

# Discrimination in Housing

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## CURRENT REFLECTIONS ON EU ANTI-DISCRIMINATION LAW

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# Outline



- Protection against discrimination in housing: Legal Basis
- Discrimination in the supply of housing
  - i.a. Lack of social housing
  - i.a. Adapting housing to persons with disabilities
- Discrimination in the allocation of housing
  - Private housing
  - Public housing
- Discrimination during occupation of housing
  - i.a. Eviction
  - i.a. Segregation



J. Ringelheim and N. Bernard, *Discrimination in Housing*, Thematic report for the European Network of Legal Experts in the non-discrimination field, European Union, 2013.

Available at:

<http://www.migpolgroup.com/portfolio/la-discrimination-dans-le-logement/>

# Protection against discrimination in housing: Legal Basis



- **EU antidiscrimination directives:**
  - Directive 2000/43/EC: equal treatment between persons irrespective of racial or ethnic origin
    - ✦ Applies to ‘access to and supply of goods and services which are available to the public, including housing’ (art. 3(1)(h))
  - Directive 2004/113/EC: equal treatment between men and women in the access to and supply of goods and services
    - ✦ ‘goods and services, which are available to the public’ => includes housing

# Protection against discrimination in housing: Legal Basis



- **UN human rights conventions:**
  - International Covenant on Economic, Social and Cultural Rights (1966) (art. 11 and art. 2)
  - International Covenant on Civil and Political Rights (1966) (art. 26)
  - International Convention on the Elimination of All Forms of Racial Discrimination (1965) (art. 5(c))
  - Convention on the Elimination of All Forms of Discrimination against Women (1979)
  - International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) (art. 43(1))
  - Convention on the Rights of Persons with Disabilities (2006) (NB: ratified by the EU itself)

# Protection against discrimination in housing: Legal Basis

- **Council of Europe instruments:**
  - European Social Charter (revised): article 31 and article E
  - European Convention on human rights: no right to housing as such but some degree of protection in
    - ✦ Article 8: right to respect for a home
    - ✦ Article 1 of Protocol 1: right to peaceful enjoyment of possession
    - ✦ Article 3: prohibition of inhuman and degrading treatment => in exceptional circumstances, can be applied to living and housing conditions (see *Moldovan and others v. Romania*, 12 July 2005)
    - ✦ Combined with Article 14: non-discrimination in the enjoyment of rights recognised in the Convention
    - ✦ Protocol 12: self-standing non-discrimination provision



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

# I. Discrimination in the supply of housing



1. The lack of social housing
2. Shelters for women who have been the victims of domestic abuse
3. Adapting housing for persons with disabilities
4. Adapting housing for the elderly
5. Availability of caravan sites for Travellers willing to maintain their traditional way of life



# 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 accessible 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.

# 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 two sons.

Conclusion: violation of the obligation to take the necessary measures to protect women victims of violence.

# Adapting housing for persons with disabilities



- International norms
  - UN Convention 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)).

# 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 i.a. housing (cf. accessibility). Limit: no disproportionate burden.
  - ✦ Reasonable accommodation shall be provided, unless would impose a disproportionate burden
- Concept of ‘disproportionate burden’: which criteria?
  - ✦ Cf. Proposal: size and resources of the organisation, its nature, estimated cost, life cycle of the goods and services, possible benefits of increased access.
  - ✦ Opportunity to receive state subsidies must be taken into account.

# Adapting housing for persons with disabilities



- 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.

# Adapting housing for persons with disabilities



- National measures
  - Establishing accessibility standards
    - ✦ Compulsory accessibility standards for newly constructed or renovated buildings
  - Recognising a right to reasonable accommodation:
    - ✦ Many member states have recognised such right in the field of housing. (e.g. : Austria, Belgium, Ireland, Spain).
  - Providing financial assistance for adapting housing

# Adapting housing for the elderly



- In some countries, financial assistance available to help the elderly adapt their house to their needs.
  - E.g. : Ireland, Housing Aid for Older People Scheme.

# Respecting the traditional way of life of Travellers



- Lack of sites – public or private – where living in caravan is allowed
  - Concerns mainly Belgium, France, Ireland, the Netherlands and the UK
  - Main problem? Travellers' way of life not taken into account, or not enough, in housing and urban planning policies
  - Consequence: threatens ability of Travellers to maintain their traditional way of life
  - International institutions:
    - ✦ Travellers entitled to live according to their traditional lifestyle
    - ✦ Public authorities must take measures to enable them to exercise this right



# Respecting the traditional way of life of Travellers



- **European Court of Human Rights:**
  - Right to respect for private and family life and for home (Art. 8 ECHR) includes the right of Travellers to lead their private and family life in accordance with their traditions.
    - ✦ Chapman v UK, 18 January 2001, § 73.
  - States have a positive obligation to facilitate Roma and Travellers way of life.
  - 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 individual decisions.
    - ✦ Winterstein and others v. France, 27 October 2013, § 148 ;  
Connors v UK, 27 August 2004, §84

# Respecting the traditional way of life of Travellers



- **European Committee of Social Rights**
  - Right to housing (Art. 31 revised Social charter); right to protection of families (Art. 16); non-discrimination (Art. E)
  - Concept of ‘housing’ extends to caravan and the land on which it is located
  - Special consideration should be given to the different needs and lifestyles of Travellers, which are a specific type of disadvantaged group and a vulnerable minority
  - States’ obligation to provide an adequate supply of housing for families (cf. Art. 16) entails positive obligation to ensure that a sufficient number of caravan sites are provided.

# Respecting the traditional way of life of Travellers



- **European Committee of Social Rights**
  - Sites must meet adequate housing criteria: i.a. basic amenities, not overcrowded, secure tenure, appropriate environment, access to public services
  - See: ERRC v. Ireland (2015), FIDH v. Belgium (2012), ERTF v France (2012), ERRC v. France (2009), ATD quart monde v. France (2007), ERRC v. Italy (2005), ERRC v. Greece (2004).

# Respecting the traditional way of life of Travellers



- **Advisory Committee on the Framework Convention for the Protection of National Minorities:**
  - see in particular Opinions on the situation in the UK.
  - Lack of caravan sites for Travellers = breach of Art. 5 FCNM (obligation to promote conditions necessary to enable persons belonging to minorities to maintain and develop their culture)
- **Committee of Ministers of the Council of Europe's Recommendations**
- **UN Committee on the Elimination of Racial Discrimination**
- **UN Special Rapporteur on adequate housing**

# Respecting the traditional way of life of Travellers



- National case-law
  - UK High Court, *Moore & Coates v Secretary of States for Communities and Local Governments*, 21 June 2015
    - ✦ Special procedure for ‘Travellers pitches’ applications => indirect discrimination
  - Netherlands Institute for Human Rights, *Decisions 2014-165, 166 and 167*, 14 December 2014
    - ✦ Municipality « passively » reducing the number of Travellers’ sites to zero => direct discrimination on the ground of race

## II. Discrimination in the allocation of housing



1. Private housing
2. Public housing

# Private housing



## 1. Renting private housing

- ✦ Various reports indicating that Roma and migrants are frequently the victim of discrimination in access to private housing
- ✦ But very little case law. Problem of proof.

## 2. Purchasing private housing

- ✦ Discrimination in access to mortgage
- ✦ Public regulations imposing conditions of nationality or « proximity » for purchasing housing in certain locations
  - ECJ, 8 May 2013, C-197/11 and C-203/11 : Flemish regulation requiring to prove 'sufficient connection' with the locality  
=> breach of free movement

## II. Discrimination in the allocation of housing



### 2. Public housing

1. The problem of (potentially) discriminatory practices
2. The harmful effect of some official allocation criteria



# 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.
  - European Committee on Social Rights, FEANTSA v France (2007): the criterion of 'social mixing' – which social housing bodies must take into account - can lead to arbitrary decisions given unclear definition in law and lack of guidelines on how to implement it in practice.

# Public housing



- **Difficulty to prove discriminatory practices**
  - 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.

# Public housing



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

### Examples :

- Priority to people having ‘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)

# 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. Security of tenure and protection in case of eviction
3. Access to basic infrastructure and public services
4. Segregation

## 2. Security of tenure and protection in case of eviction



- Notion of ‘adequate housing’ (cf. right to housing):
  - UN Committee on Economic, Social and Cultural Rights (CESCR)
  - European Committee on Social Rights (ECSR)
- Adequate housing implies legal security of tenure
- Eviction only permissible under strict conditions

## 2. Security of tenure and protection in case of eviction



- **Legal protection of persons threatened with eviction must include:**
  - Obligation to consult affected parties in order to find alternative solution;
  - Obligation to fix a reasonable notice period before eviction;
  - Prohibition to carry out evictions at night or during winter;
  - Accessibility to legal remedies;
  - Accessibility to legal aid;
  - Compensation in case of illegal evictions.
- **When evictions do take place, they must be:**
  - Carried out under conditions respecting the dignity of the persons
  - Governed by rules sufficiently protective of the rights of the persons
  - Accompanied by proposals for alternative accommodation

## 2. Security of tenure and protection in case of eviction



- ECSR: various cases concerning eviction of Roma or Travellers in violation of these requirements.
  - E.g. : MdM v. France (2012), FIDH v Belgium (2012), ERRC v Bulgaria (2006), COHRE v France (2011), COHRE v. Italy (2010).
- Eur Court HR: right to respect for home => any person at risk of being evicted from her dwelling should be able to have the proportionality of the measure determined by a court.
  - *Yordanova v. Bulgaria* (2012) => breach of Art. 8
  - *Winterstein v. France* (2013) => idem
- UN Human Rights Committee, Georgopoulos et al. v Greece, Communication No 1799/2008 (2010).

## 2. Security of tenure and protection in case of eviction



- **Important national case in Hungary**
  - Municipality of Miskolc started to systematically terminate the social housing tenancies of persons living in an underprivileged neighbourhood, without providing tenants with alternative housing.
  - Equal Treatment Authority Decision (15 July 2015): residents of the area discriminated against by the municipality based on their social status, financial situation and Roma origin.
    - => Municipality must develop an action plan to provide the people concerned with adequate housing.
  - Court's decision 25 January 2016: upheld the Authority's decision.
    - => Municipality committed indirect discrimination through its omission to take measures to protect from homelessness those who were evicted from the housing in the concerned area.



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



- For UN CESCR and ECSR, ‘adequate housing’ implies that 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.
- States have positive obligation to take legal and practical measures to ensure access to housing of an adequate standard (ECSR).
- States must pay special attention to the difficulties and needs of the most disadvantaged (ECSR).

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



- In many member states, large number of Roma living in housing not meeting these criteria:
  - E.g. ECSR, *Médecins du Monde v. France* (2012):
    - ⇒ Failure of the State to take the specific situation of (regular) Roma migrants into account and take measures adapted to improve their housing situation.
    - ⇒ ‘there is a violation of Article E read in conjunction with Article 31§1 because of a too limited access to housing of an adequate standard and degrading housing conditions for migrant Roma lawfully resident or working regularly in France’.
  - See also *ERRC v Greece* (2004), *ERRC v Bulgaria* (2006), *COHRE v Italy* (2010), *ERRC v Portugal* (2011).

# 4. Segregation



- **UN International Convention on the Elimination of Racial Discrimination:**

‘States parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.’ (art. 3)

- **UN Committee’s General Recommendation XIX (2003):**

‘while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons. (...)’

The Committee therefore affirms that a condition of racial segregation can also arise without any initiative or direct involvement by the public authorities. It invites States parties to monitor all trends which can give rise to racial segregation, to work for the eradication of any negative consequences that ensue, and to describe any such action in their periodic report.’

# 4. Segregation



- **ECSR case-law**
  - **ERRC v Portugal (2011):** programmes for re-housing Roma put in place by some municipalities leading to segregation => breach of Article E (discrimination)

« 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 (...). » (§48).
  - **COHRE v. Italy (2010):** segregation of Roma in camps caused by the actions of public authorities => discrimination in relation to the right to housing.

# 4. Segregation



- **ECSR case-law**

« States should be vigilant when implementing housing policies so as to prevent spatial or social segregation of ethnic minorities or migrants » (Médecins du Monde v. France, 2012, § 61)

# 4. Segregation



- National cases:
  - Romania: wall built by a municipality to separate a Roma neighbourhood from the main road in the city.
    - ⇒ National Equality Body sanctioned the mayor for harassment
    - ⇒ High Court confirms the decision (27 sept. 2013)
  - Italy: municipality of Rome's policy of systematically placing Roma in a camp ('la Barbuta'), located in the remote outskirts of Rome.
    - ✦ Tribunal of Rome, 30 May 2015: this housing policy, which promotes social exclusion, constitutes indirect discrimination.

# 4. Segregation



- **Segregation generating additional discrimination**  
=> CJ, C-83/14, CHEZ Razpredelenie Bulgaria AD, 16 July 2015 - 2 points to be highlighted:
  - The principle of equal treatment ‘is intended to benefit also persons who, although not themselves a member of the race or ethnic group concerned, nevertheless suffer less favourable treatment or particular disadvantage on one of those grounds’ (§56)  
=> discrimination ‘by association’
  - Such practice constitutes direct discrimination if the measure is proven to have been introduced for reasons relating to the ethnic origin of most of the district’s inhabitants (§91).