

MAY 2024

European Parliament Elections 2024

THE EU AND ITS MEMBER STATES MUST RESPECT AND PROMOTE THE RIGHT TO ADEQUATE HOUSING IN EUROPE



HOUSING
RIGHTS
WATCH



FEANTSA

Coordination:

Maria Jose Aldanas, Policy Officer at **FEANTSA**

Acknowledgements:

We would like to thank the members of the **Housing Rights Watch** network and the following experts on housing rights at the European level for their active engagement and contribution to the content of this publication: Sonia Olea Ferreras (Caritas Española), Padraic Kenna (University of Galway), Koldo Casla (University of Essex), Michel Vols (University of Groningen), Mark Jordan (Southampton University).

FEANTSA is the European Federation of National Organisations Working with the Homeless. Founded in 1989, it represents more than 130 organisations working on the ground with people experiencing homelessness. Its members are present in 30 countries, 22 of which are EU Member States. Our diverse membership includes faith-based groups and those affiliated with different political parties at the national level. With a broad network across Europe, FEANTSA advocates for effective policies and initiatives to tackle homelessness and housing exclusion at both local and European levels.

More information is available at: www.feantsa.org

Housing Rights Watch is an interdisciplinary European network of associations, lawyers and academics from different countries committed to promoting the right to housing. The network was set-up in November 2008 to facilitate exchange and mutual learning among housing rights experts and advocates. Its work is supported by the Abbe Pierre Foundation.

More information available: <https://housingrightswatch.org/>

Cover photo credit: dvpictures from Getty Images

Layout: Bryony Martin, Communications Officer, FEANTSA

CONTENTS

INTRODUCTION – HUMAN DIGNITY	4
THE HUMAN RIGHT TO ADEQUATE	5
HOUSING IN INTERNATIONAL HUMAN RIGHTS LAW	
 PROTECTION AGAINST EVICTIONS	6
THE RIGHT TO ADEQUATE HOUSING	7
IN THE REVISED EUROPEAN SOCIAL CHARTER	
EUROPEAN CONVENTION ON HUMAN	8
RIGHTS	
HOUSING RIGHTS IN THE EU CHARTER	9
OF FUNDAMENTAL RIGHTS	
EUROPEAN CONSUMER AND	9
FUNDAMENTAL RIGHTS	
ADEQUATE ACCOMMODATION FOR	10
ASYLUM SEEKERS AND REFUGEES	
CONCLUSIONS	11

INTRODUCTION – HUMAN DIGNITY

The 1948 Universal Declaration of Human Rights enshrined human dignity in its preamble: ‘Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.’

The European Union is founded on the indivisible, universal values of human dignity, freedom, equality, and solidarity. The first Chapter of the EU Charter on Fundamental Rights and Article 1 are entitled Dignity. Article 1 states: ‘*Human dignity is inviolable. It must be respected and protected*’.

This forms a self-standing guarantee, and also forms the core of all other Charter rights: none of these rights ‘*may be used to harm the dignity of another person, and ... the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted*’. These Explanations to Article 1 of the Charter also state that ‘*The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights.*’ The Court of Justice confirmed that a fundamental right to human dignity is part of Union law.

The right to human dignity is also set out in almost every constitution of EU Member States. Through legislation, public policy, and budgetary measures these States ensure that the essentials of life which are necessary to lead a life in dignity are available to all – including housing. Indeed, political parties across all EU Member States have promoted access to affordable and good quality for more than 100 years, through

public provision, regulation of markets, and support to the housing industry. European countries have also accepted human rights to housing, in their laws, policies, regulations, and public spending.

Access to affordable and quality housing is essential for the dignity, well-being and inclusion of everyone in the European Union. Today, however, a growing number of EU citizens face challenges in accessing adequate and affordable housing, whether to rent or to buy. In 2022, 8.7% of the EU population spent 40% or more of their household disposable income on housing.¹ At least 895,000 people are homeless in Europe. This estimate – focusing only on the most visible forms of homelessness – highlights the challenge of European countries to make housing a fundamental right.² The European Commission recognises the growing problem of inadequate and unaffordable housing in many European countries. As we approach the European elections in June 2024, some European parties have included their commitment to ensuring the right to adequate housing for Europeans in their manifestoes.

Bearing in mind the principle of subsidiarity, and building on the achievements of the past mandate, we see the forthcoming European Parliament as a unique opportunity for further progress on housing rights.³ This briefing serves as a call to action to promote and respect the right to adequate housing by reminding EU Member States of the international and European obligations they have already accepted.

1 Living conditions in Europe - housing https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Living_conditions_in_Europe_-_housing#Housing_affordability

2 8th Overview of Housing Exclusion in Europe 2023, FEANTSA and Fondation Abbe Pierre. <https://www.feantsa.org/en/report/2023/09/05/report-8th-overview-of-housing-exclusion-in-europe-2023>

3 EPs: Access to adequate housing should be a fundamental European right: <https://www.europarl.europa.eu/news/en/press-room/20210114IPR95632/meps-access-to-adequate-housing-should-be-a-fundamental-european-right>

THE HUMAN RIGHT TO ADEQUATE HOUSING IN INTERNATIONAL HUMAN RIGHTS LAW

Adequate housing is a human right and a condition for the fulfilment of many other human rights. The right to adequate housing has been described as ‘the right to live somewhere in security, peace and dignity’.⁴ It is also clearly intertwined with other human rights, such as the rights to human dignity, health and social security. The right to adequate housing is also closely connected to the right to home, which is part of the right to private and family life and considered to be ‘of central importance to the individual’s identity, self-determination, physical and moral integrity’.⁵

The right to housing as a social right requires States to respect, protect and fulfil it, with a view to progressively achieving it to the maximum extent of available resources. In this regard, key elements must be taken into account:

- There must be constant forward progress in the realisation of the right to adequate housing. Deliberately regressive steps are, in principle, contrary to international human rights law (Article 2 ICESCR). To comply with human rights standards, austerity-inspired policy adjustments ought to be temporary, necessary and proportionate, *inter alia*.⁶
- Public authorities must prevent direct and indirect discrimination.
- The most vulnerable individuals and groups are the first to be protected. Some groups or individuals have a particularly

hard time exercising their right to adequate housing as a result of who they are, discrimination or stigma, or a combination of these factors. In this sense, homelessness is considered ‘the most visible and most severe symptom of the lack of respect for the right to adequate housing.’⁷

- Ensuring access to justice in case of violation of this human right.

The right to adequate housing is found in Article 11 of the International Covenant on Economic, Social and Cultural Rights, which has been accepted by all European countries. The UN monitoring body the Committee on Economic and Social Rights (CESCR) has identified seven criteria to determine the adequacy of housing:

- a) Legal security of tenure, including protection from forced eviction, regardless of the type of property and tenure (home ownership, rental, informal settlement, etc.);
- b) Availability of services, materials, facilities, and infrastructure, including access to natural and common resources, all of which are essential for health, safety, comfort and nutrition;
- c) Affordability, including protection from unreasonable rent levels and increases, so as not to compromise or threaten the attainment and satisfaction of other essential needs and rights;
- (d) Habitability, in terms of protection from cold, damp, heat, rain, wind and other threats to health and safety;

4 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: Right to Adequate Housing (1991), para. 7.

5 European Court of Human Rights (ECtHR), *Connors v United Kingdom*, Application No. 66746/01 (Judgment of 27 May 2004), para. 82.

6 Principle 10 of the Guiding Principles of HR Impact Assessments: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/57

7 OHCHR Fact Sheet on the right to adequate housing.

(e) Accessibility, paying particular attention to the needs of groups and individuals at greater risk of harm, disadvantage and discrimination;

(f) Location, providing access to employment, health services, schools, transport and other facilities, taking into account environmental considerations; and

(g) Cultural adequacy, using materials and tools that adequately recognise and express the cultural identity and diversity of the population.⁸

However, in the words of the UN CESCR, such eviction ‘should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.’⁹ Before an eviction is executed, public authorities must ensure that nobody will be rendered homeless or vulnerable to human rights violations as a result of the eviction.¹⁰

The Committee has added that the eviction of people living in rental accommodation may be compatible with international human rights law, but only when ‘the eviction is provided for by law and is carried out as a last resort, and (when) the persons concerned have had prior access to an effective judicial remedy, in order to ascertain that the measure in question is duly justified.’¹¹ An eviction related to a rental contract between individuals can, therefore, affect and potentially

PROTECTION AGAINST EVICTIONS

An eviction might be necessary when there is persistent non-payment of rent and other serious breaches of contractual obligations.

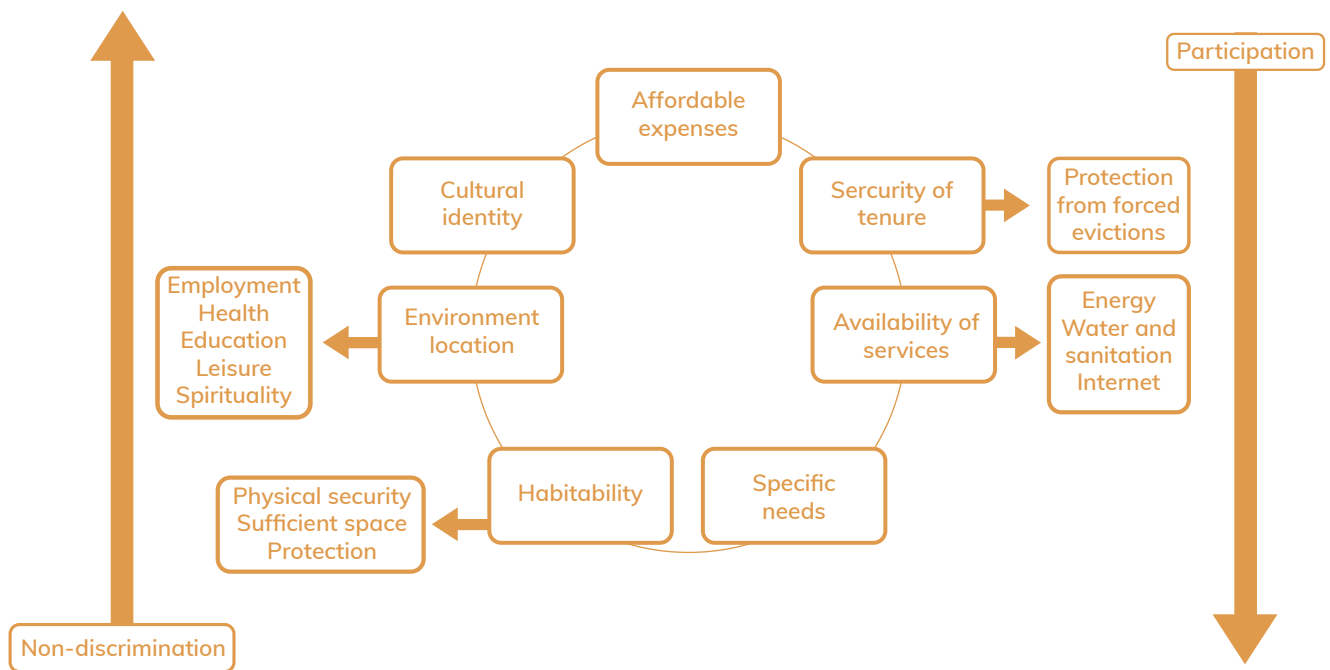


Table 1: Content of the right to adequate housing. Sonia Olea Ferreras. Advocacy team at Caritas Española

8 UN CESCR, General Comment No. 4: Right to Adequate Housing, UN doc E/1992/23 (1991, para 8.

9 UN CESCR, General Comment No. 7: Forced evictions, UN doc E/1998/22 (1997), paras 11 and 14.

10 UN CESCR, General Comment No. 7: Forced evictions (n 6), para 16.

11 UN CESCR, Ben Djazia and Naouel Bellili v Spain, Communication No. 5/2015, UN doc E/C.12/61/D/5/2015 (2017), para 15.1.

infringe on socio-economic rights the State is bound to respect, protect and fulfil.¹²

The proportionality test 'entails examining not only the consequences of the measures for the evicted persons but also the owner's need to recover possession of the property. This inevitably involves making a distinction between properties belonging to individuals who need them as a home or to provide vital income and properties belonging to financial institutions,' factors that should be borne in mind when ruling on the possible postponement or suspension of an eviction.¹³

THE RIGHT TO ADEQUATE HOUSING IN THE REVISED EUROPEAN SOCIAL CHARTER

The right to housing can be found in Article 31 of the Revised European Social Charter, RESC. This Council of Europe treaty requires State Parties to:

- 1) promote access to housing of an adequate standard,
- 2) prevent and reduce homelessness with a view to its gradual elimination, and
- 3) make the price of housing accessible to those without adequate resources.

As of 2023, fifteen states accepted obligations arising from Article 31 RESC.¹⁴ Yet, the European

Committee of Social Rights (the Committee) has made clear that the right to adequate housing in Article 31 overlaps in several important respects with the housing rights referenced in other RESC rights, such as Article 16 on right of protection of the family. This means that choosing not to ratify Article 31 does not relieve a State Party of its housing obligations contained in the RESC.¹⁵

In explaining the content of the right to adequate housing, the Committee have drawn on the norms and content of the right to adequate housing under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Committee has clarified that it will fully consider the principle of progressive realisation and resource availability only 'when it is exceptionally complex and expensive to secure one of the rights protected by the Revised Charter'.¹⁶ In such cases, the Committee explained that the State Party must take steps to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources.¹⁷

In the context of evictions, the Committee has formulated concrete requirements that States parties should fulfil. State parties must, among other things, provide access to legal remedies and assistance to persons threatened with evictions. State parties should also ensure that affected persons are consulted to find alternative solutions to evictions. In the case of unlawful evictions, they should be compensated.¹⁸

12 Ibid., para 14.2.

13 UN CESCR, *López Albán v Spain*, Communication No. 24/2018, UN doc E/C.12/66/D/37/2018, para 11.5.

14 Signatures & ratifications, Situation on 1 May 2021 <https://www.coe.int/en/web/european-social-charter/signatures-ratifications>

15 European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on admissibility of 10 October 2005, §9

16 Mental Disability Advocacy Centre (MDAC) v Bulgaria, Collective Complaint No 41/2007, Decision on the merits, 3 June 2008, at para 39.

17 *Autisme Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, para 53.

18 Conclusions 2003, Sweden

The Committee has explained that Article 31 does not impose an obligation of result on States Parties. However, State action must be practical, effective, and not merely theoretical.¹⁹ For the situation to be compatible with the treaty, State Parties must:

- a. adopt the necessary legal, financial, and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
- b. maintain meaningful statistics on needs, resources, and results;
- c. undertake regular reviews of the impact of the strategies adopted;
- d. establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;
- e. pay close attention to the impact of the policies adopted on each category of persons concerned, particularly the most vulnerable.²⁰

Art 31.2 obliges State Parties to prevent and reduce homelessness. States parties must take action to prevent categories of persons in vulnerable situations from becoming homeless. This includes a housing policy for all disadvantaged groups of people in order to ensure their access to social housing.²¹ Homeless persons must be offered shelter as an emergency solution. The

obligation to provide shelter is an emergency and temporary solution, and shelters must ensure that the dignity of the persons sheltered is respected. Shelters must meet health, safety and hygiene standards and, in particular, be equipped with necessities such as access to water, heating, and sufficient lighting. Another basic requirement is the security of the immediate surroundings.²²

Finally, however adequate, the temporary provision of shelter cannot be considered a lasting solution. These persons must be offered either long-term accommodation suited to their circumstances or housing of an adequate standard as provided by Article 31§1 within a reasonable time.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Although the European Convention on Human Rights (ECHR) does not explicitly recognise the right to housing, the treaty protects various aspects of the right.²³ The ECHR is particularly relevant in the context of evictions. The European Court of Human Rights requires that evictees have the possibility of a review of the proportionality of the eviction by a court. However, recent case law of the ECtHR indicates that this requirement does not apply to the private rental sector.²⁴ The fact is that tenants in the rented sector are often in precarious housing situations and would benefit from stronger legal protection against the loss of their homes.

19 International Commission of Jurists v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, para 32.

20 FEANTSA v France, Complaint No. 39/2006, decision on the merits of 5 June 2008, para 58

21 Conclusions 2005, Lithuania

22 Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on the merits of 1 July 2014, §§138, Defence for Children International (DCI) v. The Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §62

23 Derdek, N. & Kenna, P. The European and International Contribution to the Right to Housing: Standards, Litigation and Advocacy. Abbe Pierre Foundation, FEANTSA, University of Galway, 2023. <https://www.housingrightswatch.org/resource/european-and-international-contribution-right-housing-standards-litigation-and-advocacy>

24 FJM v UK (2018), Admissibility Decision. App. No(s). 76202/16, 6 November 2018

HOUSING RIGHTS IN THE EU CHARTER OF FUNDAMENTAL RIGHTS

The Charter includes such rights as respect for home, non-discrimination in housing, housing rights for older people and people with disabilities, provision of an adequate supply of housing for families, and a right to social and housing assistance to ensure a decent existence for all. There is a recognition of the role of social housing providers, protection of consumers, and a guarantee that existing rights will not be diminished. While the Charter does not grant standalone directly enforceable rights to housing, it is binding on EU institutions – they must respect and promote Charter housing rights.²⁵

At first sight, the provisions of Article 34(3) of the EU Charter of Fundamental Rights, right to social and housing assistance,²⁶ appear to set out a basis for a minimum core content for a right to housing in Europe based on a ‘decent existence’. Indeed, as this article draws on the jurisprudence of Articles 30 and 31 of the European Social Charter, there is scope for further exploration of this part of the article.

Article 34(3) applies in two ways. First, any Union development of the ‘right to social and housing assistance’ must be developed in the context of social policies based on Article 153 TFEU on combating social exclusion.²⁷ Secondly, the significance of Charter rights (and principles such as Article 34) lies in their use in the legal interpretation and application of primary and

secondary EU law, where there is overlap with their provisions. Thus, we find that the CJEU used Article 34(3) to interpret EU secondary legislation where it referred to housing or housing assistance, as in *Kamberaj*²⁸ where the provisions of an EU Directive were being applied by a Member State. Subsequent cases clarified the *Kamberaj* decision on applying Article 34(3) to the interpretation of Union law and its implementation by Member States.

Such indirect protection of the right to housing can also arise from Union acts that regulate other matters. Indeed, in addition to the examples mentioned in relation to the movement of citizens, migrants and refugees, other aspects of EU law indirectly relate to housing, and these are highly harmonised and technical, such as security, regulation of the mortgage market, certain elements of consumer protection, state aid rules, environmental issues, electricity, and climate. For all these aspects, the Charter can be applied, and the Court has full jurisdiction.²⁹

EUROPEAN CONSUMER AND FUNDAMENTAL RIGHTS

European Union consumer law has also been effectively applied to promote housing rights for distressed mortgage borrowers as consumers and beneficiaries of EU fundamental rights. The Directive on Unfair Contract Terms in Consumer Contracts³⁰ has been applied to mortgages, and the Court of Justice has

25 Housing Rights must be Respected and Promoted by EU Institutions for EU citizens, Briefing Paper 1 - Housing and Housing Rights in the EU Charter of Fundamental Rights. Professor Padraic Kenna, Centre for Housing Law, Rights and Policy at University of Galway. 2020. <https://www.universityofgalway.ie/media/housinglawrightsandpolicy/files/Briefing-Paper-1.-Housing-and-Housing-Rights-in-the-EU-Charter-of-Fundamental-Rights.pdf>

26 see note 25 above

27 Case C 539/14, *Sánchez Morcillo*. Para 49.

28 Case C-571 *Kamberaj*, EU:C:2012:233. 24 April 2012

29 Rossi, L.S. (2023) ‘Member States’ obligations in relation to housing rights - views of the CJEU’ at 28, in Derdek, N. & Kenna, P. *The European and International Contribution to the Right to Housing: Standards, Litigation and Advocacy* Abbe Pierre Foundation, FEANTSA, University of Galway, (2023)

30 Commission Directive of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

required that any unfair terms be taken out of such agreements.³¹ Indeed, such consumer protection for the family home is strengthened when combined with Article 7 of the EU Charter of Fundamental Rights on the right to respect for home. The Court of Justice has stated that ‘The loss of a family home is not only such as to seriously undermine consumer rights... but it also places the family of the consumer concerned in a particularly vulnerable position. Under EU law, the right to accommodation is a fundamental right guaranteed under Article 7 of the Charter that the referring court must take into consideration when implementing Directive 93/13.’^{32,33} Thus, European citizens are protected against loss of the family home by European consumer and fundamental rights.

ADEQUATE ACCOMMODATION FOR ASYLUM SEEKERS AND REFUGEES

Under the Common European Asylum System (CEAS) common standards and co-operation have been established to achieve a comprehensive approach to migration and asylum policy and consequently to ensure that asylum seekers and refugees are treated equally across EU Member States.

Access to adequate accommodation for people seeking and granted international protection is part and parcel of any functioning asylum system. EU legislation set under the CEAS, respectively the Reception Conditions Directive

(RCD)³⁴ and the Qualification Directive³⁵ set the standards to be observed by Member States.

The RCD aims to ensure that applicants have access to housing, food, clothing, health care, education for minors and access to employment under certain conditions. The right to ‘material reception conditions’ starts from the moment the asylum claim is made and entails conditions that ‘provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.’³⁶ Additionally, the Directive establishes that in connection to vulnerable asylum seekers, Member States must, *inter alia*, conduct an individual assessment in order to identify the special reception needs of vulnerable persons and to ensure their access to medical and psychological support.³⁷

However, in its initial form, the 2013 Directive left a considerable degree of discretion to define what constituted an adequate standard of living and how it should be achieved. Consequently, reception conditions have continued to vary considerably between Member States both in terms of how the reception system is organised and in terms of the standard provided to asylum seekers. In 2016, the Commission presented a proposal to recast the RCD in order to further harmonise reception conditions throughout the Union and to reduce the incentives for secondary movement. The proposed changes have been amended by the European Parliament in April

31 Case C-415/11 *Aziz v Caixa d’Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)* EU:C:2013:164).

32 C 34/13 *Kušionová*, 10 September 2014, ECLI: EU:C:2014:2189, paragraphs 63-65.

33 Case C-598/21 *SP, CI v Všeobecná úverová banka*, 12 January 2023, ECLI:EU:C:2023:22, paragraph 84.

34 Directive 2013/33/EU, Reception Conditions Directive is available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN>

35 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)

36 Reception Conditions Directive, Article 17

37 Reception Conditions Directive, Article 22

2024.³⁸

These standards will also be affected now that the new Pact on Migration and Asylum has been adopted and its implementation is about to begin. The Pact interacts closely with the Reception Conditions Directive (RCD) on issues such as detention and screening. Although most of the provisions of the RCD remain applicable, persons subject to screening (preliminary assessment of the identity, individual situation, age, and reasons for migration of persons seeking entry into a country) do not fall within the scope of the RCD.

Furthermore, 'applicants shall not be entitled to reception conditions under the Reception Conditions Directive if they do not comply with the obligation to apply to the Member State of first entry or legal stay and to remain in the responsible Member State' (as in the Dublin Regulation) - which means that they will be denied any assistance despite the obligation to ensure a standard of living 'in accordance with Union law, including the Charter of Fundamental Rights of the European Union, and international obligations'.³⁹

Despite this, many existing challenges, such as discrimination, excessive housing costs or the lack of transition support from emergency accommodation centres to adequate housing, coupled with a very short transition period, have contributed to homelessness among refugees across Europe.

38 RCD recast text as amended by the EP https://www.europarl.europa.eu/doceo/document/A-8-2017-0186-AM-146-146_EN.pdf (as of 02.04.2024)

39 The European Commission's New Pact on Migration and Asylum. Horizontal substitute impact assessment: [https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU\(2021\)694210](https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2021)694210)

CONCLUSIONS

- **The EU and its Member States** must ensure that their legislation recognises and gives effect to the human right to adequate housing as enshrined in international human rights law and European law.
- **The EU and its Member States** need to ensure that those in need, including undocumented migrants, can access emergency and temporary accommodation. Access to shelter should be temporary, with people moving on to adequate housing as soon as possible.
- **The EU and its Member States** must ensure access to adequate housing through the provision of social housing for vulnerable groups, by earmarking part of the stock for people experiencing homelessness.
- **The EU and its Member States** should prioritise the prevention of homelessness. Universal prevention policies must aim to increase the supply of adequate housing and reduce poverty.
- **The EU and its Member States** must put in place measures and policies needed to target high-risk groups, such as vulnerable young people and people leaving institutions, to prevent homelessness. Crisis and emergency prevention strategies need to be strengthened to prevent evictions and street homelessness.
- **The EU and its Member States** must take urgent action to ensure that the needs of asylum seekers and refugees are met in accordance with EU law. They should provide sufficient adequate accommodation to ensure minimum reception conditions for all asylum seekers and sufficient housing support for those granted refugee status.
- **The EU and its Member States** must strengthen the protection of people living in informal settlements and develop strategies for improving their living conditions.
- **The EU and its Member States** should continue to develop mechanisms to better monitor the evolution of homelessness and housing policies.

CONTACT:

MARIA ALDANAS, FEANTSA

194 CHAUSSEE DE LOUVAIN, 1210 BRUSSELS, BELGIUM

T +32 (0)2 538 66 69 • HOUSINGRIGHTSWATCH.ORG

LIKE US

 /HOUSINGRIGHTSWATCH

FOLLOW US

 @RIGHTHOUSING

