

Identifying Discriminatory Criteria in the Allocation of Social Housing -Summary-

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I. Preliminary considerations

The "Identifying discriminatory criteria in the allocation of social housing" study examines the situation at national level regarding the establishment of scores and criteria for the allocation of social housing set through local council decisions, at level of cities and towns, from the perspective of access to social housing for groups vulnerable to discrimination and/or disadvantaged categories.

This is a summary in English of the full study done in Romanian language which is available [here](#). The paper has been elaborated in the framework of the project "Non-discrimination, beyond words"[1] and is a continuation of the "Study on access to social housing " developed by the Centre for Legal Resources.[2]

The research was conducted from July to October 2021 and included 318 localities (cities and towns). A total of 133 decisions were analysed, as 130 localities replied that they **do not manage social housing**, **34 localities did not provide any information when asked**, (5 municipalities and 29 cities), **17 localities** provided incomplete answers (3 municipalities and 14 cities), and **4 cities** did not issue decisions on the granting of social housing, although they manage applications for granting social housing.

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II. Discriminatory criteria identified

The research shows that the presence of 2, 3 and 4 discriminatory criteria in a single decision prevails, and this reality denotes multiple or intersectional discrimination in access to social housing. According to our analysis, the localities that have adopted decisions with the most discriminatory criteria are: Baia Mare, Maramures county - 8 criteria; Alba Iulia, Alba county, Dorohoi, Botoşani county and Ocna Mureş, Alba county - 7 criteria each; Curtea de Argeş, Argeş county; Constanţa, Constanţa county; Brad, Hunedoara county; Deva, Hunedoara county; Marghita, Bihor county, Şomcuţa Mare, Maramureş county and Mioveni, Argeş county - 6 criteria each.

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II.1. Housing conditions. Criteria and scores

With reference to the obligation of Local Councils, which derives from Art. 25 para. (1) of the Law no. 116/2002 "the obligation to ensure access of marginalized persons and families to housing and to public services of strict necessity, such as water, electricity, natural gas, heating, etc.", there is a prioritization in the allocation of social housing. However, in the few decisions where people in precarious housing situations were included, this prioritisation does not exist and is in fact overshadowed by low scores for these categories. At the same time, people living in private rented accommodation under a contract registered with ANAF (National Agency of Fiscal Administration).

In some cases, even continuity of tenancy is rewarded, which is difficult to achieve from the perspective of people who suffer from financial and housing deprivation, minorities whose right to housing is systematically violated (such as the Roma minority subject to forced evictions, residential segregation, substandard housing or homelessness) and/or minorities subject to prejudice who are often denied access to renting by private landlords. Other discriminatory situations are: awarding the same score regardless of the applicant's housing situation, without differentiating between tenant, homeless person, poor housing conditions etc., awarding a single score for the housing situation (without categories) or without specifying the criteria on the basis of which the score is awarded.

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II.2. LEVEL OF EDUCATION. CRITERIA AND SCORES

Over 60% of the analysed decisions include the criteria of level of education. The higher level of education an applicant has (such as PHD or post-doctoral studies), the higher the score. The National Equality Body (the National Council for Combating Discrimination[3]) has already ruled in at least two separate instances[4] that this criterion is discriminatory as "it is not proportionate to the aim pursued, and has the effect of excluding people with a lower level of education from access to such housing".

With regard to this criterion in one of the above decisions, the High Court of Cassation and Justice (HCCJ) ruled[5]: "the discrepancy between the scores awarded to persons with at least university education compared to other persons is major and not objectively justified. The court cannot accept as objective justification the fact that it is necessary for young people with a high level of education to be given a good start towards an adequate standard of living, a point raised by the applicants, since, on the contrary their university or even doctoral studies are such as to provide them by themselves, with a high probability, an adequate standard of living through much easier access to employment and, subsequently, to bank mortgage loans, compared with those with no education or with primary education, that is to say, persons with permanent disabilities, who are much more likely not to enjoy the same economic advantages."

As regards the points awarded to persons with higher education, the High Court of Cassation and Justice finds this criterion is elitist given that in Romania the percentage of persons aged between 30 and 34 who have a university degree tertiary education is only about 28% (Eurostat).

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II.3. INCOME. CRITERIA AND SCORES

Similarly to the other two criteria analysed above, the rationale for granting social housing has not been respected in a considerable number of local council decisions, where lack of income or low incomes are not given a score or are given a minimum score, favouring people with incomes or higher incomes. In conclusion, the poorer a person, family, or socially excluded individual, the less their chance to benefit from social housing. For people in this situation, the domestic law[6] requires local councils to provide them with housing and utility support.

On the contrary, in some cases the difference in scores is so great that it is practically impossible for a person with no income to benefit from social housing. Included in the majority of decisions analysed, this criteria indirectly discriminate against the people and families most affected by poverty in Romania, such as children, Roma and people with disabilities[7].

It should be noted here that poverty is both a cause and an effect of discrimination and that all other aspects being equal (age, gender, educational level, household composition, community, geographical location) Roma have a 38% higher risk of being at risk of poverty also due to factors such as discrimination, norms, beliefs and values[8].

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II.4. Marital status. Criteria and scores

Persons who are single, divorced, widowed or living in a consensual union receive the minimum score in all decisions that include the marital status criterion. The inclusion of single-parent families in decisions with higher majority scores is positive. However, even if marital status appears to be a neutral selection criterion, this criterion has an indirect discriminatory effect on families other than the families recognized as such by these decisions, the selection criteria and the application form. It is also a criterion of indirect discrimination against persons from the LGBTI+ community who are denied the right to marry or adopt a child as a couple in Romania.

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II.5. Domicile and/or Place of work. Criteria and scores

Some of the decisions analysed include the criterion of duration of residence, i.e. an increasing score according to the number of years a person has been resident in that locality. In addition, in **16 localities**, residence within said localities is a restrictive criterion, although the issue of a permanent identity document depends on the ownership of a dwelling or the willingness of a person with property to provide residence for another person.

Also in this section, in over 40 decisions the local authority included the work place criteria which is allotted points (without a reasoning being provided for it), on a case-by-case basis, based on location of the work place of work (to be in that locality), sometimes even specifying that it has to be institutions or firms based in that locality or based on income, scoring the existence of a job, with an employment contract, with more or less seniority, of the applicant or the applicant's spouse, etc.. These scores are higher than in the case of people with a disability/invalidity allowance, an unemployed person, etc., who are sometimes not even mentioned, so only employees are scored additionally.

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II.6. Other situations. Criteria and scores.

A number of additional discriminatory criteria have been identified in the majority of the decisions (**in 79 localities out of 133**) in addition to those already outlined above. Not all were listed, but only those that appear frequently. They all show that the local authority conditions the right to housing (in this case access to social housing) on a model of a citizen, as imagined by the local authority according to its own criteria considered desirable.

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Cases of excellence

Similar to others, this type of criteria found in decisions blatantly contradicts the vocation of social housing as defined by law, reinforcing the idea that social housing must be meritorious, beyond or even to the detriment of obvious aspects that show that a person is part of a vulnerable group, eligible applicant. We refer to the inclusion of cases of excellence **(in 27 decisions)**, designed to reward people who contribute to the prestige or the good image of localities, often with scores exceeding those of other categories of eligible beneficiaries.

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Civil servant or expert/specialist status

Linked to domicile in some decisions or to a performance criterion in others, a significant number of decisions prioritise civil servants, experts, highly skilled professionals, employed in institutions (but not only) in the area of the municipality or city concerned (**in 27 decisions**). The criterion of awarding additional points to people employed in local or central administration is in fact a preference for this category of people, in practice for fellow decision-makers in the local authority and other institutions, over the rest of the population.

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“Interest” in school

Prejudice against Roma and anti-Roma racism, coupled with a misunderstanding of the concept of social housing, the vocation for it and the fact that it is not awarded on merit (neither in general nor on a point-by-point basis, established by one authority or another) are reflected in a series of criteria aimed at "interest in school", either by awarding points for demonstrating this "interest" or by being penalised if it is found to be absent (**in 26 decisions**). This is a discriminatory and arbitrary criterion: in addition to their high poverty rate, Roma children are in an extremely vulnerable educational situation.

The gap between non-Roma and Roma children in education persists: 77% of Roma secondary school leavers are not enrolled in other forms of education or vocational training, compared to 19% of the general population in this situation. In Romania, in 2016, 38% of Roma children over 4 years of age participated in pre-school education compared to 88% of majority children[9]. A major cause is school segregation of Roma children, described by the Council of Europe as "one of the worst forms of discrimination and a serious violation of the rights of the children concerned"[10]. Data from the field show worryingly not only that segregation persists, but also that at European level the percentage of segregated schools and classes has increased[11].

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Lack of debits

Among the criteria for access to housing is the applicant's obligation not to have debts to the local budget and public utility providers (**in 23 decision**), a criterion on which the National Equality Body has already ruled that it constitutes discrimination. Moreover, the High Court of Cassation and Justice holds that, although the purpose invoked (recovery of debts) may be considered legitimate, the means used were not necessary and appropriate, i.e. the application of legal provisions (access to social housing) **cannot be made conditional on the enforcement of a debt**. Therefore, there is a lack of proportionality between the aim pursued (payment of debts) and the measure adopted by the decision [12].

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"Anti-social behaviour"

One of the criteria found in 6 decisions refers to anti-social behaviour/anti-social acts[13].

Lack of proportionality and relevance are also highly problematic. On the one hand, from the perspective of the definition of anti-social behavior, which does not appear as such in the law. On the other hand, the dictionary defines "anti-social" as "deviating from the rules of good coexistence in society, which is harmful to society". How does the local authority determine whether this definition fits? And, more importantly, how is this a selection criteria in accessing social housing, a right established by law?

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III. CONCLUSION

The criteria and scores for determining priority of applicants for social housing must focus on groups at risk of social exclusion (people living in makeshift accommodation, without access to utilities, often without identity cards or with temporary identity cards, people unemployed or working without legal forms, youth leaving foster care, people with disabilities etc).

Thus, in exercising their rights, local councils cannot act abusively and cannot discriminate, either directly or indirectly, against people or categories of people. The rationale and law for the allocation of social housing must be respected in terms of priority and the conditions for setting criteria[14]. There is a need and urgency for local councils to review their decisions and remove the discriminatory criteria.

It is also necessary for local public authorities to strengthen their stance on the provision of affirmative measures for the disadvantaged groups in order to ensure their access to rights, such as the right to housing, **under fair conditions**, and to pay particular attention to issues of multiple and intersectional discrimination[15], so as to be consistent with Article 2 (10) letter a) of OG 137/2000: "*[...] the elimination of all forms of discrimination shall be achieved through: a) the prevention of any acts of discrimination, through the introduction of special measures, including affirmative action, to protect disadvantaged persons who do not enjoy equal opportunities*".

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Endnotes

[1] The project is implemented by the Centre for Legal Resources (CLR) with the financial support of Active Citizens Fund Romania, a programme funded by Iceland, Liechtenstein and Norway through EEA Grants 2014-2021. The content of this material does not necessarily represent the official position of the EEA and Norway Grants 2014-2021; for more information visit www.eeagrants.org.

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[2] See Centre for Legal Resources' 'Study on access to social housing', 2021, available at:

https://www.crj.ro/wp-content/uploads/2021/09/Policy-social-housing_EN.pdf

[3] More information about NCCD available at:

<https://www.cncd.ro/despre-cncd-prezentare-generalala/>

[4] See Decision No 511/20.07.2016 NCCD, available only in Romanian language at: <https://www.cncd.ro/wp-content/uploads/2020/12/hotarare-511-16.pdf>;

Petitioner: European Roma Rights Centre; Respondent: Institution of the Mayor of Reghin, Reghin Local Council. Decision no. 531/27.09.2017 NCCD, available only in Romanian language at: <https://www.cncd.ro/wp-content/uploads/2020/12/hotarare-531-17.pdf>; Petitioner: Desire Foundation; Respondent: Cluj-Napoca City Hall.

[5] NCCD Decision no. 531/2017, challenged by the Municipality of Cluj-Napoca through the Mayor and the Mayor of the Municipality of Cluj-Napoca, was upheld on the merits by the Cluj Court of Appeal through Civil Decision no. 86 of 3 April 2018, and remained final following the resolution of the appeal by the High Court of Cassation and Justice by Decision no. 6273.

[6] **Law No 116/2002** on preventing and combating social marginalisation states that:

(2) Central and local public institutions are obliged to establish measures and carry out actions to combat social marginalisation (Art. 4), and that Depending on the level of income established in Art. 23, local councils are obliged to identify individuals and families in this situation and to establish individual measures to prevent their social marginalisation (Art. 24).

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Endnotes

[7] According to EUROSTAT, Romania ranks first in the EU in terms of poverty risk, and these groups, together with the rural population, are disproportionately affected by poverty.

[8] World Bank. Achieving Roma Inclusion in Romania: What Does It Take?. Washington, DC, 2014, p. 12, available at: <https://openknowledge.worldbank.org/handle/10986/18663>

[9] European Union Fundamental Rights Agency, Fundamental Rights - Report 2018, Luxembourg: Publications Office of the European Union, 2018, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-fundamental-rights-report-2018_en.pdf

[10] Council of Europe, Fighting school segregation in Europe through inclusive education: a position paper, 2017, available at: <https://rm.coe.int/fighting-school-segregation-in-europe-through-inclusive-education-a-posi/168073fb65>

[11] See the study “Non-discrimination in Education. An analysis of the current situation from a non-discrimination perspective in multiple sectors of the Romanian educational system”, Centre for Legal Resources, 2020, Summary in English language available at: <https://www.crj.ro/wp-content/uploads/2020/02/Study-on-non-discrimination-English-summary-2020.pdf>

[12] See NCCD Decision no. 156/2018, available only in Romanian language at: <https://www.cncd.ro/wp-content/uploads/2020/12/Hotarare-156-18.pdf> ; Complainant: ROMAJUST - Roma Lawyers Association

[13] We have included here strictly decisions that use the terminology of "anti-social", but there are also a number of decisions with the same restrictive criteria for "convictions following fines for or acts relating to disturbing the peace and public order".

[14] Recommendations in Centre for Legal Resources' Study on access to social housing, 2021, available in English language at: https://www.crj.ro/wp-content/uploads/2021/09/Policy-social-housing_EN.pdf

[15] See the Green Paper on Equality and non-discrimination in an enlarged European Union, Commission of the European Communities, 2004, available in English language at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004DC0379&from=RO>

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