



Round Table on the Social Rights of Refugees, Asylum-Seekers and Internally Displaced Persons: A Comparative Perspective

Organised jointly by

UNHCR and the Council of Europe's Department of the European Social Charter



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showing from left to right:

Mr Rhodri C. Williams : Independent Consultant on property restitution and refugee return issues

Mrs Polonca Končar : President of the European Committee of Social Rights

Mr Luis López Guerra : Judge, European Court of Human Rights

Mr Olivier Beer : Representative, UNHCR Representation to the European Institutions in Strasbourg

Mr Christos Giakoumopoulos : Director of Monitoring, Directorate General of Human Rights and Legal Affairs

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Programme

14:00 – 15:00 Opening of the Round Table

14:00 – 14:15 Welcome address by Mr Christos Giakoumopoulos, Director of Monitoring, Directorate General of Human Rights and Legal Affairs, Council of Europe

14:15 – 14:30 Opening statement: The local integration of refugees and social rights, by Mr Olivier Beer, UNHCR Representative to the European Institutions in Strasbourg

14:30 – 14:45 The European Court of Human Rights and the protection of social rights, by Mr Luis López Guerra, Judge, European Court of Human Rights

14:45 – 15:00 The European Social Charter: Protecting the social rights of persons of concern to UNHCR, by Mrs Polonca Končar, President of the European Committee of Social Rights

15:00 – 15:45 The right to housing and property restitution for refugees and displaced persons

Overview of recent case law and issues at stake, by Mr Rhodri C. Williams, Independent Consultant on property restitution and refugee return issues

Panel:

Mrs Madeline Garlick	Head of Policy and Legal Support Unit, UNHCR Bureau for Europe, Brussels
Mr Dejan Kladarin	Assistant Protection Officer, UNHCR Representation in Serbia
Mr Mario Pavlovic	Associate Protection Officer, UNHCR Representation in Croatia
Mr Ljubomir Mikic	Former President of the Center for Peace, Legal Advice and Psychosocial Assistance, Vukovar, Croatia
Mr Marc Leyenberger	Member of the French National Human Rights Consultative Committee (CNCDH); Member of the European Commission against Racism and Intolerance (ECRI) in respect of France
Mr Jean-Michel Belorgey	General Rapporteur, European Committee of Social Rights

16:00 – 16:30 Final Discussion

16:30 – 17:00 Concluding remarks and closure of the Round Table

Mr Belorgey, General Rapporteur, European Committee of Social Rights

Organisers

UNHCR

Mr Olivier Beer, Representative
Ms Jutta Seidel, Senior Legal Assistant
Ms Anne Weber, Legal Assistant (until mid-November 2009)
Mr Tom Coppen, Intern
Ms Daphnée Ouellet, Intern
Ms Claire Simmonds, Intern

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Foreword

Since 1995, the Office of the United Nations High Commissioner for Refugees (UNHCR) has organised a series of colloquies organised jointly with the Council of Europe, relating to the protection of refugees, asylum-seekers and displaced persons in Europe.

The past colloquies focused on the potential of the European Convention of Human Rights (ECHR) to complement the protection regime set up by the 1951 Convention Relating to the Status of Refugees (1951 Convention) and its 1967 Protocol. The colloquy held in 2000 took a closer look at the evolution of the case law of the European Court of Human Rights (the Court) regarding this matter, while the colloquy which was organized in 2005 examined the question of the interaction between the ECHR and the Common European Asylum System developed by the European Union.

Today, it is commonly accepted that the ECHR plays an essential role in the protection of refugees, asylum-seekers and displaced persons in Europe. Over the years, the Court has widened the scope of its protection beyond the prohibition of torture and the right to respect for private and family life, and has taken an interest in matters such as education and the protection of property rights of persons of concern to UNHCR.

Furthermore, the protection of the social rights of refugees in Europe was raised as a key matter in the past colloquies. In this regard, several participants had mentioned the importance of the European Social Charter (ESC) and of the work of the European Committee of Social Rights (ECSR). The importance of such an issue is in line with UNHCR's constant search for a higher level of social and economic inclusion of refugees in Europe, as well as the pursuance of more effective strategies for their full integration.

Together, these factors make it a timely moment to stand back and examine the potential of both the ESC and the ECHR regarding the protection of social rights of refugees in the light of the 1951 Geneva Convention Relating to the Status of Refugees.

The Round Table on "The Right to Housing and Property Restitution for Refugees and Displaced Persons" is therefore the first in a series of discussions on the essential process of local integration which can only be achieved through effective access to, and implementation of, social rights for refugees in Europe. It is also an important opportunity for UNHCR to stress the importance of durable solutions, such as local integration, to solve the problems of refugees permanently.

By bringing together governmental and non-governmental experts from the field of human rights and refugee protection, UNHCR, together with the European Committee of Social Rights, hopes to provide an opportunity to review developments, and share knowledge and experience, as well as encourage new perspectives for the protection of social rights of persons of concern to UNHCR in Europe and achieve full implementation by the Member States of the Council of Europe of their international obligations.



Christos Giakoumopoulos
Director of Monitoring
Directorate General of Human Rights
and Legal Affairs
Council of Europe



Olivier Beer
Representative
UNHCR Representation to the
European Institutions in
Strasbourg

Summary of the Round Table

Introduction

The situation of refugees, asylum-seekers and internally displaced persons is a pressing concern for Europe, and social rights are of the utmost importance for these vulnerable groups. The Council of Europe has always shown a special interest in the situation of these groups, and over the years the Committee of Ministers has adopted a number of pan-European standards, including recommendations to governments which call for the full implementation of the 1951 Convention. These recommendations draw explicitly or implicitly on the ECHR and on the ESC, which with their universal and mutually complementary natures make up the backbone of the Council of Europe's action in the human rights field.

Although the ECHR does not contain explicit provisions on the rights of refugees and asylum-seekers, the case law of the Court has nevertheless made it an important instrument in the field of refugee law. The ESC, although its *ratione personae* is more limited, is nonetheless a comprehensive human rights treaty in terms of substantive rights contained. At present it is legally binding on 43 Member States¹ and includes many social rights which are set out in the 1951 Convention, such as employment rights, social security and assistance, education and, the focus of this Round Table, housing rights.

There are many promising interfaces of cooperation between the Council of Europe and UNHCR that should be explored fully to strengthen the protection of social rights of the persons concerned. The Round Table has attempted to do so; below one can find a brief summary of what was discussed.

The protection of social rights of refugees, asylum-seekers and displaced persons in Europe

The local integration of refugees and social rights

Olivier Beer (Representative, UNHCR Representation to the European Institutions in Strasbourg)

The mandate of UNHCR is the protection of the 36.5 million people that are uprooted worldwide; refugees, asylum-seekers, internally displaced persons and stateless persons. The protection of refugees takes place under the legal framework of the 1951 Convention. In addition, UNHCR also presses for continuing respect for the human rights of all persons of concern. In carrying out its mandate, UNHCR promotes three durable solutions for the displaced: repatriation, resettlement and local integration.²

¹ See Council of Europe, *Member States of the Council of Europe and the European Social Charter, state of signatures and ratifications as of 30 March 2010*, available at:

http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/Overview_en.asp.

[All websites accessed on 01 August 2010].

² See *UNHCR Global Report 2009*, 01 June 2010, p. 21 – 37, available at:

<http://www.unhcr.org/4c08f25a9.pdf>, <http://www.unhcr.org/4c08f1fc9.html>.

Contrary to popular belief, an increasing number of persons of concern live in urban areas - this is particularly true in Europe - thinking that they will find greater security, and broader choices there as regards education, work and housing. The reality, however, is different, as most refugees have lost all personal documents, cannot rely on any social networks, have limited or no access to work and often suffer from discrimination.

Without ensuring that refugees can fully benefit from the same social and economic rights as the citizens in the country of asylum, genuine local integration as a durable solution will never be achieved. Indeed, limiting the rights of asylum-seekers and refugees can only serve to increase their frustration and widen the barriers between them and the local population. Lack of recognition of diplomas and of access to language courses, and discrimination at work, remain clear obstacles to their real integration. As a consequence, they become an easy target, second class citizens vulnerable to exploitation with no access to health care or justice when their rights have been violated.

Many social rights are enshrined in the 1951 Convention, such as the right to property, housing and education, and these rights are reinforced by the ECHR and the ESC. Given that the ESC expressly states that "Each Contracting Party will grant to refugees as defined in the 1951 Geneva Convention relating to the Status of Refugees, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Contracting Party under the said Convention and under any other existing international instruments applicable to those refugees",³ UNHCR is looking forward to strengthening further its legal cooperation with the monitoring body of the ESC, the European Committee of Social Rights (ECSR).

UNHCR thus hopes that it will be able to submit its observations in the context of the report procedure of the ECSR, and contribute to the work of the Committee in the form of a third party intervention, as it has been doing for a number of years with the Court.

The European Court of Human Rights and the protection of social rights, Luis López Guerra (Judge, European Court of Human Rights)

When a case before the Court comes within the context of its mandate, UNHCR may intervene as a third party,⁴ providing the Court with information or giving UNHCR's view on a certain matter of refugee law. Through its case law, the Court can further shape and define human rights as they are contained in the ECHR. As it stands, the Court has never recognised a clear distinction between classic civil rights on the one hand, and social and economic rights on the other. According to the view of the Court (in line with the views of the United Nations on this matter) they are interconnected, and there is a constant interplay between them.

The interpretation of the rights in the ECHR may, according to the Court, lead into the sphere of social rights in two ways.⁵ First, classic civil rights may have an indirect effect

³ See Council of Europe, *Appendix to the European Social Charter (revised)*, CETS No.: 163, 03 May 1996, at Scope of the European Social Charter (revised) in terms of persons protected, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm>.

⁴ See Art. 36 ECHR, Rule 44 Rules of Court.

⁵ See ECtHR, *Airey v. Ireland*, Appl. No. 6289/73, Judgment of 09 October 1979, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695297&portal=hbkm&source=external/bydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

on the scope of the Court's interpretation, where civil rights and obligations may have consequences of a more socio-economic nature. This can be seen when interpreting the right to a fair trial under Article 6 ECHR, when the Court defined the concept "civil rights and obligations" as including matters such as social benefits, thereby extending the article's application to cover claims concerning social rights.⁶ Also, the prohibition of discrimination in Article 14 ECHR was interpreted by the Court as applying, beyond the context of the rights and freedoms in the ECHR, within those areas covered by (or within the scope of) its mandate. The scope of the ECHR was even further extended by its Protocol 12, prohibiting any discrimination in the sphere of any right recognised by the internal law of Member States. However, this Protocol is not widely ratified.⁷

There is also a direct effect of classic civil rights on economic and social matters, offering substantive protection to individuals. Article 1 of Protocol No. 1 to the ECHR contains the right to the enjoyment of one's possessions. According to the Court, "possessions" include socio-economic rights such as state benefits, if these are part of the internal law of the State Party concerned.⁸ In this way, the social rights recognised in the legal order of any contracting state are protected by the ECHR against any substantial violation, that is, against the illegal deprivation of these rights.

The European Social Charter: protecting the social rights of persons of concern to UNHCR

Polonca Končar (President of the European Committee of Social Rights)

The ESC contains an extensive range of social and economic rights; however, its personal scope is restricted. Those who are not nationals of a State Party and those unlawfully present in the territory of the States Parties are excluded from its protection. However, exceptions to this limited application of the Charter exist; they can be found in the Appendix to the ESC and the case law of the European Committee of Social Rights.

Under the Appendix, refugees falling within the scope of the 1951 Convention are entitled to treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Party under the 1951 Convention and under any other existing international instrument applicable to those refugees. The Appendix extends the same requirement to stateless persons as defined in the 1954 Convention relating to the Status of Stateless Persons.

Moreover, the ECSR has extended the scope of the ESC by virtue of its case law. Article 12 § 4 ESC, pursuant to which State Parties undertake to create a system of social security, extends to refugees and stateless persons; and Article 13 § 1 ESC, on the right

⁶ See ECtHR, *Buchholz v. Germany*, Appl. No. 7759/77, Judgment of 6 May 1981, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695328&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>;

Pellegrin v. France, Appl. No. 28541/95, Judgment of 8 December 1999, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=696279&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

⁷ Council of Europe, *Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, CETS No.: 177, 04 November 2000, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/177.htm>.

18 ratifications/accessions as of 05 August 2010, see <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=177&CM=7&DF=05/08/2010&CL=ENG>.

⁸ See ECtHR, *Gaygusuz v. Austria*, Appl. No. 17371/90, Judgment of 31 August 1996, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695937&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

to social and medical assistance, now has the same scope as the Appendix for refugees within the meaning of the 1951 Convention. The standpoint of the Committee regarding the right to benefit from social welfare services (Article 14 ESC) is that the provision of social welfare services concerns everybody lacking the capability to cope with social problems, and in particular the vulnerable groups, which may be deemed to include persons of concern to UNHCR.

The ECSR has not been closely monitoring the provision of social rights to refugees, asylum-seekers and internally displaced persons by the States Parties; this is primarily the responsibility of the national authorities under the system of the ESC. It is, most likely, the collective complaints procedure⁹ that is the most effective way of implementing the rights of the ESC in such a way that they will protect persons of concern to UNHCR as well as nationals of States Parties. For example, in a case concerning the entitlement of migrants to medical assistance, the ECSR found a breach of Article 17 ESC (the right of children and young persons to social, legal and economic protection) based on human rights considerations: children of illegal migrants could be exposed to the risk of not receiving medical treatment, because the law in question only envisaged assistance to them in situations involving a threat to their life and their admission to medical schemes after a certain time.¹⁰

The right to housing and property restitution for refugees and displaced persons

Rhodri C. Williams (Independent Consultant on property restitution and refugee return issues)

Property rights comprise both the right of property and the right to property, thereby incorporating aspects of both classic civil and political rights as well as social and economic rights. The right of property protects the enjoyment of property in one's possession. It is a classic negative right, meaning that it entails a negative obligation for the state: the obligation to refrain from interference with an individual's rights. In protecting individual liberties against the state, the right of property is of a conservative nature, protecting property relations regardless of whether these are just and equitable.

The right to property is, on the other hand, a socio-economic right, creating a positive duty for states to take active steps in order to ensure a fair and equitable distribution of property. While creating legal obligations, rights to property involve more overtly political considerations and are protected by fewer strong protection mechanisms at the regional and international level.

Regarding displaced persons, the international community's main policy goal in the last two decades has been to restore their property in order to secure durable solutions. In this context, the aim is to restore the *status quo ante*, rather than to ensure equitable distribution. Thus, it is important to understand that the "property rights" of refugees and displaced persons since the end of the Cold War have been conceived of almost

⁹ See Council of Europe, *Additional Protocol to the European Social Charter Providing for a System of Collective Complaints*, CETS No.: 158, 09 November 1995, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/158.htm>.

¹⁰ See ECSR, *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No. 14/2003, Decision of 03 November 2004, available at: <http://hudoc.esc.coe.int/esc2doc/esce/doc/200418/cc-14-2003-en-1.doc>.

exclusively in terms of civil and political rights, rather than in terms of social and economic rights.

The emerging right of post-displacement property restitution has made considerable progress since the end of the Cold War. However, the closely associated right of return was traditionally limited to a right of repatriation to one's country of origin, rather than a right to return to a specific place within it. Meanwhile, the right to remedy has been mainly procedural in character, amounting to the right to a fair hearing, rather than to a specific substantive remedy such as, for example, restitution.

The aftermath of ethnic cleansing in Bosnia and Herzegovina saw a breakthrough in terms of the right of return to homes of origin and the right to restitution of property. Provisions on these matters were incorporated in the peace agreement, providing a precedent for post-conflict agreements since. Moreover, attention to housing and property issues has become a standard component of humanitarian response. On top of this, new principles were formulated on how to deal with property restitution; the UN Commission on Human Rights adopted a resolution containing the "Bassiouni/Van Boven"-principles, shifting the right to reparation in international law from the purely procedural into the substantive sphere.¹¹ The "Pinheiro" principles are also of great importance, but have less force, as they have not been discussed yet by the UN Commission on Human Rights.¹²

There are many problems and challenges to be faced going ahead. Many rights are left unrecognised in practice, such as the rights of Roma in Europe, or the rights of widows in numerous contexts worldwide. In some situations, the prior regime of property distribution could be unsustainable; or an acceptable *status quo ante* may not exist. Attempting to attain a just system for housing and property rights for displaced persons using a human rights approach has strong potential; yet the near-exclusive focus on civil and political rights approaches so far hinders progress. Other problems can be of a practical nature, for example the socio-economic circumstances in a state which may preclude it from being able to afford to engage in property restitution.

To sum up, there is a need for renewed focus on a social and economic rights approach to property issues of displaced people. These rights are no less applicable and relevant than civil and political rights, yet the focus on the latter has perhaps hindered a full exploration of the former. It is crucial, in any setting, to understand the context in addressing displacement, and above all to consult with the displaced themselves, in order to arrive at the best possible diagnosis of all the human rights that are at stake and to provide suitable redress on these grounds.

¹¹ See UN Commission on Human Rights, *Resolution 2005/35 on Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 19 April 2005, E/CN.4/RES/2005/35, available at: <http://www.unhcr.org/refworld/docid/3deb2ca54.html>.

¹² UN Sub-Commission on the Promotion and Protection of Human Rights, *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, 28 June 2005, UN Doc. E/CN.4/Sub.2/2005/17, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=41640c874&skip=0&advsearch=y&process=y&allwords=E/CN.4/Sub.2/2005/17&exactphrase=&atleastone=&without=&title=&monthfrom=&yearfrom=&monthto>.

Social rights in European Union legislation

Madeline Garlick (Head of Policy and Legal Support Unit, UNHCR Bureau for Europe)

Other instruments containing relevant provisions on social rights for refugees, asylum-seekers and internally displaced persons are to be found within the legal framework of the European Union.

First, there is the Charter of Fundamental Rights of the EU (EU Charter).¹³ According to its interpretation by UNHCR, the EU Charter provides an important affirmation of the social and economic rights enjoyed by persons of concern, and has great potential for enforcing those rights. One particular provision of interest pertains to a person's right to dignity.¹⁴ If interpreted broadly, access to basic social and economic rights might fall under this article, since they are of paramount importance for any individual who wishes to be given the chance to become self-sufficient and to be able to participate in his or her host society. Furthermore, the EU Charter contains potentially very interesting articles on social rights, such as the right to choose one's occupation and the right to work.¹⁵

The Qualification Directive¹⁶ is another EU instrument that might improve the social and economic rights of displaced persons. By including social rights, the directive could have a significant positive impact on opportunities to improve the local integration of persons of concern to UNHCR. Primarily, the Qualification Directive sets out standards according to which requests for asylum should be processed. However, the instrument contains various entitlements for displaced persons that reflect the social and economic rights granted to refugees by the 1951 Convention. In addition to listing these rights, the directive goes one step further by also including a right to a residence permit and travel documents.

Clearly, there are social and economic safeguards for displaced persons to be found within the EU framework. As a legally binding document containing social rights, the EU Charter in particular provides some interesting opportunities to build on. Regarding the actual amount of assistance it is going to provide, however, it remains to be seen how difficulties implementing such rights will be overcome in practice.

¹³ European Union, *Charter of Fundamental Rights of the European Union*, 14 December 2007, Official Journal of the European Union, 14 December 2007 (2007/C 303/1), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0001:0016:EN:PDF>.

¹⁴ Art. 1 Charter of Fundamental Rights of the European Union.

¹⁵ Art. 15 Charter of Fundamental Rights of the European Union.

¹⁶ Council of the European Union, *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>.

Housing and property restitution in Europe in practice (Debate)

Case study 1: situation in Croatia and Serbia

In 2009, in Serbia, there were approximately 86,000 refugees from the former Yugoslavia left of the 524,000 who were there in 1996. The majority of those 524,000 have been naturalised, and almost 150,000 of them have been repatriated. However, these figures can to some extent be considered as artificial, since the real issue at stake is whether durable solutions have been found for them. Of the returnees, it is unclear how many have successfully reintegrated in their country of origin, just as it is unknown how many refugees remaining in Serbia have achieved full socio-economic integration. For these reasons, it is hard to comment on the sustainability of these solutions.

An analysis of these figures indicated that many refugees had not found a durable solution to their situation, and that only 5% of those still in Serbia are considering returning to their country of origin. It is notable that comparatively many more returnees were from Bosnia and Herzegovina; this is, according to UNHCR, in all probability related to the different property restitution processes concerned. UNHCR considers housing and employment as the two main protection concerns in the region. Reputedly, many refugees claim they do not require government assistance, but that they merely need their property back in order to achieve a sustainable solution.

It seems that, taking into account the facts and figures in Serbia, greater emphasis on property rights as a means of local integration is needed. Although, especially in the context of property restitution, local integration is somewhat neglected as a durable solution in favour of repatriation, it is important to realise that the right to possession of property is crucial to all durable solutions. All countries in the region offer refugees the choice between repatriation and local integration, but if rights to housing, education and work are not recognised by one of the countries involved, one may ask if there is even a real choice.

During the conflict in the Balkans, about 250,000¹⁷ ethnic Serbs became displaced outside and inside Croatia. Out of this figure some 30,000 households had been living in socially (collectively) owned apartments as specially protected occupants (lessees) and tenancy rights holders.¹⁸ The Constitution of the former Yugoslavia established tenancy rights as a family-legal, social and property-legal category, and it had characteristics of a specific (*sui generis*) proprietary right. This specially protected occupancy/ tenancy right (OTR) might be legally terminated due to unjustified non-use of the apartments for more than six months.

The majority of ethnic Serbs, former OTR holders, lost their occupancy/ tenancy rights during their displacement due to their homes being left vacant for periods of greater than six months – in *in absentia* court proceedings and without their knowledge. Croatian authorities did not accept armed conflicts, justified fear, direct or indirect pressure and threats, and in some cases forced and illegal evictions from the apartments, as well as the non-existence of objective preconditions for the physical return of beneficiaries and

¹⁷ See, for more information, UNHCR, *Refugee protection and humanitarian work in Croatia: An overview of UNHCR's operations in the past 19 years*, January 2010.

¹⁸ See ECSR, *Centre on Housing Rights and Evictions (COHRE) v. Croatia*, Complaint No. 52/2008, Decision on admissibility, 30 March 2009, available at: <http://hudoc.esc.coe.int/esc2doc/esce/doc/200915/cc52admissee.doc>.

similar circumstances as legally relevant facts that justified either the absence of OTR holders from, or their failure to return to, their apartments within the legally prescribed deadline.

It might, in fact, be better to refer to these issues as “property” problems rather than “housing” problems; it should be noted that different countries in the region have reached different solutions in relation to occupants’ rights; in some states these are considered as property rights, in others they are not.¹⁹

After the international community had taken an interest in the matter, the Croatian Government set up two housing programs, which should allow returnees of all ethnic origins to opt for a permanent return and/or stay. UNHCR is still seeking improvement in some areas, having noticed problems regarding the standard and quality of the housing involved. UNHCR is advocating offering those returnees that did not make the deadline in the first instance another opportunity to regain and enforce their occupancy/tenancy rights.

So far, 13,000²⁰ families of all ethnic origins have applied and 9,000 applications have been decided positively. While the return of ethnic Croats is mostly completed, provision of housing to former OTR holders of Serb origin continues. The Croatian Government is under an obligation to deliver 1,400 apartments a year, while UNHCR will continue to review and advise on the matter.

The region of South-East Europe still has many problems related to refugees and internally displaced persons. A main concern is the effectiveness of the social and economic rights that have been implemented, and problems with the application of such provisions continue to exist in practice. In addition, if one looks past the issue of housing, there is also, among other problems, the matter of restitution of productive property. While often essential to establishing a livelihood, restoring productive property to its rightful owner may prove practically impossible, especially if such ownership was never formally registered in the first place.

The matter of housing and property rights for the displaced in the former Yugoslavia extends far beyond its legal dimension. In order to achieve durable solutions, a multifaceted approach is essential. Issues of regional stability, security, peace and cooperation must be taken into account when trying to search for solutions.

¹⁹ Moreover, even if the former is the case, it is still a question whether a right to occupancy would be a right of property or a right to property (see above).

²⁰ See, for more information, UNHCR, *Protection and Assistance of Returnees, IDPs and Refugees*, February 2010.

Case study 2: situation in France

In France, the legal framework for housing refugees and asylum-seekers remains based on the principles contained in the ESC and the 1951 Convention. It is being claimed by the Government that all necessary legal frameworks for providing housing or accommodation and achieving a durable solution are in place. However, a discrepancy exists between law and reality.

When talking about local integration, it should be noted that before an individual can integrate in any society, he or she first needs to find his or her own place and actively start participating in it. In theory, for example, the French legal instruments aimed at achieving this are exemplary; in practice, it has proven extremely difficult for displaced persons to progress from temporary solutions to durable solutions. Rather than doing so, the Government is turning emergency solutions into indefinite ones. One example of this can be seen in the situation of the refugees and asylum-seekers who are being lodged for indefinite periods of time in hotels that fail to meet the required safety or hygiene standards.

One programme which could respond to this need may be the French Government's housing project for refugees and asylum-seekers. However, in its current form, it is grossly insufficient and cannot be considered effective. It has proven extremely difficult for refugees and asylum-seekers to obtain this kind of accommodation. The figures are self-explanatory: 50% of those enlisted in the program have been waiting for housing for two or three years, and the situation is deteriorating because of the current economic crisis. Although housing is an important factor for the integration of refugees and asylum-seekers, there are still settlements, so-called "jungles", filled with people who do not have a place to go. The result of this situation is that many refugees and asylum-seekers in France find themselves reduced to poverty, which effectively eliminates their chances for integration.

There is one more consequence of this situation that is worth mentioning. Although the state is in charge of finding durable solutions for refugees, in reality private associations and NGOs are mostly taking care of this. Consequently, these associations have to divert their energy from their original humanitarian activities. In addition to this, these organisations now find themselves competing with each other because of differences in ideologies and the grants and bonuses that are offered to them. The extra effort that is now required of the private sector ultimately has a negative impact on the time and money spent on those that need it the most.



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Final deliberations

Jean-Michel Belorgey (*General Rapporteur, European Committee of Social Rights*)

Since UNHCR has no means of regulation or enforcement of refugees' rights, it is mainly up to the Council of Europe, the Court and the ECSR to take these responsibilities upon themselves. The ability to utilise the law as a tool for improving the situation, rather than just as a guiding principle, depends on different factors, including the nature of the right, person, and regulatory body concerned.

The application of social and economic rights is not equally complicated for all rights; yet, in this context, the right to housing may be considered as one of the most problematic. In any single returnee case there are two different aspects to consider: the individual's right to housing in the host country, and his or her right to housing in the country of origin, a situation which is exemplified in the case of returnees in the ex-republic of former Yugoslavia, and particularly in Slovenia. At this point in time, the Court has some indirect means through which it can shape and define social rights as they are contained in the ECHR, notably Articles 6, 8, and 14 ECHR or Article 1 of Protocol No. 1; means which will be further supplemented by the entry into force of Protocol No. 14.²¹

The Court holds an advantage over the ECSR, in that its *ratione personae* extends to refugees, asylum-seekers and internally displaced persons, whereas the competence of the ECSR is normally limited to nationals from State Parties. Fortunately, an appendix to the ESC extends the competence of the ECSR in certain situations to refugees recognised under the 1951 Convention. In general, this group will have the strongest claim to social and economic rights when the relevant instruments are used in a complementary manner. The situation for non-recognised asylum-seekers or persons benefiting from subsidiary protection, however, is less clear; their fate in Europe is not satisfactory. Generally worst off are those whose claims have been rejected, but who have not been deported. The ECSR has declared that social rights linked to life and dignity have to be granted to all people (including refugees and asylum-seekers, even if their claims were rejected), one of these fundamental social rights being the right to housing.²²

Unlike the Court, which exerts its influence through its case law, the ECSR has two means of monitoring at its disposal: annual reports and collective complaints. Theoretically, the Committee could require its members to submit reports on social rights of refugees or returnees, but in practice it has never done so. Therefore, as mentioned earlier, collective complaints currently seem the most effective way to enforce these rights. UNHCR, unfortunately, cannot bring a complaint before the ECSR; this would require a modification of the ESC. However, this does not mean that there is no collaboration between the two institutions; UNHCR is asked for information by the ECSR, and can itself always receive information from the ECSR.

During the Round Table, many issues relating to human rights and legal or institutional issues were raised. The event should be considered a step in the direction of furthering the effectiveness of the social rights of refugees, asylum-seekers and internally displaced persons. It is a small but precious victory that needs to be strengthened by force of perseverance and inventiveness.

UNHCR Strasbourg, 01 September 2010

²¹ Please note that Protocol No. 14 to the ECHR entered into force on 01 June 2010.

²² See ECSR, *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No. 14/200, Decision of 3 November 2004, available at: <http://hudoc.esc.coe.int/esc2doc/escce/doc/200418/cc-14-2003-en-1.doc> and *Defence for Children International v. the Netherlands*, Complaint No. 47/2008, Decision on admissibility of 23 September 2008, available at: http://hudoc.esc.coe.int/esc2doc/escce/doc/200840/cc-47-admiss_en.doc.

Annex I: Table on social rights

	1951 Convention Relating to the Status of Refugees	Universal Declaration of Human Rights	ICCPR	ICESCR	(Revised) European Social Charter	European Convention on Human Rights	African Charter on Human and Peoples' Rights	American Convention on Human Rights	Charter of Fundamental Rights of the EU	Convention on the Rights of the Child
Right to work	Art. 17 to 19	Art. 23	-	Art. 6 and Art. 7	Art. 1	-	Art. 15	Art. 6 of the San Salvador Protocol (SSP)	Art. 15 and Art. 16	Art. 32 (prohibition of economic exploitation)
Housing rights	Art. 21	Art. 25	-	Art. 11	Art. 31	Art. 1 Prot. 1	-	-	-	Art. 27
Right to education	Art. 22	Art. 26	-	Art. 13	Art. 17	Art. 2 Prot. 1	Art. 17	Art. 13 SSP	Art. 14	Art. 28 and Art. 29
Public Relief and healthcare	Art. 23	Art. 25	-	Art. 12	Art. 11, Art. 13 And Art. 23	-	Art. 16	Art. 10 SSP	Art. 35	Art. 24
Social security	Art. 24	Art. 22	-	Art. 9	Art. 12	Art.6 (social security rights are enforceable through Art.6)	-	Art. 9 SSP	Art. 34	Art. 26
Family unity and reunification	-	Art. 16 § 3	Art. 23	Art. 10	Art. 16 and Art. 19 § 6	Art. 8	Art. 18	Art. 17 Art. 15 SSP	Art. 33	Art. 9 and Art. 10
Property rights	Art. 13 and Art. 14	Art. 17	-	-	-	Art. 1 Prot. 1	Art. 14 and Art. 21	Art. 21	Art. 17	-
Freedom of residence and movement	Art. 26	Art. 13	Art. 12	-	-	Art. 2 Prot. 4	Art. 12	Art. 22	Art. 45	-
Prohibition of discrimination	Art. 3	Art. 2 and Art. 7	Art. 2, Art. 24 and Art. 26	Art. 2	Art. E, Art. 20 (specific to employment and discrimination on the grounds of sex)	Art. 14, Prot. 12	Art. 2 and Art. 3 (and Art. 28: duty not to discriminate)	Art. 24, and Art. 3 SSP	Art. 20 and Art. 21	Art. 2

Annex II: Instruments relating to social rights

1. Extracts from the 1951 Geneva Convention Relating to the Status of Refugees¹

Article 1

Definition of the term “refugee”

A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Article 3

Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 13

Movable and immovable property

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14

Artistic Rights and Industrial Property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic, and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 17

Wage-earning employment

1. The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

¹ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

(a) He has completed three years' residence in the country;

(b) He has a spouse possessing the nationality of the country of residence.

A refugee may not invoke the benefits of this provision if he has abandoned his spouse;

(c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18

Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19

Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practicing a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

Article 21

Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22

Public education

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23

Public relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24

Labour legislation and social security

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

2. Extracts from the European Social Charter (revised)²

Article 1

The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation.

Article 11

The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed *inter alia*:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accident.

Article 12

The right to social security

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

1. to establish or maintain a system of social security;
2. to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;
3. to endeavour to raise progressively the system of social security to a higher level;
4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:
 - a. equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;
 - b. the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.

² Council of Europe, *European Social Charter (revised)*, CETS No.: 163, 03 May 1996, Scope, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm>.

Article 13

The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

Article 16

The right of the family to social, legal and economic protection

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Article 17

The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1.
 - a. to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
 - b. to protect children and young persons against negligence, violence or exploitation;
 - c. to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Article 19

The right of migrant workers and their families to protection and assistance

(...)

6. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;

(...)

Article 23

The right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

– to enable elderly persons to remain full members of society for as long as possible, by means of:

a. adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;

b. provision of information about services and facilities available for elderly persons and their opportunities to make use of them;

– to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:

a. provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;

b. the health care and the services necessitated by their state;

– to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

Article 31

The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;

2. to prevent and reduce homelessness with a view to its gradual elimination;

3. to make the price of housing accessible to those without adequate resources.

Article E

Non-discrimination

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

Appendix to the European Social Charter (revised)

Scope of the European Social Charter (revised) in terms of persons protected

1. Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19.

This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties.

2. Each Party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 and in the Protocol of 31 January 1967, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Party under the said convention and under any other existing international instruments applicable to those refugees.

3. Each Party will grant to stateless persons as defined in the Convention on the Status of Stateless Persons done in New York on 28 September 1954 and lawfully staying in its territory, treatment as favourable as possible and in any case not less favourable than under the obligations accepted by the Party under the said instrument and under any other existing international instruments applicable to those stateless persons.

3. Extracts from the Convention for the Protection of Human Rights and Fundamental Freedoms³, and of relevant Protocols

Article 6

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b. to have adequate time and facilities for the preparation of his defence;

c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

³ Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms*, 04 November 1950 (as amended by Protocols Nos. 11 and 14), available at: http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf.

Article 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 14

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms⁴

Article 1

Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2

Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

⁴ Council of Europe, *Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms*, 20 March 1952, CETS No.: 009, available at: http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf.

Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms⁵

Article 2

Freedom of movement

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms⁶

Article 1

General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Article 2

Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification

⁵ Council of Europe, *Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto*, 16 September 1963, CETS No.: 46, available at: http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf.

⁶ Council of Europe, *Protocol No. 12 to the European Convention on Human Rights and Fundamental Freedoms on the Prohibition of Discrimination*, 4 November 2000, CETS No.: 177, available at: http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf.

addressed to the Secretary General of the Council of Europe. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

4. A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5. Any State which has made a declaration in accordance with paragraph 1 or 2 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention in respect of Article 1 of this Protocol.

4. Extracts from the Charter of Fundamental Rights of the EU⁷

Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.

2. This right includes the possibility to receive free compulsory education.

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16

Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

⁷ European Union, *Charter of Fundamental Rights of the European Union*, 14 December 2007, Official Journal of the European Union, 14 December 2007 (2007/C 303/1), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0001:0016:EN:PDF>.

Article 17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 20

Equality before the law

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaties, and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article 33

Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

**United Nations
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