



ecre

European Council
on Refugees and Exiles

THE RIGHT TO HOUSING FOR BENEFICIARIES OF INTERNATIONAL PROTECTION

December 2016

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,¹ and the recast Reception Conditions Directive provides a more robust legal framework for asylum seekers that ensures access to accommodation.² 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'.³

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'.⁴ 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,⁵ 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.⁶

1. See for example, ECRE, 'Reception and Detention Conditions of applicants for international protection in light of the Charter of Fundamental Rights of the EU', January 2015, available here <http://bit.ly/2fGKAAY> and ECRE/AIDA, 'Wrong counts and closing doors The reception of refugees and asylum seekers in Europe' March 2016, available here <http://bit.ly/1UFSKaP>.
2. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, see also the Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast), COM (2016) 465.
3. UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 21.
4. UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, Article 11.
5. This also includes vehicles, caravans, encampments and other non-permanent structures.
6. UN Committee on Economic Social and Cultural Rights, 'General comment No. 4: The right to adequate housing (Art.11 (1))', UN. Doc. E/1992/23, 13 December 1991.

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.⁷ 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.⁸

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 and Ukraine. See here for further information; <http://bit.ly/2f0082d>.

9. European Union: Council of the European Union, Charter of Fundamental Rights of the European Union (2007/C 303/01), 14 December 2007, C 303/1.

10. The Treaty on European Union (TEU), OJ 2008 C 115/01, Article 6.

11. Explanations relating to the Charter of Fundamental Rights, 14.12.2007, No C 303.pp. 17-35.

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.

13. Proposal for a Regulation of the European Parliament and of the Council 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 and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents; COM (2016) 466, Article 33.

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'.¹⁴ 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.¹⁵

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*.¹⁶ 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 become homeless and destitute upon return to Bulgaria, have ruled that given the high risk of exploitation by landlords, the high levels of unemployment along with no language or integration courses and no plans for the Bulgarian government to improve conditions, persons returned would face a real risk of a violation of Article 3 ECHR or Article 4 Charter of Fundamental Rights.¹⁷ Similar judgments were issued in Denmark.¹⁸ In the cases decided, it appears that an emphasis was placed on the status of the applicant (subsidiary protection rather than refugee status) as well as the individual's vulnerabilities including their health.

In another German case, the Court decided that a refugee should not be transferred back to Greece and took into account the fact that beneficiaries in practice cannot access the labour market, the lack of integration assistance to ensure access to the labour market, the lack of social assistance and highlighted refugees'

14. ECtHR, *Budina v Russia*, Application no. 45603/05, 18 June 2009.

15. ECtHR, *Larioshina v Russia*, Application no. 56869/00 23.04.2002. The German Constitutional Court, in a case relating to the level of material care that asylum seekers need to be provided with stated that, 'if persons do not have the necessary material resources to ensure a dignified existence... the state is required, within its mission to protect human dignity... to ensure that the material conditions for the needy are available'. It went on to give some indications as to what benefits would need to be given to ensure a dignified existence. 'It guarantees the entire minimum level of subsistence through a uniform fundamental rights which covers both the physical existence of a human being i.e. food, clothing, household items, shelter, heating sanitation and health, and the opportunity to maintain interpersonal relationships and a minimum level of participation in social, cultural and political life, since a human being as a person necessarily exists in human relationships'. This minimum standard was based on German standards of living. BVerfG, 1 BvL 10/10 1 BvL 2/11, 18 Jul 2012.

16. ECtHR, *M.S.S v Belgium and Greece*, Application no. 30696/09, 21 January 2011. See also ECtHR, *Tarakhel v. Switzerland*, Application no. 29217/12, 4 November 2014.

17. They have not however transferred the status or allowed them to apply for protection, rather, giving them another sort of permit on Article 3 ECHR grounds. See for example Osnabrück Administrative Court, Decision of 4 January 2016, Az.5 A 83/15 See *Annex Auswärtiges Amt, Amtshilfeersuchen in Asyl und Rückführungsangelegenheiten*, 508-9-516,80 / 48488, 23 July 2015; Dr. V. Ilareva, *Bericht über die derzeitige rechtliche, wirtschaftliche und soziale Lage anerkannter Flüchtlinge und subsidiär Schutzberechtigter in Bulgarien* Erstellt, 27 August 2015. See for example Saarland Administrative Court, Decision of 4 January 2016, Az. 3K 86/ 15; Oldenburg Administrative Court, Decision of 4 November 2015, 12 A 498/15; Osnabrück Administrative Court, Decision of 17 December 2015, 5 B 432/15; Münster Administrative Court, Decision of 22 October 2015, Az. 8 K 436 / 15.A; Darmstadt Administrative Court, Decision of 30 July 2015,4 K 1035 14.DA.A; Administrative Court of Meiningen, Decision of 26 January 2015, 1 E 20386/14 Me; Oldenburg Administrative Court, Decision of 27 January 2015, 12 B 245/15; Meiningen Administrative Court, Decision of 25 November 2014, 1 K 20146/14 Me; Kassel Administrative Court, Decision of 8 September 2014, 5 L 1415/14.KS.A; Meiningen Administrative Court, 25 November 2014, 1 K 20120/14 Me and 1 K 20122/14 Me.

18. ECRE/ELENA Research Note: Reception conditions, detention and procedural safeguards for asylum seekers and content of international protection status in Bulgaria; available here <http://bit.ly/2dUAFaN>.

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 where 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

19. *VG Magdeburg*, 9 A 594/15 MD, 13 July 2016.

20. ECtHR, *Marzari v. Italy*, Application no. 36448/97, 3 May 1999, para 179.

21. See ECtHR, *Connors v. UK.*, Application no. 66746/01, 27 May 2004; ECtHR, *Chapman v. UK*, Application no. 27238/95, 18 January 2001 and ECtHR, *Beard v. UK*, Application no. 24882/94, 18 January 2001.

22. ECtHR, *Stanková v. Slovakia*, Application no. 7205/02, 9 October 2007.

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.²⁵ 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.²⁶ 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*,²⁷ 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.²⁸ 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.²⁹ 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.³⁰

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.

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.

26. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

27. ESCR, *European Roma Rights Centre v. Bulgaria* Complaint No. 31/2005, 18 October 2006.

28. ESCR, *FEANTSA v. France*, Collective complaint 39/2006, 04 February 2008.

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.

30. ESCR, *Austisme Europe v France*, Complaint 13/2002, decision on the merits, 4 November 2003, para 53. See also ESCR, *Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, decision on the merits, 20 October 2009.

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.³¹ 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.³²

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*.³³ 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.

32. See ECRE Comments on the Commission Proposal for a Qualification Regulation COM (2016) 466, available here <http://bit.ly/2fDiAu6>

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.



With financial support from the
Fundamental Rights and Citizenship
Programme of the European Union