

ARTICLE 31

The right to housing

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

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources.

INTRODUCTION

The right to housing – a broad expression referring to a set of more specific rights related to adequate housing and living conditions – is a crucial social one, closely connected to other important civil, economic, social freedoms. It may be defined as “the right to live somewhere in security, peace and dignity”¹ and secures inclusion and integration of individuals into society by contributing to overcoming socio-economic inequalities².

Housing-related rights are now considered an integral part of economic, social and cultural rights within many human rights instruments, adopted by the United Nations, the Council of Europe, the European Union, besides inter-American and African organizations. Nevertheless, on the Old Continent, a specific and autonomous right to housing is expressly provided for only in the revised European Social Charter, which is therefore of peculiar importance and represents a pioneering instrument in this regard.

On a national level, in Europe several constitutions refer to housing or housing rights. However, only in a few countries (some of) these rights are recognized as individual justiciable ones³, while in others a principle is enshrined, which has then to be realized through appropriate laws and resources⁴. Furthermore most national constitutions do not contemplate housing adequacy as a subject of rights in relations between private individuals and public authorities.

The right to housing is, instead, guaranteed on international and national levels mostly as a part of other rights, for instance to an adequate standard of living, respect for private and family life, etc.

According to the practice of major international organizations operating in this field⁵, the most problematic situations can be traced back, apart from the consequences of natural disasters, to three types of facts: expropriations and evictions, especially when perpetrated on a large scale; discrimination in access to housing against particularly vulnerable categories of people (such as ethnic minorities, women, immigrants); the housing condition of individuals in poverty, often related to the increase in urban settlements as a result of the movement of people to cities, with the creation of entire neighborhoods of inadequate, unhealthy housing or those lacking essential services.

¹ Council of Europe, “Recommendation of the Commissioner for Human Rights on the Implementation of the Right to Housing”, CommDH(2009)5, p. 3, available at <https://www.refworld.org/docid/4a49f6062.html>.

² ECSR, *European Roma Rights Centre (ERRC) v. Italy*, complaint No. 27/2004, decision on the merits of 7 December 2005, “Scope of Article 31” after § 18.

³ Mainly in the constitutional charters of Belgium (Art. 23 § 3 No. 3), Portugal (Art. 65), Spain (Art. 47), where in any case specific access to decent housing has to be considered “a constitutional objective to be achieved progressively” rather than a real right (in this sense, for example, the Belgian Constitutional Court). But also in France (where §§ 10-11 of the preamble to the 1946 constitution, referred to in the current one, expressly stipulate only that the State guarantees the individual and the family the conditions necessary for their development and material security) and Italy (where only the State’s commitment to facilitate access to home ownership is expressly stated in Article 47) this right is considered implicitly provided for in their respective constitutions – within limits similar to those mentioned above – according to the rulings of their constitutional courts (Conseil constitutionnel français, 19 Janvier 1995, déc. No. 94-359 DC; Corte costituzionale italiana, sent. 7 Aprile 1988, No. 404 and sent. 9 Marzo 2020, No. 44).

⁴ See, in particular, the constitutions of Finland (Art. 19 § 4), Greece (Art. 21 § 4), the Netherlands (Art. 22 § 2), Poland (Art. 75), Sweden (Cap. I, Art. 2, § 2), Switzerland (Art. 41 § 1 (e)), Turkey (Art. 57).

⁵ See, in particular, the Report of the United Nations Special Rapporteur on Adequate Housing Miloon Kothari of 13 February 2008 (UN doc. A/HRC/7/16). See also the Statement on Adequate Housing on World Habitat Day of 1 October 2007, by the same Special Rapporteur, available on the website of the United Nations High Commissioner for Human Rights www.ohchr.org. Cf., among others, Francesco BESTAGNO, “Gli obblighi internazionali in materia di abitazione adeguata”, in Francesco BESTAGNO (ed.), *I diritti economici, sociali e culturali. Promozione e tutela nella comunità internazionale*, Milano, Vita e Pensiero, 2009, pp. 87-88.

I. RELEVANT INTERNATIONAL STANDARDS

A. THE UNITED NATIONS' INSTRUMENTS

Within the framework of the United Nations, in addition to a reference in Article 25 of the Universal Declaration of Human Rights of 1948, the right under consideration is guaranteed by the two International Covenants of 1966, under the profile of the prohibition of “arbitrary or unlawful interference with his or her privacy, family, home or correspondence” (Article 17 ICCPR) and the profile of “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” (Article 11 ICESCR)⁶.

These instruments do not prescribe the nature of housing systems to be adopted by ratifying States, but require to recognize, respect and protect housing rights, to meet “minimum core” obligations, to ensure non-discrimination and direct legislative measures, appropriate policies and the maximum of available resources toward a progressive realization of these rights⁷.

Further relevant United Nations instruments include international conventions dedicated to specific categories of individuals, which in particular enshrine the prohibition of discrimination in access to and enjoyment of adequate housing. In addition to racial discrimination forbidden by the relevant general convention⁸, other treaties promoted especially by the United Nations identify refugees⁹, women¹⁰, children¹¹, migrant workers¹², persons with disabilities¹³ and elderly people¹⁴ as in need of specific housing protection. Provisions relating to the right to adequate housing are also found in conventions promoted by the International Labour Organization (ILO)¹⁵, as well as in declarations or recommendations of the ILO itself and other international organizations¹⁶.

B. THE UNITED NATIONS' COMMENTS

There have been many attempts to clarify the contents of international housing rights, including the concepts of “minimum core obligations” and progressive realization of rights according to available resources¹⁷, even through indicators and benchmarks¹⁸.

⁶ Article 11 ICESCR adds that “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”.

⁷ Cf. Padraic KENNA, “International Instruments on Housing Rights”, *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*, vol. 2, no. 1, 2010, p. 12. See also: Philip ALSTON and Gerald QUINN, “The Nature and Scope of States Parties Obligations under International Covenant on Economic, Social and Cultural Rights”, *Human Rights Quarterly*, vol. 9, no. 2, 1987, pp. 156-229; Manisuli SSENYONJO, *Economic, Social and Cultural Rights in International Law*, 2nd ed., London, Hart Publishing/Bloomsbury, 2016, pp. 78-156.

⁸ See Article 5 (e)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965.

⁹ See Article 21 of the Convention Relating to the Status of Refugees of 28 July 1951, devoted to the right of refugees to the most favourable treatment possible with respect to housing.

¹⁰ See Article 14 § 2 (h) of the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979, which includes housing as part of the right to benefit from decent living conditions.

¹¹ See Article 27 of the Convention on the Rights of the Child of 20 November 1989, which provides for housing as one of the conditions necessary for a sufficient standard of living to enable the child to develop.

¹² See Article 43 § 1 (d) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990, which provides for equal treatment in access to housing and the possibility of protection against excessive rents.

¹³ The Convention on the Rights of Persons with Disabilities of 13 December 2006 devotes several provisions to the non-discriminatory access of such persons to “reasonable accommodation”. See also Committee on ESCR, general comment No. 5, on persons with disabilities (UN Doc. E/1995/22), and general comment No. 14, on the right to the highest attainable standard of health (UN Doc. E/C.12/2000/4).

¹⁴ See Committee on ESCR, general comment No. 6, on the economic, social and cultural rights of older persons (UN Doc. E/1996/22).

¹⁵ See, in particular, ILO Recommendation No. 115 concerning workers' housing (1961); ILO Convention No. 117 concerning basic aims and standards of social policy (1962); ILO Convention No. 161 concerning occupational health services (1985); ILO Domestic Workers Convention No. 189 (2011).

¹⁶ See, in particular: UN Agenda 2030 for Sustainable Development (2015), according to which States have to ensure “by 2030, [...] access for all to adequate, safe and affordable housing and basic services and upgrade slums” (Goal No. 11.1); Istanbul Declaration on Human Settlements (1996); Geneva UN Charter on Sustainable Housing (2015); World Health Organisation, “Housing and Health Guidelines” (2018).

¹⁷ See the Report of the Special Rapporteur on Adequate Housing to the UN Commission on Human Rights, 3 March 2005 (UN Doc. E/CN.4/2005/48). See also the conclusions and reports of the Committee on ESCR at website

At the United Nations level, the Committee on Economic, Social and Cultural Rights devoted considerable effort to the study of this right, compared to the others under the ICESCR, with the publication of general comment No. 4 (1991) dedicated to the right to housing in general, as well as general comment No. 7 (1997) on the phenomenon of forced evictions¹⁹. In addition, the Committee has intervened over the years in a number of concrete cases under the Optional Protocol to the ICESCR, on the basis of complaints by those concerned, further specifying the States' obligations²⁰. At the same time, the Commission on Human Rights (now replaced by the Human Rights Council) appointed a Special Rapporteur to deal exclusively with "adequate housing as a component of the right to an adequate standard of living", who liaises with national governments, conducts site visits, receives individual complaints and submits very detailed annual reports²¹.

The reconstruction of the law and related international obligations undertaken mainly by the Committee on ESCR, although it covers only Article 11 of the ICESCR per se, has stood as a point of reference for the interpretation of the other international instruments on the right to housing, such as the European Social Charter and further conventional provisions²².

<http://www.unhcr.ch/html/menu2/6/cescr.htm>. Cf.: Padraic KENNA, *cit.*, p. 13; Dipak K. GUPTA, Albert J. JONGMAN and Alex P. SCHMID, "Creating a Composite Index for Assessing Country Performance in the Field of Human Rights: Proposal for a New Methodology", *Human Rights Quarterly*, vol. 16, no. 1, 1994, pp. 131-162.

¹⁸ See: Report of Secretary General on indicators and benchmarks (UN Doc. E/EN4/2000/47); UN General Assembly, "Report of the Seminar on appropriate indicators to measure achievements in the progressive realization of economic, social and cultural rights", Geneva, January 25-29 1993 (UN Doc. A/CONF.157/PC/73); United Nations Human Settlements Programme, "Urban Indicators Guidelines. Monitoring the Habitat Agenda and the Millennium Development Goals", available at <http://www.urbanobservatory.org/agenda/>. See also Scott LECKIE, "Another Step towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights", *Human Rights Quarterly*, vol. 20, no. 1, 1998, pp. 81-99; Maria GREEN, "What We Talk about When We Talk about Indicators: Current Approaches to Human Rights Measurement", *Human Rights Quarterly*, vol. 23, no. 4, 2001, pp. 1063-1097.

¹⁹ See Committee on ESCR, general comment No. 4, "The right to adequate housing (Art. 11 (1) of the Covenant)", 13 December 1991 (UN doc. E/C.12/1991/4) and general comment No. 7, "The right to adequate housing (Art. 11 (1) of the Covenant): forced evictions", 20 May 1997 (UN doc. E/C.12/1997/4).

²⁰ For a broad overview of obligations imposed by Article 11 ICESCR, arising "from the interpretation of the State Party's obligations under article 2 (1) of the Covenant, read in conjunction with article 11, and in accordance with the requirements of article 4" (as pointed out in the Views adopted on 5 March 2020 in the case *Gómez-Limón Pardo v. Spain*, E/C.12/67/D/52/2018, § 9.4), see, in particular, the Views adopted on 23 November 2021 in the case *Lorne J. Walters v. Belgium* (E/C.12/70/D/61/2018): "in order for an eviction to be justifiable" in light of the right to adequate housing, "it must meet a number of requirements. Firstly, the possibility of eviction must be determined by law. Secondly, it must promote the general welfare in a democratic society. Thirdly, it must be proportionate to the aim pursued. Fourthly, it must be necessary, in that, where there are several means reasonably capable of achieving the legitimate aim of the limitation, the one that is the least restrictive must be selected. Lastly, the benefits of the limitation in promoting the general welfare must outweigh the impact of the limitation on the enjoyment of the right. [...] This inevitably involves making a distinction between properties belonging to individuals who need them as a home or to provide vital income and properties belonging to financial institutions or other entities" (§ 9.3; see also the Views adopted on 11 October 2019 in the case *López Albán v. Spain*, E/C.12/66/D/37/2018, § 11.5). In addition, "the State Party has a duty to take reasonable measures to provide alternative housing to persons who are left homeless as a result of eviction, irrespective of whether the eviction is initiated by its authorities or by private entities such as the owner of the property" (§ 10.1; see also the Views adopted on 20 June 2017 in the case *Ben Djazja and Bellili v. Spain*, E/C.12/61/D/5/2015, § 15.2). Furthermore, "in accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases and against any undesirable effects that such legislation may have on vulnerable groups, such as older persons" (§ 11.4). Finally, to avoid a disproportionate impact of legislation, albeit compatible in the abstract with the Covenant, on the right to adequate housing of certain groups in vulnerable situations, States Parties firstly "must establish a mechanism to monitor the impact of the application of the legal framework on the most vulnerable and marginalized groups in order to introduce the necessary adjustments [...]. Second, the policy must include mechanisms and flexibility to ensure that the application of the legal framework does not have a disproportionate impact in certain cases" (§ 12.3).

²¹ These reports, drafted by successive Rapporteurs, can be found on the website <https://www.ohchr.org/fr/special-procedures/sr-housing/annual-thematic-reports-special-rapporteur-adequate-housing>. See also the Guidelines for the Implementation of the Right to Adequate Housing of 26 December 2019, by the same Special Rapporteur (UN doc. A/HRC/43/43).

²² About the influence on the European Social Charter's interpretation see the decision of the European Committee of Social Rights in the case *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, complaint No. 39/2006, decision on the merits of 7 December 2007, § 65, which expressly refers to general comments No. 4 and No. 7 and the Reports of the Special Rapporteur, Miloon Kothari. In general, on the relevance of the principles expressed by the ICESCR and Committee on ESCR as an interpretative reference point for other covenant provisions on housing rights, see Scott LECKIE, "The Human Right to Adequate Housing", in Asbjørn AIDE, Catarina KRAUSE and Allan ROSAS (eds.), *Economic, Social and Cultural Rights*, 2nd ed., Martinus Nijhoff Publishers, Dordrecht-Boston-London, 2002, p. 153.

The aforementioned comments outline a conception of housing not as a mere shelter, or as “a roof over one’s head”, but as a place where every person must have the opportunity to live stably and with dignity²³. In summary, the essential factors for the right to be considered realized are identified in the satisfaction of minimum housing needs, consisting of access to housing that meets the requirements of habitability, not excessive cost, with the availability of essential infrastructure and services, adequate with respect to cultural traditions, and with regard to which the domestic system provides protection at the legal level²⁴.

C. THE EUROPEAN CONVENTION ON HUMAN RIGHTS

In the context of the Council of Europe, although the right to housing is not specifically enshrined in the European Convention on Human Rights (ECHR), Article 8 of this instrument guarantees the protection of private and family life and home, and Protocol No. 1 to the ECHR the protection of possessions, of which the Strasbourg Court has given a broad interpretation, including in some cases the right to housing²⁵. In particular, the Court recognized a wide meaning to the notion of “home”, excluding only situations when putting a particular place within the scope of home would mean to interpret Article 8 § 1 beyond its objective²⁶. This complies with the conviction that the European Convention is a living instrument which has to be read in light of present-day conditions.

So, while there is no duty under the ECHR for a universal State housing provision²⁷, certain positive obligations have been found by the Court under Article 8²⁸, particularly in relation to protection against smells and nuisance from a waste treatment plant²⁹, toxic emissions emanating from a chemical factory³⁰, environmental pollution from a steel plant³¹, and noise from bars and nightclubs³².

In *Marzari v. Italy* and other cases³³, the obligation for public authorities to provide housing assistance to an individual suffering from a severe disability was recognized in the abstract, because of the impact of the

²³ See Committee on ESCR, general comment No. 4, *cit.*, § 7. It should be noted that the preparatory work of the ICESCR shows that the expression “adequate housing” was preferred to the expression “dwelling consistent with human dignity” because it was considered more far-reaching: cf. Matthew CRAVEN, *The International Covenant on Economic, Social and Cultural Rights. A Perspective on its Development*, Oxford, Clarendon Press, 1995, p. 290.

²⁴ See Committee on ESCR, general comment No. 4, *cit.*, § 8.

²⁵ If Article 8 ECHR and Article 1 of Protocol No. 1 happen to be among the most frequently invoked provisions before the Court, also Article 3 (prohibition of torture or inhuman or degrading treatment or punishment), Article 6 (right to fair trial) and Article 14 (prohibition of discrimination) have sometimes been interpreted by the Strasbourg Court in the context of housing. See the Court’s case law analysis on the official website <https://www.echr.coe.int/Pages/home.aspx?p=caselaw/analysis&c=and>, among others, Francesco BESTAGNO, *cit.*, pp. 112-116; Arturs KUCS, Zane SEDLOVA and Liene PIERHUROVICA, “The Right to Housing: International, European and National Perspectives”, *Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol*, no. 64/65, 2008, pp. 105-106.

²⁶ According to the Strasbourg Court, “home” is an autonomous concept, which does not depend on classification under domestic law, and it is a wide term, given that the French equivalent “domicile” has a broader connotation: see ECtHR, 24 November 1986, *Gillow v. the United Kingdom*, No. 9063/80, § 46; ECtHR, 16 December 1992, *Niemietz v. Germany*, No. 13710/88, § 30; Antoine BUYSE, “Strings Attached: the Concept of ‘Home’ in the Case Law of the European Court of Human Rights”, *European Human Rights Law Review*, vol. 6, no. 3, 2006, pp. 294-307; Arturs KUCS, Zane SEDLOVA and Liene PIERHUROVICA, *cit.*, pp. 106-108.

²⁷ “It is important to recall that Article 8 does not in terms recognise a right to be provided with a home. Nor does any of the jurisprudence of the Court acknowledge such a right. While it is clearly desirable that every human being have a place where he or she can live in dignity and which he or she can call home, there are unfortunately in the Contracting States many persons who have no home. Whether the State provides funds to enable everyone to have a home is a matter for political not judicial decision” (ECtHR, 18 January 2001, *Chapman v. the United Kingdom*, No. 27238/95, § 99). Even recently the Strasbourg Court reiterated that Article 8 “does not recognise, as such, a right to be provided with a home [...] nor does it confer a right to live in a particular location [...] or guarantee the right to have one’s housing problems solved by the authorities, as the scope of any positive obligation to house the homeless is limited” (ECtHR, 31 March 2022, *Faulkner v. Ireland and McDonagh v. Ireland*, Nos. 30391/18 and 30416/18, § 98).

²⁸ On which cf., among others, Padraic KENNA, “Housing Rights: Positive Duties and Enforceable Rights at the European Court of Human Rights”, *European Human Rights Law Review*, vol. 8, no. 2, 2008, pp. 193-208. On the influence of the Court’s interpretative convergences and judicial dialogue with the European Committee of Social Rights in the recognition of these positive obligations, see Christina DELIYANNI-DIMITRAKOU, “The European Social Charter and the European Convention on Human Rights”, in ANESC, *The European Social Charter: A Commentary*, Vol. 1, Leiden, Brill, 2022, pp. 361-364.

²⁹ ECtHR, 9 December 1994, *López Ostra v. Spain*, No. 16798/90.

³⁰ ECtHR, 19 February 1998, *Guerra and others v. Italy*, No. 14967/89.

³¹ ECtHR, final 30 November 2005, *Fadeyeva v. Russia*, No. 55723/00.

³² ECtHR, final 16 February 2005, *Moreno Gomez v. Spain*, No. 4143/02.

³³ ECtHR, dec. 4 May 1999, *Marzari v. Italy*, No. 36448/97; ECtHR, dec. 13 May 2000, *Maggiolini v. Italy*, No. 35800/97. See also ECtHR, 24 February 1998, *Botta v. Italy*, No. 36448/97, §§ 33-34 (with specific regard to architectural barriers in public buildings).

relevant refusal on his private life. Respect for domicile may also imply the adoption by public authorities of measures to secure such a right even in the sphere of relations between individuals, for instance by preventing others from entering and interfering with the applicant's home³⁴.

In a line of case law concerning the situation of the Roma³⁵, the Strasbourg Court has recognized the positive obligation on the contracting States, under Article 8 ECHR, to facilitate the lifestyle of gypsies, which involves travelling around and settling in different places: indeed, as members of a minority in a vulnerable position, they must be given a special consideration for their needs and their different way of life both in the relevant regulatory framework and in reaching decisions in particular cases³⁶. Moreover, due attention must be paid to the consequences of their removal from their home and the risk of their becoming homeless. The Court pointed out that “numerous international instruments, some of which have been adopted within the Council of Europe, emphasise the necessity, in the event of the forced eviction of Roma and travellers, of providing them with alternative housing, except in cases of *force majeure*”³⁷. And it sometimes added that “this same finding led the European Committee for Social Rights to conclude, [for instance] in complaint no. 51/2008 (*European Roma Rights Centre v. France*), that there had been a violation of Article 31 § 1 of the revised Charter”³⁸.

This, however, without going so far as to recognize, on the part of individual signatory States, a positive obligation to provide housing for those who do not have it or who are in conditions of economic and/or social hardship³⁹.

If anything, obligations of means would flow from the Convention, in the sense that States would have to make efforts to address the housing problem for those most in need and to assist them in finding solutions in order to protect their right to private and family life and home⁴⁰.

D. THE EUROPEAN UNION LAW

The right to housing is also considered at the European Union level⁴¹. Actually, neither the founding Treaties nor the Charter of Fundamental Rights do include a specific right to housing⁴², but Article 34 § 3 of the Charter, on social security and social assistance, states: “In order to combat social exclusion and poverty, the Union recognizes and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices”.

³⁴ ECtHR, final 10 November 2004, *Surugiu v. Romania*, No. 48995/99, § 59, and references therein.

³⁵ In particular ECtHR, *Chapman v. the United Kingdom*; ECtHR, final 27 August 2004, *Connors v. the United Kingdom*, No. 66746/01; ECtHR, dec. 7 February 2006, *Codona v. the United Kingdom*, No. 485/05.

³⁶ ECtHR, 29 September 1996, *Buckley v. the United Kingdom*, No. 20348/92, § 80; ECtHR, *Connors v. the United Kingdom*, § 84; ECtHR, final 7 September 2020, *Hudorovič and Others v. Slovenia*, Nos. 24816/14 and 25140/14, §§ 142 and 147; ECtHR, *Faulkner v. Ireland and McDonagh v. Ireland*, § 97. In this regard Article 16 of the European Social Charter contains similar obligations, as pointed out by the European Committee of Social Rights (see, for example, ECSR, *European Roma Rights Centre (ERRC) v. Greece*, complaint No. 15/2003, decision on the merits of 8 December 2004, § 25).

³⁷ In particular ECtHR, 17 October 2013, *Winterstein and Others v. France*, No. 27013/07, § 159.

³⁸ *Ibid.*, § 165; see also ECtHR, 24 April 2012, *Jordanova and Others v. Bulgaria*, No. 25446/06, §§ 73-74, recalling a Committee ruling on the violation of Article 16 ESC with regard to family housing.

³⁹ Furthermore, the Court has found it legitimate for States to put criteria in place according to which social housing can be allocated, when the available supply is insufficient to satisfy demand, provided that such criteria are not arbitrary or discriminatory or out of proportion (see, among others, ECtHR, final 27 December 2011, *Bab v. the United Kingdom*, No. 56328/07, § 49).

⁴⁰ In this regard see, among others, Francesco BESTAGNO, *cit.*, pp. 116-122 and 124-127; Françoise TULKENS and Sébastien VAN DROOGHENBROECK, “Le droit au logement dans la Convention européenne des droits de l’homme. Bilan et perspectives”, in Nicolas BERNARD and Charles MERTENS (eds.), *Le logement dans sa multidimensionnalité: une grande cause régionale*, Namur, Ministère de la Région wallonne, collection Etudes et documents, 2005, pp. 311-325; Nicolas BERNARD and Françoise TULKENS, “Le ‘droit au logement’ dans la Convention européenne des droits de l’homme: une illustration de l’idée ‘ostienne’ d’intérêt”, in Yves CARTUYVELS *et al.* (eds.), *Le droit malgré tout*, Bruxelles, Presses de l’Université Saint-Louis, 2018, pp. 441-461. However, within the Court of Human Rights there is no lack of minority positions calling for recourse to the guidance contained in the case law of the European Committee of Social Rights, “which is the competent body on questions of the right to housing and discrimination in access to housing”: cf., in particular, §§ 27-28 of the dissenting opinion of Judge Pinto de Albuquerque, joined by Judge Vehabović, to ECtHR, 6 November 2017, *Garib v. the Netherlands*, No. 43494/09.

⁴¹ On EU developments in the consideration of social rights in general see Giuseppe PALMISANO, *L’Europa dei diritti sociali*, Bologna, Il Mulino, 2022, pp. 264-273.

⁴² On the other hand, many European policies set out in the Treaties, notably on social and environmental issues and the functioning of the single market, affect the quantity, quality and availability of housing in the Union. For a brief overview, before and after the Lisbon Treaty, see Arturs KUCS, Zane SEDLOVA and Liene PIERHUROVICA, *cit.*, pp. 115-118.

This is a rather general provision and relates to a *principle*, that in the Nice Charter – by contrast to a *right* – does not create any directly enforceable right, but may impact on the law-making process in the European Union and member countries, providing a foundation on which more precise rights can be based. Moreover, this paragraph can only be invoked in the context of EU social inclusion policies, based on Article 153 TFEU, and, as it refers to the laws and practices of the member States, it cannot impose standards on them, unless the national legislation concerned is intended to implement Union law⁴³.

In addition, it is not entirely clear what is covered by the expression “housing assistance”: the term seems to have to be restricted as to include the assistance (financial, social, legal, etc.) needed to access a dwelling, whereby each member State is free to define the level of protection of the right to housing it deems most appropriate⁴⁴.

But this provision could take on particular importance if read in light of the regulation of the right to housing contained in the European Social Charter, which defines an essential core of that right⁴⁵. After all, the preamble to the Nice Charter contains an explicit reference to “rights derived [...] from the Social Charters adopted by the Council of Europe”. Moreover, in the EU Charter’s explanation of Article 34 – drafted and then updated under the responsibility of the European Convention’s Praesidium – it is stated that paragraph 3 is inspired by, *inter alia*, Article 31 of the revised European Social Charter.

Article 34 § 3 was invoked successfully before the Court of Justice in the *case Kamberaj* and the *case Land Oberösterreich (Aide au logement)*⁴⁶: the Court held that it was incompatible with EU law for legislation to treat long-term residents less favourably than European citizens with regard to housing allowances, stressing that member States must be regarded as bound by that provision when they implement Union law.

The supreme judicial body also emphasized Article 7 of the Nice Charter, which states that “Everyone has the right to respect for his or her private and family life, home and communications”: the Court of Justice held in the *case Kušionová*⁴⁷ that the right to accommodation is a fundamental one, guaranteed under the aforementioned Article 7 of the Charter.

In general, the Court has adopted a far from passive role in policing unfair terms to prevent that people be evicted from their homes in financial crises⁴⁸.

II. THE EUROPEAN SOCIAL CHARTER

A. THE CHARTER AND HOUSING

1. The Charter’s provisions on housing

In contrast to other continental covenants, the right to housing is expressly provided for in Article 31 of the revised European Social Charter, which is the only legally binding European instrument that contains a provision specifically and exclusively addressing this right.

Beyond Article 31, housing is also considered under Article 16 in the context of securing the right of families to social, legal and economic protection. To do this, families must be guaranteed an adequate

⁴³ Cf. CJEU, 15 January 2014, *Association de médiation sociale v. Union locale des syndicats CGI and others*, C-176/12 (referring to Article 27 of the Charter, but transposable to other provisions).

⁴⁴ In this sense cf., for example, Arturs KUCS, Zane SEDLOVA and Liene PIERHUROVICA, *cit.*, p. 117.

⁴⁵ Cf., among others, Olivier DE SCHUTTER and Natalie BOCCADORO, “Le droit au logement dans l’Union européenne”, *Cridho Working Paper series*, no. 2, 2005, available at <https://cridho.uclouvain.be/documents/Working.Papers/CridhoWPs022005.PDF>; Nicolas BERNARD, “Les ressources – préjudiciables notamment – qu’offre l’article 34, paragraphe 3, de la Charte des droits fondamentaux de l’Union européenne (droit à une aide au logement)”, *Revue Trimestrielle des Droits de l’Homme*, no. 97, 2014, pp. 81-125; Lucia Serena ROSSI, “Member States’ obligations in relation to housing rights - views of the CJEU”, in Noria DERDEK and Padraic KENNA (eds.), *The European and International Contribution to the Right to Housing: Standards, Litigation and Advocacy*, Brussels, Abbé Pierre Foundation - FEANTSA - University of Galway, 2023, pp. 23-28, available at <https://www.housingrightswatch.org/resource/european-and-international-contribution-right-housing-standards-litigation-and-advocacy>. On the role of the Social Charter in EU law and practice see Giuseppe PALMISANO, *cit.*, pp. 239-263; on conflicts and tensions between the two systems see Marco ROCCA, “The European Social Charter and the European Union”, in ANESC, *cit.*, pp. 390-398.

⁴⁶ CJEU [GC], 24 April 2012, *Kamberaj v. Istituto per l’Edilizia Sociale della Provincia autonoma di Bolzano (IPES) and Others*, C-571/10; CJEU, 10 June 2021, *Land Oberösterreich v. KV*, C-94/20.

⁴⁷ CJEU, 10 September 2014, *Monika Kušionová v. SMART Capital a.s.*, C-34/13.

⁴⁸ In this regard see Jacobien W. RUTGERS, “The Right to Housing (Article 7 of the Charter) and Unfair Terms in General Conditions”, in Hugh COLLINS (ed.), *European Contract Law and the Charter of Fundamental Rights*, Cambridge, CUP, 2017, pp. 125-138; Joan SOLANES MULLOR, “The right to housing and the protection of family life and vulnerable groups: European judicial activism”, in Maribel GONZALES PASCUAL and Aida TORRES PEREZ, *The Right to Family Life in the European Union*, London, Routledge, 2017, pp. 214-231.

supply of dwellings, their needs must be taken into account in the definition and implementation of housing policies, and existing dwellings must be of an adequate standard and include essential services, as stated by the European Committee of Social Rights⁴⁹.

In addition, the revised Social Charter recognizes housing rights specifically to persons with disabilities (Article 15)⁵⁰, children and young persons (Article 17)⁵¹, migrant workers (Article 19)⁵² and elderly people (Article 23)⁵³.

Moreover Article 30, enshrining the right to protection against poverty and social exclusion, includes the duty of States to promote effective access to, *inter alia*, housing⁵⁴. In particular, contracting Parties have to adopt positive measures for groups generally recognized as excluded or disadvantaged, such as Roma, to ensure that they are able to access housing, which in turn will have an impact on enjoyment of other rights such as education, employment and health⁵⁵.

2. The history of Article 31

Reference to housing had already been included in the drafts of the Charter of 1961. Especially in two 1956 drafts it was considered part of the right to a high standard of health or part of the right to a decent living and the rights of the family to social and economic protection⁵⁶. However, housing was introduced as the subject of a specific right only in the revised Charter, except for family housing, which had been enshrined in original Article 16, and the equal treatment of migrants with regard to housing as well, provided for in Article 19 § 4 (c) of 1961. Indeed, the ad hoc ‘Charte-Rel’ Committee on the revision of the European Social Charter, set up by the Committee of Ministers of the Council of Europe and composed of experts appointed by each member State⁵⁷, decided – albeit by a narrow majority – to include a general right to housing in the Charter, in the context of improving its substantive content⁵⁸.

⁴⁹ See, for example, ECSR, *European Roma Rights Centre (ERRC) v. Bulgaria*, complaint No. 31/2005, decision on the merits of 18 October 2006, § 9.

⁵⁰ The needs of disabled persons must be taken into account in housing policies, including the construction of an adequate supply of public, social or private suitable dwellings. Further, financial assistance should be provided for the adaptation of existing housing (among others, ECSR, Conclusions 2003, Italy, p. 299). In any case, all newly constructed or renovated public buildings, facilities and buildings open to the public and cultural and leisure activities should be physically accessible.

⁵¹ The Committee emphasized the importance of the interests of children. Therefore, “children placed in institutions are entitled to the highest degree of satisfaction of their emotional needs and physical well being as well as to a special protection and assistance. [...] A unit in a child welfare institution should be of such a size as to resemble home environment and should not therefore accommodate more than 10 children” (ECSR, Conclusions 2005, Moldova, p. 474).

⁵² The Committee reiterated the need to eliminate all legal and *de facto* discrimination concerning access to public and private housing to home-buying migrant workers (ECSR, Conclusions IV (2002), Norway, p. 121), including access to subsidized dwellings or housing aids, such as loans or other allowances (ECSR, Conclusions III (2002), Italy, p. 92).

⁵³ The Committee highlighted the significance of housing rights for elderly people and specified that the supply of adequate dwellings for them must be sufficient. Housing law and policy must take account of the special needs of this group. Policies should help elderly persons to remain in their own homes for as long as possible through the provision of sheltered/supported housing and assistance for the adaptation of homes (ECSR, Conclusions 2003, Slovenia, p. 530).

⁵⁴ The Committee pointed out that housing is a critical policy area in fighting poverty and social exclusion (for example, ECSR, Conclusions 2003, France on Article 30, Italy on Article 30).

⁵⁵ See, among others, ECSR, *European Roma Rights Centre (ERRC) v. Portugal*, complaint No. 61/2010, decision on the merits of 30 June 2011, § 65. On the line of case law about Roma’s housing rights see Jessie HOHMANN, *The Right to Housing: Law, Concepts, Possibilities*, Oxford, Hart Publishing, 2013, pp. 60-66; Giuseppe PALMISANO, *cit.*, pp. 219-226.

⁵⁶ The first draft (Council of Europe, Parliamentary Assembly, European Social Charter and European Economic and Social Council, Report by Social, Health and Family Affairs Committee, Doc. 488, 14 April 1956), which was rejected and not referred to the Committee of Ministers, dealt with the two provisions respectively in Articles 10 and 11. In addition, it stated the right to a decent living in Article 8, including adequate food, clothing and housing, and promoted a policy of town planning and rural habitation to provide adequate numbers of moderately priced dwellings complying with satisfactory standards of comfort and hygiene. The second draft of the same year (Council of Europe, Parliamentary Assembly, Establishment of a European Convention on Social and Economic Rights, Report by the Committee on Economic Affairs and Development, Doc. 536, 27 September 1956), accepted and submitted for consideration to the Committee of Ministers, repeated the first two provisions under Article I (former Article 10) and Article J (former Article 11).

⁵⁷ Whose meetings were also attended in a non-voting capacity by representatives of the Parliamentary Assembly, the International Labour Organization, the European Trade Union Confederation (ETUC) and the Union of Industrial and Employers’ Confederations of Europe (UNICE). On this body and its work see, in brief, Stefano ANGELERI and Róisín DUNBAR, “The Reform of the European Social Charter”, in ANESC, *cit.*, pp. 41-42.

⁵⁸ First, at its 5th meeting (May 1992), the Charte-Rel Committee held a preliminary general discussion on improvement of the substantive content of the Charter and agreed that developments in social rights, as reflected in other international instruments and in the legislation of the member States, should be taken into account, but even social problems not dealt with in other

Article 31 ESC (rev) requires States Parties to take measures “in so far as possible”⁵⁹ to promote access to housing of an adequate standard, to make the price of housing accessible to people without adequate resources and to prevent and reduce, to the point of elimination, homelessness.

It cannot be interpreted as imposing obligations of results, but, as “the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form”⁶⁰, States Parties have positive obligations of conduct. To this end, they are required not only to take legal measures, but also to introduce the necessary operational procedures and make sufficient resources available, in order to give full effect to this right⁶¹.

3. The personal scope

With regard to the personal scope of Article 31, the basic right to shelter must be accorded to all individuals, even though § 1 of the Appendix to the Charter limits the entitlement to almost all the rights enshrined in the Social Charter to citizens of the member State under consideration and to “nationals of the other Parties lawfully resident or working regularly within the territory of the Party concerned”. Indeed, the European Committee of Social Rights specified that “the restriction of the personal scope included in the Appendix should not be read in such a way as to deprive foreigners coming within the category of unlawfully present migrants of the protection of the most basic rights enshrined in the Charter or to impair their fundamental rights such as the right to life or to physical integrity or the right to human dignity”⁶². Such an interpretation certainly cannot apply to “all the provisions of the Charter, but solely [to] those provisions whose fundamental purpose is closely linked to the requirement to secure the most fundamental human rights and to safeguard the persons concerned by the provision in question from serious threats to the enjoyment of those rights”. These include the right to housing, at least in the form of protection against homelessness⁶³.

4. Actual implementation

instruments should be considered. Then, at its 7th meeting (January 1993), the Committee examined the report of a working party it had mandated to examine all the proposals for improving the substantive content of the Charter: the proposals, including the one on housing, were examined in thematic groups suggested by the working party (Group I as regards protection against social exclusion, where divergence of views emerged on the right to housing). Finally, at its 11th meeting (26-29 April 1994), after reconfirming the wish to include a right to protection against poverty and social exclusion in the Charter, the Charte-Rel Committee decided, by a narrow majority vote (8 for, 7 against and 5 abstentions), to consider the inclusion of a right to housing in the Charter and asked the Finnish delegate to present his draft proposal at the Committee’s next meeting.

At its 12th meeting, the Committee, after examining the Finnish proposal, adopted the first paragraph of the future Article 31 ESC (rev) with 12 votes in favour, 7 votes against and 6 abstentions. The Committee then agreed on the text of § 2 and § 3 of the article and decided to clarify in the explanatory report that “adequate standard” especially referred to an acceptable standard with regard to health. That report should also have clarified that for a definition of the words “without adequate resources” reference was made to Article 13. Two Belgian proposals to include a fourth and a fifth paragraph to the provision, concerning the acquisition of a fixed abode, for the purpose of establishing where certain social rights are to be exercised, and the notification of the implementation of an eviction, were, however, rejected (cf. Council of Europe, Committee on the European Social Charter (Charte-Rel), *Final Activity Report*, 19 October 1994, pp. 2-3 and 37-39).

⁵⁹ Council of Europe, *Explanatory Report to the European Social Charter (Revised)*, Strasbourg, 3 May 1996, § 118, available at <https://rm.coe.int/16800ccde4>.

⁶⁰ ECSR, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, § 53 (et seq.).

⁶¹ Among others, ECSR, *International Association Autism-Europe v. France*, complaint No. 13/2002, decision on the merits of 4 November 2003, § 53. Cf. Karin LUKAS, *The Revised European Social Charter*, Cheltenham UK-Northampton USA, Edward Elgar, 2021, p. 330.

⁶² Therefore “the Committee indeed considers that, beyond the letter of paragraph 1 of the Appendix, the restriction on personal scope contained therein should be interpreted – as is generally the case for any provision of an international treaty – in light of the object and purpose of the treaty concerned and in harmony with other relevant and applicable rules of international law (Vienna Convention on the Law of Treaties, 23 May 1969, Article 31, paragraphs 1 and 3), including first and foremost the peremptory norms of general international law (*jus cogens*), which take precedence over all other international norms and from which no derogation is permitted (Vienna Convention on the Law of Treaties, 23 May 1969, Article 53)” (ECSR, *Defence for Children International (DCI) v. Belgium*, complaint No. 69/2011, decision on the merits of 23 October 2012, §§ 28-29; see also, among others, ECSR, *International Federation of Human Rights Leagues (FIDH) v. France*, complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 30-31; ECSR, *Conférence of European Churches (CEC) v. the Netherlands*, § 66). Cf. Giuseppe PALMISANO, *cit.*, pp. 70-76.

⁶³ ECSR, *Defence for Children International (DCI) v. Belgium*, § 36; ECSR, *Conférence of European Churches (CEC) v. the Netherlands*, §§ 71 and 129; ECSR, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. the Netherlands*, complaint No. 86/2012, decision on the merits of 2 July 2014, §§ 58-61. Cf. Karin LUKAS, *cit.*, pp. 335-336.

Despite its fundamental importance, Article 31 is the least accepted of the Social Charter's provisions: only 11 States Parties have adhered to it in its entirety (Finland, France, Greece, Italy, Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Turkey) and a further 4 States have accepted it partially (Andorra, Lithuania and Ukraine for paragraphs 1 and 2, Latvia only for paragraph 1).

In any case, regardless of adherence or not to specific provisions under Part II of the Charter, all signatory countries have accepted, under Part I, "as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which [all of] the following rights and principles may be effectively realised: [...] 31. Everyone has the right to housing".

Accordingly, the refusal of Article 31 limits the scope of monitoring of member States' compliance with this provision, but it does not lessen their responsibility for promoting and upholding this fundamental right. Moreover, the European Committee of Social Rights can examine aspects of the right to housing under the other mentioned provisions: Article 30 on poverty and social exclusion, Article 16 concerning the family (which is accepted by most States Parties) and the rules regarding vulnerable people, such as persons with disabilities (Article 15), children (Article 17), migrant workers (Article 19) and elderly people (Article 23).

The fact remains that the scope of these articles with respect to housing is more limited and, in addition, the Committee's far-reaching interpretation is not uncontroversial⁶⁴.

B. ARTICLE 31 § 1

1. States' obligations

As mentioned above, Article 31 § 1, while not imposing obligations of results, places positive duties of conduct on States Parties to promote access to housing of an adequate standard.

According to the case law of the European Committee of Social Rights, this means that each country has to⁶⁵:

- (a) adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
- (b) maintain meaningful statistics on needs, resources and results;
- (c) undertake regular reviews of the impact of the strategies adopted;
- (d) establish a timetable and not indefinitely defer the deadline for achieving the objectives of each stage;
- (e) pay close attention to the impact of the adopted policies on each of the categories of persons concerned, particularly the most vulnerable.

However, following the jurisprudence of the European Court of Human Rights, the Committee of Social Rights acknowledges a margin of appreciation of the States in determining the steps to be taken to ensure compliance with the Charter⁶⁶, in particular as regards "the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources"⁶⁷. Furthermore, when the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party has to take measures that allows it to achieve the objectives of the Charter "within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources"⁶⁸.

2. Adequate housing

The main element of the right to housing envisaged under Article 31 § 1 is *adequacy*.

⁶⁴ Cf. Council of Europe, "The right to housing under the European Social Charter", pp. 1-2, available at https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/COVID19/UN_Entities/Council_of_Europe_Right2Housing.docx.

⁶⁵ See, among others, ECSR, *International Association Autism-Europe v. France*, § 53; ECSR, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, § 55; ECSR, *International Movement ATD Fourth World v. France*, complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-60. Cf. Nico MOONS, *The Right to Housing in Law and Society*, New York, Routledge, 2018, pp. 120-123.

⁶⁶ On this regard see Giovanni CAVAGGION, "The Implementation of the European Social Charter by National Authorities", in ANESC, *cit.*, pp. 153-156; Carole NIVARD, *La justiciabilité des droits sociaux. Etude de droit conventionnel européen*, Bruxelles, Bruylant, 2012, pp. 340-343.

⁶⁷ ECSR, *European Roma Rights Centre (ERRC) v. Bulgaria*, § 35 (et seq.).

⁶⁸ Among others, ECSR, *International Association Autism-Europe v. France*, § 53; ECSR, *International Federation for Human Rights (FIDH) v. Ireland*, complaint No. 110/2014, decision on the merits of 12 May 2017, § 109.

The term “adequate standard” is specified by the Explanatory Report to the revised Charter, recalling the 1956 draft text, as “acceptable standard concerning health requirements”, which is to be defined by the competent authorities of each country⁶⁹.

The European Committee of Social Rights has specified and broadened the notion of adequacy, which has to be set in national law on the basis of the following criteria⁷⁰:

(a) safety from a sanitary and health point of view: a dwelling must protect its inhabitants from harsh weather conditions or other threats to health and must possess all basic amenities (such as water, heating, electricity, waste disposal, sanitation facilities, etc.); in addition, it must be structurally secure to ensure the physical safety of occupants, and its specific dangers (for example, the presence of lead or asbestos materials) must be under control⁷¹;

(b) not over-crowding: the size of a dwelling has to be suitable in light of the number of persons in residence and the composition of the household;

(c) guarantee of the security of tenure, i.e. protection from forced eviction and other threats⁷².

Moreover, adequate housing must be in a location which allows access to public services, employment, health-care services, schools and other social facilities. Therefore “States should be vigilant when implementing housing policies so as to prevent spatial or social segregation of ethnic minorities or immigrants”⁷³. The European Committee emphasizes that living in segregated settings means that there will be inadequate access to schooling, fewer opportunities for employment and more difficult access to medical facilities. Likewise, inadequate standards of housing easily lead to poor health and higher incidences of diseases⁷⁴.

In its case law the Committee explicated a new aspect of adequate housing, namely cultural adequacy, which must be taken into account to avoid a violation of the principle of non-discrimination as well. The Committee therefore held that social housing offered to Roma should be, as far as possible, “culturally suited” to them. Consequently, attention must be paid to re-housing Roma families in apartment blocks, which often prevents family and casual gatherings, given that their means of existence as a community and bonds of solidarity are broken. Moreover, Roma are not infrequently faced with hostile attitudes of their new neighbours⁷⁵.

Adequacy standards shall be applied to both dwellings available for rent as well as to those occupied by their owners, and not only to new constructions but also gradually to the existing housing stock, in the case of its renovation⁷⁶.

Moreover, the requirements of adequate housing should be applied to caravans and stopping places for the Travellers as well. In the view of the Committee of Social Rights, “any place in which a family resides legally or illegally, whether a building or a movable piece of property such as a caravan, must be regarded as housing within the meaning of the Charter. By extension, [...] the site on which the caravan is installed must also be considered to form part of the dwelling”⁷⁷.

⁶⁹ Council of Europe, *Explanatory Report cit.*, §§ 118-119.

⁷⁰ See, among others, ECSR, Conclusions 2003, France, p. 221; ECSR, *European Roma Rights Centre (ERRC) v. Greece*, § 24; ECSR, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, complaint No. 173/2018, decision on the merits of 26 January 2021, § 115. For comparison, see general comment No. 4 of the UN Committee on Economic, Social and Cultural Rights, *cit.*, where the criteria for adequate housing were developed. These criteria include: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; (g) cultural adequacy. On them see, among others, Jessie HOHMANN, *cit.*, pp. 20-29, and, more concisely, Monika SMUSZ-KULESZA, “The right to housing in the light of the European Social Charter”, *Nieruchomości@*, vol. 1, no. 1, 2023, pp. 126-127.

⁷¹ See, for example, ECSR, *European Roma Rights Centre (ERRC) v. Portugal*, § 37.

⁷² See, among others, ECSR, Conclusions 2005, Lithuania, p. 406.

⁷³ ECSR, *European Roma Rights Centre (ERRC) v. Portugal*, § 41.

⁷⁴ Cf. Dovilė GAILIŪTĖ, “Right to Housing in the Jurisprudence of the European Committee of Social Rights”, *Socialinių mokslų studijos/Societal Studies*, vol. 4, no. 4, 2012, pp. 1611-1612.

⁷⁵ See, among others, again ECSR, *European Roma Rights Centre (ERRC) v. Portugal*, §§ 49-50. Cf. Giuseppe PALMISANO, *cit.*, pp. 221-223.

⁷⁶ See, for example, ECSR, Conclusions 2003, France, p. 221, Italy, p. 342, Slovenia, p. 554, and Sweden, p. 650.

⁷⁷ ECSR, *International Federation of Human Rights (FIDH) v. Belgium*, complaint No. 62/2010, decision on the merits of 21 March 2012, §§ 73-74. Also according to Recommendation Rec(2004)14 of the Committee of Ministers to member States on the movement and encampment of Travellers in Europe, adopted on 1 December 2004, the site where a caravan is installed must be considered to form part of the dwelling.

The Committee stated that the feature which undoubtedly makes nomadic families completely different is their caravan lifestyle. This situation calls for differentiated treatment for such families and tailored measures to improve their housing conditions⁷⁸. This means that public sites for Travellers must be properly fitted out with the aforementioned basic amenities necessary for a decent life, such as water, electricity, sanitation facilities, etc., and must be structurally secure, not overcrowded and with secure tenure supported by law⁷⁹.

Finally, it should be emphasized that the temporary supply of shelter cannot be considered sufficient to ensure compliance with Article 31 § 1, whereby individuals should be provided with adequate housing within a reasonable period of time⁸⁰.

3. Implementation of the provision

In light of Article 31 § 1 ESC (rev), it is incumbent on the public authorities to ensure that dwellings are adequate through various appropriate measures, such as an inventory of the housing stock, injunctions against owners who disregard housing rights, urban development regulation and maintenance obligations for landlords. Public authorities must also limit the interruption of essential services such as water, electricity and telephone⁸¹.

The effectiveness of the right to adequate housing also requires its legal protection through appropriate procedural safeguards (assessed under subsequent § 2 of Article 31). Tenants must therefore have access to affordable and impartial judicial or extra-judicial remedies⁸², and any appeals procedure must be effective, as well as the means of redress⁸³.

Even if under national law local or regional authorities are responsible for exercising a particular function, nonetheless States Parties to the Charter are ultimately responsible for ensuring that such duties are properly exercised. Thus, national governments bear the responsibility for housing policy implementation, involving at least supervision and regulation of local action: to this end, they must be able to show that both local or regional authorities and central authorities have taken practical steps to ensure that action on the ground is effective⁸⁴.

At the level of practical implementation of this legislation, the European Committee of Social Rights had to note the persistent lack of follow-up by States after its decisions on collective complaints. The Committee therefore had to reiterate its findings in several pronouncements, pointing out that in many countries a number of dwellings are substandard and not equipped with suitable amenities, lacking reliable access to water or electricity or being unsafe or unhealthy⁸⁵.

In particular, despite certain progress achieved by some States in ameliorating the living conditions of Roma, the Committee found insufficient improvement in elimination of substandard housing conditions for a large number of them and held that there were violations of the right to housing in cases where a significant number of Roma continued to live in conditions failing to meet minimal standards⁸⁶. Although the Committee recognizes that the effective implementation of the right in question may require time, it

⁷⁸ See, for example, again ECSR, *International Federation of Human Rights (FIDH) v. Belgium*, § 141.

⁷⁹ Among others, ECSR, *European Roma Rights Centre (ERRC) v. France*, complaint No. 51/2008, decision on the merits of 19 October 2009, § 46.

⁸⁰ See, for example, ECSR, *European Roma Rights Centre (ERRC) v. Italy*, § 35; ECSR, *Conference of European Churches (CEC) v. the Netherlands*, complaint No. 90/2013, decision on the merits of 1 July 2014, § 140.

⁸¹ Among others, ECSR, *Conclusions 2003, France*, p. 224.

⁸² *Ibid.*

⁸³ See, in particular, ECSR, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, § 78, where the Committee noted “the inefficacy of means of redress, which most often result in a compensatory payment or reduction in rent”.

⁸⁴ For example, ECSR, *European Roma Rights Centre (ERRC) v. Italy*, § 26; ECSR, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, § 79.

⁸⁵ Cf., for instance, the reminder in the 2011 report (ECSR, *Activity Report 2011*, p. 22, available, like all other reports, at <https://www.coe.int/en/web/european-social-charter/activity-reports>), as well as what was highlighted in the latest review of national reports on Article 31 (ECSR, *Activity Report 2019*, pp. 36-37).

⁸⁶ See, among others, ECSR, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, § 78; ECSR, *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece*, complaint No. 49/2008, decision on the merits of 11 December 2009, §§ 38-39; ECSR, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 55 and 57.

also finds that, given the urgency of the housing situation of Roma families, a time frame should not be too long⁸⁷.

C. ARTICLE 31 § 2

1. Preventing homelessness

Paragraph 2 of Article 31 requires States Parties “to prevent and reduce homelessness, with a view to its gradual elimination”. Homeless persons are individuals who legally do not have adequate housing at their disposal in the meaning of paragraph 1⁸⁸.

Ratifying countries must try to prevent people in vulnerable situations from becoming homeless. This includes a housing policy for disadvantaged groups to ensure their access to social housing⁸⁹.

National authorities enjoy a wide margin of discretion in housing policies, but they have to take into account the fundamental rights of individuals, especially of persons in vulnerable situations, balancing the general interest against them when it comes to housing⁹⁰.

2. Forced evictions

Homelessness can also be caused by forced eviction. This is “the deprivation of housing which a person occupied due to insolvency or wrongful occupation”⁹¹.

The European Committee of Social Rights has pointed out that States have to put procedures in place to limit the risk of evictions⁹² and to ensure that, when these do occur, evictions are⁹³:

- carried out under conditions which respect the dignity of the persons concerned;
- governed by rules of procedure sufficiently protective of the individuals’ rights;
- accompanied by proposals or possibilities for alternative accommodation.

Indeed, even when an eviction is justified by public interest, authorities have to adopt measures to re-house or financially assist the persons concerned to find new adequate housing⁹⁴.

To comply with the Charter, legal protection for persons threatened by eviction must be prescribed by law and include⁹⁵:

- (a) an obligation to consult the affected parties in order to find alternative solutions to eviction;
- (b) an obligation to fix a reasonable notice period before eviction;
- (c) a prohibition to carry out evictions at night or during winter;
- (d) accessibility to legal remedies and legal aid to claim them;
- (e) a compensation for illegal evictions.

As highlighted by the Committee, “illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However, the criteria of illegal occupation must not be unduly wide, the eviction should take place in accordance with the applicable rules of procedure and these should be sufficiently protective of the rights of the persons concerned”⁹⁶.

Also in case of unlawfully residing persons and migrants in an irregular situation eviction is permissible and no alternative accommodation may be required to States⁹⁷. However, the eviction of such persons

⁸⁷ For instance, the period of six years was acknowledged sufficient to realize significant improvements: see ECSR, *European Roma Rights Centre (ERRC) v. Bulgaria*, § 39.

⁸⁸ See, for example, ECSR, Conclusions 2003, France, p. 225 and Italy, p. 345; ECSR, *Conference of European Churches (CEC) v. the Netherlands*, § 135.

⁸⁹ Among others, ECSR, *European Roma Rights Centre (ERRC) v. Italy*, § 45.

⁹⁰ For example, ECSR, *European Roma Rights Centre (ERRC) v. Bulgaria*, § 54; ECSR, *International Federation of Human Rights (FIDH) v. Belgium*, § 133.

⁹¹ Among others, ECSR, Conclusions 2003, Sweden, p. 653.

⁹² See, for example, ECSR, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, § 85; ECSR, Conclusions 2015, Ukraine, p. 1260.

⁹³ See, among others, ECSR, Conclusions 2003, France, p. 225; ECSR, *European Roma Rights Centre (ERRC) v. Italy*, § 41; ECSR, *International Federation of Human Rights (FIDH) v. Belgium*, § 163.

⁹⁴ For instance, ECSR, *International Movement ATD Fourth World v. France*, § 78.

⁹⁵ *Ibid.*; cf. Dovilė GAILIŪTĖ, *cit.*, p. 1613. Of course, the destruction of dwellings or forced evacuation of villages particularly violate the right to housing: in such situations States must provide effective remedies to the victims (ECSR, Conclusions XIII-1, Turkey, pp. 258-259) and must take measures in order to re-house families in decent accommodation or to provide financial assistance (ECSR, Conclusions XIII-3, Turkey, pp. 381-385).

⁹⁶ ECSR, *European Roma Rights Centre (ERRC) v. Bulgaria*, § 51.

⁹⁷ Among others, ECSR, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. the Netherlands*, §§ 60 and 110.

from shelter should be banned if it would place them “in a situation of extreme helplessness which is contrary to the respect for their human dignity”⁹⁸. And, “since the right to shelter is closely connected to the right to life and is crucial for the respect of every person’s human dignity”, States Parties are still required to provide adequate shelter to children and adults unlawfully present in their territory for as long as they are in their jurisdiction, until they are deported or repatriated⁹⁹. Sufficient places must therefore be provided in emergency shelters, where conditions are such as to enable living in human dignity¹⁰⁰.

As mentioned above, the caravan and the site on which it is installed form part of a Traveller family’s home. Therefore, all entries onto that site for the purposes of an eviction have to be regarded as an entry into the occupant’s home and must comply with the rules concerning eviction from a home¹⁰¹. The Committee held that “urging Traveller families to leave sites on which they have settled – even illegally – and then, even though there are not enough legal sites, evicting them if they refuse to comply without proposing a suitable long-term alternative accommodation, adds to the failure to respect these families’ right to housing”¹⁰².

D. ARTICLE 31 § 3

The third paragraph of Article 31 requires States Parties to take measures “to make the price of housing accessible to those without adequate resources”.

This implies a sufficient supply of affordable dwellings for persons with limited resources. Housing is affordable if the household can manage to pay initial costs (deposit, advance rent), current rent and/or other housing-related costs (for example utility, maintenance and management charges) on a long-term basis, while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located¹⁰³.

The European Committee of Social Rights in its case law made the obligations of the signatory States in this regard clear¹⁰⁴.

Firstly, they are required to implement comprehensive housing benefit systems for at least the low-income and disadvantaged sections of the population. Such systems must grant individual rights, which all qualifying household members can enjoy in practice and against the denial of which legal remedies are available¹⁰⁵.

⁹⁸ See, for example, ECSR, *Defence for Children International (DCI) v. the Netherlands*, § 63.

⁹⁹ *Ibid.*, §§ 47 and 64; see also ECSR, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. the Netherlands*, § 61; ECSR, *Conference of European Churches (CEC) v. the Netherlands*, §§ 128-129; ECSR, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, § 117.

¹⁰⁰ Among others, ECSR, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, § 106. In particular, shelters must meet health, safety and hygiene standards and be equipped with basic necessities such as access to water, heating and sufficient lighting. Another basic requirement is the security of the immediate surroundings (ECSR, *Defence for Children International (DCI) v. the Netherlands*, § 62; ECSR, *Conference of European Churches (CEC) v. the Netherlands*, § 138).

¹⁰¹ See, for example, ECSR, *International Federation of Human Rights (FIDH) v. Belgium*, § 162.

¹⁰² *Ibid.*, § 165. Therefore, “when confronted with Roma or Traveller settlements of undefined legal status, public authorities should make every effort to seek solutions acceptable for all parties, in order to avoid situations in which Roma and Travellers are in danger of being excluded from access to services and amenities to which they are entitled as citizens of the state where they live” (ECSR, *International Movement ATD Fourth World v. France*, § 150). However, this was not the case in Italy in 2008-2009 and, even more so, in France in the summer of 2010, when authorities evicted Roma of Romanian and Bulgarian origin. In the ensuing collective complaints, the Committee pointed out that, apart from the breach of the aforementioned requirements for the procedure of evictions, adopted measures were incompatible with human dignity and specifically aimed at vulnerable groups, and the active role of the public authorities in framing and implementing this discriminatory approach to security constituted “an aggravated violation of human rights from the standpoint of Article 31 § 2 of the Revised Charter” (ECSR, *Centre on Housing Rights and Evictions (COHRE) v. France*, complaint No. 63/2010, decision on the merits of 28 June 2011, §§ 47 and 53-55; similarly ECSR, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, §§ 73-76).

¹⁰³ See, for example, ECSR, *Conclusions 2003, Sweden*, p. 655; ECSR, *International Movement ATD Fourth World v. France*, § 94. States Parties must provide data in order to show that the affordability ratio of the poorest housing applicants is compatible with their level of income (ECSR, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia*, complaint No. 53/2008, decision on the merits of 8 September 2009, § 72).

¹⁰⁴ The Committee came to conclusions of non-conformity with the provisions on affordable housing, when it found a significant shortage of social housing in a country, or the lack of equal treatment of foreigners in respect to social housing and access to housing benefits, or an excessive waiting period for allocation of non-profit rental housing (for example, see ECSR, *Conclusions 2015, Slovenia*, p. 1056, and *Turkey*, p. 1218; cf. Dovilė GAILIŪTĖ, *cit.*, p. 1615).

¹⁰⁵ Among others, ECSR, *Conclusions 2003, Sweden*, p. 655.

Secondly, member States have to adopt appropriate measures to encourage the construction of dwellings, in particular social housing, to which disadvantaged groups must have access¹⁰⁶, without direct or indirect discrimination (in particular in respect of Roma or Travellers and including equal access for nationals of other Parties to the Charter lawfully residing or regularly working in their territory)¹⁰⁷.

Moreover, signatory countries should adopt measures to ensure that waiting periods for the allocation of housing are not excessive. If so, effective judicial and extra-judicial remedies must be available¹⁰⁸.

CONCLUDING REMARKS

The right to housing is essential for a decent life and as a safeguard against poverty and social exclusion.

On the other hand, it is a complex right that requires many resources to implement¹⁰⁹. It can hardly be realized without a functioning housing market, without sufficient rental housing stock and without criteria giving priority to persons and families in vulnerable situations¹¹⁰. A further challenge is the obligation to prevent and phase out homelessness, which entails the provision and realization of the right to shelter for everyone as a basic requirement of human dignity¹¹¹.

Given the complexities and the demands placed on the right to housing, there are several aspects on which the European Committee of Social Rights has developed extensive case law: this body has not been content with either a piecemeal approach or a mere assessment of the means made available by States, but has gone so far as to give meaning to the Charter as a whole and to verify the effectiveness of the results obtained, on the basis of a dense list of obligations deemed essential for the fulfilment of the right in question¹¹².

Unfortunately, so far a low degree of compliance with this right has emerged on the part of the relatively few States Parties that have accepted Article 31 of the revised Charter, so much so a general lack of political commitment to its realization (and more generally to the realization of the rights under the Social Charter) has been denounced¹¹³.

Indeed, the most recent review, under the reporting system of the Charter, of the right to housing under Articles 16 and 31 ESC (rev) by the European Committee of Social Rights in 2019 has come to the conclusion that just one country, Finland, is in full conformity with Article 31, while another one, Andorra, is compliant only with paragraph 1 and all others are in non-conformity (or, as far as § 3, in two cases – Greece and Turkey – are unable to provide sufficient information)¹¹⁴. Even so, it should be

¹⁰⁶ *Ibid.*, p. 655; ECSR, *International Movement ATD Fourth World v. France*, §§ 95, 98 and 100.

¹⁰⁷ See, for example, ECSR, *European Roma Rights Centre (ERRC) v. Italy*, §§ 36-37 and 45-46; ECSR, *International Movement ATD Fourth World v. France*, §§ 148-149 and 154. Discrimination may also arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages open to all are truly accessible to every person (ECSR, *International Association Autism-Europe v. France*, § 52; ECSR, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, § 35).

¹⁰⁸ See, among others, ECSR, *International Movement ATD Fourth World v. France*, especially § 131, where in § 129 it was held that an average waiting time of 2 years and 4 months for allocation of social housing was too long.

¹⁰⁹ For an overview and analysis of the housing situation in European States see the reports of the Housing Europe Observatory, available at <https://www.housingeurope.eu/section-135/housing-observatory>: the latest ones, to date, are *The State of Housing in Europe 2021* and *The State of Housing in Europe 2022 mid-term update*.

¹¹⁰ Cf. Matti MIKKOLA, “Housing as a Human Right in Europe”, *European Journal of Social Security*, vol. 10, no. 3, 2008, p. 292.

¹¹¹ Cf. Karin LUKAS, *cit.*, pp. 337-338.

¹¹² On this approach of the Committee see among others: Giovanni GUIGLIA, “Il diritto all’abitazione nella Carta Sociale Europea: a proposito di una recente condanna dell’Italia da parte del Comitato Europeo dei Diritti Sociali”, *Rivista AIC*, vol. 2, no. 3, 2011, pp. 4-5; Jessie HOHMANN, *cit.*, pp. 52-53. In particular, it has been emphasized that the Committee’s decision of the complaint *FEANTSA v. France* of 5 December 2007 was a “groundbreaking” pronouncement in its attention to outcomes and in defining housing rights “in a tangible and quantifiable way” (Padraic KENNA and Marc UHRY, “FEANTSA v. France: Collective Complaint on Housing Rights at Council of Europe”, *Housing and ESC Rights Law Quarterly*, vol. 5, no. 3, 2008, pp. 1-3).

¹¹³ See, for instance, Jessie HOHMANN, *cit.*, pp. 66-67 and 92-93; Nico MOONS, *cit.*, p. 129, who, while considering it “exaggerated to say that lodging a collective complaint before the ECSR is useless”, notes that the “flaws inherent in the ECSR system have led to a sense of indifference among all relevant parties, to which we can also add the media”.

¹¹⁴ See ECSR, *Activity Report 2019*, pp. 36-37. Most of the non-conformities concern: with respect to § 1, substandard housing conditions of Roma and Travellers (France, Greece, Italy, Latvia, Portugal, Turkey and Ukraine); with reference to § 2, insufficient legal protection for persons threatened with eviction (Andorra, France, Greece, Lithuania, Portugal, Turkey and Ukraine) or for evictions of Roma (France, Greece and Italy); with respect to § 3, the shortage of social housing (France and Portugal) or the access of Roma and Travellers to social housing or housing assistance (France and Italy). Other non-compliances are related to more general problems, such as substandard housing for a large number of dwellings (France), insufficient measures to prevent and reduce homelessness in general (France, Italy and Turkey) and unsatisfactory protection of the right to shelter (Lithuania, Portugal, Turkey and Ukraine). Cf. *ibid.*; Monika SMUSZ-KULESZA, *cit.*, pp. 137-138.

pointed out that in the parallel examination, in 2019 and 2020, of the national simplified reports dealing with the follow-up given to decisions of collective complaints, the Committee noted that several violations found in the past had been fully or partially brought into conformity with the Charter¹¹⁵.

In the end, European States recognize the right to housing in principle but “consider that its implementation implies the adoption of a public policy which must be a matter for their sovereign decision-making in economic and social matters” and “do not wish to be constrained in their choices by supranational obligations”¹¹⁶.

In any case, “housing is not simply a commodity, but a human right. It should move to the top of the political agenda in Europe”¹¹⁷. The right to housing is indeed the logical and necessary prerequisite not only for adequate protection from poverty and social exclusion, whether for individuals or families, but also more generally for the effective guarantee of many other social and even civil and political rights.

Therefore, a serious commitment by European countries in this field is needed: first of all, further States among the signatories of the revised Charter are required to accept Article 31, since this alone elevates housing to a position of paramount importance, as is necessary. Furthermore, housing rights need to be integrated not merely into national policies and laws, but also into the regulation frameworks of all elements of housing systems. Indeed, to effectively guarantee the right to housing it is necessary for States to regulate the housing market and impose certain constraints on private owners. But this can only be the result of clear political will¹¹⁸.

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¹¹⁵ See ECSR, *Activity Report 2020*, pp. 31-45 (reporting the closure of the follow-up to the decisions of five cases concerning France, one of which only partially related to Article 31) and *Activity Report 2019*, pp. 20-24 (reporting the closure of the follow-up to the decisions of two cases concerning the Netherlands, one case concerning Slovenia, and one case concerning Croatia on family housing under Article 16).

¹¹⁶ As Carole NIVARD well points out in her “Conclusion”, summarising the reflections of the contributors to the recent volume edited by Noria DERDEK and Padraic KENNA (eds.), *cit.*, p. 126.

¹¹⁷ As emphasized by the Commissioner for Human Rights of the Council of Europe Dunja MIJATOVIĆ, *The right to affordable housing: Europe’s neglected duty*, 23 January 2020, available at https://www.coe.int/fr/web/commissioner/blog/-/asset_publisher/xZ32OPEoxOkq/content/id/57979683?_com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_xZ32OPEoxOkq_languageId=en_GB#p_com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_xZ32OPEoxOkq.

¹¹⁸ Cf. Padraic KENNA, “International Instruments” *cit.*, p. 16; Dunja MIJATOVIĆ, *cit.* On the possibilities, even for social transformation, and the potential of the right to housing see also Jessie HOHMANN, *cit.*, pp. 231-250; Nico MOONS, *cit.*, pp. 215-234. Finally, see Nicolas BERNARD and Koldo CASLA, “Lessons from strategic human rights litigation: From climate change to adequate housing”, in Noria DERDEK and Padraic KENNA (eds.), *cit.*, pp. 51-60, on the innovative perspective of transposing recent successes in strategic climate litigation to housing rights, in order to hold States accountable for their responsibilities and commitments by condemning their inaction.

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