

# The right to energy of the ‘vulnerable’ consumer

Legal standards for addressing energy poverty under the right to housing: Evidence from European and International Law.  
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# The right to energy of EU citizens

## EU Electricity Directive:

(59) Energy services are fundamental to safeguarding the well-being of the Union citizens. Adequate warmth, cooling and lighting, and energy to power appliances are essential services to guarantee a decent standard of living and citizens' health. Furthermore, access to those energy services enables Union citizens to fulfil their potential and enhances social inclusion.

## EU Regulation on Governance of the Energy Union and Climate Action:

Art. 3(3)d: Member States shall [...] assess the number of households in energy poverty taking into account the necessary domestic energy services needed to guarantee basic standards of living in the relevant national context, existing social policy and other relevant policies, as well as indicative Commission guidance on relevant indicators for energy poverty.

# Household consumers in EU law

## **Article 27 Universal service**

Member States shall ensure that all household customers, and, where Member States deem it to be appropriate, small enterprises, enjoy universal service, namely **the right to be supplied with electricity** of a specified quality within their territory at competitive, easily and clearly comparable, transparent and non-discriminatory prices.

## **Article 28 Vulnerable customers**

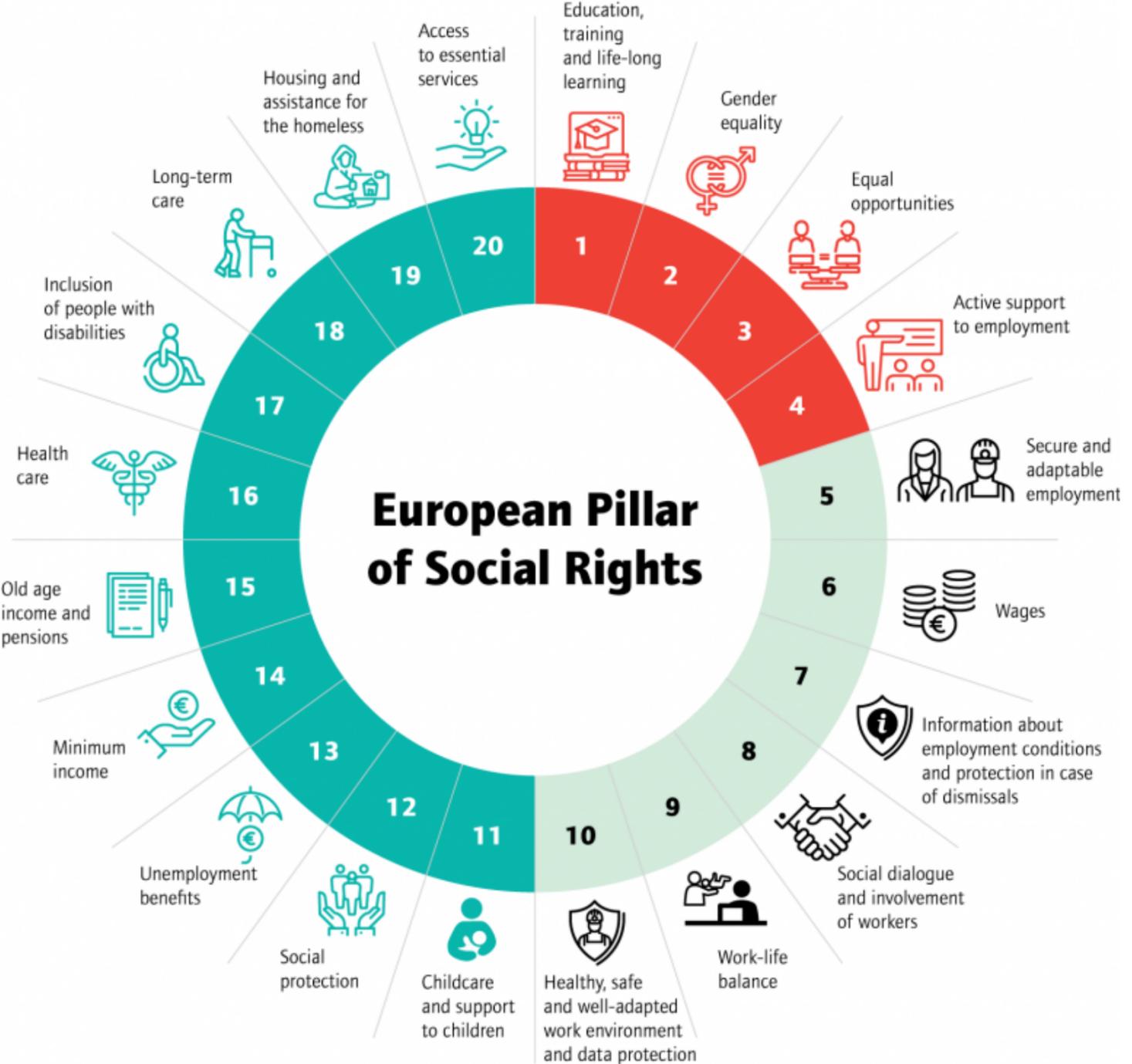
1. Member States shall take appropriate measures to protect customers and shall ensure, in particular, that there are adequate safeguards to protect vulnerable customers. In this context, each Member State shall define the concept of vulnerable customers which may refer to energy poverty and, *inter alia*, to the prohibition of disconnection of electricity to such customers in critical times.

# European Pillar of Social Rights (2017)



## Principle 20 Access to essential services

Everyone has the right to access essential services of good quality, including water, sanitation, **energy**, transport, financial services and digital communications. Support for access to such services shall be available for those in need



# Binding rights to energy in (human rights) law?

- Limited recognition in international law
  - E.g. UN Women's Rights Convention
- Limited recognition in regional law
  - E.g. OAS human rights law
- Some recognition in national (case-)law:
  - E.g. France, Spain (Catalonia), Greece
  - Latin-America
  - Asian countries

**Sources:**

Hesselman (2021) 'Right to Energy' *Elgar Encyclopedia on Human Rights* (in press); Hesselman (2021) 'Energy Poverty and Household Electricity Access in National Law' (Edward Elgar) 695-706



What about existing human rights?

# The right to housing and energy poverty

## UN CESCR General Comment No. 4 on right to housing:

An adequate house must contain certain facilities essential for health, security, comfort and nutrition. 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 [...]

Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the WHO Health Principles of Housing.

# Some accompanying tekst from papers:

- CESCR General Comment No. 4 on the right to housing on Article 11 ICESCR provides the most authoritative interpretation of this right in international law. It notes that adequate housing must not be interpreted narrowly as only having shelter or a 'roof over one's head'.
- It requires 'living somewhere in security, peace and dignity', with access to 'certain facilities essential for health, security, comfort and nutrition', including '*energy for cooking, heating and lighting*'. In addition, housing must satisfy conditions of 'habitability', for example in terms of protecting inhabitants '*from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors*' or in otherwise ensuring physical safety of people. Whether a house is 'adequate' will depend on personal or local factors (e.g. social, economic, cultural, climatic, ecological).
- In 2020, in response to the COVID-19 pandemic, the UN Special Rapporteur on the right to housing also affirmed that 'having a functioning home' is vital for health and survival, and requires at all times access to heating, electricity and Internet.

WHO Guidance over time...

# Some examples of UN 'case-law'

CESCR Communication No. 85/2018, *Hakima El Goumari and Ahmed Tidli v. Spain* (18 February 2021) UN Doc. E/ C.12/69/D/85/2018

Communications of UN Special Procedures on effects of disconnection on informal communities in Spain or Serbia: electricity is essential service.

In 2020, in response to the COVID-19 pandemic, the UN Special Rapporteur on the right to housing affirmed that 'having a functioning home' is vital for health and survival, and requires at all times access to heating, electricity and Internet. Access must also be uninterrupted.

# Some examples of European Social Right Committee's case-law

- One of the key rights stressed in the ECSR's case law on energy poverty, is the right to adequate housing in Article 31(1). According to the Committee, this right implies people's right to a 'dwelling which is safe from the point of view of sanitation and health' in the sense that it '*must possess all basic amenities*' such as *water, heating and electricity*. the ECSR reiterates that the right to housing 'permits the exercise of many other rights – both civil and political as well as economic, social and cultural' and is of fundamental importance to the 'right of families to social protection'.
- ECSR, Complaint No. 67/2011, *Médecins du Monde – International v. France* (Decision on Merits of 11 September 2012) paras. 45, 58-59, 89 referring to Conclusions 2003, Article 31§1, France; ECSR, Complaint No. 39/2006, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France* (Decision on Merits of 5 December 2007) para. 76. This dictum is also repeated in cases cited above.
- *ERRC v. Ireland* (2015) para. 56; ECSR, Complaint No. 110/2014, *International Federation for Human Rights (FIDH) v. Ireland* (Decision on Merits of 12 May 2017) paras. 25-26.

## *FIDH v. Ireland* (2017) paras. 40-53, 105-106.

The right to housing was central to one complaint **about the poor state of (social) housing in Irish public housing estates**, citing issues of poor energy-efficiency, heating, damp and mould. According to applicants, heating facilities and standards were 'lower in local authority housing, than in other types of housing', and several studies confirmed that buildings were 'unable to provide adequate thermal and ventilation performance in their current condition, resulting in mould and damp'. According to the ECSR, matters of dampness and persistent mould '*go to the core*' of the right to adequate housing'; they raise 'serious concerns from the perspective of *both habitability and access to services*'.

It supported such findings by referring to ICESCR General Comment No. 4 on the Right to Housing (see section 5.1.2). The Committee finally decided that the government 'failed to take sufficient and timely measures' to address the existence of a significant amount of substandard quality housing stock, leading to the violation of human rights of a not insignificant number of tenants. More specifically, the government failed to collect data on the ongoing housing status of tenants; set objectives and time tables to address the situation; and to implement them without unreasonable delays.

## ECSR, Complaint No. 67/2011, *Médecins du Monde – International v. France* (Decision on Merits of 11 September 2012) para. 154.

- Another interesting case on poor quality of homes, along with issues of (safe) heating, damp, mould and poor energy efficiency in housing of Roma people, is *Médecins du Monde – International v. France*. This case complained about violations of the 'right to (protection of) health' due to the 'general state of dampness, poor ventilation and harmful effects of heating methods' improvised by Roma occupants of shantytowns across France. Such conditions in view of the applicants resulted from authorities' failure 'to install electricity that conforms to the existing standards'. In turn, this led to 'numerous domestic accidents, such as burns, gas poisoning and fires' due to 'dangerous living conditions'.
- The ECSR did not address the link between the right to (protection of) health and (safe) heating and electricity access directly, but recalled more generally that the right to health in Article 11(3) ESC requires States to 'take appropriate measures to prevent, as far as possible, epidemic, endemic and other diseases as well as accidents'. The poor housing conditions of migrant Roma did not constitute such healthy living environments: the French Government was therefore asked to take specific measures to address the specific problems, but the ECSR did not specify which ones.

# Right to housing as stepping stone for rights claims in the sphere of energy?

- Energy essential facility of the home
- Right to basic supplies/minimum energy needs
- Energy for heating, lighting, safe/clean cooking
  - Cooling, health services, ICTs/Internet
- Energy efficiency of the home
- Non-discrimination and equity
- Adoption of legislation and standards for definition of 'adequate house'
- Action plan; time-lines; mobilization and allocation of resources
- Monitoring and oversight











