



# Discrimination in Housing

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Luxembourg: Office for Official Publications of the European Union 2013

ISBN 978-92-79-29448-8

doi:10.2838/93456

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*Printed in Luxembourg*

PRINTED ON WHITE CHLORINE-FREE PAPER



# Discrimination in Housing

European Network of Legal Experts  
in the non-discrimination field

Written by Julie Ringelheim and Nicolas Bernard

**European Commission**  
Directorate-General for Justice

Manuscript completed on 25 February 2013



This report was financed by and prepared for the use of the European Commission, Directorate-General for Justice. It does not necessarily represent the Commission's official position..

The text of this report was drafted by Julie Ringelheim and Nicolas Bernard for the **European Network of Legal Experts in the non-discrimination field** (on the grounds of race or ethnic origin, age, disability, religion or belief, or sexual orientation), managed by:

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This publication is supported by the European Union Programme for Employment and Social Solidarity – PROGRESS (2007-2013). This programme is managed by the Directorate-General for Justice, of the European Commission. It was established to financially support the implementation of the objectives of the European Union in the employment and social affairs sector, as set out in the Social Agenda, and thereby contribute to the achievement of the Lisbon Strategy goals in these fields.

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Jedaja | 2002

# Executive Summary

This report aims to analyse the substance and the scope of protection against discrimination in housing under European Union law, in the light of norms put in place by other European and international bodies, and developments within individual countries.

Like employment and education, housing is hugely important for individuals. Discrimination in this area can have a major impact on their living conditions, as well as knock-on effects in various aspects of their life, from health to family life, to access to employment and education.

So far, the directives adopted by the European Union on the basis of Article 19 of the Treaty on the Functioning of the European Union (TFEU) prohibit discrimination in the access to and supply of housing only on grounds of racial or ethnic origin (Directive 2000/43/EC) or on grounds of sex (Directive 2004/113/EC). Other international legal instruments, such as the European Social Charter, the International Covenant on Economic, Social and Cultural Rights and, to a degree, the European Convention on Human Rights, prohibit discrimination in housing on a far wider range of grounds. The European Union plans to extend its own protection to cover grounds relating to religion or belief, disability, age or sexual orientation through the future directive on the principle of equal treatment in the access to and provision of goods and services. However, this directive is still in the drafting stage. At the national level, some Member States already go beyond the requirements of European law, with legislation that prohibits discrimination in housing on grounds not covered in Directives 2000/43/EC and 2004/113/EC. However, there is no European harmonisation in this area, and significant differences exist between individual countries. In addition to this, the two Directives only provide protection against discrimination in relation to housing that is 'available to the public' and have no bearing on transactions that take place as part of private or family life. These concepts are quite vague and are not defined in the Directives, a situation which has led to different Member States interpreting them in different ways. Some interpretations seem to be unduly loose, and significantly restrict the protection that European bodies had intended to put in place.

Discrimination in housing can take many forms. It can be related to the *supply* of housing on the market, it can influence the process through which housing that is on the market is *allocated* to someone, and it can affect the *occupation* of a property.

Discrimination relating to the *supply* of housing refers to situations where the very nature of the housing available on the market makes it unsuitable for certain categories of individual, who are unable to access it as a result. This unsuitability can be related to finances, family structure, health, age or even cultural traditions of the people concerned. In order to remedy this situation, it is vital to take difference into account in the design of housing. Public authorities have a particular responsibility here, as they are able to commission construction of public housing, while also being able to set standards and rules for private housing projects. More generally, through their housing, urbanism and planning policies, the authorities can play a key role in ensuring that accessible housing is built for all sectors of the population. Conversely, failing to take into account the particular features of a protected group or putting obstacles in the way of suitable housing being built can create a particular disadvantage for members of the group and in some cases can be considered as indirect discrimination.

This gives pause for thought as regards the implications of the shortage of social housing in many Member States, in so far as it has a disproportionate impact on certain groups who are protected against discrimination, such as the Roma or persons of foreign origin. These groups are overrepresented among

people with very limited resources who struggle to obtain private accommodation. It also raises the issue of the accessibility of housing for people with disabilities and the elderly. The UN Convention on the Rights of Persons with Disabilities includes a requirement to promote accessibility to the physical environment, and this covers housing too. Moreover, the Convention defines as discrimination a denial of reasonable accommodation in the areas that it covers, which include housing. Through the European Disability Strategy 2010–2020, the European Commission placed the issue of disabled access to buildings throughout the European Union in the spotlight. The majority of Member States have already taken measures to foster the accessibility of public and private housing for persons with disabilities, whether this involves recognising the right to reasonable accommodation, providing financial assistance for disabled people to carry out the modifications themselves, or by setting accessibility standards for new buildings, or even for existing buildings.

Housing currently available on the market may also prove to be unsuitable for certain populations for cultural reasons. This is the case for Travellers, who wish to live in caravans in line with their traditions. In all countries where Travellers live, they face serious challenges because there are not enough sites – whether private or public – where they may set up caravans. This is in spite of the fact that international bodies within both the Council of Europe and the United Nations have recognised the obligation for States to respect the traditional lifestyle of Travellers. In practice, however, in all States where there is a significant community of Travellers there are also obstacles preventing them from accessing housing in line with their traditions.

Discrimination can also affect the process of housing being *allocated*. This primarily concerns cases where a public or private property owner refuses to let or sell their property to a person for discriminatory reasons. In the private sector, whether letting or buying, victims of discrimination face the difficulty of proving before the court that the owner's refusal to let or sell was discriminatory. This represents a challenge, despite the principle of the burden of proof being shared. Legal decisions in this area remain few and far between, but studies show the true extent of the discrimination that certain groups, such as Roma and persons of foreign origin, suffer in this area. In the case of sales, even in the private sector, discrimination can result from an act or measure being taken by the public authorities, such as conditions that the law sets for acquiring a property, or from discriminatory practices which use theoretically neutral administrative rules with the aim of preventing certain individuals from buying housing in a given location.

Although the procedure and criteria for allocating public or social housing are regulated by law, the allocation process can nevertheless lead to discrimination, whether intentional or inadvertent. Firstly, some criteria put in place by law – such as the requirement to be based locally or to speak a certain language – can adversely impact a protected group and possibly lead to indirect discrimination. Secondly, practices adopted by the bodies responsible for assigning social housing over and above the criteria put in place by law may end up discriminating against certain groups. Again, it may be extremely difficult to prove that specific decisions were discriminatory in nature.

Lastly, discrimination can occur during *occupation* of a property. Circumstances that occur after a person starts living in a property can end up depriving them of this housing, or decreasing the quality of the housing in a discriminatory manner. Individuals who are being harassed by their landlord, neighbours or a public authority will find it difficult to stay in the property. Breaking or unfairly refusing to renew a letting contract can force tenants to leave the property against their will. For various reasons, individuals can find themselves evicted from their home by the public authorities, in breach of conditions set out by international rules. Beyond this, failure by authorities to ensure that housing in certain areas has access to public services and infrastructures can impact on the quality of life of the people that live there and break the rules put in place by the European Committee of Social Rights and the United Nations Committee on Economic, Social and Cultural Rights. Situations such as this are closely



linked to the phenomenon of residential segregation, which in Europe particularly affects the Roma. In this respect, it is worth stressing that the International Convention on the Elimination of All Forms of Racial Discrimination classifies segregation as a form of discrimination. Similarly, recent decisions of the European Committee of Social Rights recognise, based on the right to housing and the principle of non-discrimination, that States have an obligation to prevent any social segregation of ethnic minorities or immigrants when implementing their housing policies.

Nick | 1982

# Introduction

This report aims to analyse the substance and scope of protection against discrimination in housing under European and international law. European Union law will be analysed in the light of major developments in this field in other legal systems, in particular in the case-law of the European Court of Human Rights and the European Committee of Social Rights, as well as the work of the Commissioner for Human Rights of the Council of Europe and the committees of the United Nations. The report will also consider anti-discrimination legislation adopted at national level by Member States of the European Union and certain other European States, as well as major legal decisions made by national courts.

The report is made up of four parts. It begins by presenting the concepts and legal instruments underpinning protection against discrimination in housing at European and international level. It also gives an overview of non-discrimination legislation that has been adopted by Member States and by selected non-Member States (Part I). The report then analyses the various forms of discrimination that can hamper access to housing and the way in which European and international norms attempt to combat this. First, discrimination can originate in the nature of housing available on the market, which may not be suitable for certain types of individual, and as a result cannot be accessed by them. In this instance, discrimination relates to the *supply* of housing on the market (Part II). Second, discrimination can arise when housing is *allocated* if a property owner takes a discriminatory decision refusing to let or sell a property to an individual (Part III). Lastly, discrimination can arise during the *occupation* of housing. This can take the form of depriving someone of their housing by breaking, refusing to renew or not transferring a letting agreement or by eviction, or it can be through affecting the individual's quality of life in the property through harassment or lack of access to basic service infrastructure (Part IV).

Linda | 1980

# I.

## Basic concepts and legal instruments



In this first part, we will look at the basic concepts and legal instruments relating to non-discrimination in housing in Europe. We will first outline the rules set out in EU law and the provisions of various relevant international conventions that create a basis for protection against discrimination in housing (1). We will then examine two concepts that are closely linked to this issue: adequate housing and segregation, as they are defined by relevant international bodies. We will then be able to make some general observations on the complex relationship between discrimination and housing (2). Lastly, we will give a general overview of national anti-discrimination legislation in the housing field adopted by the Member States of the EU and by some non-Member States (3).

# 1. Protection against discrimination in housing in European and international law

## 1.1 European Union law

Two of the directives arising from Article 19 of the Treaty on the Functioning of the European Union (TFEU) include housing within their scope of application. These are Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin<sup>1</sup> and Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services<sup>2</sup>. Directive 2000/43/EC explicitly states that it applies to 'access to and supply of goods and services which are available to the public, including housing' (Article 3(1)(h)). While Directive 2004/113/EC does not contain a similarly explicit provision, it covers the idea of housing when it mentions 'goods and services, which are available to the public'. In order to consistently interpret European texts relating to non-discrimination it must be assumed that, when identical terms are used (in this case 'goods and services, which are available to the public') the legislation is referring to the same situations. The fact that Directive 2004/113/EC references Directive 2000/43/EC in recital 10 of its preamble further shows that the authors intended for the later text to have the same scope of application as the existing directive.

In both Directives, the concept of discrimination extends to direct and indirect discrimination, harassment and instructions to discriminate. The Member States are required to prohibit all such practices, whether carried out in the private or public sphere, to provide legal and/or administrative remedies for people affected by discrimination, and to create effective, proportionate and dissuasive sanctions for infringements. The two Directives also state that equal treatment does not mean that Member States cannot put in place positive action, i.e. specific measures designed to prevent or compensate for disadvantages resulting from a discrimination ground in order to ensure full equality in practice.

Directive 2000/43/EC does not allow for any exception to the ban on direct discrimination in access to goods and services, while Directive 2004/113/EC does not preclude differences in treatment if the provision of goods and services exclusively or primarily to the members of one sex is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (Article 4(5)). Among the examples that the preamble gives for cases where goods or services can be provided exclusively or primarily to the members

<sup>1</sup> Article 3(1)(h) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180 of 19 July 2000.

<sup>2</sup> Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373 of 21 December 2004.

of one sex there are two that concern housing. These are the establishment of single-sex shelters for victims of sexual violence and the provision of accommodation by a person in a part of that person's home, both of which are mentioned in recital 16. Indirect discrimination, on the other hand, is treated the same in both Directives. It is defined as an apparently neutral provision, criterion or practice which could put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary<sup>3</sup>.

The four other grounds set out in Article 19 of the Treaty on the Functioning of the European Union (TFEU) – religion or belief, disability, age and sexual orientation – are not currently covered by anti discrimination rules related to housing in European Union law. Directive 2000/78/EC, which covers these grounds, only extends to the areas of employment and work<sup>4</sup>. The proposal for a directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation aims to remedy this shortcoming by extending the prohibition on discrimination based on these four grounds to cover areas such as 'access to and supply of goods and services which are available to the public, including housing', using the same phrasing as Directive 2000/43/EC<sup>5</sup>.

Other rules set out in EU law offer protection against certain types of discrimination in housing. Under the rules on the free movement of people, workers who are nationals of a Member State and who are employed in the territory of another Member State must enjoy all the rights and benefits accorded to national workers in matters of housing. They may also put their names down on housing lists with the same rights as nationals<sup>6</sup>. Council Directive 2003/109 gives third-country nationals who are long-term residents the right to equal treatment in the matter of the supply of goods and services made available to the public and procedures for obtaining housing<sup>7</sup>.

The Charter of Fundamental Rights of the European Union does not mention the right to housing. However it does state that the Union recognises and respects the right to housing assistance so as to 'ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.' (Article 34(3)). In its judgment of 24 April 2012 in *Servet Kamberaj v Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano (IPES) and Others*, the European Court of Justice noted that this provision must be understood as including the concept of social security, social assistance and social protection as set out in Directive 2003/109/EC. Housing assistance that meets the goals established by Article 34 of the Charter should therefore be considered as part and parcel of core social assistance and social protection benefits, which must be subject to the principle of equal treatment for third-country nationals who are long-term residents (Article 11(4) of Directive 2003/109)<sup>8</sup>.

<sup>3</sup> Article 2(2)(b) of Directive 2000/43/EC; Article 2(b) of Directive 2004/113/EC.

<sup>4</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation OJ L 303 of 2 December 2000.

<sup>5</sup> Proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008)426 final, 2 July 2008.

<sup>6</sup> Article 9(1) and 9(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (codification), OJ L 141/1 27 May 2011.

<sup>7</sup> Article 11(1)(f) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16 of 31 January 2004.

<sup>8</sup> Judgment of 24 April 2012 in Case C-571/10 *Servet Kamberaj v Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano (IPES) and Others*.

## 1.2 Other European and international legal instruments

There are numerous other international instruments that prohibit discrimination in housing, many of them covering a longer list of grounds than Article 19 of the TFEU.

The European Convention on Human Rights, although it doesn't guarantee the right to housing as such, offers a measure of protection in Article 8, which recognises the right to respect for a home, and Article 1 of Protocol 1, which protects the right to peaceful enjoyment of possessions<sup>9</sup>. Evicting someone from their housing<sup>10</sup>, destroying their home<sup>11</sup>, or denying someone access to their property after the territory has been occupied by a foreign State<sup>12</sup> may, in some cases, represent a breach of these rights. In exceptional circumstances, Article 3, which prohibits inhuman and degrading treatment, can also be applied to living and housing conditions. In one case, Roma families had their homes burned down during violent protests, with the police among the protestors. The Roma families were forced to spend ten years living in unsuitable conditions, and were acknowledged as having been victims of *degrading treatment* as described in Article 3 of the Convention<sup>13</sup>. Together with Article 14 of the Convention, which prohibits discrimination in the enjoyment of the rights guaranteed by the Convention, these provisions protect individuals against discrimination in housing. The grounds set out in Article 14 go beyond the criteria established by the European Directives; as well as sex, race and colour, they include language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or *other status*. These last terms, as well as the words 'such as' that precede the list of grounds, show that the list is not exhaustive. In *Larkos v Cyprus*, the European Court of Human Rights applied Article 14, in conjunction with Article 8, to a case of discrimination against tenants in state-owned as compared with privately owned property<sup>14</sup>. In addition, Protocol No 12 to the Convention, which entered into force on 1 April 2005, puts in place a general prohibition on discrimination applicable to any right set out in national law and to any act by a public authority. However, only a minority of EU Member States (7 out of 27) have so far ratified this Protocol<sup>15</sup>.

In the European Social Charter (revised), discrimination in housing is prohibited by Article 31, which states that, with a view to ensuring the effective exercise of the right to housing, the States undertake to take measures to promote access to housing of an adequate standard, to prevent and reduce homelessness with a view to its gradual elimination and to make the price of housing accessible to those without adequate resources, and by Article E, which forbids discrimination in enjoyment of the rights enshrined in the Charter on a long but not exhaustive list of grounds<sup>16</sup>. In addition, Article 16 of the 1996 revised European Social Charter and of the European Social Charter of 1961 recognises the right of the family to social, legal and economic protection, which includes States' obligation to promote the provision of family housing.

<sup>9</sup> See Koch, I. E. (2009) *Human Rights as Indivisible Rights. The Protection of Socio-Economic Demands under the European Convention on Human Rights*, pp. 113-148.

<sup>10</sup> ECtHR *Yordanova and others v Bulgaria*, 24 April 2012; *Gladysheva v Russia*, 6 December 2011; *McCann v The United Kingdom*, 13 May 2008; *Connors v The United Kingdom*, 27 May 2005.

<sup>11</sup> *Akdivar and others v Turkey*, 16 September 1996; *Mentes and others v Turkey*, 28 November 1997.

<sup>12</sup> *Loizidou v Turkey*, 18 December 1996.

<sup>13</sup> *Moldovan and others v Romania*, 12 July 2005. See also *Selcuk and Asker v Turkey*, 24 April 1998, paragraphs 77-80.

<sup>14</sup> *Larkos v Cyprus*, 18 February 1999.

<sup>15</sup> Cyprus, Finland, Luxembourg, the Netherlands, Romania, Slovenia and Spain (as at 1 September 2012).

<sup>16</sup> 'The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.'

In United Nations law, Article 11 of the International Covenant on Economic, Social and Cultural Rights (1966) guarantees the right to adequate housing and prohibits discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status in the exercise of the rights that it enunciates (Article 2). The International Covenant on Civil and Political Rights (1966) also contains a general non-discrimination clause, which is found in Article 26. The International Convention on the Elimination of All Forms of Racial Discrimination (1965) requires States to prohibit and eliminate discrimination in the enjoyment of the right to housing (Article 5(c) (iii)). Housing is also covered by the Convention on the Elimination of All Forms of Discrimination against Women (1979), Article 1 of which prohibits discrimination on grounds of sex ‘in the political, economic, social, cultural, civil or any other field’ and by the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) which recognises the right of migrant workers to equality with nationals of the State of employment in access to housing in Article 43(1)(d). The Convention on the Rights of Persons with Disabilities (2006), signed and ratified by the European Union, contains many provisions relating to housing. As well as the obligation enshrined in Article 4(1) to ensure the full realisation of all human rights and fundamental freedoms without discrimination of any kind on the basis of disability, States have a general obligation to take all appropriate steps to ensure that reasonable accommodation is provided, pursuant to Article 5(3). Moreover, Article 9(1)(a) provides that States must take appropriate measures to ensure that persons with disabilities have access to the physical environment, which includes the identification and elimination of obstacles and barriers to accessibility to buildings used as housing.

## 2. Adequate housing, segregation and discrimination

### 2.1 The concept of adequate housing

The concept of adequate housing is not defined by European Union law. Therefore, in order to understand the meaning of this concept, we can look at the work of international bodies with competence in the field of the right to housing.

Both the United Nations Committee on Economic, Social and Cultural Rights and the European Committee of Social Rights are clear that the concept of housing is not just about having a roof over one’s head – it must also have certain characteristics. This requirement follows from the very description of housing in international texts. The Covenant on Economic, Social and Cultural Rights talks about adequate housing, while the European Social Charter contains the idea of housing of *an adequate standard*.

For the European Committee of Social Rights, the idea of *housing of an adequate standard* primarily relates to the nature of the housing. It must be sanitary, which means that it must have all basic amenities (water, heating, waste disposal, sanitation facilities and electricity), structurally secure and sufficiently large for the number of people living there, i.e. not overcrowded. This concept also includes legal protection of the people living in the housing against illegal eviction, in other words secure tenure<sup>17</sup>.

<sup>17</sup> ECSR, *European Roma Rights Centre (ERRC) v Italy* Complaint No 27/2004, decision on the merits of 7 December 2005, Paragraph 35; Conclusions 2011, Article 31(1), Ukraine; Conclusions 2003, Article 31(1), France, p. 235. The same criteria apply to housing set out in Article 16 of the Charter: ECSR, *ERRC v Greece*, Complaint No 15/2003, decision on the merits of 8 December 2004, Paragraph 24.



Folkert | 1991



Likewise, the United Nations Committee on Economic, Social and Cultural Rights considers that for housing to be adequate it must have legal security of tenure and protection against forced eviction<sup>18</sup>, habitability and the availability of necessary services, equipment and infrastructure. For the Committee, the idea of adequate housing also includes additional elements: the housing must be affordable; accessible even to vulnerable groups such as the elderly, children, the infirm and persons with disabilities; located at a reasonable distance from places offering employment opportunities, healthcare services, schools and other public services, and away from pollution sources; culturally adequate, i.e. designed in a manner that respects cultural identity and the diversity of housing<sup>19</sup>.

The Committee thus interprets the concept of adequate housing widely to include not only the accommodation itself, but also its surroundings, which must comprise the infrastructure needed to exercise certain rights (such as access to work, education and healthcare services) and be ecologically acceptable in a way that safeguards the health of its residents.

The case law of the European Committee of Social Rights has followed a similar approach, taking into account the immediate surroundings of a place of accommodation in order to assess whether or not it is adequate. In its decision of 30 June 2011 in the case *European Roma Rights Centre (ERRC) v Portugal*, it stated that 'adequate housing must be in a location which allows access to public services, employment, health-care services, schools and other social facilities'<sup>20</sup>.

The link between ecological quality of the surroundings and the accommodation itself has also been recognised by the European Court of Human Rights, which has ruled that 'severe environmental pollution might affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely'<sup>21</sup>.

## 2.2 Segregation

Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination requires States to prevent, prohibit and eradicate racial segregation. The Committee on the Elimination of Racial Discrimination has stated that the provision covers not only segregation caused by government policies, but also situations of partial segregation, and in particular residential segregation, as an unintended by-product of the acts of private individuals:

*'In many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, colour, descent and national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds.'*<sup>22</sup>

<sup>18</sup> General Comment 7, The right to adequate housing: forced evictions (1997). General Comment 7, The right to adequate housing: forced evictions (1997).

<sup>19</sup> Section 8 of General Comment 4, The right to adequate housing (Art.11 (1)) (1991).

<sup>20</sup> ECSR, *ERRC v Portugal*, Complaint No 61/2010, decision on the merits of 30 June 2011, Paragraph 41.

<sup>21</sup> Paragraph 60 of *Guerra and others v Italy*, 19 February 1998. See also Paragraphs 69–70 and 134 of *Fadeyeva v Russia*, 9 June 2005. The European Committee of Social Rights interpreted the right to health as also including the right to a healthy environment in Paragraph 195 of *Marangopoulos Foundation for Human Rights (MFHR) v Greece*, Complaint No 30/2005, decision on the merits of 6 December 2006.

<sup>22</sup> General Recommendation XIX regarding Article 3 of the Convention, Paragraph 3.

The Committee invites States to 'monitor all trends which can give rise to racial segregation, to work for the eradication of any negative consequences that ensue'<sup>23</sup>.

The concept of segregation as a form of discrimination first appeared in the case law of the European Committee of Social Rights in 2010. The Committee found that, on the basis of Article 31(1) of the Social Charter, when implementing housing policies, States have an obligation to ensure that they 'prevent spatial or social segregation of ethnic minorities or immigrants'<sup>24</sup>. In one case, the Italian authorities' practice of confining Roma and Sinti in camps on the outskirts of towns was classified as 'segregation' and judged to run counter to the prohibition on discrimination in the enjoyment of the right to housing<sup>25</sup>. In a further case, the Committee found that the programmes for re-housing the Roma put in place by municipalities in Portugal had often led to their segregation, and once again concluded that it was a case of discrimination in relation to the right to housing<sup>26</sup>.

The Committee has still to give the concept of segregation a more precise legal definition. It is noteworthy that in the two cases where it was applied, the segregation in question was the direct result of policies put in place by public authorities..

## 2.3 Housing and discrimination: a multidimensional relationship

The question of housing lies at the centre of an intricate web of discriminatory processes. Inequalities in housing are often closely linked to other forms of social or economic exclusion. As a general rule, there is a correlation between low levels of education, low incomes, poor health and poor living conditions<sup>27</sup>. Discrimination in employment has obvious repercussions on access to housing, as individuals on an uneasy financial footing have difficulty in obtaining a suitable place to live. Conversely, individuals' housing situations can impact on various aspects of their life, and affect their ability to exercise their other rights. Without a roof over their heads, people find that their health, safety and family life are thrown into jeopardy. People without an address are frequently excluded from social assistance or the ability to exercise their political rights. Likewise, a dilapidated, overcrowded home can be a threat to the health, private and family lives of people who live there.

The location of housing can also affect people's lives. When a lack of money or acts of discrimination force people into areas with insufficient schools, childcare and hospitals, areas abandoned by employers and poorly served by public transport, their access to employment, education, healthcare and culture will suffer as a result.

The majority of European countries, to a greater or lesser extent, have some form of residential segregation, which is defined by sociologists as spatial separation of different population groups within a single geographic area<sup>28</sup>. The Roma are hit hardest by this<sup>29</sup>, while individuals of foreign origin also experience

<sup>23</sup> *Ibid.* Paragraph 4.

<sup>24</sup> *ERRC v Portugal* 30 June 2011, Paragraph 41.

<sup>25</sup> *ECSR, Centre on Housing Rights and Evictions (COHRE) v Italy*, Complaint No 58/2009, decision on the merits of 25 June 2010, Paragraph 91.

<sup>26</sup> *ERRC v Portugal* 30 June 2011, Paragraph 48.

<sup>27</sup> EUMC (2005), *Migrants, Minorities and Housing: Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union*, report prepared by Harrison, M., Law, I. and Phillips, D., p. 64.

<sup>28</sup> Huttman, E., Blauw, W. (eds) (1991), *Urban Housing Segregation of Minorities in Western Europe and United States*.

<sup>29</sup> European Union Agency for Fundamental Rights (2009), *Housing conditions of Roma and Travellers in the European Union - Comparative report*.

the problem<sup>30</sup>. This segregation is frequently accompanied by inequalities in living conditions as well as in access to public services and infrastructure. The areas where individuals on a lower socio-economic footing are living are usually characterised by mediocre housing, limited or non-existent public resources and institutions, and a long journey to the nearest places of work, education and healthcare.

This situation can lead to further types of discrimination linked to place of residence. Residents of a stigmatised neighbourhood are sometimes discriminated against because of their address, particularly in employment<sup>31</sup>. In France a situation testing carried out in 2004, based on the sending of a series of CVs to employers, found that there is significant discrimination based solely on the mention of a place of residence<sup>32</sup>. In the United States, certain financial organisations have been found to arbitrarily refuse to provide banking services to individuals living in poorer areas, a phenomenon known as redlining<sup>33</sup>. While seemingly based on place of residence, these practices are underpinned by a racial or ethnic aspect, as the close correlation between place of residence and an ethnic minority gives rise to this kind of exclusion<sup>34</sup>.

## 3. National protection against discrimination in housing

### 3.1 The grounds covered

European Union law requires Member States to adopt national legislation protecting against discrimination in housing on grounds of sex (Directive 2004/113/EC) and racial or ethnic origin (Directive 2000/43/EC). A large majority of Member States have gone further still by extending the prohibition on discrimination in housing to some or all of the other grounds listed in Article 19 of the TFEU (disability, sexual orientation, belief, age) and sometimes additional grounds.

The table below gives an overview of the situation in all the EU Member States, as well as two candidate countries, the Former Yugoslav Republic of Macedonia and Croatia, and Norway, which is a member of the European Economic Area. The table is based on the report by the European Network of Legal Experts in the non-discrimination field, and does not cover discrimination based on sex.

Does protection against discrimination in housing go beyond the grounds set out in Directive 2000/43/EC, and does it extend to the grounds mentioned in Directive 2000/78/EC<sup>35</sup>?

<sup>30</sup> See in particular Sule Özüekren, A. and van Kempen, R. (2003), 'Dynamics and Diversity: Housing Careers and Segregation of Minority Ethnic Groups', *Housing, Theory and Society*, No 20, pp. 162-171; Arbaci, S. (2008), '(Re)Viewing Ethnic Residential Segregation in Southern European Cities: Housing and Urban Regimes as Mechanisms of Marginalisation', *Housing Studies*, Vol. 23, No 4, pp. 589-613.

<sup>31</sup> European Union Agency for Fundamental Rights op. cit. pp65-66.

<sup>32</sup> This situation testing was carried out by the French body Observatoire des discriminations, and was the first to examine the place of residence as possible grounds for discrimination in employment. See 'Enquête "Testing" sur CV' available on <http://www.observatoiredesdiscriminations.fr/spip.php?rubrique5> (last visited 1 August 2013).

<sup>33</sup> Zenou, Y. and Boccoard, N. (2000), 'Racial Discrimination and Redlining in Cities', *Journal of Urban Economics*, Vol. 48, No. 2, pp. 260-285.

<sup>34</sup> See, in particular Boddie, E. C. (2010), 'Racial Territoriality', *UCLA Law Review*, Vol. 58, pp. 401-463.

<sup>35</sup> Source: European Network of Legal Experts in the non-discrimination field, Country reports, 2011 (HEC and MPG).

<b>Austria</b>	Yes: at the federal level, protection covers ethnic origin and disability. The majority of provincial laws (which are applicable to public housing) apply to discrimination on all grounds covered by the relevant legislation	
<b>Belgium</b>	Yes	
<b>Bulgaria</b>	Yes	
<b>Croatia</b>	Yes	
<b>Cyprus</b>		No: protection covers only racial and ethnic origin
<b>Czech Republic</b>	Yes	
<b>Denmark</b>	Yes: the law covers race, skin colour and national or ethnic origin, as well as belief and sexual orientation	
<b>Estonia</b>		No: protection is limited to racial and ethnic origin and skin colour
<b>Finland</b>		No: protection is limited to racial and ethnic origin
<b>France</b>	Yes	
<b>Former Yugoslav Republic of Macedonia (FYROM)</b>	Yes	
<b>Germany</b>	Yes: all grounds are covered except for belief <sup>36</sup>	
<b>Greece</b>		No: protection is limited to racial and ethnic origin
<b>Hungary</b>	Yes	
<b>Ireland</b>	Yes	
<b>Italy</b>		No: protection is limited to racial and ethnic origin
<b>Latvia</b>	Yes: the law covers disability as well as racial and ethnic origin	
<b>Lithuania</b>	Yes, but the relevant legislation (Article 8 of the law on equal treatment) does not address housing specifically and is not fully clear	
<b>Luxembourg</b>	Yes	
<b>Malta</b>		No: protection is limited to racial and ethnic origin
<b>Netherlands</b>	Yes	
<b>Norway</b>	Yes	
<b>Poland</b>		No: anti-discrimination law limits protection to racial and ethnic origin, but also covers nationality <sup>37</sup>

<sup>1</sup> The term 'belief' can cover religious and non-religious beliefs.

<sup>2</sup> General provisions in the constitution that prohibit discrimination may nevertheless be applied to other grounds for discrimination in the area of housing.

<b>Portugal</b>	Yes: the law covers disability, as well as racial and ethnic origin, colour and nationality	
<b>Romania</b>	Yes	
<b>Slovakia</b>	Yes	
<b>Slovenia</b>	Yes	
<b>Spain</b>		No: protection is limited to racial and ethnic origin
<b>Sweden</b>	Yes	
<b>United Kingdom</b>	Yes	

### 3.2. The scope of protection

Directive 2000/43/EC only covers goods and services ‘which are available to the public’. Recital 4 of the preamble highlights how important it is ‘to respect the protection of private and family life and transactions carried out in this context’. Similarly, Directive 2004/113/EC states in Article 3(1) that it applies to ‘all persons who provide goods and services, which are available to the public ... as regards both the public and private sector’ and ‘which are offered outside the area of private and family life and the transactions carried out in this context’. However, neither Directive provides any criteria for deciding which goods and services belong strictly in the private and family sphere, and which should be considered as being available to the public<sup>36</sup>. In the explanatory memorandum of the proposal for a directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation it is stated that ‘only professional or commercial activities are covered’, and transactions between private individuals acting in a private capacity are not covered. This interpretation seems inappropriate for housing. For example, if someone who is not a professional estate agent decides to let out an apartment that they own, should they therefore be exempt from the prohibition on discrimination? Such an interpretation would undermine the protection against discrimination in housing that Directives 2000/43/EC and 2004/113/EC are supposed to guarantee. After all, a significant number of houses are rented out or sold by private individuals. It would be more in the spirit of the Directives to understand the idea of ‘available to the public’ as referring to cases where the intention to sell or let the property is advertised publically. Thus, when an individual publicises their intention to sell or let, for example by publishing an advert in a newspaper or on a website, the property in question should be seen as being ‘available to the public’. This is the interpretation set out in Hungarian law, which states that private persons offering accommodation and advertising this fact are subject to anti-discrimination law<sup>37</sup>.

In their report on the balance between the right to equality and other fundamental rights, Emmanuelle Bribosa and Isabelle Rorive note that this exception opens the door for a conflict between prohibiting discrimination and the right to respect for private life. Given the uncertainties that arise, ‘A clarifying interpretation from the Court of Justice of the European Union would certainly be welcomed here’<sup>38</sup>. The terms of the explanatory memorandum to the proposal for a directive might also usefully be revised in order to prevent the future directive’s scope from being overly limited.

A certain number of Member States, in transposing the provisions of Directives 2000/43/EC and/or 2004/113/EC into their national law, have introduced an exemption to the prohibition on discrimination

<sup>36</sup> See Ringelheim, J. (2010) ‘The Prohibition of Racial and Ethnic Discrimination in Access to Services under EU Law’, *European Anti-discrimination Law Review*, No. 10, pp. 11-18.

<sup>37</sup> European Network of Legal Experts in the non-discrimination field, Country report on Hungary, 2011, András Kádár (HEC and MPG).

<sup>38</sup> Bribosa, E. and Rorive, I. (2010) ‘In search of a balance between the right to equality and other fundamental rights’.



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which is comparable to the condition of being ‘available to the public’ and respecting transactions that are carried out ‘in the area of private and family life’. How these exemptions are phrased varies greatly between different States, demonstrating how these ideas can lead to differences in interpretation<sup>39</sup>. In Germany, anti discrimination rules in contract law do not apply to personal legal relations or where there is a special relationship of trust between the parties to the contract or members of their family. This is presumed to be the case when the parties in question share the same home<sup>40</sup>. Meanwhile, only landlords letting out more than 50 apartments are affected by anti-discrimination law based on grounds other than racial or ethnic origin. In Swedish law, one-off sales or purchases of housing are considered to be within private and family life, and are therefore exempt from the law<sup>41</sup>. In other States, such as Denmark and Ireland, the law does not apply to private people who are letting or subletting a room within a home that they live in<sup>42</sup>.

The table below gives an overview of the exceptions applied by some States to the scope of their anti-discrimination legislation, which can be regarding as relating to the criteria of ‘available to the public’ and transactions carried out as part of private or family life<sup>43</sup>:

Country	Exceptions in the scope of anti-discrimination legislation
<b>Denmark</b>	Anti-discrimination law does not apply to private individuals who sublet a room in the house where they live.
<b>Finland</b>	As concerns housing, anti-discrimination law does not cover legal acts that apply to private or family life. The preparatory work to the legislation indicates that this concept concerns an individual letting or selling the home where they live.
<b>Germany</b>	The prohibition of discrimination in contract law does not cover personal legal relations or cases where there is a special relationship of trust between the parties involved or members of their family. This is understood to be the case when the parties live in the same home. In addition to this, it is only landlords letting more than 50 apartments who are subject to the prohibition on discrimination on grounds other than racial or ethnic origin.
<b>Hungary</b>	Housing provided by private individuals that is not advertised publically does not fall within the scope of anti-discrimination law.
<b>Ireland</b>	Legislation does not apply to housing provided by someone within their own home or where the provision of the housing affects the individual’s private or family life.
<b>Norway</b>	The prohibition does not apply to individuals letting out a room within their own home.
<b>Sweden</b>	The law states that one-off sales or purchases of housing must be considered to be part of private and family life, and therefore exempt from the law.

<sup>39</sup> It is worth noting that the European Commission is still looking into how successfully Directive 2004/113/EC has been transposed into national law. The Commission plans to publish its first report on this in 2014.

<sup>40</sup> European Network of Legal Experts in the non-discrimination field, Country report on Germany, 2011, Matthias Mahlmann (HEC and MPG).

<sup>41</sup> European Network of Legal Experts in the non-discrimination field, Country report on Sweden, 2011, Per Norberg (HEC and MPG).

<sup>42</sup> European Network of Legal Experts in the non-discrimination field, Country report on Denmark, 2011, Christoffer Badse, and Country report on Ireland, 2011, Orlagh O’Farrell (HEC and MPG).

<sup>43</sup> Source: European Network of Legal Experts in the non-discrimination field, Country reports, 2011 (HEC and MPG).

Country	Exceptions in the scope of anti-discrimination legislation
United Kingdom	<p>The Equality Act 2010, and the equivalent legislation for Northern Ireland, include exceptions relating to private and family life, though only for discrimination on grounds other than racial or ethnic origin (i.e. age, disability, gender reassignment, marriage or civil partnership, religion or belief, sex and sexual orientation):</p> <ul style="list-style-type: none"> <li>- When buildings are sold privately and without an estate agent or public advertisement.</li> <li>- The prohibition on discrimination provided by the Equality Act (on grounds other than race) do not apply to the sale, occupation or management of part of a small building if (a) the person or a relative of that person resides, and intends to continue to reside, in the same premises, and (b) the premises include parts (other than storage areas and means of access) shared with other residents.</li> <li>- In Northern Ireland, the legislation that prohibits discrimination because of religious or political beliefs makes an exception for small residences.</li> </ul>

Other types of exception have been put in place by some States in their legislation on discrimination in housing. Romania is a problem case since, contrary to Directive 2000/43/EC, the law provides for an exception to the prohibition on direct discrimination in the sale or letting of housing in cases where the measure is objectively justified by a legitimate aim and where the means used to this end are proportional<sup>44</sup>. In Germany unequal treatment on any discriminatory grounds is permitted if it means creating or maintaining stable social relations between inhabitants and balanced neighbourhood structures together with balanced economic, social or cultural relations. According to the explanatory report, this clause must not be interpreted as a justification for under-representation of a racial or ethnic minority<sup>45</sup>. This provision is similar to the idea of 'social mixing', which has to be taken into account by French bodies responsible for allocating housing. Although not intended as an exception to the prohibition on discrimination, an attempt to meet this objective may, in practice, come into conflict with the principle of non-discrimination, and all the more so given that this concept is not defined by law, leaving plenty of room for the institutions concerned to interpret it as they wish<sup>46</sup>. A similar debate exists in the Netherlands regarding the law 'Special measures for the problem of large towns' (*Wet Bijzondere Maatregelen Grootstedelijke Problematiek*, known as *Rotterdamwet*, or the Rotterdam Law)<sup>47</sup>, adopted in 2005 and which seeks to prevent the problem of ghettoisation by allowing local authorities to refuse to let subsidised housing in certain areas to people on low income or without stable employment who have lived in the area for less than six years. The Equal Treatment Commission issued an unfavourable opinion on this policy on the grounds that it amounted to indirect discrimination based on ethnic origin, nationality and sex, and that it could also be discriminatory against disabled people, the elderly or young people<sup>48</sup>. Belgium has its own social mix controversy as concerns the allocation of social housing and how it meshes with the principle of non-discrimination<sup>49</sup>.

<sup>44</sup> European Network of Legal Experts in the non-discrimination field, Country report on Romania, 2011, Romanita Iordache (HEC and MPG).

<sup>45</sup> European Network of Legal Experts in the non-discrimination field, Country report on Germany, 2011, Matthias Mahlmann (HEC and MPG).

<sup>46</sup> See *Infra* Part III, 2.2.

<sup>47</sup> Law of 20 December 2005, Staatsblad 2005, 726. See European Network of Legal Experts in the non-discrimination field, Country report on the Netherlands, 2011, Rikki Holtmaat (HEC and MPG).

<sup>48</sup> CGB Opinion 2005/03 (*Inzake Huisvestingbeleid Gemeente Rotterdam*), 12 July 2005. See also *infra*, Part III.

<sup>49</sup> Bervoets, W. and Loopmans, M. (2010) 'Diversiteit en discriminatie in de sociale huisvesting: een kritische benadering van "sociale mix"', a study commissioned by the Centre for Equal Opportunities and Opposition to Racism.

In Ireland, the Equal Status Acts 2000–2008 specify in Section 6(5) that they do not apply to housing reserved for specific types of people, such as homes for persons with a disability or nursing homes. Section 6(6) also states that it cannot be interpreted as prohibiting the authorities responsible for allocating public housing or housing assistance from providing different treatment to persons based on family size, family status, marital status, disability, age or membership of the Traveller community<sup>50</sup>. The Act does not state what this different treatment may involve<sup>51</sup>. In the case *Doherty and Anor v South Dublin Council, the Minister for the Environment, Heritage and Local Government, Ireland and the Attorney General*, when the applicant, who was a member of the Traveller community, questioned whether Section 6(6) of the Equal Status Acts was compatible with Directive 2000/43/EC, the High Court established that this provision could not be used by local authorities to provide less favourable treatment when allocating housing on the grounds mentioned in the Act<sup>52</sup>. The Equal Status Acts contain an additional exception in Section 6(7). This states that it must not be construed as prohibiting, in relation to housing accommodation provided by or on behalf of the Minister, different treatment to persons on the basis of nationality, gender, family size, family status, marital status, disability, age or membership of the Traveller community. This last exception is tempered by the specification that any such difference in treatment cannot go against Ireland's obligations in respect of European treaties or any act adopted by the institutions of the European Union<sup>53</sup>. It is worth noting that this is not specified in Section 6(6)<sup>54</sup>. Lastly, in the United Kingdom, the prohibition on harassment with regard to letting housing does not apply to the criteria of religion or belief, or to sexual orientation<sup>55</sup>.

<sup>50</sup> Travellers are defined by the fact that they live in caravans. They can therefore be categorised as nomads. See *infra* Part II, 6.

<sup>51</sup> Section 6(6) Equal Status Act 2000–2008.

<sup>52</sup> *Doherty and Anor v. South Dublin County Council, the Minister for the Environment, Heritage and Local Government, Ireland and the Attorney General*, [2007] IEHC 4.

<sup>53</sup> European Network of Legal Experts in the non-discrimination field, Country report on Ireland, 2011, Orlagh O'Farrell (HEC and MPG).

<sup>54</sup> *Ibid.*

<sup>55</sup> European Network of Legal Experts in the non-discrimination field, Country report on the United Kingdom, 2011, Aileen McColgan (HEC and MPG).



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## II. Discrimination in the supply of housing



For some sectors of the population, the lack of availability of housing suitable for their circumstances can be an initial barrier to finding housing. The housing available on the public or private market, whether on account of its cost or physical characteristics, can be unsuitable for certain groups of people for reasons linked to their financial means, family structure, state of health, age or cultural traditions. The resulting exclusion may not have been the intention of those who originally built the homes. It may simply arise from the tendency to design homes based on the typical person, and neglect the needs of individuals who do not fit into this mould. In order to remedy this problem, it is important to consider different needs when designing and building housing<sup>56</sup>. Public authorities have a particular responsibility here, as they are able to commission construction of public housing, while also being able to set standards and rules for private housing projects. More generally, through their housing, urbanism and planning policies, the authorities can play a key role in ensuring that suitable housing is built for all sectors of the population.

Where anti-discrimination rules fail to take into account the particular features of a group that is protected against discrimination, this can be the source of serious difficulties for this group if this attitude makes it more difficult for them to obtain housing. Practices such as this could represent indirect discrimination unless the person behind it can demonstrate that the practice is objectively justified in order to achieve a legitimate aim, and that the means are both appropriate and necessary.

There are four specific issues connected with this problem. The impact of a lack of social housing on protected groups (1), the availability of shelters for women who have been the victims of domestic violence (2), the adaptation of housing for disabled people or the elderly (3 and 4) and respect for the traditional lifestyle of Travellers (5).

## 1. The lack of social housing

In a large number of Member States, the demand for social housing, which is needed so that people on low income can find affordable accommodation, outweighs the supply<sup>57</sup>. In thirteen Member States, social housing available for rent accounts for less than 5% of all housing available<sup>58</sup>. Considering the housing crisis that many Member States are experiencing, this is a circumstance that primarily hurts people on low incomes, who struggle to find housing on the private market. Throughout the European Union, the Roma and persons of foreign origin are overrepresented in this group<sup>59</sup> and their dependence on social housing is exacerbated by the discrimination that they suffer on the private market<sup>60</sup>. In these circumstances, unless some policy is put in place to help them obtain accommodation, these ethnic minorities are disproportionately affected by the failure of authorities to take measures that would increase the supply of social housing, or the intentional refusal of certain local governments to build this housing, sometimes in spite of a legal obligation to do so, as is the case in France<sup>61</sup>. This attitude would seem to create a particular disadvantage for these groups, which could be viewed as indirect discrimination unless it can be proven that the measure in question is based on a legitimate aim, and that the means used to achieve it are appropriate and necessary.

<sup>56</sup> See Harrison, M. with Davis, C. (2001), *Housing, Social Policy and Difference. Disability, Ethnicity, Gender and Housing*.

<sup>57</sup> Regarding discrimination in access to social housing, see *infra* Part III, 2.

<sup>58</sup> Cecodhas – USH – Dexia study, 2007, cited in Ghekiere, L. (2007), *The Development of Social Housing in the European Union – When general interest meets Community interest*.

<sup>59</sup> European Union Agency for Fundamental Rights (2009) *Housing conditions of Roma and Travellers in the European Union - Comparative report* and EUMC (2005), *Migrants, Minorities and Housing: Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union*, report prepared by Harrison, M., Law, I. and Phillips, D., p. 64.

<sup>60</sup> See *infra* Part III, 1.

<sup>61</sup> ECSR, *FEANTSA v France*, Complaint No 39/2006, decision on the merits of 5 December 2007, Paragraph 115.

Nevertheless, it can be hard to tell if a policy like this has a disproportionate negative impact on a certain ethnic group, given that few Member States have easily available and reliable figures broken down by ethnic origin<sup>62</sup>. American case law shows the value of obtaining figures like these in order to support complaints regarding discrimination in access to housing that results from urban planning decisions made by local authorities. More than once, American courts have found indirect discrimination ('disparate impact') on grounds of race in cases where a locality made up almost entirely of white homes has used its powers in urban planning to hinder plans to build affordable, multi-family housing that would have been accessible to black families, who are overrepresented among the poor in the area. One example is the case *U.S. v City of Black Jack, Missouri*, where the municipality of Black Jack had decided to block the construction of all new multi-family housing following a protest by some of the population against a similar construction project. The Court of Appeal judged that this measure had a discriminatory effect as it disproportionately affected the black residents in the area by depriving them of housing opportunities – even though 40% of them were living in overcrowded and dilapidated buildings – and contributed to perpetuating the residential segregation that they faced<sup>63</sup>.

This case is similar to one brought before the United Nations Committee on the Elimination of Racial Discrimination. A town council in Slovakia had approved a plan to construct cheap housing for the Roma inhabitants of the town, most of whom were living in unsanitary conditions with no drinking water, toilets or plumbing. However, after receiving a petition signed by 2 700 residents, the town went back on its decision and withdrew its approval of the construction plans. The Committee decided that the circumstances represented discrimination in the right to housing, which goes against Article 5(d)(iii) of the Convention on the Elimination of All Forms of Racial Discrimination. By withdrawing their decision to launch a crucial measure towards providing housing for the Roma residents, the town council had deprived the Roma of their equal right to housing<sup>64</sup>.

A second problem that particularly affects certain ethnic minorities in some EU countries relates to the lack of large homes designed for large families within the selection of subsidised housing available. In many countries, the Roma and some immigrant communities have more children on average than the rest of the population<sup>65</sup>, and not giving this enough consideration when designing social housing can prevent them from finding accommodation<sup>66</sup>.

## 2. Shelters for women who have been victims of domestic abuse

In his Recommendation on the implementation of the right to housing, the Council of Europe's Commissioner for Human Rights stressed that women who have been victims of domestic abuse are among the groups of people who face the greatest challenges with regard to housing<sup>67</sup>. Following the lead of the UN Special Rapporteur

<sup>62</sup> See in particular Makkonen, T. (2007), *Measuring Discrimination. Data Collection and EU Equality Law*, European Commission DG Employment, Social Affairs and Equal Opportunities.

<sup>63</sup> *United States v City of Black Jack Missouri* 508 Fed 1179 (8th Cir. 1974). See also *Huntington Branch, N.A.A.C.P. v. The Town of Huntington* 844 F.2d 926 (2nd Cir. 1988) and *Metropolitan Housing Development Corp. v Village of Arlington Heights* 558 F.2d 1283 (7th Cir. 1977).

<sup>64</sup> CERD, *L. R. et al. v Slovakia*, Communication No 31/2003, U.N. Doc. CERD/C/66/D/31/2003, 10 March 2005.

<sup>65</sup> Harrison with Davis, *op. cit.* p. 143.

<sup>66</sup> EUMC, *op. cit.* p. 72. See also Conseil National de l'Habitat (2005), *Rapport du groupe de travail « discriminations dans l'accès au logement »*, p. 11.

<sup>67</sup> CommDH(2009)5 (30 June 2009). See also Harrison with Davis, *op. cit.* pp. 172-189.

on adequate housing<sup>68</sup>, the Commissioner insists on the right to adequate housing and on the importance of ensuring that emergency shelters are available and that alternative housing is offered to the people in question<sup>69</sup>.

In the case *AT v Hungary*, the Committee on the Elimination of Discrimination Against Women examined the case of a woman who had been violently abused by her partner for years, and who had not been able to flee to a shelter as none were equipped to take her in along with her two sons, one of whom was severely disabled. The Committee judged that Hungary had failed to fulfil its obligation to take the necessary measures to protect women who have been victims of violence<sup>70</sup>.

It is worth recalling that Directive 2004/113/EC mentions the creation of single-sex shelters to protect victims of sexual violence as one of the circumstances where, as an exception, goods or services can be supplied solely or essentially to members of only one sex<sup>71</sup>.

### 3. Adapting housing for persons with disabilities

The lack of disabled access buildings is a common problem, which makes it difficult for disabled people to obtain housing, and in some cases restricts them to living in specialised institutions. Housing that is not initially designed for the needs of persons with disabilities can always be adapted later in a variety of ways, such as providing wheelchair access, adding a toilet or bathroom on the ground floor, or installing a stairlift. However, these modifications can be too expensive for many disabled people to afford unless they receive financial assistance from the public authorities. Furthermore, the owners or co-owners of the building are often loath to have these modifications made to the rented property or to communal areas<sup>72</sup>.

There are a number of international rules that aim to solve this issue and promote the adaptation of housing to the needs of persons with disabilities (3.1). At the national level, many States have taken a variety of measures with the same end in view (3.2).

#### 3.1. International norms

The European Union is party to the United Nations Convention on the Rights of Persons with Disabilities, and its Member States are committed to ratifying it<sup>73</sup>. The Convention applies to housing, as it covers all fundamental human rights and freedoms. It sets out two essential rules in order to guarantee that disabled people have genuine access to housing – the requirement to promote accessibility, and the right to reasonable accommodation. First, the Convention requires States to take appropriate measures to ensure that disabled

<sup>68</sup> 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, 26 December 2011, A/HRC/19/53, Paragraph 67.

<sup>69</sup> CommDH(2009)5, Section 4(3)(6).

<sup>70</sup> CEDAW, *A.T. v Hungary*, Communication No 2/2003, U.N. Doc. CEDAW/C/32/D/2/2003, 26 January 2005.

<sup>71</sup> Preamble, Recital 16.

<sup>72</sup> Waddington, L. and Lawson, A. (2009), *Disability and non-discrimination law in the European Union. An analysis of disability discrimination law within and beyond the employment field*, European Commission, p. 44.

<sup>73</sup> As at 1 July 2013, all but three Member States had ratified the Convention. The three who have not yet ratified are Finland, Ireland and the Netherlands.

people have access to the physical environment, which means identifying and removing obstacles and barriers to accessibility, in particular in buildings used as housing (Articles 9(1)(a) and 3(f)). Second, the Convention states that denial of reasonable accommodation constitutes discrimination (Article 2), which must be prohibited by States (Article 5(2)). It also requires states to take all appropriate steps to ensure that reasonable accommodation is provided (Article 5(3)).

The concept of a right to reasonable accommodation means that there is an obligation for providers of goods and services to make any necessary changes or adjustments so that any disabled person who requires it can access the goods and services in question, so long as the necessary changes do not represent a disproportionate burden for the provider of goods or services. The fact that this right is recognised confers on all disabled people the power to have these modifications made. A particular feature of this concept is that it is centred on the individual claimant, which means that whether a certain accommodation can be considered 'reasonable' can be judged on a case-by-case basis. However, for the idea to work in practice it needs action from individuals who must request the modification<sup>74</sup>.

On the other hand, promoting *accessibility* requires an approach that is designed to anticipate and eliminate environmental barriers in general, and ensure that any new buildings are fully inclusive by putting in place and enforcing building standards for properties. One advantage that common standards have over the idea of reasonable accommodation is that they are clearly defined and must be taken into account by anyone constructing a building, meaning that individuals do not have to make special requests. However there is also a downside, as having uniform standards across the board means settling on the lowest common denominator with no regard for the different financial means of different building companies or for the specific requirements of certain disabilities<sup>75</sup>. The two ideas should therefore be seen as complementing each other. Even where there are general accessibility standards, disabled people who have additional requirements because of their specific disability could request them as reasonable accommodation.

The proposal for a directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation<sup>76</sup> also includes provisions in this area. Article 4 of the proposal sets out two specific measures that aim to ensure equal treatment for disabled people, particularly as regards access to goods and services:

- 'a) The measures necessary to enable persons with disabilities to have ... access to and supply of goods and services which are available to the public, including housing and transport, shall be provided by anticipation, including through appropriate modifications or adjustments. Such measures should not impose a disproportionate burden, nor require fundamental alteration of the ... goods and services in question or require the provision of alternatives thereto.
- b) Notwithstanding the obligation to ensure effective non-discriminatory access and where needed in a particular case, reasonable accommodation shall be provided unless this would impose a disproportionate burden.'

Article 2(5) of the proposal states that denial of reasonable accommodation is defined as discrimination<sup>77</sup>.

<sup>74</sup> Gooding, C. and Casserley, C. (2005), 'Open for All? Disability Discrimination Laws in Europe Relating to Goods and Services', in Lawson, A. and Gooding, C., *Disability Rights in Europe. From Theory to Practice*, pp. 135-162, p. 149.

<sup>75</sup> Ibid. p. 150.

<sup>76</sup> The proposal for a directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation COM(2008) 426 final, 2.7.2008.

<sup>77</sup> Article 5 of Directive 2000/78/EC already recognises the right of disabled people to reasonable accommodations at work.

Among the criteria used for judging whether anticipatory measures are disproportionate or whether accommodation is reasonable, the proposal includes the size and resources of the organisation, its nature, the estimated cost, the life cycle of the goods and services, and the possible benefits of increased access for persons with disabilities. Article 4(2) of the proposal adds that ‘the burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the equal treatment policy of the Member State concerned’. In other words, evaluating the burden of the adaptation means also taking into account any opportunity to receive state subsidies for the work.

Without waiting for the Directive to be adopted, the European Commission put a strategy in place in November 2010 with the aim of improving the situation of disabled people in Europe, a group which currently represents 15% of the population. The action plan is called *European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe*<sup>78</sup> and is designed to eliminate the obstacles to disabled people enjoying full and effective participation in society on an equal basis with others. One of the areas for action is accessibility, which means that ‘people with disabilities have access, on an equal basis with others, to the physical environment, transportation, information and communications technologies and systems (ICT), and other facilities and services’. One of the Commission’s major aims in this area is help improve accessibility of buildings, encourage the idea of integrating the principle of accessibility and ‘design for all’ into training for professionals in the area, and promote specific rules with the aim of improving the functioning of the internal market for accessible products and services. The Commission has launched a process that will draw up legislation regarding accessibility of goods and services in Europe.

Aside from this, in the case of *Marzari v Italy* the European Court of Human Rights made it clear that Article 8 of the Convention imposes on States the obligation to provide disabled people in social housing with a home that is adapted for their disability. It concluded that there was no violation of human rights, on the grounds that the local authorities had put in place a special commission to study the applicant’s disease, provided him with an apartment that the commission believed was suitable, and were prepared to carry out additional work to adapt it to his condition<sup>79</sup>.

## 3.2. National measures taken

The majority of Member States have taken measures to encourage adaptation in housing, both public and private, to meet the requirements of disabled people, whether owners or tenants. There are three main types of measure: recognising the right to reasonable accommodation in housing (3.2.1), providing financial assistance to carry out the modifications (3.2.2) and setting accessibility standards applicable to all new buildings or even to existing ones (3.2.3). Needless to say, these measures are not mutually exclusive, but rather they are complementary. While the accessibility standards aim to ensure that buildings are designed to be accessible to as many people as possible before they are built, the right to reasonable accommodation means that there is a second window for making them accessible to people whose particular requirements were not taken into account during building. And by providing subsidies for this, the State makes it easier to make the modifications, which can be prohibitively expensive..

<sup>78</sup> Communication from the Commission to the European Parliament, the Council, the European economic and Social Committee and the Committee of the Regions *European Disability Strategy 2010–2020: A Renewed Commitment To A Barrier-Free Europe* 15.11.2010, COM(2010) 636 final.

<sup>79</sup> ECtHR, *Marzari v Italy*, 4 May 1999. For national case law, see, *R (Bernard) v. London Borough of Enfield*, [2002] EWHC Admin 2282 and *O'Donnell v South Dublin County Council*, Unreported, Laffoy J., High Court, 22 May 2007. See O’Cinneide, C. (2009), ‘Extracting Protection for the Rights of Persons with Disabilities from Human Rights Frameworks: Established Limits and New Possibilities’, in Arnardottir, O. M. and Quinn, G. (eds), *The UN Convention on the Rights of Persons with Disabilities. European and Scandinavian Perspectives*, pp. 165-198.



### 3.2.1. Recognising a right to reasonable accommodation

A number of Member States recognise the right of disabled people to reasonable accommodation in housing. They include Austria, Belgium, Cyprus, Ireland, the Netherlands, Spain and the United Kingdom<sup>80</sup>. In Spain, for example, Law 51/2003 on equal opportunities, non-discrimination and full accessibility for disabled people applies to infrastructure and buildings, and defines reasonable accommodation as measures to adapt the physical, social and behavioural environment to meet the specific requirements of disabled people and to improve the accessibility and participation of disabled people on an equal footing with other citizens in a way that is practical, effective and without any disproportionate burdens<sup>81</sup>.

In the Netherlands, the Equal Treatment Commission has recognised that the requirement to provide reasonable accommodation in housing applies to owners' associations. During a case heard in 2011, the applicant, a home owner with a mobility impairment, had requested permission to park her electric mobility scooter near the entrance that she used or in a free space in the shared garage. Her request was rejected by the owners' management council because the internal rules did not allow a vehicle to be parked near the entrance, and because parking in the garage would have obstructed other vehicles parked there. The Equal Treatment Commission stressed that, in the area of non-discrimination, regulations adopted by owners' associations could not result in direct or indirect discrimination on grounds of disability. Moreover, they had to provide for reasonable accommodation, including non-physical accommodation such as allowing the vehicle to be parked in the building's shared areas. The management council had suggested that the applicant build a special place to park her mobility scooter at her own cost. The Commission deemed that this suggestion was unreasonable as there were other less onerous and more practical solutions to allow the applicant to park her vehicle near to her home<sup>82</sup>.

However, some national legal systems limit the scope of the obligation to provide reasonable accommodation in housing. In the United Kingdom, for example, the obligation does not apply to owners letting out a building that they have used as a main home<sup>83</sup>. In the Netherlands, the obligation does not apply when the accommodation means that construction or re-construction works have to be carried out in or around the house<sup>84</sup>.

### 3.2.2. Providing financial assistance for the adaptation of housing

A large number of EU Member States provide subsidies or financial assistance for adapting housing to the needs of disabled people, whether or not in combination with the recognition of a right to reasonable accommodation. Such measures exist in Bulgaria, the Czech Republic, Finland, Germany, Ireland, Malta and Sweden<sup>85</sup>.

The terms and the level of assistance vary from one country to the next. In Bulgaria, the criteria for receiving aid are particularly strict: the aid is a single payment, which is only awarded to disabled people who have lost 90% of their working ability or to wheelchair-bound children whose family income is below a certain

<sup>80</sup> European Network of Legal Experts in the non-discrimination field, Country reports, 2011 (HEC and MPG).

<sup>81</sup> Article 7, Law 51/2003 of 2 December 2003 on equal opportunities, non-discrimination and full accessibility for disabled people (*Ley 51/2003, 2 diciembre, de igualdad de oportunidades, no discriminación y accesibilidad universal de las personas con discapacidad*).

<sup>82</sup> Opinion No 2011-30. See also Opinion No 2010-35 and *European Anti-discrimination Law Review*, 2010, No 11, pp. 67–68.

<sup>83</sup> Schedule 5, Paragraph 2(1)(a), Equality Act.

<sup>84</sup> Article 6(c), Disability Discrimination Act.

<sup>85</sup> European Network of Legal Experts in the non-discrimination field, Country reports, 2011 (HEC and MPG).

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threshold<sup>86</sup>. Finland is quite the opposite, and the system in place there is very advantageous for disabled people. Firstly, anyone with a serious disability has the right to claim reimbursement from the municipal authorities for all costs related to adapting their home and obtaining equipment for it, including lifts, alarms or other permanent facilities, so long as the measures taken are necessary to help the person live their day-to-day life independently<sup>87</sup>. There is no maximum amount established by law, which only states that costs need to be *reasonable* in order to be reimbursed. According to the courts, this means that they must be in line with the average market price, and provide a suitable and realistic solution in each individual case. The municipality may also supply free equipment and facilities for the home of a seriously disabled person on its own initiative<sup>88</sup>. There is another law which allows any disabled person to obtain assistance to make repairs to their home, to install a lift, or to remove obstacles to mobility. In this law, the assistance is based on social considerations and the financial means of the individuals making the request<sup>89</sup>. In principle, the assistance may not exceed 40% of the cost of the works. If the works are vital in order to allow the individual to stay in their home, the assistance can cover up to 70% of the cost. Lastly, a third law allows subsidies to be awarded for building, acquiring and modernising residences designed for particular groups of people, such as disabled people<sup>90</sup>. The level of the subsidy varies depending on the nature of the residence and can range from 5–35% of the cost. In addition to all of this, disabled people can benefit from home support services, such as help in getting around, dressing, personal hygiene, eating and cleaning around the home, as well as services that are vital to their health, their rehabilitation and their wellbeing<sup>91</sup>.

In Ireland, the Housing Adaptation Grant for People with a Disability can be allocated by local authorities based on an evaluation of the applicant's financial means. The grant is for cases where changes need to be made to a home to make it suitable for a person with a physical, sensory or intellectual disability or mental health difficulty. For minor work to address mobility problems, such as installing a ramp, an individual may instead apply for a Mobility Aids Grant, which provides less money than the Housing Adaptation Grant. Although this grant is primarily intended for the elderly, disabled people are also entitled to apply for it<sup>92</sup>.

In several countries, this sort of assistance is not only provided to disabled people themselves, but also to owners or co-owners who wish to make modifications for the benefit of other people. In Finland, co-owners' associations and owners of rented properties may apply for assistance for the purpose of renovating housing and eliminating obstacles to mobility<sup>93</sup>. Sweden has an interesting provision on its books. If a tenant makes modifications to a house in order to accommodate their disability and then later leaves the property, the owner may apply for assistance to have the modifications removed<sup>94</sup>.

<sup>86</sup> European Network of Legal Experts in the non-discrimination field, Country report on Bulgaria, Margarita Ilieva (HEC and MPG).

<sup>87</sup> Section 12, Support and assistance for the disabled Decree 1987/759.

<sup>88</sup> European Network of Legal Experts in the non-discrimination field, Country report on Finland, Rainer Hiltunen (HEC and MPG).

<sup>89</sup> Act on Residential Renovation and Energy Saving Grants, 1021/2002.

<sup>90</sup> Act on Subsidies for Improving Housing Conditions for Special Groups (1281/2004).

<sup>91</sup> Services and Assistance for the Disabled Act (380/1987).

<sup>92</sup> European Network of Legal Experts in the non-discrimination field, Country report on Ireland, 2011, Orlagh O'Farrell (HEC and MPG).

<sup>93</sup> European Network of Legal Experts in the non-discrimination field, Country report on Finland, 2011, Rainer Hiltunen (HEC and MPG).

<sup>94</sup> European Network of Legal Experts in the non-discrimination field, Country report on Sweden, 2011, Per Norberg (HEC and MPG).

### 3.2.3. Establishing accessibility standards

Many Member States have put in place obligatory accessibility standards for newly constructed or renovated buildings, notably Austria, Belgium, Croatia, Finland, France, Poland, Portugal, Slovenia and Sweden<sup>95</sup>. Norway also has measures of its own in place.

Finland's legislation is again exemplary. The National Building Code contains mandatory rules for building 'without barriers'. They consist of ten pages of detailed technical requirements that aim to promote accessibility and the adaptation of buildings for disabled people, particularly those in wheelchairs<sup>96</sup>. Likewise, in Poland the general Law on building requires any new multi-family home to be built so that it can be used by disabled people<sup>97</sup>. In France, the Building and Residence Code requires that the architecture, and the indoor and outdoor facilities and equipment of housing, whether private or public, are 'such that the premises and facilities are accessible to all, particularly to disabled people, regardless of whether their disability is physical, sensory, cognitive, mental or psychological', in the cases and under the conditions established by the law. However, these provisions are not mandatory for an owner who is building or renovating a house for their personal use<sup>98</sup>. In Sweden, a local authority issuing a building permit must check that the building meets the standards for accessibility for disabled people. However, compliance with the standards is required only when an owner actually needs a building permit<sup>99</sup>.

In Portugal, Decree-law No 38/2004 concerning the accessibility of public buildings establishes accessibility standards that apply to new and existing buildings, whether public or private. Buildings constructed before 1997 must be adapted within 10 years, while buildings constructed after this date have a deadline of 5 years. However, there are still challenges with the practical application of the Decree-law to existing buildings<sup>100</sup>.

## 4. Adapting housing for the elderly

Much like disabled people, the elderly may experience physical, sensory or cognitive difficulties, making it necessary for their home to be adapted so that they can continue to live there. Some countries, such as Germany and Ireland, have established specific assistance in order to help the elderly to make necessary changes to their homes.

In Ireland, the Housing Aid for Older People Scheme is designed to improve the overall living conditions of the elderly by making it possible for their home to be adapted. Aid is provided for structural works or renovations, replacements of doors and windows, and the supply of water, heating and sanitary services. As well as this, the Mobility Aids Grant Scheme provides smaller sums of assistance for work that aims to tackle domestic mobility problems, such as obtaining and installing a ramp. The aid is primarily meant for the

<sup>95</sup> Source: European Network of Legal Experts in the non-discrimination field, Country reports, 2011 (HEC and MPG).

<sup>96</sup> European Network of Legal Experts in the non-discrimination field, Country report on Finland, 2011 Rainer Hiltunen (HEC and MPG).

<sup>97</sup> European Network of Legal Experts in the non-discrimination field, Country report on Poland, 2011, Łukasz Bojarski (HEC and MPG).

<sup>98</sup> Article L117-1 of the Construction and Residence Code [*Code de la construction et de l'habitation*].

<sup>99</sup> European Network of Legal Experts in the non-discrimination field, Country report on Sweden, 2011, Per Norberg (HEC and MPG).

<sup>100</sup> European Network of Legal Experts in the non-discrimination field, Country report on Ireland, 2011, Manuel Malheiros (HEC and MPG).

elderly, but can also be allocated to disabled people<sup>101</sup>. In Germany, special assistance is given to the elderly to help them meet their housing needs, which includes making adaptations to their home<sup>102</sup>.

In other countries, provisions put in place to help disabled people to make alterations to their homes are also available to elderly people facing similar issues. In Finland, for example, the Act on Residential Renovation and Energy Saving Grants, which was mentioned earlier in this report, expressly states that aid for repairing a home or removing obstacles to mobility can be awarded to the elderly too<sup>103</sup>.

## 5. Respecting the traditional way of life of Travellers

Housing available on the public and private market can also be unsuitable for a population group for cultural reasons. This is the problem that Travellers face when they try to maintain their traditional way of life by living in caravans rather than fixed residences.

When talking about Travellers in general, we are referring to all populations who, throughout Europe, live in mobile housing because of their cultural traditions. Some are of Roma, Gypsy or Sinti origin while others, such as the groups called 'Travellers' in the United Kingdom and Ireland, have a different ethnic origin but a similar way of life. Five Member States of the European Union have a significant community of Travellers: Belgium, France, Ireland, the Netherlands and the United Kingdom<sup>104</sup>.

In all of these countries, Travellers face serious difficulties in finding a place to live because there are not enough sites where caravans may be legally parked. This situation reflects the fact that their way of life is not taken into account sufficiently by housing and urban planning policies. Over the last fifty years, urbanisation and changes in land use have greatly reduced the amount of land available for caravans. At the same time, countries have developed urban planning regulations that prohibit caravans from being installed outside of authorised sites. Nowadays, people who live in caravans have, in theory, two possible solutions. They can buy or rent private land and put their caravan there, or they can rent a plot on public land set aside for the purpose. However, both options run into difficulties in practice. On the one hand the urban planning permit needed to place a caravan on private land is seldom granted, while on the other hand public authorities continue to fail to provide enough areas of public land where caravans are welcome. As a result, many Traveller families end up living on land without authorisation and under the constant threat of being moved on or being forced against their will to abandon their way of life.

International institutions have none the less recognised the rights of Travellers with regard to their traditional way of life, as well as the obligation of public authorities to take measures to enable them to exercise this right (5.1). Nevertheless, Travellers still face obstacles to their traditional way of life in all States where they live (5.2).

<sup>101</sup> European Network of Legal Experts in the non-discrimination field, Country report on Ireland, 2011, Orlagh O'Farrell (HEC and MPG).

<sup>102</sup> Section 70 and 71(2) of Social Code XII [*Sozialgesetzbuch XII*]. See also European Network of Legal Experts in the non-discrimination field, Country report on Germany, 2011, Matthias Mahlmann (HEC and MPG).

<sup>103</sup> Act on Residential Renovation and Energy Saving Grants, 1021/2002.

<sup>104</sup> European Union Agency for Fundamental Rights (2009), *Housing conditions of Roma and Travellers in the European Union - Comparative report*, p. 69.



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## 5.1. International norms

The right of Travellers to have their way of life respected is based on many internationally protected rights.

For the European Court of Human Rights, the right of a person to respect for their private and family life and for their home, which is guaranteed by Article 8 of the European Convention on Human Rights, includes the right of a Gypsy family to live in a caravan in cases where this situation affects the 'ability to maintain [one's] identity as a Gypsy and to lead [one's] private and family life in accordance with that tradition'<sup>105</sup>. It follows, therefore, that States have a positive obligation to 'facilitate the Gypsy way of life'. The Court also recognised that the 'vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases'<sup>106</sup>. The authorities must, therefore, take the particular features of Gypsies or Travellers living a traditional lifestyle into account when they make urban planning law and take decisions on specific cases.

The Advisory Committee on the Framework Convention for the Protection of National Minorities is of the opinion that the lack of caravan sites for Travellers is a breach of Article 5 of the Framework Convention, which says that States 'undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity' and that they must refrain from 'policies or practices aimed at assimilation of persons belonging to national minorities against their will'<sup>107</sup>.

The European Committee of Social Rights also recognises the right of Travellers to respect for their traditional way of life based on the right to housing under Article 31 of the revised Social Charter, the right to protection of families under Article 16, and the principle of non-discrimination under Article E. The Committee believes that the concept of housing extends to the caravan itself, as well as the land on which it is located<sup>108</sup>. The requirement for States to provide an adequate supply of housing for families encompasses a positive obligation to ensure that a sufficient number of residential sites are provided for them to park their caravans<sup>109</sup>. In order to satisfy the adequate housing criteria, public land meant for Travellers to stay on 'must be properly fitted out with the basic amenities necessary for a decent life. Such sites must possess all the basic amenities, such as water, waste disposal, sanitation facilities, electricity, and must be structurally secure, not overcrowded and with secure tenure supported by law'. In order to secure social integration, the sites must be 'located in an appropriate environment offering easy access to public services, where there are employment opportunities, health care services, schools and other social facilities'<sup>110</sup>. The Committee also believes that States must take account of the specific circumstances of families of Travellers in their urban planning legislation and individual decisions on planning permits 'so as to enable them to live, in so far as possible, in accordance with their traditions and cultural identity while striking the right balance between this and the public interest'<sup>111</sup>.

In the same spirit, the Committee of Ministers of the Council of Europe in its Recommendation on the movement and encampment of Travellers in Europe states in principle that any Roma or Gypsies who wish

<sup>105</sup> ECtHR, *Chapman v the United Kingdom*, GC, 18 January 2001, Paragraph 73.

<sup>106</sup> ECtHR, *Connors v the United Kingdom*, 27 August 2004, Paragraph 84.

<sup>107</sup> See in particular Advisory Committee, First Opinion on the United Kingdom, ACFC/INF/OP/I(2002)006, Paragraph 42.

<sup>108</sup> ECSR, *International Federation of Human Rights (FIDH) v Belgium*, Complaint No 62/2010, decision on the merits of 21 March 2012, Paragraph 73.

<sup>109</sup> ECSR, *ERRC v Greece* (8 December 2004), Paragraph 25; *FIDH v Belgium* (21 March 2012), Paragraph 112.

<sup>110</sup> *FIDH v Belgium* (21 March 2012), Paragraph 114.

<sup>111</sup> *Ibid.* Paragraph 115.

to continue to lead a traditional nomadic or semi-nomadic way of life 'should have the opportunity, in law and in practice, to do so'<sup>112</sup> Paragraph 3 of the Recommendation on improving the housing conditions of Roma and Travellers in Europe<sup>113</sup> calls on States to 'affirm the right of people to pursue sedentary or nomadic lifestyles', while Paragraph 33 states that they should 'ensure that an adequate number of transit/halting sites are provided to nomadic and semi-nomadic Roma' and that the sites should be 'adequately equipped with necessary facilities including water, electricity, sanitation and refuse collection'.

The European Commission itself, in its framework for European Roma Integration Strategies, has invited States to 'address the particular needs of non-sedentary Roma', for example by providing them with access to suitable halting sites<sup>114</sup>.

Other international bodies have called on States to take measures in order to ensure that there are enough caravan sites accessible to Travellers. Examples include the United Nations Committee on the Elimination of Racial Discrimination<sup>115</sup>, the European Commission against Racism and Intolerance (ECRI)<sup>116</sup>, the Commissioner for Human Rights of the Council of Europe and the UN Special Rapporteur on adequate housing<sup>117</sup>.

## 5.2. The situation in Member States

A number of the States with a significant Traveller community have taken measures to remedy the problem of a lack of accessible land. However, despite these initiatives, there is still not enough land available to meet requirements, with local authorities often being reluctant to create or authorise these sites, sometimes in response to opposition by citizens.

In France, Law No 2000-614 of 5 July 2000 on accommodating and providing homes for Travellers (or 'gens du voyage'), also known as the 'Besson law', states that municipalities with a population of more than 5 000 must make one or several halting sites available to Travellers, and provide facilities and upkeep for these areas, in line with established standards<sup>118</sup>. In order to assist municipalities in carrying out this work, the State covers, in principle, 70% of the investments needed for facilities at the sites. If the municipality fails to meet the obligation, the law says that the State may acquire the necessary land, carry out the works, and then manage the halting sites on behalf of and at the expense of the municipality in question. In exchange for providing sites, the mayor has the power to forbid caravans from being parked throughout the rest of the municipality, and punish infringements with expulsion. In spite of this provision, only a small number of municipalities have provided the necessary halting sites. At the start of 2009, almost nine years after the adoption of the law, barely 40% of the 41 865 planned areas had been

<sup>112</sup> Recommendation Rec(2004)14, adopted on 1 December 2004.

<sup>113</sup> Recommendation Rec(2005)4, adopted on 23 February 2005.

<sup>114</sup> Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions, *An EU Framework for National Roma Integration Strategies up to 2020*, 5.4.2011, COM(2011) 173 final.

<sup>115</sup> General Recommendation No 27: Discrimination against Roma, 16 August 2000, Paragraph 32.

<sup>116</sup> ECRI General Policy Recommendation No 130 on Combating Anti-Gypsyism and Discrimination Against Roma, adopted on 24 June 2011, CRI(2011)37, Paragraph 6(j)-(l).

<sup>117</sup> Joint Statement by Council of Europe Commissioner for Human Rights Thomas Hammarberg and UN Special Rapporteur on the Right to Adequate Housing Miloon Kothari (CommDH/Speech(2007)16); Recommendation of the Commissioner for Human Rights on the implementation of the right to housing, CommDH(2009)5.

<sup>118</sup> Decree No 2001-569 of 29 June 2001 on technical standards applicable to halting areas for Travellers.

created<sup>119</sup>. In addition to this, a law adopted in 2003 authorised municipalities with fewer than 20 000 inhabitants to request a derogation from the Besson Law<sup>120</sup>. The supply of available areas remains far below the demand as estimated by the authorities themselves. In its fourth report on France, the ECRI notes that this situation engenders tensions between local people and Travellers unable to find suitable halting places, whereas, according to a number of sources, relations are considerably improved where such sites exist<sup>121</sup>.

This state of affairs has twice led the European Committee of Social Rights to judge that France had violated the right to housing<sup>122</sup>. The Committee felt that ‘despite the efforts of central and local authorities in this area and the positive results that have been achieved at times, there appears to have been a long period during which local authorities and the State have failed to take sufficient account of the specific needs of Travellers’<sup>123</sup>. Moreover, the halting areas that are created do not always meet the health and safety conditions set by French legislation. They are often outside urban areas or near facilities that create unpleasant conditions, such as electric transformers or very busy roads<sup>124</sup>. This situation creates an additional violation of Article 31(1) of the revised Social Charter<sup>125</sup>.

As for the United Kingdom, in its first opinion on the UK, the Advisory Committee on the Framework Convention for the Protection of National Minorities highlighted the seriousness of the problem created by the lack of caravan sites available to Travellers:

‘This [lack of sites] combined with a range of legislative and administrative measures have the effect of inhibiting nomadism and effectively denying travellers the right to maintain and preserve or develop one of the important elements of their culture and identity, namely travelling.’<sup>126</sup>

The Housing Act adopted in 2004 requires local authorities in England and Wales to carry out an assessment of the accommodation needs of gypsies and travellers residing in or resorting to their district whenever they carry out a similar assessment for the rest of the population. This assessment must be sent to regional planning bodies who determine the number of caravan sites that each region must allow for in regional planning strategies<sup>127</sup>. The Government also earmarks public funds for local authorities to equip new sites and refurbish existing ones. Nonetheless, in 2011 the Advisory Committee on the Framework Convention noted that progress in providing residential or transit land was very limited. The majority of local authorities had not created or refurbished sites in cases where an assessment had shown that there was a need for this. The reluctance of local authorities, which partly reflects the attitude of the majority of the population,

<sup>119</sup> ECRI report on France (fourth monitoring cycle), 29 April 2010. CRI(2010)16, Paragraph 97. See also European Union Agency for Fundamental Rights, *op. cit.*, p. 70.

<sup>120</sup> Article 15 of Law No 20003-710 of 1 August 2003 on urban planning and renovation.

<sup>121</sup> ECRI report on France (fourth monitoring cycle), 29 April 2010. CRI(2010)16, Paragraph 97.

<sup>122</sup> ECSR, *International Movement ATD Fourth World v. France*, Complaint No 33/2006, decision on the merits of 5 December 2007, Paragraph 155 and *ERRC v. France* Complaint No 51/2008, decision on the merits of 19 October 2008, Paragraph 41.

<sup>123</sup> *ERRC v France* (19 October 2009), Paragraph 40.

<sup>124</sup> See also Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008, CommDH(2008)34, 20 November 2008.

<sup>125</sup> *ERRC v France* (19 October 2009), Paragraphs 49–50.

<sup>126</sup> Advisory Committee, First Opinion on the United Kingdom, ACFC/INF/OP/I(2002)006, Paragraph 42. See also the Resolution of the Committee of Ministers on the implementation of the Framework Convention for the Protection of National Minorities by the United Kingdom, Resolution ResCMN(2002)9, 13 June 2002.

<sup>127</sup> Planning for Gypsy and Traveller Caravan Sites, Office of the Deputy Prime Minister Circular 1/2006, 2 February 2006. See Advisory Committee, Second Opinion on the United Kingdom, ACFC/OP/II(2007)003, Paragraph 95.

represents a major obstacle to the creation of new sites<sup>128</sup>. At the same time, Travellers applying for planning permission to live on private sites struggle hugely in spite of the fact that the authorities encourage them to create private sites as an alternative to sites managed by public authorities. The Committee likewise found that, in Scotland, certain solicitors report that 80% of planning permission requests made by Gypsies and Travellers are rejected, which compares to a figure of 20% for the rest of the population<sup>129</sup>. The Committee concluded that it was necessary to take 'far more vigorous measures to meet the accommodation needs of Gypsies and Travellers'<sup>130</sup>. It recommended that authorities ensure that suitable sites are made available to these communities and ensure that planning permission is granted in due consideration of their specific needs<sup>131</sup>.

In Ireland, the Housing (Traveller Accommodation) Act adopted in 1998 instructs local authorities to consult with Travellers in order to adopt a five-year programme with the aim of meeting their housing requirements<sup>132</sup>. Although all local authorities have put such programmes in place, they have still only been partly implemented. In 2006, the Advisory Committee on the Framework Convention noted that, although the judiciary had confirmed the fact that the delivery of halting sites was a mandatory duty of local authorities<sup>133</sup>, many of the authorities had failed to meet their own targets in this area<sup>134</sup>. The lack of suitable halting sites continues to be one of the key problem areas for Travellers<sup>135</sup>. The negative effects of this lack are in some cases aggravated by the implementation of the Housing (Miscellaneous Provisions) Act, 2002, which criminalises trespassing, and gives authorities the power to remove alleged trespassers under vaguely worded conditions without providing robust procedural guarantees for the persons concerned<sup>136</sup>.

In Belgium, although local authorities are not obliged to create halting areas for Travellers, the Regions and Communities offer financial incentives to encourage municipalities to do this. In the Flemish Community, these incentives can cover up to 90% of the cost of acquiring or expanding a caravan site. However, there are still not enough sites: in 2010, Flanders had a total of 29 public residential sites (469 pitches) where families could stay throughout the year by paying rent, which represented 50% of the total requirement. There are only five public sites for families who travel and wish to rent places for brief periods, which only meet 20% of demand. The situation is worse still in the rest of the country: the Walloon Region had just one public transit site, and a few sites that were made available for brief periods by some towns and villages on an ad hoc basis, while the Brussels region offered one small public residential site (with six pitches) and one public transit site (twenty-one pitches)<sup>137</sup>. Furthermore, families who purchase or rent private sites so that they can stay there in their caravans are seldom granted the planning permission required for this. In 2010, only two families in the whole country obtained planning permission to place their caravan permanently on a private site. The European Committee of Social Rights found this situation to be a violation of the Social Charter. The lack of sites for Travellers and the State's inadequate efforts to rectify the problem, as well as the failure to take sufficient account of the specific circumstances of Traveller families when drawing up and implementing

<sup>128</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on the United Kingdom, ACFC/OP/III(2011)006, Paragraph 87.

<sup>129</sup> *Ibid.* Paragraph 88.

<sup>130</sup> *Ibid.* Paragraph 95.

<sup>131</sup> *Ibid.* Paragraphs 96–97.

<sup>132</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, First Opinion on Ireland ACFC/INF/OP/I(2004)003, Paragraph 51.

<sup>133</sup> Second Opinion on Ireland ACFC/OP/II(2006)007, Paragraph 57.

<sup>134</sup> *Ibid.* Paragraph 58.

<sup>135</sup> *Ibid.* Paragraph 59.

<sup>136</sup> *Ibid.* Paragraph 60.

<sup>137</sup> ECSR, *FIDH v Belgium* (21 March 2012) Paragraphs 88–96.



planning legislation were all found to constitute a violation of Article E on non-discrimination in conjunction with Article 16<sup>138</sup>.

The European Committee of Social Rights has also found that the insufficient number of 'camping sites' in Greece and Italy for Roma who have chosen or been forced to live a nomadic lifestyle, as well as the unsuitable living conditions in these camps constituted discrimination as set out in the European Social Charter<sup>139</sup>.

<sup>138</sup> *Ibid.* Paragraphs 121 and 141.

<sup>139</sup> ECSR, *ERRC v Italy*, Complaint No 27/2004, decision on the merits of 7 December 2005, Paragraphs 12–13; *ERRC v Greece*, Complaint No 15/2003, decision on the merits of 8 December 2004, Paragraphs 46–47.

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### III. Discrimination in the allocation of housing

Needless to say, the prohibition of discrimination in access to housing also applies to the process through which a property put up for sale or rent is allocated to a prospective buyer or tenant. To be sure, there is an inherent element of selectivity in the choice to allocate goods to one person rather than another in a situation where demand generally outweighs supply. Anti-discrimination laws mean that the decision to refuse to let or sell a property cannot be based on criteria that amount to direct or indirect discrimination.

In what follows, private housing (1) and public housing (2) will be considered separately, as the latter is governed by particular rules put in place by the law.

Two groups seem to be particularly hard hit by this type of discrimination, in both the public and private sectors: the Roma and persons of foreign origin.

# 1. Private Housing

## 1.1 Renting private housing

### 1.1.1 The groups affected by discrimination in access to privately rented housing

Both the report by the European Monitoring Centre on Racism and Xenophobia on discrimination against migrants and minorities in housing in 2005<sup>140</sup> and the 2009 report by the Agency for Fundamental Rights on the living conditions of Roma and Travellers<sup>141</sup> demonstrate the extent of discrimination suffered throughout the European Union by Roma, migrants and persons of foreign origin looking to rent private housing. This often takes the form of a refusal to let out a property, but another example is landlords demanding a higher rent from migrants or members of an ethnic minority<sup>142</sup>.

Although there is a shortage of data in this area, some sources suggest that women, and particularly women who are single parents, regardless of their origin, are also disproportionately affected by discrimination when renting private housing. According to a 2006 study carried out in Belgium, a large number of landlords react unfavourably to the idea of having single women or unmarried mothers in their property. Some of them were influenced by the old stereotype that women are not as good as men at handling the practical aspects of maintaining a property<sup>143</sup>, while the fact that many women have low incomes only exacerbates this tendency<sup>144</sup>. In France the Equal Opportunities and Anti-Discrimination Commission [*Haute autorité de lutte contre les discriminations et pour l'égalité – HALDE*]<sup>145</sup> found in 2011 that single-parent families are among the family types that suffer most frequent discrimination in the private housing sector, 85% of which are

<sup>140</sup> EUMC (2005), *Migrants, Minorities and Housing: Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union*, report prepared by Harrison, M., Law, I. and Phillips, D. See also Edgar, B. (2004), *Policy measures to ensure access to decent housing for migrants and ethnic minorities*, Joint Centre for Scottish Housing Research.

<sup>141</sup> European Union Agency for Fundamental Rights (2009), *Housing conditions of Roma and Travellers in the European Union - Comparative report*.

<sup>142</sup> EUMC (2005), *op. cit.* p. 70.

<sup>143</sup> Bernard, N. (2007), 'Les femmes, la précarité et le mal-logement : un lien fatal à dénouer', *Courrier hebdomadaire du CRISP*, No 1970.

<sup>144</sup> *Ibid.*

<sup>145</sup> On 1 May 2011, the HALDE was dissolved and its responsibilities were transferred to the Défenseur des droits.

single mothers looking after one or more children<sup>146</sup>. In the United Kingdom, the report 'How fair is Britain? 2010' highlighted the fact that single mothers are significantly more likely than other family types to live in overcrowded, poor quality housing<sup>147</sup>.

According to the HALDE Deliberation cited above, people who are disabled or who are no longer independent and young people under the age of thirty also face significant discrimination in access to housing in France. It would be useful to conduct Europe-wide studies in order to see if these groups are also affected significantly by this type of discrimination in other European States.

Some decisions in national case law show that same-sex couples who wish to rent accommodation are sometimes victims of discrimination<sup>148</sup>. However, there are no studies on this subject, so it is not possible to assess the scale of this phenomenon in Europe<sup>149</sup>.

### 1.1.2 The scope of discrimination law in privately rented housing

Although studies show that there is a significant level of discrimination in the private rental market throughout the States of the European Union, there is still very little case law in this field. Proving in court that a refusal by a private owner to let out their property constituted discrimination is, in many cases, a serious challenge in spite of the principle of a shared burden of proof set out in the European Directives.

Naturally, there is no such problem of proof when the very terms of a published advert to let housing are discriminatory. In 2005 an Austrian NGO complained about the large number of openly discriminatory adverts offering property to let in magazines and online media, with conditions such as 'Austrians only', 'no foreigners' or 'native German-speakers only'. The NGO notified the authorities of the situation and asked them to take legal action on the basis of the Equal Treatment Act<sup>150</sup>. In 2007, Norway's Equality Tribunal heard the case of an owner who posted an advert on a national property website, stating that only Norwegian citizens would be considered. Even though Norway's anti-discrimination law makes no mention of nationality as grounds for discrimination, the Tribunal decided that such a condition would lead to indirect discrimination on grounds of ethnic origin given that it would create a particular disadvantage for people not of Norwegian ethnic origin<sup>151</sup>.

<sup>146</sup> Deliberation No 2011-122 of 18 April 2011.

<sup>147</sup> Equality and Human Rights Commission (2011), *How fair is Britain? Equality, Human Rights and Good Relations in 2010. The First Triennial Review*, pp. 490-495. The report stated that 24% of women with children said that they lived in poor quality housing, compared to 13% of households made up of a man and children.

<sup>148</sup> In 2005, the court of first instance in Nivelles, Belgium, ordered an owner to stop discriminating against homosexual people when renting property. The complainants were a same-sex couple who had asked to rent a home that was let out by this owner through an estate agent. The owner replied that they wished to let the property to a 'traditional couple'. (Civ. Nivelles 19 April 2005). In a prior case, again in Belgium, a couple of men had told their estate agent that they wished to rent an apartment that was being let out, but the owner responded that they did not wish to let the property to two men or to two women. One of the men launched an appeal together with the Centre for Equal Opportunities and Opposition to Racism. The judge considered that the case was not admissible (Civ. Gand (ref.), 31 December 2003).

<sup>149</sup> The study on homophobia and transphobia published in 2011 by the European Union Agency for Fundamental Rights, for example, contains no information on discrimination that homosexuals might suffer in housing. See European Union Agency for Fundamental Rights (2011) *Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the EU Member States*.

<sup>150</sup> *European Anti-Discrimination Law Review*, No 4, November 2006, p. 50.

<sup>151</sup> Case No 18/2006.



However, as the public, including owners looking to rent their property, become more and more aware of anti-discrimination law, adverts such as those are becoming ever rarer. With no written evidence or testimony from a third party, it is incredibly difficult to prove that a refusal to let out property was based on prohibited grounds of discrimination. In these circumstances, the avenue of situation testing can be crucial to establish that the behaviour of an owner or an estate agent is discriminatory. In many Member States, this process is accepted by law as proof of discrimination<sup>152</sup>. The French Court of Cassation in particular accepted situation testing recorded over the telephone as evidence to prove discrimination by an estate agent in letting properties. In the case in question, the manager of the estate agent had stated during a telephone conversation that was recorded by the NGO *SOS Racisme* that she met a particular client's request by selecting potential tenants based on whether their name sounded French or foreign, explaining that she could not 'rent it to coloured people'. The Court of Appeal in Toulouse fined her 3 000 euros<sup>153</sup>.

As that case shows, discrimination in letting out housing is prohibited both for property owners and for intermediaries, such as estate agents. Going back to Belgium, the Criminal Court of Antwerp jailed an estate agent who used a flyer in the offices to announce that only tenants who were 'naturally Belgian' would be considered<sup>154</sup>.

It should also be stressed that if an owner asks an estate agent not to let their property to certain individuals on discriminatory grounds, this is discrimination in and of itself. The European anti-discrimination Directives state that any behaviour that involves instructing someone else to discriminate on prohibited grounds is deemed to be discrimination<sup>155</sup>. Estate agents can therefore oppose any discriminatory requests made by clients and report them to the law enforcement authorities. One example of this happening was a French estate agent who reported a landlord that told them not to deal with 'Arabs'<sup>156</sup>.

Protection against discrimination in access to privately rented housing is none the less limited in certain States by clauses that exempt transactions relating to private or family life from anti-discrimination laws. Although this concept is interpreted differently in some countries – such as Denmark, Ireland and Norway – it is meant to apply to a room that is rented in the house where the owner lives<sup>157</sup>.

## 1.2. Purchasing private housing

Like renting, purchasing private housing can be hindered by discriminatory acts or measures, whether they are carried out by private individuals, such as a property owner or an estate agent, or by public authorities..

### 1.2.1 Discrimination caused by private persons

As is the case with rental properties, there are very few legal decisions stating that discrimination took place when a property was purchased. It is once again problematic to prove that an owner's choice not to sell their property to a certain person was on discriminatory grounds. In France, two sisters were given a suspended fine of

<sup>152</sup> Rorive, I. (2009), *Proving Discrimination Cases. The Role of Situation Testing*.

<sup>153</sup> Court of Cassation (Criminal Chamber) 7 June 2005 No 04-87354, unpublished. This decision is available on the *legimobile* site: <http://legimobile.fr/fr/jp/j/c/crim/2005/6/7/04-87354/> (last visited 1 August 2013).

<sup>154</sup> *Corr. Anvers*, 21 June 1996, *T. Vreemd.*, 1996, p. 165.

<sup>155</sup> Article 2(4) of Directive 2000/43/EC; Article 4(4) of Directive 2004/113/EC.

<sup>156</sup> Boccadoro, N. (2009), 'Housing Rights and Racial Discrimination', *European Anti-discrimination Law Review*, No 9, December 2009, p. 27.

<sup>157</sup> See *Supra*, Part I, 3.2.

3 000 euros by the criminal court in Béthune for refusing to sell a house to an Algerian couple who had offered to buy it. The court was able to find the sisters guilty on account of the testimony of the secretary of the estate agent, who revealed that one of the owners had asked about the nationality of the prospective buyers, and had stated that she 'didn't want Arabs in the house'. Just before the contract of sale was signed, the owners cancelled the deal and sold the house to a different couple<sup>158</sup>. Norway's Equality Tribunal judged that there was discrimination in the case of a private owner who wanted to sell his property to a 'native Norwegian' rather than an individual of foreign descent, even if the latter offered a higher price for the property<sup>159</sup>. However, in another case with similar circumstances, the same tribunal judged that there was no proof that the sale was related to the ethnic origin of the buyer<sup>160</sup>. In Portugal, although the High Commission for Immigration and Intercultural Dialogue [*Alto Comissariado para a Imigração e Diálogo Intercultural – I.P.*] had fined owners who refused to sell their properties to Roma, the Court of first instance of Vila Franca de Xira acquitted them as there was not enough evidence to prove that the sale was refused on discriminatory grounds<sup>161</sup>.

Access to property may also be hindered by the refusal of a financial institution to grant a loan, depriving a person of the means to buy a home. In some countries, such as Greece<sup>162</sup> and the Netherlands<sup>163</sup>, there have been reports of Roma being discriminated against when asking for credit from banks. Practices like this represent a breach of Directives 2000/43/EC and 2004/113/EC, which prohibit discrimination when providing services, including financial services.

## 1.2.2 Discrimination caused by public authorities

Public authorities are involved in property deals in a number of ways, whether through regulations covering property contracts or through the administrative formalities that the parties have to fulfil. This involvement may open the door to discrimination.

Authorities occasionally apply certain conditions to the right to acquire property. In Cyprus, non-Cypriots wishing to buy property need a permit to officially register property in their name<sup>164</sup>. In the Flemish region of Belgium, people wishing to buy property in certain areas are required by legislation to demonstrate a 'sufficient connection' with the locality<sup>165</sup>. In theory, the aim is to make it possible for local residents to obtain property by limiting the influx of buyers from other areas, which causes a hike in prices. To demonstrate a connection with the municipality a person can show that they have lived there continuously for at least six years, that they spend at least half of their working week there on average, or that they have a professional, family, social or economic link with the area based on a long-standing and significant circumstance. Faced with a complaint that this legislation violated the principle of non-discrimination, the Constitutional Court expressed its doubts on the appropriateness of the criteria, given that 'none of these criteria have socioeconomic elements that would allow people with low or average incomes to obtain property'. The Court found that the measure '[seemed] to have a disproportionate effect on citizens of the European Union

<sup>158</sup> *Le Figaro*, 17 April 2012, available (only in French) at <http://www.lefigaro.fr/flash-actu/2012/04/17/97001-20120417FILWWW00460-2-surs-condamnees-pour-discrimination.php> (last visited 1 July 2013).

<sup>159</sup> Case No 22/2007.

<sup>160</sup> Case No 7/2007.

<sup>161</sup> Anti-discrimination Law Review - issue 6/7, October 2008, P. 111.

<sup>162</sup> EUMC, *op cit.* p. 62.

<sup>163</sup> European Network of Legal Experts in the non-discrimination field, Country report on the Netherlands, 2011, Rikki Holtmaat (HEC and MPG).

<sup>164</sup> Acquisition of Immovable Property (Aliens) Law 54(I)/2003, chap. 109.

<sup>165</sup> Flemish Decree on land and real estate policy of 27 March 2009, known as the 'living in your own region' decree ['Wonen in eigen streek'].

wishing to exercise their right to freedom of movement or to stay freely in these areas, or those wishing to leave the areas to exercise this same right in another Member State' because 'they will only be able to demonstrate or maintain a connection with the municipality in very exceptional circumstances'<sup>166</sup>. As it had doubts about the interpretation of the relevant European Union law, the Court decided to refer the matter to the Court of Justice of the European Union for a preliminary ruling<sup>167</sup>. The Court of Justice is yet to give its decision.

There is a similar situation in Cyprus, where the Property Law<sup>168</sup>, adopted in response to the 'unusual situation' created by the conflict between Greek and Turkish Cypriots, gives the director of the land administration the power of discretion to refuse permission for someone to purchase land if the transfer of property is seen as a risk to public security. In such cases, the property can only be transferred with authorisation from the Minister of the Interior. This legislation was contested in 2010 before the equality body on the grounds that the law was only applied in practice to cases where Turkish Cypriots wanted to buy or sell property. The institution decided that the implementation of the law effectively led to discrimination against Turkish Cypriots<sup>169</sup>.

In other cases, public authorities use apparently neutral administrative regulations to prevent certain types of individual from buying property. In Greece, many complaints have been submitted to the Ombudsman against local authorities taking an unusually long time to send the necessary administrative documents to sell a property in cases where the buyers were Roma. According to the complainants, this was part of a strategy to discourage owners from selling their property to Roma people<sup>170</sup>. In France, a mayor was given a criminal sentence for racial discrimination by the Court of Appeal in Grenoble. The mayor was found guilty of abusing his pre-emption right (which allowed him first refusal on any property put up for sale) exclusively for the purpose of stopping potential buyers with Maghreb-sounding names from buying housing and residing in the municipality<sup>171</sup>. Nevertheless, the Court of Cassation overturned this decision on the grounds that the discrimination referred to in French criminal law is limited to denying someone a right provided to them by law. According to the Court 'using a right of pre-emption, even in an abusive manner' would not constitute denial of a right provided by law<sup>172</sup>. The NGO *European Roma Rights Centre* reported another example of a discriminatory intervention by a public authority in a private transaction to sell housing: In 2001, in the town of Gyure in Hungary, the mayor and local councillors threatened and harassed a resident in an attempt to put her off selling her house to a Roma family<sup>173</sup>.

## 2. Public housing

Discrimination in the public or social sector takes a different form than in the private sector, and is much harder to detect than in relations between individuals in the private housing sector. Because social

<sup>166</sup> Decision No 50/2011 of 6 April 2011, B.72, B.74.2 and B.74.3.

<sup>167</sup> Case C-203/11.

<sup>168</sup> Immovable Property (Temporary Provisions) Law No. 49/1970.

<sup>169</sup> 25 August 2010, AKP 6/2009 and 23/2010.

<sup>170</sup> Complaints 1956/2006 and 11255/2006.

<sup>171</sup> Grenoble Court of Appeal, 8 November 2006, No 06/0053, *Dezempte and Boyer v Ghezzal*. See also the Court's decision of 16 June 2010.

<sup>172</sup> Court of Cassation (Criminal Chamber) 17 June 2008, No 07-81666, *Bulletin criminel*, 2008, No 148. See also Court of Cassation (Criminal Chamber) 21 June 2011, No 10-85641, *Bulletin criminel*, 2011, No 143.

<sup>173</sup> See the European Roma Rights Center website: <http://www.errc.org/cikk.php?cikk=327&archiv=1> (last visited 1 August 2013).

housing is allocated through a more impersonal, bureaucratic process, there tend to be various people and institutions involved and, although there are carefully regulated criteria for allocating housing, the process can hide discrimination, intentional or otherwise, as people are not always fully aware of their rights and the segmented chain of decision-making can dilute individual responsibility<sup>174</sup>.

Before looking more closely at the problem of discrimination in the public sector (2.2 and 2.3), it is worth outlining the different forms of public and social housing, and procedures for allocating housing throughout Europe (2.1).

## 2.1 The forms of public housing in Europe

The concept of social housing and its place in housing policy differ significantly across the continent. Firstly, it is provided in different forms from one State to the next. Some opt for rented social housing, some offer social housing with a right to buy, and others favour a mixed approach<sup>175</sup>. In addition, the size of the social housing stock varies greatly. According to figures from 2007, the share of rented social housing in the whole housing market (rental and sales) is 35% in the Netherlands, 21% in Austria and the United Kingdom, 20% in Denmark and the Czech Republic, but only 1% in Spain and Latvia, 2% in Bulgaria and Luxembourg and is simply non-existent in Greece<sup>176</sup>. The figures for the share of social housing in the rental market only are as high as 77% in the Netherlands and 68% in the United Kingdom, but fall to 4% in Latvia, 8% in Luxembourg and 9% in Spain<sup>177</sup>.

Perceptions of the purpose of social housing and of its target public also vary from State to State, depending on the nature of the housing market and the social model in place. There are three main models: 'residual', 'generalist' and 'universal'<sup>178</sup>. In the *residual* or *targeted* model, the purpose of social housing is strictly to provide housing to the most disadvantaged and to groups who are excluded from the private market for other reasons. The aim is not to affect the housing market, but instead to cater for the social demand outside of this market. This category covers countries such as Bulgaria, Hungary, Ireland, Romania and the United Kingdom. In the *generalist* model, social housing is intended for people who have difficulty finding housing on the market for financial reasons. This includes a greater range of beneficiaries than the previous model, such as low-income households, who are generally defined as those below a given income ceiling. Notably, the system intentionally influences the private market by increasing the total supply of housing. This model is used in Austria, Belgium, France, Germany and Slovenia. In practice, however, the model can resemble the *residual* model when, for example, there is not enough social housing available or when the income ceiling is not indexed. Lastly, in the *universal* model, social housing is available for everyone, with no income conditions, and exists alongside private housing, with the primary aim of influencing the market. This model is used in Denmark and Sweden, and was used in the Netherlands until 2011. The model was changed in the Netherlands after the European Commission decided that a public housing system could not qualify as a 'service of general economic interest' as described in EU law unless it was meant exclusively for poorer households<sup>179</sup>.

<sup>174</sup> Bernard, N. (2009), 'Le secteur du logement (privé et social) au prisme des réglementations anti-discrimination', in Wautelet, P. (ed.), *Le droit de la lutte contre les discriminations dans tous ses états*, p. 151 et seq.

<sup>175</sup> Ghekiere, L. (2007), *The Development of Social Housing in the European Union – When general interest meets Community interest*, p. 109. See also Houard, N. (ed.) (2011), *Loger l'Europe. Le logement social dans tous ses Etats*.

<sup>176</sup> Cecodhas – USH – Dexia study, 2007, cited in Ghekiere, op. cit. p. 109.

<sup>177</sup> *Ibid.*

<sup>178</sup> Ghekiere, op. cit. pp. 133-138.

<sup>179</sup> State Aid, case No E 2/2005.

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The allocation of social housing is governed by complex procedures, and each State has its own system. Social housing companies and local authorities manage the process, but other parties, such as the central State (in France) or tenants' associations (in Denmark and Italy) can also be involved. The criteria for allocating housing depend on the social housing model used in the State concerned and can be defined at the national, regional or local level. In theory, conditions for receiving housing are set by law, but in some States local authorities can add their own priority criteria.

The procedure is made up of three distinct stages. Firstly, the relevant body must check if the applicant for social housing is eligible, i.e. whether they meet the legal criteria to be considered. Next, the body considers a variety of criteria in order to decide who to prioritise on the waiting list, such as how long they have been on the list, how urgent their case is or any local connections. Lastly, when an applicant has been selected, housing can only be allocated if there is housing available that is suitable for the applicant's circumstances (income, members of the family, age, etc.)<sup>180</sup>.

Because the systems used by the various EU Member States are so complex and vary so widely, an entire report could be dedicated to examining the issue of discrimination in access to social housing in depth. Here, we will restrict ourselves to a few general observations, with a focus on two types of potential problem. The first is practices developed by bodies that are responsible for allocating social housing which go beyond the criteria set out in law, and which may constitute discrimination if they put certain people at an unfair disadvantage on prohibited grounds (2.2). Secondly, certain criteria for allocating housing that are formally established in law can penalise protected groups (2.3).

## 2.2 The problem of (potentially) discriminatory practices

Although the process is regulated, in a number of countries the bodies responsible for allocating social housing have developed some potentially discriminatory practices within their scope for discretion. This risk is of course higher when the process is less transparent and the selection criteria are vague.

For example, some social landlords in a number of States take the ethnic origin of applicants into account in their decision to a greater or lesser extent and for a variety of reasons. In some cases, the practices lead to de facto segregation of residents based on their origin. In the Czech Republic, Roma who apply for housing are systematically put in insalubrious housing, isolated on the outskirts of towns<sup>181</sup>. In the United Kingdom, social landlords avoid placing households from an ethnic minority in the outer city neighbourhoods which are predominantly 'white', which leads to minorities being concentrated in the inner city, in the poorest housing and neighbourhoods. This policy is inspired as much by the stereotype that these families prefer to live in the inner city as it is by the goal of preventing racial tension by not placing them in neighbourhoods that have a reputation for being hostile to ethnic minorities<sup>182</sup>.

In other cases, social landlords aim to limit the proportion of residents of certain origins, whether in the social housing stock as a whole, or in certain neighbourhoods. This can lead to official or unofficial 'ethnic quotas' being put into place. When a social housing company deems that the maximum acceptable number of immigrant families has been reached in a given housing complex or neighbourhood, it stops providing

<sup>180</sup> Ghekiere, *op. cit.* pp. 145-155.

<sup>181</sup> Hrubá, K. (2010), 'Ethnic Discrimination and Segregation in Housing as a Violation of Personality Rights - Strategic Litigation Cases in Kladno, Czech Republic', *Housing Rights Watch: Housing Rights of Roma and Travellers Across Europe*, pp. 3-4.

<sup>182</sup> Sala-Pala, V. (2006) 'Le racisme institutionnel dans les attributions de logement social. Une comparaison franco-britannique', *Hommes et migrations*, No 1264, pp. 103-112, p. 108. See also Robinson, D. (2002) 'Missing the target? Discrimination and Exclusion in the Allocation of Social Housing', in Somerville, P. and Steele, A., *'Race', Housing and Social Exclusion*, p. 94.

housing to specific types of applicant. Unofficial practices of this nature have been observed in Belgium, Denmark, France, Germany and the Netherlands<sup>183</sup>. In Belgium, for example, certain social housing companies used to maintain a distinction between 'white' and 'coloured' applicants when registering them on waiting lists. They applied quotas with the aim of spreading applicants of non-European origin throughout the available housing or alternatively grouping tenants together based on their origin. These practices have since been prohibited<sup>184</sup>.

When analysing the situation in France, Patrick Simon and Thomas Kirszbaum explained this attitude as being the result of an effort to avoid a series of risks that social landlords associated with foreign families. They consider there to be a financial risk as immigrant households are seen as being less reliable at paying rent, a social risk based on fears of disturbances or tensions with neighbours, and a political risk centred on the concern that the neighbourhood's image will worsen<sup>185</sup>.

Attempts to deal with the issue of ghettos or urban segregation by avoiding an overconcentration of immigrant populations and the socially disadvantaged in certain neighbourhoods can certainly be a noble aim. However it is crucial to make sure that the means used to achieve this objective of 'social mixing' do not harm the very people they should be helping.

In Denmark, the High Court decided in 1991 that establishing maximum quotas for immigrants when allocating social housing was discriminatory. The complainant had twice been refused an available house in the town of Ishøj because the maximum immigrant quota for the buildings in question had already been reached. The town council claimed that the policy was necessary in order to make sure that residents from other countries were fully integrated into society. However the Court rejected this argument, and stated that a refusal to provide housing to an individual because of their nationality was racial discrimination<sup>186</sup>. In France, 2009 marked the first time that the courts found against an office for affordable housing for illegally recording information about the racial or ethnic origin of applicants for housing, and applying ethno-racial criteria when providing housing<sup>187</sup>. The office had asked the service managing housing rental to limit the number of tenants of Maghreb, African and Asian origin in certain buildings<sup>188</sup>.

More generally the official reference to social mixing in French social housing law can have mixed effects. Since 1998, the Building and Housing code expressly states that aiming to achieve social mixing is a public service objective, which social housing bodies ought to consider when carrying out their duties<sup>189</sup>. However, the law does not define the concept, nor does it specify how it should affect the other criteria that have to be taken into account<sup>190</sup>. The concept lends itself to different interpretations as, without any further clarification, social mixing could mean mixing residents with different levels of wealth, different ethnic origin, different age or different family composition in a given area<sup>191</sup>. In practice, applying the idea of ethnic mixing can

<sup>183</sup> EUMC, *op. cit.* pp. 90 and 94-96.

<sup>184</sup> Bervoets, W. and Loopmans, M. (2010) 'Diversiteit en discriminatie in de sociale huisvesting: een kritische benadering van "sociale mix"', a study commissioned by the Centre for Equal Opportunities and Opposition to Racism. p. 40.

<sup>185</sup> Simon, P. and Kirszbaum, Th. (2001) *Les discriminations raciales et ethniques dans l'accès au logement social*, Note de synthèse n°3 du GIP du Groupe d'étude et de lutte contre la discrimination, p. 42.

<sup>186</sup> Judgment of 22 January 1991, Ugeskrift for Retsvasen, 1991, p. 358. See CERD, 12th periodic report submitted by Denmark to the CERD, CERD/C/280/Add. 1, 3 May 1995, Paragraphs 62-66.

<sup>187</sup> Superior court of Saint-Etienne, 3 February 2009, No 304/09, *SOS Racisme v. Métropole habitat*.

<sup>188</sup> Bertrand, O., 'Première (faible) condamnation d'un office HLM pour fichage ethnique', *Liberation, LibeLyon*, 4 February 2009, available at <http://www.libelyon.fr/info/2009/02/premiere-faible.html> (last visited 1 August 2013).

<sup>189</sup> Article L. 411-2, last point, of the construction and housing code.

<sup>190</sup> Houard, N. (2009), *Droit au logement et mixité - Les contradictions du logement social*, L'Harmattan.

<sup>191</sup> Bervoets et Loopmans, *op. cit.* p. 20.

lead to denying housing to certain applicants on grounds of their ethnic origin in cases where the housing authority feels that assigning these applicants to a certain neighbourhood would jeopardise the goal of social mixing. In the case of *FEANTSA v France*, the European Committee of Social Rights judged that ‘the competent authorities rely too frequently on the criteria of ‘social mix’ to refuse allocation of social housing, which can lead to arbitrary decisions given the unclear manner in which this concept is defined in law, and the lack of any guidelines on how to implement it in practice’<sup>192</sup>.

It is also worth noting that, if they wish to promote social mixing and counter urban segregation, States may turn to a number of other policy tools. A good example of this would be taking action on the supply of housing by increasing the number of houses available, by building smaller housing units that are spread more evenly throughout the urban area, including in wealthier neighbourhoods, or by using urban planning policy to promote diversification of housing in each neighbourhood, mixing private housing with social housing, owners with tenants, and houses for large families with apartments for single people or couples<sup>193</sup>.

It can again be difficult to prove the existence of discriminatory practices in the allocation of social housing. A study carried out in France in 2001 highlighted the fact that the waiting periods for receiving social housing were significantly longer for immigrant families than they were for other households. While 75% of people who had recently moved into social housing had received it within 6 months of their application, the figure fell to 58% for immigrants. 19% of immigrant families had waited at least 3 years, while the percentage of people waiting this long among the total population was only 8%. The study specified that this disparity was not just the result of a lack of houses for large families, which are more frequently requested by immigrants. There were also differences between immigrants and other households with the same size families<sup>194</sup>.

Several years later, statistics showed that 18% of applications made by immigrants for social housing were still pending after three years, compared to a figure of 10% for families originating from France<sup>195</sup>. The authors of the 2001 study highlighted the difficulty of establishing whether this situation was born of intentional discrimination:

‘In the case of access to social housing, the criterion of ethnic origin or ‘race’ is combined with other social and family characteristics in order to justify denying applications or handling them slowly, making it difficult to pick out a single cause. In the majority of cases, discriminatory practices are hidden behind other reasons, and neither the victims nor others who observe these practices are in a position to definitively prove that there was intent. Moreover discrimination results from the complex procedures that make up the chain of allocation.’<sup>196</sup>

Several Member States, as well as the Court of Justice of the European Union<sup>197</sup> and the European Court of Human Rights<sup>198</sup>, accept that statistics showing a disproportionate impact on a protected group caused by a certain measure can be taken into account in order to establish a presumption of indirect discrimination. The

<sup>192</sup> ECSR, *European Federation of National Organisations working with the Homeless (FEANTSA) v France*, Complaint No 39/2006, decision on the merits of 5 December 2007, Paragraph 161.

<sup>193</sup> Bervoets and Loopmans, *op. cit.* p. 20, pp. 28–30.

<sup>194</sup> Simon and Kirsbaum, *op. cit.* pp. 33–34.

<sup>195</sup> Figure cited by the French government in *FEANTSA v France*, Paragraph 155.

<sup>196</sup> Simon and Kirsbaum, *op. cit.* pp. 34–35.

<sup>197</sup> See in particular ECtHR, *D.H. and Others v the Czech Republic*, 13 November 2007.

<sup>198</sup> In the words of Directive 2000/43/EC, national law or practices ‘may provide in particular for indirect discrimination to be established by any means including on the basis of statistical evidence.’ (recital 15).

presumption can be overturned if the person who put the measure in place can show that it is objectively justified by a legitimate aim and that the means used to achieve this aim are appropriate and necessary. Directive 2000/43/EC leaves it for national law and national practices to decide how indirect discrimination can be established by judicial or other competent bodies, but it also expressly states that these means may include statistical evidence. In the Netherlands, statistics were used successfully as far back as 1982, when an applicant of Turkish origin was able to establish that he had been discriminated against by a social housing company. Four years after registering on the waiting list, he had still not been given social housing, despite the fact that his case was urgent. He was able to show that the company in question had let out 543 apartments in 5 years, but only one to an immigrant household. In comparison, other social housing companies based in the same area had assigned more than 7% of their houses to immigrant families. The High Court (*Hoge Raad*) upheld the decision of the Court of Appeal, and found the social housing company guilty of discrimination on grounds of origin<sup>199</sup>. In the case of *FEANTSA v France*, the European Committee of Social Rights observed that, considering the statistics cited by the applicant, which showed longer waits and higher rates of rejection for requests from immigrant households compared to other households, 'it could be presumed that there is a problem of indirect discrimination' against immigrants in respect of access to social housing<sup>200</sup>. However, the Committee does not follow this thread of logic to the end, as it does not consider whether the justification given by the Government – the lack of housing for large families – meets the criteria of a legitimate aim, and necessary and appropriate means.

### 2.3. The harmful effects of some allocation criteria

The criteria formally established by law for allocating social housing can turn out in practice to be a source of particular disadvantages for members of a protected group when it transpires that these groups are less likely than the rest of the population to meet the criteria, which gives them less of a chance of receiving social housing. A situation like this can give rise to a presumption of indirect discrimination, with the public authority having to justify the criteria in question. Here we will look at just a few allocation criteria used in various countries that can give rise to these problems.

#### *Local connections*

In many States, the rules on allocating social housing give priority to people who have already been living in the locality for a certain amount of time, or who have local family or professional ties<sup>201</sup>. In the United Kingdom, many housing associations apply selection criteria such as having parents, friends or a job in the neighbourhood<sup>202</sup>. In the Walloon region of Belgium, five priority points are awarded to applicants who can prove that they have been in the municipality for three years<sup>203</sup>. In Slovenia, one of the conditions for being eligible for social housing is the requirement to be permanently resident in the area where the house is located<sup>204</sup>. In some countries, a more or less significant share of public housing is reserved for council

<sup>199</sup> High Court (*Hoge Raad*), 10 December 1982, *R.K. Woningbouwvereniging Binderen v. Kaya*, NJ 1983, 687. See Schiek, D., Waddington, L., Bell, M. (eds) (2007), *Non-Discrimination Law*, pp. 383-384 and Hondius, E. H. (1984), 'Private remedies against racial discrimination – some comparative observations with regard to R.K. woningbouwvereniging Binderen V. Kaya', *Unification and comparative law in theory and practice: contributions in honour of Jean Georges Sauveplanne*, p. 103.

<sup>200</sup> *FEANTSA v France*, Paragraph 160.

<sup>201</sup> EUMC, op. cit. p. 71.

<sup>202</sup> Bervoet and Loopmans, op. cit. p. 37.

<sup>203</sup> Article 17(2)(3) of the decree of the Walloon Government of 6 September 2007.

<sup>204</sup> European Network of Legal Experts in the non-discrimination field, Country report on Slovenia, 2011 Neža Kogovšek (HEC and MPG).

employees. In the Czech Republic, for example, many low rent public apartments are reserved for council employees<sup>205</sup>.

While it can be relevant to take an applicant's local ties into account when deciding to allocate social housing, if this criterion is given too much weight it can negatively affect certain groups of the population by limiting their chances of obtaining social housing there. This is the case for immigrants who have only just arrived in the country, and are therefore not able to prove that they have any local connection. In some circumstances, this can also have a negative impact on people with an immigrant background, or on Roma. In situations where there is a degree of residential segregation and ethnic minorities are concentrated in poorer areas, it is less likely that these people will have any links with more socially well-off neighbourhoods.

#### *Income requirements*

In some States, conditions have occasionally been put in place that require someone to have a minimum income before they can be given social housing. However, certain protected groups may be overrepresented among households who are unable to reach this minimum level.

In the Netherlands, the highly controversial law 'Special measures for the problem of large towns' (*Wet Bijzondere Maatregelen Grootstedelijke Problematiek*, known as *Rotterdamwet* – or the Rotterdam Law), adopted in 2005 and mentioned earlier in this report<sup>206</sup>, authorises local authorities in large towns to deny social housing in certain areas to people who have lived in the area for less than six years and who do not have permanent employment or do not receive social security payments, a pension or a student grant<sup>207</sup>. The law aims to prevent ghettos forming with poorer people concentrated in the same place and was inspired by social housing regulations adopted by Rotterdam in 2004. The law states that new arrivals must prove that they have an income of over 120% of the minimum wage in order to be eligible for social housing in certain sectors<sup>208</sup>. The Equal Treatment Commission had issued an unfavourable opinion on this policy on the understanding that it amounted to indirect discrimination against immigrants, people of foreign descent, women and, potentially, disabled people, the elderly and young people, who often have lower and less stable income than the rest of the population<sup>209</sup>.

Taking a slightly different approach, many municipalities of Brussels in Belgium have set a condition that a potential tenant of social housing must have enough income so that the rent does not exceed a certain amount, generally one third, of their resources<sup>210</sup>. Although it has a noble motive of preventing over-indebtedness, the end result of this rule is that it prevents a large number of households from obtaining social housing<sup>211</sup>. Lastly, in France certain sources indicate that numerous social housing authorities have unofficially put in place an income threshold, and systematically refuse any applicant who does not reach this limit<sup>212</sup>.

<sup>205</sup> European Network of Legal Experts in the non-discrimination field, Country report on the Czech Republic, 2011 Pavla Boucková (HEC and MPG).

<sup>206</sup> See Part I, 3.2.

<sup>207</sup> 20 December 2005, Staatsblad 2005, 726.

<sup>208</sup> *European Anti-discrimination Law Review*, No 3, April 2006 p. 78.

<sup>209</sup> CGB, Opinion 2005/03 (inzake Huisvestingsbeleid Gemeente Rotterdam), 12 July 2005.

<sup>210</sup> See No 46 ('Logements communaux : plaidoyer pour une réforme des conditions d'attribution') in the review *Article 23* published by the Rassemblement bruxellois pour le droit à l'habitat, 2012.

<sup>211</sup> See the opinion of the Centre for Equal Opportunities and Opposition to Racism on certain regulations for allocating social housing in the Brussels Region (June 2010).

<sup>212</sup> Tribby, H. (2006), *Discrimination et droit au logement en Europe*, Feantsa, p. 27.



### *Requirements of nationality or duration of legal residence*

In some countries, the selection criteria for social housing favour nationals. Measures like these have a negative impact on people from other Member States, and have been judged by the Court of Justice of the European Union as constraining the right of establishment<sup>213</sup>. In Italy in 2002, an Italian court judged that the city of Milan's policy of awarding points to social housing applicants based on their Italian origin was illegal<sup>214</sup>.

Sometimes, countries take into account the length of time that someone has been in the country legally. In Italy again, the European Roma Rights Centre claimed in its appeal before the European Court of Social Rights that it was almost impossible for Roma to receive social housing in the country, because the system for allocating housing was based on points totals using criteria such as the nature and duration of the applicant's residence permit, making it very difficult for Roma to satisfy the criteria<sup>215</sup>. In its decision, the Committee stressed the importance of ensuring that the Roma population had the possibility for an effective access to social housing<sup>216</sup>.

In France, the law on an enforceable right to housing (DALO) recognises the right for certain priority groups (such as the homeless, people in danger of being evicted, persons with disabilities) and applicants for social housing who have been waiting an unusually long time for a response to make a complaint before a mediation commission or, if they do not received a satisfactory response, before a judge in order to have social housing allocated to them urgently, as a priority<sup>217</sup>. However, although the law has opened this avenue to anyone residing in France legitimately, in the cases of non-European immigrants without a residence permit, an implementing order limited the right to people able to justify that they had legally and continually lived in France for at least two years<sup>218</sup>. The Equal Opportunities and Anti-Discrimination Commission in France judged that this clause constituted 'unfair treatment on grounds of nationality, which does not appear to be justified and proportional to the aim pursued by the DALO law, which is to guarantee the right to decent housing for the poorest people'<sup>219</sup>. Through its order of 11 April 2012, the Council of State annulled the contested article<sup>220</sup>.

### *Language requirement*

In Belgium's Flemish Region, since 2006 applicants for social housing have had to show that they are willing to learn the local language, which is Dutch<sup>221</sup>. The housing company is authorised to stop letting

<sup>213</sup> Judgment of 14 January 1988 in Case C-63/86, *Commission of the European Communities v Italian Republic* (ECR 1988, p. 29); Judgment of 1 June 1999 in 1988 in Case C-302/97, *Klaus Konle v Republik Österreich* (ECR 1999 p. I-3099).

<sup>214</sup> Court of First Instance of Milan. 1st Chamber, 20 and 21 March 2002, No 3624, *Diritto, Immigrazione e Cittadinanza*, 2002/4, obs. A. Simoni.

<sup>215</sup> ECSR, *ERRC v Italy* Complaint No 27/2004, decision on the merits of 7 December 2005, Paragraph 43.

<sup>216</sup> *Ibid.* Paragraph 46.

<sup>217</sup> Law No 2007-290 of 5 March 2007 establishing the law on compulsory social housing and putting in place various measures to benefit social cohesion, French Official Journal, 6 March 2007.

<sup>218</sup> Decree No 2008-908 of 8 September 2008 on conditions of permanent residence or beneficiaries of the right to decent and independent housing, and modifying the construction and housing code (regulatory part).

<sup>219</sup> Deliberation No 2009-385 of 30 November 2009.

<sup>220</sup> Decision No 322326 of the Council of State of 11 April 2012.

<sup>221</sup> Articles 93(1)(2)(2) and 93(1)(2)(3) of the Flemish Housing Code, as introduced by Article 7 of the decree of the Flemish Parliament of 15 December 2006.

the property if the tenant 'seriously or persistently' fails to meet this obligation<sup>222</sup>. It may also fine a tenant unwilling to learn the language an amount up to 5 000 euros<sup>223</sup>. The Flemish authorities justify the measure on the grounds that it makes communication easier between social landlords and tenants, and the general framework of the measure has been approved by the Belgian Constitutional Court<sup>224</sup>. Many international bodies, however, were worried that the measure could lead to discrimination against non-nationals and members of linguistic minorities. The United Nations Committee on the Elimination of Racial Discrimination stated that it was concerned by the initiative and recommended that Belgium monitor the initiative to ensure that it did not lead to indirect discrimination against non-nationals and nationals who did not speak Dutch<sup>225</sup>. The Council of Europe's European Commission against Racism and Intolerance judged that these measures '[seemed] to have little effect and to be dangerous for the exercise of certain individual rights such as access to social housing' and above all they '[stigmatised] the groups concerned'<sup>226</sup>.

#### *Not having lived in an illegal construction*

In Romania, the criteria for access to social housing exclude people who have at any time occupied a property illegally. A large number of Roma find themselves in this exact position<sup>227</sup>.

<sup>222</sup> Articles 92(3)(1)(6) and 92(3)(1)(7), and Article 98(3)(1)(2) of the Flemish Housing Code.

<sup>223</sup> Article 102bis(3)(1) of the Flemish Housing Code, as introduced by Article 14 of the decree of the Flemish parliament of December 2006.

<sup>224</sup> C.C., 10 July 2008, No 101/2008.

<sup>225</sup> CERD/C/BEL/CO/15, 11 April 2008, Paragraph 16.

<sup>226</sup> ECRI Report on Belgium (fourth monitoring cycle), 19 December 2008, CRI(2009)18, pp. 8 and 26 (Paragraph 82).

<sup>227</sup> European Network of Legal Experts in the non-discrimination field, Country report on Romania, 2011, Romanita Iordache (HEC and MPG).

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## IV. Discrimination during occupation of housing

Just because a person has a home does not mean that they are free from discrimination. Circumstances that occur after they move in can deprive them of their home or affect its quality in a discriminatory manner. Someone being harassed by their landlord or their neighbours will find it difficult to stay in their home (1). Unfairly breaking or refusing to renew a letting agreement can force a tenant to leave premises against their will (2). Individuals can also find themselves evicted from their home by public authorities on a variety of grounds (4). Furthermore, the failure of authorities to ensure that housing in certain areas has access to basic public services and infrastructure can seriously affect the living conditions of residents, and breach the standards on adequate housing (3).

The situation of the Roma and Travellers needs to be looked at in particular, especially with respect to the last two points: they seem to be affected more than any other group in Europe by forced evictions and living conditions that do not meet the minimum requirements for adequate housing.

## 1. Harassment

The European anti discrimination Directives define harassment as a form of discrimination. Harassment in housing is prohibited by EU law in cases where it is related to either the racial or ethnic origin, or the sex of the victim. In the former case, harassment is defined as ‘unwanted conduct related to racial or ethnic origin’, which ‘takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment’<sup>228</sup>. In the second case, it is described as ‘unwanted physical, verbal, non-verbal or physical conduct of a sexual nature’, which has ‘the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment’<sup>229</sup>.

Interestingly, the Housing Act adopted in 2007 by the Autonomous Community of Catalonia in Spain, expressly defines the concept of ‘real estate harassment’ as a form of discrimination. This concept is defined as follows:

« Real estate harassment is understood as any act or omission of an act which causes one’s rights to be abused and has the objective of disturbing one’s housing needs through harassment and a hostile environment. This can be expressed in a material, personal, or social manner, with the ultimate motive of forcing someone to adopt a decision that they do not want in regards to their right which protects them from occupying their home. The unjustified denial of accepting rent by a homeowner is an indication of real estate harassment »<sup>230</sup>.

Several parties can commit acts that harass someone within their home. Examples are a landlord threatening their tenant with eviction on racist or sexist grounds, or acting with unwelcome familiarity; neighbours creating a hostile climate with insults, abuse and threats; or public authorities who might, for example, make multiple home visits on false pretexts in order to drive out residents who they feel are undesirable.

Although a lack of available information makes it difficult to evaluate the extent of this phenomenon, reports on discrimination in housing carried out at the European level vouch for a certain number of cases of

<sup>228</sup> Article 2(3) of Directive 2000/43/EC.

<sup>229</sup> Article 2(d) of Directive 2004/113/EC.

<sup>230</sup> Article 45(3)(c), Law No 18/2007. See Ponce, J. (2010), ‘Housing discrimination & minorities in European Cities: the Catalan Right to Housing Act 2007’, *International Journal of Law in the Built Environment*, 2010/2, pp. 138–156.



harassment by neighbours directed against immigrants or ethnic minorities. In various European countries there are reports of groups of neighbours running campaigns, sometimes accompanied by threats or violence, in order to discourage Roma or people of foreign descent from moving into or staying in a certain neighbourhood or village<sup>231</sup>. For example in 2003 in the Netherlands a group of residents organised a petition against the re-housing of a Moroccan national in their building, and threatened him with violence and arson if he were to move in<sup>232</sup>. In Sweden, the former Ombudsman against ethnic discrimination received frequent complaints concerning harassment by neighbours or by a landlord<sup>233</sup>.

Sometimes, the police are guilty of behaviour resembling harassment. In Italy, NGOs denounced the constant raids made by police on Roma camps, which were marked by excessive use of force and destruction of personal belongings, shacks and campers, with all residents being affected, including children<sup>234</sup>.

## 2. Terminating, not renewing or not transferring letting agreements

When an owner decides to terminate or not renew a letting contract so that the tenant is forced to leave the property, this can also be a result of discrimination. The Norwegian anti-discrimination law expressly specifies that certain prohibited, discriminatory reasons may not be given as grounds for terminating a letting agreement, nor for refusing to accept a sub-lessor or the transferral of tenancy to another individual<sup>235</sup>. On 2 January 2011, the Irish Equality Tribunal found a social housing company guilty of discrimination on grounds of age when they terminated the letting agreement of a 73-year-old tenant after a complaint of elder abuse was made against the company by a group of residents, including the tenant himself. The social housing company then decided to use a clause in the contract that allowed them to annul the tenant's contract without any reason<sup>236</sup>. In Sweden, the former Ombudsman against ethnic discrimination registered a number of complaints of discrimination in termination of letting agreements<sup>237</sup>.

In certain countries, homosexual people have been confronted with a specific problem. The law generally states that if a tenant dies, the members of their family, including their spouse or life partner, who have lived in the property for a certain amount of time have the right to take over the letting agreement so that they can stay in the property. However, courts in some countries have refused to apply this clause to the surviving partner in a homosexual couple on the grounds that this circumstance was not covered by the law. This exclusion of homosexual couples from the right to transfer the lease was judged to be discriminatory

<sup>231</sup> EUMC (2005), *Migrants, Minorities and Housing: Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union*, report prepared by Harrison, M., Law, I. and Phillips, D., p. 62 and p. 93.

<sup>232</sup> *Ibid.* p. 70.

<sup>233</sup> European Network of Legal Experts in the non-discrimination field, Country report on Sweden, 2011, Per Norberg (HEC and MPG).

<sup>234</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Italy, ACFC/INF/OP/II(2005)003, Paragraph 85.

<sup>235</sup> Tenancy Act of 26 March 1999, Section 1-8, paragraph 1.

<sup>236</sup> Equality Tribunal, ES/2009/90 and ES/2010/32 of 20 January 2011. Available at <http://www.equalitytribunal.ie/Database-of-Decisions/2011/Equal-Status-Decisions/DEC-S2011-004-Full-Case-Report.html> (Last visited 1 July 2013).

<sup>237</sup> European Network of Legal Experts in the non-discrimination field, Country report on Sweden, 2011, Per Norberg (HEC and MPG).

by the European Court of Human Rights, which decided against both Austria<sup>238</sup> and Poland<sup>239</sup> on that basis.

### 3. Access to basic infrastructure and public services

The European Committee of Social Rights and the United Nations Committee on Economic, Social and Cultural Rights have both stated that housing must have access to essential services, equipment and infrastructure, such as running water, heating, waste disposal, sanitary facilities and electricity in order to be considered as adequate. It must also be located within a reasonable distance of employment opportunities, and healthcare and education services<sup>240</sup>.

In the majority of European States, there are a large number of Roma people living in housing that is a long way from meeting these requirements. They often have no access to basic utilities, such as running water, electricity, sewage systems and regular waste collection, and find themselves segregated in areas far from urban centres with little or no public transport<sup>241</sup>. According to a report carried out in 2007, more than 70% of Roma in Romania do not have access to gas, sewage systems or running water in their homes<sup>242</sup>. Data from 2005 suggest that the majority of Roma in Bulgaria live in what amount to ghettos in dreadful conditions – many houses are made of cardboard, scrap iron, and wattle and daub, frequently with no windows. Basic infrastructure such as water, electricity, heating, drainage and waste collection are absent or grossly insufficient<sup>243</sup>. In Slovenia, the majority of Roma live in isolated neighbourhoods or on the outskirts of towns, while nearly half live in shacks and makeshift houses<sup>244</sup>. In France, Greece, Italy and Portugal, many Roma live in slums or informal camps, far away from the rest of the population and without essential infrastructure and public services<sup>245</sup>.

As for Travellers, the lack of caravan sites forces many of them to live illegally on land that is not suited for the purpose, and often in worrying sanitary conditions<sup>246</sup>.

Moreover, it is quite common for the places where Roma or Travellers live to be located near areas that pose an environmental hazard, such as a site producing methane emissions (Czech Republic), a municipal tip (Greece) or a closed mercury mine (Slovakia)<sup>247</sup>. In Ireland, according to a report carried out in 2008, 82% of

<sup>238</sup> ECtHR, *Karner v. Austria*, 24 July 2003.

<sup>239</sup> ECtHR, *Kozak v. Poland*, 2 March 2010.

<sup>240</sup> See *supra* Part I, 2.1.

<sup>241</sup> European Union Agency for Fundamental Rights (2009), *Housing conditions of Roma and Travellers in the European Union - Comparative report*, pp. 66–69 and 74–76.

<sup>242</sup> *Ibid.* p. 67.

<sup>243</sup> See ECSR, *ERRC v Bulgaria*, Complaint No 31/2005, decision on the merits of 18 October 2006, Paragraphs 22–24. See also ECSR, *ERRC v Bulgaria*, Complaint No 46/2007, decision on the merits of 3 December 2008 (concerning the lack of access to healthcare for Roma living in segregated neighbourhoods).

<sup>244</sup> European Network of Legal Experts in the non-discrimination field, Country report on Slovenia, 2011 Neža Kogovšek (HEC and MPG).

<sup>245</sup> European Union Agency for Fundamental Rights.

<sup>246</sup> *Ibid.* p. 76.

<sup>247</sup> Tribby, *op. cit.* p. 25.

halting sites or collective housing projects for Travellers were located near to an ecological hazard (such as industrial pollution, tips, busy roads and electricity pylons)<sup>248</sup>.

Several complaints have been made to the European Committee of Social Rights about failure by various States to ensure that Roma have adequate living conditions. Bulgaria<sup>249</sup>, Greece<sup>250</sup>, Italy<sup>251</sup> and Portugal<sup>252</sup> have all been found in violation of the European Social Charter on these grounds. In all of the cases, the Committee recalled that the Social Charter gave States the positive obligation to take legal and practical measures in order to provide the right to housing of an adequate standard. In the case of a disadvantaged minority such as the Roma, it is not enough to guarantee them the same treatment as the rest of society: public authorities must take their particular situation into account<sup>253</sup>. The Committee found that in all these countries, Roma live in conditions that do not meet the minimum standards for adequate housing and the public authorities have failed to take concrete and effective measures to improve their situation. The Committee felt that this attitude constituted discrimination in the enjoyment of the right to housing.

In the case *ERRC v Portugal*, the Committee also noted that programmes for re-housing Roma put in place by certain municipalities had led to segregation of the Roma, and were sometimes accompanied by discriminatory practices:

'The Committee considers that segregated neighbourhoods for Roma have to a large extent been created by the action of municipalities. Roma have been re-housed by municipalities in such neighbourhoods in a higher proportion than the general population with housing needs. Moreover, there are also examples of discriminatory practices by local authorities, such as the construction of a concrete wall to separate the Roma in Beja ..., the cutting of water in Vidigueira ... or the precarious municipal houses of the Roma community in Sobral de Adiça, lacking electricity, water or sanitation ...<sup>254</sup>.

The Committee found additional discrimination in these actions. In the case of Italy, the Committee also found that the segregation of the Roma and Sinti in camps was caused by the actions of the authorities themselves, who were therefore guilty of discrimination in relation to housing<sup>255</sup>.

These cases can be compared to two national legal proceedings that also concerned the concept of segregation. In Slovakia in 2008, Roma who were displaced by the authorities from their homes in the centre of the town of Sabinov and re-housed in a neighbourhood on the outskirts launched a complaint concerning discrimination in housing and intentional segregation. At first instance, the court of Presov found that the town council and the regional Ministry for Building and Development had committed a violation of the principle of equal treatment. This judgment was, however, appealed, and the appeal is currently pending before the High Court<sup>256</sup>. Another example came before the Czech High Court in 2005. The municipality of Ústí nad Labem had decided to build a wall to separate houses occupied by Roma

<sup>248</sup> European Union Agency for Fundamental Rights, *Ibid.* p. 76.

<sup>249</sup> *ERRC v Bulgaria* (18 October 2006), claim 31/2005.

<sup>250</sup> ECSR, *ERRC v Greece*, Complaint No 15/2003, decision on the merits of 8 December 2004.

<sup>251</sup> ECSR, *COHRE v Italy*, Complaint No 58/2009, decision on the merits of 25 June 2010 and *ERRC v Italy*, Complaint No 27/2004, decision on the merits of 7 December 2005.

<sup>252</sup> ECSR, *ERRC v Portugal*, Complaint No 61/2010, decision on the merits of 30 June 2011.

<sup>253</sup> *ERRC v Italy* (7 December 2005) Paragraph 21; *ERRC v Bulgaria* (18 October 2006), Paragraph 42.

<sup>254</sup> *ERRC v Portugal* (30 June 2011), Paragraph 48.

<sup>255</sup> *COHRE v Italy* (25 June 2010), Paragraph 91. See also *ERRC v Italy* (7 December 2005), Paragraph 36.

<sup>256</sup> European Network of Legal Experts in the non-discrimination field, Country report on Slovakia, 2011, Janka Debreceniová (HEC and MPG).

from the rest of the town on the grounds that the residents were bothered by noise and disturbances coming from the Roma neighbourhood. A Roma resident made a legal complaint against this measure on the grounds that it was discriminatory and would lead to segregation. The complaint was dismissed on appeal. However, the Supreme Court overturned the appeal decision, declaring that courts had the responsibility of assessing the proportionality of measures that are likely to have a discriminatory or segregating effect<sup>257</sup>.

It is also worth remarking on the number of positive examples of successful programmes for improving the living conditions of the Roma with a view to residential integration and social mixing. Case studies carried out by the European Agency for Fundamental Rights have highlighted examples of this in a number of European Countries, such as the Czech Republic<sup>258</sup>, Hungary<sup>259</sup>, Slovakia<sup>260</sup> and Spain<sup>261</sup>. There are also examples of transit sites for Travellers that have good infrastructure and are sufficiently close to healthcare and education services. However, the fact that there are very few of these often leads to problems of overcrowding<sup>262</sup>.

## 4. Security of tenure and eviction

According to both the European Committee of Social Rights and the United Nations Committee on Economic, Social and Cultural Rights, the idea of adequate housing implies legal security of tenure – people must have a legal guarantee that they can remain in the property, protected from the threat of eviction<sup>263</sup>.

Throughout Europe, many Roma live precariously, without any security of tenure. Because of the discrimination that they suffer and their financial difficulties, many of them end up living in illegally built homes, or live without any letting agreement<sup>264</sup>. As such, they are under constant threat of eviction. Situations like these are typical in Bulgaria, Greece, Italy, Lithuania, Portugal, Romania and Slovenia<sup>265</sup>. In Bulgaria, a 2002 report showed that 70% of housing in urban Roma neighbourhoods was built illegally<sup>266</sup>. In Romania, more than a quarter of Roma households had no letting agreement or valid title deeds<sup>267</sup>. Furthermore, the lack of halting sites forces many families of Travellers to pitch on unauthorised land<sup>268</sup>.

<sup>257</sup> Judgment No 30 Cdo 1892/2004-203 of 30 June 2005, European Anti-discrimination Law Review, No. 3, 2006.

<sup>258</sup> European Agency of Fundamental Rights (2009), *Case study, Living together, Czech Republic*.

<sup>259</sup> European Agency of Fundamental Rights (2009), *Case study, Combating Roma residential segregation, Hungary*.

<sup>260</sup> European Agency of Fundamental Rights (2009), *Case study, Roma housing projects in small communities, Slovakia*.

<sup>261</sup> European Agency of Fundamental Rights (2009), *Case study, Improving Roma housing and eliminating slums, Spain*.

<sup>262</sup> European Union Agency for Fundamental Rights (2009), *Housing conditions of Roma and Travellers in the European Union - Comparative report*, pp. 66–69.

<sup>263</sup> See *Supra* Part I, 2.1.

<sup>264</sup> European Union Agency for Fundamental Rights (2009), *Housing conditions of Roma and Travellers in the European Union - Comparative report*, p. 57–62.

<sup>265</sup> See European Network of Legal Experts in the non-discrimination field, Country reports, 2011 (HEC and MPG).

<sup>266</sup> European Union Agency for Fundamental Rights (2009), *Housing conditions of Roma and Travellers in the European Union - Comparative report*, p. 58.

<sup>267</sup> European Network of Legal Experts in the non-discrimination field, Country report on Romania, 2011, Romanita Iordache (HEC and MPG). See also Amnesty International (June 2011), *Mind the legal gap: Roma and the right to housing in Romania*.

<sup>268</sup> European Union Agency for Fundamental Rights (2009), *Housing conditions of Roma and Travellers in the European Union - Comparative report*, p. 65.

Whether or not someone has legal deeds to protect their tenancy, international human rights law states that someone may only be evicted from the housing where they live under certain strict conditions. According to the European Committee of Social Rights, evictions ‘must be justified and carried out in conditions that respect the dignity of the persons concerned, and ... alternative accommodation should be made available’<sup>269</sup>. The law must offer legal protection to people threatened with eviction, and this must include:

- an obligation to consult the affected parties in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- a prohibition to carry out evictions at night or during winter;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation for illegal evictions<sup>270</sup>.

The European Court of Human Rights believes that losing one’s home seriously interferes with the right protected by Article 8 of the European Convention on Human Rights, and therefore anyone threatened with eviction – even when living in housing without legal deeds – must have access to an independent tribunal that can examine whether the measure was reasonable and proportional with respect to the rights guaranteed by Article 8<sup>271</sup>.

In many European countries, Roma and Travellers are evicted in violation of these conditions. The European Committee of Social Rights has found Belgium,<sup>272</sup> Bulgaria,<sup>273</sup> France,<sup>274</sup> Greece<sup>275</sup> and Italy<sup>276</sup> responsible for breaches of the European Social Charter for evicting Roma and Travellers from their homes without regard for legal safeguards. In the case of Italy in particular, the Committee denounced the authorities’ repeated evictions of Roma from their housing with no respect for the dignity of the people concerned, who were frequently victims of violence, and without offering them alternative housing<sup>277</sup>.

In the case *ERRC v Bulgaria*, the Committee also criticised the Bulgarian 2001 Territorial Planning Law, which significantly limited the opportunity to have an illegally built home legalised while also providing for non-legalised constructions to be demolished with no alternative housing or compensation offered to the occupants. The legalisation conditions are so restrictive that many Roma – who are overrepresented among people living in illegal buildings – are unable to meet them. Moreover, illegal sites had been occupied for a number of years, and the State had happily tolerated and even recognised the buildings, given that services such as electricity had been supplied and sometimes invoiced to the residents<sup>278</sup>. Taking all of this into account, the Committee decided that, by strictly enforcing the legislation on the legalisation of illegal

<sup>269</sup> ECSR, *FEANTSA v France*, Complaint No 39/2006, decision on the merits of 5 December 2007, Paragraph 163.

<sup>270</sup> ECSR, *FIDH v Belgium* (21 March 2012), Paragraph 163. The United Nations Committee on Economic, Social and Cultural has established similar conditions in General Comment No 7, The right to adequate housing: forced evictions (1997).

<sup>271</sup> ECtHR, *Yoranova and others v Bulgaria*, 24 April 2012, Paragraph 130. See also *Gladysheva v. Russia*, 6 December 2011; *McCann v The United Kingdom*, 13 May 2008; and *Connors v The United Kingdom*, 27 May 2004.

<sup>272</sup> *FIDH v Belgium* (21 March 2012).

<sup>273</sup> *ERRC v Bulgaria* (18 October 2006).

<sup>274</sup> COHRE v France, Complaint No 63/2010, decision on the merits of 28 June 2011.

<sup>275</sup> *ERRC v Greece* (8 December 2004).

<sup>276</sup> *ERRC v Italy* (7 December 2005) and COHRE v. Italy (25 June 2010).

<sup>277</sup> COHRE v Italy (25 June 2010), Paragraphs 73 and 79.

<sup>278</sup> *ERRC v Bulgaria* (18 October 2006), Paragraph 54.



buildings, Bulgaria had discriminated against Roma families, who were disproportionately affected by these measures<sup>279</sup>.

There have also been cases in other countries of Roma families being evicted from properties that they had occupied for years, in breach of the safeguards required by international law. According to Amnesty International, in Romania families are frequently evicted without warning or the right to appeal and, in cases where alternative housing is offered, it is usually precarious and of poor quality<sup>280</sup>. In Slovakia, there were at least 13 mass expulsions between 2005 and 2007, effecting over 1 400 Roma people, based on non-payment of rent. In many cases, the council had sold the town centre apartments to private companies, who had hiked up the rent or immediately evicted the tenants. The people affected by this were forced to leave the town centre and live in segregated areas or in villages on the outskirts<sup>281</sup>.

The United Nations Human Rights Committee has also had cause to rule on the question of evictions following a communication brought by a Roma couple and their seven children against Greece. The family had always lived in a Roma camp in Patras. In the summer of 2006, when they were away from the camp, the authorities demolished all houses belonging to people who were not present. When the family returned, they were offered a mere 200 euros in compensation by the town council. The Committee decided that the arbitrary and illegal eviction of the complainants and demolition of their home had resulted in a violation of multiple rights guaranteed by the International Covenant on Civil and Political Rights: the right to non-discrimination (Article 2), the right to respect for private and family life (Article 17), the right to protection for the family (Article 23) and the rights of minorities (Article 27)<sup>282</sup>.

Travellers are particularly vulnerable to eviction. As there are not enough caravan sites, they are often left with no choice but to stay on unauthorised land<sup>283</sup>. However, the removal of an illegally placed caravan is generally not subject to the rules that apply when evicting an individual from their home. In its decision of 21 March 2012 in the case *FIDH v Belgium*, the European Committee of Social Rights clearly indicated that the Travellers' way of life did not justify a failure to provide them with safeguards in the event of eviction, in particular the prohibition on evicting people from their home during the winter or at night, and the obligation to offer them alternative housing<sup>284</sup>. The Committee further insisted that it was necessary to take into account the fact that these families were more at risk of eviction because of the lack of authorised land available, which forced them to settle unlawfully<sup>285</sup>. Thus:

'...urging Traveller families to leave sites on which they have settled – even illegally – and then, even though there are not enough legal sites, evicting them if they refuse to comply and not proposing suitable long-term alternative accommodation, adds to the failure to respect these families' right to housing'<sup>286</sup>.

<sup>279</sup> *ERRC v Bulgaria* (18 October 2006), Paragraphs 55–56. Regarding the eviction by Bulgarian authorities of Roma families living in unauthorised buildings that they had occupied for a number of years, see also ECtHR, *Yordanova and others v. Bulgaria*, 24 April 2012.

<sup>280</sup> Amnesty International *Op. cit.* p. 9.

<sup>281</sup> European Network of Legal Experts in the non-discrimination field, Country report on Slovakia, 2011 Janka Debreceňiová (HEC and MPG).

<sup>282</sup> Human Rights Committee, *Georgopoulos et al. v. Greece*, Communication No 1799/2008, U.N. Doc. CCPR/C/99/D/977/2008, 14 September 2010.

<sup>283</sup> See *supra* Part II, 6.

<sup>284</sup> *FIDH v. Belgium* (21 March 2012), Paragraph 164.

<sup>285</sup> *Ibid.* Paragraph 166.

<sup>286</sup> *Ibid.* Paragraph 165.

The Committee also judged that the situation of Traveller families with regard to eviction from sites on which they have settled illegally constituted discrimination in the families' right to protection<sup>287</sup>.

<sup>287</sup> *Ibid.* Paragraph 167.

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# Conclusion

Just like employment and education, housing is hugely important for individuals. When people are victims of discrimination in this area, it can seriously affect their living conditions, forcing them to live in housing that is dilapidated, unsafe, overcrowded or completely unsuited to their needs. In the most serious cases, they may find themselves with no home at all. Inevitably this discrimination impacts on other areas of their life, particularly their health, their family life, and their access to employment and education.

At the moment, the anti-discrimination Directives based on Article 19 of the Treaty on the Functioning of the European Union protect people from discrimination in housing only on grounds of sex, or racial or ethnic origin. While some States have extended protection to cover other grounds, there is no harmonisation at European level, and so protection in these areas can vary considerably from country to country, including some countries where there is no protection at all. It is therefore imperative for the European Union to finish drafting the directive on equal treatment in the access to and provision of goods and services so that all people in all Member States can be guaranteed a high degree of protection against the risk of discrimination in housing on grounds of their age, disability, sexual orientation, religion or belief. This new directive could provide an opportunity to clarify the meaning of the phrase housing available to the public, while also ensuring that the terms are interpreted in a way that does not needlessly limit the protection put in place. As such, it would be advisable to revise the terms used in the current draft of the explanatory memorandum in order to clearly establish that the prohibition on discrimination in housing does not only cover cases where housing is made available to the public in the context of professional or commercial activities.

As a party to the United Nations Convention on the Rights of Persons with Disabilities, the European Union also has a particular role to play in promoting accessibility to housing for disabled people. As part of the current process of drafting legislation on access to goods and services, it is important that housing be given particular attention. In this way, adopting the proposed directive would make it possible to recognise the right of disabled people to reasonable accommodation in housing, as set out in the United Nations Convention.

A number of studies provide evidence of the seriousness of discrimination in housing against Roma and Travellers throughout Europe. Monitoring the national strategies for integration of the Roma, which all Member States had to draw up in 2011, gives the European Commission the opportunity to ensure that Member States are putting concrete measures in place in order to counter the various forms of discrimination against Roma in the area of housing, especially as concerns access to basic infrastructure and protection against eviction. This process must also allow the Commission to remind Member States of their obligation to guarantee Travellers access to suitable and sufficient caravan sites, as recognised by various international bodies.

Knowledge and analysis of discrimination in the housing sector is nevertheless hampered by the scarcity of empirical data. While there are recent studies carried out at European level concerning discrimination against migrants, the Roma and other ethnic minorities, there are no similar studies available for analysing the scope of discrimination affecting access to housing for other protected groups, such as women, disabled people, young people and the elderly, homosexual people or religious minorities. Likewise the specific question of harassment in housing has barely been studied. The European Union could help fill this void by promoting studies in these areas, and encouraging Member States to collect relevant data.

The concept of residential segregation and its links with discrimination, as defined in European law, is worthy of deeper consideration. The United Nations Convention on the Elimination of All Forms of Racial

Discrimination classes racial segregation as a form of discrimination. The European Committee of Social Rights has likewise made this connection in its case law. However, the concept needs tighter legal definition: determining whether a given case of residential segregation amounts to discrimination, who should be considered responsible and what measures States should or could take to curb the problem remain complex issues. The European Union could contribute to promoting debate of these issues, lending special attention to the situation of the Roma in this area, which is a particular cause for concern.

As for the Member States, European and international rules require them to adopt various types of measure to combat discrimination in housing.

Firstly, public authorities must be aware of the obstacles preventing certain protected groups from accessing housing, which result from the very structure of existing premises, i.e. the features of available housing. In many countries, the lack of social housing hurts certain protected groups, who are overrepresented among those on low incomes who struggle to find housing on the private market. Some consideration needs to be given to the risk of indirect discrimination which this situation produces or uncovers. In the case of disabled people, the United Nations Convention on the Rights of Persons with Disabilities obliges States to eliminate barriers to accessibility to buildings used as housing and to recognise the right to reasonable accommodation. As for Travellers who, for traditional cultural reasons, live in caravans rather than fixed houses, numerous international bodies already recognise the obligation of States to take into account this style of housing in their urban planning policies, and to take necessary measures to ensure that there are enough sites accessible to caravans. Specific measures may also be necessary for other groups, such as the elderly, or women who have been victims of domestic violence, to ensure that suitable housing is available.

Secondly, the Member States must ensure that discrimination, whether it results from actions of public or private persons, does not affect the processes of how housing that is sold or rented is allocated to specific people. It must prevent and punish practices in the private or public sector that involve refusing to sell or rent out a property on prohibited grounds. Moreover, when establishing and putting in place criteria for access to social housing, authorities must be especially careful to remove any conditions that could result in indirect discrimination against certain groups.

Lastly, States must also protect people against discrimination that is likely to occur while they are occupying a home, such as harassment by neighbours, the landlord or a public authority, or the termination of or failure to renew or transfer a letting contract on prohibited grounds. It must avoid all discrimination when supplying commodities and services that are needed for the house to be habitable. Likewise, it must avoid any discriminatory practice when exercising its power to conduct forced evictions in specific cases and under specific conditions.



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## **European Commission**

### **Discrimination in Housing**

Luxembourg: Office for Official Publications of the European Union

2013 — 80 pp. — 21 × 29.7 cm

ISBN 978-92-79-29448-8

doi:10.2838/93456

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