

# **BINDING OBLIGATIONS RELATED TO HOUSING FROM EUROPEAN AND INTERNATIONAL CASE-LAW**



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**W**e need to refer to the current context of health and social crisis before speaking about binding obligations. The health crisis starting in 2020 has shown the fundamental right nature of the right to housing, essential for human dignity, on which many other rights depend, such as the rights to health, safety or privacy and family life.

Access to adequate and affordable housing for all is becoming a real test of the economic, social, and environmental sustainability of the European Union. In fact, even before the pandemic, the housing crisis was raging across Europe and more than 700,000 are on the streets or in emergency shelters<sup>1</sup>. The health crisis in 2020 acts as an indicator of a pre-existing housing crisis.

Despite the huge efforts made by public authorities to end homelessness and evictions, improve slums, increase tenant protection from unaffordable rent prices, the housing crisis and its effects have not been effectively tackled and they may become even more pronounced.

### **What are the obligations that states must fulfil according to international human rights law?**

Positive obligations in human rights law refer to the obligation of a state to take measures to ensure effective access to a fundamental right. Social rights very often imply an obligation for the state to act, by promoting the conditions necessary for their effectiveness.

In this document, we would like to offer a summary of the obligations public authorities have to fulfil to effectively implement the right to housing as well as other related fundamental rights.

Positive obligations under International Human Rights Law cover economic social and cultural rights as well as civil and political rights issues. Indeed, the interdependence and complementarity of human rights are well established. The right to adequate housing obviously implies protection against eviction and forced displacement, for example, just as its violation can affect people's lives.

The right to housing exists in several human rights treaties, but its scope and precise content have been defined more concretely by Jurisprudence:

- One can derive a right to housing from the right to an adequate standard of living which is recognised in article 11 of the **International Covenant on Economic, Social and Cultural Rights of the UN** (ICESCR), and further explained in the General Comments 4 and 7 of the UN Committee on Economic, Social and Cultural Rights. They provide specific details regarding the different dimensions of the right to housing.
- Although the right to housing is not explicitly included in the **European Convention on Human Rights** (ECHR), it is enshrined in numerous articles relevant in the fight against homelessness and housing exclusion such as Article 8, the right to

<sup>1</sup> Fifth Overview of Housing Exclusion in Europe 2020. FEANTSA and Abbe Pierre Foundation, July 2020: <https://www.feantsa.org/en/report/2020/07/23/fifth-overview-of-housing-exclusion-in-europe-2020?bcParent=27>

# INTRODUCTION

family and private life and protection of the home; Article 6, the right to due process in the case of eviction; Article 3, the right to be protected against inhuman and degrading treatment; Article 2, the right to life; and Article 14, the right to protection against discrimination. The right to housing is also grounded in the right to property (Article 1, protocol 1).

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

- **The EU Charter of Fundamental Rights** of the European Union (CFREU) does not create stand-alone housing rights, but it does create binding obligations on EU institutions, acting within their competencies and mandates, to respect and promote the housing rights of people in Europe. The Charter establishes the right to social and housing assistance in article 34.3. Several articles of the EU Charter echo the terms of equivalent articles in other treaties listed above. Interpretation of the provisions of the EU Charter is regulated by the 'Explanations', which make clear

references to the Council of Europe's human rights instruments and interpretations.

These legal norms and the case law make up a coherent corpus of jurisprudence specifying the obligations imposed on public authorities at national, regional, and local levels to progressively achieve the right to housing. You will find in this document a selection of relevant rulings of the European Court of Human Rights (ECtHR), and the case law of the European Committee of Social Rights (ECSR).<sup>2</sup>

Since 2013, the **Optional Protocol to the International Covenant on Economic, Social and Cultural Rights** (OP-ICESCR) allowed victims of violations of economic, social, or cultural rights to present complaints at international level. We have included in this version, the most relevant views of the Committee on Economic, Cultural and Social Rights (CESCR) in respect to the right to housing.

The effectiveness of international law in different countries depends on the system that regulates the relationship between national and international law. In monist legal systems, international law is considered part of the internal legal order while in a dualist legal system, international law stands apart from national law, and to have any effect on rights and obligations at the national level, international law needs domestic implementation.<sup>3</sup>

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<sup>2</sup> Our update in relation to the it was done thanks to the Digest of the case law of the European Committee of Social Rights, Strasbourg, France December 2018: <https://www.coe.int/en/web/european-social-charter/-/new-version-of-the-digest-of-the-case-law-of-the-european-committee-of-social-rights> (page 225)

<sup>3</sup> Instruments for Advocacy and Strategic Litigation on Housing Rights in Europe: <http://housingrightswatch.org/news/instruments-advocacy-and-strategic-litigation-housing-rights-europe>

The various decisions and judgments in the present document are organized by theme. It has been conceived as a tool for practitioners and as an advocacy tool on housing rights and housing exclusion for other non-legal actors. We wanted to offer professionals a guide where they could find argumentation for their domestic litigation and advocacy. In addition to this, positive obligations from European and international case law can be used to advocate for the realization of the right to housing in many creative ways.

Since the publication of the previous version of this document in 2016, **the European Pillar of Social Rights (EPSR)** unveiled as a real opportunity for the effective implementation of social rights at EU level. The Pillar is in line with the emergence of housing exclusion and homelessness as key social issues at EU level over the past 20 years. It implies the need to balance economic and social imperatives in housing systems. Principle 19 of the Pillar draws on Article 34 of the Charter of Fundamental Rights, covering the right to housing assistance but it goes considerably further than Article 34 to include social housing, protection against eviction, support for low- and medium-income households and the right to shelter and social services for homeless people. It can be argued that establishing a more clearly rights-based approach could strengthen the housing priority of the Pillar. International human

rights treaties, as well as the emerging body of European and international case law, would be useful references for this.

The meaning of adequate housing has been defined by International Human Rights Law (IHRL) and it can help to substantiate the housing priority in the EPSR. Focusing on the right to adequate housing would provide a coherent point of departure from which to elaborate policies for implementation, taking account of different contexts. Using international and European jurisprudence on housing rights to develop benchmarks must be central to implementing the EPSR. Unlike vague policy principles, the growing body of case law on housing rights contained in this document could be used to help elaborate benchmarks to measure Members states' performance on housing.

In terms of measuring progress, the European Committee of Social Rights offers an interesting approach to the realization of social rights which may be costly to implement, such as housing rights: *“When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State party must take measures that allow 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.”*<sup>4</sup>

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4 Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53

# SHAPING OF PUBLIC POLICY AND ITS EVALUATION

KEY WORDS	POSITIVE OBLIGATIONS ON STATES	INSTITUTION	SOURCE	LEGAL BASIS	REFLECTION IN EU LAW
<b>Provision of necessary means to guarantee the right to housing</b>	The State must devote the necessary resources to guaranteeing the right to housing in legislation and cannot use a problem of resources as a reason for not honouring a debt based on a court decision.	ECtHR	Tchokontio Happi v. France, no 65829/12, 9 April 2015	Art. 6 ECHR	Art. 47 CFREU
<b>Adequate resources and procedures</b>	States must adopt the necessary legal, financial, and operational means of ensuring steady progress towards achieving the goals laid down by the ESC.	ECSR	ATD Fourth World v. France, No. 33/2006, 5 December 2007	Art. 31 RESC	Art. 7 CFREU Art. 34.3 CFREU
<b>Obligation of means</b>	The rights recognized in the Social Charter must take a practical and effective form (§32).	ECSR	International Commission of Jurists v. Portugal, Complaint No. 1/1998, 9 September 1999	Art. 7-1 ESC	Art. 32 CFREU
<b>Reliable data for effectiveness and evaluation of policies</b>	States must maintain meaningful statistics on needs, resources, and results. States must undertake regular reviews of the impact of the strategies adopted.	ECSR	FEANTSA v. France, No. 39/2006, 5 December 2007 ATD Fourth World v. France, No. 33/2006, 5 December 2007	Art. 30 RESC Art. 31 RESC	Art. 7 CFREU Art. 34.3 CFREU
<b>Legal protection of the right to housing</b>	States must take the legal and practical measures that are necessary for the effective protection of the right to housing.	ECSR	European Roma Rights Centre (ERRC) v. Bulgaria, No. 31/2005, 18 October 2006	Art.31 RESC	Art. 7 CFREU (cf. CJEU Kusionova)
<b>Measurable progress and reasonable timeframe</b>	States must establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage.	ECSR	ATD Fourth World v. France, No. 33/2006, 5 December 2007 FEANTSA v. France, No. 39/2006, 5 December 2007	Art. 31 RESC	Art. 7 CFREU Art. 34.3 CFREU
<b>Priority to vulnerable groups</b>	States must pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.	ECSR	ATD Fourth World v. France, No. 33/2006, 5 December 2007 FEANTSA v. France, No. 39/2006, 5 December 2007	Art. 31 RESC Art. E RESC	Art. 7 CFREU Art. 34.3 CFREU Art. 21 CFREU
	States' measures must specifically allow vulnerable groups to access housing, i.e. people on low incomes, unemployed people, lone parent families, young people, and people with disabilities (particularly people with mental illness).	ECSR	Conclusions Italy, 2003, 24 January 2004	Art. 31 RESC Art. E RESC	Art. 7 CFREU Art. 34.3 CFREU

# SHAPING OF PUBLIC POLICY AND ITS EVALUATION

KEY WORDS	POSITIVE OBLIGATIONS ON STATES	INSTITUTION	SOURCE	LEGAL BASIS	REFLECTION IN EU LAW
<b>States Accountability</b>	The decentralisation of policies to local or regional authorities must not lead to a watering-down of responsibilities. States must put in place monitoring systems to make sure the objectives are complied with.	ECSR	ERRC v. Italy, No. 27/2004, 07 December 2005  FEANTSA v. France, No. 39/2006, 5 December 2007  FEANTSA v. Netherlands, No. 86/2012, 2 July 2014	Art. 30 RESC Art. 31 RESC	Art. 7 CFREU Art. 34.3 CFREU
<b>Spatial segregation</b>	Spatial segregation, the social exclusion of Roma in the enjoyment of the right to housing, is forbidden.	ECSR	ERRC v. Portugal, No. 61/2010, 30 June 2011	Art. 31 RESC Art. E RESC	Art. 7 CFREU Art. 21 CFREU Art. 34.3 CFREU
<b>Social policy measures must be accessible</b>	Roma people and Travellers have the right not to be discriminated against in the allocation of housing benefit and in the waiting times for access to adequate and affordable housing.	ECSR	ATD Fourth World v. France, No. 33/2006, 5 December 2007	Art. 30 RESC Art. 31 RESC Art. E RESC	Art. 7 CFREU Art. 34.3 CFREU
<b>No restriction of rights as a result of public pressure</b>	Cancelling a rehousing programme for Roma people from a slum following a petition by residents is discriminatory.	UN, CERD	L. R. and others v. Slovakia, Communication No. 31/2003. CERD/C/66/D/31/2003, 10 mars 2005	Art. 2, 5, 6 ICERD	Art. 34.3 CFREU Art. 7 CFREU Art. 21 CFREU Directive 2000/43/EC

# HOUSING OF ADEQUATE QUALITY AND A HEALTHY ENVIRONMENT

KEY WORDS	POSITIVE OBLIGATIONS ON STATES	INSTITUTION	SOURCE	LEGAL BASIS	REFLECTION IN EU LAW
<b>Protection from dangerous substances</b>	States and all public authorities are responsible for land-use planning and for issuing building permits must ensure that rules on safe distances between residential areas and facilities using dangerous substances and representing serious risks of accident are complied with.	CJEU	Franz Mücksch, C-53/10. 15 September 2011	Art. 192 TFEU	Directive 96/82/EC on the control of major-accident hazards involving dangerous substances.
<b>Protection from polluting industries</b>	States must satisfactorily evaluate the risks represented by industry activity near residential areas. Regulate permits, development, safety, and evaluation of industrial activity, in particular when it constitutes a danger to the environment and human health. Take appropriate measures to pre-empt and reduce the incidence of polluting industrial disasters. Identify steps towards protecting the rights of victims of industrial pollution. This protection applies also to illegal sites.	ECtHR ECtHR	López Ostra v. Spain, no. 16798/90, 9 December 1994  Öneryıldız v. Turkey, no 48939/99, 30 November 2004	Art. 8 ECHR Art. 1 Protocol 1 ECHR	Art.7 CFREU Art. 7 CFREU
<b>Housing of an adequate standard</b>	States must guarantee the housing of an adequate standard for all.  Adequate supply of housing for families must take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity)." (§106) All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating, and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services. (§118)	ECSR  ECSR	Conclusions France, 2003, 23 January 2004  International Federation for Human rights (FIDH) v. Ireland, No. 110/2014, 12 May 2017	Art. 31 RESC  Art. 16 RESC	Art. 34.3 CFREU  Art. 33 CFREU Art. 34.3 CFREU
<b>Standards for adequate housing apply to all dwellings</b>	The notion of adequate housing applies to new constructions, but also gradually to the existing housing stock. It applies to housing available for rent as well as to owner occupied housing.	ECSR	Conclusions France, 2003, 23 January 2004	Art. 31 RESC	Art. 34.3 CFREU Art. 7 CFREU
<b>Decent housing health and safety standards</b>	The state must guarantee adequate housing, including access to water, heating, rubbish disposal, sanitary facilities, electricity, etc. Specific risk factors, such as lead or asbestos, must be controlled.	ECSR	Conclusions France, 2003, 23 January 2004	Art. 31 RESC	Art. 34.3 CFREU Art. 7 CFREU

# HOUSING OF ADEQUATE QUALITY AND A HEALTHY ENVIRONMENT

KEY WORDS	POSITIVE OBLIGATIONS ON STATES	INSTITUTION	SOURCE	LEGAL BASIS	REFLECTION IN EU LAW
<b>Housing size adapted to family structure</b>	States must guarantee that housing is not overcrowded, is of adequate size for the number of family members and for the structure of the household that lives there.	ECSR	Conclusions France, 2003, 23 January 2004	Art. 31 RESC	Art. 34.3 CFREU Art. 7 CFREU
<b>Continuous access to basic services</b>	States must prevent the interruption of access to essential services, e.g. water, electricity, telephone.	ECSR	Conclusions France, 2003, 23 January 2004	Art. 31 RESC	Art. 34.3 CFREU Art. 7 CFREU
<b>State support for renovation work</b>	In order to meet social needs, States can introduce taxation measures that encourage energy-saving renovation work, provided that the group benefiting from the measure is clearly defined (on basis of income, age, or other criteria) and the most excluded groups are the first to benefit.	CJEU	Commission v. United Kingdom of Great Britain and Northern Ireland, 4 June 2015	Art. 93 ECT Art. 113 TFEU	Directive 2006/112/EC on the common system of value added tax.

# AFFORDABILITY OF HOUSING

KEY WORDS	POSITIVE OBLIGATIONS ON STATES	INSTITUTION	SOURCE	LEGAL BASIS	REFLECTION IN EU LAW
<b>Provision of sufficient housing</b>	The State must take the necessary measures to ensure the construction of enough housing, especially social housing.	ECSR	Conclusions Sweden, 2003, 23 January 2004	Art. 31 RESC	Art. 34.3 CFREU Art. 7 CFREU
<b>Affordable cost for those on lowest income</b>	The State must not only ensure that the average cost of housing corresponds to average income, but it must also make sure the burden on the most disadvantaged households is compatible with their resources.	ECSR	FEANTSA v. Slovenia, No 53/2008, 8 September 2009	Art. 31 RESC Art. E RESC	Art. 34.3 CFREU Art. 7 CFREU Art. 21 CDFUE
<b>Vulnerable households as priority groups for social housing</b>	Social housing must particularly target the most vulnerable households.	ECSR	FEANTSA v. France, No. 39/2006, 5 December 2007	Art. 31 RESC Art. E RESC	Art. 34.3 CFREU Art. 7 CFREU Art. 21 CFREU
<b>Reasonable waiting periods for social housing (and possibility of appeal)</b>	The State must take measures to reduce too long waiting times and put in place an appeals procedure in case of excessive waiting times.	ECSR	FEANTSA v. France, No. 39/2006, 5 December 2007	Art. 31 RESC	Art. 34.3 CFREU Art. 7 CFREU
<b>Individual housing benefit</b>	The State must provide housing benefit for people on low incomes and disadvantaged population groups. Individual housing benefits should make the cost of housing affordable (including electricity, taxes, etc.)	ECSR	Conclusions Sweden, 2003, 23 January 2004  Conclusions France, 2011, 9 December 2011	Art. 31 RESC Art. E RESC Art. 13.1 RESC	Art. 34.3 CFREU Art. 7 CFREU Art. 21 CFREU
<b>Housing benefits non-discriminatory</b>	Legislative changes affecting the recipients of housing benefits must consider specific situations to avoid disproportionate discriminative effects.	ECtHR	J.D. and A. v. the United Kingdom, (n° 32949/17 & 34614/17), 24 October 2019	Art. 14 ECHR Art. 1 Protocol 1	Art. 34.3 CFREU Art. 7 CFREU
<b>No restrictions on access to housing benefit for rights holders</b>	Housing benefit is an individual right: all households that are eligible for it must receive it effectively; appeals procedures must exist in case that benefits are refused.	ECSR	Conclusions Sweden, 2005, 30 November 2005	Art. 30 RESC Art. 31 RESC	Art. 34.3 CFREU Art. 7 CFREU

# APPEAL AND LEGAL PROTECTION OF THE RIGHT TO HOUSING

KEY WORDS	POSITIVE OBLIGATIONS ON STATES	INSTITUTION	SOURCE	LEGAL BASIS	REFLECTION IN EU LAW
<b>Legal proceedings in a reasonable timeframe</b>	10 years for a court decision following an appeal, which allows the delivery of financial compensation for the demolition of housing, is too long.	ECtHR	Moldovan and Others v. Romania (no. 2), no. 41138/98, 30 November 2005	Art. 6 ECHR Art. 8 ECHR	Art. 47 CFREU Art. 34.3 CFREU Art. 7 CFREU
<b>Public authorities must obey court decisions requiring the provision of housing</b>	The lack of available stock is not a valid excuse for not obeying the judge's order.	ECtHR	Tchokontio Happi v. France, no. 65829/12, 9 April 2015	Art. 6 ECHR	Art. 47 CFREU
<b>Legal protection of residents in case of illegal eviction</b>	The effectiveness of the right to housing requires adequate procedural safeguards. Occupiers must have access to affordable and impartial judicial or other remedies. Their operation must be budgeted for and affordable.	ECSR	Conclusions France, 2003, 23 January 2004  ERRC v. Bulgaria, No. 31/2005, 18 October 2006	Art. 30 RESC Art. 31 RESC	Art. 34.3 CFREU Art. 7 CFREU
	The appeal procedure must be effective.	ECSR	FEANTSA v. France, No. 39/2006, 5 December 2007	Art. 30 RESC Art. 31 RESC	Art. 34.3 CFREU Art. 7 CFREU

# STATUTORY PROTECTION OF THE HOME

KEY WORDS	POSITIVE OBLIGATIONS ON STATES	INSTITUTION	SOURCE	LEGAL BASIS	REFLECTION IN EU LAW
<b>Protection for displaced people</b>	States must ensure tenants and owners have the possibility to be in full possession of dwellings they have a legal right to occupy (Following the Turkish invasion of north Cyprus rendering it impossible for Greek Cypriots to return to their homes). Also applies to Karabakh, between Armenians and Azeris.	ECtHR	Cyprus v. Turkey, no. 25781/94, 12 May 2014 Chiragov and Others v. Armenia [GC], no. 13216/05, 16 June 2015	Art. 8 ECHR Art. 13 ECHR Art. 1 prot.1 ECHR	Art. 7 CFREU Art. 45 CFREU Art. 17 CFREU
<b>Protection in the event of prolonged absence from the home</b>	The legal system must quickly and fully apply the right of the people to accommodation, even when the occupant is absent (for example someone spending time carrying out research abroad and their partner being absent because of a prolonged period of hospitalisation).	ECtHR	Novoseletskiy v. Ukraine, no. 47148/99, 22 May 2005	Art. 8 ECHR	Art. 7 CFREU
<b>Respect for the home</b>	A state agent must have a prior approval of the occupant before a visit to his/ her home, or failing that, a judicial authorization.	ECtHR	Halabi v. France, no. 66554/14, 16 May 2019	Art. 8 ECHR	Art. 7 CFREU
<b>No legal protection in instances of domestic violence: Physical and psychological integrity are part of habitability of a dwelling</b>	The legal system cannot convict a woman who has been subjected to repeated violence for changing the lock on the house door (even if she has refused to go to a women's refuge because one of her children has a severe brain injury).	CEDAW	A.T. v. Hungary, Communication No. 2/2003, CEDAW/C/32/D/2/2003, 26 January 2005	Art. 2(a), 2(b), 2(e), article 5(a), combined with Art. 16. CEDAW	Art 3, 4, 6, 7, 23 CFREU Recommendation n° 84/635/EEC on the promotion of positive action for women

# EVICCTIONS

KEY WORDS	POSITIVE OBLIGATIONS ON STATES	INSTITUTION	SOURCE	LEGAL BASIS	REFLECTION IN EU LAW
<b>Principle of proportionality in the light of risk of homelessness</b>	Particular attention must be paid to consequences of an eviction before deciding to proceed, when it could cause the persons affected to become homeless.	ECtHR	Winterstein and Others v. France, no. 27013/07, 17 January 2014	Art. 8 ECHR Art.1 prot.1 C	Art. 34.3 CFREU Art. 7 CFREU Art. 17 CFREU
<b>Illegal occupation</b>	Illegal occupation can lead to eviction but without too broad an understanding of the concept and respecting procedures upholding the rights of the people affected.	ECSR	ERRC v. Greece, No. 15/2003, 8 December 2004	Art. 31 RESC	Art. 34.3 CFREU Art. 7 CFREU
<b>Keep down the number of evictions</b>	States must put in place measures designed to restrict the number of evictions (whatever the reasons for them and whatever the occupancy status).	ECSR	Conclusions Sweden, 2003, 23 January 2004	Art. 31 RESC	Art. 34.3 CFREU Art. 7 CFREU
<b>Protection against eviction</b>	A dwelling must come with a legal guarantee of security of tenure.	ECSR	Conclusions France, 2003, 23 January 2004	Art. 31 RESC	Art.34.3 CFREU Art. 7 CFREU
<b>Protective legal framework</b>	Legal protection for persons threatened with eviction must be prescribed by law and include: <ul style="list-style-type: none"> <li>■ an obligation to consult the affected parties in order to find alternative solutions.</li> <li>■ an obligation to fix a reasonable notice period.</li> <li>■ a prohibition to carry out evictions at night or during winter.</li> <li>■ access to legal remedies.</li> <li>■ access to legal aid.</li> <li>■ compensation in case of illegal evictions.</li> </ul>	ECSR	ERRC v. Greece, No. 15/2003, 8 December 2004	Art. 30 RESC Art. 31 RESC Art. E RESC	Art. 34.3 CFREU Art. 7 CFREU Art. 21 CFREU
<b>Legal protection in law</b>	An eviction must be provided for by law and carried out as a last resort, the persons concerned must have prior access to an effective judicial remedy in order to ascertain that the measure in question is duly justified.	CESCR	M.B.D. and others v. Spain, Communication No. 5/2015, 5.07.2017, CESCR	Art. 11(1) ICESCR	Art. 34.3 CFREU Art. 7 CFREU Art. 21 CFREU
<b>Power of judges</b>	Judges must be able to suspend or annul eviction if the rights of occupants are not respected and must take provisional measures in case of an illegal mortgage seizure.	CJEU	Monika Kusionova v. SMART Capital A.S., C-34/13, 20 September 2014	Directive 93/13/CEE Art. 100 A ECT	Arts. 7, 38, 47 CFREU.
<b>No evictions at night or in winter</b>	Evictions must be outlawed at night and in winter.	ECSR	ERRC v. Bulgaria, No. 31/2005, 18 October 2006	Art.12 RESC Art. 31 RESC	Art. 34.2 CFREU Art. 34.3 CFREU Art. 7 CFREU

# EVICCTIONS

KEY WORDS	POSITIVE OBLIGATIONS ON STATES	INSTITUTION	SOURCE	LEGAL BASIS	REFLECTION IN EU LAW
<b>Rehousing or financial assistance</b>	When eviction is justified in the public interest, States must rehouse the evicted households or provide them with financial assistance.	ECSR	ERRC v. Bulgaria, No. 31/2005, 18 October 2006	Art. 31 RESC	Art. 34.3 CFREU Art. 7 CFREU
<b>Alternative housing must be provided</b>	Take all necessary measures, to the maximum of available resources, to guarantee alternative housing in case of an eviction.	CESCR	M.B.D. and others v. Spain, Communication No. 5/2015, 5.07.2017	Art. 11(1) ICESCR	Art. 34.3 CFREU Art. 7 CFREU Art. 21 CFREU
<b>Notice period preceding the eviction</b>	A notice period of 2 months before the actual eviction is reasonable, but a notice period of minimum 2 weeks before an eviction is too short.	ECSR	Conclusion the Netherlands, 2015, 4 December 2015	Art. 31.2 RESC	Art. 34.3 CFREU

# MORTGAGE CONTRACTS: UNFAIR TERMS AND REPOSSESSION

KEY WORDS	POSITIVE OBLIGATIONS ON STATES	INSTITUTION	SOURCE	LEGAL BASIS	REFLECTION IN EU LAW
<b>Unfair terms in contracts must be raised automatically by the judge</b>	The State must make Directive 93/13/EEC an imperative in its domestic legal order. The judge must raise as a matter of course grounds of public order and strike terms from the contract deemed unfair.	CJEU	Asbeek Brusse v. Jahani, C-488/11, 30 May 2013,	93/13/EEC Directive on unfair terms in consumer contracts	Art. 100 A ECT Art. 122 TFEU
<b>Power of judges</b>	The State must allow judges to: assess, in the event of a mortgage seizure procedure, the unfairness of contract terms. to adopt temporary measures to ensure the full effectiveness of the final measure, i.e. to suspend the procedure if needed.	CJEU	Banco Popular Español SA, C-537/12 and C-116/13, 14 November 2013	93/13/EEC Directive on unfair terms in consumer contracts	Art. 100 A ECT Art. 122 TFEU
	Judges must be able to suspend or annul eviction if the rights of occupants are not respected and must take provisional measures in case of an illegal mortgage seizure.	CJEU	Monika Kusionova v. SMART Capital A.S., C-34/13, 10 September 2014	Art. 7, 38, 47 CFREU	Art. 100 A ECT Art. 122 TFEU
<b>No eviction without final court decision</b>	The State must put in place a system that allows effective protection of consumers against the risks of eviction from their mortgaged housing until a final court decision has been reached.	CJEU	Mohamed Aziz v. Catalonia, C415/11, 14 March 2013	93/13/EEC Directive on unfair terms in consumer contracts	Art. 100 A ECT Art. 122 TFEU

# HOMELESSNESS AND THE RIGHT TO SHELTER

## HOMELESSNESS

KEY WORDS	POSITIVE OBLIGATIONS ON STATES	INSTITUTION	SOURCE	LEGAL BASIS	REFLECTION IN EU LAW
<b>Definition</b>	Homelessness is defined as not legally having a dwelling or another form of adequate shelter at their disposal.	ECSR	Conclusions Italy, 2003, 23 January 2004	Art. 31.2 RESC	Art. 34.3 CFREU Art. 7 CFREU
<b>Prevention</b>	No eviction must take place if the public authority has not looked for alternative methods for rehousing: legalisation of informal habitation, connection to standard utilities networks, and help with rehousing if eviction proves necessary.	ECtHR	Yordanova and Others v. Bulgaria, no. 25446/06, 24 September 2012	Art. 8 ECHR	Art. 7 CFREU
<b>Principle of proportionality</b>	Particular attention must be paid to the consequences of an eviction; notably whether an eviction could cause the persons affected to become homeless.	ECtHR	Winterstein and Others v. France, no. 27013/07, 17 October 2013	Art. 3 ECHR Art. 8 ECHR	Art. 4 CFREU Art. 7 CFREU
<b>Principle of non-abandonment</b>	The authorities cannot leave people to live in deplorable conditions. A lack of reaction to the situation of people forced to sleep in hen houses, pigsties and open buildings exposed to the cold is a violation of the Convention.	ECtHR	Moldovan and Others v. Romania (no. 2), no. 41138/98  V.M. v. Belgium, no. 236/14	Art.3 ECHR Art. 8 ECHR  Art. 3 ECHR Art. 13 ECHR	Art. 4 CFREU Art. 7 CFREU  Art. 4 CFREU Art. 47 CFREU
<b>Specific measures for vulnerable people Prevention of homelessness</b>	States must take action to prevent vulnerable people from becoming homeless. In addition to a housing policy for all disadvantaged groups of people to ensure access to social housing.	ECSR	Conclusions 2005, Lithuania, 30 November 2005  Conf. of European Churches (CEC) v. the Netherlands, No. 90/2013, 1 July 2014	Art. 31.3 RESC Art. 12 RESC Art. 30 RESC	Art. 34.2 CFREU Art. 34.3 CFREU Art. 7 CFREU
<b>Effects of Town planning.</b>	Town planning carried out in the public interest (stations, roads...) ensure individuals do not become homeless.	ECSR	ERRC v. Bulgaria, No. 31/2005, 18 October 2006	Art. 31 RESC	Art. 4 CFREU Art. 7 CFREU
<b>Ensure alternative housing to people left homeless as a result of an eviction</b>	Evictions should not result in individuals becoming homeless. The State party must ensure that adequate alternative housing is provided to those left homeless as a result of an eviction, irrespective of whether the eviction is initiated by its authorities or by private entities (...).	CESCR	López Albán v. Spain, Communication No. 37/2018, 11 October 2019	Art. 11 (1) ICESCR	Art. 34.3 CFREU Art. 7 CFREU

# HOMELESSNESS AND THE RIGHT TO SHELTER

## RIGHT TO SHELTER/ EMERGENCY ACCOMMODATION

KEY WORDS	POSITIVE OBLIGATIONS ON STATES	INSTITUTION	SOURCE	LEGAL BASIS	REFLECTION IN EU LAW
<b>Eligibility for emergency accommodation</b>	There can be no restrictions on access to emergency social services (no criteria requiring local connection or residence permits).	ECSR	FEANTSA v. the Netherlands, No. 86/2012, 2 July 2014	Art. 31 RESC Art. 13 CESR	Art.4 CFREU Art.7 CFREU
<b>Provision of adequate shelter to all children.</b>	States must ensure shelter for children with irregular immigration status present on their territory for as long as they are under the states' jurisdiction.	ECSR	Defence for Children International (DCI) v. Netherlands, 2009, 20 October 2009  Conference of European Churches (CEC) v. the Netherlands, 1 July 2014  FEANTSA v. the Netherlands, No. 86/2012, 2 July 2014	Art. 31.2 RESC	Art. 4 CFREU Art.7 CFREU
<b>Emergency accommodation for children with family</b>	States must provide emergency accommodation to children evicted from the settlement and their families.	ECTHR	P.H. and Others v. Italy, No 25838/ 2019, 20 May 2019	Not communicated by the Court	Art. 34.3 CFREU
<b>Regulation of emergency shelter</b>	The capacity of shelter must be sufficient to meet needs.	ECSR	FEANTSA v. France, No. 39/2006, 5 December 2007	Art. 31 RESC	Art. 4 CFREU Art. 7 CFREU
<b>Minimum quality criteria for emergency support</b>	Services providing temporary responses to emergency situations must respect safety, health and hygiene standards and must have essential comfort facilities such as access to running water and sufficient heating and lighting. The surrounding area must be safe.	ECSR	Defence for Children International (DCI) v. Netherlands, 20 October 2009  Conference of European Churches (CEC) v. the Netherlands, 2014, 1 July 2014	Art.12 RESC Art. 31 RESC	Art. 34.2 CFREU Art. 4 CFREU Art. 7 CFREU
<b>Emergency accommodation services must preserve dignity</b>	Living conditions in emergency structures must respect people's dignity.	ECSR	FEANTSA v. France, No. 39/2006, 5 December 2007	Art. 31 RESC	Art. 4 CFREU Art. 7 CFREU
<b>The temporary supply of shelter, cannot be considered satisfactory</b>	Individuals who are homeless should be provided with adequate housing within a reasonable period. Measures should be taken to help them overcome their difficulties and to prevent them from returning to a situation of homelessness.	ECSR	Conclusions Italy, 2003  Conclusions 2015, Statement of Interpretation, 4 December 2015	Art. 31 RESC	Art.4 CFREU Art.7 CFREU
<b>Prohibition of eviction from shelters</b>	Eviction from shelters without the provision of alternative accommodation must be prohibited.	ECSR	Conclusions 2015, Statement of Interpretation, 4 December 2015	Art. 31.2 RESC	Art. 34.3 CFREU
<b>Provision of halting sites</b>	States must specifically provide sufficient halting sites for travellers and with appropriate facilities.	ECSR	ERRC v. France, No. 51/2008, 19 October 2009	Art. 31 RESC Art. E RESC	Art. 4 CFREU Art. 7 CFREU Art. 21 CFREU

# DISADVANTAGED GROUPS AND VULNERABLE MINORITIES

## ROMA PEOPLE AND TRAVELERS

KEY WORDS	POSITIVE OBLIGATIONS ON STATES	INSTITUTION	SOURCE	LEGAL BASIS	REFLECTION IN EU LAW
<b>Minority lifestyles deserve specific attention</b>	Special consideration should be given to the needs and lifestyle of travellers both in the relevant regulatory planning framework and in reaching decisions in particular cases. There is a positive obligation imposed on the contracting states to facilitate the Roma people way of life § 96.	ECtHR	Chapman v. United Kingdom, no. 27238/95, 18 January 2001	Art. 8 ECHR	Art. 7 CFREU
<b>Positive measures in the field of housing for Roma and Travellers</b>	Special consideration should be given to Roma people and Travelers: their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases.	ECSR	ATD Quart-Monde v. France, No. 33/2006, 5 December 2007	Art. 31 RESC Art. E RESC	Art. 4 CFREU Art. 7 CFREU Art. 21 CFREU
<b>Specific facilities</b>	Specific and adapted measures must be put in place for Roma People and Travelers.	ECSR	COHRE v. Italy, 2010, No: 58/2009, 25 June 2010	Art. 31 CESR	Art. 4 CFREU Art. 7 CFREU Art. 21 CFREU
<b>Roma and Travellers are vulnerable groups &amp; must benefit from measures that are in line with their way of life and their local attachments</b>	Obligation to provide alternative solutions in the event of eviction of Roma people and Travellers, taking into account their being part of a vulnerable minority. These measures must respect community and spatial attachments.	ECtHR	Winterstein and Others v. France, no. 27013/07, 17 January 2014	Art. 31 RESC Art. E RESC	Art. 7 CFREU Art. 34.3 CFREU Art. 21 CFREU
<b>No 'passive' discrimination</b>	Not taking in consideration the grievances of a group of people can amount to discrimination.	ECtHR	Moldovan and Others v. Romania (no. 2), no. 41138/98, 30 November 2005	Art. 6 ECHR Art. 8 ECHR Art. 14 ECHR	Art. 7, 47 CFREU Anti-Discrimination Directive 2000/43/EC
<b>Assessment of proportionality in an eviction</b>	Roma people constitute a disadvantaged and vulnerable minority and states must take it into account their special needs in the proportionality assessment (when they envisage solutions and if eviction is necessary, when they decide on its date, its modalities and, if possible, rehousing offers).	ECtHR	Hirtu and Others v. France, no. 24720/13, 22 April 2014	Art. 8 ECHR	Art. 7 CFREU

# DISADVANTAGED GROUPS AND VULNERABLE MINORITIES

## MIGRANTS AND ASYLUM SEEKERS

KEY WORDS	POSITIVE OBLIGATIONS ON STATES	INSTITUTION	SOURCE	LEGAL BASIS	REFLECTION IN EU LAW
<b>Obligation to house asylum seekers</b>	States must provide minimum reception conditions for asylum seekers, be they accommodation or financial assistance, in order to allow asylum seekers to access housing in the private sector if necessary.	CJEU	FEDASIL v. Saciri Family, C-79/13, 27 February 2014	Asylum Directive 2013/32/EU Directive 2003/9/EC (Art. 63 1) ECT, (Art. 78 TFEU)	
<b>Provision of minimum material conditions to asylum seekers</b>	States should provide decent material conditions to impoverished asylum-seekers, bearing in mind their vulnerability: access to sanitary facilities, essential needs, prospects that the person's situation may improve.	ECtHR	M.S.S. v. Belgium & Greece, no. 30696/09, 21 January 2011	Art. 3 ECHR	Art. 4 CFREU
<b>Adequate Living conditions of homeless asylum applicants must be ensured</b>	States must provide access to sanitary facilities or other material support for asylum seekers without time delay. Reception conditions respectful of human dignity are a right for all asylum seekers, regardless of age or gender, because of the vulnerability inherent in their status. The context of a "migration crisis" cannot exempt a State from its obligations.	ECtHR	N.H. v. France, no 28820/13, 16 January 2014	Art. 3 ECHR	Art. 4 CFREU
<b>Obligation of protection and care for unaccompanied foreign children</b>	Implement measures for the protection and care of unaccompanied foreign minors who have been left in deprivation ("unacceptably precarious conditions").	ECtHR	Khan v. France, no 12267/16, 28 February 2019	Art. 3 ECHR	Art. 4 CFREU
	Obligation to care for an unaccompanied minor, even if not yet recognised as a minor by the responsible department - temporary care is mandatory.	ECtHR (interim measures Rule 39)	S.M.K c. France, no 14356/19, 28 March 2019	Not communicated by the Court	Art. 4 CFREU
	Obligation to care for a minor (Housing and food) until the end of the lockdown.	ECtHR (interim measures Rule 39)	Camara. c. France, no 15457/20, 31 mars 2020	Not communicated by the Court	Art. 4 CFREU
<b>Provision of Emergency accommodation for a family of asylum seekers</b>	The State should provide emergency accommodation to the homeless asylum-seeker families concerned.	ECtHR	M. K. v. France, no. 34349/18, 24 July 2021	Art. 3 ECHR	Art. 4 CFREU Art. 34.3 CFREU
<b>No refusal to renew residence permits because of housing conditions</b>	States cannot use the housing conditions of an applicant as a justification to refuse renewal of their residence permit.	CJEU	CEC v. FRG, C-249/86, 18 May 1989		Art. 48, 49 TFEU Regulation n° 1612/68 on the free movement of workers

# DISADVANTAGED GROUPS AND VULNERABLE MINORITIES

KEY WORDS	POSITIVE OBLIGATIONS ON STATES	INSTITUTION	SOURCE	LEGAL BASIS	REFLECTION IN EU LAW
<b>No sanction should deprive of minimum material reception conditions</b>	States cannot impose a sanction consisting in the withdrawal (even temporary) of material reception conditions, relating to housing, food, or clothing, as it would prevent the asylum seeker to meet his/ her basic needs.	CJEU	Haqbin v. Federaal Agentschap voor de opvang van asielzoekers, Case C-233/18, 12 November 2019		Directive 2013/33/ EU on Reception Conditions. (Art. 20.4)
<b>Non-discrimination for European workers</b>	States have the same obligations towards the families of European workers as towards its own nationals in terms of housing conditions.	CJEU	CEC v. FRG, C-249/86. 18 May 1989	Art. 48, 49 TFEU. Regulation n° 1612/68 on the free movement of workers within the Community	
	...and must guarantee them equivalent conditions of access to housing (rented or owned).	CJEU	Commission v. Italy, C-63/86. 14 January 1988,	Arts. 45, 49, 56 TFEU.	
	States must recognise large family status for European nationals and the right to advantages for EU citizens, on the same terms as for nationals (family allowance, housing allowance, apart from optional aid).	CJEU	Commission v. Greece, C-185/96, 29 October 1998	Art. 48 & 59 TFEU.	
	States must give the same housing benefit to third country nationals with the status of long-term resident as to European citizens.	CJEU	Servet Kamberaj v. IPES, C-571/10, 24 April 2012	Art. 79 TFEU Directive 2003/109/EC on the status of third country nationals.	Art.34.3 CFREU
	A two-year residence requirement for eligibility for municipal housing is excessive and constitutes a discrimination against migrant workers and their families.	ECSR	Conclusions Norway, 2015, 4 December 2015	Art. 19.4 RESC Art. 31.1 RESC	
<b>Family reunification and requirements related to housing</b>	Restrictions to family reunifications in the form of requirements on the migrant to secure adequate or suitable accommodation to house his/her migrating family cannot be so restrictive as to make every family reunification impossible. The State can impose restrictions in a proportionate way and only to protect the interests of the family. Nevertheless, the States must not apply the rules in a general way as it would exclude the possibility to allow for derogations for certain categories of cases or to take account of personal circumstances.	ECSR	Conclusions 2015, Explanatory observations, 4 December 2015	Art. 19.6 RESC	

# COMMUNITY-BASED HOUSING | INFORMAL HOUSING | ATYPICAL HOUSING

KEY WORDS	POSITIVE OBLIGATIONS ON STATES	INSTITUTION	SOURCE	LEGAL BASIS	REFLECTION IN EU LAW
<b>Principle of proportionality in case of evictions</b>	A public authority cannot just evict without alternative solution a family from their housing, even if it is of poor quality, if the family has been living there for a long time and forms part of a family and community environment the family has chosen.	ECtHR	Yordanova and Others v. Bulgaria, no. 25446/06, 24 April 2012	Art. 8 ECHR	Art. 7 CFREU
<b>Recognition of informal housing and illegal occupation as a home: the facts go before the law</b>	A home is an independent concept: it exists when people have lived in the same place for a long time (between 5 and 30 years) and have developed sufficiently close and regular links with the caravans, huts, and bungalows in the place to allow them to be thought of as their home, regardless of whether their presence in the place was legitimate in the eyes of domestic law.	ECtHR	Winterstein and Others v. France, no. 27013/07, 17 January 2014	ECHR Art.1 protocol 1	Art. 17 CFREU
<b>Protection from hazardous activities, such as the operation of waste storage sites</b>	Public authorities are responsible for protecting the rights of victims against dangerous activities. This protection is valid also for illegal waste storage sites.	ECtHR	Önerilidiz v. Turkey, no 48939/99, 30 November 2004	ECHR Art.1 protocol 1	Art. 7 CFREU
<b>Secure the shelter for vulnerable groups</b>	An obligation to secure shelter to particularly vulnerable individuals stems from Art. 8 in exceptional cases for particularly vulnerable people.	ECtHR	Yordanova and Others v. Bulgaria, no. 25446/06, 24 April 2012	Art. 8 ECHR	Art. 7 CFREU
<b>No eviction if the public authority has been inactive for too long</b>	The absence of action on the part of the public authority for decades has allowed the people to develop close links with their neighbours and a community life.	ECtHR	Yordanova and Others v. Bulgaria, no. 25446/06, 24 April 2012	Art. 8 ECHR	Art. 7 CFREU
<b>Adapted procedures to deal with long-term settlements</b>	In situations where an entire community that has been present for a long time is involved, the usual, routine procedures for eviction and rehousing cannot be applied. The State cannot claim to respect the law if it does not take account of the specificities of the situation, even when the settlement is in breach of planning regulations.	ECtHR	Yordanova and Others v. Bulgaria, no. 25446/06, 24 April 2012 Winterstein and Others v. France, no. 27013/07, 17 January 2014	Art. 6 ECHR Art. 8 ECHR ECHR Art. 1 Protocol 1	Art. 47 CFREU Art. 7 CFREU Art.17 CFREU
<b>Drinking water in Roma irregular settlements</b>	The state must ensure the right to access safe drinking water and sanitation, when persistent and long-standing lack of access to safe-drinking water may have adverse consequences for health and human dignity. The obligation is determined by the specific circumstances of the persons affected.	ECtHR	Hudorovic and others v Slovenia, no 24816/14 and 25140/14, 10 March 2020	Art. 8 ECHR	Art. 47 CFREU Art. 7 CFREU

# COMMUNITY-BASED HOUSING | INFORMAL HOUSING | ATYPICAL HOUSING

KEY WORDS	POSITIVE OBLIGATIONS ON STATES	INSTITUTION	SOURCE	LEGAL BASIS	REFLECTION IN EU LAW
<b>No evictions from an informal neighbourhood that is known and recognised for a long time</b>	Obligation to provide a solution, even temporary, whilst waiting for an appropriate and sustainable solution to be found, in the event of eviction from a long-standing (70 years) Roma community.	UN, HRC	Liliana Assenova Naidenova and others v. Bulgaria, no. 2073/2011, 27 November 2012	Art. 17 ICCPR Principle of proportionality	Art. 7 CFREU
<b>No refusal of necessary equipment for a person with disabilities</b>	Public authorities and landlords cannot refuse to extend or carry out necessary work on the housing of an occupant with disabilities as it is discriminatory and disproportionate.	UN CRPD	H.M. v. Sweden, CRPD/C/7/D/3/2011, 21 May 2012	Art. 5(1), 5(3), 19(b), 25, 26, CRPD. In conjunction with 3 and 4	Convention ratified by the EU (direct application)

## LIST OF ACRONYMS

<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CFREU</b>	Charter of Fundamental Rights of the European Union
<b>CJEU</b>	Court of Justice of the European Union
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CERD</b>	Committee on the Elimination of Racial Discrimination
<b>ECHR</b>	European Convention of Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ECSR</b>	European Committee of Social Rights
<b>EEC</b>	Treaty on the European Economic Community
<b>ESC</b>	European Social Charter
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic Social and Cultural Rights
<b>RESC</b>	Revised European Social Charter
<b>OP-ICESCR</b>	Optional Protocol of the International Covenant on Economic, Social and Cultural Rights
<b>TFEU</b>	Treaty on the Functioning of the European Union







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