

**The European
Contribution
to the Right
to Housing**

Standards, Litigation
and Advocacy

**L'apport européen
au droit au
logement**

Normes,
contentieux
et plaidoyer

Workshop 1.

**Loss of home: what are the requirements of
the principle of proportionality?**

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Loss of Home



- Article 8 European Convention on Human Rights

1. Everyone has the right to respect for ..home...

2. There shall be no interference by a public authority with the exercise of this right, except as in accordance with law, and is necessary in a democratic society...

“Home”



- What constitutes a “home” – an autonomous concept under the Convention – will depend on the existence of sufficient and continuous links with a specific place (*Winterstein* para 141) –
- A question of fact and does not depend on the lawfulness of the occupation under domestic law (*Hirtu v France* 2020).

Proportionality

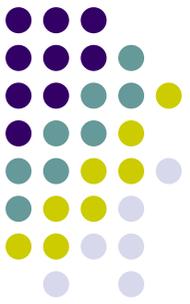


- *Connors v UK* ECtHR [2004]
“An interference will be considered “necessary in a democratic society” for a legitimate aim if it answers a “pressing social need” and, in particular, if it is proportionate to the legitimate aim pursued. While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court [ECtHR] for conformity with the requirements of the Convention” (para 81.)

Proportionality



- Margin of appreciation – left with national authorities - but where intimate or key rights are concerned, the margin is narrow (*Yordanova*).
- This is the case, in particular, for Article 8 rights, which are rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community.



Vertical /horizontal

- Vertical application - claims against the State
- Horizontal application – claims between non-State parties – tenants/landowners etc.
- ECtHR – vertical claims only
- UNCESCR – broader approach – based on State obligations
- EU Charter (Art 7=Art 8 ECHR) must be considered by a court when dealing with implementation of a relevant Regulation or Directive– *Kusionova* [2014].