



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Romania
<b>Title:</b>	Court of Appeal maintains NCCD decision on social housing criteria leading to discrimination
<b>Date:</b>	31 January 2018
<b>Expert:</b>	Iordache, Romanița
<b>Update of news report:</b>	<a href="#">Romania - National equality body decision on social housing criteria in Bucharest (PDF 134 kB)</a>
<b>Context</b>	
<b>Issue at stake:</b>	Social housing criteria deemed as discriminatory following ex officio NCCD investigation
<b>Ground of discrimination:</b>	Race/ethnic origin
<b>Source:</b>	National equality body NCCD decision 511 from 20 July 2016, Târgu Mureș Court of Appeal decision 30/2017 from 17 March 2017
<b>Field:</b>	Housing
<b>Applicable law:</b>	Governmental Ordinance 137/2000, Article 2(1), 2(4) and 10 letters a) and h)

### Content

**Case development:** In 2016, the National Council for Combating Discrimination initiated an ex officio investigation against several mayors and county councils by assessing the criteria for social housing. The NCCD found that the criteria established by local councils giving access to social housing de facto limits access of vulnerable categories which actually need it. The NCCD noted that the local administration did not meet its own duties under the burden of proof by failing to provide a justification for the differential criteria which awarded points proportional with the level of education, and where a higher number of points gave priority access to social housing. In relation with the particular case of Reghin municipality, the NCCD found that the points awarded for the level of education were not proportionate with the goal to be achieved and that it caused the exclusion of persons with a low level of education, which lead to indirect discrimination of Roma. The mechanism proposed was of granting 1 point for persons who graduated primary school, 2 points for professional school, 3 points for those with high school studies and 5 points to those with higher education. Consequently, the NCCD fined the municipality with RON 2.000 (approx. € 400) and the obligation to publish a brief of the decision on its website.<sup>1</sup>

Reghin municipality challenged the NCCD decision before Târgu Mureș Court of Appeal, which communicated the reasoning of its decision in January 2018.<sup>2</sup>

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<sup>1</sup> NCCD, decision No 511 of 20 July 2016.

<sup>2</sup> Târgu Mureș Court of Appeal decision No 30/2017 of 17 March 2017.

**Decision of the Court:** In its appeal against the NCCD decision, Reghin municipality argued that the criterion 'level of education' used as a priority criterion in access to social housing does not amount to indirect discrimination of Roma. On the contrary, the municipality claimed that a combination of the three criteria used (level of income, number of children and level of education) read together lead to an affirmative measure. Reghin municipality stated that the criterion 'level of education' pursued the purpose of 'stimulating social inclusion and professional inclusion.' Also, it was argued that deciding on the priority criteria for social housing falls in 'the margin of appreciation and the discretionary powers' of the local authorities.

Târgu Mureş Court of Appeal took into consideration statistical data provided by the NCCD showing that more than 50% of the Roma population did not graduate, compared to Romanians or Hungarians (15%) but also statistical data on the conditions of living of Roma – more than 50% live in spaces of less than 4 sqm for a person, as compared to 10% in the case of other ethnic groups.

While rejecting the request for referral to the Court of Justice of the European Union, the Court of Appeal concluded that the 'criterion level of education limits access to social housing for persons with a lower level of education.' The court highlighted that 'based on the statistical data of the Romanian census regarding the level of education of the different ethnic communities, granting an increasing number of points proportionally with the higher level of education leads to negative consequences in relation to the Roma community, amounting to indirect discrimination.' The court concluded that while for other types of public housing prioritising higher levels of education is useful as this might encourage education, in the case of social housing, such a criterion is not objectively justified.

Reghin municipality appealed the decision before the High Court of Cassation and Justice. No date has been decided for the hearings.

**Key points of analysis:** The court looked into statistical data in order to understand the specificity of the educational and housing conditions of the Roma minority. It concluded that 'eligibility criteria established by local authorities in relation to the level of education or the residence disadvantage poor and vulnerable persons who usually do not have higher education and often times do not have the registration documents required.' The court also stated that 'the right of appreciation of the public authorities does not entail the possibility of acting in an abusive, arbitrary manner, without legal justifications and escaping any control, exercising such powers being under the principle of proportionality.' Consequently, the Court of Appeal rejected the appeal against the NCCD decision.

**Internet link source:** The decision is available in Romanian with the national expert.