

Basis and Scope of the Right to Housing in Europe

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Civil and Political Rights

- “ European Convention on Human Rights
- “ EU Charter of Fundamental Rights
- “ Constitutional Rights and Statutory Provision
- “ International Covenant of Civil and Political Rights

Economic and Social Rights

- “ European Social Charter (original and revised)
- “ EU Charter of Fundamental Rights
- “ Constitutional Rights and Statutory Provision
- “ International Covenant on Economic, Social and Cultural Rights

European Convention on Human Rights

- “ No 'Right to Housing' as such but....
- “ What about using other rights?
- “ Civil and political character
- “ Treaty interpretation: Vienna Convention on Law of Treaties: good faith, objective and purpose, do not go beyond what has been agreed....

European Convention on Human Rights

- “ Article 2: Right to Life: *Oneryildiz v Turkey*
- “ Article 3: Prohibition on torture and inhuman or degrading treatment or punishment *MSS v Greece and Belgium* (food, shelter and essential living needs)
- “ Article 5: Right to Liberty and Security (no arbitrary detention of homeless persons)
- “ Article 6: Right to a Fair Hearing (civil and criminal procedure, including evictions)

European Convention on Human Rights

- “ Article 8: Right to respect for private life, family life, the home and correspondence (the home/proportionality, family unity, children and care, human dignity, use of public realm)
- “ Article 11: Freedom of Assembly and Association (use of public realm)
- “ Article 13: Right to an Effective Remedy (legal remedy)
- “ Article 14: Prohibition on Discrimination (race, sex, etc but also as homeless)
- “ Article 1, Protocol 1: Protection of Property (possession of the homeless)
- “ Article 3, Protocol 1: Right to Free Elections (residential address needed to vote)

European Social Charter (revised)

- “ The Right to Housing - Article 31
- “ With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:
 - “ to promote access to housing of an adequate standard;
 - “ to prevent and reduce homelessness with a view to its gradual elimination;
 - “ to make the price of housing accessible to those without adequate resources.
- “ FEANTSA v France (39/2006)
- “ FEANTSA v Slovenia (53/2008)

European Social Charter (revised)

- “ Article 16 . The right of the family to social, legal and economic protection
- “ With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

European Social Charter (revised)

- “ Article 30 . The right to protection against poverty and social exclusion
- “ With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:
- “ to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
- “ to review these measures with a view to their adaptation if necessary.

EU Charter of Fundamental Rights

- “ Article 34
- “ Social security and social assistance
- “ 1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
- “ 2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.
- “ **3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and 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.**

EU Charter - Explanations

- “ Re Article 34
- “ Paragraph 3 draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article 153 of the Treaty on the Functioning of the European Union

Application of EU Charter

- “ Article 51:
- “ Scope
- “ 1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are **implementing** Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
- “ 2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Explanation of Article 51

- “ The aim of Article 51 is to determine the scope of the Charter. **It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union**, in compliance with the principle of subsidiarity. This provision was drafted in keeping with Article 6(2) of the Treaty on European Union, which required the Union to respect fundamental rights, and with the mandate issued by the Cologne European Council. The term **institutions** is enshrined in the Treaties. The expression **bodies, offices and agencies** is commonly used in the Treaties to refer to all the authorities set up by the Treaties or by secondary legislation (see, e.g., Articles 15 or 16 of the Treaty on the Functioning of the European Union).

Explanation of Article 51

- “ As regards the Member States, it follows unambiguously from the case-law of the Court of Justice that the requirement to respect fundamental rights defined in the context of the Union is **only binding on the Member States when they act in the scope of Union law** (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, Case C-260/89 ERT [1991] ECR I-2925; judgment of 18 December 1997, Case C-309/96 Annibaldi [1997] ECR I-7493). The Court of Justice confirmed this case-law in the following terms: ~~It~~ In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules ...q(judgment of 13 April 2000, Case C-292/97 [2000] ECR I-2737, paragraph 37 of the grounds). Of course this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.

When are Member States 'implementing' EU law?

“ C-617/10 *Fransson* CJEU:

“ 29 That said, where a court of a Member State is called upon to review whether fundamental rights are complied with by a national provision or measure which, in a situation **where action of the Member States is not entirely determined by European Union law**, implements the latter for the purposes of Article 51(1) of the Charter, national authorities and courts remain free to apply national standards of protection of fundamental rights, provided that the level of protection **provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of European Union law are not thereby compromised** (see, in relation to the latter aspect, Case C-399/11 Melloni [2013] ECR I-0000, paragraph 60).

Article 34 of the Charter in action

“ C-571/10 *Kamberaj*:

“ 80 It follows that, when determining the social security, social assistance and social protection measures defined by their national law and subject to the principle of equal treatment enshrined in **Article 11(1)(d) of Directive 2003/109, the Member States must comply with the rights and observe the principles provided for under the Charter, including those laid down in Article 34 thereof. Under Article 34(3) of the Charter, in order to combat social exclusion and poverty, the Union (and thus the Member States when they are implementing European Union law) recognises and respects the right to social and housing assistance so as to ensure a decent existence** for all those who lack sufficient resources, in accordance with the rules laid down by European Union law and national laws and practices”

EU Instruments

- “ Directive 2003/109:
- “ Article 11(1) of Directive 2003/109 is worded as follows:
- “ Long-term residents shall enjoy equal treatment with nationals as regards:
- “ (d) social security, social assistance and social protection as defined by national law;

EU Instruments

- “ See Also the Asylum Reception Directive 2003/9:
- “ Article 13: General rules on material reception conditions and health care
- “ 1. Member States shall ensure that material reception conditions are available to applicants when they make their application for asylum.
- “ 2. Member States shall make provisions on material reception conditions **to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence.**

National law:

- “ Housing/homelessness assistance for EU Citizens
- “ Free movement of persons
- “ Action 'not entirely determined' by EU law?
- “ Raising standards

Constitutional Rights and Statutory Provision

- “ Fundamental Rights protected under the Constitution
- “ Principled legislation to enact a statutory right to housing

Statutory Provision: Scotland

- “ There is a national strategic framework for tackling homelessness in Scotland. The main outcome of the Housing (Scotland) Act, 2001 and The Homeless etc (Scotland) Act 2003) is that, since the end of 2012, **all unintentionally homeless households have been entitled to settled accommodation.**
- “ An integrated strategic approach was adopted from the beginning where all relevant stakeholders (including academics, landlords, local authorities, elected members of local authorities, NGOs and all relevant government departments) ensured that problems were identified early and support offered to the relevant bodies to resolve them.

The End

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