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RECOMMENDATION

OF THE COMMISSIONER FOR HUMAN RIGHTS ON THE IMPLEMENTATION OF THE RIGHT TO HOUSING

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Executive Summary

Many people across Europe are experiencing a great housing need which is exacerbated by the current economic crisis. Significant numbers of people cannot access housing in the market while others have nowhere to live or live in places unfit for human habitation. Among those facing major difficulties are Roma and Travellers, victims of domestic violence, many people with disabilities, refugees, many migrants, internally displaced persons, tenants without security, certain national minorities and other discriminated groups, as well as people on the lowest parts of the labour market.

In this context, housing rights are gaining a growing relevance. These rights can inspire and develop meaningful and effective responses to homelessness, and promote equality and non-discrimination in housing systems.

The expression 'right to housing' may be considered to refer to a cluster of more specific rights related to adequate housing and living conditions but, in general terms, it may be defined as 'the right to live somewhere in security, peace and dignity'. The right to housing is of central importance to the enjoyment not only of other social, economic and cultural rights, but also to the effective enjoyment of civil and political rights. The key international instruments relating to housing rights recognise many aspects of the right to housing thus defined. The UN Covenant on Economic, Social and Cultural Rights, the European Convention on Human Rights, and the revised European Social Charter are core international instruments for the right to housing.

States have undertaken to aim at the full realisation of the rights concerned, to work towards the progressive realisation of these rights and to do so by all appropriate means. Normally, moving towards full realisation of rights will require the adoption of a national housing strategy which incorporates targets to be achieved and effective monitoring of the situation with respect to housing rights. The prevention of homelessness, including protection against forced evictions, should be one of the key objectives of such a strategy.

The international obligations must be recognised in appropriate ways within the domestic legal order. Remedies or means of redress must be available to individuals or groups aggrieved by the denial of housing rights. Furthermore, governmental accountability must be ensured. An important aspect is that national governments should engage in oversight of the actions of regional or local authorities, or other agencies, if they have been conferred responsibilities for the realisation of housing rights. Individual justiciability is a substantial remedial measure.

The European Committee of Social Rights and the European Court of Human Rights have specified the European standards on housing rights in their jurisprudence. The major elements of these standards are: accessibility, adequacy, prevention and reduction of homelessness, and affordability. The European standards should be used for clarifying the legal obligations and minimum standards involved in the implementation of the right to housing as well as in the development of indicators for monitoring the situation.

Housing rights must be implemented in full compliance with the principle of non-discrimination, as stipulated in the relevant human rights instruments. Any positive steps that states take to improve the housing situation of persons within their jurisdiction should be carried out on a non-discriminatory basis. Nevertheless, positive measures for disadvantaged groups are often necessary to ensure that rights are genuinely available to all. Housing rights should also be included in the scope of general non-discrimination legislation.

1. Introduction

Many people across Europe are experiencing a great housing need which is exacerbated by the current economic crisis. Significant numbers of people cannot access housing in the market, either to rent or buy. Some have nowhere to live or are afraid to live in their homes. Increasing numbers of people sleep in doorways, squats, abandoned buildings and other places unfit for human habitation. On another level, housing has become a marketable and valuable asset in addition to being a home while, at the same time, the provision of social and state housing has diminished. Among those facing major difficulties are Roma and Travellers, victims of domestic violence, many people with disabilities, refugees, many migrants, internally displaced persons, tenants without security, certain national minorities and other discriminated groups, as well as people on the lowest parts of the labour market.¹

In this context, housing rights are gaining a growing relevance. These rights can inspire and develop meaningful and effective responses to homelessness, and promote equality and non-discrimination in housing systems. In order to develop greater understanding on the right to housing, the Commissioner organised an expert workshop “Housing rights: positive duties and enforceable rights” in Budapest on 24-25 September 2007. He also outlined his concerns in an Issue Paper - *Housing Rights: The Duty to Ensure Housing for All* – which was published on 25 April 2008.

In accordance with the mandate of the Commissioner for Human Rights to promote the awareness of and effective observance and full enjoyment of human rights in Council of Europe member states as well as to provide advice and information on the protection of human rights (Articles 3 and 8 of Resolution (99) 50 of the Committee of Ministers), the Commissioner issues this Recommendation on the implementation of the right to housing.

2. The implementation of the right to housing

2.1 Key legal sources

The expression ‘right to housing’ may be considered to refer to a cluster of more specific rights related to adequate housing and living conditions but, in general terms, it may be defined as ‘the right to live somewhere in security, peace and dignity’.² In common with other rights, the right to housing derives from the inherent dignity of the human person.³ It is of central importance to the enjoyment not only of other social, economic and cultural rights such as rights to water, food, health, education and work,⁴ but also to the effective enjoyment of civil and political rights such as rights to privacy and family life. The key international instruments relating to housing rights recognise many aspects of this definition of the right to housing.

The UN Covenant on Economic, Social and Cultural Rights (ICESCR - Article 11§1) includes “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”. *General Comment No. 4 on the Right to Adequate Housing* of the UN Committee on Economic, Social and Cultural Rights (UNCESCR) sets out the minimum core guarantees which, under public international law, are legally vested in all persons. These are legal security of tenure, availability of services, materials and infrastructure, affordable housing, habitable housing, accessible housing, housing in a suitable location as well as housing constructed and sited in a way which is culturally adequate. The UNCESCR *General Comment No. 7 on the Right to Adequate Housing – forced evictions* reminds states of their obligation to refrain from forced evictions and to ensure that the law is enforced against their agents or third parties who carry out forced evictions.

¹ See, Commissioner for Human Rights Issue Paper – *Housing Rights: The Duty to Ensure Housing for All*. CommDH/Issue paper(2008)1, 25 April 2008.

² UN Committee on Economic, Social and Cultural Rights (UNCESCR), *General Comment No. 4*, para. 7.

³ International Covenant on Economic, Social and Cultural Rights (ICESCR), Preamble.

⁴ UNCESCR, *General Comment No. 4*, para. 1.

The revised European Social Charter (ESC) of 1996 includes a specific provision on the right to housing in its Article 31. Under this Article, states have undertaken to take measures:

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.

The conditions of appropriate housing are that housing is accessible and qualitatively of adequate standard, no one is left homeless and that housing costs are affordable. Article 31 of the revised ESC should be implemented without discrimination in accordance with the Charter's open-ended non-discrimination clause, Article E.

The revised ESC and the European Social Charter of 1961 also contain rights to social and medical assistance for those without adequate resources and rights to social, legal and economic protection for families. These rights establish housing obligations in relation to physically and mentally disabled persons, children and young persons as well as a state obligation to provide family housing. The Charters grant migrant workers an explicit right to be treated equally in relation to access to housing, and set out the right of elderly persons to provision of housing suited to their needs and state of health.⁵ Article 30 of the revised ESC on the right to protection against poverty and social exclusion stipulates an obligation to promote effective access to a range of services, including housing.

The European Convention on Human Rights (ECHR) contains many civil and political rights provisions which are being indirectly interpreted in the development of housing rights. Article 2 (right to life) may be applicable in cases related to the requirements of safety and health in terms of habitability.⁶ Under Article 3 (prohibition of torture), a state has positive obligations to prevent a person suffering inhuman and degrading treatment also with reference to housing or living conditions.⁷ Article 8 (right to respect for private and family life) has particular significance in relation to housing with its protection of respect for the home. There is a right to access to, occupation of and peaceful enjoyment of the home. 'Home' is an autonomous concept, which does not depend on classification under domestic law, but the existence of sufficient and continuous links with a place can point to the existence of a home.⁸ Furthermore, Articles 6 (right to a fair trial), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the ECHR and Article 1 (protection of property) of its Protocol No. 1 can also be invoked in cases involving housing rights.

2.2 State obligations to implement housing rights

The obligations assumed by states in relation to housing rights are of several types. Firstly, some are obligations to refrain from interfering with liberties, opportunities or possessions. The right to peaceful enjoyment of possessions,⁹ for example, means that states may not interfere with private property without justification. However, it is unlikely that illegitimate state interference will never occur. Therefore, in order to respect rights in the fullest sense, states must provide remedies for interference with rights by organs of the state and those claiming to wield the authority of the state. Secondly, there are obligations to secure rights against interference by other individuals or groups. The right to peaceful enjoyment of possessions also requires that individuals are not subject to interference with their property rights by other individuals. Thirdly, states may have positive obligations to take appropriate legislative, budgetary and other measures in order to achieve appropriate housing outcomes. States have undertaken to make the aim of their policy the full realisation of the rights concerned, to work towards their progressive realisation and to do so by all appropriate means.

⁵ See below, Section 4.3 – Positive measures for particular groups of people.

⁶ See the judgments of the European Court of Human Rights (ECtHR) *Oneryildiz v. Turkey*, Judgment of 30 November 2004 and *Guerra and Others v. Italy*, Judgment of 19 February 1998.

⁷ See ECtHR, *Moldovan and Others v. Romania*, Judgment No. 2 of 12 July 2005; cf. *Price v United Kingdom*, Judgment of 10 July 2001.

⁸ ECtHR, *Buckley v. UK*, Judgment of 25 September 1996; *Chapman v. UK*, Judgment of 18 January 2001 and *Beard v. UK*, Judgment of 18 January 2001.

⁹ ECHR, Protocol No. 1, Article 1 (protection of property). A claimant's legally established local housing rights entitlement can also be treated as a possession in this context.

Fulfilment of their housing rights obligations may require states to provide material assistance to persons or to take other steps necessary to ensure that persons enjoy a certain level of material provision, broadly that they have affordable housing of adequate quality. These obligations could include providing persons with cash benefits (e.g. support for rental payments or mortgage payments) or other services such as free accommodation or free services related to housing, or intervening in the economy and society in other ways such as regulatory measures regarding housing standards and other housing rights. Article 1 of ICESCR and Article 31 of revised ESC are examples of this type of obligation. These types of obligation are sometimes referred to as obligations to respect, protect and fulfill although they must be understood as overlapping rather than mutually exclusive categories and should not be seen as excluding other categorisations.

States enjoy discretion as to the form and methods of implementation of housing rights. Implementation may take into account the distinct features of the legal and administrative systems of each state and other relevant considerations. Whilst economic factors, including externally imposed constraints may limit the ability of states to achieve housing rights objectives, the obligations continue to apply, and arguably have particular importance, even during times of economic contraction.¹⁰ Normally, moving towards full realisation of rights will require the adoption of a national housing strategy which incorporates targets to be achieved and effective monitoring of the situation with respect to housing rights.¹¹ The obligations imposed must be recognised in appropriate ways within the domestic legal order, remedies or means of redress must be available to individuals or groups aggrieved by the denial of housing rights, and means of ensuring governmental accountability must exist.¹²

2.3 Justiciability of housing rights

One of the key issues in ensuring the effective enjoyment of housing rights is whether they are justiciable. It is widely assumed that civil and political rights are justiciable, and most states ensure that judicial remedies for the violation of such rights are available to aggrieved persons. Contrary to what is sometimes suggested, neither the far-reaching nature of the obligations undertaken in the housing field, nor their character as social or economic rights present a major obstacle to conferring justiciable housing rights on persons within national legal systems.

All states, whether or not their legal regimes already include justiciable constitutional housing rights, should enact specific legislation which clarifies how the housing rights guaranteed by international law are made effective within their jurisdictions. States should, for example, legislate to create security of tenure for tenants or to create rights to accommodation for the homeless. This will be particularly important in states whose legal orders do not apply international obligations in a way to confer rights on individuals directly without further provisions within their national legal systems. However, even in states whose legal systems permit individuals to rely directly on international instruments in judicial or administrative proceedings, specific legislation is desirable.

A number of general considerations support making housing rights justiciable within the domestic legal order:

- specific legislation is more likely to clarify who precisely (i.e. which government agencies or private parties) is/are responsible for implementing international obligations;
- specific legislation is more likely to result in the creation of effective remedies for violations of housing rights;
- national judicial institutions are more likely to treat questions relating to housing rights as justiciable when given the task of interpreting specific legislation rather than the more broadly stated provisions of treaty obligations or constitutional guarantees;
- the process of enacting legislation focuses the attention of the political authorities on the conditions needed to ensure effective realisation of rights in practice, e.g. the resources required and allocation of responsibilities;

¹⁰ UNCESCR, *General Comment No. 4*, para. 11.

¹¹ UNCESCR, *General Comment No. 4*, paras 12 & 13.

¹² UNCESCR, *General Comment No. 9*, paras. 1 and 10.

- the existence of specific legislation better enables states to assess the extent of their compliance with international standards.

Housing rights can be made justiciable in a variety of ways. Most obviously, there is a distinction between, on the one hand, relying on administrative bodies to enforce housing rights – whether by administrative or judicial procedures or a combination of both – and on the other providing legal remedies which may be invoked by individuals or by groups/NGOs acting on their behalf. Whilst administrative enforcement may be highly effective, the provision of both administrative and individual enforcement should prove even more effective in practice. The reasons for this are:

- administrative bodies may have limited resources for monitoring and detecting violations and for taking enforcement action;
- individual and group/NGO enforcement broadens the range of those engaged in enforcement, allows people to take the initiative in protecting their own rights, and harnesses the resources of civil society;
- the possibility of individual enforcement increases the likelihood that violations will be detected and remedies sought;
- the greater frequency with which remedies for violation are sought will feed through into greater incentives for both public bodies and private parties to respect housing rights.

The European Committee of Social Rights (ECSR) has concluded that to enforce the right to housing effectively, it must be protected by sufficient legal remedies. Tenants must have the option of appealing to an independent legal body and the cost of legal process must not become an obstacle to the application of law.¹³

There are numerous examples of housing rights being made justiciable in states which are parties to the relevant treaties. Many states provide legal guarantees of security of tenure for tenants in both the public and social rented sector requiring, for example, that eviction cannot occur without the permission of a judge and unless good cause is shown. There are also examples of positive rights to material assistance from the state being made justiciable, for example, the Scottish legislation on the rights of the homeless. The Housing (Scotland) Act 1987, as amended, provides a right to accommodation for homeless persons, including a right to temporary accommodation for all homeless persons, and a right to long-term accommodation for broadly defined categories encompassing the majority of homeless applicants. By 2012, the right to long-term accommodation will be extended to all. This right is enforceable in the civil courts, which may order, in appropriate cases, that accommodation be provided to homeless persons. In France, an enforceable right to housing has also been established through the DALO Act of 5 March 2007. The Act provides for a two-tier remedial mechanism with regional mediation committees and the possibility to take a case before the administrative court.

Clearly, the practical effectiveness of such measures depends on sufficient accommodation being available for occupation to meet the demand from persons classified as ‘homeless’ in law. Therefore, the enactment of legislation conferring rights to accommodation must be accompanied by other measures such as direct provision of accommodation by the state or the social rented sector, provision of welfare benefits, and co-ordination of private sector provision of accommodation.

2.4 Effectiveness in practice

States are required to ensure that housing rights are effective in practice. Even where judicial remedies are available for a wide range of housing rights violations, the role of the state in actively supervising the implementation of housing rights remains important. States should have regard to what is the most appropriate internal allocation of governmental responsibility within their constitutional and governmental frameworks for the implementation of housing rights. Nevertheless, the ultimate responsibility for implementing international housing rights

¹³ European Committee of Social Rights (ECSR), Conclusions 2003, France, p. 224.

obligations remains with national governments.¹⁴ Where the responsibility for housing functions lies with regional or local authorities or other agencies, national authorities should, as a minimum, engage in oversight and regulation of the actions of such bodies.

In some circumstances, states must be able to demonstrate that the desired outcomes are in fact achieved, and that they are not impeded by, for example, failure of regional or local authorities to implement national legislation adequately, or more generally undue difficulties in enforcing legal rights.¹⁵ Inadequate remedies, failure by administrative bodies to implement legislation and the failure of the state to collect the necessary factual information – for example data on the accommodation/shelter needs of homeless persons – are all circumstances that may lead a state to be in breach of its obligations.¹⁶ Data collection is also essential for monitoring the extent of discrimination against particular groups of people.¹⁷

National authorities are normally better placed than international tribunals to evaluate the adequacy of the measures taken by the government in the light of the needs of the country. Nonetheless, the measures taken must meet the following criteria: they must allow the state to achieve the relevant objectives (i) within a reasonable timeframe, (ii) with a measurable progress and (iii) to an extent consistent with the maximum use of available resources.¹⁸ In the light of (ii), it is clear that in some contexts, states should also have in place effective arrangements for monitoring progress towards the achievement of necessary goals, including appropriate statistical indicators.

2.5 Monitoring

At the international level, the UNCESCR monitors the implementation of the ICESCR housing rights. It strives to develop a “constructive dialogue” with States Parties submitting periodic reports outlining the legislative, judicial, policy and other measures which they have taken to ensure the enjoyment of the rights contained in the Covenant. States Parties are also requested to provide detailed data on the degree to which the rights are implemented and areas where particular difficulties have been faced in this respect.¹⁹ On 10 December 2008, the UN General Assembly adopted an Optional Protocol to the ICESCR which provides the UNCESCR competence to receive and consider communications, after the Protocol has been ratified by States Parties.

The ECSR decides whether the situation in the States Parties is in conformity with the ESC, based on an examination of cyclical national reports which states are bound to submit.²⁰ The Committee assesses, from a legal standpoint, the compliance of national law and practice with the obligations arising from the Charter for the Contracting Parties concerned.²¹ The Additional Protocol of 1995 provides for a system of collective complaints whereby complaints of violations of the Charter may be lodged with the ECSR by trade unions, employers’ organisations and approved NGOs.

For the effective monitoring of housing rights compliance at national level, states need a mechanism for the ongoing collation of data and the development of indicators on the implementation of housing rights, as well as for recording details of any violations taking place.

¹⁴ See, for example, ECSR, *European Roma Rights Centre v Greece*, Complaint No 15/2003, Decision on the merits of 8 December 2004 and *European Roma Rights Centre v Italy*, Complaint No 27/2004, Decision on the merits of 7 December 2005.

¹⁵ Ibid, and see also ECSR, *Autism-Europe v France*, Complaint No 13/2002, Decision on the merits of 4 November 2003.

¹⁶ ECSR, *FEANTSA v France*, Complaint No 39/2006, Decision on the merits of 5 December 2007.

¹⁷ ECSR, *ERRC v Greece*, Complaint No. 15/2003, Decision on the merits of 8 December 2004, §27.

¹⁸ ECSR, *Autism-Europe v France*, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §53.

¹⁹ See UN Doc. E/1989/22, annex III, General Comment No. I (1989). There is a set of reporting guidelines and a detailed questionnaire specifying the types of information the Committee requires in order to monitor the compliance with the Covenant effectively.

²⁰ See Council of Europe, FORM for the reports to be submitted in pursuance of the 1961 European Social Charter and the 1988 Additional Protocol adopted by the Committee of Ministers on 26 March 2008.

²¹ See the ECSR, Digest of the Case Law, 1 September 2008.

Indeed, monitoring is a key part of the state's obligations on implementation of rights and the reporting formats for the UNCESCR and ECSR can serve as examples for the types of data required for national monitoring. An effective monitoring process would require the establishment of a focal point for coordinating the monitoring activities and the involvement of national human rights structures (including Ombudsman and equality institutions), social partners, relevant NGOs, and housing rights advocacy agencies. Such a focal point of collation would facilitate timely reporting to all international housing rights monitoring bodies and enable comparative and best practice approaches.

3. European standards on housing rights

The European Committee of Social Rights and the European Court of Human Rights (ECtHR) have specified the European standards on housing rights in their jurisprudence. Following Article 31 of the revised ESC, the major elements of these standards can be defined in terms of accessibility, adequacy, prevention and reduction of homelessness, and affordability. The European standards should be used for clarifying the legal obligations involved in the implementation of housing rights as well as in the development of indicators for monitoring the situation.

3.1 Accessibility of housing

3.1.1 Contractual safety

As housing is the most important investment to most people, the key principle in buying and selling, or renting, housing is the requirement of fairness and protection of the weaker party in contracting, especially in unequal market situations. Also, the tenant must be protected against unfair or disproportionate contractual conditions, faults and deficiencies in the dwelling, and indiscriminate rent rises or termination of contract. In addition, certain standards must be set for the legal protection of tenants, including standards relating to harassment, threats and forced eviction. Housing may not be considered accessible simply because it is occupied; the sustainability of the right to occupy housing is also a factor. From this viewpoint, the focus is primarily on the fairness, or reasonableness, of rental contracts.

Security of tenure has a dual meaning: it is a measure toward fulfilment of the right to housing on one hand, and it is used as a counter-measure aimed at preventing unpredictable homelessness on the other. In this context, the first and second paragraphs of Article 31 of the revised ESC are overlapping. Regarding termination of contracts, the starting point should be that there are acceptable criteria which also cover situations where social rental housing is privatised, or sold to a third party.

The rationale for requiring a minimum period of notice for termination of tenure is comparable to that for termination of an employment contract, whereby experience, commitment and integration in a work community are respected by offering longer minimum notice of termination the longer the contract. However, in well-functioning housing markets, the landlord must also enjoy the right to a minimum termination time, during which time a new tenant may be sought. Stemming from their different interests and different needs for protection, the tenant and landlord need not have the same minimum times for the termination of tenure.

3.1.2 Availability

In order to extend the right to housing to cover all those in need, there must be sufficient housing available. Availability is dependent on (a) the aggregate size of housing stock in general, the rental housing stock in particular and, especially, the volume of social rental housing stock and (b) its rate of turnover, i.e. availability of social housing units for new tenants. Therefore, assessment of accessibility should focus primarily on aggregate housing, on the share of rented housing and, in particular, on the share of social rented housing and its allocation. The size of the social rented housing stock depends, among other things, on the level of construction activity, demolition of old housing and on privatisation.

The realisation of the right to housing becomes a question of how the most vulnerable find access to new or vacated social housing. If such housing is in short supply, then the right to housing cannot be exercised in full. For example, if five per cent of a country's population is living below the poverty line, then it should be evident that in order to provide adequate housing for such persons, the country needs at least an equal percentage of social rented housing. To meet the housing needs of the poorest part of a population, the allocation of social housing needs to be targeted at this group.

However, those whose income is just above the official poverty line may have great difficulty in securing housing which is let at market rates. These persons also may require access to social rented housing. In addition to those who are on or close to the poverty line, societies are also required to allocate social housing to groups who are in need for other reasons. Therefore, one may conclude that in order to guarantee the availability of housing for all poor or otherwise vulnerable groups or individuals, the state should have a stock of social rented housing that equals 10 - 30 per cent of the aggregate housing depending on the country concerned. For this purpose, social housing may also include housing in the private sector which is subject to regulation in the interest of tenants and for which rent is subsidised.

Any general indicator of the availability of housing should be based on simultaneous consideration of a range of specific factors. This is what the ECSR has done by putting together indicators for evaluating the employment situations and measures taken to achieve full employment in different states (under Article 1§1 of the revised ESC), as well as in evaluating the adequacy of health care systems (under Article 11§1). Therefore, the starting point should be the need for social rented housing in general, and an indicator of its availability, combined with allocation criteria and urgency of need.

The question of waiting periods for social housing is important. Temporary shelter may be provided as an emergency service, but if housing there is prolonged, it might make the occupier's situation even more vulnerable. The ECSR has taken the view that waiting periods in temporary accommodation should not become unreasonably long.²² Selection criteria also form an important factor in determining maximum waiting periods. If the criteria are simply based on the level of income and capital, then the urgency of need might be overlooked.

3.1.3 Allocation

In recent times, it has become customary for states to allocate their social rental housing using levels of income and capital as criteria. In some cases, when a person reaches an income or property level that is judged sufficient for owning a home or renting it on the open market, then the person is no longer considered entitled to social housing. Income and capital-based criteria for the allocation of social housing may thus become a mechanism which excludes those in real need from social housing.

In addition to the effect of any such income-based criteria specified by state policy, exclusion may arise from the selection processes operated by social landlords themselves. Some social landlords usually select from the eligible group those persons in the best financial position, i.e. those with the best credit rating. Therefore the poorest persons, the unemployed, those who have been evicted or members of minority groups may be given lower priority in the allocation of housing than those who are less disadvantaged. If the availability of social housing is scarce and the objective of eradicating homelessness is to be achieved, then the selection criteria must be based on the urgency of the applicant's need.

3.2 Adequacy of housing

3.2.1 Standards of adequacy

The ECSR has pointed out that "adequate housing" means that a dwelling is structurally secure, safe from a sanitary and health point of view, possesses all basic amenities such as water, heating, waste disposal, sanitation facilities, electricity, is not overcrowded, and has secure

²² ECSR, Conclusions 2003, France, p. 225.

tenure supported by law.²³ It has considered it elementary that standards for adequate housing are defined by law and applied in practice, and that the object of their application is not merely new projects but that, after reconstruction, the standards should be applied gradually to all existing housing. Standards of adequacy must apply to both owner-occupied and rented housing, including social rented housing. States may set their own measures for supervising adherence to standards and this supervision must include the sustainability of public services, i.e. water, electricity and communications.²⁴

3.2.2 Habitability

The core provisions concerning habitability in Europe are found in Article 31§1 of the revised ESC and in Articles 2 (right to life), 3 (prohibition of inhuman and degrading treatment) and 8 (respect of privacy and family life) of the ECHR. In principle, habitability means that a dwelling complies at least with the requirements of safety, health and hygiene. It should also offer certain basic amenities, the provision of which is closely related to public services, such as water, heating and lighting, which both the ECtHR and the ECSR have stressed in their case law.²⁵

The immediate surroundings of a dwelling must be included in consideration of its habitability both under the ESC and the ECHR. In a judgment in 1998 related to the pollution caused by a chemical factory situated in the proximity of a residential area, the ECtHR stated that “severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely.”²⁶ A similar decision was made by the ECSR in 2006 regarding health hazards caused by lignite mining.²⁷

3.2.3 Suitability

The requirement of suitability includes requirements with reference to size, surroundings and the location of the dwelling in relation to work, school and social services. Evaluation of suitability should also take into account tenants’ cultural backgrounds.²⁸ Of these four factors, the ECSR has taken a position on only one of them, the question of size:

“Over-crowding means that the size of the dwelling is not suitable in light of the number of persons and the composition of the household in residence.”²⁹

The ECSR has not yet taken a clear position on the suitability of surroundings, accessibility to and from places of work or cultural suitability.

However, an important guideline to evaluating cultural suitability is the Charter’s core functional principle of inclusion. Accordingly, people of different social, ethnic or cultural origin should not be segregated into different areas or different housing blocks. On the contrary, the principle of inclusion requires that different sections of the population are encouraged to come into closer contact with one another.³⁰ However, any “social mix” policies must be clearly transparent and non-discriminatory.³¹

3.3 Measures against homelessness

The ECSR has defined homelessness in the following way: “Homeless are those individuals who legally do not have at their disposal a dwelling or other form of adequate shelter.”³²

²³ ECSR, Conclusions 2003, Slovenia, p. 554.

²⁴ ECSR, Conclusions 2003, France, p. 221.

²⁵ ECSR, Conclusions 2003, France, p. 221; see also *FEANTSA v. France*, Complaint No. 39/2006, Decision on the merits of 5 December 2007, §76.

²⁶ ECtHR, *Guerra and Others v. Italy*, Judgment of 19 February 1998; cf. *Fadeyeva v. Russia*, Judgment of 9 June 2005.

²⁷ ECSR, *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, Complaint No. 30/2005, Decision on the merits of 6 December 2006.

²⁸ Cf. the UNCESCR, *General Comment No. 4*.

²⁹ ECSR, Conclusions 2003, France, p. 221.

³⁰ ECSR, *European Roma Rights Centre v Greece*, Complaint No. 15/2003, Decision on the merits of 8 December 2004, § 19.

³¹ ECSR, *FEANTSA v. France*, Complaint No 39/2006, Decision on the merits of 5 December 2007.

³² ECSR, Conclusions 2003, Italy, p. 345.

Furthermore, the ECSR has required that housing in temporary shelter should not be for an unreasonably long time.³³ In other words, homelessness has been viewed as a condition of rooflessness (i.e. not having any shelter at all), or housing in temporary shelter inadequately or for an unreasonably long period.³⁴

3.3.1 Prevention

Prevention of homelessness may mean either general or targeted housing policy measures designed to promote access to housing. Essential measures include legal protection of tenants against unfair and disproportionate contractual conditions, indiscriminate termination of contracts and forced eviction, as well as having an adequate stock of rental housing with sufficient turnover available to provide housing for vulnerable groups. In addition, the requirements concerning availability of social rental housing, selection criteria and waiting periods discussed earlier in this chapter are also applicable.

The ECSR has considered it crucial that states target their housing measures to guarantee housing for the disadvantaged and vulnerable groups of people:

“The Committee considers that the parties must prevent categories of vulnerable people from becoming homeless. This requires states to introduce a housing policy for all disadvantaged groups of people to ensure access to social housing.”³⁵

Protection of tenure against forced eviction is an area where both the ECtHR and the ECSR have developed case law. The ECSR has defined eviction as deprivation of housing which a person occupied, on account of insolvency or wrongful occupation.³⁶ The Committee has emphasised the necessity of legal protection of evicted persons and families both in preventive and reparative sense:

“Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the affected parties in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction. The law must also prohibit evictions carried out at night or during the winter period and provide legal remedies and offer legal aid to those who are in need so they may seek redress from the courts. Procedural safeguards are important. Compensation for illegal evictions must also be provided. Even when an eviction is justified, authorities must adopt measures to re-house or financially assist the persons concerned.”³⁷

The UN Special Rapporteur on adequate housing has provided detailed guidance on the implementation of international human rights obligations with reference to evictions.³⁸

3.3.2 Reduction of homelessness

Above all, the reduction of homelessness implies the introduction of emergency and long-term measures, such as provision of immediate shelter and care of the homeless, as well as measures to help them overcome their difficulties and to prevent them from becoming homeless again.³⁹ Although setting waiting periods for adequate housing is permissible, the starting point

³³ ECSR, Conclusions 2003, France, p. 225.

³⁴ The European Federation of National Organisations Working with the Homeless (FEANTSA) has created a holistic European definition of homelessness which incorporates the many factors involved. *The European Typology on Homelessness and Housing Exclusion* (ETHOS) definition, incorporates the four domains of rooflessness, houselessness, insecure and inadequate housing and classifies homeless people according to their living situation.

³⁵ ECSR, Conclusions 2005, Lithuania, pp. 408-409.

³⁶ ECSR, Conclusions 2003, Sweden, p. 653.

³⁷ The Committee has accepted as sufficient protection two months' period after formal notice has been served before the eviction. *FEANTSA v. France*, Complaint No 39/2006, Decision on the merits of 5 December 2007, § 88 and 89.

³⁸ *Basic Principles and Guidelines on Development-Based Evictions and Displacement*. Annex 1 to the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari. A/HRC/4/18, 5 February 2007.

³⁹ ECSR, *FEANTSA v. France*, Complaint No. 39/2006, Decision on the merits of 5 December 2007, § 103.

should be, besides meeting the requirements of Articles 2 and 3 of the ECHR, to guarantee that all people, regardless of circumstance, are able to benefit from housing that corresponds with human dignity, the minimum being temporary shelter. Consequently, the state should have at its disposal a sufficient quantity of temporary shelters that can provide for all in need without delay.

The requirement of dignity in housing means that even temporary shelters must fulfill the demands for safety, health and hygiene, including basic amenities, i.e. clean water, sufficient lighting and heating. The basic requirements of temporary housing include also security of the immediate surroundings. Nevertheless, temporary housing need not be subject to the same requirements of privacy, family life and suitability as are required from more permanent forms of standard housing, once the minimum requirements are met. The ECSR has also highlighted the importance of respecting human dignity and “greatest possible degree of independence” in temporary housing.⁴⁰ The housing of people in reception camps and temporary shelters which do not satisfy the standards of human dignity is in violation of the aforementioned requirements.

3.4 Affordability of housing

It is central to the affordability of housing that supply and demand are balanced in the housing market in general and in the rental market in particular. When such balance is not achieved and when housing costs effectively limit the opportunity of those with the least resources to find standard housing, then the public authorities should address the situation. There are several measures that may be taken, including regulation of social housing costs, rent regulation in the private sector, and provision of direct or indirect income transfers. Here again, the choice lies in the hands of each state, but the effects should be assessed according to international human rights standards. In the context of the current economic crisis which may result in a reduction of income for some sectors of the population, the availability of affordable housing is particularly important.⁴¹

3.4.1 Support to homebuyers and low-cost housing

As with other forms of support, support for home buyers may be universal in nature, or it may be related to their levels of income and capital. First-time home buyers and persons with disabilities are often among the primary beneficiaries of support measures. The development of credit ratings agencies and their impact on access to credit, often calculated on housing equity, permanence and income from employment, has steepened the divide between those who can access housing finance from credit institutions and those on low incomes or unemployed who do not enjoy this possibility. To preserve equality in the allocation of owner-occupied housing, it is important that no population group, such as ethnic minorities or migrants, is subjected to discriminatory legal constraints on purchase, discounts, loans, interest rate subsidies or tax reliefs, by virtue of membership of that group. However, in the light of the sub-prime housing crisis, it is important to recognise that access to high cost or unregulated housing finance for low income groups may lead to ultimately unaffordable and insecure housing. States may also support independent construction and reconstruction by means of investment loans, building grants or interest rate subsidies, which further reduce the capital cost of housing. The availability of low-cost housing more generally will reduce the need for direct financial support.

3.4.2 Compensation of housing costs

To ensure that persons with inadequate resources have access to standard housing, it is important that the compensation of housing costs is provided for by law. Further, the system should be sufficiently attentive to the requirements of adequacy of housing and should cover the cost of basic amenities (water, lighting and heating). At the same time, the compensation should ensure that:

- households' housing costs do not rise to an unreasonable level, which might obstruct the possibilities for fulfilling other basic social needs;

⁴⁰ Ibid. § 108.

⁴¹ The UN Special Rapporteur on adequate housing has assessed the impact of the current economic crisis on the right to adequate housing in her recent report to the Human Rights Council. *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, Raquel Rolnik. A/HRC/10/7, 4 February 2009.

- high housing costs of persons and families with inadequate resources do not lead to segregated low-quality housing or slums; and
- an inadequate level of income or capital does not lead to homelessness.

The amount of housing allowance may be made dependant on the number of people benefiting from it, surface area of the dwelling or other objective criteria, or it may be universal and independent of income. It may also be targeted support, paid to certain groups of the population considered disadvantaged in gaining access to standard housing. The benefit may also be based on means testing or a combination of the aforementioned.

ECSR case law requires that an adequate supply of affordable housing (meaning low cost or subsidised housing) must be ensured. A further requirement has been that housing costs should not lower anyone's standard of living below the acceptable minimum:

"The Committee considers housing to be affordable when the household can afford to pay the initial costs (deposit, advance rent), current rent and/or other costs (utility, maintenance and management charges) on a long-term basis and still be able to maintain a minimum standard of living, as defined by the society in which the household is located."⁴²

The ECSR has set three requirements for housing benefits. They should (a) target low-income and disadvantaged sections of the population, (b) be based on objective criteria and (c) include recourse to legal remedies.⁴³

4. Equality

4.1 Key legal sources

The international human rights instruments relevant to housing rights must be implemented in conjunction with their non-discrimination clauses which are generally understood as encompassing both direct and indirect discrimination. Direct discrimination occurs where a person is subject to less favourable treatment than others explicitly on the basis of a particular characteristic such as race or gender. Indirect discrimination occurs where an ostensibly neutral criterion is applied to make decisions or take action but has a disproportionate impact on persons who share a particular characteristic. The relevant instruments require, as a minimum, that states refrain from discrimination themselves, in the sense that actions and decisions of state authorities should not be taken on a discriminatory basis. However, positive measures may also be required to ensure equality in the effective enjoyment of housing rights.

Article 2(2) of ICESCR is an open-ended non-discrimination clause which can be linked to Article 11 to prohibit discrimination in the right to adequate housing. It prohibits discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

As for the ECHR, claims of discrimination in the housing context are most likely to link Article 14 (prohibition of discrimination) to Articles 3 (inhuman and degrading treatment) and 8 (respect for privacy and family life) as well as Article 1 of Protocol No. 1 (protection of property). It is important to distinguish between differential treatment and discrimination. Where a case falls within the ambit of Article 14, the differential treatment will be discriminatory where it lacks an objective and reasonable justification, and there is no reasonable proportionality between the means employed and the aim which the state seeks to realise.⁴⁴ The combined effect of Articles 3, 8, 14 and Article 1 to Protocol No. 1 is that, although the ECHR has to date been interpreted by the Court as imposing only relatively limited positive obligations on states to ameliorate the housing situation of disadvantaged groups and persons, once the state makes any provision or assumes responsibility for housing it must do so on the basis of equality of treatment.⁴⁵

Protocol No. 12 to the ECHR has more far-reaching effects. Article 1.1 of the Protocol states that the enjoyment of any right set forth by law shall be secured without discrimination. This

⁴² ECSR, Conclusions 2003, Sweden, p. 655.

⁴³ Ibid. pp. 658-659.

⁴⁴ ECtHR, *Rasmussen v Denmark*, Judgment of 28 November 1984.

⁴⁵ See *Moldovan and Others v Romania*, Judgment No. 2 of 12 July 2005.

means that persons may complain of convention violations in respect of discrimination relating to any rights protected by law in any of the states which have accepted the Protocol even where those rights go beyond the minimum obligations imposed by the ECHR. Article 1.2 states that no one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1. This means that discriminatory treatment by a public authority is a breach of the ECHR even where it does not relate to legal rights. For example, the provision prohibits discrimination in relation to benefits which are given wholly at the discretion of public authorities.

Article E of the revised ESC is an open-ended non-discrimination clause prohibiting discrimination which can be linked to any substantial provision of the Charter including Article 31 of the ESC (right to housing). Because the ESC guarantees positive rights to material provision in the housing field as well as negative freedoms from interference with property rights its impact is potentially greater than that of the ECHR. In common with the other treaties, Article E forbids both direct and indirect discrimination. As a result, states must not only refrain from direct discrimination but also from measures which are apparently neutral but have a disproportionately disadvantageous impact on different groups and which lack objective justification. In some situations, states have a positive duty to go beyond formal legal equality to ensure that rights and advantages are equally available to all in practice.⁴⁶

Under European Union law, both treaty provisions and secondary legislation establish effectively the principle of non-discrimination on the ground of nationality for EU citizens.⁴⁷ Article 7 of Regulation 1612/68 specifically states that EU workers exercising their right to freedom of movement shall enjoy the same social and tax advantages as national workers; Article 9 states that they are to enjoy the same rights and benefits in matters of housing; and Article 10 states that their spouses and dependents, regardless of nationality, are entitled to join them.

More generally, Article 13 of the EC Treaty gives the European Community power to take appropriate action, which includes legislation, to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Directive 2000/43 prohibits discrimination on grounds of racial or ethnic origin including in relation to housing. It applies to both public and private sectors and EU Member States are required to ensure that judicial or administrative procedures are available to those who consider themselves wronged by failure to apply the principle of equal treatment. Directive 2000/43, therefore, requires that there be effective remedies for acts of discrimination whether committed by public bodies or private parties including discrimination in housing. Similarly, Directive 2004/113 prohibits discrimination on the ground of sex, including in relation to housing.

4.2 Practical consequences for housing rights

The prohibitions on discrimination affect all three types of housing rights obligation – to respect, protect and fulfill. Insofar as owners and tenants enjoy legal protection against interference with their interests in their homes, those interests must be subject to the same level of protection for all. No one should be afforded lesser protection for their interest in occupying their home on any of the forbidden grounds. Thus, for example, Articles E and 31 of the revised ESC will be violated when the state in evicting persons or destroying their property appears to single out an ethnic group for more severe treatment than persons generally.⁴⁸ Similarly, Articles 8 and 14 of the ECHR will be violated when the state fails to provide adequate remedies for unlawful destruction of their homes (whether by private individuals or by agents of the state) to members of a particular ethnic group.⁴⁹

The preceding are examples of direct discrimination. Indirect discrimination will occur when ostensibly 'neutral' rules have a disproportionately negative impact on persons defined by

⁴⁶ See ECSR, *Autism-Europe v France*, Complaint No 13/2002, Decision on the merits of 4 November 2003.

⁴⁷ Articles 39-42 of the EC Treaty concerned with free movement of workers and Regulation 1612/68.

⁴⁸ ECSR, *European Roma Rights Centre v Italy*, Complaint No 27/2004, Decision on the merits of 7 December 2005.

⁴⁹ See, for example, ECtHR, *Moldovan and Others v Romania*, Judgment No. 2 of 12 July 2005.

ethnicity or another ‘forbidden’ characteristic as, for example, where Roma families find that the criteria regulating access to social housing are much harder for them to meet in practice.⁵⁰ Indirect discrimination may also occur when the same rules are applied to all without taking account of relevant differences between groups as, for example, where Roma families run a higher risk of eviction and, consequently, the strict application of laws restricting the legalization of unlawful dwellings is inappropriate.⁵¹

As regards obligations to fulfil, any positive steps that states take to improve the housing situation of persons within their jurisdiction must be carried out on a non-discriminatory basis. Moreover, complying with the obligations imposed by the revised ESC obligations in respect of disadvantaged groups requires states to monitor their housing situation and take measures specifically aimed at improving their housing situation. Legislative measures by themselves may not be enough as states must ensure that rights are genuinely available to all in practice.⁵²

4.3 Positive measures for particular groups of people

The promotion of full and effective equality may require positive measures in favour of certain groups of people, provided that there is an objective and reasonable justification for such measures. In addition to the general prohibition of discrimination, various provisions of the revised ESC require positive steps to be taken to advance the interests of particular groups, including Article 15 (rights of disabled persons), Articles 16 and 17 (rights of families, children and young persons to social, legal and economic protection), Article 19 (rights of migrant workers) and Article 23 (right of the elderly to social protection). Furthermore, it is clear that Roma and Travellers, women victims of violence as well as internally displaced persons are among the groups of people for whom positive measures are needed in the field of housing.

4.3.1 Persons with disabilities

States have undertaken that, with a view to ensuring that persons with disabilities are able to exercise effectively the right to independence, social integration and participation in the life of the community, they shall, *inter alia*, promote the full social integration of people with disabilities in the life of the community.⁵³ Full social integration requires that states take appropriate measures to overcome barriers to communication and mobility and ensure access to transport, housing, cultural and leisure activities. In the housing context this may comprise adaptations to home, home help services supporting independent living (service housing) or continued mentoring that is indispensable for the person’s survival (support housing). Support may mean removing obstacles to free movement, taking special precautions or other types of support aimed at facilitating independent living. In contrast, any measure that leads to the discontinuation of a person’s rehabilitation or poses a risk to his or her health or capacity is not permitted. Limitations of capacity may also be due to old age, in which case similar measures may be appropriate to support the independent living of older persons.

4.3.2 Families, children and young persons

Article 16 of revised ESC requires that states promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, and benefits for the newly married. Measures should be addressed both to the owner-occupied and rented housing markets, and state’s housing policies should secure access to housing for families with children. In particular, the ECSR has highlighted the support and assistance states provide to young couples in gaining access to adequate housing.⁵⁴

⁵⁰ ECSR, *European Roma Rights Centre v Italy*, Complaint No 27/2004, Decision on the merits of 7 December 2005.

⁵¹ ECSR, *European Roma Rights Centre v Bulgaria*, Complaint No 31/2005, Decision on the merits of 18 October 2006.

⁵² ECSR, *Fourth World v France*, Complaint No 33/2006, Decision on the merits of 5 December 2007 and *FEANTSA v France*, Complaint No 39/2006, Decision on the merits of 5 December 2007.

⁵³ Art. 15§3 of revised ESC.

⁵⁴ See, for example, ECSR, Conclusions 2006, Estonia, pp. 212-213, and Italy, p. 459.

4.3.3 *Migrant workers*

Article 19 of revised ESC requires that states secure for migrant workers lawfully within their territories not less favourable treatment than is given to national workers with regard to, amongst other things, accommodation. States should also facilitate, as far as possible, the reunion of such workers with their families. Moreover, Article 12 is relevant here as it requires states to take steps to ensure the equal treatment of nationals of other States Parties in relation to social security rights, which is of importance in the context of, for example, housing allowances to make rents affordable.

Accordingly, states should eliminate all discrimination against migrant workers from both law and practice, including inappropriate restrictions on ownership, mortgages, access to social housing and eligibility for housing allowances. While irregular migrants and temporary residents are, in principle, excluded from the protection of the ESC, anyone in urgent need due to lack of resources, as well as children of undocumented migrants, are required to be supported with temporary measures according to Article 13§4.⁵⁵

Migrants may have to wait a long time for their housing allowances. Internationally, several years has been viewed as acceptable.⁵⁶ The ECSR has, nevertheless, required that the waiting period must not be excessive and pointed out that 1) housing benefit is an individual right, 2) all qualifying households must receive it in practice; and that 3) legal remedies must be available in case of refusal.⁵⁷

4.3.4 *Older persons*

Article 23 of revised ESC requires states, with a view to ensuring that elderly persons can effectively exercise their right to social protection:

- to adopt or encourage measures designed to enable elderly persons to remain full members of society for as long as possible;
- to enable elderly persons to choose their life-style freely and to lead independent lives in familiar surroundings for as long as they wish and are able to do so, and;
- to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning their living conditions.

Therefore, the ECSR has required that the needs of older persons must be taken into account in national or local housing policies. The supply of adequate and appropriate housing for elderly persons must be sufficient. National policies should help older 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.⁵⁸

4.3.5 *Roma and Travellers*

Roma and Travellers have often been victims of discrimination in the field of housing and this is reflected in the case law of the ECtHR and the ECSR.⁵⁹ Discrimination may concern all aspects of housing: accessibility, quality standards, prevention of homelessness and financial support. In the worst cases, Roma communities live in segregated settlements under conditions of such a poor standard as to cause severe safety and health hazards for the inhabitants.

The case law of the ECSR has covered issues related to the lack and inadequacy of permanent housing, insufficiency and inadequacy of stopping sites, the lack of legal security of tenure, forced evictions and the non-respect of the conditions accompanying evictions. ESCR has underlined that States Parties must make sure that evictions are justified and are carried out in conditions that respect the dignity of the persons concerned, and that alternative

⁵⁵ ECSR, *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No. 14/2003, Decision on the merits.

⁵⁶ European Code of Social Security (1964).

⁵⁷ ECSR, Digest of 1 September 2008, p. 173 with reference to Conclusions 2003, Sweden, p. 659.

⁵⁸ ECSR, Conclusions 2003, Slovenia, p. 530; Conclusions 2005, France, p. 252-253.

⁵⁹ See the Commissioner's Final report on the human rights situation of the Roma, Sinti and Travellers, 15 February 2006, CommDH (2006) 1.

accommodation is available.⁶⁰ Effective legal remedies should also be available to all persons affected by eviction orders. Moreover, ECSR has highlighted that the conditions for the legalisation of illegal constructions should not be too high as to prevent redressing the particularly urgent housing situation of Roma families.⁶¹ Recommendation Rec(2005)4 of the Committee of Ministers provides detailed guidance to member states on improving the housing conditions of Roma and Travellers.

4.3.6 *Women and women victims of violence*

Special attention is required for some groups of women who are at higher risk of becoming homeless or suffering from the consequences of inadequate housing and living conditions. Such groups include, among others, women victims of violence, women victims of forced evictions, women with disabilities, women in conflict and post-conflict situations, migrant women and women living under poverty. Multiple discrimination of women is an important risk factor. Equal access to credit and finance, equal rights in respect of inheritance of land and property and the elimination of gender-biased customs and traditions that hinder women's enjoyment of housing rights are critical issues. Laws and policies must be articulated and implemented in ways that recognise the specific constraints and vulnerabilities of women in relation to the right to housing.

Lack of adequate housing can make women more vulnerable to various forms of violence and, conversely, violence against women can lead to the violation of women's right to housing. In most countries, domestic violence is a key cause of women's homelessness and presents a threat to their security of person and security of tenure. Many women continue to live in violent relationships because they face homelessness if they resist domestic violence. Others leave their homes, often with their children, in fear of violence and seek temporary and later permanent re-housing. States need to protect women victims of violence through specific legal and policy initiatives including the provision of specialised emergency shelters and other alternative housing.⁶²

4.3.7 *Internally displaced persons*

Internally displaced persons (IDPs) also constitute a disadvantaged group with particular needs in relation to the right to adequate housing. One of the recurrent features of displacement in Europe is that people have been forced to leave their homes and possessions because of conflict or violations of human rights. During and after the conflict, displaced persons have difficulties finding adequate housing. IDPs are often hosted in temporary shelters or collective centres in inadequate conditions. For many this situation has lasted for almost a decade, long after the conflict ended. In the worse cases, IDPs in Europe are living in makeshift shelters built from scrap materials, self-built mud houses, railway wagons and in informal settlements without any security of tenure. In addition, displaced persons face difficulties in repossessing their homes after the conflict, since many are either destroyed or occupied.

The Guiding Principles on Internal Displacement⁶³ endorsed by the General Assembly of the United Nations reflect and are consistent with international human rights and humanitarian law. As such, they contain provisions in relation to the right to be protected from arbitrary displacement from home (principle 6), the right to proper accommodation (principle 7), right to an adequate standard of living (principle 18), prevention from arbitrary deprivation of property and possessions (principle 21) and right to property restitution and compensation (principles 28 and 29). In addition, the provisions of the ECHR and ESC on adequate housing and non-interference with home and possession apply to IDPs. Addressing housing rights of displaced persons supposes that laws and policies include specific measures designed to facilitate

⁶⁰ ECSR, Conclusions 2003, France, p. 225, Italy, p. 345, Slovenia, p. 557, and Sweden, p. 653.

⁶¹ ECSR, *European Roma Rights Centre v. Bulgaria*, Complaint No 31/2005, Decision on the merits of 18 October 2006. Cf. ECtHR, *Oneryildiz v. Turkey*, Judgment of 30 November 2004.

⁶² The UN Special Rapporteur on adequate housing has published three reports on women and adequate housing. UN Doc. E/CN.4/2003/55, UN Doc. E/CN.4/2005/43 and UN Doc. E/CN.4/2006/118.

⁶³ UN doc. E/CN.4/1998/53/Add2 (1998).

reconstruction, restitution and compensation for destroyed property. It also entails the provision of adequate housing conditions and security of tenure which is often lacking for people hosted in collective centres. The Committee of Ministers has issued a Recommendation – Rec(2006)6 – to member states regarding measures in favour of IDPs.

5. Recommendations

In implementing the right to housing member states should:

1. Enact specific legislation which clarifies how the housing rights guaranteed by international law are to be made effective in a national jurisdiction without discrimination. National laws should set out in detail housing rights, identify those who are responsible for their implementation at different levels, and provide for effective remedies when they are violated. Those countries which have not yet done so should ratify the revised European Social Charter, its Article 31 on the right to housing as well as its Additional Protocol providing for a system of collective complaints.
2. Include housing rights in the scope of general non-discrimination legislation both in the public and private sectors and specify that positive measures are justified in order to promote full and effective equality provided that there is an objective and reasonable justification for such measures. Those countries which have not yet done so should ratify Protocol No. 12 on the general prohibition of discrimination to the European Convention on Human Rights.
3. Establish minimum standards in all areas of housing provision for accessibility, adequacy and affordability in accordance with the European standards developed by the European Committee of Social Rights and the European Court of Human Rights.
4. Prevent and reduce homelessness through general and targeted policy measures designed to promote access to housing. Such measures include legal protection of tenants against unfair and disproportionate contractual conditions, indiscriminate termination of contracts and forced eviction, as well as the availability of a sufficient stock of rental housing, temporary shelters and support or service housing to provide housing for disadvantaged and vulnerable groups.
5. Adopt and implement a national housing strategy which incorporates targets to be achieved for the realisation of housing rights to an extent consistent with the maximum use of available resources. A national housing strategy should also apply a gender perspective, identify disadvantaged and vulnerable groups and include positive measures for ensuring their effective enjoyment of the right to housing.
6. Adopt anti-violence provisions in housing legislation and policies and ensure that domestic violence laws include provisions to protect women's right to housing, including the right to privacy and security.
7. Enable individual justiciability of the right to housing. The individual enforcement of housing rights should be accompanied by other measures aimed at providing sufficient accommodation to meet the demand from persons classified as homeless.
8. Engage in oversight and regulation to ensure that national, regional and local authorities as well as private bodies fulfill their respective obligations in implementing the right to housing. The authorities which have responsibilities in the field of housing rights should coordinate their activities to optimise results for the realisation of rights.
9. Establish a monitoring mechanism for the ongoing collation of data, including disaggregated data, and the development of indicators on the implementation of housing rights as well as for recording violations taking place. The process of monitoring should involve national human rights structures, social partners, relevant NGOs and housing rights advocacy agencies.