

INFORMAL SETTLEMENTS – LEGISLATIVE CHANGES MADE IN THE ROMANIAN LEGISLATION, THROUGH LAW NO. 151/2019, RELATED TO THE EUROPEAN LEGISLATION AND THE PROVISIONS OF THE CONVENTIONS THAT PROTECT THE FUNDAMENTAL HUMAN RIGHTS

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Abstract

The article presents a brief analysis on the current legal regulation of informal settlements in Romania. Since, until July 2019, in Romania the legislation did not regulate informal living, although our state has assumed a number of European and international documents, which directly or indirectly address informal settlements, the Law no. 151 of July 24, 2019 for the completion of Law no. 350/2001 regarding urban and territorial planning.

The purpose I have pursued through the elaboration of this article was to list the main international and European documents referring to informal settlements and to present a concrete situation, which is directly applied to the new legislative regulations adopted by the Romanian Parliament.

Keywords: *informal settlements, informal housing, main international and European documents on informal settlements*

The United Nations provided in art. 25.1. from the Universal Declaration of Human Rights that "every person has the right to a standard of living adequate for the health and well-being of himself and his family, including providing food, housing, medical care and necessary medical services, ..."1.

The Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights consider the home as a cornerstone of the right to a decent standard of living. All the Member States of the European Union have ratified the International Covenant on Economic, Social and Cultural Rights. This is a key document for understanding the responsibilities of governments in terms of respecting housing rights2.

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1 On December 10, 1948, the General Assembly of the O.N.U. adopted and proclaimed the Universal Declaration of Human Rights.

2 Michael Kolocek, *The Human Right to housing in the 27 Member States of European Union*, în European Journal of Homelessness, Volume 7, No.1 August 2013.

Although the European Convention for the Protection of Human Rights does not explicitly refer to the right to housing, it does provide the framework for deriving this right in subsequent conventions, treaties and agreements³. These provisions relate to the protection of property (Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms), the right to respect for private and family life (Article 8 of Section I: rights and freedoms) and the prohibition of discrimination (Article 14 from section I: Rights and freedoms). Specifically, Article 8, which also protects the "right to respect for the home", includes, inter alia, the right of access, the right to occupy and the right not to be expelled or evicted without providing relevant guarantees⁴.

Currently, informal living is a phenomenon that is affecting large-scale communities around the world. Informal living in Central and Eastern Europe has spread in the context of the abrupt transition from planned economies to market economies, which has created a legislative vacuum and a discredit of "planning" itself as a process of organizing life in communities⁵. From the studies carried out and the analyses in the field, the phenomenon of informal living in Eastern Europe, and even in Romania, is expanding⁶. The latest Report prepared in this regard in Romania⁷, has the role of highlighting the size and urgency of informal housing problems, substantiating the need for adjustments to the regulatory framework, to allow solutions, as well as documenting the modalities of extension and manifestation of informal housing (community local and county practices).

³ *** OSCE/ODIHR 2013, *Best Practices for Roma Integration* Regional Report on Housing Legalization, Settlement Upgrading and Social Housing for Roma in the Western Balkans, February 2014.

⁴ European Convention on Human Rights", Council of Europe, 1 June 2010, pp. 10, 12 and 31, <http://www.echr.coe.int/Documents/Convention_ENG.pdf>.

⁵ Explanatory statement of the Law no. 151/2019 for the amendment of Law no. 350/2001 regarding urban and territorial planning.

⁶ The PACT and MKBT Foundation: Make Better launches the project "No man's land: informal living in the Roma communities - recognition, responsibility and shared solutions". At the time of launching the No Man's Land project (2017), the phenomenon of informal living was very little known and debated at the level of public opinion in Romania. The first discussions on the topic of informal settlements were held since 2007, within the Working Group on the issue of Roma housing, at the Ministry of Development, Public Works and Housing. The only national research on the topic of informal housing - *Analysis of informal settlements in Romania - assessment of the current situation in order to formulate regulations and intervention instruments* - was coordinated, during 2013-2014, by the Ministry of Regional Development and Public Administration (MDRAP). According to this study, based on the answers provided by only 53% of UATs, almost half of the localities in Romania have at least an informal settlement. The research noted that there would be 50,000 homes and about 64,000 families located in informal settlements in 2013, but the reality in the field is much worse, and the phenomenon is growing.

⁷ ***Research report of the project "No Man's Land": *Informal housing in Roma communities - recognition, responsibility and common solutions*, The project is supported by a grant from the Foundation Open Society Institute in cooperation with the Roma Initiatives of the Open Society Foundations, August 1st, 2017- January 31st, 2019

Romania is a member of several European and international structures and has ratified several books and strategic documents very relevant in the field of housing. Compliance with these general guidelines implies the integration in the national legislation and programs of the institutional principles and actions to which it has subscribed⁸, as follows:

➤ The Vancouver Declaration on Human Settlements⁹ was signed following the Habitat I Conference, the first UN Conference on Human Settlements, held in Vancouver, Canada in 1976. The conference was convened by the UN as governments began to recognize the size and the consequences of rapid urbanization;

➤ The Istanbul Declaration on Human Settlements and the Habitat 2 Agenda were part of HABITAT II, the second UN Conference on Human Settlements¹⁰;

➤ The Millennium Declaration was adopted by the UN Member States in September 2000¹¹;

➤ The Andria report on housing policy and regional policy was approved by the European Parliament on May 10, 2007, being drafted by the rapporteur Alfonso Andria, from the Committee for Regional Development¹²;

➤ The European Charter on Housing, adopted by the Intergroup for Urban Habitat of the European Parliament on 26 April 2006, defines living as a central part of life, a fundamental social right that supports the European social model and a source of human dignity¹³;

➤ The Vienna Declaration on informal settlements in south-eastern Europe aimed at reaching joint agreements on actions that (a) regulate (legalize) and improve informal settlements in a sustainable manner and (b) prevent the development of illegal settlements in the future;

➤ The Leipzig Charter on the Sustainable Development of Cities is a document of the EU Member States, adopted by the ministers responsible for urban development in the Member States and elaborated with the broad and transparent participation of stakeholders at European level;

➤ The meeting of the European ministers in the field of housing in Marseille (2008) represented the 17th meeting of the ministers of the European Union with

⁸ *** The World Bank, Romania Regional Development Program, *Armonizarea investițiilor publice - Componenta 4: Raport final - Locuirea în România - Prioritizarea programelor și proiecte*, București, 2015.

⁹ Habitat I refers to the first United Nations Conference on human Settlements, in Vancouver, Canada, 31 May -11 June 1976.

¹⁰ Habitat, "The Habitat Agenda: Istanbul Declaration on Human Settlements", 3-14 iunie 1996. <http://www.un.org/ga/Istanbul+5/declaration.htm>

¹¹ ONU, <http://www.un.org/millenniumgoals/>

¹² European Parliament, "Report: On Housing and Regional Policy (2006/2108 (INI))" March 29, 2007.

¹³ Urban housing, proposal for a European housing charter (Urban Logement, "Proposal of a European Charter for Housing", April 4, 2006).

responsibility in the field of housing, as part of the informal regional policy council;

➤ The European Social Charter (Revised, 1996, European Treaties Series no. 163) was signed by Romania in 1997 and ratified by Law 74/1999. Part II (Article 31) of the Charter explicitly provides for the right to housing.

Among the determining factors that are presented in the Report of the UN Economic Commission for Europe 2016, there are: restitution and privatization of land, privatization of socialist public housing stock, withdrawal of the state from the planning and housing sectors¹⁴, shifting responsibility from the state to the private sector, decentralization and transfer of responsibilities for local urban development to the local administration.¹⁵

The Romanian Parliament adopted Law no. 151 of July 24, 2019 for the completion of Law no. 350/2001 regarding urban and territorial planning¹⁶, which defines the informal settlement, but also clarifies and details the responsibilities of central and local public authorities in relation to the recognition of the phenomenon, introduces provisions regarding the identification and delimitation of inhabited perimeters under natural or biological risk, clarifies and completes the legal provisions regarding the processes of consultation and participatory planning, introduce provisions regarding the implementation of a financing program aimed at improving the capacity of local public authorities and communities for limiting and solving the problem, etc.

According to the changes recently introduced by Law no. 151/2019, within 180 days from the entry into force of the law (29.07.2019), “the mayor of the administrative-territorial unit in the territorial area in which such informal settlements are identified, has the obligation to proceed with the identification of the lands within the administrative territory occupied by the informal settlements, setting their limits, when developing and updating the database on the number of persons living in these settlements and the occupied buildings, as well as informing the inhabitants of the informal settlements and initiating a consultation process and participatory planning”.

¹⁴ Marilena Marin, Gabriela-Liliana Vulpoiu, „Operațiuni de carte funciară în procedura execuțională civilă. Aspecte comparative între legislația națională și cea europeană” (*Land Register Operations in Civil Enforcement Procedure in the Light of the New Civil Procedure Code*), paper published in *Revista Română de Executare Silită (Romanian J. Compulsory Execution)* nr. 2/2013, Universul Juridic Publishing House, Bucharest, 2013, pp. 40-48.

¹⁵ Marilena Marin, THE CADASTRAL AND JUDICIAL RECORD, AS WELL AS THE APPROVAL OF CADASTRAL WORKS IN ROMANIAN LAW, DOI: 10.5593/SGEM2016/B23/S11.061, 16th International Multidisciplinary Scientific GeoConference SGEM 2016, www.sgem.org, SGEM2016 Conference Proceedings, ISBN 978-619-7105-60-5 / ISSN 1314-2704, June 28 - July 6, 2016, Book2 Vol. 3, pp. 479-486.

¹⁶ Law no. 151 of July 24, 2019 for the completion of Law no. 350/2001 regarding urban and territorial planning, Published in the Official Gazette no. 623 from July 26, 2019.

❖ Case study

Related to the informal settlements to which the legislative text refers, such a case is represented by the situation of 150 people who have received evictions because they live, without legal forms, in an area outside the city of Năvodari. In this regard, the media reported that "Năvodari City Hall, in collaboration with the Local Police and the National Police, carried out, on 18.08.2019, a joint verification action in the area - Wooden warehouse - to identify the people living. Without legal forms. As a result of the control action, 32 eviction orders were sent, about 150 persons being targeted, who could not prove ownership of the land and occupied buildings".

Reported to the situation provided by the media, the People's Advocate Institution has self-notified and conducted an investigation at the Năvodari City Hall. Thus, from the analysis of all the documents presented by the representatives of the local authority, it was found that prior to issuing the evacuation orders, the local authority did not act in the sense of implementing a coherent action plan, dedicated to this informal settlement, located within the radius of the territorial administrative unit Năvodari, which should have provided for operational, urban and cadastral measures necessary to improve the living conditions of the inhabitants of the informal settlements.

At the same time, according to the legal provisions provided in article no. 271 para. (2), of Law no. 151/2019, the mayor had to inform the residents of this informal settlement about the provisions of this law and to initiate a process of consultation and participatory planning, in order to identify intervention solutions tailored to the specific of the informal settlement and community needs. The mayor of Năvodari City did not proceed to identify the lands within the administrative territory occupied by the informal settlement by establishing its limit.

As the eviction orders were communicated before the fulfillment of the obligations provided by Law no. 151/2019, these contradict the provisions of the law applicable in this case. It was found that at the level of the U.A.T. Năvodari the provisions of Law no. 151/2019 and legal measures are required regarding compliance with the provisions provided by art. 47 paragraph (1) of the Romanian Constitution "The state is obliged to take measures of economic development and social protection, which can provide citizens with a decent standard of living".

Pursuant to the attribution provided by article 154 para. (1) of the Government Ordinance no. 57/2019 The administrative code, according to which the mayor ensures the observance of the fundamental rights and freedoms of the citizens, the provisions of the Constitution, as well as the implementation of the laws, the decrees of the President of Romania, the ordinances and decisions of the Government, the decisions of the local council, the mayor should be to dispose, according to the express provisions provided in Law no. 151 of 2019, the following:

- a) legal measures for the elaboration and implementation of a coherent action plan, dedicated to this informal settlement, within the territorial administrative unit of Năvodari;
- b) to initiate processes of consultation and participatory planning, in order to identify the intervention solutions adapted to the specific of the informal settlement and the needs of the community, respectively to support the inhabitants, in order to obtain a right to own the occupied lands;
- c) modification of existing public investment programs with specific measures for this informal settlement;
- d) offering alternative housing solutions, by relocating households.

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