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## **HOUSING RIGHTS:**

# **THE DUTY TO ENSURE HOUSING FOR ALL**

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## Commissioner’s Issue Papers

*Issue Papers* published by the Commissioner for Human Rights are intended to highlight the human rights dimension of certain current issues, giving their main factual and legal particulars. Where appropriate, questions are raised, guidelines are set for subsequent work, and suggestions or warnings are included. The documents essentially serve a function of alert, information and stimulus to reflection or debate. They do not have the status of *Recommendations* or *Opinions* as prescribed by the Commissioner’s terms of reference.

## 1. Introduction

Across Europe, many people are experiencing great housing need. Significant numbers of people cannot access housing in the market, either to rent or buy. Some have nowhere to live or are afraid to live in their homes. Increasing numbers of people sleep in doorways, squats, abandoned buildings and other places unfit for human habitation. On another level, housing has become a marketable and valuable asset, as well as a home. At the same time, the provision of social and State housing has diminished. In this context, housing rights are gaining a growing relevance. These rights can inspire and develop meaningful and effective responses, and promote equality and non-discrimination in housing systems.

This paper examines the housing crisis facing groups of people in Europe. It outlines the housing rights which have been accepted by countries within the Council of Europe (CoE), arising from United Nations (UN), CoE and European Union (EU) instruments. Obstacles to the effective enjoyment of housing rights are considered. But the paper draws attention to significant initiatives, including legislation in Scotland and France, CoE and EU endorsements of rights, and projects where people define and assert their housing rights. Finally, a set of recommendations for the promotion of housing rights, as a key element of the enjoyment of all other human rights, is offered. The challenge is to make housing rights, which often originate in international law, meaningful and useful to those in housing need at local level.

## 2. Background to housing rights

### 2.1 *Obstacles to accessing housing*

Growing numbers of people across Europe are experiencing a housing crisis. Those denied access to the housing market face poor prospects. Some groups of people are particularly affected and often permanently excluded. These include Roma/Travellers, victims of domestic violence, many people with disabilities, refugees, many migrants, tenants without security, some national minorities and other discriminated groups, as well as people on the lowest parts of the labour market.

Financial markets and corporations are forcing States to act in new ways. Across Europe, States have retreated from direct provision of housing.<sup>1</sup> They have moved from being large-scale housing providers to a new “enabling” role, supporting housing markets. This has coincided with the continued expansion of owner-occupation as a visible sign of economic and social success, both for the traditional household and for society as a whole. States are increasingly driven to using public finances to bridge the “affordability gap” for households unable to access the market due to low incomes, thus “enabling” people to buy homes at historically high costs. They are required to spend to sustain the housing market, which is constantly in a state of disequilibrium requiring State support.

Of course, in this market access to housing finance corresponds with access to housing, even if repayments form a large part of disposable income. As increasing numbers of people are forced to rely on this market, high interest ‘sub-prime’ lending, targeting those with poor credit ratings in low paid or insecure employment, is common. Repossessions for non-payment can easily result in homelessness and those minorities who are most vulnerable and excluded face the greatest risks. Sub-prime lending targets those who in previous times would have received State housing. It also raises questions in relation to improvident lending and respect for housing rights by European lending corporations.

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<sup>1</sup> MacLennan, Stephens & Kemp. (1997) *Housing Policy in the Member States*. European Parliament Social Affairs Series W-14.PE 166.328.

One consequence of this shift to ownership has been the concept of social mix, with restrictions in certain areas of social housing. While policy obstacles to the ghettoisation of poor people are desirable, concepts of social mix, combating undue segregation between different social groups and social diversity can be unclear and actually lead to poor people being denied social housing because they live in the wrong area.

FEANTSA, the federation of European homeless organisations, describes the growing risks of homelessness in contemporary Europe. *“For very poor people the terrible pressure of the housing market increasingly leads to social exclusion and, in some cases, to a situation of social emergency, where people find themselves without resources, reduced to sleeping in the street.”*<sup>2</sup>

Migrants face overcrowding, poor facilities and hygiene, while undocumented foreign migrants often live in undesirable areas that can be detrimental to their health and well-being.<sup>3</sup> Irregular migrants and undocumented migrants are often forced to live as nomads due to the uncertainty of their income and the illegality of their presence.<sup>4</sup> There are estimates of 4.5 million irregular migrants in the EU area and between 10 and 12 million in Russia, with one million migrants moving from less developed countries to Europe each year.<sup>5</sup>

Persistent difficulties are faced by Roma, Travellers, migrants, refugees and asylum seekers securing adequate basic housing. For example, one study in rural Spain found that Roma were concentrated in shanty towns with 30 per cent of households living in sub-standard housing, exacerbated by poor facilities, overcrowding and poor local environments. Exclusion of Roma from housing neighbourhoods and new developments of social housing is widely recounted across Europe. In Slovenia, around 300 inhabitants of a village in the Dolenjska region, gathered at a protest meeting to demand that the municipality permanently remove a Roma family (around 30 persons, among them some 14 children aged between three months and 15 years) from the settlement within a week. Endangered by serious threats, the Roma fled to a nearby forest the same night, and stayed there for several days. As a consequence, the Roma family abandoned their land. The Commissioner carried out a special visit to Slovenia in November 2006 in order to facilitate finding a solution to the situation which has subsequently been resolved.<sup>6</sup> The separate district of Luník IX in Košice, Slovakia, is almost 100 per cent inhabited by socially excluded Roma and comprises 666 flats that should officially be inhabited by 4,000 tenants, but is inhabited by some 7,000 and 8,000. There is an unemployment rate of nearly 100 per cent.<sup>7</sup>

Regular evictions, inhuman living conditions and non-recognition of their needs can result in persecution for Roma and other minorities, as shown in the Moldovan case at the European Court of Human Rights. *“Following this incident, having been hounded from their village and homes, the applicants had to live, and some of them still live, in crowded and improper conditions – cellars, hen-houses, stables, etc. - and frequently changed address, moving in with friends or family in extremely overcrowded conditions”*.<sup>8</sup>

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<sup>2</sup> FEANTSA Press Release 2.9.2005. See website: [www.feantsa.org](http://www.feantsa.org). FEANTSA has created a holistic definition of homelessness, - the ETHOS definition, containing four domains of rooflessness, houselessness, insecure and inadequate housing.

<sup>3</sup> Medecins du Monde European Observatory on Access to Health Care. (2007) *European Survey on migrants' access to health care*. p. 19.

<sup>4</sup> This term has been recognised by the UN and others to denote people who have some irregularity in their status whether through their fault or the fault or negligence of the authorities in not regularising their status. See Cholewinski, R. (2005) *Irregular migrants: access to minimum social rights*. Strasbourg: Council of Europe Publishing. p. 9.

<sup>5</sup> See Commissioner for Human Rights, *The Human Rights of Irregular Migrants in Europe*. CommDH/Issue Paper (2007) 1; *International Migration 2006*. UN Population Division, New York.

<sup>6</sup> See Statement by Thomas Hammarberg, Commissioner for Human Rights, at press conference in Ljubljana, Slovenia, on 16 November 2006 (CommDH/Speech (2006)24); and EU Fundamental Rights Agency, *Report on Racism and Xenophobia 2007*, p. 79.

<sup>7</sup> *Ibid.* p. 89.

<sup>8</sup> *Moldovan and Others v. Romania* Judgement 12 July 2005 (Applications 41138/98 and 64320/01).

One study in 2005 showed that some 75 per cent of Moroccan migrants in one European country area had no hot water, 57 per cent suffered extensive dampness, 49 per cent had no toilet, 45 per cent had no kitchen and 40 per cent had no running water.<sup>9</sup> In 2005 also, three separate fires in overcrowded sub-standard buildings in Paris, killed a total of 48 people and injured many more. The residents who died were all either immigrants from Africa or French citizens of African origin.<sup>10</sup>

People with disabilities are largely excluded from the housing market and, despite programmes in many States, adequate and accessible housing is not available. Significant numbers remain within institutions where their personal and social development is impeded.<sup>11</sup>

Discrimination in access to housing is poorly recorded across Europe. Reports show that the small number of complaints contrasts with the evidence from research and surveys, which describe widespread experiences of discrimination in the housing field, suggesting that a large share of discrimination cases remains unreported.<sup>12</sup> This situation is true for gay men and lesbians, who often face discrimination in access to housing and inheritance.<sup>13</sup>

There is a continuing problem of hidden homelessness, such as overcrowded, substandard and insecure housing. Increasing numbers of people sleep in doorways, squats, abandoned buildings and other places unfit for human living. Nowadays, it is frequently women, families with children, migrants and young people who find themselves homeless, or in a situation of social and housing emergency. The trigger of their plight is usually housing affordability, leading to a spiral of exclusion, affecting health, employment options, and education of children. Quite simply, there is no housing available for the limited financial resources that poor and vulnerable groups have at their disposal.

There are many hidden tragedies of older people who cannot afford to stay in their old but privatized former State owned flats due to increased rents and tax charges. Equally, the despair of those sitting tenants of former publicly owned or managed housing, estimated at seven million people in central and eastern European countries, where the State has abandoned their protection from insecurity of tenure, arbitrary eviction or massive rent increases.<sup>14</sup>

## **2.2 Gaps in housing rights protection**

Housing rights derive from international law instruments, based on agreements between States to guarantee these rights to their citizens and others. Indeed, all European States have accepted UN housing rights obligations and most have adopted the European Social Charter in its original or revised version. These do not always grant individual enforceable rights unless incorporated into national law.<sup>15</sup> Yet, they provide both inspiration and the international development of clearly defined legal standards and norms for these rights. However, their legal effectiveness, definition and precision at national level often remain problematic. Nor do these rights always address the

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<sup>9</sup> Harrison, M., Law, I. & Phillips, D. (2005) *Migrants, Minorities and Housing. Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union*. European Monitoring Centre for Racism and Xenophobia. p. 62.

<sup>10</sup> *Ibid.* p. 13.

<sup>11</sup> See International Disability Rights Monitor 2007. *Regional Report of Europe*.

<sup>12</sup> EU Fundamental Rights Agency. *Report on Racism and Xenophobia 2007*. p. 11.

<sup>13</sup> See Stonewall Housing Association at:

[http://www.stonewall.org.uk/information\\_bank/housing\\_\\_homelessness/1293.asp](http://www.stonewall.org.uk/information_bank/housing__homelessness/1293.asp)

<sup>14</sup> See Paper on *Sitting Tenants in Central and Eastern Europe*, presented by Jure Debevec at Council of Europe, Expert Workshop: Housing rights: positive duties and enforceable rights. Budapest, September 2007.

<sup>15</sup> Monist national legal systems ensure that States incorporate international treaties into national law automatically, while dualist legal systems require specific legislation to give effect to these.

housing system in a fully explicit manner, since legal systems and housing systems have different, frameworks, perspectives and terms.

While supporting housing rights at international level, many States fail to address these rights obligations within national legislation, administration systems, monitoring and policies. Some have difficulties in defining and enforcing a minimum standard of housing rights protection, or in securing the resources for effective State action. Indeed, where they exist, many programmatic approaches preclude any remedies for violations, while some rights approaches ignore the role of housing markets. Growing 'soft law' and 'regulatory' measures fail to engage with the existence of enforceable rights to housing.

Information on housing rights for the general population is poor. Language and cultural issues can prevent awareness of these rights. Low self-esteem, lack of information and knowledge, economic resources and social skills, psychological and socio-cultural issues and limited social contacts (including with NGOs), must be addressed in developing access to housing rights. Within the unequal distribution of resources within States, access to rights for those without resources is of crucial importance. Of course, the fear of retribution can deter many people in vulnerable or powerless positions from exercising their rights. The irregular status of many homeless people can deter them asserting their housing rights.

The violation of the right to adequate housing may have different meanings for women and men. This has been one of the themes taken up the UN Special Rapporteur on Adequate Housing, Mr. Miloon Kothari. Women usually bear the primary responsibility for sustaining and maintaining homes, and it is vital that this critical role is recognized and their rights advanced. Any understanding of adequate housing in relation to women must take into account the context and housing and living conditions of the community and the family in which they live. The impact of inadequate living conditions and homelessness on children therefore becomes equally important for their mothers. The lives of many women are intrinsically linked to those of their families and their children. Homelessness for women carries great dangers. Accordingly, national Governments and the international community need to ensure that women are accorded substantive rather than illusory housing rights. Equal access to credit and finance, equal rights in respect of inheritance of land and property and the elimination of gender-biased customs and traditions that deny women their rights to their natal and marital homes are critical issues. Moreover, laws and policies must be articulated and implemented in ways that recognize the specific constraints and vulnerabilities of women in relation to the right to adequate housing. The attainment of legal security of tenure is of critical importance to a large number of women.<sup>16</sup>

Support for victims of housing rights violations in defining and asserting their rights at a personal and group level is critical. Access to decent housing is a precondition for the exercise of other fundamental rights and for full participation in society.

### **3. Legal protection of housing rights in international law**

#### **3.1 *UN Treaties, conventions, conclusions and recommendations***

Housing rights are now viewed as an integral part of economic, social, and cultural rights within the international human rights instruments, on a similar footing to civil and political rights. The UN Committee on Economic, Social and Cultural Rights and the European Committee on Social Rights (CSR) have clarified the contents, standards and obligations within housing rights. These include the concepts of minimum core obligations and progressive realisation of rights according

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<sup>16</sup> UN Doc. E/CN.4/2003/55. *Economic, Social and Cultural Rights, Women and adequate housing*. Miloon Kothari. p. 8.

to available resources in the context of the right to an adequate standard of living. Any retrogression in housing rights would constitute a human rights violation.<sup>17</sup>

- *The Universal Declaration of Human Rights* (1948) states: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.
- *The International Convention on the Elimination of All Forms of Racial Discrimination* (1965 – Article 5) obliges States “to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... (e) ... (iii) the right to housing”.
- *The International Covenant on Economic, Social and Cultural Rights* (1966) states: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.” Article 2(1) of this Covenant states: “Each State Party to the present Covenant undertakes to take steps... to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present covenant”.
- *General Comment No. 4. on the Right to Adequate Housing* sets out the minimum core guarantees which, under public international law, are legally vested in all persons. These are legal security of tenure, availability of services, materials and infrastructure, affordable housing, habitable housing, accessible housing, housing in a suitable location, housing constructed and sited in a way which is culturally adequate. *General Comment No. 7 on The Rights to Adequate Housing – forced eviction* seeks to prohibit forced evictions which result in individuals being rendered homeless or vulnerable to the violation of other human rights. Other UN *General Comments* refer to housing rights in the context of people with disabilities, older people, health rights and other areas.<sup>18</sup>
- The UN *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) promotes women’s rights to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.
- Further relevant UN instruments include the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, *Convention on the Rights of the Child*, the *UN Global Strategy for Shelter to the Year 2000*<sup>19</sup> and the *UN Convention Relating to the Status of Refugees* (1951) and its Protocol. Many other international instruments setting out rights to housing have been ratified by countries around the world.<sup>20</sup>

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<sup>17</sup> See UNCESCR Conclusions and Reports at website: <http://www.unhchr.ch/html/menu2/6/cescr.htm>; ICESCR Covenant Art 2. See also Alston, P. & Quinn, G. ‘The Nature and Scope of States Parties Obligations under ICESCR,’ 9 *HRQ* 156-229 (1987).

<sup>18</sup> See for instance, *General Comment No. 5*, on persons with disabilities - UN Doc. E/1995/22; *General Comment No. 6*, on the economic, social and cultural rights of older people - UN Doc. E/1996/22; *General Comment No. 14*, on the right to the highest attainable standard of health - UN Doc. E/C.12/2000/4.

<sup>19</sup> Adopted by the UN General Assembly in resolution 43/181 on 20 December 1988.

<sup>20</sup> See Leckie, S. (2000) *Legal Resources for Housing Rights*. Geneva: COHRE - website: <http://www.cohre.org>; See also Habitat Agenda adopted by 171 countries, available at <http://www.hic-net.org/media/TheHabitatAgenda.htm>

- The *Limburg Principles* (1986) and the *Maastricht Guidelines* (1997) have defined further the requirements of effective implementation of socio-economic rights, such as housing rights, and the nature and appropriate remedies for violations.<sup>21</sup> The *Limburg Principles* emphasize that the obligation under the *International Covenant on Economic, Social and Cultural Rights* “to achieve progressively the full realization of the rights” requires States Parties to move as expeditiously as possible towards the realization of these rights. Article 11 of the *Maastricht Guidelines* states that a violation of economic, social and cultural rights occurs when a State pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result. Furthermore, any discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the Covenant. Violations of these rights can occur through the direct action of States, or other entities insufficiently regulated by States, or through the omission or failure of States to take necessary measures stemming from legal obligations. Any person or group who is a victim of a violation of an economic, social or cultural right should have access to effective judicial or other appropriate remedies at both national and international levels, as well as adequate reparation
- The World Conference on Human Rights in 1993 adopted the *Vienna Declaration* accepting the principle, by States across the world, that both socio-economic rights (which include housing rights) and civil and political rights are “*universal, indivisible, interdependent and interrelated*”.<sup>22</sup> This means that socio-economic rights should enjoy the same protection by States as that accorded to civil and political rights, such as the right to vote or own property.

### **3.2 Jurisprudence and decisions of the European Social Charter and European Court of Human Rights**

At Council of Europe level the *European Social Charter* and *Revised Charter* (RESC), and in an indirect way the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) contain important housing and housing-related rights.

The Charter grants rights to social and medical assistance for those without adequate resources, establishing housing obligations in relation to physically and mentally disabled persons, children and young persons, migrant workers, elderly persons and rights to social, legal and economic protection for families, including a State obligation to provide family housing.<sup>23</sup> Part V of Article E of the Charter states: “*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.*”

Article 30 (RESC) on the right to protection against poverty and social exclusion includes an obligation to promote effective access to a range of services, including housing. Article 31 establishes a right to housing, with Contracting States undertaking to take measures designed to promote access to housing of an adequate standard, to prevent and reduce homelessness with a view to its gradual elimination, and to make the price of housing accessible to those without

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<sup>21</sup> UN Doc. E/CN.4/1987/19. *The Limburg Principles on the Implementation of the ICESCR*. HRQ 16 (1987) 37-40; *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*. 20 HRQ 20 (1998) 691-704.

<sup>22</sup> UN Doc. A/CONF 157/24 (1993) *Vienna Declaration and Programme of Action*, World Conference on Human Rights, Vienna.

<sup>23</sup> Articles 13, 15, 16, 17, 19 and 23.



adequate resources.<sup>24</sup> The specific right to housing was examined for Italy, France, Slovenia and Sweden in *Conclusions 2003*. The European Committee on Social Rights (CSR) interpreted Article 31, defining fundamental notions, such as adequate housing, homeless persons, forced eviction and housing affordability. It also established what action States are required to carry out to ensure the effectiveness of the right to housing: These include, among others, the control of adequacy, construction policy, social housing, housing benefits, judicial remedies, and emergency housing for homeless people. These Conclusions of the CSR in monitoring States obligations under Article 31 have demonstrated the application of a new set of benchmarks to national housing law and policy.<sup>25</sup>

The jurisprudence of the Charter is also being developed through the Collective Complaints Protocol.<sup>26</sup> This allows approved NGOs to lodge a complaint to the CSR where there appears to be a violation of any provision of the Social Charter by any State which has accepted it.<sup>27</sup> In *European Roma Rights Centre v. Bulgaria* (Complaint No. 31/2005) the CSR held that the situation concerning the inadequate housing of Roma families, lack of legal security of tenure, non-respect of the conditions accompanying eviction of Roma families from dwellings unlawfully occupied by them, and the lack of proper amenities, constituted a violation of Article 16 of the Revised European Social Charter taken together with Article E.

The ECHR contains many civil and political rights provisions which are being indirectly interpreted in the development of housing rights across Europe, especially within Articles 3, 6, 8, 13 and 14. These can also be applied in national courts where the Convention has been incorporated into national law.<sup>28</sup> Positive obligations on States are being established in the European Court of Human Rights (ECtHR) especially in relation to vulnerable persons who cannot assert rights themselves, although many cases fail to reach the court,<sup>29</sup> or are limited by the inadequacy of State resources.<sup>30</sup>

In *Moldovan and Others v. Romania*<sup>31</sup> (2005), the ECtHR concluded that the applicants living conditions, and the racially discriminatory manner in which their grievances were handled by the public authorities, constituted an interference with their human dignity, amounting to 'degrading treatment' within the meaning of Article 3. Article 8(1) protects the right of individuals to "respect" for their private life, family life and "home," although this does not amount to a right to housing.

However, the combination of obligations under Articles 3 and 8 can lead to positive obligations in this area. The ECtHR considered in *Marzari v. Italy* that, "although Article 8 does not guarantee the right to have one's housing problem solved by the authorities, a refusal of the authorities to provide assistance in this respect to an individual suffering from a severe disease might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such refusal on the private life of the individual..., this provision does not merely compel the state to

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<sup>24</sup> States which had accepted Article 31 in full or in part at October 2007 were Andorra, Finland, France, Italy, Lithuania, Moldova, Netherlands, Norway, Portugal, Slovenia, Sweden, Turkey and Ukraine. See website: [http://www.coe.int/t/e/human\\_rights/esc/1\\_general\\_presentation/Provisions\\_en.pdf](http://www.coe.int/t/e/human_rights/esc/1_general_presentation/Provisions_en.pdf)

<sup>25</sup> See Conclusions of the Committee on Social Rights available at: [www.coe.int/t/e/human\\_rights/esc/3\\_Reporting\\_procedure/2\\_Recent\\_Conclusions/default](http://www.coe.int/t/e/human_rights/esc/3_Reporting_procedure/2_Recent_Conclusions/default).

<sup>26</sup> See also the Collective Complaints in relation to housing rights, at [http://www.coe.int/t/e/human\\_rights/esc/4\\_collective\\_complaints/List\\_of\\_collective\\_complaints/default](http://www.coe.int/t/e/human_rights/esc/4_collective_complaints/List_of_collective_complaints/default).

<sup>27</sup> See website: <http://conventions.coe.int/treaty/en/Treaties/Html/158.htm>. There were 44 complaints as at November 2007. The States which have ratified the Collective Complaints Protocol of 1995 (at 26 October 2007) were Belgium, Croatia, Cyprus, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal and Sweden. Bulgaria and Slovenia have made a declaration to be bound by the Protocol under Article D of the RESC.

<sup>28</sup> See *Regina v. Secretary of State for the Home Department (Appellant) ex parte Adam (FC) (Respondent) and others. (Conjoined Appeals)* [2005] UKHL 66.

<sup>29</sup> See Mowbray, A. (2004) *Human Rights Law in Perspective: The Development of Positive Obligations under the European Convention on Human Rights*. London: Sweet & Maxwell.

<sup>30</sup> See *Codona v. UK* (Application No. 484/05) Decision February 7 2006.

<sup>31</sup> Judgement 12 July 2005 (Applications 41138/98 and 64320/01).

*abstain from such interference: in addition, to this negative undertaking, there may be positive obligations inherent in effective respect for private life. A State has obligations of this type where there is a direct and immediate link between the measures sought by the applicant and the latter's private life.*<sup>32</sup> Positive obligations on States to protect people's homes have been found under Article 8 in relation to protection from smells and nuisance from a waste treatment plant, toxic emissions emanating from a chemical factory, environmental pollution from a steel plant, and noise from bars and nightclubs which made it impossible for local residents to sleep in their homes.<sup>33</sup>

All proceedings for possession of a home engage Article 8, but the justification for such lawful interference can be made on the grounds that it is in accordance with the law, necessary in a democratic society and proportionate to the aim sought to be achieved.<sup>34</sup> In *Stanková v. Slovakia* (Application no. 7205/02, Judgment 9 October 2007) the ECtHR found that an eviction by a public authority, which met the above requirements, but without providing any alternative accommodation, produced effects which were incompatible with the right to respect for private and family life and home.

### **3.3 European Union (EU) Law**

European Union Regulations in the 1960s and 1970s ensured that migrating non-national workers and their dependents were entitled to the same social benefits, including access to housing, as nationals of Member States, on the principle of non-discrimination in freedom of movement.<sup>35</sup> However, the accession of new States has led to revised conditions for housing rights for citizens of these EU States. At another level, there are legally defined EU steps to harmonise the conditions of asylum-seekers across Europe, including housing conditions,<sup>36</sup> to recognise the rights and status of third-country nationals,<sup>37</sup> and to develop a common policy on illegal immigrants.<sup>38</sup> Yet, there are wide variations in the treatment of asylum-seekers and refugees.

A major development has been the 'Race Directive' (2000) promoting the implementation of the principle of equal treatment between persons irrespective of racial or ethnic origin (but excluding non-citizens of EU States). This applies in "*relation to... (h) access to and supply of goods and services which are available to the public, including housing.*"<sup>39</sup> In 2004, the 'Gender Directive' was adopted, implementing the principle of equal treatment between women and men in the access to and supply of goods and services, including housing.<sup>40</sup> The *Unfair Contract Terms*

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<sup>32</sup> *Marzari v. Italy* (1999) 28 EHRR CD 175. at 179. See also *Botta v. Italy* (1998) 26 EHRR 241.

<sup>33</sup> *Geurra v Italy* (1998) EHRR 357 *Lopez-Ostra v Spain* (1991) 14 EHRR 319; *Moreno-Gomez v Spain* (Application No 4143/02) judgment 16 November 2004; *Fadeyeva v Russia* (Application No. 55723/00) judgment of 9 June 2005;

<sup>34</sup> See *Case of Connors v. UK*. ECtHR Judgement 27 May 2004. (Application no. 66746/01); *Chapman v. UK* (2001) 33 EHRR 413; *Beard v. UK* (2001) 33 EHRR 442.

<sup>35</sup> Regulation 1612/68. OJ L 257, 19.10.1968. Regulation (EEC) No. 1612/68 of the Council of 15<sup>th</sup> October 1968 on freedom of movement for workers within the Community (as amended).

<sup>36</sup> *Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*. OJ L031, 06.2.2003. See also *Communication from the Commission of 3 June 2003 Towards more accessible, equitable and managed asylum systems*. COM(2003) 315 final OJ C76/21, 25.03.2004; *Communication from the Commission of 26 March 2003 on the common asylum policy and the Agenda for protection* COM(2003) 152 final OJ C76/2, 25.03.2004; See also website: <http://www.statewatch.org/news/NEWSINBR/05migration.htm>

<sup>37</sup> See Directive 2003/109/EC. OJ L16/44, 23.1.2004.

<sup>38</sup> See *Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration*. COM (2001) 672 final Brussels, 15.11.2001.

<sup>39</sup> *Council Directive 2000/43/EC of June 2000 on the implementation of the principle of equal treatment between persons irrespective of racial or ethnic origin*. Article 3 (1).

<sup>40</sup> *Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of services and goods*.

*Directive* (1993) is leading to a classification of unfair contract terms in housing rental and purchase contracts.<sup>41</sup>

European Parliament resolutions such as *The Resolution on the Social Aspects of Housing* (1997) expressed the desire for the development of a housing policy at European level, based on efforts to provide adequate housing for all.<sup>42</sup> The Opinion of the Committee of the Regions on "*Housing and the homeless*" (1999), called upon the European institutions to give further consideration to the principle of the right to adequate housing.<sup>43</sup> In 2006, an all-party group of members of the European Parliament, '*Urban Logement*' published proposals for a European Charter for housing that would make 'healthy, decent and affordable accommodation' a fundamental right of all European Union citizens'.<sup>44</sup>

The EU *Charter of Fundamental Rights* was "jointly and solemnly proclaimed" at Nice by the Presidents of the European Parliament, the Council and the Commission in December 2000. While the Charter does not include a specific right to housing, Article 34 states that "[I]n 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 procedures laid down by Community law and national laws and practices." In 2005, the Commission issued a proposal on *Compliance with the Charter of Fundamental Rights in Commission legislative proposals*, to allow Commission departments to check systematically and thoroughly that all the fundamental rights concerned have been respected in all draft EU proposals.<sup>45</sup> The European Parliament approved the Charter of Fundamental Rights of the European Union in November 2007, and it is now an integral part of the Lisbon/Reform Treaty which is in the process of being ratified by EU Member States.<sup>46</sup> Measures at EU level should ensure that international housing rights obligations and Article 34(3) of the Charter of Fundamental Rights are observed in the implementation of EU law at European and national level.

There are many EU approaches to social inclusion which refer to housing and homelessness, although these have no legally binding effect in EU or national law.<sup>47</sup> The EU is addressing the issue through its Social Protection Social Inclusion Strategy and with a special emphasis on the elaboration of common definitions and indicators. However, at EU level consumer rights for people buying or renting housing, or borrowing finance, are poorly developed, in contrast to the efforts expended in the harmonization of finance and other markets. There is now a need to create a legally backed European-wide harmonized consumer protection system for people who are renting or purchasing homes and who are borrowing loans in the housing market system, to mirror the increasing harmonization of mortgage markets. This would entail binding regulations on mortgage lenders protecting housing rights, consumer rights and responsible lending.

### **3.4 On-going international and national initiatives**

- The Homelessness (Scotland) Act 2003 obliges local authorities, by 2012, to secure adequate accommodation for all persons who become homeless, as part of a legally binding obligation to provide housing for all. The questions of intentional homelessness

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<sup>41</sup> *Unfair Contract Terms Directive 1993/93/13/EEC*.

<sup>42</sup> A4-0088/97, [1997] OJ C182/70, 16 June 1997.

<sup>43</sup> [1999] OJ C293/07, 13 October 1999. See also *Report on housing and regional policy*. FINAL A6-0090/2007. 28.3.2007. Rapporteur: Alfonso Andria.

<sup>44</sup> See website: [http://www.iut.nu/EU/Housing%20Charter/Charter\\_ENG\\_060406.doc](http://www.iut.nu/EU/Housing%20Charter/Charter_ENG_060406.doc)

<sup>45</sup> See Communication from the Commission, *Compliance with the Charter of Fundamental rights in Commission legislative proposals – Methodology for systematic and rigorous monitoring*, COM(2005) 172 final, 27.5.2005.

<sup>46</sup> See <http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=2&procnum=ACI/2007/2218>

<sup>47</sup> See [http://ec.europa.eu/employment\\_social/spsi/homelessness\\_en.htm](http://ec.europa.eu/employment_social/spsi/homelessness_en.htm); Kenna, P. (2005) *Housing Rights and Human Rights*. Brussels: FEANTSA.

and local connection which limited eligibility in the past will be removed. This represents a major development in universal and enforceable housing rights for a European country.

- The recently adopted law on the justiciable right to housing in France aims to give people the right to seek legal redress before an administrative tribunal, where their right to housing has been avoided by public authorities. It can require the State to offer the claimant adequate housing, within certain categories of need.
- Several Autonomous Regions in Spain are currently discussing ways to enforce housing rights for vulnerable groups. In Andalusia, a new law aims to ensure access to housing for three different priority groups; people with an income that is below the minimum wage, socially disadvantaged people and young people. It will be enshrined in Article 25 of the Regional Constitution of Andalusia (*Estatuto de autonomía*). In Catalonia, the National Pact for Housing aims to ensure that nobody experiences housing exclusion due to economic reasons. The Catalan Government will use elements of the Scottish and the French law in the prevention of homelessness, prevention of eviction and support for tenants.
- In the EU Parliament, a cross-party written declaration on ending street homelessness in the EU by 2015 has been registered in December 2007 and is open for MEPs signature until March 2007. It calls on the Commission to develop a European framework definition of homelessness, gather comparable and reliable statistical data, and provide annual updates on action taken and progress made in EU Member States towards ending homelessness. It urges Member States to devise 'winter emergency plans' as part of a wider homelessness strategy, and instructs its President to forward this declaration, together with the names of the signatories, to the Council, Commission and the Member States.<sup>48</sup>
- FEANTSA has proposed the establishment of an independent agency - *Housing Rights Watch*, to monitor developments, implementation and violations of housing rights, with correspondents in every country across Europe, and drawing on the Fundamental Rights Agency and Council of Europe institutions, linking with Ombudspersons, Human Rights Institutions, NGOs and Advocacy Networks, and producing an annual report on the situation on housing rights across Europe. This would seek to develop Europe-wide measures, ensuring that States and non-State actors, such as international institutions, comply with international housing rights obligations in the facilitation and regulation of their housing systems, both market and non-market, including planning and land use, competition policy, licensing of lenders, standards, taxation and policy measures.

One very valuable NGO initiative, the Participation and Practice of Rights Project, involved an "*Evidence Hearing on the Right to Housing*" before a panel of international housing rights advocates. Residents of a housing estate in Northern Ireland translated international housing rights norms to their living conditions. Through a process of action research involving surveys, the residents established a quantifiable human rights 'baseline' of outstanding housing rights issues. Uniquely, the residents had developed organic human rights indicators and benchmarks which would enable the measurement of the duty bearers' (State) progressive realization of housing rights over a twelve month period. These showed that there were, in fact, violations of their right to housing, as outlined in the International Covenant for Economic, Social and Cultural Rights (ICESCR) and clarified in subsequent UN General Comments. In addition to verbal testimonies, the panel of housing rights advocates was provided with documents of supplementary evidence on the day of the hearing, which were taken into account in their recommendations and subsequent report.<sup>49</sup>

<sup>48</sup> See <http://www.europarl.europa.eu/sidesSearch/search.do?type=WDECL&term=6&author=28111>

<sup>49</sup> PPR, *Evidence Hearing on the Right to Housing*, (2007) available at: <http://www.pprproject.org/documents/evidencehearing.pdf>

## 4. Conclusions – implementing housing rights at national level

### 4.1 Recommendations by the Council of Europe

- In 2000, the Committee of Ministers adopted a Recommendation to Member States on the *Right to the Satisfaction of Basic Material Needs of Persons in Situations of Extreme Hardship*. This acknowledged that “*the satisfaction of basic human material needs (as a minimum: food, clothing, shelter and basic medical care) is a requirement intrinsic to the dignity of every human being and constitutes the condition for the existence of all human beings and their well-being.*”<sup>50</sup>
- The Committee of Ministers adopted a Recommendation in 2005 to member states on improving the housing conditions of Roma and Travellers in Europe, making 52 recommendations relating to general principles, legal frameworks, preventing and combating discrimination, protection and improvement of existing housing, frameworks for housing policies, financing of housing and housing standards.<sup>51</sup>
- The Parliamentary Assembly adopted “*A dynamic housing policy as an element of European social cohesion,*” in May 2006. This recommended that the Committee of Ministers pursue the ratification of the Revised Social Charter so as to extend recognition of the right to housing as a fundamental social right to all member countries. It should strengthen the supervisory machinery relating to the right to housing by treating its genuine enforcement as a priority, particularly in cases of discrimination, eviction and continuing existence of substandard housing. It should also develop knowledge of housing situations as reflected by statistical indicators in the member countries. The Committee of Ministers should promote exchange of best practice and conduct of integrated projects on the effective realisation of the right to housing and its enforceability and, among other things, arrange for intensified co-operation with the European Union on the effective exercise of everyone’s right to be housed and have access a decent dwelling, bearing in mind the shared goals of the Council of Europe and the European Union concerning the preservation of European social cohesion, and the specific role of housing which has been unanimously acknowledged by the Lisbon Council and the European Parliament.<sup>52</sup>
- The Parliamentary Assembly in 2006 proposed that adequate housing and shelter guaranteeing human dignity should be afforded to irregular migrants and women victims of domestic violence.<sup>53</sup>
- The Group of Specialists on Access to Housing (CS-LO) of the Council of Europe adopted in 2001 *Policy Guidelines on Access to Housing for Vulnerable Categories of People* (CS-LO (2001) 25). These recommendations include advice on how to develop a

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<sup>50</sup> Council of Europe, Recommendation No. R (2000) 3 of the Committee of Ministers to the member states on the *Right to the Satisfaction of Basic Material Needs of Persons in Situations of Extreme Hardship*. Adopted 19 January 2000.

<sup>51</sup> Recommendation Rec(2005)4. See also *Recommendation Rec(2004)14 on the movement and encampment of Travellers in Europe*.

<sup>52</sup> Council of Europe Parliamentary Assembly, Doc. 10833.

<sup>53</sup> See Council of Europe Parliamentary Assembly. Resolution 1509 (2006) Human rights of irregular migrants; Resolution 1512 (2006) Parliaments united in combating domestic violence against women. See *Protecting Women against Violence. Analytical study on the effective implementation of Recommendation Rec(2002)5 on the protection of women against violence in Council of Europe member states*. Available at: [http://www.coe.int/t/e/human\\_rights/equality/PDF\\_CDEG\(2007\)3rev\\_E.pdf](http://www.coe.int/t/e/human_rights/equality/PDF_CDEG(2007)3rev_E.pdf); Recommendation 1755 (2006) Human rights of irregular migrants.



comprehensive legal framework on access to housing for vulnerable categories of persons, taking account of market constraints and opportunities, and respecting international standards, to support national housing policies. The Group have recommended that all Council of Europe Member States should sign, ratify and implement the European Social Charter and Revised Charter, including in particular Article 31, as well as the Collective Complaints Protocol, and consider the possibility of an additional protocol providing for a system of individual complaints.<sup>54</sup>

## **4.2 National strategy for implementing housing rights**

A national strategy for implementing housing rights in accordance with international human rights instruments and recommendations should include the following elements.

- States at national level should adopt and effectively implement the range of housing rights instruments without discrimination, and the right to adequate, affordable and accessible housing should be made justiciable before the courts. Minimum standards in all areas of private and public sector provision should be established. The CSR has established that adequate housing within the meaning of Article 31(1) of the RESC means a dwelling which is safe from a sanitary and health point of view, that is, possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities and electricity; is structurally secure; not overcrowded; and with secure tenure supported by law.<sup>55</sup>
- Adequate and full provision should be made for effective remedies for violations of housing rights at national and local level in line with the *Limburg Principles* and *Maastricht Guidelines* (see above). States should establish institutional support and assistance for victims of violations to assert these rights and secure remedies at personal and group levels, as well as enabling them to participate in defining the content and scope of their housing rights. This should be allied with more involvement of NGOs at all levels in the monitoring and supervisory systems.
- Undocumented migrants, minorities (including ethnic and language minorities) and those with special needs (especially those with comprehension difficulties) should be informed on their housing rights, with information adapted to levels of education or language capacity and visual disability.<sup>56</sup> Measures should be taken to prevent the exploitation of irregular migrants in the housing market. Disseminating housing rights information through media other than written formats should be developed by human rights institutions.
- Sufficient, accessible, affordable and appropriate social housing should be provided across Europe for those excluded from the housing market. This would prevent those on low incomes and unemployed from being forced into high cost rents and penal housing loans, with the risks of homelessness and evictions on default of payments. Housing costs, including management and utility costs, must not reduce the resources available for the enjoyment of a minimum standard of living defined by the society in which the household is located, or prevent the enjoyment of other rights and full participation in society.

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<sup>54</sup> Available at: <http://www.coe.int/t/dg3/socialpolicies/socialrights/>. See also *Report on Access to Housing for Disadvantaged Categories of Persons and Guidelines on supply of housing, financing and housing allowance* (2006).

<sup>55</sup> See Conclusions 2003, Article 31(1), France.

<sup>56</sup> See Platform for Cooperation on Undocumented Migrants. (PICUM) Report on the Housing Situation of Undocumented Migrants in Six European Countries: Austria, Belgium, Germany, Italy, the Netherlands and Spain. PICUM, March 2004. p. 44-46.

- The implementation of housing rights should include positive measures for vulnerable and excluded people through provision of adequate supported and sheltered housing and the promotion of independent living, especially for people with disabilities. Women who are victims of domestic violence should not be the ones who have to move from their homes in order to put an end to abuse.
- The realization of housing rights should be regularly monitored. Ombudspersons and national human rights institutions have a role in this process.