



HOUSING-RELATED BINDING OBLIGATIONS ON STATES

FROM EUROPEAN AND INTERNATIONAL CASE LAW

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What minimum norms do public authorities have to respect when effectively implementing fundamental social rights and, more specifically, the right to housing?

The answer to this question should inform actions of NGOs working with homeless people and fighting housing exclusion. The table below is an attempt to list the norms set by international and European jurisprudence on important matters related to housing such as legal protection, material living conditions, equal treatment, respect for diversity, etc.

There is a growing interest to use these legal norms in a European context of **worsening living conditions for low-income households and vulnerable groups**, stricter targeting of State support to certain population groups, and the **disintegration of individual rights** (e.g. specific legal status for certain immigrants, specific rather than broad social welfare categories).

Opening up a discussion at European level on minimum norms on the basis of intellectual, political and moral principles and arguments can easily lead to disagreements. Several recent attempts to come to a common interpretation of the scope and actual impact of European and national legislation that concern social rights have been difficult and inconclusive and has led to more frequent claims that social rights are not properly respected. Yet, for fifty years already, the European Court of Human Rights, the European Committee of Social Rights of the Council of Europe, the UN Committee on Economic, Social and Cultural Rights, and the Court of Justice of the European Union, have been making **decisions on disputes between individuals and public bodies on the exact meaning of social rights, particularly in relation to housing**. These decisions can and should be used more as a resource to uphold and promote social rights.

The EU is not properly equipped to guarantee full respect of social rights, but in order to remain relevant and effective the EU must do more than just recognising the important role of social rights and help to ensure their enjoyment, especially by the most vulnerable people.

The right to housing exists in several human rights treaties, but its scope and precise content are not very explicit:

- One can derive a right to housing from the right to an adequate standard of living which is recognised in article 11 of the International Covenant on Economic, Social and Cultural Rights of the UN (ICESCR), and further explained in the General Comments 4 and 7 of the UN Committee on Economic, Social and Cultural Rights. The latter provide specific details regarding the different dimensions of the right to housing. Case law exists, and will be further enriched by the newly established Optional Protocol which now gives individuals the opportunity to introduce complaints against States when human rights listed in the ICESCR are violated.

- The European Convention on Human Rights (ECHR) includes specific rights that guarantee a right to housing, including Article 8, the right to family and private life and protection of the home; Article 6, the right to due process in the case of eviction; Article 3, the right to be protected against inhuman and degrading treatment; Article 2, the right to life; and Article 14, the right to protection against discrimination. The right to housing is also grounded in the right to property. An individual's substantial interest in a 'good' can cover in certain situations the protection of one's home irrespective of the tenure status (Article 1, protocol 1).

- The right to housing is explicitly recognised in Article 31 of the Revised European Social Charter of the Council of Europe (RESC), which provides specific criteria and guidance for the progressive realisation of the right to housing and the reduction and prevention of homelessness, to the point of its eradication. Housing must be available, affordable and of adequate quality. The Charter also contains the rights to social protection (Article 30) and the right to the protection of family and children (Articles 16 and 17), which have been considered to also constitute a right to housing.

The right to housing can and should be considered as a prerequisite to the enjoyment of many other rights included in the human right treaties cited above.

The European Union has not (yet) ratified the European Convention on Human Rights. Nor has it ratified the Revised European Social Charter. However, the Charter of Fundamental Rights of the European Union (CFREU) has taken the status of a Treaty and is therefore at the top of the hierarchy of legal standards in the Union. As such, the Charter predicates a 'right to social and housing assistance'. Several articles of the EU Charter echo the terms of equivalent articles in the two Council of Europe treaties listed above. Interpretation of the provisions of the EU Charter by local and European judges is regulated by the so-called 'Explanations', the legal force of which is guaranteed by the Charter itself, and they make clear references to the Council of Europe's human rights instruments and interpretations.

The legal norms related to the right to housing are being gradually better defined by case law from the European Court of Human Rights and the European Committee of Social Rights as well as by the decisions of the European Court of Justice. They now make up **a coherent corpus specifying the limits and obligations imposed on public authorities at national, regional and local levels, when respecting the right to housing.**

Delivering on the right to housing is not a political choice any longer. Case law and legal practice now **oblige public authorities** to respect, protect and implement the right to housing.

In some cases, in order to guarantee human rights, public authorities must refrain from acting (negative obligations). This type of obligation leaves little room for interpretation and debate. The corpus of positive obligations derived from the texts above and their case law, makes it incumbent on all public authorities to protect human rights, not only as theoretical endeavour but as

a concrete and binding obligation (see European Convention on Human Rights - Airey, C. vs Ireland, 7 October 1979).

The corpus of positive obligations means that public authorities at all levels of policy making and all jurisdictions are responsible for upholding and ensuring access to human rights, because they have direct effect. The EU Charter of Fundamental Rights, which is based on other European human rights treaties, also has direct effect when EU law is applied. Therefore, even local judges have a responsibility to ensure the protection of human rights.

Although the right to housing is not explicitly included in all above international human rights treaties, it stems from these treaties. The judicial authorities that have to arbitrate in human rights cases have created a corpus of case law that defines the right to housing. Through the strong link between the EU Charter of Fundamental Rights and other international human rights treaties, and thanks to the strength of the Charter which is self-executing and placed at the top of the hierarchy of legal standards, the right to housing in part of the European integration process in far-reaching and growing way.

FEANTSA and Fondation Abbé Pierre believe that it is urgent and necessary to bring together the norms set by case law relating to the right to housing and to list the obligations on public authorities that result from the case law. You find the table of norms and obligations below. They are not ranked according to legal categories but by the social issues they deal with. This list of positive obligations for public authorities should allow for a proper European evaluation of local and national policy developments.

At a time when the European Union is finding its social feet, we want to provide a list of the norms that exist independently of any political initiative and which must be recognised, respected, protected and implemented by the European Union and all public authorities.

SHAPING OF PUBLIC POLICY AND ITS EVALUATION.

| KEY WORDS | POSITIVE OBLIGATIONS ON STATES | INSTITUTION | SOURCE | LEGAL BASIS | REFLECTION IN EU LAW |
|--|--|-------------------------------------|--|------------------------------|---|
| Reliable data | The state must have reliable data allowing it to identify needs, allocate resources and monitor results. The burden of proof lies with the State. | European Committee of Social Rights | FEANTSA v. France, 2007 | Art. 30 RESC Art. 31 RESC | Art.34.3 CFREU |
| Legal guarantee of the right to housing | The State must take the legal and practical measures that are necessary to guarantee the right to housing. | European Committee of Social Rights | ERRC v. Bulgaria, 2006 | Art.31 RESC | Art.7 CFREU (cf. ECJ Kusionova) |
| Effectiveness of policy | The State must run a regular review of the effectiveness of strategies adopted. | European Committee of Social Rights | FEANTSA v. France, 2006 | Art.31 RESC | Art. 7 CFREU Art.34.3 CFREU |
| Measurable progress, reasonable timeframe | The State must identify concrete steps towards the progressive realisation of rights and must not put off indefinitely the deadline for meeting the targets it has set itself. | European Committee of Social Rights | FEANTSA v. France, 2006 | Art.31 RESC | Art. 7 CFREU Art.34.3 CFREU |
| Adequate resources and procedures | The State must not only provide a legal framework, but also free up resources and establish procedures conducive to ensuring that rights are secured. | European Committee of Social Rights | ATD v. France, 2007 | Art.31 RESC | Art. 7 CFREU Art.34.3 CFREU |
| | The state must provide the necessary resources to guarantee the right to housing. | European Court of Human Rights | Tchokontio Happi v. France, no. 65829/12 | Art. 6 CEDH | Art. 47 CFREU |
| Priority groups | Measures must specifically allow vulnerable groups to access housing, i.e. people on low incomes, unemployed people, lone parent families, young people and people with disabilities (particularly people with mental ill-health). | European Committee of Social Rights | ECSR Conclusions on Italy, 2003 | Art.31 RESC Art.E RESC | Art. 7 CFREU Art.34.3 CFREU |
| | The State must be attentive to the impact its policy choices have on all groups of people concerned and more specifically the most vulnerable. | European Committee of Social Rights | FEANTSA v. France, 2006 | Art.31 RESC Art.E RESC | Art. 7 CFREU Art. 34.3 CFREU Art.21 CFREU |
| The State remains accountable | The decentralisation of policy must not lead to a watering-down of responsibilities. States must put in place monitoring systems to make sure the objectives are complied with. | European Committee of Social Rights | ERRC v. Italy, 2005 FEANTSA v. France, 2007 FEANTSA v. Netherlands, 2014 | Art.30 RESC Art.31 RESC | Art. 7 CFREU Art.34.3 CFREU |

ECHR : European Court of Human Rights
CFREU : Charter of Fundamental Rights of the European Union
CJEU : Court of Justice of the European Union
RESC : Revised European Social Charter
CRPD : Convention on the Rights of Persons with Disabilities
ICCPR : International Covenant on Civil and Political Rights
TFEU : Treaty on the Functioning of the European Union
EEC : Treaty on the European Economic Community

HOUSING OF ADEQUATE QUALITY AND A HEALTHY ENVIRONMENT.

| KEY WORDS | POSITIVE OBLIGATIONS ON STATES | INSTITUTION | SOURCE | LEGAL BASIS | REFLECTION IN EU LAW |
|---|---|--|---|--|---|
| Minimum quality | The State must guarantee the right to housing of adequate quality for all. | European Committee of Social Rights | ECSR Conclusions on France, 2003 | Art.31 RESC | Art.34.3 CFREU |
| Rights apply to all dwellings | These characteristics are applicable to new housing as well as old, privately-rented as well as owner-occupied housing. | European Committee of Social Rights | ECSR Conclusions on France, 2003 | Art.31 RESC | |
| Protection from dangerous substances | The State and all public authorities responsible for land-use planning and for issuing building permits must ensure that rules on safe distances between residential areas and facilities using dangerous substances and representing serious risks of accident are complied with. | Court of Justice of the European Union | ECJ, Franz Mücksch, C-53/10. 15 September 2011 | | *Seveso 2 Directive 96/82/EC on the control of major-accident hazards involving dangerous substances (stemming from Article 192 TFEU) |
| Protection from polluting industries | Satisfactorily evaluate the risks represented by industry activity in close proximity to residential areas. Regulate permits, development, safety and evaluation of industrial activity, in particular when it constitutes a danger to the environment and human health. Take appropriate measures to pre-empt and reduce the incidence of polluting industrial disasters. Identify steps towards protecting the rights of victims of industrial pollution. This protection applies also to illegal industrial sites. | European Court of Human Rights | López Ostra v. Spain, no. 16798/90, 9 December 1994 Oneryildiz v. Turkey, 30 November 2004 | Art. 8 ECHR Margin of appreciation doctrine Art. 1 Prot. 1 | Art.7 CFREU Art. 7 CFREU |
| Adequate facilities | The State must ensure healthy housing, that means housing that provides water, heating, household waste disposal, sanitation facilities, electricity, etc. and where risk factors like lead and asbestos are under control. | European Committee of Social Rights | ECSR Conclusions on France, 2003 | Art.31 RESC | Art.34.3 CFREU Art. 7 CFREU |
| State support for renovation work | In order to meet social needs, the State can introduce taxation measures that encourage energy-saving renovation work, provided that the group benefiting from the measure is clearly defined (on basis of income, age, or other criteria) and the most excluded groups are the first to benefit. | Court of Justice of the European Union | Commission v. United Kingdom of Great Britain and Northern Ireland, 4 June 2015 | | VAT Directive 2006/112/EC on the common system of value added tax (from Article 93 ECT, (Article 113 TFEU) |
| Housing size adapted to family structure | The State must guarantee that housing is not overcrowded, is of adequate size for the number of family members and for the structure of the household that lives there. | European Committee of Social Rights | ECSR Conclusions on France, 2003 | Art.31 RESC | Art.34.3 CFREU Art. 7 CFREU |
| Continuous access to utilities | The State must prevent the interruption of access to essential services, e.g. water, electricity, telephone... | European Committee of Social Rights | ECSR Conclusions on France, 2003 | Art.31 RESC | Art.34.3 CFREU Art. 7 CFREU |

AFFORDABLE HOUSING.

| KEY WORDS | POSITIVE OBLIGATIONS ON STATES | INSTITUTION | SOURCE | LEGAL BASIS | REFLECTION IN EU LAW |
|--|---|-------------------------------------|----------------------------------|----------------------------|--|
| Affordable cost for those on lowest income | The State must not only ensure that the average cost of housing corresponds to average income, it must also make sure the burden on the most disadvantaged households is compatible with their resources. | European Committee of Social Rights | FEANTSA v. Slovenia, 2008 | Art.31 RESC Art.E RESC | Art.34.3 CFREU Art. 7 CFREU |
| Sufficient quantity of housing | The State must take the necessary measures to ensure the construction of a sufficient housing, especially social housing. | European Committee of Social Rights | ECSR Conclusions on Sweden, 2003 | Art.31 RESC | Art.34.3 CFREU Art. 7 CFREU |
| Vulnerable households as priority groups for social housing | Social housing must particularly target the most vulnerable households. | European Committee of Social Rights | FEANTSA v. France, 2007 | Art.31 RESC Art.E RESC | Art.34.3 CFREU Art. 7 CFREU Art.21 CFREU |
| Reasonable waiting periods for social housing (and possibility of appeal) | The State must take measures to reduce too long waiting times and put in place an appeals procedure in case of excessive waiting times. | European Committee of Social Rights | FEANTSA v. France, 2007 | Art.31 RESC | Art.34.3 CFREU Art. 7 CFREU |
| Individual housing benefit | The State must provide housing benefit for people on low incomes and disadvantaged population groups. | European Committee of Social Rights | ECSR Conclusions on Sweden, 2003 | Art.31 RESC Art.E RESC | Art.34.3 CFREU Art. 7 CFREU |
| | Individual housing benefits should make the cost of housing affordable (including electricity, taxes, etc.). | | ECSR Conclusions on France, 2011 | Article 13.1 RESC | Art.21 CFREU Art. 34 CFREU |
| No restrictions on access to housing benefit for rights holders | Housing benefit is an individual right: all households that are eligible for it must receive it effectively; appeals procedures must exist in case benefits are refused. | European Committee of Social Rights | ECSR Conclusions on Sweden, 2005 | Art.30 RESC Art.31 RESC | Art.34.3 CFREU Art. 7 CFREU |

APPEAL AND LEGAL RECOURSE TO ENSURE THE RIGHT TO HOUSING.

| KEY WORDS | POSITIVE OBLIGATIONS ON STATES | INSTITUTION | SOURCE | LEGAL BASIS | REFLECTION IN EU LAW |
|--|--|-------------------------------------|--|----------------------------|--|
| Appeal, legal aid, and compensation. | The law must provide access to legal redress, legal aid, and compensation for households that have been illegally evicted. Their use must be budgeted for and they must be affordable. | European Committee of Social Rights | ECSR Conclusions on France, 2003 ERRC v. Bulgaria, 2006 | Art.30 RESC Art.31 RESC | Art.34.3 CFREU Art. 7 CFREU |
| Obligation of result | The redress must work in practice. | European Committee of Social Rights | FEANTSA v. France, 2007 | Art.30 RESC Art.31 RESC | Art.34.3 CFREU Art. 7 CFREU |
| Legal proceedings in a reasonable timeframe | 10 years for a court decision following an appeal, which allows the delivery of financial compensation for the demolition of housing, is too long. | European Court of Human Rights | Moldovan and Others v. Romania (no. 2), no. 41138/98 | Art.6 ECHR Art.8 ECHR | Art.47 CFREU Art.34.3 CFREU Art. 7 CFREU |
| Public authorities must obey court decisions requiring the provision of housing | The lack of available stock is not a valid excuse for not obeying the judge's order. | European Court of Human Rights | Tchokontio Happi v. France, no. 65829/12 | Art.6 ECHR | Art.47 CFREU |

STATUTORY PROTECTION OF THE HOME.

| KEY WORDS | POSITIVE OBLIGATIONS ON STATES | INSTITUTION | SOURCE | LEGAL BASIS | REFLECTION IN EU LAW |
|---|---|--------------------------------|---|---|--|
| Protection for displaced people | The State must ensure tenants and owners have the possibility to be in full possession of dwellings they have a legal right to occupy (Following the Turkish invasion of north Cyprus rendering it impossible for Greek Cypriots to return to their homes. Also applies to Karabakh, between Armenians and Azeris). | European Court of Human Rights | Cyprus v. Turkey, no. 25781/94 Chiragov and Others v. Armenia [GC], no. 13216/05 | Art.8 ECHR Art. 13 ECHR Art.1 prot.1 ECHR | Art.7 CFREU Art.45 CFREU Art.17 CFREU |
| Protection in the event of prolonged absence from the home | The legal system must quickly and fully apply the right of the people to accommodation, even when the occupant is absent (for example someone spending time carrying out research abroad and their partner being absent because of a prolonged period of hospitalisation). | European Court of Human Rights | Novoseletskiy v. Ukraine, no. 47148/99 | Art.8 ECHR | Art. 7 CFREU |
| No legal protection in instances of domestic violence: Physical and psychological integrity are part of habitability of a dwelling | The legal system cannot convict a woman who has been subjected to repeated violence for changing the lock on the house door (even if she has refused to go to a women's refuge because one of her children has a severe brain injury). | UN, CEDAW Committee | A.T. v. Hungary, Communication No. 2/2003, UN Doc. CEDAW/C/32/D/2/2003 | Art. 2(a), 2(b), 2(e), article 5(a), combined with Art. 16. | Art 3, 4, 6, 7, 23 CFREU Recommendation n° 84/635/EEC on the promotion of positive action for women |

EVICCTIONS.

| KEY WORDS | POSITIVE OBLIGATIONS ON STATES | INSTITUTION | SOURCE | LEGAL BASIS | REFLECTION IN EU LAW |
|--|--|--|--|---|--|
| Keep down the number of evictions | States must put in place measures designed to restrict the number of evictions (whatever the reasons for them and whatever the occupancy status). | European Committee of Social Rights | ECSR Conclusions on Sweden, 2003 | Art.31 RESC | Art.34.3 CFREU Art. 7 CFREU |
| Statutory protection against eviction | A dwelling must come with a legal guarantee of security of tenure. | European Committee of Social Rights | ECSR Conclusions on France, 2003 | Art.31 RESC | Art.34.3 CFREU Art. 7 CFREU |
| Protective legal framework | The laws and regulations that regulate evictions must provide sufficient protection for the rights of people. | European Committee of Social Rights | ERRC v. Greece, 2004 | Art.30 RESC Art.31 RES Art.E RESC | Art.34.3 CFREU Art. 7 CFREU Art.21 CFREU |
| No eviction without final court decision | The State must put in place a system that allows effective protection of consumers against the risks of eviction from their mortgaged housing until a final court decision has been reached. | Court of Justice of the European Union | Mohamed Aziz v. Catalonia, 14 March 2013, C415/11. | | 93/13/EEC Directive on unfair terms in consumer contracts (stemming from Article 100 A ECT, (Article 122 TFEU) |
| Illegal occupation | Illegal occupation can lead to eviction but without too broad an understanding of the concept of illegal occupation and with respect for procedures upholding the rights of the people affected. | European Committee of Social Rights | ERRC v. Greece, 2004 | Art.31 RESC | Art.34.3 CFREU Art. 7 CFREU |
| Illegal occupation. No evictions at night or in winter | Evictions must be outlawed at night and in winter. | European Committee of Social Rights | ERRC v. Bulgaria, 2006 | Art.12 RESC Art.31 RESC | Art.34.2 CFREU Art.34.3 CFREU Art. 7 CFREU |
| Principle of proportionality when there is a risk of homelessness | Particular attention must be paid to consequences of an eviction before deciding whether it is appropriate to proceed, in particular when an eviction could cause the persons affected to become homeless. | Court of Justice of the European Union | Winterstein and Others v. France, no. 27013/07 | Art.8 ECHR Art.1 prot.1 C | Art.34.3 CFREU Art. 7 CFREU Art.17 CFREU |
| Help with rehousing | When eviction is justified in the public interest, States must rehouse the evicted households or provide them with financial assistance. | European Committee of Social Rights | ERRC v. Bulgaria, 2006 | Art.31 RESC | Art.34.3 CFREU Art. 7 CFREU |
| Notice period preceding the eviction | A notice period of 2 months before the actual eviction is reasonable, but a notice period of minimum 2 weeks before an eviction is too short. | European Committee of Social Rights | Conclusion ECSR Netherlands, 2015 | Art. 31-2 RESC | Art. 34.3 CFREU |

UNFAIR TERMS.

| KEY WORDS | POSITIVE OBLIGATIONS ON STATES | INSTITUTION | SOURCE | LEGAL BASIS | REFLECTION IN EU LAW |
|---|---|--|--|-------------|--|
| Unfair terms in contracts must be raised automatically by the judge. | The State must make Directive 93/13/EEC an imperative in its domestic legal order. The judge must raise as a matter of course grounds of public order and strike terms from the contract deemed unfair. | Court of Justice of the European Union | Asbeek Brusse v. Jahani, 30 May 2013, C-488/11. | | 93/13/EEC Directive on unfair terms in consumer contracts (stemming from Article 100 A ECT, i.e. Article 122 TFEU) |
| Power of judges. | The State must allow judges to: 1) assess, in the event of a mortgage seizure procedure, the unfairness of contract terms; 2) to adopt temporary measures to ensure the full effectiveness of the final measure, i.e. to suspend the procedure if needed. | Court of Justice of the European Union | Banco Popular Español SA, 14 November 2013, C-537/12 and C-116/13. | | 93/13/EEC Directive on unfair terms in consumer contracts (stemming from Article 100 A ECT, i.e. Article 122 TFEU) |
| | Judges must be able to suspend or annul eviction if the rights of occupants are not respected and must take provisional measures in case of an illegal mortgage seizure. | Court of Justice of the European Union | Monika Kusionova v. SMART Capital A.S., C-34/13. | | 93/13/EEC Directive on unfair terms in consumer contracts (stemming from Article 100 A ECT, i.e. Article 122 TFEU) Art. 7, 38, 47 CFREU |

HOMELESSNESS.

| KEY WORDS | POSITIVE OBLIGATIONS ON STATES | INSTITUTION | SOURCE | LEGAL BASIS | REFLECTION IN EU LAW |
|--|---|-------------------------------------|--|--|---|
| Definition | Homelessness is defined as not having access to adequate housing, defined as described above. | European Committee of Social Rights | ECSR Conclusions on Italy, 2003 | Art.31 RESC | Art.34.3 CFREU Art. 7 CFREU |
| Prevention | No eviction must take place if the public authority has not looked for alternative methods for rehousing: legalisation of informal habitation, connection to standard utilities networks, and help with rehousing if eviction proves necessary. | European Court of Human Rights | Yordanova and Others v. Bulgaria, no. 25446/06 | Art.8 ECHR | Art.7 CFREU |
| Principle of proportionality | Particular attention must be paid to the consequences of an eviction; notably whether an eviction could cause the persons affected to become homeless. | European Court of Human Rights | Winterstein and Others v. France, no. 27013/07 | Art.3 ECHR Art.8 ECHR | Art.4 CFREU Art.7 CFREU |
| Specific measures for vulnerable groups | States must act to make sure vulnerable people are not deprived of shelter (in addition to policies to promote access to social housing for low-income groups). | European Committee of Social Rights | ECSR Conclusions on Lithuania, 2005 | Art.12 RESC Art.30 RESC Art.31 RESC | Art.34.2 Art.34.3 CFREU Art. 7 CFREU |
| Principle of non-abandonment | The authorities cannot leave people to live in deplorable conditions. A lack of reaction to the situation of people forced to sleep in hen houses, pigsties and open buildings exposed to the cold is a violation of the ECHR. | European Court of Human Rights | Moldovan and Others v. Romania (no. 2), no. 41138/98 V.M.v. Belgium, no. 236/14 | Art.3 ECHR Art.8 ECHR Art. 3 ECHR Art. 3 ECHR | Art.4 CFREU Art.7 CFREU Art. 4 CFREU Art. 47 CFREU |
| Effect of town planning | Town planning carried out in the public interest (stations, roads...) cannot have the effect of making people homeless. | European Committee of Social Rights | ERRC v. Bulgaria, 2006 | Art.31 RESC | Art.4 CFREU Art.7 CFREU |

SHELTER/EMERGENCY ACCOMMODATION.

| KEY WORDS | POSITIVE OBLIGATIONS ON STATES | INSTITUTION | SOURCE | LEGAL BASIS | REFLECTION IN EU LAW |
|--|--|-------------------------------------|---------------------------------|----------------------------|--|
| Eligibility for emergency accommodation | There can be no restrictions on access to emergency social services (no criteria requiring local connection or residence permits). | European Committee of Social Rights | FEANTSA v. Netherlands, 2014 | Art.31 RESC | Art.4 CFREU Art.7 CFREU |
| Shelter for children | States must ensure shelter for children with irregular immigration status present on their territory, for as long as they are under the states' jurisdiction. | European Committee of Social Rights | DCI v. Netherlands, 2009 | Art.31 RESC | Art.4 CFREU Art.7 CFREU |
| Regulation of emergency shelter | The capacity of shelter must be sufficient to meet needs. | European Committee of Social Rights | FEANTSA v. France, 2007 | Art.31 RESC | Art.4 CFREU Art.7 CFREU |
| Minimum quality criteria for emergency support | Services providing temporary responses to emergency situations must respect safety, health and hygiene standards and must have essential comfort facilities such as access to running water and sufficient heating and lighting. Another basic requirement is that the immediate surrounding area be safe. | European Committee of Social Rights | DCI v. Netherlands, 2009 | Art.12 RESC Art.31 RESC | Art.34.2 CFREU Art.4 CFREU Art.7 CFREU |
| Emergency accommodation services must preserve dignity. | Living conditions in emergency structures must respect people's dignity. | European Committee of Social Rights | FEANTSA v. France, 2007 | Art.31 RESC | Art.4 CFREU Art.7 CFREU |
| Exit from emergency accommodation | Temporary structures are not an adequate solution, they must lead to secure housing and must not let the people involved fall back into difficulty. | European Committee of Social Rights | ECSR Conclusions on Italy, 2003 | Art.31 RESC | Art.4 CFREU Art.7 CFREU |

ROMA AND TRAVELLERS.

| KEY WORDS | POSITIVE OBLIGATIONS ON STATES | INSTITUTION | SOURCE | LEGAL BASIS | REFLECTION IN EU LAW |
|---|---|---|--|--|---|
| Specific facilities | Specific and adapted measures must be put in place for Roma people and Travellers. | European Committee of Social Rights | COHRE v. Italy, 2010 | Art.31 RESC Art.E RESC | Art.4 CFREU Art.7 CFREU Art.21 CFREU |
| Caravan dwellings | States must specifically provide stopping places for caravans, in sufficient number and with appropriate facilities. | European Committee of Social Rights | ERRC v. France, 2009 | Art.31 RESC Art.E RESC | Art.4 CFREU Art.7 CFREU Art.21 CFREU |
| Minority lifestyles merit specific attention | "the vulnerable position of Gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases [...] there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the Gypsy way of life" [para 96 verbatim]. | European Court of Human Rights | Chapman v. United Kingdom, no. 27238/95 | Art.8 ECHR | Art.7 CFREU |
| No segregational solutions | Segregational solutions are forbidden. | European Committee of Social Rights | ERRC v. Portugal, 2011 | Art.31 RESC Art.E RESC | Art.34.3 CFREU Art.7 CFREU Art.21 CFREU |
| Social policy measures must be accessible | Roma people and Travellers have the right not to be discriminated against in the allocation of housing benefit and in the waiting times for access to adequate and affordable housing. | European Committee of Social Rights | ATD Quart-Monde v. France, 2007 | Art.30 RESC Art.31 RESC Art.E RESC | Art.34 CFREU Art.7 CFREU Art.21 CFREU |
| Roma people and Travellers are vulnerable groups who must benefit from measures that are in line with their way of life and their local attachments. | Obligation to provide alternative solutions in the event of eviction of Roma people and Travellers, taking into account their being part of a vulnerable minority. These measures must respect community and spatial attachments. | European Court of Human Rights | Winterstein and Others v. France, no. 27013/07 | Art.31 RESC Art.E RESC | Art.7 CFREU Art. 34.3 CFREU Art.21 CFREU |
| No 'passive' discrimination | Not taking into account the grievances of a group of people can amount to discrimination. | European Court of Human Rights | Moldovan and Others v. Romania (no. 2), no. 41138/98 | Art.6 ECHR Art.8 ECHR Art.14 ECHR | Art.47 CFREU Art.7 CFREU Anti-Discrimination Directive 2000/43/EC |
| No restriction of rights as a result of public pressure | Cancelling a rehousing programme for Roma people from a slum following a petition by local residents is discriminatory. | UN, Committee on the Elimination of Racial Discrimination | L. R. et al. v. Slovakia, Communication No. 31/2003, U.N. Doc. CERD/C/66/D/31/2003 | Art. 2, 5, 6 | Art.34.3 CFREU Art.7 Art.21 CFREU Anti-Discrimination Directive 2000/43/EC |

FOREIGN NATIONALS.

| KEY WORDS | POSITIVE OBLIGATIONS ON STATES | INSTITUTION | SOURCE | LEGAL BASIS | REFLECTION IN EU LAW |
|--|--|--|---|----------------|--|
| No refusal to renew residence permits because of housing conditions | States cannot use the housing conditions of an applicant as a justification to refuse renewal of their residence permit. | Court of Justice of the European Union | CJEU, 18 May 1989, CEC v. FRG, C-249/86 | | Art. 48 and 49 of the EEC Treaty = (Article 48 and 49 TFEU) + Regulation n° 1612/68 on the free movement of workers within the Community |
| Obligation to house asylum seekers | States must provide minimum reception conditions for asylum seekers, be they accommodation or financial assistance, in order to allow asylum seekers to access housing, in the private sector if necessary. | Court of Justice of the European Union | FEDASIL v. Saciri Family, C-79/13. | | Asylum Directive 2013/32/EU Directive 2003/9/EC (stemming from Article 63 1) ECT, (Article 78 TFEU)) |
| Non-discrimination for European workers | States have the same obligations towards the families of European workers as towards its own nationals in terms of housing conditions... | Court of Justice of the European Union | ECJ, 18 May 1989, CEC v. FRG, C-249/86. | | Art. 48 and 49 of the EEC Treaty = (Article 48 and 49 TFEU) + Regulation n° 1612/68 on the free movement of workers within the Community |
| | ...and must guarantee them equivalent conditions of access to housing (rented or owned). | Court of Justice of the European Union | Commission v. Italy, 14 January 1988, C-63/86. | | Art. 45, 49, 56 TFEU. |
| | States must recognise large family status for European nationals and the right to advantages for EU citizens, on the same terms as for nationals (family allowance, housing allowance, apart from optionql aid). | Court of Justice of the European Union | Commission v. Greece, 29 October 1998, C-185/96. | | Art. 48 and 59 TFEU. |
| | States must give the same housing benefit to third country nationals with the status of long-term resident as to European citizens. | Court of Justice of the European Union | Servet Kamberaj v. IPES, 24 April 2012, C-571/10. | | Art.34.3 CFREU + Directive 2003/109/EC on the status of third country nationals who are long-term residents (based on Article 53 3) and 4) ECT (Art. 79 TFEU)) |
| | It is excessive to request two year residence to benefit from municipal housing and it constitutes a discrimination of migrant workers and their families. | European Committee of Social Rights | Conclusions ECSR Norway | Art. 19-4 RESC | |
| Family reunification and requirements related to housing | Restrictions to family reunifications in the form of requirements on the migrant to secure adequate or suitable accommodation to house his/her migrating family cannot be so restrictive as to make every family reunification impossible. The State can impose restrictions in a proportionate way and only to protect the interests of the family. Nevertheless, the States must not apply the rules in a general way as it would exclude the possibility to allow for derogations for certain categories of cases or to take account of personal circumstances. | European Committee of Social Rights | Conclusions ECSR 2015, explanatory observation | Art. 19-6 RESC | |

COMMUNITY-BASED HOUSING, INFORMAL HOUSING, ATYPICAL HOUSING.

| KEY WORDS | POSITIVE OBLIGATIONS ON STATES | INSTITUTION | SOURCE | LEGAL BASIS | REFLECTION IN EU LAW |
|--|--|---|--|---|--|
| Principle of proportionality in case of evictions | A public authority cannot just evict without alternative solution a family from their housing, even if it is of poor quality, if the family has been living there for a long time and forms part of a family and community environment the family has chosen. | European Court of Human Rights | Yordanova and Others v. Bulgaria, no. 25446/06 | Art.8 ECHR Principle of proportionality | Art. 7 CFREU |
| Recognition of informal housing and illegal occupation as a home: the facts go before the law. | A home is an independent concept: it exists when people have lived in the same place for a long time (between 5 and 30 years) and have developed sufficiently close and regular links with the caravans, huts and bungalows in the place to allow them to be thought of as their home, regardless of whether their presence in the place was legitimate in the eyes of domestic law. | European Court of Human Rights | Winterstein and Others v. France, no. 27013/07 | ECHR Art.1 prot.1 | Arti. 17 CFREU |
| Secure the informal housing of vulnerable groups | "an obligation to secure shelter to particularly vulnerable individuals stems from Article 8 in exceptional cases". | European Court of Human Rights | Yordanova and Others v. Bulgaria, no. 25446/06 | Art. 8 ECHR | Art. 7 CFREU |
| No eviction if the public authority has been inactive for too long | The absence of action on the part of the public authority for decades has allowed the people to develop close links with their neighbours and a community life. | European Court of Human Rights | Yordanova and Others v. Bulgaria, no. 25446/06 | Art.8 ECHR | Art. 7 CFREU |
| Adapted procedures to deal with long-term settlements | In situations where an entire community that has been present for a long time is involved, the usual, routine procedures for eviction and rehousing cannot be applied. The State cannot claim to respect the law if it does not take account of the specificities of the situation, even when the settlement is in breach of planning regulations. | European Court of Human Rights | Yordanova and Others v. Bulgaria, no. 25446/06 Winterstein and Others v. France, no. 27013/07 | Art.6 ECHR Art.8 Art.1 prot.1 | Art. 47 CFREU Art.7 CFREU Art.17 CFREU |
| No evictions from an informal neighbourhood that has been known about and recognised for a long time without rehousing in social housing. | Obligation to provide a solution, even temporary, whilst waiting for an appropriate and sustainable solution to be found, in the event of eviction from an informal neighbourhood that has existed for 70 years. | UN, Human Rights Committee | Liliana Assenova Naidenova et al. v. Bulgaria, Communication No. 2073/2011, UN Doc. CCPR/C/106/D/2073/2011 | Art.17 ICCPR Principle of proportionality | Art.7 CFREU |
| No refusal of necessary equipment for a person with disabilities | Public authorities and landlords cannot refuse to extend or carry out necessary work on the housing of an occupant with disabilities (this is discriminatory and disproportionate). | UN Committee on the Rights of Persons with Disabilities | HM v. Sweden, UN Doc CRPD/C/7/D/3/2011, 21 May 2012 | Violation of CRPD Art. 5(1), 5(3), 19(b), 25, 26, by themselves and in conjunction with 3 (b), (d), (e), and 4(1) (d) | Convention ratified by the EU, self-executing. |



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