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The Deprivation of Access to Social Housing as an Invisible Penal Sanction: A Comparative Analysis Across Western Countries

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Abstract: Criminological literature has increasingly highlighted how imprisonment constitutes a long-term barrier to securing stable housing, leaving formerly convicted persons dependent on sporadic support services or at risk of homelessness. Across Western welfare states, a growing number of countries impose legal restrictions on the right to social housing as a collateral consequence of conviction, a trend shaped by the broader commodification of public space under global capitalism. This article offers an exploratory normative analysis across nine jurisdictions (the United States, England and Wales, Spain, Germany, Italy, Poland, Finland, Romania, and France) using the RIMES Instrument, a multidimensional tool designed to quantify the exclusionary impact of penal systems. Our findings reveal a spectrum of exclusion: from jurisdictions with no formal restrictions to those that disqualify individuals based on the nature of the offence committed or even on unrelated offences. We further identify jurisdictions applying automatic disqualification and restrictions that disproportionately affect racialized communities and individuals in vulnerable situations. These findings suggest that social housing policy is increasingly deployed as a mechanism of penal exclusion, situated within the broader criminalization of poverty[3].

Keywords: *Invisible punishments, Social housing, Criminal conviction, Criminal records, Social exclusion.*

1. Social Housing as a Structural Question: The Impact of Penal Sanction on Social Inclusion

The deprivation of civil, political and social rights of convicted and formerly convicted persons as a consequence of the imposition of a sentence, particularly imprisonment, is an increasingly widespread phenomenon. These are not deprivations of rights imposed as principal or accessory penalties related to the nature of the offence committed, nor linked to the conditions of sentence enforcement, but rather deprivations that may arise, mandatorily or discretionally, from the mere fact of having been convicted (Díez-Ripollés, 2014; Love, 2006; Mele & Miller, 2005; Travis, 2002).

These deprivations, referred to in Anglo-American scholarship as the "collateral consequences of conviction", have until recently gone largely unnoticed and have been neglected by criminal justice practitioners, which is why they are also known as *invisible* penal

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sanctions. They are deprivations that arise automatically upon the imposition of the principal sentence – and may outlast its enforcement period – or that emerge from non-criminal legal provisions applied simultaneously with, or subsequent to, the imposition of the conviction (Díez-Ripollés, 2014; Travis, 2002). Generally, the most commonly cited justification for their application is the need to address the risk of harm to others. However, they do not always bear relation to the nature or gravity of the offence committed, and are in many instances applied indiscriminately, without regard to the particular circumstances of the person or their conduct (Bennett, 2017; Contreras-Román, 2021; Díez-Ripollés, 2014; Hoskins, 2014; Hoskins, 2018).

Therefore, the collateral consequences of conviction hinder or even deny access to political and social participation and to the benefits of the welfare state. They have been particularly criticized for increasing the risk of reoffending and for being inconsistent with the ideal relational egalitarian principles of justice, as they constitute obstacles to opportunities for developing prosocial life projects and maintaining or building family and community ties (Brown, 2020; Contreras- Román, 2021; Travis, 2022). Rather than sanctions, they may be defined as administrative measures of social control exercised by diverse State bodies and authorities (Díez-Ripollés, 2014). Contrary to the political-criminal model of social inclusion (Díez-Ripollés, 2024), they reinforce the exclusionary effects of exposure to penal control in general, and of imprisonment in particular (Burnett & Maruna, 2004; Langan & Levin, 2002; Martí & Cid, 2013; Valentine & Redcross, 2015).

Among other social rights, the desocializing effects of these measures can be identified in access to public or social housing. That is, government-owned dwellings or publicly subsidized dwellings created to provide affordable housing for people who lack sufficient resources to rent or purchase adequate housing at market prices, an issue of relevance given the growing commodification of public and urban space. Research on inequality and social exclusion points to the resurgence of monetarist and *laissez-faire* economic doctrines as an alternative to the welfare state within the most industrialized Western societies, following the economic and social crisis of the 1970s (Offe, 1990). Capitalism has transformed space into a commodity of constant reproduction and accumulation (Harvey, 1985). This logic implies that housing availability and land access are determined not by social need, but by market profitability. Examples include the promotion of private housing by real estate and banking groups through mortgage credit, or the creation of regulatory frameworks that privilege large corporations (Agulles-Martos, 2019; Castro-Martínez, 2022).

Under speculative dynamics, land privatization and rezoning processes produce a hierarchization of uses that generates residential exclusion for particular social groups (Vacas-Mora, 2022). This trend is not marginal; it is expressed in the *residualization* of social housing – a process whereby the social rental stock is reduced to a marginal position within the total housing supply. As Vincze (2024) shows in Central and Eastern Europe, particularly Romania, reintegration into the global capitalist economy as an emerging market dismantled socialist mixed housing regimes and pushed social housing to urban peripheries, producing and *racializing* a social category of those deemed unfit for housing. This process of residualization and racialized residential exclusion intersects with another structural barrier

International e-Journal of Criminal Sciences

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documented in criminological research: incarceration generates long-term barriers to stable housing, with a criminal record further compounding this disadvantage.

In the United States context, formerly convicted persons are ten times more likely than the general population to experience homelessness. Upon release, they tend to rely on temporary accommodation, and rates are particularly high among Black and Hispanic women. Indeed, those who experience cycles of incarceration – often described as "the revolving door of prison" – are twice as likely to lack stable housing compared to those returning from a first custodial sentence (Couloute, 2018). In England, some studies indicate that 22% of single homeless people who do not meet the priority need criteria for local authority housing have a criminal record, as this can be a ground for refusal (Homeless Link, 2015). When such services report refusing applicants on the grounds that their needs are too high or too complex, this typically refers to a combination of factors, including a history of mental health diagnoses, experiences of domestic abuse, drug dependency, dual diagnosis, and a history of offending (Prison Reform Trust, 2026).

Similar findings have been reported elsewhere. In Australia, Baldry, McDonell et al (2006) found that prior incarceration is associated with precarious housing conditions and reoffending or reincarceration, in combination with other social factors such as lack of social support and unemployment. In Spain, data on people experiencing homelessness with a history of imprisonment show that they present significantly more adverse personal and family backgrounds than those without such a history, including longer periods of homelessness and unemployment, chronic or serious illness, parental history of imprisonment, and experiences of domestic violence (Puente-Guerrero, 2019).

Taken together, this framework suggests that the deprivation of social housing places convicted and formerly convicted persons at a systematic disadvantage in developing prosocial life projects. Access to adequate housing – and the capacity to sustain it – is not merely a material need but a structural condition for social inclusion following release from custody and a key factor in reducing reoffending. Given that the available research on this barrier is more established within Anglo-American scholarship, examining how criminal convictions restrict access to social housing across other jurisdictions represents a valuable comparative undertaking.

2. Objectives

The overarching objective of this study is to evaluate the statutory and administrative mechanisms through which a prior criminal conviction restricts access to social housing across nine Western jurisdictions, in order to understand the extent to which penal intervention constitutes a structural barrier to residential inclusion for convicted and formerly convicted persons. Specifically, the research pursues three interconnected operational objectives:

1. To identify whether jurisdictions exclude persons serving minor or moderate custodial sentences (up to three years of imprisonment) from accessing fully or partially subsidized social housing.

International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

2. To map the multi-level regulatory frameworks – criminal, administrative, regional, and municipal – governing social housing exclusion, and to assess the degree to which their application is mandatory or discretionary and how a criminal record is established as an eligibility criterion.
3. To determine the extent to which social housing exclusion operates at different levels across jurisdictions, constituting a structural and systematic disadvantage for convicted and formerly convicted persons in developing prosocial life projects, with particular attention to social groups disproportionately exposed to residential exclusion.

3. Methodological framework

To achieve these objectives, this exploratory analysis examines nine Western jurisdictions (Germany, Spain, the United States—specifically focusing on New York, California, Texas, and Florida—, Finland, France, England and Wales, Italy, Poland, and Romania). The comparative assessment is conducted using the RIMES Instrument, which has been internationally validated for comparing the criminal justice policies of Western countries on the basis of the degree of social exclusion that penal intervention generates upon those subject to it. In this regard, a criminal justice system is considered socially inclusive when its intervention upon persons who are suspected, convicted, or formerly convicted aims at their social reintegration. Conversely, a criminal justice system is considered socially exclusionary when its intervention instead pursues their social neutralization (Díez-Ripollés & García-España, 2019; Díez Ripollés & García-España, 2020).

The RIMES Instrument comprises 39 indicators (items) of exclusion – encompassing both statutory rules and institutional practices – classified into nine thematic pools. This research focuses on indicator 92, which is situated within Pool 7: *Legal/ Social Status of Offenders and Former Offenders*). This Pool assesses various domains impacted by penal intervention, including the right to vote (Item 86), the deportation of foreign residents (Item 88), the right to employment (Item 91), and access to social benefits (Item 93). Specifically, Item 92 seeks to measure whether jurisdictions exclude individuals from social housing following the completion of minor or moderate custodial sentences. Among the items validated for Pool 7, Item 92 received some of the highest scores for clarity and suitability (Aiken's V of 0.96), establishing it as a robust metric for assessing social exclusion within the broader instrument.

3.1. Operational Criteria

To ensure a consistent application of Item 92 across the nine jurisdictions, five operational criteria derived from the indicator were applied.

1. Definition of Social Housing**:** Social housing is defined as *any dwelling provided for people on low income, partially or fully subsidized by public funds.*
2. Scope of the Penalty: custodial sentences of up to and including three years, as well as non-custodial sentences.

International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

3. Offence Threshold: prohibitions and disqualifications must apply to any offence — whether encompassing the vast majority of offences or expressed through broad and general categories — that meets the general conditions for sentencing.
4. Temporal Duration: no minimum duration for the disqualification is required; the mere existence of a statutory or administrative exclusionary provision is sufficient to meet the threshold established by Item 92.
5. Nature of Enforcement: it is sufficient that the statutory possibility of denying access to social housing exists, regardless of whether its application is mandatory or discretionary.

Overall, these elements of the operationalization of the item make it complex to reach an unambiguous determination as to whether the criteria are met in the nine jurisdictions analyzed, as it requires an in-depth understanding of the regulatory framework governing access to social housing in each case. However, this information enables a detailed and rigorous assessment of the different levels of exclusion produced across jurisdictions. It should therefore be noted that this study does not claim to be representative of the international panorama; rather, its exploratory nature makes it possible to identify benchmarks for a future research agenda on how exclusion from social housing operates in practice across different Western contexts.

3.2. Data Collection and Legal Analysis

Given that Item 92 evaluates a legal-administrative rule, the overarching methodology employed has been a systematic analysis of legal norms. Since disqualification from social housing may be regulated under both criminal and administrative frameworks, a comprehensive array of legal instruments was examined (summarized in Table 1).

Criminal legislation was scrutinized to ascertain whether the deprivation of the right to social housing is prescribed as a primary or ancillary sanction. In parallel, administrative regulatory frameworks were examined to determine whether a criminal record constitutes a statutory ground for exclusion within the eligibility criteria for social housing applicants. While these administrative provisions are nationwide in certain jurisdictions, in others they are determined at the regional or local level. In such cases, it was necessary to assess whether the provisions identified were sufficiently representative of the jurisdiction as a whole. This approach ensures that the response to Item 92 is consistent with the methodological framework of the RIMES Instrument, which aims to capture the broader national landscape. Where interpretive uncertainties arose, academic literature, case law, or academic experts from the respective country were additionally consulted.

International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

Table 1. *Social Housing Regulatory Frameworks Analyzed Across the Nine Jurisdictions*

Jurisdiction	National Social Housing Regulations	Regional or Local Regulatory Sample
Germany	Housing Promotion Act of 13 September 2001, as amended by Article 12(15) of the Act of 16 December 2022	
Spain	Law 12/2023 of 24 May on the Right to Housing Royal Decree 42/2022 of 18 January, regulating the Young Rental Bonus and the State Housing Access Plan	Law 5/2025 of 16 December on Housing in Andalusia Ordinance regulating the operation of the Municipal Public Registry of Applicants for Public Housing of the Province of Malaga (No. 45 of 16 March 2012) Ordinance regulating the operation of the Municipal Public Registry of Applicants for Public Housing of the Province of Seville (No. 260 of 8 November 2012) Ordinance regulating the Municipal Public Registry of Applicants for Public Housing in the Province of Cádiz (No. 102 of 1 June 2023) Housing Code of Extremadura, as amended on 12 January 2026
United States	Housing Opportunity Program Extension Act of 1996, Public Law No. 104-120 of 28 March Quality Housing and Work Responsibility Act of 1998, Public Law No. 105-276 of 21 October United States Code, Title 42, Chapter 135, section 13663 on ineligibility of dangerous sex offenders for admission to public housing Code of Federal Regulations, Title 24, Subtitle B, Chapter IX, Part 982, section 982.553 on denial of admission and termination of assistance for criminals and alcohol abusers	New York City Fair Housing Law of 20 December 2023 (enacted 20 January 2024; effective 1 January 2025) amending the Administrative Code of the city of New York in relation to prohibiting housing discrimination on the basis of criminal history Texas Administrative Code, Title 10, Part I, Chapter 11 on Qualified Allocation Plan Florida Housing Act, Title XXX, Chapter 420, Part I on State Housing Strategy Social Housing Act of California, adding Title 6.91 (commencing with Section 64900) to the Government Code (Assembly Bill No. 11 of 2 December 2024)
Finland	Government Decree on the Selection of Tenants for State-Subsidised (ARAVA) and Interest-Subsidy Rental Dwellings of 20 March 2008, No.166 Act on Subsidies for Improving the Housing Conditions of Special Groups of 20 December 2004, No.1281	
France	The Construction and Housing Code of 10 March 1977, as amended on 21 March 2026	
England and Wales	Housing Act of 1996 (part IV) Homelessness (Priority Need for Accommodation) (England) Order 2002 Localism Act of 2011	

International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

Jurisdiction	National Social Housing Regulations	Regional or Local Regulatory Sample
Italy		Regional Law of Lombardy No. 1 of 10 February 2004 Regional Law of Lazio No. 12 of 6 August 1999 Regional Law of Emilia-Romagna No. 24 of 8 August 2001 Regional Law of Sicily No. 26 of 22 March 1963 Regional Law of Puglia No. 47 of 8 April 2014 Regional Law of Basilicata No. 24 of 18 December 2007 Regional Law of Calabria No. 32 of 25 November 1996 Regional Law of Campania No. 11 of 28 October 2019 Regional Law of Liguria No. 10 of 29 June 2004 Regional Law of Piedmont No. 3 of 17 February 2010 Regional Law of Veneto No. 39 of 3 November 2017 Regional Law of Abruzzo No. 96 of 25 October 1996 Regional Law of Friuli-Venezia Giulia No. 14 of 6 August 2019
Poland	Act of 21 June 2001 on the Protection of Tenants' Rights, the Municipal Housing Stock and the Amendment of the Civil Code Act of 26 October 1995 on Social Forms of Housing Development	
Romania	National Housing Law No. 14 of 11 October 1996, as last amended on 8 March 2022	Ordinance No. 141/2008 of Hâr□ ova Ordinance No. 9/2021 of □ ăndărei Ordinance No. 216/2021 of Alba-Iulia Ordinance No. 77/2019 of Ocna Mureÿ Ordinance No. 29/2021 of Băile Olăne□ ti Resolution No. 63/2019 of Mizil Ordinance No. 27/2018 of Drobeta Turnu Severin

Source: own elaboration.

Upon completion of the protocol for Item 92 across all jurisdictions, the findings were submitted for review by national experts. Regarding this specific item, all protocols were validated at the first instance, with supplementary information required only in the case of Italy, which did not alter the initial conclusion.

International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

4. Results

The following table summarizes the overall results regarding the exclusion from social housing for individuals sentenced to custodial or non-custodial penalties. It specifies the jurisdictions in which the exclusion criteria defined by Item 92 are met.

Table 2. *Exclusion from Access to Social Housing Following the Completion of a Sentence*

Jurisdiction	Item 92: Right to public or social housing
Germany	No
Spain	No
United States (New York, Florida, Texas, California)	Yes
Finland	No
France	No
England and Wales	Yes
Italy	No
Poland	No
Romania	No

Source: own elaboration.

As evidenced, the exclusion from social housing occurs within the two Common Law jurisdictions – England and Wales and the United States – whereas it does not occur in jurisdictions belonging to the Civil Law tradition. However, the fact that the exclusion threshold established by Item 92 is not met in most of these jurisdictions does not imply an absolute lack of exclusionary practices. Indeed, as shown in Table 3, an in-depth analysis of the legislation reveals that exclusion operates at different levels across jurisdictions.

Table 3. *Gradation of Exclusion from Access to Social Housing Following the Completion of a Sentence*

Level of Exclusion	Classification of Jurisdictions	Jurisdictions
1. Jurisdictions where no exclusion from social or public housing occurs	A. Jurisdictions with no regulatory framework for exclusion from the public housing system.	Germany, Finland, Poland, France
2. Jurisdictions where exclusionary practices exist but do not meet the Item 92 threshold	B. Jurisdictions where exclusion is governed by criminal legislation.	
	C. Jurisdictions where exclusion is governed by national or regional housing legislation.	Italy
	D. Jurisdictions where exclusion is governed by municipal ordinances.	Romania, Spain
3. Jurisdictions where the Item 92 exclusion threshold is met		England and Wales, United States (New York, Texas, Florida, California)

Source: own elaboration.

International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

The following sections examine each jurisdiction in greater detail, presented in ascending order from the lowest to the highest level of exclusion.

4.1. Jurisdictions Without Regulatory Exclusion from Social Housing

In **Germany**, where a highly developed framework of public housing and housing assistance has long been established, the *Wohnraumförderungsgesetz* (WoFG), translated as the Housing Promotion Act, delineates a set of eligibility criteria, encompassing income thresholds, administrative prerequisites pertaining to legal residency status, and the possession of valid work authorization. However, the legislation contains no provisions restricting eligibility on the basis of prior convictions or criminal records. This federal framework is complemented by regional legislation enacted by the German federal states, or *Länder*, which bear responsibility for the implementation and coordination of relevant policies and economic measures, in cooperation with local governments directly charged with the execution of urban and residential planning. The central mechanism for accessing this market is the Certificate of Entitlement to Housing (*Wohnberechtigungsschein*), an official document certifying that a household's income falls below the established thresholds and that it therefore qualifies to rent social housing. None of the regional laws examined incorporate restrictions grounded in the criteria of Item 92. Likewise, the websites of organizations offering advisory services on public housing or social assistance make no reference to any restrictions based on criminal convictions. Following consultation with the *Bundesarbeitsgemeinschaft für Straffälligenhilfe* (BAG-S), an organization dedicated to the provision of social services to formerly incarcerated persons and to fostering public awareness of the challenges inherent their reintegration and resocialization, it was confirmed that people who have served a custodial sentence are not precluded from accessing public housing in Germany.

In **Finland**, the *Asumisen rahoitus- ja kehittämiskeskus* (ARA), translated as the Housing Finance and Development Centre, is responsible for implementing Finnish housing policy and managing the housing stock constructed with state subsidies. However, it is the responsibility of municipalities to monitor rents and oversee resident selection. To assess housing needs, the national legislation establishes that applicants who are eligible are placed in an order of priority based on the: 1) housing needs, means and income, and 2) households with a low income and means. Complementary, among the governmental measures aimed at addressing housing insecurity, Finland adopted the Action Plan for Preventing Homelessness – commonly known as "Housing First" – in 2008, with the primary objective of reducing long-term homelessness. The program funds projects and organizations that procure supported housing for groups at risk of social exclusion, including recently released prisoners and people under probation supervision who lack stable housing (Busch-Geertsema, 2010; Pleace, 2017). In general, the Finnish Prison and Probation Service, in collaboration with local authorities and relevant organizations, seeks to ensure a phased release process whereby people transition from intensive supported housing to permanent social housing tenancies. However, the level of support available for accessing public housing may vary according to sentence length and criminal history (Pleace, Culhane et al, 2015).

In **Poland**, the 2001 Act on Tenants' Rights requires each municipality to develop its own regulations governing the allocation and management of housing. Municipal dwellings must

International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

be made available to those who do not own a home, offered at a significantly reduced cost, with eligibility determined primarily by income level. In parallel, the 1995 Act on Social Housing Development regulates the state, private, and non-profit cooperatives known as TBS/SIM (*Towarzystwo Budownictwa Społecznego/Społeczna Inicjatywa Mieszkaniowa*). These entities develop residential properties on municipality-owned land with financial support from the National Housing Fund. These cooperatives are intended for those who neither qualify for a mortgage nor meet the eligibility criteria for municipal housing. Thus, legislative frameworks suggest that convicted persons are not formally excluded from the right to access public housing. This finding is consistent with the observations of experts consulted at the Jagiellonian University of Kraków, who noted that people with prior criminal records, including those who have served custodial sentences, have successfully secured public housing (Magdalena Grzyb, personal communication). Nevertheless, it is acknowledged that the scarcity of available housing and lengthy waiting lists pose significant barriers to access, affecting not only homeless people and formerly convicted persons, but the general population as well (Krzysztof Krajewski, personal communication).

In **France** the Construction and Housing Code establishes the general criteria for access to social housing (*logements sociaux*), including income thresholds and provisions governing the allocation of housing, and is supplemented by specific regulatory decrees. Oversight of the sector is entrusted to the National Agency for the Control of Social Housing, a public administrative body responsible for the monitoring and evaluation of social housing provision. Social housing in France is organized into several categories, determined by the type of loans and subsidies granted to organizations during the construction phase. Access to social housing is contingent upon the submission of a formal application (*dossier*) through the national registration system. However, certain departments have opted for a distinct local system for registration, updating and consultation of the requests for social housing. In those cases, when housing is available, a scoring system (*cotation*) can be employed to rank and select candidates for allocation. This scoring mechanism operates by defining a set of weighted criteria to assess each application, including social urgency, current housing conditions, economic situation, employment status, and the specific characteristics of the applicants. None of the social housing models identified across the country formally exclude convicted persons from access to social housing.

4.2. Jurisdictions With Exclusionary Practices Below the Item 92 Threshold

4.2.1. Jurisdictions With Exclusion Governed by National or Regional Legislation

In **Italy**, access to social housing (*Edilizia Residenziale Pubblica*) is structured primarily through regional legislation governing its allocation. While criminal law does not provide accessory penalties involving the deprivation of the right to access social housing, certain regional legislations do. Convicted people are not excluded in Lombardy, Lazio, Emilia-Romagna, Sicily, Puglia, Basilicata, Calabria and Piedmont. Conversely, exclusion is enforced where convictions relate to intentional offences carrying a custodial sentence exceeding seven years (as in Campania) or five years (as in Liguria). Furthermore, only two regions have been identified in which exclusion applies to individuals convicted of an intentional offence

International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

punishable by a custodial sentence of up to three years or a fine: Veneto (Regional Law of Veneto No. 39 of 3 November 2017, governing access to public housing, Article 25.2) and Abruzzo (Regional Law of Abruzzo No. 96 of 25 October 1996, governing access to public housing, amended regarding criminal records by Regional Law No. 34 of 31 October 2019, Article 1, (b-bis) and (g-bis)). While Veneto focuses specifically on the unlawful occupation of property – a requirement that applies to the applicant and all members of the household unit alike –, Abruzzo adopts a significantly broader approach. Its legislation disqualifies individuals with final convictions within the previous ten years for offences carrying a maximum sentence of two years or more, as well as those convicted of a wide array of offenses, including organized crime, drug trafficking, and various offences against the public administration, persons, and property. Although this provision was examined by the Italian Constitutional Court (Judgment No. 9, of January 29, 2021) regarding the prohibition on access to social housing on grounds of criminal record, the proceedings were discontinued following the partial withdrawal of the appeal brought by the Government, without the Court ruling on the merits of the case. Nonetheless, the exclusionary provisions identified remain limited in territorial scope, affecting regions which collectively account for 10.4% of the Italian population (Italian National Institute of Statistics, 2024), and cannot therefore be considered representative of the national regulatory landscape.

4.2.2. Jurisdictions Where Exclusion Is Governed by Municipal Ordinances

In **Romania**, while national legislation defines the overarching eligibility and prioritization framework, the practical management of social housing is devolved to local authorities. On an annual basis, these authorities issue municipal ordinances establishing their own selection criteria. This decentralized approach allows for the inclusion of highly specific requirements – such as higher income thresholds, minimum residency periods, or the absence of outstanding debts – as well as merit-based factors, including intellectual, cultural, sporting, or civic achievements. Among the identified exclusionary criteria, antisocial behavior or a criminal record may serve either to disqualify an applicant or to reduce the points assigned within the scoring system. Evidence of such practices has been documented in at least one city (*municipiu*) and six smaller localities (*ora*□). In the city of Cluj-Napoca, people sanctioned for the unlawful occupation of social housing are ineligible for social housing allocation (Social Housing Now, 2022). In two of the six localities – Hâr□ ova y □ ăndărei – a criminal record constitutes a ground for ineligibility. The Ordinance No. 141/2008 of Hâr□ ova (Constanţa county) establishes that applicants or family members registered by the local authority as having been sanctioned for anti-social conduct are excluded from the priority list for social housing allocation. Similarly, Ordinance No. 9/2021of □ ăndărei (Ialomi□ a county) provides that grounds for refusal of contract renewal include begging or other "anti-social conduct" within the municipality by the contract holder or cohabiting family members. In the remaining four localities – Alba-Iulia, Ocna Mureÿ, Băile Olăne□ ti y Mizil – the consequence is the deduction of points from the total score. Additionally, in localities such as Drobeta Turnu Severin, prioritization criteria may include "moral guarantees" of cohabitation and care of public assets, understood as the absence of a criminal record, contraventions, or administrative sanctions (Centre for the Study of Legal Resources, 2021).

International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

While these provisions are clearly exclusionary, they cannot be considered representative of the national context, given that Hâr□ ova and □ ăndărei collectively account for 0.11% of the Romanian population (National Institute of Statistics of Romania, 2021 Census).

In **Spain**, there is no uniform national framework governing public housing (*Viviendas de Protección Oficial*). The most significant recent development is the is the Housing Rights Act of 2023, which introduced two categories of protected housing: social housing (*vivienda social*) and price-limited housing (*vivienda de precio limitado*), the former referring to dwellings built on publicly owned land and the latter to dwellings whose price is subject to administrative limitations for a specified period. While it is the central state that legislates on the characteristics of protected housing, it is the Autonomous Communities that are responsible for defining the specific access requirements, administered through the Municipal Register of Applicants for Protected Housing (*Registro Municipal de Demandantes de Vivienda Protegida*), in which prospective applicants must enroll in order to submit their application (Housing and Land Observatory, 2024). Having a criminal record for any offence is not established as a ground for ineligibility in any of the regional regulations consulted (Andalusia, the Community of Madrid, the Basque Country, Catalonia, Asturias, Castilla-La Mancha and the Valencian Community). However, a criminal record for offences related to unlawful occupation of or damage to social housing is established as an exclusion criterion in certain ordinances governing municipal registers at the provincial level. This has been identified in at least three provinces (Malaga, Seville and Cadiz) as well as in the local ordinances of the municipalities of Tocina, Gelves, Carrión de los Céspedes and Lora del Río (Seville) and La Carlota, La Guijarrosa and Dos Torres (Cordoba). From December 2025 the new Andalusian Housing Act extends this criterion to the entire Autonomous Community, with Article 43.2 establishing measures against the unlawful occupation of housing within the five years prior to the selection procedure. Similarly, the Housing Code of Extremadura (Articles 7.2 and 7.3) excludes persons who have unlawfully occupied public housing within the previous three years, as well as those convicted of offences against public health or public order, or who regularly engage in "anti-social conduct". Nevertheless, these remain highly specific categories of offences whose application is not widespread across Spanish territory. In the case of Extremadura, while the exclusionary criteria are broader in scope, the region accounts for only 2.14% of the Spanish population (National Institute of Statistics of Spain, 2025).

4.3 Jurisdictions Where the Item 92 Exclusion Threshold Is Met

In England and Wales and the United States, where social housing systems are highly developed, people with criminal records may be excluded from public housing for more than five years following the completion of their sentence, even where the custodial sentence imposed was under three years. This is because exclusion is linked to criminal records and the statutory periods governing their cancellation in these countries are considerably lengthy. Where exclusion is not automatic, it falls within the discretion of local public housing authorities, subject to individual case assessment.

In **England and Wales**, the Housing Act 1996 establishes that reasonable preference for social housing must be granted to those experiencing homelessness, those living in unsanitary or overcrowded conditions, those with medical or welfare needs, and those required to

International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

relocate to avoid hardship. The Homelessness Order 2002 (England) further recognizes persons who have served a custodial sentence, been remained in custody, or been committed for contempt of court may constitute a priority need group on grounds of vulnerability, provided this is established on an individual basis. While neither instrument formally excludes convicted persons, allocation schemes in England and Wales permit local authorities to consider the behaviour of an applicant or household member as a factor affecting their suitability as a tenant. In Wales, this includes the power to deny preference to applicants where the authority is satisfied that they have been guilty of "unacceptable behavior". In England, the Localism Act 2011 significantly expanded this discretionary power, enabling local authorities to determine which classes of persons qualify for social housing and to refuse applications on grounds of past behavior. According to the Anti-Social Behavior, Crime and Policing Act 2014, "anti-social behavior" encompasses conduct that causes harassment, alarm or distress, or nuisance or annoyance in relation to residential premises. Where a conviction is relevant to such conduct, the Rehabilitation of Offenders Act 1974 governs its treatment. For custodial sentences of up to three years, the conviction becomes spent after a period of between two and seven years, and must thereafter be treated as though the offence had never been committed. Persons sentenced to more than four years, however, never have their conviction spent.

In the **United States**, social housing is managed by the Public Housing Authority (PHA) of each state. Two main housing programs exist: the *Public Housing Program* and the *Housing Choice Voucher Program (Section 8*), which subsidizes rent in the private real estate market. The governance of these programs operates within a dual-level institutional framework. At the federal level, the Department of Housing and Urban Development (HUD) establishes the general regulatory framework and imposes mandatory prohibitions regarding persons with criminal records. The Housing Opportunity Program Extension Act 1996 empowered PHAs to evict tenants and enabled them to conduct criminal record checks on applicants. This was subsequently reinforced by the Quality Housing and Work Responsibility Act 1998, which further decentralized the system by delegating to local agency staff the power to deny admission based on the criminal history of applicants or any member of their household. In turn, the United States Code introduced the ineligibility of persons convicted of sex offences, and the Code of Federal Regulations defined the full eligibility criteria governing denial of admission and termination of assistance. Based on this legislative framework, federal regulation establishes a broad range of grounds on which applicants to both programs may be refused: lifetime registration on the sex offender registry; involvement in any violent or drug-related criminal activity that could interfere with the wellbeing of the public housing community; illegal drug use or alcohol abuse affecting cohabitation within the public housing community; eviction from public housing on grounds of drug-related offences; and certain additional admission criteria, including the exclusion of any household member found guilty of fraud or corruption in connection with a federal housing program. While local Public Housing Authorities retain discretionary autonomy to define conduct-based denial criteria, federal regulations require administrative review of such exclusions, including consideration of mitigating factors and evidence of rehabilitation before a final decision is reached.

International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

These restrictions have been further entrenched by recent regulatory developments. In 2025, the HUD withdrew several state-level guidance documents that had warned against automatic criminal exclusion policies on the grounds that these violated the Fair Housing Act of 1968 by disproportionately racialized communities. In their place, the new HUD guidance compels housing providers to take all steps necessary to ensure "decent, safe, and affordable" housing. This includes: (1) screening for criminal history prior to admission into HUD-assisted housing; (2) monitoring assisted households to remove those who "pose a threat to the safety and peaceful enjoyment" of their units; and (3) deploying resources to ensure the ongoing safety of such properties through physical security measures and/or contracted safety services. The following paragraphs briefly examine how exclusion operates in four of the most populous states: New York, Texas, Florida, and California.

When applying for state-funded housing in New York City, covered housing providers are permitted to consider specific categories of convictions: misdemeanors within the previous three years and felonies within the previous five years – calculated in both cases from the date of release or from the date of sentencing. However, the City of New York has distanced itself from the restrictive approach of federal regulation. The Anti-Discrimination Guide for Justice-Involved Housing Applicants (2022) establishes that covered housing providers electing to perform criminal background checks may only do so following a preliminary assessment of the applicant's general eligibility and the issuance of a conditional offer. Outside New York City exclusion remains discretionary for misdemeanors and felonies occurring more than one and five years prior, respectively. This also applies to people released from supervision for over a year and those who have obtained official certificates of rehabilitation.

In Texas, public housing policy previously established recommendations against using criminal records as automatic grounds for disqualification and stipulated that blanket bans based on arrests rather than convictions would constitute a violation of criminal background screening policy and potentially of federal law (Austin/Travis County Reentry Roundtable, 2018). However, subsidized housing may be denied based on an extensive array of criminal offences. These are frequently grouped under vague, overarching categories – ranging from property and public health violations to any conduct deemed a threat to the safety or peaceful enjoyment of other residents and owners or property management staff –. Some of these offences fall within the category of misdemeanors and may carry custodial sentences of up to three years (Austin/Travis County Reentry Roundtable, 2016).

The Florida State Housing Strategy Act requires housing entities to submit a *Tenant Selection Plan* (TSP) describing application and tenant selection procedures. While it is unlawful to discriminate on the basis of race, creed, religion, color, age, sex, marital status, familial status, national origin, or disability in the award application process for eligible housing (Florida State Housing Initiatives Partnership Act, s. 420.9072), it does not specify selection criteria beyond this prohibition. Applicants are required to provide comprehensive disclosure of their criminal history, which serves as the basis for a risk-based assessment. Admission may be denied if the conduct of an applicant is deemed to have "a detrimental impact on the residential community or the integrity of the housing environment". Certain jurisdictions, such as Broward County (see, for instance, the website of Housing Authority

International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

of the City of Fort Lauderdale), impose even more stringent requirements, disqualifying households for any history of drugs or violence, as well as any fraudulent or corrupt acts committed in connection with federal housing programs.

Finally, in California, Public Housing Authorities establish that a criminal record does not constitute an automatic ground for exclusion unless the competent authority determines that the applicant poses a manifest risk to the housing development or its residents. In this regard, public housing policies of the most populous cities, such as San Diego, San Francisco and Los Angeles prohibit the admission of applicants with a history of specific felonies or misdemeanors. These include drug-related offences, violent criminal activity, arson, fraud, and conduct threatening the health or safety of other residents. Los Angeles additionally considers felony convictions occurring within the ten years prior to the application date, with an extended five-year lookback period for offences involving controlled substances or alcohol. Furthermore, eligibility may be denied where the authority finds reasonable cause to believe that a household member's substance use may compromise the health, safety, or peaceful enjoyment of the premises.

5. Reflections on Social Housing Ineligibility as a Collateral Sanction

The collateral consequences of conviction constitute structural barriers to the resocialization of many convicted people worldwide. A detailed analysis of social housing legislation through the RIMES Instrument allows us to map how these consequences are regulated across nine jurisdictions and to assess the degree to which restrictions on access to this right are imposed in each context.

In the most exclusionary systems, a criminal record operates as an automatic barrier to social housing access, without any necessary connection to the nature of the offence committed. This is the case in England and Wales and the United States, where such measures oscillate between punitive aims and the prevention of reoffending. The exclusionary criteria identified encompass offences carrying penalties more severe than those established at the threshold of Item 92, highly specific categories of offending, or conduct broadly categorized as "anti-social behavior". This concept, despite statutory definition in certain jurisdictions, remains subject to broad discretionary interpretation in practice, as illustrated by provisions authorizing the monitoring of assisted households to remove residents deemed to pose a threat to the safety and peaceful enjoyment of their units.

In other jurisdictions, exclusion from social housing emerges through discretionary administrative practices, whereby regulatory gaps leave significant power in local authorities. Spain and Romania exemplify this pattern, where the exclusion measured by Item 92 is regulated through municipal ordinances. The absence of clearly defined legal criteria – particularly where eligibility is determined through scoring systems that penalize applicants for "anti-social conduct" or contraventions in the use of communal property – raises questions about the oversight of such decisions and renders them insufficiently transparent. Related concerns include legal uncertainty, as some jurisdictions impose exclusions for unspecified periods of time, and normative drafting deficiencies, evidenced by the replication of legislative content across local regulatory instruments without meaningful adaptation to local context, as observed in Spain, Romania, and the United States.

International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

The analysis further reveals the mechanisms underlying social exclusion. A consistent pattern emerges in which restrictions on social housing access disproportionately affect persons from specific ethnic or racial backgrounds, or individuals in vulnerable situations, including those experiencing housing instability or homelessness. This is particularly evident in the United States, where federal regulation mandates ineligibility across a broad range of offences that closely mirror the composition of the prison population. Drawing on 2022 data, violent offences accounted for 63.3% of convictions within the state prison system, followed by property offences (13.1%), drug-related offences (12.8%), and public order offences (11.1%). Within these institutions, Black and Latino persons account for nearly seven in ten of the prison population (The Sentencing Project, 2024). These patterns of racial overrepresentation extend beyond incarceration, as homelessness rates are estimated to be particularly high among individuals who have been incarcerated more than once, individuals recently released from prison, and Black and Latino people, particularly women (Couloute, 2018).

This dynamic resonates with the Romanian experience described by Rughini (2004), where national frameworks prioritize professional middle class and local interventions frequently result in the collective displacement of Roma communities to urban peripheries, relegating them to conditions of systemic housing precariousness at the urban and political margins. Thus, access criteria embedded in municipal ordinances – such as higher income thresholds, the absence of outstanding debts, or civic achievements – constitute a form of indirect discrimination with a disproportionate impact on communities that structurally face greater obstacles in meeting them.

Alongside this, a further finding concerns the penalization of social housing access linked to the unlawful occupation of land or public buildings, as observed in Italy and Spain, or to conduct contrary to civic coexistence and the proper use of public space, as in the case of Romania. These restrictions may be situated within the broader framework of the criminalization of poverty. As Puente-Guerrero (2020) argues, in Spanish provincial capitals municipal ordinances on civic coexistence operate as instruments of exclusion that criminalize homelessness itself, by establishing infractions for behaviors necessary for survival – such as washing or sleeping in public spaces. This reflects a form of cultural violence against people compelled to live their lives in public spaces, where they are consequently more likely to be detected when engaging in prohibited conduct. A parallel example can be found in the United States, where people experiencing homelessness are more frequently detained in local jails on charges of trespassing – a charge commonly used to criminalize those who have nowhere else to go (Wang, 2025).

Taken together, the collateral consequences of conviction in terms of social housing access form a broad spectrum that extends beyond the mere fact of having been convicted. Even in jurisdictions that do not reach the level of exclusion measured by Item 92 of the RIMES Instrument, a range of issues have been identified that, in practice, restrict access to social housing. This is exemplified by expert accounts from Poland pointing to the existence of formerly convicted persons experiencing homelessness as a result of an underdeveloped social housing system, as well as by Finland, where, despite the adoption of Housing First policies, it remains necessary to assess whether such policies adequately address the structural

International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

conditions underlying the commodification of housing and the differential access shaped by residential exclusion (Agulles-Martos, 2019). Eurostat data (2024) reinforce these findings, showing that among European Union member states, Romania records one of the highest housing overcrowding rates among the population at risk of poverty (53.7%), alongside Poland (38.6%) and Italy (31.7%) – figures that point to the structural dimension of housing precarity in several of the jurisdictions analyzed.

The normative analysis conducted across the nine jurisdictions constitutes a robust analytical framework for understanding how this form of collateral consequence operates: which criminal offences are deemed by legislators and policymakers to warrant the restriction of a social right, the competent authorities involved in the decision-making process, the scope of discretionary powers they may exercise, and the direct impact on the lives of those affected. Beyond deepening knowledge of how criminal conviction restricts access to social housing, this framework provides a foundation for future empirical research aimed at exploring the diverse forms through which such exclusion manifests across Western welfare states.

6. Conclusions

The findings of this study shed light on the mechanisms through which criminal records operate as barriers to social housing across diverse jurisdictions. By examining the intersection of penal policy and housing administrative frameworks, three interconnected conclusions emerge.

First, regarding the exclusion of persons serving minor or moderate custodial sentences, the analysis reveals a marked divergence between Common Law and Civil Law traditions. In the continental European jurisdictions examined – Germany, Finland, Poland, and France – completion of a sentence within the three-year threshold does not constitute a formal legal ground for exclusion from social housing for any category of offence. Conversely, in England and Wales and the United States, formerly convicted persons are routinely subjected to prolonged or lifetime exclusion following the completion of equivalent sentences. This is primarily because these jurisdictions link housing eligibility directly to criminal record status rather than to the length of the sentence itself.

Second, the structural mapping of regulatory frameworks reveals that housing exclusion is rarely a centralized administrative phenomenon. Rather, it is governed by a multi-level articulation of institutional layers: in Civil Law systems, exclusionary practices operate primarily at the regional or municipal level, as observed in specific Italian regions, Romanian municipalities, and Spanish autonomous and local frameworks. In Common Law systems, institutional architecture produces significant regulatory fragmentation. In the United States, federal guidelines establish only a minimum regulatory threshold, leaving local Public Housing Authorities (PHAs) and private landlords broad discretionary autonomy to define and apply their own criminal screening criteria. This multi-level governance can be used to build protective frameworks – as seen in New York City – or, conversely, to reinforce punitive barriers, as exemplified by Texas and Florida.

Finally, the gradation of exclusion identified across the nine Western welfare states examined shows that different levels of social housing exclusion constitute a structural and

International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

systematic disadvantage for convicted and formerly convicted persons in developing prosocial life projects. These exclusionary practices disproportionately affect racialized communities and other groups in vulnerable situations that structurally face greater obstacles in meeting eligibility criteria and are therefore more exposed to criminalization.

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