



NEWS REPORT

Date:	17 June 2011
Expert:	Romanița Iordache
Title:	The Romanian Senate approves a draft law criminalizing as aggravating circumstance “deliberately transmitting AIDS while having sexual relations”
Country:	Romania
<u>Context</u>	
Issue at stake:	Draft law adopted by the Senate increasing the penalties for “transmitting AIDS through sexual relations” might lead to further discrimination against persons living with HIV/AIDS
Ground of discrimination:	HIV/AIDS
Source:	Legislation: Law 15/1968 the Romanian Criminal Code, Article 309 on venereal contamination and HIV transmitting
Field:	Health, criminalization of transmitting HIV
Legislative provisions:	Legislative proposal 273/2011 for modifying the Criminal Code - <i>Propunere legislativă pentru modificarea și completarea Legii nr.15/1968 Codul penal al României, publicată în B.Of. nr.79-79 bis/ 21 iun.1968, republicată în Monitorul Oficial al României, Partea I, nr.65 din 16 apr.1997, cu modificările și completările ulterioare</i>

Content

Legal development: In February 2011, two senators submitted a bill meant to amend current Criminal Code provisions on deliberately transmitting HIV. On June 14th, the Romanian Senate, acting as first chamber, adopted the draft with minor changes. In justifying the need for amending the legal provisions, the senators referred to a story reported by the media according to which a person died after being infected by her husband and the investigation team mentioned that there will be difficulties in prosecuting due to the lack of clarity of the legislation.

The draft received a positive assessment from the Legislative Council and from the Government but not from NGOs working with persons living with HIV/AIDS ('PLHIV/AIDS') who criticised the bill for being unclear and confusing and for discriminatorily targeting persons living with HIV/AIDS while neglecting persons carrying other viruses with similar potential consequences.¹

Given that persons living with HIV/AIDS are featured in the annual perceptions and attitudes surveys carried out by the national equality body as one of the most discriminated against groups in the Romanian society, the fears of the civil society groups is that the draft law will only send another message towards stigmatization and marginalization of PLHIV/AIDS without managing to cover the alleged legislative gap.²

The current form of the Criminal Code provision reads: "(1) Transmission of a venereal disease through any type of sexual act, sexual relations with a person of opposite sex or between same-sex persons or acts of sexual perversion by a person who knows to suffer from such a disease shall be punished with imprisonment from one to five years. (2) Transmitting the acquired immunodeficiency syndrome-AIDS by a person who knows that is suffering from this disease is punishable by imprisonment from five to 15 years. (3) The court of law will decide on the need of the security measure of mandatory medical treatment."

The form adopted by the Senate on June 14th 2011 adds one more paragraph: "(4) If the offense resulted in death of the victim, the punishment is imprisonment from seven to 15 years." In the initial draft presented by the two senators the aggravating circumstance from paragraph four was imprisonment from 15 to 25 years.

The draft however fails to take into consideration that a New Criminal Code was adopted in 2009 (to enter into force in October 2011).³ The New Criminal Code significantly changed the language for sanctioning transmission of the acquired immunodeficiency virus by making it a distinct

¹ Positions of NGOs working with persons living with HIV/AIDS are available at: http://www.unopa.ro/?page=pagini_list&PagId=Comunicate%20de%20presa_16&ArticleId=Persoanele+seropozitive+din+Rom%C3%A2nia+sunt+discriminate+de+Parlamentul+Rom%C3%A2niei_13&m=2 (17.06.2011) and <http://senspozitiv.blogspot.com/2011/06/knowingly-transmitting-hiv-is-criminal.html> (16.06.2011)

² See, Romanian Flash reports 20 from 26.09.2009 and 41 from 19 October 2010 Flash report

³ See Romanian Flash report 16 from 28.06.2009.

offense in Article 354: “(1) Transmitting through any means of the acquired immunodeficiency syndrome AIDS by a person who is aware that suffers from this disease, is punishable with imprisonment from three to ten years. (2) Transmitting through any means of the acquired immunodeficiency syndrome AIDS by any person other than those described in paragraph one is punishable with imprisonment from five to 12 years. (3) If as a result of the deeds described in paragraph one and two, the victim dies, the sanction is imprisonment from seven to 15 years. (4) If the deed provided for in paragraph two is perpetrated recklessly, the sanction is imprisonment from six months to three years, and if it causes the death of the victim, the sanction is imprisonment from two to seven years. (5) Attempt in relation to offenses from paragraphs one and two is punishable.”

While the new bill proposes a language different than the one to enter into force in October this year and fails to clarify the legislative provisions and improve language to reflect the correct transmission of HIV, more worrying is that fact that the message is one of further stigmatization of PLHIV/AIDS as proved by the way in which the media reflected the adoption of the bill.

Internet link source and additional information: The text of the draft as well as supporting documents for the bill are available in Romanian at: <https://www.senat.ro/FisaSenator.aspx?ParlamentarID=05b71277-2912-4c80-bf67-f708fae54da4> (16.06.2011).