatory restriction in the Constitution does nothing to protect “the family”. The ability of heterosexual single men and women of marriageable age to exercise their legitimate right to marry and contract a marriage with one another is not further protected or indeed impacted at all by the proposed constitutional revision, and neither is their right to found a family and to enjoy their right to family life in communion with one another. Marriage is recognition of a stable relationship, and providing such an institution for same-sex relationships can only assist in protecting the concept of the family. There is no evidence that restrictions on same-sex marriage are necessary in order to protect family life. Indeed, as the CJEU remarked in paragraph 46 in *Coman*, “an obligation to recognise such marriagesdoes not undermine the national identity or pose a threat to the public policy of the Member State concerned”.

³⁴ Ibid, para 94.

³⁵ Ibid, para 105.

³⁶ *Lustig-Prean and Beckett v. the United Kingdom*, nos. 31417/96 and 32377/96, European Court of Human Rights, judgment, 27 September 1999; *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, European Court of Human Rights, judgment, 27 September 1999; *Perkins and R. v. the United Kingdom*, nos. 43208/98 and 44875/98, European Court of Human Rights, judgment, 22 October 2002; and *Beck, Copp and Bazeley v. the United Kingdom*, nos. 48535/99, 48536/99 and 48537/ 99, European Court of Human Rights, judgment, 22 October 2002.

³⁷ Para. 82.

32. In any event the proposed constitutional revision is not a proportionate means of achieving the stated objective of protecting family life. It actually runs contrary to that objective in that it subjects same-sex families to unjustified discrimination and deprives them of a right to have their status recognized in law.
33. The consequences for same sex couples and their children are significant. Failure of the state to recognize these relationships can prohibit a partner from making decisions on a partner's behalf when she or he is sick or visit a partner's child in the hospital; share equal rights and equal responsibility for children in their care; have his or her partner and children covered under their health insurance or receive employment based benefits; and inherit from a deceased partner if he or she dies without a valid will.
34. Consequently, the proposed constitutional revision violates Article 8 of the ECHR, as well as Article 14 of the ECHR, taken together with Article 8 of the ECHR.
35. Romania has the responsibility to protect the well-being of its citizens, regardless of their sexual orientation. In any event, given that same-sex marriage is not available in Romania, there is no pressing need to hold the proposed referendum.
36. To conclude, the proposed constitutional revision violates the following human rights enshrined in the ECHR: (i) the right to equality before the law and equal protection of the law, (ii) the right to respect for private and family life, and (iii) the right to enjoy one's rights without discrimination and not to be subject to unjustified discrimination by a public authority, including on the ground of sex and sexual orientation. Such a violation is not justified by any pressing arguments of public policy, and does nothing to advance its stated goal, namely the protection of family life. Same sex couples have the same right to marriage as heterosexual couples, and this proposed revision unjustifiably violates that right.

Annex I The Amici

1. **Amnesty International** (<http://www.amnesty.org>) is a worldwide movement of more than 7 million people working for the respect, protection and fulfilment of internationally recognized human rights. The movement has members and supporters in more than 150 countries and territories and is independent of any government, political ideology, economic interest or religion. Amnesty International bases its work on international human rights instruments adopted by the United Nations and regional bodies. An important aspect of Amnesty International's activities relate to the promotion of respect for international human rights law, international humanitarian law and refugee law. Amnesty International has intervened in a number of cases that have raised a wide range of human rights issues before national and international courts, including the European Court of Human Rights, the Court of Justice of the European Union, the Inter-American Court of Human Rights, the Court of Justice of the Economic Community Of West African States (ECOWAS), the UK House of Lords, the Supreme Court of the United States and the Constitutional Court of South Africa.
2. **ECSOL** (<http://www.sexualorientationlaw.eu>), founded in 2004 and based in Vienna, is a non-governmental and non-political network of legal experts from across Europe, covering all Council of Europe member states. Its mission is to strengthen research partnerships and to promote equality and legal recognition for LGBT individuals and same-sex couples in Europe. Its 54 members (at least one expert per member state) have a range of professional backgrounds: they include legal academics, practising lawyers, judges, and legal professionals working in governmental and non-governmental organisations. They regularly exchange information on important legal developments at the national, European and international levels. ECSOL is a member of the Fundamental Rights Platform of the Fundamental Rights Agency of the EU.
3. The **European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association** (ILGA-Europe, <https://www.ilga-europe.org>) was founded in 1996 and is based in Brussels. It seeks to defend the human rights of those who face discrimination on grounds of sexual orientation, gender identity or gender expression and sex characteristics, at the European level. It was granted consultative status with the Council of Europe in 1998 and with the United Nations Economic and Social Council in 2006. Its membership consists of over 500 nongovernmental organizations across the Council of Europe countries and Central Asia. ILGA-Europe has frequently intervened before the European Court of Human Rights and domestic courts in cases concerning discrimination based on sexual orientation, gender identity or expression, and sex characteristics.