

**A COMPARATIVE VIEW OF THE MINIMUM STANDARDS OF
HABITABILITY IN ROMANIA AND IN THE STATE
OF MASSACHUSETTS (U.S.A)**

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ABSTRACT: *One of the landlord's main obligations, that derives from a contractual basis, is to maintain the rental space in the appropriate condition for use. When the rental space is used for living, the appropriate condition for use automatically means that the rental space has to be habitable. The present article offers a comparative view of the minimum housing standards for health and safety, that derive from Romanian laws and the laws of the State of Massachusetts.*

KEYWORDS: *standards of habitability; obligations; contractual basis; Romania laws; laws of the State of Massachusetts.*

JEL CODE: *K1, K12, K32.*

INTRODUCTION

A dwelling is safe when it doesn't represent a threat to a person's physical or mental health. According to a statement made by the World Health Organization: "Housing conditions affect people's health. Inadequate housing causes or contributes to many preventable diseases and injuries, including respiratory, nervous system and cardiovascular diseases and cancer"¹.

In order to prevent becoming ill because of unfit living conditions, the Romanian and U.S. legislatures have created minimum standards that a home needs to meet in order to be deemed fit for human habitation.

In the U.S., the standards were set in the Sanitary Code of every U.S. state.

In Romania, these are set in the Dwelling Law², which contains the basic standards a dwelling needs to meet in order to be deemed safe for human habitations, such as: individual and free access to the dwelling, separate space for food preparation and rest, the existence of a sanitary group, access to electricity and drinking water, controlled evacuation of used water and waste. More detailed legal provisions can be found in special laws.

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¹<http://www.euro.who.int/en/health-topics/environment-and-health/Housing-and-health/housing-and-health>

² Law nr.114/1996, annex nr.1.

For a comparative overview of the basic health and safety standards a dwelling needs to meet, we will use the U.S. legislation as a guideline, because it groups its laws based on factors that can cause a threat to the tenant.

2. HAZARDOUS SUBSTANCES IN LEASED DWELLINGS

The storing of hazardous chemical substances needs a detailed overview, because these substances pose a serious threat to the health and safety of those, who inhabit the dwelling.

Chemical substances can enter the human body by inhalation, direct contact or by touch.

The effects that these substances can have on the human body are multiple, such as: skin rashes, allergies, asthma, and cancer.

The Massachusetts Sanitary Code states that the dangerous substances that can be found in dwellings are the following: lead, asbestos, carbon monoxide, unstable chemical compounds and mold.

3. LEAD BASED PAINT

Lead intoxication is a serious medical problem, caused by the inhalation of lead dust or by the swallowing of lead particles that come off from walls that were painted with lead based paint. Children under 6 are under the greatest risk of getting lead poisoning. Lead dust or lead particles can be swallowed by children by putting their hands to their mouths or by simply inhaling when near walls, that were painted using lead-based paint” (Balandis, 2008, p. 132).

In Europe, lead cannot be used as a compound of paint, with the exception of special kinds of paint, used for the restoration of art or historical buildings³.

In 1978, the U.S. banned the commercialization of paint that had concentrations of lead that were higher than 0,06%.⁴ This measure did not put a stop to illnesses, because all buildings built before the law was enacted had been covered with lead based paint. The same conclusion can be drawn from the U.S. Environmental Protection Agency’s Statistical analysis⁵.

In 1971, the State of Massachusetts was the first American state that enacted a law to prevent lead poisoning⁶. The law was amended several times after that, however its core principles remained the same.

According to the law, the landlord has the following obligations:

- To scrape the original lead based paint off the walls of the dwelling and repaint it with non-lead based paint, in the event, that the tenant has children that are under 6 years old.⁷
- To disclose information in the lease contract negotiation phase regarding the presence of layers of lead based paint on the walls of the dwelling provided the dwelling was built

³ Directive nr. 76/769/CEE, annex nr. 1, point 17.

⁴ U.S. Federal Code, art. 1303 point 4.

⁵ annex nr. 1.

⁶ <http://www.nchh.org/Policy/State-and-Local-Policy/State-and-Local-Lead-Laws/Massachusetts-Lead-Law.aspx>,

⁷ 105 C.M.R. §460.100.

before 1971, even if the tenant does not have children.⁸ The information will be given in writing and a copy of the lead inspection or lead removal report will also be attached.

If the landlord does not comply with the above obligations, he can be held liable for the damages that were caused by his lack of disclose. The damages can be up to 1000 dollars (Balandis, 2008, p. 134).

In conclusion, the two legislations have a crucial element in common: the banning of selling of lead based paint that can cause harm to the people who inhabit dwellings that were painted with it.

4. ASBESTOS

Asbestos is a raw material that is being used in construction, especially for covering pipes, ovens and boilers.

In Massachusetts, the owner of the dwelling is obliged to keep pipes and every other thing in the home that contains asbestos, in a state of good repair, without defects, such as holes, cracks that would allow asbestos dust to circulate.⁹

In Romania, in the purpose of public health and environment protection, the commercializing and usage of asbestos materials has been banned, starting the 1st of January, 2007¹⁰.

5. GASOLINE AND OTHER INFLAMMABLE LIQUIDS

According to Romanian law, gasoline and other inflammable liquids need to be kept in special and sealed metal containers in a safe area, in a maximum amount of 25 l.¹¹

U.S. law does not regulate the storage of inflammable liquids in dwellings.

6. MOLD

Being exposed to mold for a prolonged period of time, has been associated with asthma, allergies, airway infections and experiencing difficulty when breathing (Mendell & Mirer, 2011, p. 748).

The Massachusetts Sanitary Code defines mold as „*chronic damp*”¹² or as „*regular or periodic appearance of damp, water, mold, fungus*”¹³.

The Sanitary Code enlists the landlord’s obligation to maintain the floors, foundation, walls, doors, windows, roof, ceiling, chimney or other structural elements free from chronic damp.¹⁴

The Romanian law does not refer to mold, however in our opinion, it is a part of the landlord’s legal obligation to maintain the dwelling in habitable condition.

⁸ Public Law, 102-550, Title X.

⁹ 504 CMR §410.353.

¹⁰ H.G. nr. 134/2003.

¹¹ art. 117 of the Romanian M.A.I. Ordinance nr. 163/2007.

¹² 105 CMR §410.020.

¹³ *Ibidem*.

¹⁴ 105 CMR §410.501.

7. BURGLARY REGULATIONS

Burglary is a safety hazard in the case of a dwelling.

Any house can be subjected to burglary; however there are certain factors that increase the probability for a dwelling to be burglarized.

These factors are: lack of lighting surrounding the dwelling, unsecure doors and windows, lack of an alarm system or a peep hole.

Another important factor is the location of the apartment.

According to statistical analysis conducted by the F.B.I in the year 2014, there were 1,729,806 burglaries¹⁵ in the U.S.; on the other hand, there were only 35.000 in Romania. Based on the population of the two countries, it is clear that the rate of burglary is approximately three times higher in the U.S. Consequently, the differences that occur due to the different location of dwellings have caused legislators to enact different laws regarding minimum standards of habitability, U.S. being the more severe ones.

Nevertheless, the burglary rate in the U.S. varies from State to State. For our analysis on the minimum safety measures needed to prevent burglary, we will take the State of New York as an example, because the rate of burglary is much higher there than in the State of Massachusetts.

Regarding security of entrance in the state of New York, when there is more than one apartment in the dwelling, the entrance door must have an automatic lock¹⁶ and a chain installed, that allow the controlled opening of the access door to the apartment¹⁷.

When there are more than 8 apartments in the dwelling, every apartment needs to have its own intercom system; the entrance door must be opened by pressing a button from inside the apartment¹⁸.

It is mandatory for the entrance door to the apartment to have a peep hole.¹⁹

The windows of the dwelling, including those that are located in the hallways need to be provided with a lock and with security bars.²⁰ Moreover, the landlord is legally obliged to notify the tenant about the possibility of asking for the security bars to be put up, by inserting the responsibility to ask for it free of additional costs, in the lease contract and by issuing annual written notifications.

Regarding locks, the tenant has the right to change the locks to the entry door, with the condition of giving a key to the landlord.²¹

Moreover, if the building has an elevator, it is compulsory to put mirrors in the elevator, in order to allow the person entering the elevator to see who is already inside the, before stepping in.²²

Also, the landlord is legally obliged to light the entryway, the halls and the yard from sunset until the crack of dawn.

¹⁵<https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/offenses-known-to-law-enforcement/burglary>

¹⁶ New York Multiple Dwelling Law, §50.

¹⁷ New York Administrative Code, 27-2043.

¹⁸ New York Multiple Dwelling Law §50.

¹⁹ New York Administrative Code, 27-2043.

²⁰ 410.480(B), (D)&(E)

²¹ New York Multiple Dwelling Law, art. 3, title 2, section 51C.

²² New York City Administrative Code, art. 11, section 27-2042.

In Romania, it is not mandatory for a landlord to put mirrors in the elevator, ensure the lighting of the outside of the dwelling, or to have centralized locks and peepholes installed on doors.

De lege ferenda, all of the above should be mandatory every time the landlord can be considered a professional (has several dwellings up for lease or works in an organized way).

8. UTILITIES SERVICES

In the vision of the law of the European Union, the notion of a habitable dwelling is not limited to the existence of a roof over one's head, but it must also ensure the existence of the minimum standards of health, comfort and safety.

In the era we live in, the providing of utilities services is a part of the minimum standards of habitability.

9. HEATING

Both legislations oblige the landlord to maintain the heating system of a dwelling in good condition of repair. The difference between the two legislations lies in the difference in regulating the criteria that determine the minimum temperature that a dwelling needs to be able to insure: in Romania, the only variable is the room of the dwelling, whereas in the U.S., there are two variables, the season and the time of day.

This way, in Romania, the heating system of a newly built home needs to ensure the minimum heat of 20 degrees Celsius in the bedroom and 22 degrees Celsius in the other rooms²³, whereas in Massachusetts, between the 15th of September and the 15th of June, the heating system needs to function in such way, as to ensure the possibility to obtain a minimum heat of 20 degrees Celsius between 7 in the morning and 11 at night. The rest of the day, the heat minimum is 17 degrees Celsius²⁴.

In certain U.S. States there are heating laws that govern the pre-contractual phase. For example, in the State of New York, during the pre-contractual negotiations, the landlord is obliged by law to present, by the request of the prospective tenant, copies of gas bills, for as far as two years²⁵. This law was named „Truth in heating”. Such obligation implicitly exists in the Romanian legislation, too, due to the legal provisions regarding “*dolus incidens*” (art. 1214 din N.C.C.).

10. WATER FOR DOMESTIC USE

In both legislations, the tenant is entitled to have access to drinking water. The water needs to come from the public water system or from another source approved by the Public Health Department, or in the case of Romania, it can come from personal or local wells.

²³ art. 17 (7) of Ordinance nr. 119/2014.

²⁴ 105 CMR §410.201.

²⁵ Energy Law, §17-103.

Water that comes from a well, in order to be drinkable, needs to correspond to legal provisions regarding water quality: the well needs to be deeper than 6 meters, it needs to be 10 meters away from any polluting source, its walls need to be made from cement or brick, it has to be closed by a lid, a water extraction system needs to be set in place that can consist of either a pump or a bucket and lastly but no least, periodic disinfections need to be done using chloride²⁶.

In the U.S.A, the law obliges the landlord to ensure a tenant's hot water supply, the temperature requirements being set in the range of 54 degrees Celsius to 43 degrees Celsius²⁷.

11. ELECTRICITY

Both Romanian and U.S. laws contain legal provisions regarding the minimum of electrical outlets needed for every room of a dwelling.

This way, the Massachusetts Sanitary Code has a mandatory provision, according to which every room must have at least two electrical wall outlets or an electrical outlet and a space for a lamp.²⁸ The Romanian law is a bit stricter; it mandates the number of minimum electrical outlets to be higher by one, the space for a lamp being mandatory regardless of the number of electrical outlets²⁹.

Both legislators agree that every bathroom and kitchen has to be equipped with minimum one source of light³⁰.

The difference between the two legislations is that the law of Massachusetts brings, in addition, the obligation of ensuring the proper lighting of the entire dwelling in order to ensure its safety based on a reasonable use by the tenant. This way, it is compulsory to light the halls, stairways, porches and washrooms. The law does not refer to the minimum number of electrical outlets and light systems that the latter must dispose of, it must be determined individually.³¹

The Romanian law also differs in a few aspects from the law of the U.S. Under Romanian law, it is mandatory for the electrical outlets to have protectors in the kitchen and in the bathroom.³² Moreover, if the homes are built after 2014, natural lighting needs to be sufficient as to ensure the normal use of the kitchen and main rooms without having to resort to artificial lighting during the daytime³³.

12. BEING CUT OFF FROM GAS, ELECTRICITY, WATER

A special American law that regulates heating of dwellings refers to the issue of being cut off from utilities services.

²⁶ art. 27 of Ordinance nr. 119/2014.

²⁷ 105 CMR §410.190.

²⁸ 105 CMR §410.220.

²⁹ annex nr. 2, pct. F of Law nr.114/1996.

³⁰ *Ibidem*.

³¹ 105 CMR §410.253(A).

³² annex nr. 2, pct. F of Law nr. 114/1996.

³³ art. 17 (3) of Ordinance nr. 119/2014.

Gas companies are not allowed to cut off a dwelling's gas supply between the 15th of November and the 15th of March as a sanction for not paying the bills in time, if the tenant is in financial difficulty.³⁴

There are two other categories of people, who's utilities services cannot be cut off, regardless of season: if a child who is under 1 year old lives in the dwelling or if only people that are older than 65 years old live in the dwelling.

In Romania, cutting someone off from utilities services can always be done, in case of noncompliance with the legal obligation to pay for those services, regardless of the season or whether or not the beneficiary is in financial difficulty.

13. HYGIENE IN DWELLINGS

Inadequate hygiene in dwellings can lead to multiple diseases that can be grouped as: bacterial disease, viral disease and parasites.

In order to prevent the onset of these diseases, it is necessary to ensure the proper storage of waste and the minimum conditions of adequate personal hygiene, such as access to a bathroom that is connected to the sewage and water system.

14. COLLECTING AND STORAGE OF WASTE

The tenant has the legal obligation to maintain the dwelling in a state of proper hygiene. However, the providing of the necessary conditions for the tenant to be able to exercise his legal obligation is the job of the landlord.

In multiple dwelling homes, the landlord has the legal obligation to provide a place of storage for waste, in accordance with the law.

The Romanian Dwelling Law enounces the base principle, according to which the collecting and storing of waste has to be done in a designated area³⁵. Special laws contain further provisions regarding the conditions the designated area needs to meet: it needs to be a separated platform that is impervious and has a slope for drainage. The designated area will be placed at a distance of 10 meters from the windows of surrounding dwellings and will be permanently kept in a state of cleanliness³⁶.

The law of the U.S. is similar to Romanian law. Waste will be stored in special containers that have a lid, are impervious and cannot be reached by rodents.³⁷

15. THE SANITARY ACCOMMODATION OF A DWELLING

Under Romanian law, each dwelling has to have a sanitary group³⁸.

According to the definition of the Romanian dictionary, a sanitary group is „*a space containing a water closet, a sink and sometimes a bathtub*”³⁹.

³⁴ Legal tactics, *op.cit.*, chapter 6, p. 63.

³⁵ Annex nr. 1, pt. G of Law nr. 114/1996.

³⁶ Art. 4 of Ordinance nr. 119/2014.

³⁷ 105 CMR §410.600.

³⁸ Annex nr. 1, pt.A of Law nr.114/1996.

³⁹ <https://dexonline.ro/definitie/grup>

In the continuance of the law, the Romanian legislature uses the term sanitary accommodation and underlines that the „*sanitary accommodation is included in the dwelling, when it can be connected to the water system and the sewage system*”⁴⁰.

From the analysis of the above legal texts, we can deduce that the minimum requirement for a dwelling is that it has a sanitary group, and it isn't mandatory for it to be connected to the water and sewage system.

The law also refers to the minimum requirements that need to be met when a dwelling has a sanitary group.

According to the terminology of the law, there are three types of sanitary groups: bathroom, shower and water closet.

According to the law, the minimum requirements dwelling needs to meet differ based on the number of rooms a dwelling has. Every dwelling needs to have at least a sanitary accommodation, a three bedroom apartment needs to have a sanitary accommodation and a separate water closet, a four bedroom rooms needs to have a sanitary accommodation and a shower and a five bedroom apartment needs to have two sanitary accommodations.

The U.S. law obliges that a dwelling has a sanitary accommodation that is connected to the sewage system and to running water⁴¹. The sanitary group can have a bathtub or a shower and needs to be accessible directly from the dwelling, without having to pass through neighboring apartments⁴².

Massachusetts law is stricter than Romanian law, the presence of a sanitary group not being sufficient. This is due to the differing social realities of the two countries. According to a statistical analysis conducted in Romania in 2009, more than 40% of the Romanian population doesn't have access to a sanitary accommodation (Rybowska&Schneider, 2011, p. 3).

Unlike Romanian law, the law of the State of Massachusetts does not forbid the sharing of a sanitary accommodation between apartments, under the condition of insuring it is cleaned on a daily basis.⁴³

16. FIGHTING OVERPOPULATION

According to the World Health Organization, overpopulation in dwellings is the primary cause for the spreading of epidemic disease, such as airway infections, meningitis, cholera, typhoid fever⁴⁴.

Overpopulation is defined by Eurostat, the agency for statistical analysis of the European Union, as the living condition where a person does not have access to his own room. As an exception to this rule, Eurostat tolerates the sharing of a room by two people when they are brothers or sisters or they are married.⁴⁵

⁴⁰ Annex nr. 1 pt. B of Law nr. 114/1996.

⁴¹ 105 CMR §410.150.

⁴² 105 CMR §410.150 (c).

⁴³ 105 CMR §410.151.

⁴⁴ http://www.who.int/water_sanitation_health/emergencies/qa/emergencies_qa9/en/

⁴⁵ http://ec.europa.eu/eurostat/statistics-explained/index.php/Housing_statistics,

According to a 2013 Eurostat statistics, one in 6 European citizens live in an overpopulated home⁴⁶. According to the statistics, the highest rate of overpopulation was documented in Romania, where half of the population lives in overpopulated dwellings.

This way, overpopulation is a serious and current problem that the legislators attempted to resolve by enacting laws that define the minimum living space that is mandatory for each person.

This way, the minimum living conditions a dwelling needs to meet when it is being inhabited by two people are: the minimum useful floor area of a dwelling is 30 square meters in Romania⁴⁷, 23 m² in Massachusetts⁴⁸ and will be composed of a bedroom, that will have the minimum useful floor area of 12 m² in Romania⁴⁹ and 11.15 in Massachusetts⁵⁰, a bathroom and a dining area.⁵¹

In Massachusetts, the minimum useful floor area is not determined for the sanitary accommodation and the dining area, because it varies in accordance with the number of people who live in the dwelling. If, for example, two people live there, the sanitary accommodation will have the minimum useful floor area of 4.5 m² and the dining area will be of minimum 3 m².

This way, the Romanian law sets higher minimum standards than the law of Massachusetts, the difference being the highest in the case of the minimum useful area that can differ by even 7-8 m².

17. LIABILITY IN CASE OF FIRE

The legislation of the United States is radically different from Romanian legislation regarding liability in the event of fire in leased dwellings.

According to Romanian law, the general rule is that the tenant is reliable for the degrading of the leased premises in case of fire⁵²; however the U.S. legislation has opposite legal provisions that state that as a general rule, the tenant is reliable in such cases.

The legal basis of the difference is that Romanian law is based on legislation, whereas U.S. law is based on legal precedent.

This way, in Romanian law, the tenant's liability stems from the obligations assumed by the rental agreement, that to use the rented premises with the prudence and diligence of a good owner and from the legal provisions of the Civil Code, that state that the tenant is reliable in case of fire, unless he can prove that the fire was a result of "force majeure"⁵³.

In U.S. legislation, the legal precedent that the landlord's reliability is based on was set in the case of *New Hampshire Insurance v. Labombard*⁵⁴.

⁴⁶ Annex nr. 2.

⁴⁷ Annex nr. 1, pt. B of Law nr. 114/1996.

⁴⁸ 105 CMR §410.400.

⁴⁹ Annex nr. 1, pt. B of Law nr. 114/1996.

⁵⁰ 105 CMR §410.400.

⁵¹ Annex nr. 1, pt. B of Law nr. 114/1996.

⁵² art.1822 (1) of the Civil Code.

⁵³ *Ibidem*.

⁵⁴ *New Hampshire Insurance versus Labombard*, Michigan Court of Appeal, 1986.

According to the facts of the case, a fire broke out in a rented home, due to the tenant's negligence, which had left his 3 years old daughter unsupervised with a box of matches near her.

The landlord's insurance company sued the tenant for the resulting damages.

The Court decided in favor of the tenant, arguing that „*it is reasonable for the tenant to expect the landlord to utilize the rent in such manner as to cover all costs, including the costs of insurance*”⁵⁵

A particularly interesting scenario is when the tenant's negligence causes the fire, and the negligent act is described as prohibited either in a particular clause of the rental agreement that the parties had agreed on or in the House Rules and Regulations, that are also a part of the contract.

In this particular case, the Court applied the legal precedent set by the case of Lombard, mentioned above, according to which the landlord is reliable for the damages.⁵⁶

This way, the legal provisions of the Romanian legislation regarding liability in case of fire, oppose the U.S. legislation's provisions. Nevertheless, the two legislations have something in common: putting the accent on fire prevention and fire safety measures.

This way, both the American and Romanian landlord can buy insurance policies, however they are not obligated to do so under neither of the legislations.

The legislations also refer to fire prevention and fire safety measures that need to be taken. In Romania, the law only recommends for certain measures to be taken: placing a fire extinguisher in every apartment and every kitchen.⁵⁷

In the State of New York, every apartment of a condominium has to have a smoke detector⁵⁸ that needs to be placed near the bedroom.

In Romania, smoke detectors are not compulsory.

18. THE SAFETY OF THE COMMON ELEMENTS OF A DWELLING

When the dwelling is a part of a condominium, it is necessary to analyse whether the common elements of the dwelling can be dangerous to the health and safety of the tenant. We shall analyse whether the landlord is obliged to maintain the common elements fit for habitation.

The common elements of a building are an accessory to the leased dwelling, therefore during the duration of the lease „the tenants have the right to use the common elements of the building”.

In Romania, in the lack of a contrary understanding between the parties, the landlord is responsible for the repair and upkeep of the common elements⁵⁹, providing the normal functioning⁶⁰ of these spaces, the tenant being only responsible for the living expenses, such as lighting and cleaning of the common elements⁶¹.

⁵⁵ *Ibidem*.

⁵⁶ Milbrand Company versus Lumbermens Mutual Insurance Company, Michigan Court of Appeal, 1989.

⁵⁷ Art. 119 of M.A.I. Ordinance.

⁵⁸ 105 CMR §410.482.

⁵⁹ Art. 654 (1) of Civil Code.

⁶⁰ Art. 35 of Law nr. 114/1996.

⁶¹ Art. 1829 (2) of Civil Code.

This way, in a case⁶², the owner of a multiple dwelling sued the Owner's Association because the depositing of the trash of the entire dwelling in the hallways contravened the provisions of the law⁶³, and put the health of the people who lived there in danger due to its smell. The Court of Appeal of Cluj decided in the claimant's favour and ruled that the Owner's Association move the trash bin from the hallway to the common court of the dwelling.

This way, when the tenant sees that the health and safety measures regarding the common elements of the building are not in compliance with, he is obliged to notify his landlord⁶⁴ about the possible hazard.

Moreover, the tenant can notify the Owner's Association, if there is one, and can ask that an Extraordinary Meeting be held⁶⁵. The measure is necessary, because changing the common area of a dwelling is only possible with the approval of the Owner's Association⁶⁶.

The latter will adopt a decision with the majority of the owner's votes.

If the vote is a positive one, the Owner's Association will make necessary repairs and will divide the expenses among the owners, proportionally with their undivided share of the land.⁶⁷

If the result of the vote is negative, the tenant can notify the State Health Department.

When the health and safety hazard is very serious, in our opinion, the tenant can terminate the tenancy agreement and can solicit damages, after having previously notified the landlord about the hazard.

The State of Massachusetts has similar laws regarding the safety hazards of the common elements.

The U.S. doctrine has brought up the issue of extending the warranty of habitability of the common elements of a dwelling.

In one author's opinion (Brennan, 1999, p. 32), this would be the natural next step in the evolution of the warranty of habitability. The main argument being the Javins case, that first introduced the concept of warranty of habitability. According to the author, Courts should take the Javins case as an example to follow and should assume an active role in the extension of the warranty of habitability to the common elements of a dwelling (Brennan, 1999, p. 32).

19. THE LEGAL SANCTIONS OF NON-COMPLIANCE WITH THE LEGAL NORMS THAT GOVERN THE HABITABILITY OF A LEASED DWELLING

Non-compliance with the legal norms presented above that govern the habitability of a leased dwelling can cause a threat to the health and safety of those who inhabit the dwelling.

⁶²Decision nr. 4632/2013, Cluj Court of Appeal, civil section.

⁶³Art. 20 of Law nr. 211/2011.

⁶⁴Art. 1801 of the Civil Code.

⁶⁵Art. 14 (3) of Methodological Norm of Law nr. 230/2007.

⁶⁶Art. 11 (2) of Law nr. 230/2007.

⁶⁷Art. 48 (1) of Law nr. 230/2007.

Both Romanian and U.S. law sanctions noncompliance with health and safety measures, however the two legislations are radically different in the way they impose these sanctions.

The basic difference lays in the way the landlord is held liable.

Under U.S. law, it is done with the help of the coercive force of the State, under Romanian law, on the other hand, State interference is not considered necessary, because it is believed that the tenant has all the necessary means to protect himself on a contractual basis.

The two legislations are similar in the way that the tenant can make the necessary repairs on the expense of the landlord.

If the tenant doesn't wish to do so, under Romanian law, the tenant only has one legal remedy, that to terminate the contract and ask for damages, whereas under U.S. law, the tenant can force the landlord to remedy the hazards that contravene health and safety regulations by contest of the State's coercive force.

This way, based on the above differences, we will present all the steps the tenant needs to take under U.S. and Romanian law.

In the State of Massachusetts, all of the minimum standards of habitability are in the State Sanitary Code. This way, evaluating whether a dwelling is in compliance with health and safety regulations can be done by the contracting parties directly, without specialized help.

If the tenant reaches the conclusion that the dwelling doesn't comply with the regulations, he needs to notify his landlord.

The law sets the amount of time the landlord has in order to remedy the hazard, based on the type of the hazard.

The most serious hazards are the ones that are related to the lack of utilities services, the lack of a functioning water closet. These hazards need to be remedied within 24 hours⁶⁸.

Other hazards, that aren't considered as serious, as for example the improper functioning of the kitchen sink, the hazard needs to be remedied within 5 days.⁶⁹

For other hazards, the deadline is 30 days.

If the landlord doesn't remedy the hazard within the legal time-frame, the tenant can ask for the State Health department or the Inspection Services Department to conduct an inspection of the dwelling. When solicited for, the Inspector is legally obliged to make the inspection in 5 days after receiving the request⁷⁰. At the end of the inspection, the inspector is legally obliged to send the tenant a copy of the inspection report.⁷¹

If the Inspector finds that the dwelling is in violation of health and safety regulations, he will file a Correction Order.⁷²

If the landlord does not remedy the hazard within the period of time that was given to him by the Inspector, the tenant has three courses of action that he can choose from: he can remedy the hazard on his own expense, that he can later deduct from his rent for a

⁶⁸ 105 C.M.R. §410.750.

⁶⁹ *Ibidem*.

⁷⁰ 105 CMR §410.820(A)(2).

⁷¹ 105 C.M.R. §410.822(C).

⁷² 105 CMR §410.830.

maximum of 4 months⁷³; he can invoke the exception of the landlord's non-compliance with his contractual obligations, by which he can withhold rent until the hazard has been remedied⁷⁴ or when the hazard is very serious, the tenant can terminate the contract (Balandis, 2008, p. 120).

As we have already explained above, under Romanian law, the tenant has to defend himself alone, based on contractual remedies.

These remedies are basically the same ones that the U.S. tenant has in the second phase, after the landlord's noncompliance with the State Department's deadline.

This way, if the landlord doesn't take measures to remedy the hazard after having been previously notified by his tenant, the latter can fix the hazard on his own expense⁷⁵, if the hazard is so serious that it poses a threat to the health and physical safety of the tenant, he can terminate the tenancy agreement.⁷⁶

A last difference between the two legislations is regarding the protection of the tenant from the landlord's unilateral denunciation of the tenancy agreement.

In accordance with a clause from a Massachusetts law, called the anti-revenge clause, it is illegal for the landlord to unilaterally denounce the lease or increase the rent in 6 months from when the tenant announces the landlord about his non-compliance with the legal provisions regarding the minimum standards of habitability⁷⁷.

The Romanian legislation does not have such a clause, however in accordance with the Romanian Civil Code, the landlord cannot unilaterally denounce a lease that's duration was determined by the rental agreement, unless the contracting parties inserted a clause in the contract that allows the landlord to do so.⁷⁸

In accordance with the principle of contractual good faith and civil law doctrine, a unilateral modification of the contractual terms that had been previously agreed upon that has the vengeance upon the tenant as a cause, even if the contract the parties had signed would allow doing so, it would not be valid because it has an immoral cause that is contrary to the legal principle of contractual good faith.

De lege ferenda, the anti-vengeance clause should be introduced in Romanian landlord-tenant laws, because proving an immoral cause or the lack of good faith will be hard to do by the tenant.

20. CONCLUSIONS

The minimum standards of habitability are regulated differently in the two legal systems analyzed above.

In the U.S., the minimum standards of habitability are integrated in a single law and the competent public authority watches over the fact that it is being complied with, by doing regular home inspections and by issuing a Correction Order that can be enforced by a Court of law.

⁷³ General Law, chapter 111, section 127L.

⁷⁴ Massachusetts General Law, chapter 239, section 8a.

⁷⁵ Art. 1788 of the Civil Code.

⁷⁶ Art. 1827 of the Civil Code.

⁷⁷ Massachusetts General Law, chapter 239, section 2a.

⁷⁸ Art. 1825 of Civil code.

In Romania, on the other hand, the minimum standards of habitability cannot be found in a single legal document. Although the Dwelling Law contains basic legal provisions, for a complete image of the legislative requirements, the reading of special laws is also required.

Consequently, the Romanian law is less transparent and also less accessible than the law of Massachusetts.

Moreover, the Massachusetts law has a higher degree of accessibility also due to its clear wording.

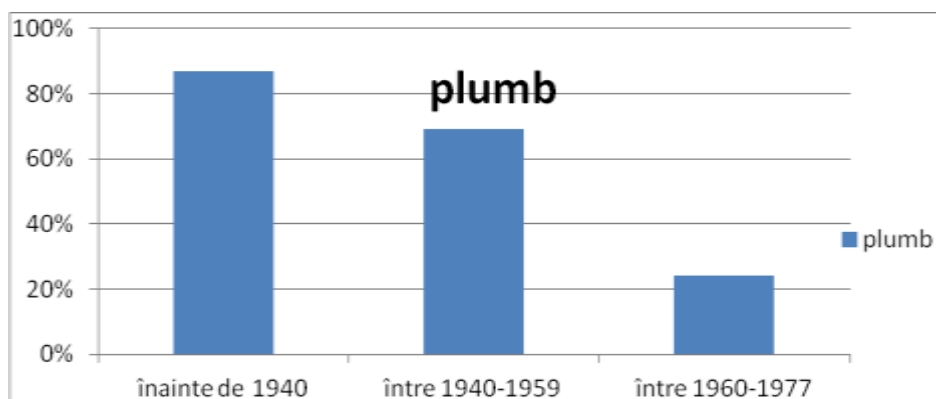
In our opinion, even though the laws on the minimum standards of habitability are considerably different at present, in the future few decades, the two legislations will come to be alike. Legal harmonization already exists on a European level.

The legislature will have a determining role in the process of legal harmonization, however we cannot escape the principle of general law, according to which „*legal norms are a reflection of socio-historic reality, they cannot exist beforehand*” (Boboș, et al., 2008, p. 193).

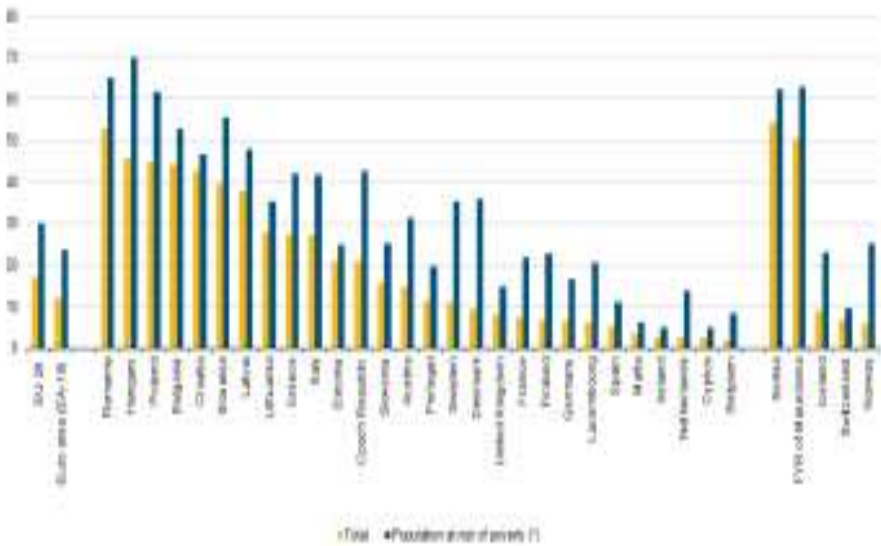
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Annex nr.1



Annex nr.2



(*) Population below 65% of median equivalent income
 Source: Eurostat (2016) data code: la_jeval01