A. NCCD case-law with respect to discrimination on the basis of ethnic origin

N	NCCD decisions finding a violation of anti-discrimination law and sanctions imposed (on the basis of ethnic origin –Roma) 2020-2022													
								Sanctions						
Decision	Year	DD ¹	H ²	MD^3	V ⁴	Wr ⁵	F ⁶	Rec ⁷	Pub ⁸	Area				
no. 89	2020	1					7000			Housing segregation				
11	2020	1				1	. 000	1		Discriminatory speech				
12	2020	1				1		1		Discriminatory speech				
746	2020	1				1				Discriminatory speech				
856	2020	1					2000	1	1	Discriminatory speech caricature				
179	2020	1				1				Discriminatory speech press article				
690	2020			1			2000			Discriminatory speech				
348	2020	1				1				Employment				
168	2020	1				1		1		Discriminatory speech				
178 487	2020	1				1				Discriminatory speech				
511	2020	1					2000			Discriminatory speech				
498	2020	1					4000			Education speech transport public school				
300	2020	1				1				Discriminatory speech				
504	2020	1					6000	1		Education. Segregation				
580	2020		1				5000			Employment profession				
436	2020	1				1		1		Local authority. Prohibition music				
457	2020	1				1		1		Discriminatory speech Facebook				
629	2020			1			2000			Education discriminatory speech teacher				
90	2020	1					20000	1		Discriminatory speech				
513	2020	1				2				Discriminatory speech				
61	2020	1					20000	1		Discriminatory speech				
635	2020	1				1				Discriminatory speech Facebook				
61	2020	1					20000	1		Discriminatory speech				
635	2020	1				1				Discriminatory speech Facebook				
Decision no.	Year	DD _a	H ¹⁰	MD ¹¹	V ¹²	Wr ¹³	F ¹⁴	Rec 15	Pub 16	Area				

¹ DD – Direct or indirect discrimination.

² H - Harassment

³ MD – Multiple discrimination ⁴ V - Victimization

V - Victimization
 Wr - Warning
 F - Fine in Romanian currency (RON)
 Rec - Recommendation
 Pub - Publishing of the NCCD decision
 DD - Direct or indirect discrimination.

¹⁰ H - Harassment

¹¹ MD – Multiple discrimination

¹² V - Victimization

¹³ W - Warning

¹⁴ F – Fine in Romanian currency (RON)

854	2020	1		1		1		Discriminatory speech Facebook
819	2020	1		1				Access public places
394	2020	1			5000			Discriminatory speech Facebook
441	2020	1			6000			Discriminatory speech Facebook
81	2021	1		1		1	1	Discriminatory speech press article
241	2021	1			2000			Discriminatory speech
204	2021	1			6000	1	1	Discriminatory speech press article
880	2021	1			3000		1	Discriminatory speech
442	2020	1			6000			Discriminatory speech
205	2021	1			2000			Discriminatory speech
239	2021	1			2000			Discriminatory speech
181	2021	1		1		1	1	Discriminatory speech press article
609	2021	1			2000		1	Discriminatory speech press article
507	2021	1			2000			Discriminatory speech
802	2021	1			5000			Discriminatory speech
824	2021	1			2000			Education discriminatory speech teacher
270	2021	1			2000			Discriminatory speech Facebook
648	2021	1		1		1		Employment
353	2021	1		1				Discriminatory speech
866	2021	1			1000			Discriminatory speech
522	2021	1		1				Discriminatory speech
850	2021	1		1				Discriminatory speech
43	2022	1			5000			Discriminatory speech Facebook
54	2022	1			3000			Discriminatory speech press article
61	2022	1			10000 10000		1	Discriminatory speech
95	2022	1		1		1		Social housing. Requirements
96	2022	1				1		Social housing. Requirements
160	2022		1	1				Discriminatory speech
188	2022	1			2000		1	Public announcement rent of housing
255	2022	1		1			1	Discriminatory speech
261	2022	1			5000			Discriminatory speech
266	2022	1			5000			Social housing. Requirements

The High Court of Cassation and Justice endorsed a number of decisions adopted by the National Council for Combating Discrimination following complaints raised by civil society organizations on Roma issues. Among other, for example:

Rec – Recommendation

16 Pub – Publishing of the NCCD decision

- Civil decision no. 580/2022¹⁷, the High Court of Cassation and Justice admitted the appeal of the CNCD against sentence no. 11/2021 pronounced by the Court of Appeal of Iasi, by which it annulled the NCCD decision no. 504/17.06.2020. NCCD ruled that school segregation of Roma students represents discrimination and sanctioned the County School Inspectorate with a fine of 4000 lei. The Court of Appeal annulled the NCCD decision considering the fact that there was an amicable agreement between the parties. The supreme court rejected the argument and held that "the procedure for trading the claims brought to the judgment can only be carried out before the NCCD, before the pronouncement of a decision, considering that after the facts of discrimination have been established, the public interest takes precedence, and on the other hand, the superior interest of the child intervenes who has been subjected to acts of discrimination, and this prevails over other interests when measures are taken regarding the child, which has distinct needs and rights".
- Civil decision no. 1529/2021 the Supreme Court¹⁸ endorsed the NCCD decision no. 156/11.04.2018 finding that it is discriminatory to condition the granting of social housing on the existence of outstanding debts to the local budget and to public utility providers. The Supreme Court stated that such a condition is not necessary nor adequate nor objectively justified in respect with the provision of social housing addressed to families that cannot afford access to a home or renting such home in the conditions of free market due to their economic situation.
- Civil decision *no.* 1309/2021 the Supreme Court¹⁹ endorsed, on procedural grounds, the NCCD decision no. 489/11.12.2018 finding that it is discriminatory the exclusion from granting emergency aid for families or single individuals in situations of necessity due to debts to the local budget.
- Decision no. 6749/2020 the Supreme Court²⁰ endorsing the NCCD decision no. 662/26.10.2016 finding discrimination on the basis of ethnic origin in relation to the owner and administrator of an advertising website that did not filter ads for sale discriminating towards Roma people. The Supreme Court held that the expressions found in the advertisements in question ('excluded for gypsies', 'excluded Roma') can be interpreted no other than as an impermissible exclusion of Roma citizens from accessing those ads and of being able to become potential bidders or even buyers, simply because they belong to a certain ethnicity. By its action of not censoring the publication of advertisements with such content, it is beyond doubt that the respondents participated in the commission of an act of discrimination, not only from the perspective of restricting access to the services offered to Roma people, but also from the perspective of creating a hostile, degrading and humiliating atmosphere against that ethnic group"21. The High Court stated that "through the car sales announcements which, by their content, exclude expressis verbis persons of Roma ethnicity, advertisements situated in the paradigm of the 'language of hatred', there is an obvious violation of the right to dignity of an ethnic group, through the prohibitions established precisely on account of the origin of a person of that ethnicity, which cannot be

¹⁸ High Court of Cassation and Justice, Civil decision no. 1529 from 11.03.2021 available on the website of the High Court. The initial complaint was lodged before the NCCD by the Association of the Roma Lawyers Romajust.

High Court of Cassation and Justice, Civil decision no. 1309 from 03.03.2021 available on the website of the High Court. The initial complaint was lodged before the NCCD by the Association of the Roma Lawyers Romaiust.

High Court of Cassation and Justice, Civil decision no. 6749 from 11.12.2020 available on the website of the High Court. The initial complaint was lodged before the NCCD by the Association Center of Legal Studies and Human Rights.

¹⁷ High Court of Cassation and Justice, Civil decision no. 580 from 2.02.2022 available on the website of the High Court. The initial complaint was lodged before the NCCD by the Pro Europe Roma Party Association.

²¹ High Court of Cassation and Justice, Civil decision no. 6749 from 11.12.2020 available on the website of the High Court.

perceived other than as a hostile, defamatory attitude"22.

- Decision no. 1015/2020, the High Court of Cassation and Justice upholding the NCCD decision no. 769/07.12.2016 by which it found discrimination on the basis of ethnic origin in connection with school segregation of Roma children. The High Court held that the court of first instance did not take into account the provisions of Art. 3 of the International Convention on the Elimination of All Forms of Wage Discrimination, Art. 14 of the European Convention on Human Rights, Art. 1 of Protocol No. 12 to the European Convention on Human Rights, General Recommendation XXVII on discrimination against Roma of the Committee on the Elimination of Racial Discrimination, the acts of the European Union that have already been mentioned, but also the provisions of Article 4 para. (2) of the Constitution of Romania. According to the Court, the documents in the case file showed that the students who lived in Roma neighbourhood were assigned to the C Corps, although two more buildings were available for primary education. The High Court concluded that the respondents did not manage to address the problem of segregation of Roma children, through desegregation measures, but on contrary the situation had been continuous, which is an aggravated form of discrimination. The respondents did not adopt measures as indicated in Article 7 from the Annex of the Order no 1540/2007 prohibiting school segregation, did not adopt a desegregation plan on the basis of agreement and in cooperation with local authorities and parents. These arguments allowed for the conclusion that the facts of the case were in violation of the anti-discrimination law, and thus school segregation of Roma children amounted to discrimination²³.
- Decision no. 996/2020, the High Court of Cassation and Justice²⁴ upholding on procedural grounds the NCCD decision no. 511/20.07.2016 finding that the score set for the level of education for granting social housing is not proportionate to the aim pursued and has the effect of excluding persons who have a low level of education from their access to social housing, which constitute indirect discrimination towards Roma members.

Other Court rulings on Roma related cases and discrimination issues

- Through its decision no. 441 from 15.11.2011 the National Council for Combating Discrimination found a violation of the anti-discrimination law in respect with the evacuation and the relocation of the Roma applicants near the garbage dump of the Cluj Napoca city. NCCD sanctioned the Mayor of the city with a warning, a fine in amount of 2000 lei, and a fine in amount of 6000 lei and issued a recommendation for the municipality to ensure appropriate standards. The NCCD decision has been challenged before the Court of Appeal in Cluj Napoca by the Municipality and subsequently before the High Court of Cassation and Justice. Through its civil sentence no. 145 from 27 February 2012, the Court of Appeal rejected the complaint on procedural grounds. The decision was further challenged before for Supreme Court. Through its civil decision no. 5443 from 28.05.2013, High Court of Cassation and Justice rejected the appeal. Although, the decision was related to procedural aspects only, the NCCD decision has been implicitly legitimised.
- In respect with the Municipality in Cluj Napoca and the policy on access to social housing, through its decision no. 531 from 27.09.2017, NCCD found that imposing more favourable criteria's related to the level of higher education (university and post university level) of the applicants in comparison with applicants without education, with a lower level of education or with disabilities amounts with discrimination of vulnerable groups such as people without education or people with disabilities. The Municipality challenged the decision of the NCCD but the Court of Appeal from Cluj Napoca rejected the complaint by civil sentence no. 86 from 03 April 2018. Through its civil decision no.

²² Ibid.

²³ Ibid.

²⁴ High Court of Cassation and Justice, Civil decision no. 996 from 20.02.2020 available on the website of the High Court. The initial complaint was lodged before the NCCD by the European Roma Rights Centre.

6273 from 25 November 2020, the High Court of Cassation and Justice further rejected the appeal of the Municipality. Therefore the decision of NCCD have been endorsed to be legal.

- By decision no. 439 from 15 November 2011, the National Council for Combating Discrimination held that a wall erected in Baia Mare municipality separating Roma and non-Roma population was in violation of the anti-discrimination law and 2 fines have been enacted in the amount of 2000 lei and 4000 lei. Although the fines have been paid in full by the local authority, the NCCD decision has been subsequently challenged before the Court. In the first instance, through civil sentence no. 141 from 24 February 2012, the Court of Appeal nullified the NCCD decision though NCCD appealed the decision before the Supreme Court. By civil decision no. 6402 from 27.09.2013, the High Court of Cassation and Justice admitted the appeal and rejected the initial complaint of the local authority and thus held the decision of the NCCD finding discrimination to be lawful. Following a complaint from a civil society organization in respect with the wall in Baia Mare, by decision no. 89 from 29.01.2020, the NCCD held that further maintaining the wall constituted a violation of the anti-discrimination law and imposed a fine in the amount of 7000 lei against the municipality, by its mayor. The NCCD decision has been challenged by the municipality. The Court of Appeal of Bucharest, through its civil sentence no. 120 from 4 February 2021, rejected the municipality's complaint. The Court of Appel judgment has been appealed before the High Court of Cassation and Justice by the municipality and the hearings on the case are set for early 2023.
- By its decision no. 454 from 19.11.2018, the National Council for Combating Discrimination held that the eviction of a group of persons, belonging to a vulnerable group, from 33 studios privately owned by the local council, without granting an alternative accommodation, constitutes a form of direct discrimination on the grounds of belonging to a disadvantaged social group and ethnic origin (Roma), violating the right to housing. NCCD imposed a fine in the amount of 5000 lei. The Bucharest Court of Appeal rejected the proceedings brought by the representatives of the Municipality and of the Local Council. The judgment was further appealed in front of the High Court of Cassation and Justice. The case is still pending.
- According to the civil society organizations (European Roma Rights Centre and RomaJust) involved in litigating on behalf of Roma individuals that have been subject to evacuation, the first instance Court in Constanta ruled on 1st June 2016 that the demolition of the Roma housing was unlawful and ordered the municipality to provide victims with adequate alternative housing²⁵. On 11th March 2021, the Constanta Tribunal ruled that the Mayor of Eforie and the Administrative Territorial Unit of Eforie are obliged to pay a penalty of approximately €20 per day to each person who was victim of this eviction. The compensation is applicable for every day the people were left homeless since 11th April 2017, and will continue until the authorities satisfactorily implement the 2016 judgment to rehouse the Roma families who were evicted in 2013. The judgment also states that the Mayor's Office has to provide one house for each evicted family²⁶. On 8 July 2021 the Court of Appeal in Constanţa has confirmed the previous judgment of the Constanta Tribunal and ruled that the Mayor of Eforie and the Administrative Territorial Unit of Eforie must pay a sum of approximately €36,000 to each Romani person evicted from Agricola Street in 2013, as well as provide social housing for each family. There are twelve people represented in the case, meaning the total cost to the Eforie authorities (minus the housing costs) will

compensate-and-rehouse-roma

²⁵ European Roma Rights Centre, Municipality Ordered to rehouse Roma evicted from Eforie, http://www.errc.org/press-releases/municipality-ordered-to-rehouse-roma-evicted-from-eforie-in-2013.

²⁶ European Roma Rights Centre, RomaJust, Romanian Court orders authorities in Eforie to compensate and rehouse Roma, <a href="http://www.errc.org/press-releases/romanian-court-orders-authorities-in-eforie-to-press-releases/romanian-court-orders-au

be approximately €432,000²⁷.

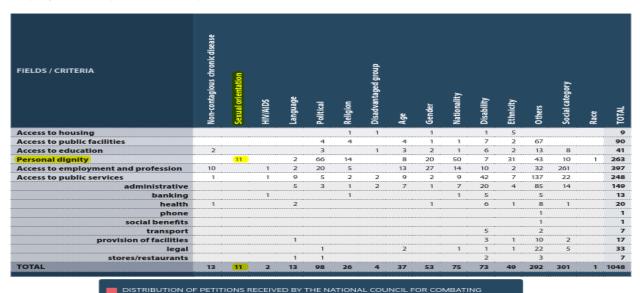
²⁷ European Roma Rights Centre, RomaJust, Romanian city of Eforie ordered to pay over 430.000 EUR for evicting Roma in 2013, http://www.errc.org/press-releases/romanian-city-of-eforie-ordered-to-pay-over-EUR-430000-for-evicting-roma-in-2013.

B. NCCD case-law with respect to discrimination on the ground of sexual orientation

CRITERIA	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Non-contagious chronic disease	0	0	6	2	3	2	4	2	0	1	6	9	9	5	8	10	6	8	8	13
Sexual orientation	1	5	6	9	6	7	6	6	4	8	3	13	9	3	8	17	13	13	11	11
HIV Infection	0	1	15	10	5	3	7	1	3	1	5	4	3	4	4	8	4	6	7	2
Language	0	2	1	2	2	7	11	13	16	10	43	38	27	27	25	12	17	20	26	13
Beliefs	4	12	23	19	8	10	14	13	4	2	15	14	13	4	20	6	22	15	24	98
Religion	2	9	9	11	8	12	15	6	6	5	5	11	18	14	7	12	11	17	138	26
Disadvantaged group	2	0	10	6	4	26	22	9	7	14	10	13	25	26	5	2	9	6	13	4
Age	6	11	14	17	10	10	24	10	9	16	5	18	21	22	31	31	29	35	38	37
Gender	3	14	13	9	11	22	32	9	18	15	21	31	46	28	29	19	43	29	30	53
Nationality	1	12	21	39	20	39	54	28	42	33	49	61	49	36	30	64	56	80	83	75
Disability	3	31	18	21	20	70	55	49	38	42	45	42	57	56	83	74	81	87	90	73
Ethnicity	34	66	45	85	69	82	62	62	54	62	61	66	42	61	81	53	52	48	92	49
Others	52	184	108	61	132	32	159	96	83	81	69	121	127	147	194	114	177	153	220	292
Race	0	0	1	1	2	0	0	2	1	0	0	3	2	1	3	2	0	1	1	1
Social category	26	126	63	90	132	514	372	222	193	175	211	414	328	318	314	258	302	386	258	301
TOTAL	134	473	353	382	432	836	837	528	478	465	548	858	776	752	842	682	822	904	1039	1048

DISTRIBUTION OF PETITIONS RECEIVED BY THE NATIONAL COUNCIL FOR COMBATING
DISCRIMINATION DURING THE 2002-2021 PERIOD, ACCORDING TO DISCRIMINATION CRITERIA

The complaints addressed to NCCD in 2021 and 2020 regarded the right to personal dignity in relation with sexual orientation. Only one complaint per each year was implicitly related to employment or profession aspects. For details see 2021 and 2020 NCCD annual reports.



- Currently, 10 complaints from 2022 relating to discrimination on the ground of sexual orientation are pending before the National Council for Combating Discrimination.
- 3 complaints relating to discrimination on the ground of sexual orientation have been rejected by NCCD in 2022, on procedural grounds (complaints not fulfilling the formal requirements in line with the complaint procedure before the NCCD)
- In respect to one complaint, in 2022 NCCD found that public statements made in regard to members of the LGBT community amounts with discrimination, affected personal dignity and imposed a written warning against a member of the Parliament.
- By decision no. 723 of 06 October 2021, NCCD held that the supervisor's attitude towards the employee, expressed by using some offending expressions, an obscene and deprecating language, also on a social network that includes the company workers, respectively the members of the employee's own team, in relation to the employee's alleged sexual orientation, represents an act of discrimination. The passive attitude of the employer in relation to the supervisor's attitude and lack of any action taken towards the degrading, humiliating and offensive framework built on the job represents an endorsement of the discriminatory behaviour applied to work relations and an

- aggravating circumstance for discrimination. NCCD ordered an administrative sanction against the employer and the supervisor by applying a fine amounting to 5,000 lei, respectively 2,000 lei.
- By decision no. 625 from 01.09.2021, NCCD found a violation of the anti-discrimination law partially, in respect with the refusal of a private company to grant acces to a casino for a person on the basis of sexual orientation. NCCD imposed a warning against the company.
- By decision no. 836 from 21.11.2021, NCCD found that various posts on social media
 relating to the context of University related activities and in respect to sexual orientation
 issues amounted with discrimination. NCCD imposed a warning against the legal person
 posting respective messages and recommended to avoid using in the future language
 that may have be offensive or humiliating.
- By decision no. 629 from 16.09.2020, NCCD held that negative statements made by a professor from a national college relating to the ethnic background or sexual orientation of students amounted with discrimination, affected personal dignity and imposed a pecuniary sanction of 2000 lei.
- By decision no. 421 from 20.05.2020, NCCD held that negative statements made during a TV debate relating to persons that belong to the LGBT community amounted with discrimination, affected the personal dignity and imposed a pecuniary sanction of 2000 lei.

B. NCCD case-law in respect to discrimination on the basis of trade union membership

NCCD	NCCD decisions finding a violation of anti-discrimination law and sanctions imposed (on the basis of trade union membership) 2020-2022								ed	
		•				nation			tions	
No. decision	Year	Area	DD ²⁸	ID ²⁹	H ³⁰	MD ³¹	Wr ³²	Fine ³³	Rec ³⁴	Pub ³⁵
818	2020	Different tratament due to membership to trade union	1				1		1	
852	2020	Discriminatory granting of professional grade based on status of leader of trade union, by receiving higher points	1				1			
849	2020	Different treatment related to reduction of activities and suspension of contract in absence of objective grounds	1				1		1	
275	2021	Different tratament in respect to work contract amendments for employees with a diferent political opinion of trade union membership			1		1			
611	2021	Different treatment based on sex and age at work place				1		2000		1
383	2021	Dismissal of contract by the management for highlighting non- compliance with regulations on COVID patients				1	1			
No. decision	Year	Area	DD ³⁶	ID.	Н.	MD.	Wr.	Fine	Rec.	Pub.
489	2021	Different treatment in respect with establishing the length of work contract, on the basis of age and former work status	1				1		1	
502	2022	Different treatment in respect with salary increase on the basis of harmful work conditions	1				1			

²⁸ DD – Direct discrimination

²⁹ ID – Indirect discrimination

³⁰ H - Harassment

³¹ MD – Multiple discrimination

³² Wr – Warning

³³ Fine – fine in Romanian currency (RON)

³⁴ Rec – Recommendations

³⁵ Pub – Publishing the decision of the NCCD

³⁶ DD – Direct discrimination, ID – Indirect discrimination, H – Harassment, MD – Multiple discrimination, Wr – Warning, Fine, Rec – Recommendations, Pub – Publishing the decision of the NCCD

383	2022	Condition in the	1	1	
		election of trade union			
		representative on the			
		ground that the person			
		shall not be a trade			
		union member			

Number of complaints decided by the NCCD relating to alleged discrimination on the basis or relating to trade union membership 2020-2022 Year No of Violation Violation not Rejected on Complaints Year pending found procedural complaints found decided grounds

No. decision	Year	NCCD decision finding a violation of the anti-discrimination law
818	2020	https://www.cncd.ro/wp-content/uploads/2021/01/Hotarare-818-2020-1.pdf
852	2020	https://www.cncd.ro/wp-content/uploads/2021/03/hotarare-852-2020.pdf
849	2020	https://www.cncd.ro/wp-content/uploads/2021/02/hotarare-849-2020.pdf
275	2021	https://www.cncd.ro/wp-content/uploads/2021/05/Hotarare-275-2021.pdf
611	2021	https://www.cncd.ro/wp-content/uploads/2021/10/Hotarare-611-2021.pdf
383	2021	https://www.cncd.ro/wp-content/uploads/2021/08/Hotarare-383-2021.pdf
489	2021	https://www.cncd.ro/wp-content/uploads/2021/09/hotarare-489-2021.pdf