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# Study on access to social housing

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## Study on access to social housing

### A. Preliminary considerations

Any document of public policy, to be viable and to meet specific needs, must be based on statistical data collected by the authorities of the state, at regular time intervals, in the field subject to the decision. Regarding the access to housing of the Roma population, there is no concrete statistical data on this issue. The data collected on access to housing in Romania are general, they are not disaggregated on ethnic criteria, consequently housing decisions and policies for this disadvantaged group cannot lead to real changes. Concerning the access to adequate housing and the situation of forced evictions to which Roma citizens are predominantly subjected to, these have been documented exclusively by human rights organizations, national (Romani CRISS) or international (Amnesty International), respectively by European organizations (European Union Agency for Fundamental Rights), Council of Europe organizations (European Commission against Racism and Intolerance), the Organization for Security and Cooperation in Europe (ODIHR - Office for Democratic Institutions and Human Rights).

The **ECRI Report** (European Commission against Racism and Intolerance<sup>1</sup>) on Romania in 2019 shows that *"the National Strategy for the inclusion of Romanian citizens belonging to the Roma minority had an insignificant impact (...), Roma occupy the most disadvantageous position on the labour market, the lack of social housing persists, and the*

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<sup>1</sup> Established by the Council of Europe, it is an independent human rights monitoring body specializing in issues of racism and intolerance.

*forced eviction of Roma from their unstable settlements continues, often without relocation solutions"*<sup>2</sup>.

ECRI points out that, while 25% of the total population has incomes below the minimum poverty line, this percentage increases to 70% for the Roma population.

According to the **Regional Study on Roma (RSR)** conducted by the United Nations Development Program, the World Bank and the European Commission<sup>3</sup>, most Romanians of Roma ethnicity are living in segregated communities. Thus, 56% of Roma households are located in localities where the dominant ethnic group is the Roma, thus indicating a high level of territorial segregation. There is a strong correlation between this type of segregation and poor health, early school leaving, low integration into the labour market and costly access to health services: *"a significant proportion of Roma live in poor quality housing, facing an inadequate infrastructure, overcrowding and lack of housing security. The living conditions of Roma households are much poorer than those of non-Roma households. RSR data show that 30% of Roma families live in a dilapidated house or slum, compared to only 4% of other ethnic families living nearby. Only about half of Roma households in urban areas have access to relatively good quality housing, such as new constructions, housing made of traditional materials in older localities or social housing."* Also, most Roma households do not have access to water and a sewerage system: only 17% have indoor plumbing compared to 44%

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<sup>2</sup>Available at <https://rm.coe.int/fifth-report-on-romania-romanian-translation-/16809>

<sup>3</sup> See the World Bank. *Achieving Roma Inclusion in Romania: What Does It Take? ("Ce este necesar pentru realizarea incluziunii romilor din România?")* Washington, DC, 2014, available, in English language, at: <https://openknowledge.worldbank.org/handle/10986/18663>

of non-Roma families in the vicinity who have such facilities, according to the same study.

The World Bank's 2014 research, which is based on the RSR results, shows that, all other aspects being the same (age, gender, educational level, household composition, community, geographical location), **Roma people have a 38% higher risk of facing poverty, strictly due to factors such as discrimination**, social norms, beliefs and values<sup>4</sup>.

**The National Strategy on Social Inclusion and Poverty Reduction**<sup>5</sup> (derived from Romania's obligation to take concrete measures to meet the objectives set in the Europe 2020 Strategy) developed by the Minister of Labour *aims to develop and finance a social housing program for vulnerable groups who cannot afford to pay rent, such as homeless people, young people leaving the protection system, former detainees, people evicted from re-possessed homes, drug addicts*. As can be seen, Roma citizens do not explicitly appear in the composition of vulnerable groups, although the same document states: *Based on the national poverty line determined on the basis of consumption in 2013, **Roma citizens are exposed towards a risk of poverty ten times higher than the rest of the population**. While the calculated rate for the Roma population was 33%, the poverty rate for the rest of the population was 3.4%. Worryingly, the risk of poverty is extremely high for Roma children - the poverty rate in their case is 37.7%, while the national poverty rate is only 4.3%*. Although the proposed stock of social housing should have covered 20% of their

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<sup>4</sup> Ibid, pg. 20

<sup>5</sup> Available at [http://www.mmuncii.ro/j33/images/Documente/Familie/2016/StrategieVol1RO\\_web.pdf](http://www.mmuncii.ro/j33/images/Documente/Familie/2016/StrategieVol1RO_web.pdf).

needs by the end of 2020, budget allocations in this regard have been extremely low.

Furthermore, in the "**Guidelines for Roma Inclusion for the 2011-2020 period**", adopted in 2011, as part of the EU 2020 Economic Growth Strategy undertaken by Romania, the government undertook to "*create a legislative framework that would allow intervention in addressing a housing crisis with an impact on human freedoms and rights in accordance with existing European standards.*" This has not materialized so far.

For all the above, the Centre for Legal Resources has formulated, not a public policy document, but a document that aims to mention, non-exhaustively, the concordance between international and national law on the right to housing, as part of human rights. The document will focus, in particular, on the right to housing of vulnerable groups, with a focus on the Roma population.

## **B. International legislative framework**

The right to adequate housing is guaranteed in many international human rights treaties to which Romania is a party, examples being the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Discrimination (ICERD), as well as regional treaties and the (revised) European Social Charter signed by the member states of the Council of Europe. With regard to European legislation, there is an incident in EU Council Directive 2000/43/EC "*which implements the principle of equal treatment between persons irrespective of racial or ethnic*

*origin*", as well as the Charter of Fundamental Rights of the European Union.

Thus, with regard to the **International Covenant on Economic, Social and Cultural Rights** (ICESCR)<sup>6</sup>, it contains explicit provisions on the right to housing, as an integral part of human rights and deriving from the general right to an adequate standard of living. Article 11 paragraph (1) of the ICESCR provides that the signatory States "*recognize the right of every individual to an adequate standard of living for himself and his family, including access to adequate food, clothing and housing and the right to continuously improve his living conditions*".

Regarding the right provided in article 11 paragraph (1) mentioned above, in order to correctly understand and implement by the signatory states the principle contained therein, the UN Committee on Economic, Social and Cultural Rights formulated **General Comment no. 4**<sup>7</sup> defining the necessary attributes according to which a dwelling can be considered suitable:

- ✓ **Legal security of possession** - regardless of the legal nature of possession, all people must rely on a certain degree of security in this regard, which will provide them with legal protection against forced evictions, harassment and other things like these. Thus, States must take immediate steps to provide legal certainty of possession for those people and

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<sup>6</sup> Available, in English language, at <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

<sup>7</sup> Available, in English language, at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en)

households lacking such protection, through real consultation with the persons and groups affected.

- ✓ **Availability of services, materials, facilities and infrastructure**, meaning that an adequate home must have those facilities essential for the health, safety, comfort and nutrition of people (drinking water, energy for food preparation, heating and lighting, sanitary facilities).
- ✓ **Financial accessibility** - its costs, including maintenance, through their level, do not jeopardize basic needs.
- ✓ **The space is habitable**, it provides the necessary space for the tenants, protects them from cold, humidity, heat, rain, wind and other health threats. The mental health of the tenants must also be guaranteed.
- ✓ **Accessibility** - adequate housing must be accessible to disadvantaged groups (the elderly, children, people with mental disabilities, people in terminal stages, people living with HIV and any other discriminated groups), who must take priority in accessing housing. Thus, housing legislation, as well as public policies, must take into account the special housing needs of these groups.
- ✓ **Location** - adequate housing must be located in an area/location that allows access to employment, health services, schools, kindergartens, etc. Moreover, homes should not be built in polluted areas or near sources of pollution.

Regarding the legal security of possession and, implicitly, the legal protection against forced evictions, as a result of the countless reports received regarding cases of forced evictions, the UN Committee on Economic, Social and

Cultural Rights made **General Comment no. 7**<sup>8</sup> to explicitly state the right to adequate housing from the perspective of forced evictions. The Committee started from the general premise that forced evictions are incompatible with the requirements of the Convention.

Thus, the Committee defines in article 3 of General Comment no.7 forced eviction as representing "*permanent or temporary removal, against their will, of persons, families and/or communities from the houses and/or on the land they occupy, without being made available and without having access to appropriate forms of legal protection or other types of protection*". However, the Committee argues that forced evictions may be justified in certain situations, provided that certain conditions are met: prior consultation with the people to be evicted, adequate and reasonable notice of the time of eviction, availability of legal remedies, either to prevent evacuation or to obtain compensation, whether the evacuations are ordered by public authorities or by private persons. In any case, evacuations must comply with international human rights law: evacuations must not leave people homeless or increase their vulnerability, evacuations must not take place in bad weather or at night. **Lastly, if evacuees cannot support themselves, then states must take all reasonable steps, using all available resources, to ensure that adequate alternative housing is provided.**

The signatory States must also ensure that the rights enshrined in the Convention, including the right to adequate housing and protection against forced evictions will be exercised without discrimination, regardless of race,

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<sup>8</sup> Available, in English language, at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f6430&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f6430&Lang=en)



colour, gender, language, religion, political opinion or another type, social or national origin or another status, according to article 2.

On the same subject, **the UN Special Rapporteur on Human Rights has published a set of detailed guidelines**<sup>9</sup> setting out the obligations of member States before, during and after evacuation. Thus, after an evacuation, States are obliged "*at least, regardless of the circumstances and without discrimination, [...] to ensure that evacuated persons or groups, especially those who cannot be maintained, have safe and guaranteed access to: [...] basic shelter and housing*".

Concerning the non-discrimination of Roma in regard to access to adequate housing, the UN Committee on the Elimination of All Forms of Racial Discrimination (CERD) has initiated a **General Comment on Discrimination against Roma (General Comment No. 27**<sup>10</sup>). According to it, State Parties must "*develop and implement policies and projects that avoid segregation of Roma communities in the field of housing; involve Roma communities and associations as partners, together with others, in the design of housing, rehabilitation and maintenance projects*" and they must also "*take firm action to prevent any practice of discrimination affecting the Roma, in particular from the part of local authorities and private owners in terms of residence registration and access to housing; take firm action to prevent local measures of denial of residence and illegal expulsion of Roma people and to refrain from moving Roma people to camps located outside*

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<sup>9</sup> Available, in English Language, at <https://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf>

<sup>10</sup> Available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=6&DocTypeID=11](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=6&DocTypeID=11)

*populated areas that are isolated and lack access to medical services and other facilities".*

At the European Union level, **Directive 2000/43/EC<sup>11</sup> of implementing the principle of equal treatment between persons irrespective of racial or ethnic origin** is mandatory. The application field of this Directive has an impact on this topic. Thus, article 3, paragraph (1) letter (h) provides that "*within the limits of the powers conferred on the Community, this Directive shall apply to all persons, both in the public and private sectors, including public bodies, as regards: (h) access to and supply of goods and services, available to the public, including housing.*"

In this regard, the European Union Agency for Fundamental Rights (FRA) concluded in its 2019 Report<sup>12</sup> that "***one of the causes of poor living conditions of Roma and travellers is both direct and indirect racial discrimination. Sometimes, local authorities deny Roma and travellers access to social housing, through measures that are directly or indirectly discriminatory against them.***"

### **C. National legislation**

The legal framework applicable in the field of housing is the **Housing Law no. 114/1996**. It states in the preamble that "*free and unrestricted access to housing is a right of every citizen*".

Regarding the type of housing, the same law defines five types of housing, with interest for the present study:

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<sup>11</sup> Available at <https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:32000L0043&from=RO>

<sup>12</sup> [https://fra.europa.eu/sites/default/files/fra\\_uploads/703-roma\\_housing\\_comparative-final\\_ro.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/703-roma_housing_comparative-final_ro.pdf)

- ✓ Housing (article 2, letter a) - Construction consisting of one or more living rooms, with the necessary outbuildings, facilities and utilities, which meets the living requirements of a person or family.
- ✓ Convenient housing (article 2, letter b) - Housing that, through the degree of satisfaction of the relationship between the user's requirement and the characteristics of the home, at a given time, covers the essential needs of rest, food preparation, education and hygiene, ensuring minimum requirements presented in annex no. 1 to this law.
- ✓ Social housing (article 2, letter c) - housing that is assigned, with subsidized rent to some people or families, whose economic situation does not allow them access to own a housing or rent a housing under market conditions.
- ✓ Necessity housing (article 2, letter f) - Housing intended for the temporary accommodation of persons and families whose dwellings have become unusable as a result of natural disasters or accidents or whose dwellings are subject to demolition in order to carry out public utility works, as well as rehabilitation works that cannot be performed in buildings occupied by tenants.
- ✓ Support housing (article 2, letter f<sup>1</sup>) - housing with a usable area of no more than 100 sq m, which is leased to persons or families who have been evicted through foreclosure proceedings from personal property housing, following non-payment contractual obligations set out in mortgage contracts, and whose economic situation does not allow them to access a home or rent a home on market terms.

Therefore, although the law defines housing as the one that meets the needs of a family or person, including in terms of existing dependencies, facilities and utilities, it introduces a new term of "convenient housing", a term which apparently covers the same needs, which creates confusion from a terminological perspective. It is true that the latter term is based on minimum requirements for housing (described in Annex no. 1 of the law) from the perspective of the number of square meters allocated depending on the number of family members.

It can be concluded that a dwelling that does not have the necessary dependencies, endowments and utilities is not part, within the meaning of the law, of the category of "housing" provided by art. 2, letter a). Also, if it does not contain rest space, food preparation space, bathroom, utilities and the minimum number of square meters provided in Annex no. 1 to Law no. 114/1996, it does not meet the standards of a "convenient housing".

As regards the right of access to social housing, it is mainly based on financial considerations. Thus, art. 42 of Law no. 114/1996 provides that *"they have access to social housing, in regards to renting, family or persons with an average monthly net income per person, achieved in the last 12 months, below the level of average net earnings monthly on total economy, communicated by the National Institute of Statistics in the last Statistical Bulletin prior to the month in which the request is made, as well as prior to the month in which the housing is distributed"*.

This financial criterion is a priority. To the extent that this criterion is met, the law lists the eligible applicants and the subsequent order of priority, order provided in art. 43:

- People and families evicted or to be evicted from homes returned to former owners
- Young people with ages up to 35 years old
- Young people from social welfare institutions and who have reached the age of 18
- People with disabilities based on their degree of disability (1st and 2nd degree)
- Retirees, veterans and war widows, beneficiaries of the Law of Gratitude to the Heroes-Martyrs and Fighters Who Contributed to the Victory of the Revolution (...)
- Other entitled people or families

It is worth noting that the law does not explicitly provide allocation of housing for persons who have been evicted from residential buildings for the purpose of carrying out a work of public interest. They do not belong, for example, to the target group of people who are entitled to support housing and are not explicit recipients of social housing.

Also, art. 48 of Law no. 114/1996 establishes the categories of applicants ineligible for access to social housing:

- own a home;
- alienated a home after January 1<sup>st</sup> 1990;
- benefited from state support in loans and execution for the construction of a house;
- they own, as a tenant, another house from the state housing fund.

Although the law establishes the categories of eligible applicants and the order of priority of persons with a vocation for social housing (in so far as they meet the

financial conditions), it leaves it to the local public administration authorities to establish their annual criteria to grant them. Specifically, GD no. 1275/2000 provides in art. 21 the fact that by decisions of the local councils will be established and will be published, by posting at the mayor's office, the criteria based on which the social housing and the necessary supporting documents are distributed. The application norms stipulate that when establishing the criteria, the provisions of art. 42 and 43 of the law, and within each criterion, when establishing the order of priority, the following will be taken into account:

- the living conditions of the applicants;
- the number of children and other household members with the applicant;
- the state of health of the applicants or members of their families;
- the precedence of the applications.

**The terminology used in Law no. 114/1996 and that in the Norms for its application (GD no. 122/2000) is confusing and contradictory:**

- on the one hand, the law establishes the categories of eligible applicants and the order of priority, an order that cannot be modified by secondary acts (such as local council decisions), on the other hand the application rules refer to criteria established by local councils, and, within each criterion, the order of priority.
- therefore, we have two types of order of priority, one derived from the law and the second derived from the implementing rules, the latter referring to things fundamentally different from what the law specifies.

In practice, beyond terminological dysfunctions, the margin of appreciation left to local public authorities in the provision of social housing leads to discriminatory practices at the local level, with the concrete removal of vulnerable groups, especially Roma citizens, as we will show below.

In this context, the definition given by art. 3 of **Law no. 116/2002 on social marginalization**: *Social marginalization, within the meaning of this law, is defined by the peripheral social position, isolation of individuals or groups with limited access to economic, political, educational and communication resources of the community; it is manifested by the absence of a minimum social living conditions*. Depending on the level of income according to which a person considers himself socially marginalized (established annually by Government decision), he/she is entitled to:

- ✓ Housing and public services of strict necessity such as: water, electricity, natural gas, district heating, etc. (art. 25);
- ✓ Free counselling from the competent state institutions and the specialized working apparatus of the town halls in order to benefit from the rights established by law (art. 26).

Art. 49 of **GD 1149/2002** defines the socially marginalized person as the person who benefits from the guaranteed minimum income and who is in at least two of the following situations:

- a) has no job;
- b) does not have a home owned or used;
- c) lives in improper conditions;

d) has one or more dependent children or is part of a family with many dependent children;

e) is an elderly person, without legal supporters;

f) is included in the category of disabled persons or invalids;

g) has a dependent person in the category of people with severe, accentuated disability or degree I or II disability;

h) has served a deprivation of liberty sentence.

Regarding the notion of *housing with improper conditions*, art. 50 of GD no. 1149/2002 defines it as: the improvised dwelling or the construction with housing destination that does not meet the minimum requirements provided by letter A from annex no. 1 to the Housing Law no. 114/1996, republished, with the subsequent modifications and additions, as well as other conditions established on the basis of the criteria approved by decision of the local council.

Also, **Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination** specifies in the content of art. 4 the notion of disadvantaged category as *that category of people who are either in a position of inequality in relation to the majority of citizens due to identity differences from the majority, or face a behaviour of rejection and marginalization.*

Regarding the local public administration authorities, respectively their margin of appreciation in designing, in concrete terms, the rules/criteria for allocating social housing, this margin must avoid the excess of power of the authority, excess defined by art. 2, letter n) of Law no. 554/2004 of the Administrative Contentious as



*being the exercise of the right of appreciation of the public authorities by violating the limits of the competence provided by law or by violating the rights and freedoms of the citizens.*

An extremely important role in accessing social housing should be played by the social assistance departments organized under the local councils of municipalities and cities. Their attributions are described in Annex no. 2 of GD no. 797/2017 for the approval of the framework regulations for the organization and functioning of the public social assistance services and of the indicative personnel structure. They are defined as *a public institution specialized in the administration and provision of social assistance and social services, established under the local councils of municipalities and cities, in order to ensure the implementation of social policies in the field of child protection, family, the elderly, people with disabilities, as well as other persons, groups or communities in special need* (art. 1, paragraph 1 of Annex no. 2 of GD no. 797/2017). The directorate can be organized as a functional compartment in the specialized apparatus of the mayor or as a general directorate, a public institution subordinated to the local councils, depending on the demographic structure and socio-economic indicators of the municipality/city (art. 1 paragraph 2 of Annex no. 2 of GD No. 797/2017).

Among the functions of the departments is the realization of the social diagnosis at the level of the respective administrative-territorial unit, by assessing the social needs of the community, conducting surveys and social surveys, capitalizing on the potential of the community to prevent and detect early situations of neglect, abuse, abandonment , violence, cases of risk of social exclusion, but also coordination of measures to prevent and

combat situations of marginalization and social exclusion in which certain groups or communities may be (art. 2, letters a and b).

The social services provided by the Directorate with the sole purpose of preventing and combating poverty and the risk of social exclusion are addressed to people and families without income or low income, homeless people (...) and can be counselling and information services, social insertion services/ social reintegration, rehabilitation services and the like, for families and single people without income or with low income (...).

Regarding the attributions of the departments in the field of organization, administration and provision of social services, the provisions of art. 3, paragraph 2, letters c and d are incidents:

*c) initiates, coordinates and applies measures to prevent and combat situations of marginalization and social exclusion in which certain groups or communities may be;*

*d) identifies the families and persons in difficulty, as well as the causes that generated the situations of risk of social exclusion.*

All these provisions must be corroborated with the provisions of Law no. 116/2002 on social marginalization, as they were previously made explicit.

## Case Study – Alba Iulia

Through Annex no. 1 to the Decision of the Local Council no. 91/2019<sup>13</sup>, the criteria regarding the scoring of the applications for social housing in Alba Iulia for the people with domicile/residence in Alba Iulia were stated.

Thus, in the case of the job/domicile for the applicant, people who have a job in Alba Iulia and the domicile/residence in Alba Iulia benefit from 10 points, and people with a job in another locality, but with the domicile/residence in Alba Iulia benefit from 9 points. Therefore, people who are, in any case, in a better situation in terms of the existence of a job in the municipality are at an advantage over those who work in another locality, and people without a job – the most difficult situation – do not exist according to the local law maker from Alba Iulia.

Another criterion taken into account by the local authority refers to the average net income per family member of the applicants. Thus, the higher the income, the higher the points awarded. For example, a net income between 501 lei and 1200 lei entails the score of 10 points, while a net income of less than 142 lei is scored at 0 points.

Regarding the level of education and/or professional training of the applicant for social housing, the more studies he has, the higher the score awarded. For example, an applicant with higher education obtains a maximum of 6 points, while an applicant without education obtains 0 points. Although the vocation to find a better paid job is for the one with higher education, which would allow him,

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<sup>13</sup> Available at <https://se.apulum.ro/Registratura/DetaliuHCL?nr=91&an=2019>, accessed at 07.07.2021

hypothetically, to pay a rent or a mortgage, he is favored by the municipality.

Annex no. 3 the H.C.L. no. 91/2019 contains the list of supporting documents that social housing applicants must submit in order to evaluate the applications, respectively 19 points are listed, at each point there may be one or more documents. They also include two types of notarial deeds, tax certificates and certificates from at least 10 institutions. This excessive burden, not doubled, in concrete terms, by the support actions of the applicants from the Social Assistance Department of Alba Iulia City Hall leads to the impossibility of vulnerable people, without studies, to manage such a large volume of documents. The latter aspect is in total contradiction with the provisions of Law no. 116/2002, respectively with art. 26, which, as we have shown before, imposes on the specialized working apparatus of the mayoralties the free counselling of persons at risk of social exclusion.

Therefore, they, however discriminated by the criteria issued by the municipality, remain with a simple vocation to social housing, not being able to access, in fact, this right.

Regarding the score awarded based on the living conditions of the applicants, the municipality awards 10 points to those who live under a lease registered with the Alba County Administration of Public Finance, 9 points to those who live under a loan agreement concluded in authentic form or under a private signature with a definite date, 5 points for those living temporarily in social assistance units and only 4 points for those living in sheltered housing. Consequently, although Law no. 114/1996 defines the minimum standards that a dwelling

or a suitable dwelling must meet, standards that do not, of course, include any improvised dwellings, the way of awarding the score places socially marginalized groups in a very unfavourable position, the finality being the impossibility to access a social housing.

**In conclusion, the poorer a person/family, socially excluded, the less their chance to benefit from social housing, this fact being in full contradiction with the provisions of Law no. 116/2002 on social marginalization, but also with the spirit of the Law. no. 114/1996** regarding the access to housing as a right that must be exercised freely and unrestricted. According to the data presented in the preamble of this study, the poverty and social exclusion rate is extremely high among the Roma population compared to the general population (the poverty rate is, for example, 25% for the general population compared to 70% among the Roma ethnic group). As such, the discriminatory criteria contained in the Alba Iulia Local Council Decision exclude any possibility of accessing the social housing fund for vulnerable groups, especially for Roma people<sup>14</sup>, for the reasons explained above.

### **Case – Cluj Napoca**

By Decision no. 531/27.09.2017<sup>15</sup>, the Board of Directors of the National Council for Combating Discrimination (NCCD) applied to the Institution of the Mayor of Cluj-Napoca the fine of 3000 lei, obliged it to publish on the website of the City Hall a summary of the decision and recommended to initiate an amendment of the

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<sup>14</sup> See also the study of the Center for Legal Resources available at: <https://www.crj.ro/comunitatea-turturica-alba-iulia/>

<sup>15</sup> Available at <https://www.cncd.ro/wp-content/uploads/2020/12/hotarare-531-17.pdf>

DLC no.434/16.12.2015 (scoring, eligibility and selection criteria for solving social housing applications, registration forms on the priority lists, supporting documents for preparing the file, how to communicate this information to applicants), in the sense to increase the score awarded to persons in a situation found by the Council to be discriminatory.

Specifically, the Board of Directors of NCCD found that the following criteria constitute discriminatory treatment of people without education or people with disabilities in accessing social housing:

- 40 points for people with university degrees and 45 points for people with doctoral studies;
- 5 points for people without education or with primary education;
- 10 points for people with disabilities in a permanent disability category (only for a family member);
- Up to 20 points for poor living conditions in unconventional homes.

Thus, the NCCD notes that *the establishment of a reduced score for criteria such as the absence of studies or primary education, of only 5 points, respectively disability, of 10 points, compared to, for example, the major score for study criteria such as university and doctoral of 40 and 45 points, generates the effect of disadvantaging precisely the people placed by their condition in the category of socially disadvantaged people. Such a disadvantage is tantamount to discriminatory treatment when accessing an administrative service or rights or facilities, in particular the nature of social housing.*

The High Court of Cassation and Justice (HCCJ) rejects the appeal filed by the Municipality of Cluj-Napoca through the Mayor and the Mayor of the Municipality of Cluj-Napoca, upholding the decision of the Cluj Court of Appeal initiated by the plaintiffs against NCCD Decision no. 531/2017.

The Court concludes in its recitals:

*Even if the establishment of criteria is attributed to local public administrations, the content of the law undoubtedly shows that the will of the legislator was that these criteria be established in such a way as to determine the most vulnerable categories of people, prone to social exclusion, limited to the objective socio-legal law. (...) However, people without education or with primary education and even more so persons with disabilities are part of the category of disadvantaged persons, these being among the first categories of persons whose range of professional opportunities, employment and insurance of a decent standard of living is extremely low. (...) According to art. 2 paragraph 9 in conjunction with art. 4 of Government Ordinance no. 137/2000, **the elimination of all forms of discrimination is also achieved by establishing special measures, including affirmative action, in order to protect disadvantaged people who do not enjoy equal opportunities.***

Regarding the score given to people with higher education, the court finds that given that in Romania the percentage of people between 30 and 34 years old who have tertiary education is only about 28% (Eurostat), this criterion is elitist. The court also claims that the appearance of neutrality of the criterion of studies creates, in fact, a form of direct discrimination against Roma people because,

according to the last Census (2011), only 0.7% of them said they had a university degree.

Following the final decision of the High Court of Cassation and Justice, the Institution of the Mayor of Cluj-Napoca published on the website of the City Hall a summary of NCCD Decision no. 531/27.09.2017, and the Local Council, at the initiative of the Mayor, adopted DLC. no. 622/2020<sup>16</sup>. We consider that the latter decision also contains discriminatory provisions, as it follows:

- Although the discriminatory criteria that favoured people with higher and doctoral studies were eliminated, a new criterion was introduced under the name of “Cases of Excellence”, which means “the cases of applicants who contributed in increasing the prestige of Cluj-Napoca or the country through intellectual, cultural, sports, civic performances, etc.”. The score for this kind of merits is 40 points, equivalent to the score of 40 points for those who have higher education from the old Decision no. 531/2017.
- By comparison, in the new decision, a person with a severe disability obtains 20 points, those who live in informal settlements (and who, of course, must appear in the database according to Law no. 151/2019) 15 points, and people who have been accommodated for a period of more than 6 months in social assistance units, 15 points.
- While people living in informal settlements, as shown above, receive 15 points, people who are

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<sup>16</sup> Available at <https://primariaclujnapoca.ro/consiliu-local/hotarare-de-consiliu/hotararea-622-din-2020/>



evacuated from former nationalized homes receive 30 points.

- They do not have access to social housing “applicants and/or family members – 1<sup>st</sup> degree relatives (husband, wife, older children, parents of spouses, as the case may be, who live and manage the household together) who occupy or have abusively occupied a building owned by the Romanian State/under the administration of the Local Council of Cluj-Napoca/Cluj- Napoca, or owned by the Municipality of Cluj-Napoca”.

In fact, the new criteria for granting social housing also contain discriminatory provisions, excluding vulnerable people in extreme situations, especially Roma people: they live in informal settlements (being generally forcibly evicted even by the Municipality) with or without database registration; to the extent that they had access to modular housing and failed to pay the rent to the Municipality of Cluj-Napoca, they risk going through a forced eviction procedure and, to the extent that until the end of the procedure they continue to live there become ineligible to access social housing as a result of the unlawful occupation of a building. If a person who lives in an informal settlement and is possibly classified as severely disabled is considered, accumulates 30 points while a person who contributed to increasing the prestige of Cluj-Napoca accumulates, only based on this new criterion, 40 points. We assume that, since that person had intellectual, cultural, sports, civic performances and “**etc.**” (following to prove in any way these merits, according to DLC no. 622/2020), can afford to pay a rent, unlike less “deserving” people, without education, without the possibility of

proving seniority in work and living in informal settlements.

In conclusion, what the Institution of the Mayor of Cluj-Napoca and the Local Council omit is the vocation of social housing, respectively that of being social and not an award granted for the level of education or for the contribution to increasing the prestige of the city. Social housing is not a reward for good behaviour, but a measure of a social nature through which the right to housing is put into practice, in concrete terms, as a fundamental part of the right to privacy. Also omitted (and despite the final decision of the HCCJ) are the provisions of Law no. 116/2002 on social marginalization, which define the disadvantaged category as *that category of persons who are either in a position of inequality in relation to the majority of citizens due to identity differences from the majority, or face a behaviour of rejection and marginalization*. It is not without interest that in Cluj-Napoca there were repeated forced evictions<sup>17</sup> of the Roma population<sup>18</sup>, a good part of them living on the edge of the landfill in the Pata Rât area, being, therefore, rejected and marginalized by the Municipality due to identity/ethnic difference.

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<sup>17</sup> See the public statement Amnesty International, the European Roma Rights Center, the Working Group of Civic Organizations - GLOC and the Community Association of Roma on the Coast "Romania: Bring the Roma back to the city of Cluj-Napoca!" available at <https://www.amnesty.org/download/Documents/20000/eur390132012ro.pdf>

<sup>18</sup> See the study of the Center for Legal Resources, "Community on the Ramp: Pata Rât", 2020, available at: <https://www.crj.ro/comunitatea-de-pe-rampa-pata-rat/>

## Case – Reghin

The National Council for Combating Discrimination found by Decision no. 511/2016<sup>19</sup> that the score established by DLC. no. 51/2014 of Reghin Municipality for the level of education in order to access social housing is not proportional to the purpose pursued and has the effect of excluding people who have a low level of education from their access to these housing, which discriminates Roma people indirectly. Consequently, NCCD applied to the Mayor of Reghin Municipality and to the Local Council of Reghin Municipality a fine amounting to 2000 lei and the obligation to publish a summary of the decision on its own website.

The Târgu Mureş Court of Appeal rejects the action filed by Reghin Municipality against NCCD, noting the following: the establishment of the criterion regarding the level of education in the procedure of allocating social housing has an effect of disadvantaging Roma people, constitutes an indirect discrimination, not being objectively justified, not being relevant that the application of the criterion could be counterbalanced by the number of children and income.

Finally, the Court submits that **the margin of appreciation of public authorities does not amount to the possibility of acting abusively, arbitrarily, without legal justification and outside any control (...).**

Regarding the degree of accessibility of the local council's decisions by which the criteria for granting social housing are established, Law no. 114/1996 and the Norms of its application (GD 1275/2000) provide the obligation to post the list of criteria at the town halls.

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<sup>19</sup> Available at <https://www.cncd.ro/wp-content/uploads/2020/12/hotarare-511-16.pdf>

### **Case - Focșani**

By Annex no. 1 to the Decision of the Local Council of Focșani Municipality no. 277/2017, the criteria and scores for establishing the order of priority in solving the applications for the allocation of a social housing were established. Among the criteria for access to housing (point B) in point 8 is indicated the obligation of the applicant not to have outstanding debts to the local budget and to the providers of public utilities in Focșani Municipality. Regarding this point, the National Council for Combating Discrimination concluded, by Decision no. 156/2018<sup>20</sup>, that this exclusion criterion represents discrimination, according to art. 2, paragraph 3 and 4 of GO no. 137/2000:

*(3) According to this ordinance, the seemingly neutral provisions, criteria or practices that disadvantage certain persons are discriminatory, based on the criteria provided in paragraph (1), in relation to other people, unless these provisions, criteria or practices are objectively justified by a legitimate aim, and the methods of achieving that aim are adequate and necessary.*

*(4) Any active or passive behavior which, by the effects it generates, favors or disadvantages unjustifiably or subjects to an unfair or degrading treatment a person, a group of people or a community towards other people, groups of people or communities attracts the contravention liability according to this ordinances, if it does not fall under the criminal law.*

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<sup>20</sup> Available at <https://www.cncd.ro/wp-content/uploads/2020/12/Hotarare-156-18.pdf>

The decision of the NCCD was upheld by the Galati Court of Appeal and remained final as a result of the settlement of the appeal by the High Court of Cassation and Justice.

The first instance court and, subsequently, the HCCJ, held on the legitimacy of the aim pursued and on the adequacy and necessity of the methods used to achieve the goal, the fact that: *the obligation imposed by Decision no. 20/2017 by the Vrancea Chamber of Accounts consisting in taking measures to obtain enforceable titles in order to recover the debts representing utilities paid centrally by the entity and not recovered from the tenants of the blocks of flats is not able to constitute an objective justification of a legitimate purpose for adopting the criteria for allocating social housing, and the lack of relevance on the effectiveness of the measure and the fact that some social housing applicants have agreed to pay these debts or have not applied for social housing.*

Moreover, the HCCJ argues that, although the purpose invoked (recovery of debts) can be considered legitimate, the means used were not necessary and adequate, respectively the application of legal provisions (access to social housing) cannot be conditioned by the execution of a debt. Therefore, there is a lack of proportionality between the intended purpose (payment of debts) and the measure adopted by DLC.

### **Possible discriminatory criteria identified in the case of different municipalities**

In order to centralize the possible discriminatory criteria, decisions of the local councils regarding the establishment of criteria and scores for the distribution of

social housing in the county capital municipalities and the municipality of Bucharest were analysed (having available, at the time of writing this study, a total of 38 decisions)<sup>21</sup>. After analysing these decisions, it is possible to observe a common tendency to award scores on some categories of criteria, encountered in most cases and briefly set out below. Some of them are found in the cases presented above, where there are already court decisions on their discriminatory nature. We also identified discriminatory criteria specific to one municipality or another, worthy of mention in the light of this study.

### **Discriminatory criteria - common tendencies**

In the criterion regarding the housing situation in the analysed decisions, a lack of inclusion of the categories of persons who do not own a house or who live in makeshift houses prevails. This prevalence materializes in **24** of the decisions analysed.

Regarding the level of study, **21** of the analysed decisions show differences in score in the sense that, as in the case of Cluj-Napoca, they give maximum score to persons who have university and/or postgraduate studies

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<sup>21</sup> The data collection was carried out between May and July 2021, by identifying the respective decisions on the websites of the county seat municipalities. Out of the total of 41 county residences and the municipality of Bucharest (analyzed separately by sectors and the Capital City Hall) - therefore 48 cases, in total -, no relevant or complete decisions could be identified for 20 of them, where requests were sent based on Law no. 544/2001 on free access to information of public interest. At the time of writing (20.07.2021), answers or completions were expected for 10 of them (Brăila, Bistrița, Bufta, Sector 1 Bucharest, Reșița, Miercurea Ciuc, Iași, Târgu Mureș, Satu Mare, Suceava). The decisions of the Local Councils analyzed in this study are from the following municipalities: Alba Iulia, Alexandria, Arad, Baia Mare, Bacau, Botosani, Brasov, Bucharest (General Council), Sector 2 Bucharest, Sector 3 Bucharest, Sector 4 Bucharest, Sector 5 Bucharest, Sector 6 Bucharest, Buzau, Calarasi, Cluj-Napoca, Constanta, Craiova, Deva, Drobeta-Turnu Severin, Focsani, Galati, Giurgiu, Oradea, Pitesti, Piatra Neamt, Ploiesti, Ramnicu Valcea, Sfantu Gheorghe, Sibiu, Slatina, Slobozia, Targoviste, Targu Jiu, Timisoara, Tulcea, Vaslui, Zalau.

and minimum or zero score to people who have not followed any form of studies/education. Additionally, some of the municipalities also have the elitist criterion which is manifested by awarding points for outstanding performances in sports or Olympics, as seen in the Local Council Decision no. 415/2020 of **the Municipality of Deva**<sup>22</sup> (performance athletes with outstanding results recognized nationally and/or internationally, legitimized at sports clubs: ranked on the podium at national competitions - 2 points, ranked on the podium at international competitions - 3 points, ranked on the podium at the Olympics (Olympic Games) - 4 points), in the Decision of the Local Council no. 38/2016 of **the Municipality of Timișoara**<sup>23</sup> (performance athletes with outstanding results internationally (1st, 2nd or 3rd place at the Olympic Games, world or European championships), in the Decision of the Local Council No. 27/2018 of **the Municipality of Drobeta-Turnu Severin**<sup>24</sup> (for each family member holding national or international Olympics, sports and cultural diplomas - 10 points), but also in the Decision of the Local Council No. 23/2013 of **the Municipality of Râmnicu Vâlcea**<sup>25</sup>(families whose children have performed at national/international school high-level competitions or national/international sports championships in the last 5 years, organized by/in

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<sup>22</sup> Available at

[http://www.primariadeva.ro/fisiere/module\\_fisiere/15627/415-pdf](http://www.primariadeva.ro/fisiere/module_fisiere/15627/415-pdf)

<sup>23</sup> Available at: <https://www.primariatm.ro/administratie/consiliul-local/hotarari-ale-consiliului-local/?uid=08CF7E9C0EFFF095C2257F3F00383480>

<sup>24</sup> Available at: <https://primariadrobeta.ro/wp-content/uploads/2019/10/HCL-027.pdf>

<sup>25</sup> Available at:

[https://dm.primariavl.ro/dm/2013/hotarari.nsf/vwHotarariByAn/42007A1605266A30C2257B0B004479AE/\\$FILE/23.Aprob.%20criteriilor%20in%20baza%20carora%20se%20vor%20intocmi%20listele%20de%20prioritati%20pt%20solutionarea%20cererilor%20si%20repartizarea%20locuintelor%20sociale.pdf](https://dm.primariavl.ro/dm/2013/hotarari.nsf/vwHotarariByAn/42007A1605266A30C2257B0B004479AE/$FILE/23.Aprob.%20criteriilor%20in%20baza%20carora%20se%20vor%20intocmi%20listele%20de%20prioritati%20pt%20solutionarea%20cererilor%20si%20repartizarea%20locuintelor%20sociale.pdf)

collaboration with the Ministry of National Education, Ministry of Youth and Sports, Romanian Sports Federations). If the two criteria are checked simultaneously, regarding the level of study and the elitist/performance level (irrelevant criteria in the issue of distribution of social housing), the chances of applicants from the categories mentioned by law to have priority in score establishment decrease dramatically, and may even become null.

The criterion that determines the score according to the level of the average net income per economy is found in **27** of the analysed decisions, in the form of exclusion/limitation of access of persons who do not carry out income-generating activities. It manifests itself in different ways; either by not mentioning these categories of persons, or by being granted a minimum/zero score in the event of including on the list persons who have no income.

There is also a discrepancy between categories of people depending on marital status. Thus, married people have a maximum score, to the detriment of unmarried or single people (except for single-parent families who are expressly provided with a high score). This tacitly excludes vulnerable groups such couples/individuals who are part of the LGBTQ+ community and who do not have the possibility of a legal civil union in Romania. Such discrepancies are present in **23** of the decisions analysed.

### **Other discriminatory criteria – isolated criteria from different municipalities**

The prejudices against Roma people, doubled by the misunderstanding of the concept of social housing, the



vocation for it and the fact that it is not granted on the basis of merit (neither in general, nor punctually, established by one authority or another) are found in a number of criteria that score "interest in school". Again, it is a criterion that ignores the situation of extreme vulnerability of Roma, of Roma children. Differences between non-Roma and Roma children in education persist: 77% of Roma students who have completed upper secondary education are not enrolled in other forms of education or training, compared to 19% of the general population in this situation. In Romania, at the level of 2016, Roma children older than 4 years participate in preschool education in a percentage of 38% compared to 88% in the case of majority children<sup>26</sup>. The main reasons mentioned to explain this image of the education situation concerning Roma children are the financial ones<sup>27</sup>. To these conditions are added ethnic discrimination<sup>28</sup> which contributes to early school leaving. Other elements that influence the education of Roma children are related to the reduced possibilities of Roma parents to support their children in the educational process and to the quality of education received by Roma students in the educational system. Among the signs of low quality education are the much worse infrastructure in schools where Roma children study compared to those where the number of non-Roma students is predominant, lower

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<sup>26</sup> European Union Fundamental Rights Agency, Fundamental Rights - Report 2018, Luxembourg: Publications Office of the European Union, 2018

<sup>27</sup> Ana Maria Preoteasa, Monica Șerban, Daniela Tarnovschi. The situation of Roma in Romania, 2011. Between social inclusion and migration. 2011. Bucharest: Soros Foundation Romania

<sup>28</sup> Surdu, Laura, 2011. Roma school participation, non-attendance and discrimination in Romania, Bucharest, Vanemonde; quoted in United Nations Economic and Social Council (2012) Draft country program document Romania, p.3-4

qualifications of teachers in schools with a large number of Roma<sup>29</sup> and school segregation<sup>30</sup>.

In the Decision of the Local Council no. 97/2015 of **the Municipality of Sfântu Gheorghe**<sup>31</sup>, at point 3 regarding the Motivational criteria can be found at letter c) *The interest shown for the upbringing and education of the child/children established by the opinion of the educator/class master about the parents' concern for the child.* Thus, in the opinion of the teacher, parents who are not concerned will receive 1 point, and parents who have a very high concern will receive 5 points. This criterion is subjective and biased, including the way established to demonstrate it (the opinion of a teacher) correlated with the lack of specialization of teachers in conducting psychosocial surveys to determine this "interest" and the actual relevance for whether or not to provide housing. This criterion, in addition to those provided by law, does not support the socially and materially disadvantaged, but even adds an obstacle in their way to access social housing.

In the same note, but this time by sanctioning the applicant for social housing, there can be a tendency to downgrade in case of school dropout (Baia Mare Municipality - Local Council Decision no. 415/2016<sup>32</sup>), non-schooling in compulsory education for older children

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<sup>29</sup> Romani CRISS and ERRC, Letter to the European Commission, Breaches of Directive 2000/43 resulting from segregation of Romani children in the Romanian education system, 2016.

<sup>30</sup> See the LRC study, "Non-discrimination in education. An analysis of the current situation from the perspective of non-discrimination in several sectors of Romanian education" available at [https://www.crj.ro/wp-content/uploads/2020/03/Studiu-nediscriminarea-in-educatie\\_final2020.pdf](https://www.crj.ro/wp-content/uploads/2020/03/Studiu-nediscriminarea-in-educatie_final2020.pdf).

<sup>31</sup> Available at: [https://www.sfantugheorgheinfo.ro/edit\\_file/uploads/files/hotarari/2015/hcl%2097%20anexa1%20si%202.pdf](https://www.sfantugheorgheinfo.ro/edit_file/uploads/files/hotarari/2015/hcl%2097%20anexa1%20si%202.pdf)

<sup>32</sup> Available at: [https://www.baiamare.ro/Baiamare/Consiliu%20local/HCL/an%202016/26%20octombrie/hot415\\_16%20Anexa%202.pdf](https://www.baiamare.ro/Baiamare/Consiliu%20local/HCL/an%202016/26%20octombrie/hot415_16%20Anexa%202.pdf)

(**Tulcea Municipality** - Local Council Decision no. 203/2018<sup>33</sup>) or the non-attendance of an educational unit (**Alba Iulia Municipality** - Local Council Decision no. 91/2019<sup>34</sup>).

In **the Municipality of Baia Mare**, in addition to the score reduction with 20 points for dropping out of school, there are special criteria that reward with 10 points the participation in vocational training and qualification courses, legally recognized, as well as awarding a score of 30 points for enrolling children to a form of education and proof of attendance of at least 80%. In the case of **the Municipality of Constanța**, frequent school attendance is rewarded with additional points (Decision of the Local Council no. 6/2018<sup>35</sup>). All these criteria increase the importance of the criterion on the increasing score given according to the level of education and contribute to the inequality of opportunities for socially, financially disadvantaged families and not only.

Both in **the Municipality of Bacău**<sup>36</sup>, by the Decision of the Local Council no. 148/2020, as well as in **the Municipality of Arad**<sup>37</sup>, by the Decision of the Local Council no. 52/2016, it is specified that in the event of several persons with a medical certificate (in a family), the person with the worst disability will be scored, therefore only one family member will be scored. We point out that, in 2013, almost half of all children with disabilities were not enrolled in any form of schooling and, according to reports,

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<sup>33</sup> Available at: <https://www.primariatulcea.ro/wp-content/uploads/2018/09/hcl203.pdf>

<sup>34</sup> Available at: <https://se.apulum.ro/Registratura/DetaliuHCL?nr=91&an=2019>

<sup>35</sup> Available at: <http://www.primaria-constanta.ro/consiliul-local/hotarari-de-consiliu>

<sup>36</sup> Available at: <https://municipiulbacau.ro/wp-content/uploads/2019/12/hcl-nr.148-din-28.07.2020.pdf>

<sup>37</sup> Available at: <http://www.primariaarad.ro/files/hotariri/h7910.pdf>

were seven times more likely than other children not to have access to educational opportunities. The low educational performance of children with disabilities has a negative impact on their ability to be employed in the future. According to the National Authority for Persons with Disabilities, the employment rate among adults with disabilities between 18 and 65 years old is **11,46 percent**<sup>38</sup>. Thus, the above-mentioned criterion, instead of taking into account the increased vulnerability of a family with multiple people with disabilities, which implies high social marginalization and the premise of extremely low or zero income, in fact excludes people with disabilities, creating a premise for competitiveness between people who are already in a state of vulnerability.

It is not possible to overlook the decisions of the **Local Council of Sector 4 Bucharest**<sup>39</sup> (DLCS 4 no. 36/2016), respectively of **the Local Council of Sector 6 Bucharest**<sup>40</sup> (DLCS 6 no. 218/2019) through which employees of the City Hall and its subordinate departments receive a higher score (5 points) than other priority categories (young people with ages up to 35 years - 2 points, families and people living in buildings with affected structures - 1 point, retirees for the age limit - 4 points, beneficiaries of Law no. 341/2004 and of Decree-Law no. 118/1990 - 3 points), as well as receiving a score for the quality of civil servant. In the note of **the Decision of the**

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<sup>38</sup> See the report published following the visit to Romania of Professor Phillip Allston, United Nations (UN) Special Rapporteur on Human Rights and Extreme Poverty in Romania, 2016, available at [https://romeurope.org/wp-content/uploads/2016/07/extreme\\_poverty\\_in\\_romania\\_-\\_un\\_report.pdf](https://romeurope.org/wp-content/uploads/2016/07/extreme_poverty_in_romania_-_un_report.pdf)

<sup>39</sup> Available at: [https://ps4.ro/wp-content/uploads/2016/03/HCLS\\_nr\\_36\\_si\\_anexe.pdf](https://ps4.ro/wp-content/uploads/2016/03/HCLS_nr_36_si_anexe.pdf)

<sup>40</sup> Available at: <https://www.primarie6.ro/www2/wp-content/uploads/2019/09/hcl-nr.-218.pdf>

**Local Council of Sector 2 Bucharest** no. 162/2016 are specified with priority the young specialists working in budgetary units. Also, in the **Decision of the Local Council of Sector 3 Bucharest**<sup>41</sup> no. 234/2015, the employees from the Central and Local Public Administration receive scores higher than those belonging to the priority categories, namely the employees from the public administration based in Sector 3 will receive 30 points, and the employees from the public administration based in the municipality Bucharest will receive 20 points. At the same time, the criterion of awarding an additional score to persons employed in local or central administration is in fact a preference for this category of people, practically for colleagues of decision makers within the local authority and other institutions, over the rest of the population. This preference is not objectively justified and contradicts the provisions of art. 2 of O.G. 137/2000 on the prevention and sanctioning of all forms of discrimination, as well as art. 14 of the European Convention on Human Rights<sup>42</sup>. In the Decision of the Local Council no. 6/2016 of **the Municipality of Galați**<sup>43</sup>, at point 6 entitled “special conditions for the file holder and his family members”, civil servants transferred in the interest of service and other categories of persons who were transferred in the interest of the Municipality of Galați (20 points), young family aged up to 35 who have a business or are majority shareholders, with at least 2 (two) employees in the company (30 points) receive scores markedly higher than the other priority

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<sup>41</sup> Available at:

[https://www.primarie3.ro/index.php/consiliul\\_local/hotarari2015](https://www.primarie3.ro/index.php/consiliul_local/hotarari2015)

<sup>42</sup> Study of the LRC, “The right to adequate housing in Bucharest”,  
<https://www.crj.ro/wp-content/uploads/2020/02/bucuresti-final.pdf>

<sup>43</sup>

<https://www.primariagalati.ro/portal/hotarari/010116/HCL%206.pdf?Open>

categories of young people (young people from social housing - 2 points, people living in buildings that no longer have safety in operation - 1 point, people living in buildings claimed / seismic risk 1 and have a lease with the city of Galati - 5 points). Thus, persons who do not fall under the conditions expressly established by law in order to obtain a social housing are favored, generating the possibility of excluding, by obtaining a lower score, families/people in housing/material deprivation and, implicitly, in the need to obtain housing respectively.

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### **Recommendations:**

- The previously specified normative acts must be corroborated in the sense of capitalizing on the rights (in this case the right to housing and family life) and, as such, the criteria considered by municipalities must take into account the eminently social vocation of “*social*” housing; any other interpretation leads to the situation of abuse of power
- In order to have uniformity and prediction, it is necessary to amend Law no. 114/1996 by including clear and uniform criteria for granting social housing, with their transparent and non-discriminatory allocation
- The criteria and scores for establishing the order of priority in resolving applications for social housing must give priority to groups at risk of social exclusion (people living in makeshift housing, without access to utilities, often without identity cards or with temporary identity cards, persons without a job or who, being exploited, cannot prove

by documents the existence of a job, young people coming from the child protection system, people with disabilities)

- Social housing must provide them with decent living conditions, in compliance with legal regulations according to Annex no. 1 to Law no. 114/1996, rents and utilities must be affordable
- As the criteria for granting social housing provided in art. 43 of Law no. 114/1996 do not provide a condition related to the identity card, they cannot be included among the criteria available to local authorities, the measure being discriminatory, according to the more detailed down:
- The authorities must give up the illegal practice of refusing to issue a permanent identity card for those persons who cannot present documents regarding the domicile in the conditions in which, according to art.28, paragraph 1, letter c) of GEO 97/2005 regarding evidence, domicile, residence and identity documents of Romanian citizens, proof of domicile can be made by declaration on their own responsibility accompanied by field checks performed by the police
- The documents required by the local public administration authorities to prove certain factual or legal situations (the file for social housing) are extremely numerous, diverse and involve costs, but also travel to various institutions; it is advisable to update them with strictly necessary documents. Even so, people belonging to socially marginalized groups are unlikely to be able to obtain all the necessary evidence themselves. So that:

- It is necessary to involve social workers/workers in the field in order to effectively implement free counselling, but also to support people belonging to vulnerable/socially marginalized groups in the preparation of the file for social housing
- Any measures that the local public administration authorities wish to take regarding/affecting vulnerable groups must be taken/carried out in consultation with that vulnerable group, its opinion taking precedence over a possible majority opinion
- The involvement of the Prefect's Institution is necessary, an institution that has the legal power and obligation to challenge before the administrative contentious court the acts it considers illegal, including in terms of discriminating vulnerable groups through the criteria and scores given to access social housing.
- The institution of the People's Advocate must be a constant presence among vulnerable communities, having the opportunity to investigate specific situations of abuse of power.
- Regarding forced evictions, which were not the subject of this study, but which have a connection with the vocation to social housing (which remains a simple vocation for those forcibly evicted), we recall the ECRI recommendations in its report on Romania in 2019, in which it recommends that the authorities intensify their efforts to regulate informal settlements, ensuring that any initiative taken in this direction also includes the Roma. Also suggests to the authorities that measures be taken to ensure that all Roma who can be evicted from their homes enjoy the guarantees offered by international



standards in this regard; they must be notified well in advance of the evacuation and must have adequate legal protection; they should not be evacuated without being given the opportunity to relocate to decent housing.<sup>44</sup>

Translation from Romanian into English language by Corina Diaconică. The original version of the document, in Romanian language, is available at <https://www.crj.ro/intersect-altfel-despre-discriminare/>

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<sup>44</sup> Available at <https://rm.coe.int/fifth-report-on-romania-romanian-translation-/168094c9e7>