



CHAPTER 3

HOUSING RIGHTS IN EUROPE



1. LEGAL TOOLS FOR PROTECTING HOUSING RIGHTS



THE UN'S SPECIAL RAPPORTEUR ON ADEQUATE HOUSING, AN INFLUENTIAL ADVOCATE FOR THE RIGHT TO HOUSING

- 1 International Special Representative on Adequate Housing, www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx
- 2 Report on homelessness and adequate housing, <http://ap.ohchr.org/documents/E/HRC/Reports/A/HRC/2016/24>
- 3 The Shift: from housing as a commodity to housing as home and a human right, <http://www.un.org/press/docs/2016/20160916.unshiftohousing.html>
- 4 Report on financialization of housing, <http://www.ohchr.org/documents/E/HRC/Reports/A/HRC/2016/24>
- 5 Report on the right to housing for persons with disabilities, <http://www.ohchr.org/documents/E/HRC/Reports/A/HRC/2016/24>
- 6 Report of the Special Representative on Adequate Housing as a component of the right to an adequate standard of living, Mission to Portugal, <http://www.ohchr.org/documents/E/HRC/Reports/A/HRC/2016/24>, Add.2

This year saw a widening gap between the housing rights guaranteed by international and European legal texts and the reality as experienced at national and local level. Breaches of housing rights vary in type and intensity: from the harsh reality of people sleeping rough to difficulties accessing affordable housing. Situations such as discrimination based on administrative status are also common. As has been said in other parts of this report, a wider section of the population than before are being affected by the problem of access to housing due to the financial crisis. This chapter will look at the right to housing in Europe in 2017. While international and European instruments are trying to develop housing rights, Member States continue to disregard them. International and European institutions must be tougher with those States that do not respect their obligations. This chapter also presents several recent developments relating to the implementation of the right to housing for undocumented migrants and the criminalisation of homeless people in Europe. Lastly, we look at the vital role of strategic litigation against austerity measures in holding Member States and EU institutions accountable for the failure to enforce social rights.

The Special Rapporteur calls for special attention to be paid to the most **vulnerable populations**, e.g. in her report on the right to housing of persons with disabilities⁵. Persons with disabilities are commonly homeless and subjected to cruel and inhuman treatment. They may endure isolation, stigmatisation and discrimination in all aspects of housing, including access, design, policy development and implementation. Her report concludes with recommendations to States, including the prioritisation and recognition in domestic law for people with disabilities' right to housing to be respected as far as resources allow.

In committing to the **Sustainable Development Goals**, governments worldwide undertook to ensure **access to adequate, secure and affordable housing for all by 2030**. To meet this ambitious pledge, governments will have to design **housing strategies based on human rights**. The Special Rapporteur's next report will focus precisely on human rights-based housing strategies and she will provide guidance on how to design and implement them in an effective way. Considering the scale and depth of homelessness and inadequate housing, it is no longer reasonable for governments to treat these realities as simple policy failures.

Her reports are useful for civil society organisations advocating for housing rights, setting out clear obligations for States: where they are failing and how can they do better. Apart from her reports, she also makes visits which could potentially have an impact in advancing housing rights in Europe, e.g. her recent mission to Portugal, which she has visited as part of her mandate.⁶

The Special Rapporteur has been a constant reminder to States of their international obligations' in relation to the right to housing. Concerned by the gap between current standards regarding the right to housing and the reality, the Special Rapporteur focuses on concrete obligations that can be implemented, including measuring progress, and that are useful for those advocating for housing rights on the ground.

In her 2015 report on homelessness and adequate housing as a component of the right to an adequate standard of living, she called for States to commit to **eradicating homelessness by 2030**, in line with the **Sustainable Development Goals**.

In November 2016, The Special Rapporteur launched a worldwide campaign called **Make the Shift**³. "The Shift" calls for us to see housing as a human right and a social good, rather than a commodity. It calls for an end to the financialization of housing and condemns forced evictions and displacement without alternative housing. In 2017, she focused on the **financialization of housing**⁴, exploring its detrimental impact on human rights and on the right to housing. She called for governments to ensure markets serve housing needs rather than financial priorities.

The number of countries that have ratified the Protocol²¹ remains low so NGOs are campaigning for more widespread ratification. In Spain, for example, in a joint letter sent in December 2017 to the Deputy Prime Minister several Spanish NGOs (such as Caritas Española, AID Cuarto Mundo, la Plataforma del Tercer Sector and EAPN Spain) called for full ratification of the European Social Charter and the Optional Protocol.

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Chart of signatures and ratifications of Additional Protocol to the European Social Charter: <http://www.coe.int/t/09/charter/charter/charter.asp>
Complaints: <https://www.coe.int/t/09/charter/charter/charter.asp>
Signatures: <https://www.coe.int/t/09/charter/charter/charter.asp>
Ratifications: <https://www.coe.int/t/09/charter/charter/charter.asp>



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The Charter of Fundamental Rights of the European Union: <http://eur-lex.europa.eu/legal-content/EN/CELEX/2012/EUFCharter/charter.html>

THE SITUATION OF SOCIAL RIGHTS IN THE EUROPEAN UNION: RIGHT TO SOCIAL AND HOUSING ASSISTANCE

The European Union has not yet ratified the European Convention on Human Rights or the Revised Social Charter. However, the **Charter of Fundamental Rights of the European Union**²² (CFREU) is part of EU legal rules and many articles of the EU Charter echo similar ones in the Council of Europe treaties. The preamble to the Charter includes a reminder that the rights included are not new but "result, in particular, from (...) the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights".

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Researcher PhD University of Antwerp, Faculty of Law, September 2017. What Rights? The Potential of the European Pillar of Social Rights <https://www.researchgate.net/publication/318400000>

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Opinion of the Secretary General of the Council of Europe on the European Union Social Rights <https://www.coe.int/t/09/charter/charter/charter.asp>

the European Pillar of Social Rights at the social summit in Gothenburg in November 2017. This non-binding declaration includes twenty major institutional principles including Principle 19 on **housing and assistance for the homeless**:

- a. Access to social housing or housing assistance of good quality shall be provided for those in need.
- b. Vulnerable people have the right to appropriate assistance and protection against forced eviction.
- c. Adequate shelter and services shall be provided to the homeless in order to promote their social inclusion.

This provision makes use of **Article 34.3 of the Charter of Fundamental Rights of the European Union** which recognises the right to social and housing assistance to ensure a decent existence for all those who lack sufficient resources.

Although the Commission's initiative was welcomed, a point of concern was that of the **legal nature of the principles**. The principles and rights enshrined in the Pillar **are not directly enforceable and non-binding**. They need to be translated into concerted action and legislation. In the case of principle 19, Member States are invited to adopt measures to support universal access to accommodation²⁴.

The Secretary General of the Council of Europe believes that the Pillar is an opportunity. However, he expressed concerns that "while the standard-setting systems of the European Union and Council of Europe constitute a comprehensive and structured whole, the persisting inconsistencies between them could jeopardise effective enforcement of the rights that they guarantee."²⁵ Many European stakeholders believe that the provisions of the European Social Charter should be formally incorporated into the European Pillar of Social Rights as a common benchmark.

Indeed, the proclamation states that "nothing in the European Pillar of Social Rights shall be interpreted as a common benchmark".

preted as restricting or adversely affecting rights and principles as recognised, in their respective fields of application, by Union law or international law and by international agreements to which the Union or all the Member States are party, including the European Social Charter signed at Turin on 18 October 1961 (...)"

FREE MOVEMENT AND HOMELESSNESS IN THE UNITED KINGDOM

The United Kingdom adopted legislation that made sleeping rough a sufficient reason to forcibly deport EU citizens and their family members on the basis that they are "an abuse" of the right to residence.

On 15 June 2017, FEANTSA, the Migrants' Rights Network and Praxis brought a complaint before the European Commission against the UK Government legislation. These advocacy organisations believe that interpreting sleeping rough as a form of abuse of the right to residence contravenes EEA rules. This needs to be condemned at EU level to prevent measures targeting destitute mobile EU citizens being adopted by other EU Member States.

You can read more about this in the **UK Country Close-up in Chapter 2**.

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CHALLENGES TO THE DEVELOPMENT OF HOUSING RIGHTS IN EUROPE

RIGHT TO ACCOMMODATION FOR UNDOCUMENTED MIGRANTS

People on the move, irrespective of whether they are refugees, asylum-seekers, or migrants, are particularly vulnerable to a range of human rights violations, including violations of the right to adequate housing.

It is the EU States' duty to promote and protect the human rights of migrants. Whereas EU states must provide minimum reception conditions for asylum seekers, migrants in transit risk a range of human rights violations and do not receive the same protection.

In many countries, large parts of the homeless population are migrants. In France in particular, shelter and accommodation providers are facing growing pressure from the authorities to participate in deportation procedures. The **unconditional right to accommodation** is being questioned. On 12 December 2017, the French Government announced the introduction of a mechanism whereby mobile teams led by law enforcement have access to emergency accommodation services to check the administrative status of migrants and act. Such decisions go against the values and mission of the homelessness sector and, for this reason, a coalition of NGOs led by FEANTSA addressed a letter to the European Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos.

The Netherlands adopted the use of the local connection or legal residence to refuse access to accommodation, which has been questioned by different decisions of the European Committee of Social Rights such as the **Collective Complaint FEANTSA v the Netherlands**²⁶. Municipalities

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Collective Complaint
FEANTSA v the
Netherlands
<http://www.bouanundwatch.org/juspublicum/collective-complaint-feantsa-v-netherlands-2017>

indicated in their policies criteria on which eligibility for emergency accommodation is based. In the Collective Complaint, the European Committee of Social Rights ruled that there could be no restrictions on access to emergency social services (no criteria requiring local connection or residence permits).

CRIMINALISATION OF HOMELESS PEOPLE

In 2016 different UN documents and reports at national level have given the impression that things are changing in this area. We are referring to the **UN resolution adopted by the Human Rights Council** in March 2016 that contained a call for states "to take all measures necessary to eliminate legislation that criminalizes homelessness" and **The New Urban Agenda**, approved at the UN Habitat III Conference in November 2016, that called for measures to "prevent and eliminate homelessness", to "combat and eliminate its criminalization" and for "the progressive realization of the right to adequate housing."

However, cities, regions and countries across Europe continue to use the criminal and administrative justice systems to minimise the visibility of people experiencing homelessness in public spaces. Governments continue to establish formal and informal measures and enforce policies to limit where homeless people can congregate, often punishing those who try to earn a living in public spaces.

Begging bans are gaining credence amongst policy makers as a convenient way to "solve" the problems associated with homelessness and poverty. Most homeless people do not beg for money,

The fact is that penalisation strategies can push homeless people further into poverty and social exclusion. Rather than punishing people, local authorities should encourage homeless people to claim their rights. Governments must ensure the right to adequate housing and a decent standard of living for all citizens. Public funding should be used to assist and protect households, not to carry out costly penalisation measures.

Against this backdrop, FEANTSA and Foundation Abbé Pierre have launched a Europe-wide campaign to encourage cities to recognise the rights of homeless people. **The Homeless Bill of Rights**²⁷ targets cities and includes basic entitlements drawn from European and international human rights law. By endorsing it, cities reaffirm their commitment to human rights. The main goal is to facilitate public debate and emphasise the role of cities in tackling homelessness and upholding human rights at local level. In France, the Abbé Pierre Foundation has launched the "Soyons Humains" campaign to mobilise citizens in condemning anti-homeless architecture. In many European countries, defenders of housing rights are increasingly mobilised around the issue of criminalisation.

however, so making it illegal to beg criminalises homelessness and poverty. Criminalising homelessness opens the door for law enforcement agencies, policy makers and others to push poor people out of public spaces and to claim that homelessness has been solved. Begging bans are often the tip of an iceberg: a wide base of antisocial behaviour measures that can be used to punish or fine people in the name of disrupting public order and measures that criminalise the use of public space by people considered "undesirable" by policy makers and business owners.

A **Written Question before the European Parliament**²⁷ condemns Denmark which has enacted a law against all types of begging, following on from similar laws in Greece and Romania. Although these laws target all kinds of begging, it can constitute indirect discrimination by disproportionately affecting Roma people. The local situation worsened in Norway after a documentary²⁸ depicted the Roma as organised begging criminals. A human rights platform was set up to promote the rights of the Roma. In Sweden there is growing public debate on a proposal to ban begging. Such laws are spreading, the Commission should therefore react to these discriminations in relation to wealth, not only because this is condemned by European law, but also because it indirectly targets the Roma population, a vulnerable group that EU seek to protect.

Other worrying developments in relation to criminalisation are happening around Europe. In the United Kingdom there is growing debate about the increasing use of **Public Space Protection Orders**²⁹. In Nottingham (UK), **anti-begging posters published by a council were banned** by the Advertising Standards Authority (ASA) for "reinforcing negative stereotypes"³⁰. In Italy a municipal ordinance punishing begging was withdrawn by the Council of State and the President of the Republic following a **complaint made by Avvocato di Strada**³¹.

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Written Question before
the European Parliament:
<http://www.parliament.europa.eu/writers/question/2016-08-24-01>
reference: E-2016-0172
<http://www.parliament.europa.eu/writers/question/2016-08-24-01>

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Documentary
"Lykkedaniel"
<http://forstromning.no/forstromning-lykkedaniel/>
forstromning.samlene
<http://www.kommunaltidning.no/forstromning-lykkedaniel>
<http://www.kommunaltidning.no/forstromning-lykkedaniel>

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Public Protection
Orders Campaign by
Liberty: <https://www.liberty.org/campaign/public-space-protection-orders/>

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Nottingham anti-begging
posters banned by
advertising authority:
<http://www.bbc.com/news/health-37488612>

31

Complaint made by
Avvocato di Strada: <http://www.bouanundwatch.org/juspublicum/collective-complaint-feantsa-v-netherlands-2017>

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The Homeless Bill of
Rights: <http://www.bouanundwatch.org/>

3. IS STRATEGIC LITIGATION AGAINST AUSTERITY MEASURES A SOLUTION?

The financial crisis has disproportionately impacted the rights of citizens, especially women, children, and vulnerable and marginalised persons. States have largely failed to address the root causes of the financial crisis, including the de-regulation of the financial sector, rising inequality and other systemic weaknesses. The bank bailouts and widespread imposition of austerity measures that followed the crisis reduced government expenditures on human rights, development and social welfare when and where they were most needed.

The United Nations Office of the High Commissioner for Human Rights published "*Austerity measures and economic, social and cultural rights*"³³, which affirms that States should fulfil the following criteria when adopting austerity measures in order to ensure compliance with human rights obligations: "*the existence of a compelling state interest; the necessity, reasonableness, temporariness and proportionality of the austerity measures; the exhaustion of alternative and less restrictive measures; the non-discriminatory nature of the proposed measures; the protection of a minimum core content of the rights; and the genuine participation of affected groups and individuals in decision-making processes*" (page 12).

In Europe, both the **European Court of Human Rights** (ECHR) as well as the **European Committee of Social Rights** (ECSR) had to address austerity measures and other responses to the crisis in their

decisions. The ECHR has handed down numerous judgments where the economic factor can be discerned. It grants wide discretionary powers to States when introducing austerity measures, but the Committee of Ministers of the Council of Europe has drawn on several general principles which are used by the Court when applying and interpreting the Convention as mentioned at UN level: "*public interest*", "*necessity*", "*proportionality*", "*effectiveness*" or "*discriminatory measures*"³⁴.

Legal mobilisations against austerity policies in Europe have tried to hold Member States and EU institutions accountable for the failure to enforce social rights. Although some progress has been made, legal stakeholders recognise the restrictions the courts face in shaping policy. Experts from academia and the voluntary sector discussed this at a conference held in Brussels in September 2017 entitled "*Austerity on trial. Legal mobilisations and austerity policies in Europe*"³⁵. The wider research project explores the cross-border movement in relation to the practice of strategic litigation. The event focused primarily on the fight against poverty against a backdrop of austerity policies.

The case of Spain was a paradigmatic shift with regard to the housing crisis. Many mortgage foreclosure cases have been brought up before the Spanish courts, and judges have used preliminary rulings before the **European Court of Justice** to determine whether national mortgage law was

in line with EU consumer law. The **European Court of Justice in the Aziz case ruling** on March 2013³⁶ forced Spanish authorities to change the foreclosure system. The Spanish foreclosure legal system did not allow consumers to oppose abusive clauses within the procedure, and it should, on the contrary, allow judges to analyse abusive clauses and rule according to **EU Directive 13/93 of Unfair Terms in Consumers Contracts**³⁷. In the case of residential mortgages, unfair terms are forbidden, and should therefore be eliminated from contracts.

But the legal struggle could not have had the same momentum without the support of a social movement, the PAH (*Plataforma de Afectados por la Hipoteca*) which has brought together thousands of victims of evictions/mortgage foreclosures across Spain. The PAH movement fights against mortgage foreclosures, forced evictions and abusive lending practices, and for the right to housing for all. Some of their legal strategies include a mass dissemination of judicial decisions on foreclosures procedures.

Legal mobilisations did not start with the crisis. There has been a wide range of case law in previous periods including case law emerging from the global south that can be used in severely resource-poor contexts. Austerity is a global problem and having a narrow regional focus fails to capture the real impact of the global economic recession. Legal mobilisations have not been able to stop austerity measures, and some questioned whether it was worth squandering so much talent and resources that could be used to sustain the activist political movement.

A critical issue is access to the courts. Often, the more vulnerable people, i.e. homeless people, cannot access the courts. There is a need for

36 Case C-415/11 Mohamed Aziz v. Caixa d'Esparis de Catalunya 14 March 2013 <http://eur-lex.europa.eu/legal-content/en/idx/?uri=CELEX:62011CJ415>

37 Directive 13/93 of Unfair Terms in Consumers contracts and follow <http://eur-lex.europa.eu/legal-content/en/idx/?uri=CELEX:32009L0013>