



ALLIANCE DEFENSE FUND
Defending Our First Liberty

February 11, 2008

Mr. Peter Eckstein Kovacs
President, Senate Judiciary Commission
Str. Izvor, Nr. 2-4
Sector 5
Bucharest, Romania

Dear Mr. Kovacs:

By way of introduction, the Alliance Defense Fund (ADF) is a not-for-profit public interest law and education group with nearly 1,100 allied attorneys across the United States and in several nations around the world. Our organization exists, among other things, to educate the public and government about important constitutional rights and protections involving religious liberty, sanctity of life, and traditional family values. When necessary, we litigate these issues, including defending the institution of marriage from the demands of homosexual activists to redefine it.

In 2004, ADF formed a marriage litigation team that has successfully defended some 40 cases against homosexual activist demands to redefine marriage. In addition, the marriage team has drafted marriage amendments and had significant legal involvement in passing a number of the 27 marriage amendments to state constitutions in the United States. In 2007, we filed an amicus brief in the Romania Supreme Court in support of the constitutionality of the proposed marriage amendment under the Romania Constitution and the laws of the European Union.

Our contacts in Romania, the Alliance of Romania's Families, recently alerted us that on February 4, 2008, the Judiciary Committee of the Romanian Parliament voted unanimously to revise Romania's Constitution to protect the institution of marriage as the union of a man and a woman. We applaud this decision and encourage you to move forward with amending your Constitution to protect this vital social institution.

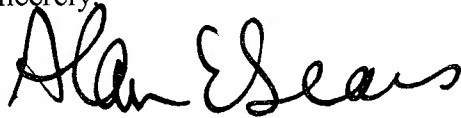
Marriage as the union of a man and a woman has been the foundation of every successful society throughout history. That is because every child needs and deserves his or her own mother and father, as recognized by Article 7 of the United Nations Convention on the Rights of the Child (every child has, "as far as possible, the right to know and be cared for by his or her parents"). As the Georgia Supreme Court recently said, marriage is "nature's child protection agency." With strong marriages, the state need not concern itself with raising children.

Because marriage is so important, the Romanian government should promote and encourage strong families by adopting a marriage amendment into the Constitution. This is not a minority position. Instead, marriage is the most unifying issue in society; it is supported by the vast majority of the people in America and Romania alike, regardless of religious belief, cultural background, or political association. There is nothing discriminatory about protecting the

institution of marriage as the union of a man and a woman because same-sex couples are not the same as opposite-sex couples when it comes to forming a family. Same-sex couples cannot physically create a family because they do not have the capacity to reproduce. The government should not encourage the formation of motherless or fatherless families.

We stand ready to assist any government in defending its marriage laws. If there is any way we can assist you, please do not hesitate to let us know.

Most sincerely,

A handwritten signature in black ink that reads "Alan E. Sears". The signature is written in a cursive, flowing style.

Alan E. Sears
President, CEO, and General Counsel



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MEMORANDUM

TO: Mr. Traian Basescu
President of Romania

FROM: Glen Lavy, *Senior Vice President and Senior Counsel*
Brian W. Raum, *Senior Legal Counsel*
Austin R. Nimocks, *Senior Legal Counsel*
Amy Smith, *Litigation Counsel*

RE: Proposed Amendments to Romania's Family
Code Do Not Conflict With International Law

DATE: February 19, 2008

In an attempt at confusion, on February 7, 2008, the Human Rights Watch (HRW) delivered a letter advocating that Romania's proposed amendments to its family code would somehow violate international law, treaties to which Romania is a signatory, and is a departure from existing Romanian law and custom. HRW supports these improper assertions by broadening treaty language and case interpretations beyond their reasonable and actual meanings. Yet, Romania's proposed amendment merely codifies the existing tradition, custom, and law of Romania by defining marriage between a man and a woman—the true basis of the family in Romania.

Romania is a signatory to many international treaties, but not one of those treaties imposes a binding definition of marriage to State members. For example, the International Covenant on Civil and Political Rights (ICCPR) does not create a mandate for same-sex "marriage."¹ In fact, the General Comment 19 to the ICCPR quoted by HRW explains that the

¹ Regarding marriage, the Covenant's implementation has clearly involved a "difference of sexes" and "organised life community between woman and man. It is based on the free decision of man and woman to contract a marriage, on the equality of spouses, mutual respect and aid. . . . The marriage is contracted between two persons of different sexes . . ." *See Report of United Nations Human Rights Committee, International Covenant on Civil and Political Rights, CCPR/C/BIH/1, paragraphs 251, 253, and 254, November 24, 2005* – [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/eccbf1ebbabf6c6ec125718500518f42/\\$FILE/G0545189.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/eccbf1ebbabf6c6ec125718500518f42/$FILE/G0545189.pdf). Moreover, between 1969 and 2006, 165 countries adopted the ICCPR, including Romania, with none of those countries defining or redefining Article 23 to include same-sex "marriage." *See* <http://www.ohchr.org/english/countries/ratification/4.htm>.

reason for leaving the definition of family to the individual States is because each State or region reserves the right to define their own marriage laws. Additionally, the Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights,² and the European Convention of Human Rights do not require its signatories to mandate or even advocate the concept of same-sex “marriage.” In fact, the UDHR expressly endorses marriage between one man and one woman.³ Thus, contrary to the assertions of HRW, no treaty binding on Romania or any recognized international law compels the recognition of same-sex “marriages.”

The UDHR expressly endorses marriage between one man and one woman. Specifically, it provides as follows:

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

UDHR, Article 16.

Among others, the language of the UDHR encompasses two very important ideas: (1) marriage is intrinsically linked to children and procreation (“right to marry and to found a family”); and (2) the natural family is society’s basic group unit. Thus, the “right to marry” is inextricably linked to the “family.” Moreover, the “family” is the “natural and fundamental group,” which necessarily involves the biological parents—the natural persons who bear the children and compose the “family.” Thus, the “right to marry” is a natural one—universal and existing everywhere—and involves one man and one woman, the “natural” and complimentary “group unit” that exists in nature to “found a family.”⁴ No other definition of marriage, or formulation of family, fulfills the fundamental rights declared by the United Nations. Therefore, the UDHR clearly supports Romania’s view of family, and does not support redefining marriage to recognize other types of private relationships.

² Like the ICCPR, the International Covenant on Economic, Social and Cultural Rights was passed by the United Nations General Assembly on December 16, 1966, long before the concept of same-sex “marriage” came to the political or judicial forefront. Between 1968 and 2006, 161 countries adopted the International Covenant on Economic, Social and Cultural Rights, including Romania, with none of those countries defining or declaring Article 10 to include same-sex “marriage.” *See* <http://www.ohchr.org/english/countries/ratification/3.htm>.

³ *See* UDHR, Article 16.

⁴ David Blankenhorn, *The Future of Marriage*, pp. 179-83 (2007).

With the “right to marry” linked directly to the “family,” it is also appropriate to note the impact of the United Nations Convention on the Rights of the Child. This Convention, adopted in 1989, applies the principles of the UDHR to children. In Article 7, the Convention provides:

The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and, as far as possible, *the right to know and be cared for by his or her parents.*

U.N. Convention on the Rights of the Child, Art. 7(1) (1990) (emphasis added). As was already established, marriage under the UDHR calls for the “natural and fundamental group” which necessarily involves one man and one woman. It then follows that a child’s right “to know and be cared for by his or her parents” is referencing the one man and woman who are necessarily the child’s natural “parents.” The qualification “as far as possible” is also important, stating clearly that “I have a right as a child to the mother and father who made me.” Blankenhorn, p. 189.⁵

Further evidence of the traditional notions of marriage contained within Section 1, Article 12 (“Right to Marry”) of the European Convention of Human Rights, can be seen in the body of case law from the European Court of Human Rights interpreting Article 12. In *Rees v. United Kingdom*, Case No. 9532/81 (ECHR 1986), the European Court of Human Rights was quite clear that:

In the Court’s opinion, the right to marry guaranteed by Article 12 (art. 12) refers to the traditional marriage between persons of opposite biological sex. This appears also from the wording of the Article which makes it clear that Article 12 (art. 12) is mainly concerned to protect marriage as the basis of the family.

Rees, at para. 49. While the European Court of Human Rights did subsequently permit a transsexual to marry, the Court was clear that this permission was only granted because the traditional form of opposite-sex marriage was maintained in this setting. *Goodwin v. United*

⁵ As put very clearly by the author:

“As far as possible” is an important qualification and exception. It is intended to recognize the reality of human failure and loss, while providing protection for the child. Sometimes natural parents die. Sometimes they do not or cannot competently parent their child. Sometimes they become threats to their own children. In such cases, society can and must intervene directly on behalf of the child, primarily through institutions such as adoption and state-run residences for children. “As far as possible” is not an escape clause for indifferent policy makers or for parents who would rather do whatever, but is instead a sober recognition by the state that sometimes, tragically, children are denied their birthright to their two parents.

Blankenhorn, p. 189.

Kingdom, Case No. 28957/95, para. 97-103 (ECHR 2002) (“The applicant in this case lives as a woman, is in a relationship with a man and would only wish to marry a man.”).⁶

Therefore, no aspect of international law, binding treaties, or current Romanian law compels the recognition or adoption of same-sex “marriage” in Romania.⁷ HRW is clearly in error when it avers that Romania’s view of the family “is itself at odds with European and international standards for the protection of diverse family forms.”

Romania’s recognition that “[t]he marriage between a man and a woman is at the basis of the family” is not only consistent with European and International law, but sound social and public policy. Marriage between one man and one woman is the foundational building block for all of society, and Romania’s recognition of this important principle should be applauded.

⁶ While it remains debatable whether one can fully transcend their sex through surgical alteration of one’s body, the point of *Goodwin* is clear—marriage is one man and one woman.




⁷ In its letter, HRW also cites the Yogyakarta Principles, a series of recommendations proffered by an agenda-driven panel of “human rights experts.” The Yogyakarta Principles are nothing more than a one-sided effort to influence international leaders and are not, in any way, law or binding authority upon any government. See http://www.yogyakartaprinciples.org/principles_en.pdf.



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MEMORANDUM

TO: Mr. Nicolae Paun, President
Commission for Human Rights, Religious Denominations
and National Minorities
Palatul Parlamentului
str. Izvor nr. 2-4, sect. 5
Bucharest, Romania
E-mail: npaun@cdep.ro

FROM: Glen Lavy, *Senior Vice President and Senior Counsel* 
Brian W. Raum, *Senior Legal Counsel* 
Austin R. Nimocks, *Senior Legal Counsel* 
Amy Smith, *Litigation Counsel*

RE: Proposed Amendments to Romania's Family
Code Do Not Conflict With International Law

DATE: February 26, 2008

The Alliance Defense Fund is one of the United States' preeminent legal establishments for the legal protection of family and traditional values. Our friends in Romania, the Alliance of Romania's Families, recently informed us that the Romanian Senate passed a bill affirming marriage as the freely consented to union between a man and a woman. We, and the overwhelming majority of the American people, welcome this confirmation and congratulate the people of Romania.

In an attempt at confusion, the Human Rights Watch (HRW) of New York recently delivered a letter to various political leaders of Romania advocating that Romania's proposed amendments to its family code would somehow violate international law, European Union law, treaties to which Romania is a signatory, and is a departure from existing Romanian law and custom. HRW supports these improper assertions by broadening treaty language and case interpretations beyond their reasonable and actual meanings. Yet, Romania's proposed amendment merely codifies the existing tradition, custom, and law of Romania by defining marriage between a man and a woman—the true basis of the family in Romania. No international legal instruments or European Union legal instruments would be violated by the Chamber of Deputies enacting the modifications.

Romania is a signatory to many international treaties, but not one of those treaties imposes a binding definition of marriage to State members. For example, the International Covenant on Civil and Political Rights (ICCPR) does not create a mandate for same-sex “marriage.”¹ In fact, the General Comment 19 to the ICCPR quoted by HRW explains that the reason for leaving the definition of family to the individual States is because each State or region reserves the right to define their own marriage laws. Additionally, the Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights,² and the European Convention of Human Rights do not require its signatories to mandate or even advocate the concept of same-sex “marriage.” In fact, the UDHR expressly endorses marriage between one man and one woman.³ Thus, contrary to the assertions of HRW, no treaty binding on Romania or any recognized international law compels the recognition of same-sex “marriages.”

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Should the Government of Romania ever be sued, before the European Court of Human Rights, or in any other court, over the enactment of pro-family legislation, ADF stands ready to provide to the Romanian Government, whatever assistance and defense it deems necessary and appropriate.

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