

Discrimination in housing

LEGAL SEMINAR

EQUALITY LAW ? WHAT KIND OF EQUALITY

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J. Ringelheim and N. Bernard, *Discrimination in housing*, Thematic report for the European Network of Legal Experts in the non-discrimination field.

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- I. Discrimination in the supply of housing
- II. Discrimination in the allocation of housing
- III. Discrimination during occupation of housing

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## I. Discrimination in the supply of housing

1. The lack of social housing
2. Shelters for women who have been victims of domestic abuse
3. Adapting housing for persons with disabilities
4. Adapting housing for the elderly
5. Respecting the traditional way of life of Travellers

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### Lack of social housing

- Disproportionate impact on certain ethnic minorities?
- American case-law. E.g.: *U.S. v City of Black Jack, Missouri*, 508 Fed 1179 (8th Circ. 1974)  
(‘white’ municipality blocking the building of affordable multi-family housing that would have been available to black families. Ruling: disparate impact discrimination.)
- UN : CERD, L.R. et al. v Slovakia, Communication No 31/2003, 10 March 2005:  
Town council withdrawing its approval of plan to construct cheap housing for Roma, after receiving petition signed by 2700 residents. Conclusion: discrimination in the right to housing.
- Special problem: lack of large homes designed for large families in some EU countries.

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

- Recommendation on the right to housing of the Council of Europe's Commissioner for Human Rights (2009).
- Report of the UN Special Rapporteur on adequate housing (2011)
- CEDAW, A.T. v Hungary, Communication No 2/2003, 26 January 2005.  
Women abused by her partner unable to flee her house because no shelter was equipped to host her with her children. Conclusion: violation of the obligation to take the necessary measures to protect women victims of violence.

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### Adapting housing for persons with disabilities

#### • International norms

- UN Conventions on the Rights of Persons with Disabilities
  - Obligation to identify and remove obstacles to accessibility, in particular in buildings used as housing (Art. 9(1) and 3(f)).
  - Denial of reasonable accommodation constitutes discrimination (Art. 5(2)).
  - Obligation to take all appropriate steps to ensure that reasonable accommodation is provided (Art. 5(3)).
- ECtHR, *Marzari v. Italy*, 4 May 1999 (based on Art. 8 ECHR)
  - States should provide disabled people in social housing with a home adapted for their disability.

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### Adapting housing for persons with disabilities

- Proposal for an EU directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation :
  - Obligation to take, by anticipation, measures necessary to enable persons with disabilities to have access to inter alia housing (accessibility)
  - Reasonable accommodation shall be provided unless this would impose a disproportionate burden
- European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe (European Commission, Nov. 2011)
  - Accessibility of buildings is one of the areas for action.

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### Adapting housing for persons with disabilities

#### • National measures

- Recognising a right to reasonable accommodation:
  - Despite the fact that this is not required by EU law (for now), many member states have recognised such right in the field of housing. (e.g. : Austria, Belgium, Cyprus, Ireland, The Netherlands, Spain, UK).
- Providing financial assistance for adapting housing
- Establishing accessibility standards

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### Adapting housing for the elderly

- In some countries, financial assistance available to help the elderly adapt their house so that they can continue to live there.
  - E.g. : Ireland, Housing Aid for Older People Scheme.

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### Respecting the traditional way of life of Travellers

- International norms
  - ECtHR:
    - » right to respect for private and family life and for home (Art. 8 ECHR) includes the right of Traveller families to live in a caravan. (Chapman v UK, 18 January 2001, § 73).
    - » Vulnerable position of Roma and Travellers as a minority means that some special consideration should be given to their needs and different lifestyle both in regulatory framework and in reaching decisions in particular cases. (Winterstein and others v. France, 27 October 2013, § 148 ; Chapman ; Connors v UK, 27 August 2004)
    - » States have a positive obligation to facilitate Roma and Travellers way of life. (idem).

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### Respecting the traditional way of life of Travellers

- International norms
  - Advisory Committee on the Framework Convention for the Protection of National Minorities:
    - » see in particular Opinions on the UK.
  - European Committee of Social Rights
    - » Right to housing (Art. 31 revised Social charter); right to protection of families (Art. 16); non-discrimination (Art. E)
    - » Requirement for States to provide an adequate supply of housing for families (Art. 16) encompasses a positive obligation to ensure that a sufficient number of residential sites are provided for them to park their caravans.
    - » E.g. : ERRC v. Greece (2004); FIDH v. Belgium (2012)
  - Recommendations of Committee of Ministers of the Council of Europe

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## Respecting the traditional way of life of Travellers

### • The situation in member states

- Number of states with significant Traveller community have taken measures to foster the creation of sites. Nonetheless, there is still not enough land accessible to Travellers living in caravan.
- France
- UK
- Ireland
- Belgium

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## II. Discrimination in the allocation of housing

### 1. Private housing

1. Renting private housing
2. Purchasing private housing
  1. NB : ECJ, 8 May 2013, C-197/11 and C-203/11

### 2. Public housing

1. The forms of public housing in Europe
2. The problem of (potentially) discriminatory practices
3. The harmful effect of some allocation criteria

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## Public housing

### a) Problem of (potentially) discriminatory practices

- Unofficial practices of concentrating minorities in certain neighbourhoods (E.g. Czech Republic, UK)
- Official or unofficial 'ethnic quotas' (cases in Belgium, Denmark, France, Germany, the Netherlands).
  - High Court of Denmark, 22 Jan. 1991: establishing maximum quotas for immigrants when allocating social housing is discriminatory.
  - France: aim of achieving 'social mixing' should be taken into account by social housing bodies. => European Committee on Social Rights, FEANTSA v France (2007): this criterion can lead to arbitrary decisions given unclear definition in law and lack of guidelines on how to implement it in practice.

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## Public housing

- How to prove discriminatory practices in the allocation of housing?
  - One useful tool: statistics showing disproportionate negative impact on a certain group can establish a presumption of indirect discrimination.
  - See Netherlands, High Court, 10 Dec. 1982, R.K. Woningbouwvereniging Binderen v. Kaya.
  - But in many countries, data needed to constitute such statistics are not collected.

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## Public housing

### b) The harmful effects of some allocation criteria

- Local connections
- Minimum income requirements
- Requirements of nationality or duration of legal residence
- Language requirement (Belgium, Flemish Region)
- Not having lived in an illegal construction (Romania)

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## III. Discrimination during occupation

### 1. Harassment in housing

- Based on race and ethnic origin: prohibited by EU Directive 2000/43/EC, Art. 2(3)
  - Based on sex: prohibited by EU Directive 2004/113/EC, Art. 2(d)
2. Terminating, not renewing or not transferring letting agreements (for discriminatory reasons)
  3. Access to basic infrastructure and public services
  4. Security of tenure and eviction

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### Access to basic infrastructure and public services

- Notion of 'adequate housing' :
  - UN Committee on Economic, Social and Cultural Rights (CESCR)
  - European Committee on Social Rights (ECSR)
- Adequate housing must (1) have access to essential services, equipment and infrastructure, such as running water, heating, sanitary facilities and electricity, and (2) be located within a reasonable distance of employment opportunities, healthcare and education services.
- In most member states, large number of Roma and Travellers living in housing not meeting these criteria.
  - See complaints before the ECSR: e.g. ERRC v Greece (2004), ERRC v Bulgaria (2006), COHRE v Italy (2010), ERRC v Portugal (2011).

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### Access to basic infrastructure and public services

- The issue of segregation
  - Art. 3 of International Convention on the Elimination of Racial Discrimination
  - ECSR, ERRC v Portugal (2011)
    - « ...the Committee considers that segregated neighbourhoods for Roma have to a large extent been created by the action of municipalities » (§48).
  - National cases: Slovakia, Czech Republic.

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### Security of tenure and eviction

- Adequate housing implies legal security of tenure (see UN CESCR and ECSR).
- ECtHR, *Yordanova v. Bulgaria* (2012); *Winterstein c. France* (2013) : violation of Art. 8.
- ECSR: several cases concerning eviction of Roma in violation of international requirements.
  - E.g. : FIDH v Belgium (2012), ERRC v Bulgaria (2006), COHRE v France (2011).
- UN Human Rights Committee, *Georgopoulos et al. v Greece*, Communication No 1799/2008 (2010).

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