THE RIGHT TO HOUSING FOR BENEFICIARIES OF INTERNATIONAL PROTECTION
INTRODUCTION

Accessing shelter is a basic human right and necessity. The conditions in which people live determine to a great extent their physical and mental health, well-being, their ability to engage in gainful employment and pursue self-improvement through education and, as a consequence, attain a decent standard of living. Beneficiaries of international protection have the right to access accommodation; however, in practice it can be difficult to attain this right. Access to social housing and the lack of private accommodation are becoming widespread challenges across Europe, for both nationals and beneficiaries of international protection. However, beneficiaries may face more obstacles when accessing accommodation due to language and financial barriers as well as difficulties in navigating disjointed housing support services. This has become more acute over the past two years as the number of people obtaining international protection increase, which in turn puts additional pressure on existing housing services. As a result, more beneficiaries face destitution as they move from the reception system foreseen for asylum seekers to mainstream accommodation.

This note will not examine the reception conditions facing asylum seekers as this has been extensively documented elsewhere, and the recast Reception Conditions Directive provides a more robust legal framework for asylum seekers that ensures access to accommodation. This note will be split into two sections, the first section will examine the right to accommodation as set out in the international and EU law framework and the second section will briefly look at the right to free movement and dispersal policies within a State which is inextricably linked to housing rights. It will examine and highlight certain safeguards that can be found within EU and international law that can challenge dispersal practices.

ACCESS TO HOUSING

I. INTERNATIONAL LEGISLATION

The 1951 Refugee Convention

The Refugee Convention foresees that refugees should have access to housing, and be afforded treatment as favourable as possible, and ‘in any event, not less favourable than that accorded to aliens generally in the same circumstances’.

The International Covenant of Economic Social and Cultural Rights

The International Covenant of Economic Social and Cultural Rights (hereinafter ‘ICESCR’) provides that everyone has the right to ‘an adequate standard of living for himself and his family including adequate food, clothing and housing, and to the continuous improvement of living conditions’. According to the UN Committee on Economic, Social and Cultural Rights, adequate housing must satisfy a range of requirements. In particular, it should be of sufficient quality to ensure protection from the elements; reflect the cultural requirements of inhabitants, be connected to public utilities and sanitation services; be connected to public services and allow access to work opportunities through an adequate infrastructure. It should also include adequate protection against forced or summary eviction, and be affordable.


5. This also includes vehicles, caravans, encampments and other non-permanent structures.

II. COUNCIL OF EUROPE LEGISLATION

The European Social Charter (Revised)

Numerous articles of the European Social Charter Revised, adopted in the framework of the Council of Europe (hereinafter ‘revised Social Charter’) guarantee various degrees of social protection, including housing. Article 19 of the revised Social Charter grants migrant workers an explicit right to be treated no less favourably than nationals in relation to access to housing. Article 30 includes an obligation to promote effective access to a range of services, including housing. Article 31 establishes a right to housing, with Contracting States undertaking measures designed 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.7

III. EU LEGISLATION

The Charter of Fundamental Rights of the EU

With the entry into force of the Treaty of Lisbon in December 2009, the Charter of Fundamental Rights of the EU (hereinafter ‘the EU Charter’) became a binding bill of rights for the EU9 and now has the same legal status as the Treaties themselves.10 It brings together in one text all the fundamental rights protected in the Union, and through the explanations,11 provides guidance on their scope, ultimately making them visible and predictable. Given that it forms part of primary EU law; it reinforces the necessity of interpreting EU law in light of fundamental rights. The EU Charter contains many provisions that can assist beneficiaries in accessing their right to housing, some of which are discussed below.

The recast Qualification Directive

Under the recast Qualification Directive, beneficiaries of international protection have access to accommodation under ‘equivalent conditions as other third-country nationals legally resident in their territories’.12 Under the proposed Qualification Regulation, a similar standard is envisaged.13

IV. RELEVANT RIGHTS AND PRINCIPLES

This section will look primarily at the relevant rights and principles that emanate from the European Convention of Human Rights (hereinafter ‘ECHR’) and its case law and the Charter of Fundamental Rights of the EU as informed by the case law of the Court of Justice of the European Union (hereinafter ‘CJEU’). There will also be a review of the relevant rights found under the Social Charter revised as well as its case law.

7. The Revised Social Charter came into being in 1999. 43 Council of Europe States have ratified the Revised Charter, but States can accept which provisions of the text they agree to.
8. States which had accepted Article 31 in full as of January 2015 were Finland, France, Italy, Netherlands, Norway, Portugal, Slovenia, Sweden, and Turkey. States that accepted Article 31 in part as of January 2015 include Andorra, Latvia, Lithuania, Portugal, and Ukraine. See here for further information; http://bit.ly/2f0082d.
12. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast); Article 32.
The right to Human Dignity (Article 1 EU Charter) and the prohibition of inhuman and degrading treatment (Article 4 EU Charter)

While States do not have an absolute obligation to provide housing to beneficiaries of international protection, they may under certain circumstances have obligations to ensure that they do not become destitute. The ECtHR has not ruled out the possibility that Article 3 of the ECHR could be invoked when an individual is wholly reliant on the state. A violation of the right to human dignity (which is now enshrined in Article 1 of the EU Charter) combined with a prohibition of degrading treatment, may trigger the responsibility of the state to provide housing to beneficiaries of international protection, taking into consideration their possible lack of access to the labour market and their particular vulnerabilities.

The ECtHR, in two cases that were ultimately dismissed, found that a State may have responsibilities to ensure that an individual does not face a situation of destitution. In Budina v. Russia, it found: ‘[t]he Court cannot exclude that State responsibility could arise for treatment where an applicant, in circumstances wholly dependent on State support, found herself faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity’. In Larioshina v Russia, the Court found that a complaint about a wholly insufficient pension and other social benefits may raise an issue under Article 3; however, the conditions were not met in this case.

The right to dignity and the prohibition of inhuman and degrading treatment can also trigger non-refoulement obligations, preventing states from transferring individuals to a country where they would face destitution as was found by the ECtHR in M.S.S v Belgium and Greece. A number of cases have come before Member States’ courts challenging a transfer back to the State that granted them protection on the grounds that if transferred, it would put them at real risk of inhuman and degrading treatment given their risk of homelessness and destitution. The response has been mixed in various EU Member States. For instance, some German courts have stopped transfers back to Bulgaria on these grounds. The Courts, relying upon a statement from the German Federal Foreign Office from July 2015, that persons with at least subsidiary protection status transferred, it would put them at real risk of inhuman and degrading treatment given their risk of homelessness and destitution. The Courts have relied upon a statement from the German Federal Foreign Office from July 2015, that persons with at least subsidiary protection status would put them at real risk of inhuman and degrading treatment given their risk of homelessness and destitution. The Courts have relied upon a statement from the German Federal Foreign Office from July 2015, that persons with at least subsidiary protection status.
special vulnerabilities as they cannot rely on social protection benefits and family networks. As a result of the lack of access to social assistance and the labour market, there is a lack of access to health care and accommodation, and subsequently found that for humanitarian reasons, the applicant should not be sent back to Greece. 19

The right to respect for private and family life, (Article 7 EU Charter)

The right to respect for private life can be engaged when looking at the accommodation needs of an individual, in particular where a State refuses to provide assistance in accessing accommodation. Limitations on the right to private life are permissible, but pursuant to Art 8(2) ECHR, limitations on this right are only permissible if they are in accordance with the law and necessary in a democratic society. In Marzari v. Italy, which was also found to be inadmissible, the ECtHR established the principle that although Article 8 does not guarantee the right to have one’s housing problem solved by the authorities, a refusal of the authorities to provide assistance in this respect to an individual suffering from a severe disease might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such refusal on the private life of the individual.20

Generally, in cases were an individual faces an eviction from a public authority or where a home is being repossessed, Article 8 is engaged. However, these actions can be justified as lawful interference on the grounds that it is 'in accordance with the law,' necessary in a democratic society and proportionate to the aim sought to be achieved.21 In Stanková v. Slovakia the ECtHR found that an eviction by a public authority, met all the requisite legal requirements, but, by not providing any alternative accommodation, produced effects which were disproportionate and incompatible with the right to respect for private and family life and home.22

Social Security and Social Assistance; (Article 34 EU Charter)

Article 34 (3) of the EU Charter provides that 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.23

The CJEU drew on this Article when considering the extent of a Member State’s obligation to provide housing to third-country nationals in the Kamberaj case. The case centred around a dispute whereby the fund used to pay the housing benefit for legally resident third country nationals in Italy was exhausted and as a result, the applicant was denied the benefit. He argued that such a scheme breached the Long Term Residence Directive which obliged States to treat long term residents on an equal basis with nationals (Article 11 (4)). Another issue that the Court addressed was whether housing benefits fell within ‘core benefits’ since the principle of equal treatment could be limited to benefits falling within that concept. The CJEU, when reflecting on this issue, put great weight on Article 34 of the Charter. It indicated

…that, according to Article 34 of the Charter, 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. It follows that, in so far as the benefit in question in the main proceedings fulfils the purpose set out in that article of the Charter, it cannot be considered, under European Union law, as not being part of core benefits within the meaning of Article 11(4) of [the Long Term Residence Directive].24

The Court stressed the basic nature of housing assistance as an individual’s basic needs include food, accommodation and health. Beneficiaries of international protection have access to accommodation under

23. According to the explanations to the Charter, Article 34 (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. As a result, its interpretation needs to be informed by the Social Charter and its evolving case law.
24. CJEU, Case C-571/10 Kamberaj v IPES, 23 April 2012, para 92.
equivalent conditions as other third country nationals legally resident according to the recast Qualification Directive. However, the latter also provides that Member States shall ensure that beneficiaries receive the necessary social assistance as provided to nationals, while Member States can decide to limit social assistance to core benefits for beneficiaries of subsidiary protection. While the Court ultimately left it to the Italian authorities to decide whether housing assistance fell within social assistance, it needed to do so in a way that took into account the objectives of the core benefits relating to social assistance and protection within the meaning of the Long term Residence Directive in light of the EU Charter. As a result, by analogy, a strong argument can be made that housing assistance for beneficiaries of international protection under the recast Qualification Directive falls within social assistance and core benefits that need to be granted at the same level as to nationals.

**Non-Discrimination (Article 21 EU Charter)**

Article 21 of the EU Charter prohibits discrimination including on the grounds of race, colour, ethnic or social origin or genetic features. Article 14 of the ECHR also prohibits discrimination. The Racial Equality Directive, which is applicable to private landlords and service providers, also prohibits discrimination in the provision of goods and services, including housing. The Racial Equality Directive is also applicable to private landlords and service providers.

**The right of the family to social, legal and economic protection (Article 16 European Social Charter)**

Article 16 of the revised Social Charter provides for the right of the family to social, legal and economic protection. In European Roma Rights Centre v. Bulgaria, the ESCR found that Article 16 and 31 (the right to housing) of the revised Social Charter overlap in relation to several respects of the right to housing. In FEANTSA v. France, the European Committee on Social Rights (hereinafter ‘ECSR’) emphasised that Article 31 revised Social Charter places an obligation on Member States to ensure that the housing rights are practical and effective. The ECSR held that the situation concerning the inadequate housing of Roma families, the lack of legal security of tenure, non-respect of the conditions accompanying eviction of Roma families from dwellings unlawfully occupied by them, and the lack of proper amenities, constituted a violation of Article 16 of the Revised European Social Charter taken together with its Article E. In Austisme Europe v France, the Committee found that the authorities must pay particular attention to the impact of their policy choices on the most vulnerable, and in the case at hand meant families facing exclusion and poverty.

**FREE MOVEMENT AND DISPERSAL PRACTICES**

Both international and European law accord the right to beneficiaries of international protection the right to move freely within their Member State subject to some restrictions. This is important as the freedom to move also denotes the freedom to choose where to live which significantly impacts the individual’s ability to integrate and access to other essential necessities such as a labour market, family and social connections, integration and language classes as well as housing.

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25. Article 29, recast Qualification Directive. Under the proposed Qualification Regulation, a similar provision is foreseen but can link the provision of social assistance to the condition of effective participation in integration measures.


29. Article E provides that 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.

V. RELEVANT PRIMARY AND SECONDARY LAW

Geneva 1951 Convention Relating to the Status of Refugees

Article 26 of the Geneva Convention provides that it shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

Recast Qualification Directive

Under the recast Qualification Directive, Article 32 provides that Member States shall endeavour to implement policies aimed at preventing discrimination of beneficiaries of international protection and at ensuring equal opportunities regarding access to accommodation while allowing national dispersal policies for beneficiaries of international protection. A similar standard is provided for under the proposed Qualification Regulation. Article 33 of the recast Qualification Directive provides that beneficiaries of international protection have freedom of movement within the Member State under the same conditions as those provided for third country nationals who are legally resident. Under the proposed Qualification Regulation, an additional proviso is included whereby residence conditions can be imposed on beneficiaries who receive certain social benefits but only where such residence conditions are necessary to facilitate their integration.

VI. RELEVANT RIGHTS AND PRINCIPLES

The right to non-discrimination (Article 21 EU Charter)

The CJEU looked at the issue of free movement, social benefits and the right to choose residence in the case of Alo and Osso. The applicants, who had subsidiary protection status, were subsequently given a residence permit which included a condition requiring them to take up residence in a designated area of Germany. They challenged this restriction before the Court.

The CJEU clarified that the right to free movement within the territory also encompasses the beneficiary’s right to choose their place of residence within that territory. The Court, while not explicitly referring to a Member State’s obligation to ensure non-discrimination and equal treatment when applying the recast Qualification Directive, held that Member States are required to allow freedom of movement within their territory to persons to whom they have granted subsidiary protection status, under the same conditions as those provided for other non-EU citizens who are legally resident. It found that a restriction on the freedom of movement of subsidiary protection holders is not justifiable for reasons of territorial sharing of social assistance burdens. Nevertheless, the CJEU stated that it was for the Member State’s court in question (the German Federal Administrative Court) to determine whether beneficiaries of subsidiary protection in receipt of social assistance face greater difficulties relating to integration than other non-EU citizens legally resident in Germany and receiving social assistance. If those two groups of persons are not in a comparable situation so far as the objective of facilitating the integration of non-EU citizens in Germany is concerned, the Directive does not prevent beneficiaries of subsidiary protection from being subject to a residence condition for integration purposes, even if that condition does not apply to other non-EU citizens legally resident in Germany.

31. Article 32 Qualification Regulation.


33. CJEU, Joined Cases C-443/14 and C-444/14 Alo and Osso, Judgment of 1 March 2016, paras 28-37.
CONCLUSION

The lack of adequate housing, and in particular social housing, is a significant issue facing large cohorts of people, including beneficiaries of international protection across the EU. This issue will become even more contentious as the numbers receiving international protection increase. Housing is a basic human necessity, and without stable accommodation, beneficiaries’ ability to re-start their lives and integrate into society will be put on hold. It is therefore essential that Member States’ housing policies ensure that beneficiaries of international protection have adequate access to housing and that any housing, that is provided through social assistance, complies with the principle of non-discrimination and equal treatment. Member States must ensure that beneficiaries right to dignity is upheld and that they are not provided with insufficient assistance regarding their right to access accommodation, in instances whereby they are wholly reliant on the state.

Member States must take into account the beneficiaries’ potential vulnerabilities when providing social assistance and when allocating housing. Furthermore, the right to free movement within a Member State enables beneficiaries to choose where they live and enable access to the labour market, goods and services and integrate into society. Therefore, any restriction on this right needs to be applied in a strict manner.

The respect of human dignity requires access to adequate housing and the possibility of enjoying private and family life, which are not only essential for the individual but also for the proper functioning of societies. International and EU law can be used in order to obtain these standards.