



THESIS

EFFECTIVE PROTECTION OF THE RIGHT TO HOUSING
BY THE EUROPEAN COURT OF HUMAN RIGHTS

By Julie BARRIERE

Supervised by the Professor Nell MUNRO
The School of Law of the University of Nottingham



2012 / 2013

TABLE OF CONTENT

ABSTRACT

INTRODUCTION

CHAPTER I

The Knowledge: What does the Right to Housing mean in the jurisprudence of the European Court of Human Rights?

Introduction

Section 1: Meaning of the right to housing by the Member States of the European Convention on Human rights

- §1. Common recognition of the right to housing by the Member States
 - a) Various domestic legislations of the right to housing by the Member States of the European Convention and different levels of protection
 - b) Particular position for Members of EU: Influence and obligations
- §2. The challenge of a common definition by Member States of the European Convention: Useless utopia

Section 2: Meaning of the right to housing by the European Court of Human Rights

- §1. Weakness of direct protection on the corpus of Convention
- §2. Various meanings of “housing” in the jurisprudence of the European Court on Human Rights

- a) The meaning of “house” as a good: privacy
 - b) The meaning “home”: attachment
 - c) The meaning of “accommodation” in detention: security
- §3. The European Court takes into account the International Texts to support its reasoning

Section 3. Useful flexibility from the non-definition of the right to housing by the European Court of Human rights

Conclusion

CHAPTER II

The Will: Different political levels of the Issues of the Right to Housing by the European Court of Human Rights

Introduction

Section 1: The economic aspect to consider in the right to housing

- §1. Controversial point of the economic aspect of housing
- a) Obvious pecuniary character of the right to housing
 - b) New view of the pecuniary right to housing by distinguishing: the right to have housing v. the right to housing access.
- §2. Context of economic crises Europe and the right to housing
- a) Consequence of the economic crisis on the standard of human living: the degradation of right to housing (minorities: first affected)
 - b) Attention of the States and the European Court of the economic crisis context in its jurisprudence: Necessity to sustain the right to housing

- c) Contradiction of social actions in transitional situation of State:
example of Kosovo

Section 2: The political aspect to promote the right to housing

§1. Political interest according to the European Court on Human rights

- a) The European Court is the only jurisdiction to guarantee protection of Human Rights in Europe.
- b) European Court of Human Rights faced with the competing role of the European Court of Justice

§2. Political interest according to the Council of the Europe Members States

- a) Promotion on a national level: stability by social inclusion as a political strategy
- b) Pressure from an the international level: credibility by political promotion of human rights

Section 3: Democratic dimension of the protection of the right to housing: the rationalization

Conclusion

CHAPTER III

The Power: Legal issues of the right to Housing by the European Court of Human Rights

Introduction

Section 1: Justiciability of the right to housing: Objective Character of the European Convention on Human Rights Versus Competence of the Court

§1. Challenge from the presumption of " non-justiciability" of the right to housing: relative justiciability from social rights

§2. Ideological and legal opposition of justiciability of the right to housing: objective character of the Convention and the competence of the European Court

§3. Reflexive analysis of the competence of the Court regarding the right to housing

a) Ratione temporis: favourable competence to the justiciability of cases concerning the right to housing by continuous violation

b) Ratione loci: competence which reveals the unclear notion of "residence"

c) Ratione personae: favorable competence for the right to housing through the notion of victim

d) Ratione materiae: favourable competence for the justiciability of the right to housing by autonomous notions and the extension of article 14 of the Convention

1. The autonomous notion and the right to housing

- Autonomous notion of the right to respect private and family life (article 8)
- Autonomous notion of the respect of property (article 1 of the protocol 1)

2. Reinterpretation of the articles from the convention by different types of interpretation

3. The specificity of article 14 and the right to housing

Section 3: Redefinition of Obligation for the member states: Subsidiarity principle versus European Public Order (Interpretation of the balance)

§1. The ideological issue for the right to housing

- §2. National Margin of Appreciation v. fair respect of the right to housing
- §3. Principle of proportionality v. Burden for the states concerning the implementation of the right to housing: redefinition of obligations for the Member States
- §4. The necessity of the respect of preventive measures regarding the housing issues

Conclusion

GENERAL CONCLUSION

BIBLIOGRAPHY

ACKNOWLEDGEMENTS

ABSTRACT

In this thesis, I will develop the argument that the European Court of Human Rights should recognise the necessity and the existence of a right to housing.

Housing is a fundamental part of the life of human beings. It is considered as one of the basic economic, social and cultural rights. These rights involve an economic aspect for governments and citizens. Consequently, it is difficult to implement equal access to and a respect of a right to housing.

For a full understanding of the right to housing and the manner to legitimise the respect of this right by the European Court of Human Rights I will adapt the Mireille Delmas-Marty's view of the theory of rights.

This argumentation will be divided into two points. Firstly, the adaptation of this innovative theory to the right to housing to the European Court of Human Rights, in order to overcome the issue of the profusion of human rights which can create a "legal mess". Secondly, this demonstration should harmonise the views of all members of the Council of Europe to support an "effective protection" for the right to housing.

This specific reasoning will be divided into three parts in order to demonstrate how to guarantee this right: the harmonisation of meaning of the housing as a right in this area; the common individual interest to protect the right to housing; the European Court's mechanisms in favour of "effective protection" of this right.

I will base this argument on the Court's existing jurisprudence and debatable reasoning of the European Court as well as on national legislations, on the recognition of the right within each Member State of the Council of Europe and the wider normative claim that the enjoyment of shelter and secure accommodation is indispensable to the enjoyment of other European Convention rights.

"Housing is a matter of Justice¹," it is through law that it will be possible to achieve the right to housing to be able to live in dignity.

1 Abbé Pierre

THESIS

EFFECTIVE PROTECTION OF THE RIGHT TO HOUSING BY THE EUROPEAN COURT OF HUMAN RIGHTS

“To defeat them, we need audacity,
still more audacity, and audacity forever,
and the Fatherland will be saved!”

Danton, 1792

INTRODUCTION

The right to housing is a part of fundamental rights, because of the inherent character between the house and the human life³. The relationship of the human being and housing as a shelter is old. Shelter is one of the oldest concepts in the history of humanity as caves are proof of the Paleolithic man⁴.

If we have a look at the history of humankind, the first “houses” for humans were not exactly “caves” but spaces under rocks because caves did not protect enough from wild animals. The weather too, this unpredictable element, confirms the needs of a shelter.

2 DANTON (G.J.). Discourses to legislative Assembly, 2 September 1792.

<http://www.assemblee-nationale.fr/histoire/Danton1792.asp>

3 Case Law Grootboom of the Constitutional Court of South Africa

4 MELIOUH (F.) and TABET AOUL (K.), “L’habitat espaces et repères conceptuels”, Courrier du Savoir, November 2001, p.59

Housing is necessary due to seasonal change, and the winter can be cold⁵, sometimes extremely cold.

The evolution of humans includes many perspectives, such as reproduction, cultural evolution, etc. Shelter or the more recent term “housing” allows us to materialise this perspective, for a first step towards our protection. It was therefore necessary for the survival of man from the risk of environmental factors such as animals or inclement weather.

Beyond the necessary aspect, different kinds of house have allowed various cultures to develop around the world. These riches of culture have led to human evolution. So housing exceeds also the mere aspect of shelter. The great Europe of forty-seven countries has cultural richness thanks to its past during the Roman Empire.

Today the environmental context of society has changed but the needs for shelter still exist. We must focus on the necessary aspect of housing as a vital need, for the continuity of human life to promote housing as a right or even as a fundamental human right.

Housing implies different dimensions⁶. Conventionally, lawyers and scholars identify the right to housing as an Economic, Social and Cultural Right. This right is a cornerstone for the achievement of other human rights, because the modern world has developed new major concepts such as family, money, green environment etc... Jessie Hohmann supports the idea as the determination of the rights to housing are proving to be fundamental to the development of social rights in Europe⁷

Furthermore, the economic dimension of the right to housing seems obvious, because of the “market value” which is included in the aspect of property. We can buy property, become a landlord, or rent a house. This right includes the right to property.

5 MIKKOLA (M.), “Housing as Human Right in Europe”, *European journal of Social Security*, Volume 10 (2008), No. 3, p. 250

6 DIAS (C.J.) & LECKIE (S.), Part II : Housing Rights and Human Development: Intertwined and Inseparable from “Human Development and Shelter: A Human right perspective”, p.22

7 HOHMANN J. (2013) *The Right to Housing: Law, Concepts, Possibilities*. Oxford and Portland, Oregon p.52

The social dimension of the right to housing is interesting, because it allows us to develop many other human rights. Housing is the place where each human develops their family life for adults and for children, as well as being the right to respect privacy and private life, as a protection of health (hygiene), it is a right to live in a healthy environment.

If we consider housing as a private place we can also use the freedom of speech in all liberty⁸. The cultural dimension of housing has a link with the nature of humans as people rather than animals which can sleep outside. According to a researcher at the French National Scientific Research Centre housing is a source of emotion, self-projection and organisation of life⁹.

The object and purpose of the European Convention is to protect the human being¹⁰. This shows the objective character of the Convention as it makes no distinction between people. This means the Court understands humans in a universal approach.

Housing has an impact on different minorities. There are many ways in which discrimination can arise: young people may not have enough money for a first home, older people with low pensions (sometimes excluded because of their silence), the disabled people may have specific housing needs which are expensive to meet, migrants and refugees may find it hard to access legal housing because of their paperless status. This issue also concerns specific European ethnic minorities such as Gypsies and Romas. These types of minorities are constantly discriminated against concerning housing but also for many other violations of human rights¹¹.

⁸ Freedom of expression from the Article 10 - The best place for use the freedom of speech is this own place, and that is a cultural right.

⁹ LARCENEUX (F.), "J'habite donc je suis," *Etudes foncières*, 2011 23-26. p.1

¹⁰ ECtHR, *Berktaş v. Turkey*, 1st June 2001, application n° 22493/93, paragraph 151 (only in french) - facts: *Sieur Berktaş* was seriously injured after falling from the balcony during the house search

¹¹ Examples of others discriminations recognize by the European Court on Human Rights for show the sensitive case of those communities: The Roma people are victim of discrimination in different point. We can note the forced sterilization in many cases (ECtHR, *V.C v. Slovakia* on 8 february 2012 (application n°18968/07); *N.B v. Slovakia* on 12 September 2012 (application n°29518/10); *I.G and others v. Slovakia* on 29 April 2013 (application n°15966/04)), which commits a violation of the article 3 and 8 of the Convention.

This kind of discrimination is a result of social exclusion. This exclusion of people can create instability and tension within States. It is therefore also important to pay attention to the right to housing for domestic stability in Europe even if the economic crisis is also a burden to consider. Housing is and has to be a right because in the current world society, implementation of rights is made through policy.

The complexity of the right to housing includes these various dimensions, as well as the fundamental contribution of the achievement of other human rights, and the sensitive issue of minorities.

The Universal Declaration of Human Rights said that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control¹².”

This text promotes all fundamental rights of all human beings even if it has no legal effect. The Universal Declaration is symbolic and has impact through common values. This means housing is not an unknown idea, since it is recognized as a universal value.

However, the implementation of this right on a global level¹³ is too broad, due to the lack of international legal mechanisms that concern individual applications.

If we compare with the European system the implementation becomes possible as individual applications are receivable on the regional level.

The International Court of Justice only has intergovernmental competencies. This is a problem for claims by the international covenant on economic social and cultural rights which defends the right to housing in its article 11 paragraph 1¹⁴.

12 Article 25 paragraph 1 of the Universal Declaration of Human Rights on 10 December 1948, General Assembly Resolution 217A (III)

13 Committee on ESC Rights (the CESCR) had precise in its General Comment in 1991 -Core obligation paragraph 43 (c) “To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water”

14 Article 11 §1 of the ICESCR on 16 December 1966 ‘The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including

To develop a concrete analysis of the situation we have to focus on a European level with its legal mechanism; even if this does not change the sensitive character of the legal debate.

The Council of Europe has many instruments to protect human rights. It seems obvious to talk about the European Social Charter¹⁵ when we want to develop the right to housing. This text clearly supports the right to housing¹⁶ as a goal of policy for Member States. However this legal instrument does not have its own mechanism of protection such as jurisdiction. For this fundamental reason, we shall focus on the European Convention on Human Rights.

The European Court on Human Rights seems to be the only regional mechanism able to defend a concrete case for the protection of the right to housing. Indeed, there are many reasons for using the European Convention. For example the Preamble of the European Convention on Human Rights paragraph 4 stipulates that the Council of Europe has to achieve “the maintenance” and “further realization” of Human rights. This also means an evolving approach to Human rights with scope to develop extensive legal reasoning. Even if paragraph 6 of the same Preamble states this development “the Governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and rules of law to take the first steps for the collective enforcement of certain of the Rights Stated in the Universal Declaration .” This means, on one hand, a sort of continuity or evolution because the Member States continually create their common history because nothing is motionless. On the other hand the extension can only succeed if Member States have a common idea of the Convention's Law. Likewise, the Additional Protocols add to the original text of the European Convention. So the European text of protection on Human rights is not permanent.

adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent”

15 European Social Charter of Council of Europe adopted in 1961

16 European Social Charter Part 1 Article 31

It is interesting to mention that the Recommendation n°1415 of the Parliamentary Assembly reminded that, “economic and social rights are inherent aspects of human dignity and are clearly human rights, in the same way as are civil and political rights. These two categories of rights are interdependent and cannot be dealt with differently¹⁷.” Indeed the Parliament is the political organ of the Council of Europe which is represented by one personality from each Member States. This proves the interest of each Member State in socio-economic rights. This is essential for the application of the Convention in Europe, because the system of the Court is based on the principle of subsidiarity¹⁸.

The Right to Housing needs real protection even if its implementation is delicate. The “effectiveness” character means a particular and bold goal for human rights protection by the European Court in general. On one hand this specificity justifies this European Instrument as the most successful regional system of protection of human rights, by its objective character. The jurisprudence *Airey v. Ireland*, supports this idea “the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective¹⁹.” And on the other hand, the audacious character of the convention which appears in the same sentence.

The European judge expresses the determination for it to be a rightful legal instrument to protect human rights by exceeding substantial provisions. This is a demonstration of the protective spirit of the Convention.

17 Recommendation 1415, Additional protocol to the European Convention on Human Rights concerning fundamental social rights, the Official Gazette of the Council of Europe – June 1999, paragraph 2

18 Report prepared for the Steering Committee on Local and Regional Authorities (CDLR) Definition and limits of the principle of subsidiarity, Local and regional authorities in Europe, No. 55. (for more information: <https://wcd.coe.int/ViewDoc.jsp?id=1388071&Site=COE>)

Consecration of the Subsidiary in the jurisprudence of ECtHR, *Handyside v. The United Kingdom*, on 7 December 1976 (application n°5493/72), “The Court points out that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights” (paragraph48)

19 ECtHR, *Airey v. Ireland*, on 9 October 1979 (application n°6289/93), paragraph 24; see also ECtHR (plenary) *Belgian Linguistic v. Belgium* on 23 July 1968 (application n°1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64); and ECtHR *Marckx v. Belgium* on 13 June 1979 (application n°6833/74) paragraph 31 (“effective respect on family life”)

The term of “effectiveness” in the Convention is not a legal approach but more a general spirit of this specific mechanism.

This word appears only once in the Convention in article 13 “Right to an effective remedy.” This term has a more specific meaning than the general approach in the first law case. Indeed, the European Court explained in the law case *Silver and others v. The United Kingdom* that the “effective” adjective supposes a few conditions²⁰ about this right. The Court specified in this case that the existence of a remedy alone is not sufficient to justify it being an “effective” remedy.

We can understand the Court's point of view as a specific level of protection and their specific meaning of the term “effective”.

Therefore, the right to housing should be understood in the same way.

The existence of domestic legislation about the right to housing does not necessarily mean the existence of “effective” protection. This case of law mentions article 1 of the European Convention which states the liberty of the State to implement the rights of the Convention. The idea of the effective protection implies some guarantees or conditions to demonstrate the respect of this right.

The European judge uses different kinds of interpretation (dynamic, evolving, finalist²¹), which allow to extend the protection by official recognition by the European jurisprudence for “new rights,” not as directly written in the Convention. Understandably enough, the interpretation is “consubstantial power of the judicial activity²².” Furthermore, article 32 of the European Convention expresses this special competence: “the jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols.” The interpretation is a fundamental part of the role of the judges. They, therefore, should remain in the “spirit of the Convention” as much as possible.

When the European Judge uses the various interpretations in the wrong way, distancing himself too far from the view of the State, there are many disagreements. The

20 ECtHR, *Silver and others v. The United Kingdom*, on 25 March 1983, paragraph 113

21 Those interpretations will be develop on the Chapter III

22 AGUILA (Y.), *Cinq questions sur l'interprétation Constitutionnelle*, RFDC, 21, 1995, p.13

application of the law case becomes a difficulty for the State. Some scholars talk about “instrumentalisation of the text of the convention” by the Court.

Through the different interpretations by the European judge we must pay attention to the view of the State, even more so to make “effective protection” for the Right to Housing. Article 1 gives some obligations for the Member States but also mentions the idea of the principle of subsidiarity which preserves their sovereignty. The States are very attached to their sovereignty because sovereignty represents the independence of the legal and judicial authorities of each State. For this reason the domestic jurisdictions judge the first level of jurisdiction. In other words, the national judge is the first interpreter of the Convention.

The fact to defend the right to housing exposes the general question of the European Court of Human Rights concerning the justiciability of economic, social and cultural rights. The achievement of this type of right, including the right to housing, needs money. This protection supposes the creation of an economic policy for each Member State. No State can implement the right to housing without a governmental budget or without considering the economic context. This complex approach of the particularity of the right to housing creates a delicate issue because we cannot mix the political aspect of the Member States and the role of the European judge, on account of the principle of the separation of power²³. The European Court made an allusion to the separation of power in the Chapman Case²⁴. Indeed, many constitutions invoke the separation of the legislative, executive, and judicial powers. This is old reasoning in the history of law elaborated by Locke and Montesquieu is clearly established in Europe²⁵.

23 Article 16 of Universal declaration of Human rights and citizens, 1789

24 ECtHR, Chapman v. The United Kingdom, 18 January 2001 (application n°27238/95) §99. This case distinguish the competency of the judicial and the legislation concerning the right to housing.

25 French example: Paragraph 16 of the Declaration of Human and Civic Right of 23 August 1789. See the dissentient opinion of Judge Borrego Borrego (ECtHR, Pabla KY v. Finland on 22 September 2004 - application n°47221/99) who remind this principle about the article 6 as “the separation of powers is an essential component of a State based on the rule of law and presupposes the separation of the relevant bodies (...) I would refer here to Montesquieu, father of the theory of separation of powers: “Nor is there liberty if the power of judging is not separate from legislative power and from executive power. If it were joined to legislative power, the power over the life and liberty of the citizens would be arbitrary, for the judge would be the legislator. If it were joined to executive power, the judge could have the force of an oppressor.”

Despite this point, it is, even more, hypocritical to say that there are no links with politics. Above this irreversible aspect of the conception of power, we need today to change opinions, and propose an objective view, without changing the old structure of States. The focus only on the policy cannot guarantee the realization of this right²⁶.

The need is for a new view of law, a new reasoning to develop human rights for a right to housing expanding to “effective protection” recognized by the European Court of Human rights and to also being a “political” agreement of the Member States.

We have to overcome these challenges of this reasoning and make a compromise between various stakes evoked, related to the right to housing. We have observed many disputes concerning housing as a right²⁷.

We can also find a new approach to a right to housing as a protection to right to lodging or hosting. This is a new approach to the right. We can “exclude” the idea of property as property and “exclude” a part of the economic dimension for faster implementation. The right to housing is a global fundamental right and deserves attention in this time of economic crisis. Today the right to housing has a character of emergency.

How could the European Court of Human Rights build “effective protection” of the right to housing with these many issues connected to the economic, social and cultural rights?

This thesis has a double challenge. On the one hand, to demonstrate the possible effective protection of the right to housing by the European Court of Human Rights, and on the other hand is to use the thinking of “Trilogy of powers” by Mireille Delmas-Marty as a structure of this demonstration.

26 MIKKOLA (M.), “Housing as Human rights in Europe”, *European journal of Social Security*, Volume 10 (2008), No. 3, p. 250

27 CLARENCE J. DIAS & LECKIE (S.), Part II : Housing Rights and Human Development: Intertwined and Inseparable from “Human Development and Shelter: A Human right perspective”, p.21

The Professor Mireille Delmas-Marty explains that a “désordre juridique” or “legal mess” creates an important confusion of the legal order. The legal order is a “victim” of the globalisation of the idea of human rights, of the economy, of crimes. She explained the interdependency between the States with their obligations and the judges with their law cases²⁸.

Some scholars talk about “governance of judges” and the heavy impact of judicial decisions or “international governance” about the action of international organizations. This confusion between politics and the jurisdiction can be problematic for the division of power. This division allows us to create a clear legal reasoning in an effective approach.

The Professor Mireille Delmas Marty offers a specific way to create new laws without the complexity of different levels of law through a “trilogy of powers” which is composed of three specific steps: **The Knowledge, The Will and The Power**.

It is surprising to note that this idea is not modern. Victor Hugo had already recognized the important effect of these words when he wrote the “Power, Will, Knowledge, three words that lead the world”²⁹. However Professor Mireille Delmas-Marty made a specific order of these three words to find a “right way” in legal thinking. Even if these three ways seem simple by their name, this concept needs particular attention due to many various subtleties.

“The **Knowledge**” means the fact of knowing through different sources of knowledge. She talks about the “crossbreeding of knowledge.” The right to housing implies States and the European Court know about it. It is interesting to comment this “Knowledge” concerning the right to housing because we can have various views of the meaning of this right in different Member States of the Council of Europe. In this way we can see the differences and the similarities. It is a starting point that allows us to launch the debate of the right to housing in the regional European area.

28 DELMAS-MARTY (M.). 2009. Les forces imaginantes du droits (Livre III), “La refondation des pouvoirs”, Ed. Le Seuil, p.37

29 HUGO (V.), Philosophie prose, p.78, in Océan, Éd.Robert Laffont coll. Bouquins

“The **Will**” means a voluntary approach³⁰, and this part includes different players: firstly, the governments and the jurisdictions (domestic and regional level) then the citizens, the non-governmental organizations, the associations etc... This will to react in favour of the right to housing is motivated by a political interest. In a realistic way, the implication of the Member States in the housing cause is not motivated by an infinite commitment to human rights.

According to Professor Mireille Delmas-Marty, “the **Power**” means the reinstatement of powers³¹, especially between the government and the judges. To continue, the legal reasoning, we must focus on the power of the European judge through the analysis of the different possibilities to achieve the recognition of the right to housing, through jurisprudence and the texts of the European Convention.

The Professor chooses a specific order to overcome the current “legal mess³².” The Knowledge can give rise to the Will. Finally the Will can legitimate the Power³³. She uses this concept as the global idea of Law.

For this thesis, I will apply this reasoning to the Right to Housing in the European Convention of Human Rights, to keep a strict structure for a legal approach.

Thus, the development of this demonstration will be divided into and based on these three arguments. Chapter I named “the Knowledge” will allow us to analyze the meaning of the right to housing. To have a full understanding of the meaning, this implies focusing on the view of the Court but also on the view of the Member States. This part is the first step to gather a common view of this right.

After the analysis of the meaning of this right, we must comment the different arguments in having an interest to achieve this right. This is Chapter II called “the Will” which highlights the inevitable link between the European context and each country's

30 DELMAS-MARTY (M.), 2009, Les forces imaginantes du droits (Livre III), La refondation des pouvoirs. Ed. Le Seuil p.133

31 DELMAS-MARTY (M.), 2009, Les forces imaginantes du droits (Livre III), La refondation des pouvoirs. Ed. Le Seuil. p.37

32 “Désordre juridique”

33 DELMAS-MARTY (M.), 2009, Les forces imaginantes du droits (Livre III), La refondation des pouvoirs. Ed. Le Seuil p.253

national interests: the economic dimension, the political dimension, and the democratic dimension.

Chapter III, called “the Power”, is the main legal demonstration by the European Convention and jurisprudence for the recognition of the right to housing. Extension of the legal protection of this right will emphasize the Court's status as a major player and the only regional jurisdiction able to protect human rights.

In this way the Court will promote the “living character” of the Convention, by adapting to urgent needs. The legal dimension argues that the Court has the Power to legitimate this legal extension through its different judicial techniques used and developed over the past 50 years.

The European Court must take this opportunity to promote human rights.

This thesis is not an advocacy for the protection of a Right to Housing. It is the overall legal demonstration by three approaches which can result in an “Effective Protection.” This thesis has the goal to create new hope for the role of the doctrine, not just as an observer but as a creator of a new way of thinking.

CHAPTER I

The Knowledge: What does the Right to Housing mean in the jurisprudence of the European Court of Human Rights?

“If knowledge can create problems,
it is not through ignorance that we can solve them³⁴”

Isaac Asimov

INTRODUCTION

Knowledge is the first step to understand housing as a human right. The meaning is a difficult issue because there are many players in the European approach. The European Court of Human Rights is a regional jurisdiction which regroups forty-seven States with their political sovereignty. Each State has their own meaning of housing in their domestic law.

We will see that the term “housing” does not have a clear, unique definition for all. The Member States have different policies even if the democratic regime is common for all States (because the Court recognizes only the democratic regime³⁵). We will note the different levels of protection of housing according to the various contexts of countries but also the meaning of the jurisprudence of the European Court.

³⁴ ASIMOV (I.). Quoted on p.70 of Mardy Grothe’s *ifferisms: an anthology of aphorisms that begin with the word if*.

³⁵ ECtHR, *United Communist Party of Turkey and others v. Turkey*, on 30 January 1998, application n°133/1996/752/951, paragraph 45.

All these views are the essential knowledge to identify the framework involved in the right to housing.

Generally housing, as in a home, includes three conceptual categories³⁶: security, privacy and attachment. These meanings are developed in a general way by the Member States of the Convention and the European Court by its jurisprudences.

It is hard to find a common clear definition, but the Court considers the States with their diversity and tries to find common values, not as a principle of standardisation but rather as a harmonisation³⁷.

The interest of this analysis is to observe the relationship between the definition or the understanding of the meaning that Member States have and the definition of the European Court in order to develop common knowledge because the different meanings will allow us to define the obligations of the States on a national level.

The Court must seize the opportunity to clarify the meaning of housing to develop a framework with a view to giving effective protection of the right to housing as a fundamental right.

SECTION I. Meaning of the right to housing by the Member States of the European Convention on Human rights

One specific aspect of the Convention is the principle of “subsidiary³⁸,” the European Court has a secondary role in the application and interpretation of the Convention. This is justified when it takes time to analyse the Member States of the Convention’s national approaches to the right to housing. We will, therefore, observe

36 BUYSE (A).European Human Rights Law Review. 2006. Strings attached: the concept of "home" in the case law of the European Court of Human Rights, p.1

37 The judges Costa (former President of the European Court on Human Rights) Caflich and Jungwiert remind in partly dissenting opinion “It is better to accept certain national judicial features and concentrate on harmonizing the guarantees which States must provide in respect of substantive rights and liberties” (ECtHR, Martine v. France on 12 April 2006 (application n°5867/00)

38 ECtHR, Handyside v. The United Kingdom, , 7 December 1976, (application n°5493/72) paragraph 48.

the common recognition of this right with different levels of protection (§1) and analyze the objective to find a common meaning to the right of housing (§2).

§1. Common recognition of the right to housing by the Member States

The right to housing is recognised by all Member States of the European Convention on Human Rights, even if there are various orientations of policy (a). However, there are many obligations for the twenty-eight Members of the European Union which support the implementation of the protection of the right to housing in domestic policies (b).

a) Various domestic legislations of the right to housing by the Member States of the European Convention and different levels of protection.

The analysis of domestic legislations of each Member State is not useful for the summary of a general meaning of the right to housing. All Member States have democratic regimes³⁹. However we can note different policy orientations. We will distinguish the liberal policy, the socialist (communist) policy, and the policy after conflict. This point is essential to understand the different interests of countries concerning housing.

The liberal policy can be illustrated by two significant cases, namely the United Kingdom and the French Republic.

The United Kingdom is considered as liberal.

The Housing Act of 1985 under the governance of Prime Minister Thatcher was a liberal project because it gave the “right to buy or acquire”. But, on no account an access to a right to housing or a claim for this right. The most important example of

³⁹ French Constitution of 4 October 1958 article 1 “France shall be an indivisible, secular, democratic and social Republic”

legislation in United Kingdom is The Housing Act adopted in 1996 (the Prime Minister was John Major). This Act is very long (322 pages) and is considered as an official legal text of the protection of housing. It is interesting because the duties of local authorities are explained. There may be a “housing claim⁴⁰,” but it remains between the individual and the landlord with the help of a third party mediation but it does not involve a Court. This does not seem to be an effective approach if there is not any jurisdiction. The Homeless Act 2002 made this mediation a duty for local authorities.

The devolution in the United Kingdom allowed us to see several differences concerning the right to housing. The Scottish Social Housing Charter is a good example of the extension of the implementation of this right. This document was adopted on 14 March 2012; it is the outcome of the Housing Act (Scotland) 2010. This Charter helps and guides the social landlord, concerning their responsibility and the awareness of housing issues. This Charter promotes equal and fair access to housing and housing services⁴¹. The social landlord has to maintain a standard of quality of housing⁴², give information about the access⁴³ to housing, prevent homelessness⁴⁴, and give priority to homeless people. The Charter includes the rights of Gypsies and travelers through appropriate maintenance of an allocated and authorised site⁴⁵. We can see the Scottish commitment concerning the right to housing.

However there are still critical points about the absence of jurisdiction. Because in the case when the mediation does not work, what is the solution for the applicant? We have to note that a right to housing is not as well understood in the liberal market policy as the individual right for living.

The French Republic is an interesting case because it has been called the country of human rights since the Declaration of Human and Civic Rights. What about its concern for the protection of housing?

40 Article 51(1) of the Housing Act of 1996 -

<http://www.legislation.gov.uk/ukpga/1996/52/part/I/chapter/V/crossheading/housing-complaints>

41 Point 1 of the Scottish Social Housing Charter

42 Point 4 of the Scottish Social Housing Charter

43 Point 7 and 10 of the Scottish Social Housing Charter

44 Point 9 of the Scottish Social Housing Charter

45 Point 16 of the Scottish Social Housing Charter

The French “Bloc de Constitutionnalité” includes a few fundamental texts. Paragraph 17 of the French Declaration of Human and Civic Rights of 1789, explains the limits of ownership of private property. The State has the right to take ownership of property in exchange for financial compensation. The Preamble of the Constitution of 1946 does not include the right to housing. Nevertheless, paragraph 10 says the Nation shall provide the necessary conditions for individual or family development and paragraph 11 mentions “material security.”

Indeed, there is no real reference to the right to housing in the most important constitutional texts in France. However the legislative texts protect the right to housing. The first legislation which recognized housing as a right was promulgated in 1948⁴⁶. Then the Court of Paris said the “right to housing is a fundamental right and an objective of constitutional value⁴⁷” in 1995. The point is that the right to housing is included in the legislation which illustrates the wiliness of the policy. However there is no justiciability for the access to housing as a human right. Consequently, the French parliament adopted new legislation “loi sur le droit au logement opposable⁴⁸” called DALO (modified the 14 May 2009) to overcome this problem.

This legislation has created good conditions for the citizens (homeless people, people threatened with expulsion, people inadequately housed, social applicants ...) to exercise the right to housing through an application to the Commission for mediation rather than an application at an administrative trial. This legislation recognizes that the right to housing helps to fight against social inclusion.

The case of France⁴⁹ illustrates the implementation of the right to housing even if the Gypsies seem not to be included for asylum requests.

46 Loi 48-1360 du 1 septembre 1948 portant modification et codification de la législation relative aux rapports des bailleurs et locataires ou occupants de locaux d’habitation ou à usage professionnel et instituant des allocations de logement.

47 ODERZO (J.C) 2002 Des Vagabonds au SDF: Approche d’une marginalité, publication Université de Saint Etienne p.40

48 Loi n° 2007-290 du 5 mars 2007 instituant le droit au logement opposable et portant diverses mesures en faveur de la cohésion sociale

49For more information:

<http://www.vie-publique.fr/politiques-publiques/logement-social/chronologie/>

There was a strengthening in the policy of housing in January 2013⁵⁰, but it still did not illustrate “housing” as a right.

Russia is a democratic country according to paragraph 1 article 1 of the Constitution of the Russian Federation⁵¹, but Russia is also a good example of communist (socialist) policy. The Constitution of the Russian Federation⁵² guarantees the right to housing for all citizens in article 40⁵³, as a right to having a home. This protection by the Constitution was influenced by previous Constitutions from the Union of Soviet Socialist Republic (URSS) and Russian Socialist Federated Soviet Republic (RSFSR)⁵⁴. This right is an important policy in Russia. From 1986 the (former) President Gorbachev wanted ‘to provide every family with a separate apartment or house from 2000’⁵⁵. This President recognized “the social importance and acuteness of the housing problem (...) and the need for serious improvements in the practice of allocating housing⁵⁶.”

On a legislative level the Law on the Fundamentals of Federal Housing Policy was the first step to implement the right to housing in December 1992⁵⁷. The protection of the right to housing by Russia is of great importance because of the constitutional

50 LOI n° 2013-61 du 18 janvier 2013 relative à la mobilisation du foncier public en faveur du logement et au renforcement des obligations de production de logement social (1)

51 Article 1, Paragraph 1 on the Constitution of the Russian Federation: “The Russian Federation - Russia is a democratic federal law-governed State with a republican form of government.”

52 The Constitution of the Russian Federation was adopted by national referendum on 12 December 1993. <http://www.government.ru/eng/gov/base/54.html#section6>

53 Article 40 of the Constitution of the Russian Federation:

1. Everyone shall have the right to a home. No one may be arbitrarily deprived of his or her home.
2. The bodies of State authority and local self-government shall encourage housing construction and create conditions for exercising the right to a home.
3. People on low-incomes and other persons mentioned in law and in need of a home shall receive it gratis or for reasonable payment from the State, municipal and other housing stocks according to the norms established by law.

54 American University International Law review, Vol 9, issues 3 Article 7, (1995) The Constitutional Right to Housing in the Russian Federation: Rethinking the Guarantee in Light of Economic and Political Reform by Sheila O’Leary. p1015

55 Current Digest of the Post-Soviet, N°8, Vol.38, March 26, 1986, Minneapolis, USA. p.21, paragraph 6

56 Current Digest of the Post-Soviet, N°8, Vol.38, March 26, 1986, Minneapolis, USA. p.21, paragraph 6 and 7

57 STRUYK (R.J.) and KOSAREVA (N.B.), The Russian housing market in Transition. (1993), p.14

protection. Even though since 1986 there have been many weaknesses for its enforcement.

The legislative level with the “Housing Code” is not effective because the laws linked with the civil right to housing have not been published. The result is that citizens cannot apply for this right⁵⁸. There is not a clear definition of Housing or social housing⁵⁹ despite new legislation such as the “Housing Code” or the “Affordable and Comfortable Housing” legislation.

The recognition of the right to housing is not satisfying for effective protection if this right is not applicable or justiciable. A socialist country needs support to implement this right effectively.

The conception of housing is also interesting in Kosovo because it is a Member State of the Convention but it is also in a specific situation due to its post-conflict condition. Housing is a priority policy in this country. The character of human rights for the right to housing is not very clear but housing is a priority to rebuild the country and also as a step to rebuild the economy.

The international community has helped Kosovo with temporary measures. The United Nations Interim Administration Mission in Kosovo (UNMIK) has developed mechanisms to claim the protection and the restoration concerning the lost residential property rights by the Housing and Property Directorate and Housing and Property Claims Commission⁶⁰.

In this situation housing includes “an apartment which does not aggravate materially the housing conditions of the occupancy right holder who is supposed to move into this apartment taking into consideration all housing conditions, especially the size, comfort and location of the apartment⁶¹”

58 American University International Law review, Vol 9, issues 3 Article 7, (1995) The Constitutional Right to Housing in the Russian Federation: Rethinking the Guarantee in Light of Economic and Political Reform by Sheila O'Leary. p1031

59 KOLLEGOVAP (A). 2011. Changes in Russian Housing Policy after the Crisis 2008 p.3

60 Official Gazette 31 October 2000, On residential property claims and the rules of procedure and evidence of the Housing and Property Directorate and the Housing and Property Claims Commission (UNMIK/REG/2000/60 31 October 2000)

Due to the conflict Kosovo has fallen behind in the proper implementation of this human right. However, since 2012 Kosovo has started to improve this implementation in accordance with the Council of Europe⁶².

So we can see there is a protection of the right to housing but without any clear definition. However, it is a preoccupation of State policy. We can note common knowledge of the issue of housing: it shows an improvement which leads to an improvement of the justiciability for a possible effective application by citizens.

b) Particular position for Members of EU: Influence and obligations

The majority of Members of the European Convention are also Members of the European Union. These twenty-eight States have obligations from the Union concerning the right to housing. These obligations concern mostly political advice or orientation.

The European Parliament recognizes the right to housing as having an important effect on other fundamental rights⁶³. The main point is the recommendation to “integrate policies to guarantee universal access to decent affordable housing⁶⁴” for all Member States. This includes, “specific support for good-quality social and ‘very social’ housing, (...) the access to other essential public services, (...) specific steps for the vulnerable population, such as migrants and young people, in seeking access to decent housing, (...) effective policies to stop tenants being evicted, (...) specific programmes for the homeless, linked to social support measures”. This is illustrated by a goal: fight against poverty and promote inclusion and social cohesion.

61 Article 8 of the legislation “Law on housing relations,” Official Gazette of the SAPK”, No. 11/83, 29/86, 42/86

62 Declaration of medium-term policy priorities 2014-2016 on 15 April 2013. p.19 (2.4)

63 Draft report on social housing in the European Union by Committee on Employment and Social Affairs, on 28 January 2013, 2012/2293 (INI), paragraph 14

64 Draft report on social housing in the European Union by Committee on Employment and Social Affairs, on 28 January 2013, 2012/2293 (INI), paragraph 16

Two paragraphs raise amendments concerning the report of the European Parliament⁶⁵. These amendments add precisions such as the people concerned⁶⁶. At least they demonstrate the interest of parliament⁶⁷.

What is surprising is that none of these amendments delete or alter the sentence “whereas access to housing is a fundamental right that affects access to other fundamental rights and to a life in conditions of human dignity.” This proves the parliamentarians' approval of the importance of the access to housing as a fundamental right in Europe.

The Agency for Fundamental Rights will supervise the implementation of the right to housing in Europe⁶⁸. This institution is not a jurisdiction. It provides advice for the implementation of community law of fundamental rights by the Member States.

The only negative point is that the report is a draft of a Parliamentary proposition. The critical point could be that the dialogue between the Council of Europe (47 countries) and the Agency (representing 28 countries)⁶⁹ is absent or not coherent with each State. This means some efficiency is lost.

65 European Parliament Amendment 1-326, Draft report Karima Delli (PE504.103v01), Social housing in the European Union (2012/2293(INI)) on 28 February 2013- Reference AM\929261EN.doc - page from 98 to 130

66 Amendment 246, p.117 (Reference AM\929261EN.doc) precise about vulnerable people (paragraph 16) “migrants and young people, large families, single-income families with children, households with elderly people over the age of 65, households including people with disabilities, young couples and students far from home,” and not only migrant and young people.

Or Amendment 199, p.98 (same reference) precise about the impact of housing “Points out that acknowledging and implementing the right to housing affect the implementation of other fundamental rights, including political and social rights; takes the view, therefore, that the right to housing should be clearly recognised in EU primary law; points out that it is the Member State or public authority concerned which is responsible for making this right to housing a reality by improving, through its policies and programmes, universal access to housing, in particular for disadvantaged persons, by providing sufficient decent, clean and affordable housing and, if necessary, by establishing an enforceable right to housing”

67 Committee report tabled for plenary, single reading is not online - (A7-0155/2013) // Indicative plenary sitting date, 1st reading/single reading 10 June 2013

68 Council Regulation (EC) n°168/2007 of 15 February 2007 in Vienna, establishing the European Union Agency for the Fundamental Rights (OJ L 53/2 22.2.2007)

69 Document Overview of the cooperation between the European Union Agency for Fundamental Rights and the Council of Europe July 2011 – June 2012 (DD(2012)1006) => exclude the direct relation with the Member States. Or Joint programmes between e Council of Europe and the European Union (<http://www.jp.coe.int/default.asp>) => exclude the link with the Court.

Ultimately there is no strict control of the policy or of the legislation of the Member States of the European Union concerning the right to housing.

Housing is not a direct competence of the European Union.

§2. The challenge of a common definition by Member States of the European Convention: Useless utopia

There are many questions concerning a common definition of the right to housing. The first one is a language issue. The language allows people to understand this term to different extents. We can note that the European Court is careful about the issue of language concerning the term “home” in article 8 of the European Convention. For example in French the version “domicile” is used. This French term means not only the material space of home but a place where someone lives permanently or usually⁷⁰. The precise definition has a precise meaning and this is also an issue for the implementation by different political ideologies (see example of Russia and the United Kingdom) which imply different duties for the enforcement of the right to housing. However all countries who are part of the Convention recognize housing as a right, even if the level of protection is different and the means for its implementation are different. The main point is that the right to housing is a common value for all Member States because housing is acknowledged in each country, translated by various legislations.

In fact, the European Court has recognized the diversity of the Members.

However the Court should find a compromise to find a common meaning of housing in order to implement policies through its existing common values from the European Public Order.

⁷⁰ BUYSE (A).European Human Rights Law Review. 2006. Strings attached: the concept of "home" in the case law of the European Court of Human Rights, p.2

SECTION II: Meaning of the right to housing by the European Court

The European Convention on human rights does not have a protection of the right to housing (§1). However, it has been mentioned in various “housing” jurisprudences (§2). Even if there is a weak point, the Court usually supports their extension of rights, through external texts. The right to housing is sustained by many regional and international instruments. This leads to a broad interpretation by the Court.

We can analyse this approach as a discretionary extension of the right and question every case of jurisprudence or recognise this technique as a continuity of the reasoning of the European Court.

§1. Weakness of direct protection on the corpus of Convention

Professor Frédéric Sudre underlined the “incompleteness and indeterminacy⁷¹” of this legal text. This thought also concerns the right to housing because the European Convention does not protect it in a direct way. Generally, social rights are not directly guaranteed by the Convention. “In this respect the Court recalls that the Convention does not guarantee, as such, social and economic rights,” as in *Paneenko v. Latvia*⁷² about the violation of the right to work or in *Salveti v. Italy*⁷³ about the right to compensation for damage to health. It does not mean because there are weaknesses in the European Convention about the right to housing that the court cannot extend its protection.

71 SUDRE (F), *Les colloques du Sénat* 29 and 30 September 2006, *Interprétation Dynamique de la Cour Européenne des Droits de l’Homme*, p.225

72 ECtHR, *Paneenko v. Latvia* of 28 October 1999, application. n° 40772/98, §2 in Law (article 6, 8 and 13), (application inadmissible); see also Commission Decision, *Godfrey v. The United Kingdom* (article 8), of 4 February 1982, application no. 8542/7

73 ECtHR, *Salveti c. Italy* of 9 July 2002, application. n° 42197/98 (article8), (application inadmissible)

Concerning precisely the right to housing, the “preparatory work” does not give us an idea of home in article 8⁷⁴, or more precision about the interpretation of the articles for a possible extension of the protection of the right to housing.

In other words the term housing does not exist in the original text of the Convention and it does not give guarantee for the right to housing⁷⁵.

§2. Various meanings of “housing” in the jurisprudence of the European Court on Human Rights

The notion of housing is wide. Housing can have different synonyms from the different articles of the Convention. It could mean a good, (a), a place of attachment (b) or place of security in the specific case of the detention (c).

European jurisprudence is not precise on the basic definition of housing and does not give it value as a substantial right.

a) The meaning of “house” as a good: privacy

According to article 1 protocol 1, concerning the right to property the European Court recognizes the “house” as a good. The meaning has been extended to include slums.⁷⁶ In this case, the residence of the applicant, where he lives with his family, represents a substantial economic interest. That interest, which the authorities allowed to subsist over a long period of time, amounts to a “possession.”

The European Court recognises the obligation to provide housing by the town council on the basis of a written document, a so-called “social tenancy agreement”

74 Council of Europe, European Commission on human rights, preparatory work on the article 8 of the European Convention on human rights, Confidential DH(56)12, Strasbourg 9th August 1956.

75 All doctrine is agree with this fact - example: HOHMANN J. (2013) The Right to Housing: Law, Concepts, Possibilities. Oxford and Portland, Oregon p.67

76 ECtHR (Former First Section), Öneriyildiz v. Turkey, 30 November 2004 (Application n°48939/99), paragraph 142

signed by the competent authority and the applicant⁷⁷. According to a “legitimate expectation” of article 1 protocol 1 from this document the Court has not given a definition of the right to housing.

b) The meaning “home”: attachment

Article 8 (1) is the main source in the European Convention to develop the notion of “home.” This article mentions the term “home” as “Everyone has a right to respect his private and family life, his home and his correspondence.”

The Court recognized the term “home” as an autonomous notion under article 8 of the European Court⁷⁸. The European Judge develops the notion of home in its jurisprudence as an autonomous notion.

The Court has recognised the conception of a home as of “central importance to an individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community” since 2004⁷⁹ and it has reaffirmed this meaning and added to it by stating that eviction is a violation of the individual respect to his/her home⁸⁰. Considering the *Moreno Gomez v. Spain Judgment*⁸¹ we can see the home as a material thing, as a “physical area,” but there is a dimension of attachment because “private and family life develops,” and that presumes “the quiet enjoyment.”

The Court recognises the personal development of the right to a home and to develop family life.

The European Commission of Human Rights in the case *X v. Belgium*⁸² stated that the search for a car could not equal the search for a home for the purposes of

77 ECtHR (First Section), *Teteriny v. Russia* ETERINY, 30 October 2005, (application n°11931/03), to paragraph 47 from paragraph 50

78 ECtHR, *Prokopovich v. Russia*, 18 February 2005, (application n° 58255/00) - paragraph 36

79 ECtHR(First Section), *Connors v. The United Kingdom*, 27 August 2004, (application n°66746/01) paragraph 82 - about Gipsy

80 ECtHR, (Fifth section) *Kryvitska and Krivitsky v. Ukraine*, 2 March 2011, (application n°30856/03) paragraph 44

81 ECtHR (Fourth Section), *Moreno Gomez v. Spain* on 16 February 2005 (application n°4143/02) paragraph 53.

82 ECmHR, *X v. Belgium* 30 May 1974, (App. No.5488/72) - non applicable decision

Article 8. In this decision the Commission referred to two earlier decisions⁸³ in which it had “tacitly accepted” this notion of home. The term “home” in the English version of the Convention cannot be extended in an arbitrary way.

The scope of the notion of home was also developed in the *Gillow v. The United Kingdom* case. The Court said there needs to be “continuing links⁸⁴” with a specific place to justify the notion of home.

The meaning of home is therefore recognized by the Court; however there is no right to access, or other guarantee. This acknowledges the term of “home” without an aim to promote but only protect a right to enjoy to live in , enjoy to keep (article 1), and respect (article 8) home.

c) The meaning of “accommodation” in detention: security

Recently the European Court did not recognize “reasonable accommodation,” but concluded by the violation of article 3 (prohibition of torture)⁸⁵. In this case the Hungarian authorities did not provide special accommodation for Mr Z.H, a disabled person (§7) “innately deaf and dumb and has medium grade intellectual disability) in detention. This fact led this vulnerable person to have been molested, sexually and otherwise, by the other inmates (§12). The Court notes the point of the “The Mental Disability Advocacy Center” (third party), namely explained as the prevention of ill-treatment of detainees with disabilities with the obligation to include the provision of “reasonable accommodation” on an individualized basis (§27). However the argumentation of violation supported by Government had failed to meet this burden of proof in a satisfactory manner. This means a procedural violation of article 3 and not a substantial violation (§31).

83 ECtHR, *X v Germany* (Application n°530/59), decision of January 4, 1960 and *X v Germany* (Application n°1216/61), decision of March 28, 1963.

84 ECtHR, *Gillow v. The United Kingdom* 24 November 1986 (application n°9063/80). Paragraph 46. See also ECtHR (Chamber), *Buckley v. The United Kingdom* (application n°20348/92) Paragraph from 52 to 54 The Court considers a link with specific place as land. Article 8 is applied for the meaning of home.

85 ECtHR (Second Section), *Z.H v. Hungary*, 8 February 2013, (application n°28973/11) - paragraph 32 et conclusion paragraph 33

According to Ivan Loveland homelessness legislation cannot properly be classified as part of “civil rights” by the European Court of human rights due to meaning of article 6(1)⁸⁶. Housing means a good according to the jurisprudence of the European Court of human rights. There is no real social dimension. It is not classified as a civil right.

All derived words do not mean “housing” as a right so we can say the Court is careful concerning this term.

However the Court recognises that, “it is clearly desirable that every human being have a place where he or she can live in dignity and which he or she can call home. There are unfortunately in certain States people who have no home⁸⁷.”

In another case “The Court has also stated that in spheres such as housing, which play a central role in the welfare and economic policies of modern societies⁸⁸”

The essential point is that the Court has an idea of the meaning of housing through these examples (home etc.) but with posteriori protection, that means after the acquisition of a material place. This seems to be a discrimination against people who cannot afford to acquire a property.

§3. The European Court takes into account the International Texts to support its reasoning

In many Court jurisprudences there is a “relevant” international law, an interest of another text, to base and build a strong position on to make a judgment. This is interesting to support the extension of the protection of the right to housing.

86 LOVELAND (I.). 2003. Does homelessness decision making engage Article 6(1) of the European Convention on Human Rights?, *European Human Rights Law review*, p.4

87 ECtHR, *Chapman v. The United Kingdom* 18 January 2001 (application n°27238/95) paragraph 99

88 ECtHR, *Connors v. the United Kingdom*, on 27 May 2004 (application n°66746/01). paragraph 82

The Court has used international instruments in its jurisprudence such as the International Covenants on Civil on political rights and the International Covenant on Economic, Social and Cultural rights⁸⁹. These texts do not have a legal enforcement on an International level but the Court has used them to support its argumentations. Consequently, it could use article 11.1 of the UN International Covenant on Economic Social and Cultural⁹⁰ (ESC) Rights to support the right to housing.

The European Court supports its argumentation by the “relevant” international texts, but also with the High Commissioner of Human Rights’ report⁹¹. This is interesting because the reports of the European Parliament support the implementation of the Right to housing⁹². The Court could, hence, use this instrument.

The Court has previously used other non-legal documents, such as the Guidelines of the Committee of Ministers of the Council of Europe, the Amnesty International Report, Report of Human Rights Watch, Activities of the International Committee of the Red Cross Report of the US department on Human rights⁹³.

The Court used the International Convention on the Elimination of All Forms of Discrimination Against Women and the Social Charter⁹⁴. Article 14 - 2 (h) of this Convention and article 31 of the Social Charter protect the right to housing⁹⁵. The Case law *Kontantn Markin* is about the sexual discrimination in social care.

89 ECtHR (Grand Chamber), *Demir and Baykara v. Turkey*, on 12 November 2008 (application n° 34503/97). Paragraph 40-41. Relevant International Law - paragraph 37 to 52

90 Article 11.1 of the UN International Covenant on Economic Social and Cultural “the States Parties of the present Covenant recognize the right of everyone 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. The States Parties will take appropriate steps to ensure the realization of this right, recognizing in this effect the essential importance of international co-operation based on free consent”

91 ECtHR (Grand Chamber) *Kafkaris Case v. Cyprus*⁴⁶, (application n°21906/04), 12 February 2008. Relevant International Law - paragraph 68 to 76

92 Draft report on social housing in the European Union by Committee on Employment and Social Affairs, on 28 January 2013, 2012/2293 (INI)

93 ECtHR (Grand Chamber), *Saadi v. Italy*, on 28 February 2008, (application n°37201/06) - Relevant documents - paragraphs 64 to 94

94 ECtHR (Grand Chamber) *Konstantin Markin v. Russia*, on 22 March 2012 (application n°30078/06), paragraphs 49-50 and 55.

95 Article 14-2 (h) of the International Convention on the Elimination of All Forms of Discrimination Against Women: “To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications”

The Convention on the rights of the child⁹⁶ and article 27 paragraph 3⁹⁷ stipulates the “States Parties shall provide material assistance with regard to housing”.

The International Convention on the Elimination of All Forms of Racial Discrimination was used by the Court⁹⁸, (protection by article 5 (e) iii “Right to housing”).

The Court made a reference to the Charter of Fundamental Right and the Convention relating to the status of refugees⁹⁹ (“As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances.”) United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons¹⁰⁰

The Court used also the Case law of the European Court of Justice¹⁰¹ and the European Social Charter¹⁰² not concerning the right to housing but to encourage coherence in the Council of Europe.

So why does the Court not use international or regional texts to support the right to housing? This is illustrated by the case *Antonyan v. Armenia*¹⁰³.

96 ECtHR (Grand Chamber), *Neuinger v. Switzerland*, on 6 July 2010, (application n°41615/07), paragraph 48

97 Such as “the States Parties in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing”

98 ECtHR (Grand Chamber), *Nachova and others v. Bulgaria*, 6 July 2005, (application n°43577/98 and 43579/98) paragraph 76.

99 ECtHR (Grand Chamber), *Jamaa and other v. Italy*, 23 February 2012, (application n°27765/09) paragraphs 22, 23, and 28

100 ECtHR, *Mago and others v. Bosnia and Herzegovina*, 24 October 2012 (Applications n°12959/05, 19724/05, 47860/06, 8367/08, 9872/09 and 11706/09), paragraph 67

101 ECtHR (Grand Chamber) *Konstantin Markin v. Russia*, on 22 March 2012 (application n°30078/06), paragraph from 65 to 70 or ECtHR *Kress v. France*, on 7 June 2001 (application n°39594/98), paragraph 53 and 53 - *Emesa Sugar Case*

102 ECtHR, *Sorensen and Rasmussen v. Denmark* on 11 January 2006 (application n°52562/99 and n°52620/99) paragraph 35 (about article 5 “right to organize”)

103 ECtHR, *Antonyan v. Armenia*, on 2 October 2010, (application n°3946/05)

It is important to show that the European Court is sensitive to the International, Regional instruments of protection of Human Rights. This allows it to ensure “uniformity” with international public law. The Court therefore knows what the right to housing is. All these texts can be used by the European Court and can encourage the Court to take the opportunity to protect this right.

SECTION III: Useful flexibility from the non-definition of the right to housing by the European Court of Human rights

The specificity of the European Convention: The jurisprudence *Ireland v. The United Kingdom* gave an objective character to the Convention by an explanation of the exceeding or overstepping of the text as “unlike international treaties of the classic kind, the Convention comprises more than mere reciprocal engagements between contracting States. It creates, over and above a network of mutual, bilateral undertakings, objective obligations which, in the words of the Preamble, benefit from a “collective enforcement”¹⁰⁴.”

The European Court is like a “Minister of sense¹⁰⁵” so it decides on autonomous notions which allow the Court to give a common, European definition of one term. However, this liberty is limited to the value given by the Member States.

Here we must be careful, the meaning for the right to housing is wide but it does not mean a right to housing for everybody, in all circumstances because the State does not control everything.¹⁰⁶

A social right means a “duty to be.” It is difficult to state all the obligations included in the right to housing.

104 ECtHR (Plenary Court), *Ireland v. The United Kingdom* on 18 January 1978 (application n°5310/71)

105 RIGAUX (F). 1997. *La loi des juges*, ed. O. Jacob. p.233

106 NIVARD (C.) *La justiciabilité des droits sociaux en Europe* (Thèse) p.113

This term illustrates the limits of the Court and the freedom of the legislator. However, at least the right to housing should be invoked in front of the European Court for more precision¹⁰⁷.

With the Member States' broad definition it is very difficult for the European jurisdiction to find a common definition (unlike for substantial rights). Hence the challenge to find a balance between the Court and the Members States.

According to Antoine Buyse, the flexibility and the lack of a definition of the "home" from the jurisprudences of the Court (from the article 8) is low degree of legal certainty¹⁰⁸. On the other hand that wide conception allows us to develop a dynamic evolution of this term.

CONCLUSION

The Member States recognise, in their legal texts or policy, the right to housing, even if this recognition has different levels of protection, such as legal, constitutional etc... The States even have various orientations of policy, such as liberal, social, or post-conflict situation with international aid. The Member States who are also part of the European Union have additional pressure to properly implement this right in their policy, but without any real effect (an example being that there is no case for the European Court of Justice concerning housing).

Despite the legal recognition of the right to housing, these domestic definitions seem unclear. This fact leads us to both a problem and a solution. The problem: the Court cannot easily use the broad definition of the Member States. There is no common framework of this right, but we can see common implementation, in other words,

107 NIVARD (C.) La justiciabilité des droits sociaux en Europe (Thèse) p.114

108 BUYSE (A).European Human Rights Law Review. 2006. Strings attached: the concept of "home" in the case law of the European Court of Human Rights, p.7

common acknowledgement concerning housing. The solution: the European Court has the liberty to give its own interpretation and definition (as an autonomous notion).

We can also say this interpretation will be sustained by a European consensus in order to recognize the right to housing. The Court has used external texts to support its reasoning in all legitimacy as it has to support other rights

For all Member States the right to housing is more a right to keep housing rather than a real access to housing; this is almost the Court's approach in article 8 and article 1 protocol 1.

Can we talk about discrimination of the protection of poor people? Today we can see that the jurisprudence of the Court has failed to reach a satisfactory conclusion.

CHAPTER II

The Will: Different political levels of the Issues of the Right to Housing by the European Court of Human Rights

“In truth, the path does not matter,
just the desire to get everything¹⁰⁹”

Albert CAMUS

INTRODUCTION

Housing law and housing policy have some common references¹¹⁰. This illustrates their natural interdependence for an effective protection of these rights. This interdisciplinary notion must be analysed for two reasons. The first is to have a view of the implication of the right to housing. This means the different challenges in different areas. The second reason is to open up the idea to support the implementation of this right faced with the challenges. This is “the Will”. The simple fact to want to protect the right to housing is not enough to made legal and political protection. The real “will” has to be understood as a fundamental necessity to protect these rights through many issues and to prevent other challenges. We cannot deny the relationship between the Court and the legislation. Indeed, when the European Court condemns a State concerning a legislation that does not comply, the State has to change this legislation. We know legislations are defined from State policies. There is an impact. It is more about a

109 CAMUS (A.), *Le Mythe de Sisyphe* (chapter “le suicide philosophique”)

110 COWAN (D.). 2011. *Housing Law & Policy. Law in Context*, Cambridge University Press. p.3

necessary dialogue within the Court and the impact of domestic law rather than a confusion of powers.

The right to housing is not independent of the general European context. This context depends on the economic situation because the right to housing is an economic, social and cultural right. Since 2008¹¹¹, the economic recession has crossed Europe and this situation is not over. This situation is major to the implementation of the right to housing but also to the assessment of the value of housing as a good. We must analyse the economic character of housing and the impact of economic crisis context to have an idea how to resolve this double challenge (Section 1).

The political approach means to find an irrefutable interest to implement this right, because without an interest there is no political action (Section II).

The combination of both types of reasoning (economic and political) is the result of one aim of Member States of the Convention: the promotion of democracy. Democracy is more a graspable concept than one of dignity (Section III).

The Court must seize the opportunity to support the protection of the right to housing under domestic policies because of the urgency context in Europe, and furthermore the Member States must act according to their own interests.

SECTION I. The economic aspect to consider in the right to housing

The problem for the Court to protect the right to housing is linked with economic matters, and in this term we can observe a controversial approach (§1). These matters are directly a part of each State's policies, consequently we have to consider the context of the current economic crisis argue in favour of this particular right (§2).

§1. Controversial point of the economic aspect of housing

111 <http://www.globalresearch.ca/the-2008-world-economic-crisis-global-shifts-and-faultlines/12283>

The right to housing is an economic right that involves a financial or pecuniary dimension. Housing as a good, as a property has a value (a), however we can find in the access to the right to housing other dimensions than simply an economic one. This is more about equal access without discrimination (b).

a) Obvious pecuniary character of the right to housing

Housing is a kind of market economy product which has a permanent use. It is a product because housing is a good with monetary value and the fact of using it also a monetary value. The public or private landlord has the goal to make a profit from this investment (buying a house for example). It includes the notion of property. Also housing can be a capital. It is noteworthy that the economic crisis can disadvantage groups such as the exclusion of vulnerable people on this market. The consequence is inadequate housing or homelessness.

To reestablish the equality for housing, we include subsidies or the setting up of housing benefit systems¹¹² from the States. This is a sensitive issue for States due to the financial aspect.

We must note the strange reasoning of the European Court of Human Rights. Since Protocol 1 has come into effect the Court has protected the property (article 1 Protocol 1) but in the second paragraph it limits this protection. The Court gives the States a margin of appreciation¹¹³.

b) New view of the pecuniary right to housing by distinguishing: the right to have housing v. the right to housing access.

112 MIKKOLA (M.), "Housing as a Human Right in Europe", *European journal of Social Security*, Volume 10 (2008), No. 3, p.251

113 ECtHR, *James and others v. The United Kingdom* on 21 February 1986, paragraph 46 (application 8793/79) "Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest (...) the Court cannot substitute its own assessment for that of the national authorities, it is bound to review the contested measures under Article 1 of Protocol No. 1 (P1-1) and, in so doing, to make an inquiry into the facts with reference to which the national authorities acted"

Here, our new approach to the right to housing can be the protection of the right to lodging or hosting. This new view can “exclude” the idea of property as ownership and “exclude” a part of the economic dimension for faster implementation. However the reasoning presumes an effort concerning the non-discrimination to access. With access to information; is it possible to find housing? According to the report of “Compte du logement” from the General Committee there are, in France 28 243 000 properties classed as primary homes and 33 842 000 properties classed as secondary homes or vacant housing¹¹⁴. If we consider the population in France in 2011 as 65 026 900¹¹⁵, it seems that all citizens should have access to housing.

§2. Context of economic crises Europe and the right to housing

The European Union and “Greater Europe” - the Members of the Council of Europe are living a period of economic crisis. This context influences the standard of living and weakens the human condition and emphasizes the attention of fundamental rights such as housing (a). The European Court has to consider in its jurisprudence the sensitive context, and maintain its protection (b). The effort made to develop housing in critical situations such as in Kosovo, illustrates the hypocrisy of European policy in an economic context (c).

- a) Consequence of the economic crisis on the standard of human living:
the degradation of right to housing (minorities: first affected)

114 Commissariat général du développement durable, Compte du logement 2011, Service de l’observation et des statistiques p.39

115 http://www.insee.fr/fr/themes/document.asp?ref_id=T11F031

The context of the economic crisis is a dynamic factor of the increase of price of housing¹¹⁶.

In Spain Ada Colau is a voice for the homeowners¹¹⁷. She said, “Housing is the principal reason for the precarious situation of Spanish families. When the money stops; when there is no work: the first problem for families is their house.” This kind of movement is real and on the increase in many countries.

Consequently, access to housing is hard and a gap is created between different groups of people and encourages discrimination.

The European Parliament notes that, “as a result of the current economic and social crisis, the need for affordable homes is increasingly unmet by the private housing market alone, and that rising house prices and energy prices are aggravating the risks of poverty and social exclusion; is concerned about the impact of austerity measures such as cuts in housing benefit¹¹⁸”

A decrease of protection for vulnerable people creates social exclusion. Housing is “a key element of social and spatial stratification¹¹⁹”

The demography shows an aging population in this difficult economic context. Older people¹²⁰ are a human group, a vulnerable group. Older people are often victims “of poverty, discrimination and isolation (...) and “they are more vulnerable not only to disease, senescence and death, but also to various forms of abuse and exploitation” as noted by Frédéric Mégret¹²¹. Poverty is also the result of the negation of economic and social rights that leads to the negation of civil and political rights including the recognition on an international level of the right to housing.

116 GARDÓ (S) and MARTIN (R), Impact of the global economic and financial crisis on Central, Eastern, South-Eastern Europe European Central Bank, Occasional paper series n°114 / June 2010, p.23

117 http://articles.washingtonpost.com/2013-03-08/world/37550410_1_spaniards-evictions-platform

118 Draft report on social housing in the European Union (2012/2293 (INI)), by the Committee on Employment and Social Affairs on 28 January 2013. Rapporteur: Karima Delli, paragraph 1

119 MARSH (A.) and MULLINS (D.)The Social Exclusion Perspective and Housing Studies: Origins, Applications and Limitations Housing Studies, Vol. 13, No. 6, 1998 page 750.

120 The term old include different other terms as “elder persons” and “elderly,” ”seniors,” ”the elderly,” ”the aged,” the “third age”

121 MEGRET (F.), The Human Rights of Older Persons: A Growing Challenge, Human Rights Law Review 11:1 on 29 January 2011, p.46

This specific situation is recognised on an international level. The Recommendation 19 of the Vienna International Plan of Action on Aging explained since 1983 “Housing for the elderly must be viewed as more than mere shelter. In addition to the physical aspect, it has psychological and social significance, which should be taken into account¹²².” The crisis has made the context difficult to implement specific help for this group. Currently the question is if older people need specific treatment, do those people need specific human rights¹²³?

It seems more logical to implement a right to housing for all minorities than to divide them by type of group for an approach from the European Convention.

Social exclusion also concern ethnic groups such as Roma people or Gypsies. Gypsies are an ethnic group who are often discriminated against because of their atypical way of life. Sometimes the European Court takes into account their particular situation¹²⁴. According to the European Union Agency for Fundamental Rights¹²⁵ there are between twelve and thirty-four percent of different ethnicities of Roma discriminated against for housing (date for 2004-2009)¹²⁶. This discrimination is due to ethnic reasons for ninety percent of Roma in Greece for example. The point can be explained by the fact that Greece is currently the country (in the European Union) which is most affected by the economic crisis. The priority of housing cannot include Roma people. There is therefore a link between the economic crisis and social exclusion.

“Further east, in Hungary, Romania, Bulgaria, the Czech Republic, and Slovakia, the situation is even more alarming, with violent attacks and anti-Roma rhetoric and little progress towards ending housing and school segregation despite hundreds of millions of

122 Vienna International Plan of Action on Aging on 1983, was adopted by the World Assembly on Aging held in Vienna, Austria from 26 July to 6 August 1982, p.30

123 DE HERT (P), and EUGENIO (M), Specific human rights for older persons? 2011, European Human Rights Law Review

124 ECtHR, Connors v. The United Kingdom on 27 August 2004 (application n°66746/01) - violation article 8

125 European Union Agency for Fundamental Right, Housing discrimination against Roma in selected EU Member States, An analysis of EU-MIDIS data 2009, p.36

126 European Union Agency for Fundamental Right, Housing discrimination against Roma in selected EU Member States, An analysis of EU-MIDIS data 2009, p.41

euros of EU funding and rulings of the European Court of Human Rights (ECtHR, a Council of Europe court that binds EU States)¹²⁷.”

The problem that we have so far forgotten is that the ethnic mix in Europe is a part of the common heritage. It is not right to ignore a part of people in Europe

The minorities are the first victim of discrimination and it is damageable to note that the Protocol 12 of the European Convention¹²⁸, has not been signed by all Member States (for example France)

b) Attention of the States and the European Court of the economic crisis context in its jurisprudence: Necessity to sustain the right to housing

The European Court: duties for States = a burden. Difficulty implementation of social policy with this crisis

The parliamentary Assembly already recognized in 1999 the economic context in Europe, as “carrying out economic reforms and substantial social changes¹²⁹,” “difficult period of transition” for countries, and the “well as increasing pressure on society on the economic front and from the logic of competition.” However this recommendation explains that the context “makes it essential to promote common values and standards that can be respected by all European countries”

“At the hearing the applicant submitted that the problem of slums, in which one-third of Turkish citizens currently lived, had arisen as a result of the waves of immigration knowingly encouraged for political ends by the successive amnesty laws passed to legalize these dwellings¹³⁰.”

127 Europe's Own Human Rights Crisis by Benjamin Ward - World Report 2011 - Human Right Watch - <http://www.hrw.org/world-report-2012/europe-s-own-human-rights-crisis>

128 Opened signature on 4 November 2000 - ETS 177, 8 IHRR 300 (2000)

129 Recommendation 1415, Additional protocol to the European Convention on Human Rights concerning fundamental social rights, the Official Gazette of the Council of Europe – June 1999, paragraph 3

130 ECtHR, Öneriyildiz v. Turkey, 30 November 2004 (Application no. 48939/99) paragraph 71

The context effect is also underlined in the *Bah v. The United Kingdom Case*¹³¹. This case said “Furthermore, given that the subject matter of this case – the provision of housing to those in need – is predominantly socio-economic in nature, the margin of appreciation accorded to the Government will be relatively wide (see *Stec and Others*, cited above, § 52).”

However, in paragraph 51 the Court tries to relativize the situation by a long explanation detached from the right of housing. The Court is aware of the problematic question of housing but, in this case, does not take into account the right to housing. “In these circumstances, the Court finds that the differential treatment to which the applicant was subjected was reasonably and objectively justified by the need to allocate, as fairly as possible, the scarce stock of social housing available in the United Kingdom and the legitimacy, in so allocating, of having regard to the immigration status of those who are in need of housing.” The Court paid attention to all circumstances of making this decision. According to the Professor Paul Tavernier, the Court follows the arguments of the United Kingdom while the lack of social housing is of the state's doing. He adds that taking care of a child must be an argument of priority status¹³².

The economic, social and cultural rights need flexibility and appropriate attention to the economic crisis¹³³.

c) Contradiction of social actions in transitional situation of State:
example of Kosovo

Kosovo is a country in a post-conflict situation and the main goal is to implement the human rights and the rules of standard Law. Where is the place of the right to housing in this specific context? The Parliamentary Assembly called on the

131 ECtHR, *Bah v. United Kingdom*, 27 September 2011, application n° 56328/07 - article 8 conjunction with article 14. Admissibility of the query. No Violation. §47

132 TAVERNIER (P). 2001. “Chronique de jurisprudence de la Cour européenne des droits de l'homme”, *Journal du droit international (Clunet)* n° 3, July 2012, chron. 6

133 BREMS (E.). *Human Rights Law Review* 9:3. 2009 Human Rights: Minimum and Maximum Perspectives - p.357 about the Case Law Grootboom of the Constitutional Court of South Africa

authority of Pristina “(...) to give priority to the promotion of access to basic rights, including housing¹³⁴.”

In this particular context, the right to housing is a priority started in policy. (Thirty-two percent of Kosovo households' budget is for the housing, and this percentage continues to rise¹³⁵). So the financial aspect is very important. There is much discrimination in Kosovo about the right to housing. Concerning Serbs and Roma the Parliamentary Assembly 2013 Report presents a kind of discrimination concerning the Kosovo Roma, Ashkali and Egyptian population for access to housing¹³⁶. In Kosovo, there is also the problem of returning refugees, the figure rises to forty-nine percent in need of housing. Concerning Roma people this 74,5 percent¹³⁷.

The United Nations Interim Administration Mission in Kosovo established the Housing and Property Directorate¹³⁸. This international aid is justified by the context of post-conflict situation. However, in Kosovo it is damageable to see the Government does not include an adequate housing policy¹³⁹ for all citizens.

The main obstacle of the policy of the development of human rights in Kosovo is the lack of legal basis to be able to make a claim at the European Court of Human Rights; even if the European Union and the European Council joined together their capacity to improve the implementation of human rights by the Ombudsperson Institution.

The Declaration of medium term policy priorities in Kosovo for 2014-2016 present the priorities of strengthening housing and support of social welfare by the building of

134 Draft Resolution point 10.7 by the Committee on Political Affaire and Democracy (AS/Pol (2011) 35) on 14 December 2012. (adopted unanimously). Rapporteur: Mr Björn VON SYDOW

135 Kosovo Agency of statistics - Statistic of Livings Standard in 2007, publish by Statistical Office of Kosovo in November 2008.

136 Parliamentary Assembly, The situation in Kosovo* and the role of the Council of Europe (Doc n° 13088) on 07 January 2013. p.21

137 Parliamentary Assembly, The situation in Kosovo* and the role of the Council of Europe (Doc n° 13088) on 07 January 2013. p.22

138 UNMIK/REG/1999/23 on the establishment of the Housing and Property Directorate and the Housing and Property Claims Commission, on 15 November 1999 -

www.unmikonline.org/regulations/1999/reg23-99.htm

139 The program of the government of the republic of Kosovo 2011-2014

community-based housing for persons with disabilities, adults and children, and for elderly persons without family care¹⁴⁰.

Many efforts have been made to re-build Kosovo. Why does the main European policy not include similar measures in the particular context of economic crisis?

SECTION II: The political aspect to promote the right to housing

All kinds of policies are encouraged by “the will”. That means “the will” in accordance with the political ideology of the Country. The Member States of the European Convention are democratic countries, consequently these States promote and implement democratic values. The argument of being a democratic country should be a result of protection of human rights supported by a real policy but if we exclude the hypocrisy. The implementation of the right depends on the interests of the policies concerning the matter of housing. It is a kind of transparent reality, there is no confusion of power¹⁴¹. For “the will” to protect the right to housing the European Court of Human Rights has its own legislative and judicial interest (§1), as Member States have their own (§2). The implementation of legislation which illustrates democratic policy and the impact on the citizen when th claims this rights in Court.

§1. Political interest according to the European Court on Human rights

The European Court is a jurisdiction, it does not directly have a political interest because it is a jurisdiction and this jurisdiction is an institution of judicial power and not legislate power. However we cannot forget that the Court was created by a political organ as the Council of Europe, which is composed of political representatives

¹⁴⁰ Declaration of medium-term policy priorities 2014-2016 on 15 April 2013, p.35 and 37

¹⁴¹Theory of separation of power: explanation on the introduction

from each Member State. As a protector of human rights in Europe the European Court should conserve its status (a) faced with the European Court of Justice (b).

a) The European Court is the only jurisdiction to guarantee protection of Human Rights in Europe.

Stopping the extension of human rights by this Court means a decline of promotion of human rights in Europe.

The European Court can use the European Social Charter as “the benchmark for fundamental social rights and as one of the keystones¹⁴²”

The unique statute of this Court is recognized by its ability to control the violation of human rights by individual applications. This system “appears to be the most efficient means of improving the protection of European citizens, and of guaranteeing full respect of social rights by States¹⁴³.”

The European Court has many jurisprudence and many mechanisms of protection. The Court adapts this jurisprudence to the modern societies in Europe. The unique character of this jurisdiction rather than being local or international but as regional should guarantee effective protection.

The European Convention guarantees civil and political rights and since 1961 the European Social Charter has protected the economic, social and cultural rights. Despite this there is no jurisdiction of guaranteeing effective protection. It is damageable for the guarantee of civil and political rights that are already promoted by the European Court.

b) European Court of Human Rights faced with the competing role of the European Court of Justice

142 Recommendation 1415, Additional protocol to the European Convention on Human Rights concerning fundamental social rights, the Official Gazette of the Council of Europe – June 1999, paragraph 7

143 Recommendation 1415, Additional protocol to the European Convention on Human Rights concerning fundamental social rights, the Official Gazette of the Council of Europe – June 1999, paragraph 11

The European Court of Justice is facing a challenge. The European Court of Human Rights can be discredited if it does not make an effort to protect social rights. The European Court of Justice has tried since the Defrenne Case¹⁴⁴ to improve the judicial protection of rights by the recognition of human rights. We cannot forget the point that a judge of the European Court of Justice is a judge of “common European Law¹⁴⁵”. There are not specialists of human rights. For these judges an effort is necessary to consider human rights. Since the famous case Costa/ENEL¹⁴⁶ this Court has imposed the primacy of Community Law. This fact has become increasingly important since the adoption of the Charter of Fundamental Rights of the European Union¹⁴⁷ as primary law¹⁴⁸. Henceforth, that is includes article 34 paragraph 3 the social assistance “(...) to combat social exclusion and poverty, the Union recognizes 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.”

There are some problematic tensions¹⁴⁹ between the Human rights standard offer by the European Court and the European Union with this extension of protection of economic and social rights.

Even if the Bosphorus case¹⁵⁰ concludes in paragraph 156, a protection by the Court of Justice is “equivalent protection”. That is not formal but could be “reviewable¹⁵¹.” This term means a possibility for reversal.

144 CJ, Defrenne, on 15 June 1978 (149/77) This case is considered has cornerstone of the Court of Justice for into account the human right (this case concerning the equal gender remuneration)

145 Droit commun

146 CJ, Costa/ENEL, on 15 July 1964 (6-64)

147 Charter of Fundamental Rights of the European Union of 18 December 2000, (2000/C 364/01)

148 Since 2009 by the into force of Lisbon Treaty.

149 PALMER (E.), “Judicial Review, Socio-Economic Rights and the Human Rights Act, Oxford and Portland Oregon, 2009, p.102

150 Cour EDH, 30 juin 2005, Bosphorus Hava Yollari Turizm Ve Ticaret Anonim Sirketi c. Irlande, Rec. 2005-VI, GACEDH n° 69 ; RFDA, 2006, 566, note J. Andriantsimbazovina; RTDH, 2005, 827, F. Benoît-Rohmer ; RTDE, 2005, 749, note J.-P. Jacqué. Selon la Cour, dans le cas où des Etats parties à la Convention européenne ont transféré une partie de leur souveraineté à une organisation internationale, « Si l'on considère que l'organisation offre protection équivalente[en matière de droits fondamentaux], il y a lieu de présumer qu'un Etat respecte les exigences de la Convention lorsqu'il ne fait qu'exécuter des obligations juridiques résultant de son adhésion à l'organisation. Pareille présomption peut toutefois être renversée dans le cadre d'une affaire donnée si l'on estime que la protection des droits garantis par la Convention était entachée d'une insuffisance manifeste » (Ibid., § 156).

151 NIVARD (C.), La justiciabilité des droits sociaux en Europe (Thèse) p.20, 2012

The other point concerns the adhesion of the European Union as a Member of the European Convention. Even if the adhesion is recognized by both parts¹⁵², there are many points to settle. The European Court has to keep its position towards the European Court of Justice, and be ready to control the legislation of European Union which includes an economic, social and cultural dimension.

§2. Political interest according to the Council of the Europe Members States

The Member States have many reasons to implement the right to housing despite the financial means necessary. The implementation of the right to housing improves the national standard of living and supports the stability in each county (a). On an international level it is also important in order to have credibility (b). Europe has a duty to promote human rights but it should be a good example for the rest of the planet which is struggling due to not having the same financial means.

- a) Promotion on a national level: stability by social inclusion as a political strategy

Recommendation 1415 from the Council of Europe explains that the objectives of the social rights “must be an absolute priority for governments¹⁵³.” This proves the support of the development of democratic stability via the sustaining of political reforms (legislative or constitutional). The President Jean-Claude Mignon of the Parliamentary Assembly of Council of Europe said, “it is essential to ensure that the Council of Europe and the EU speak with one voice (when it comes to compliance with our standards)¹⁵⁴.” Harmonisation is essential with the economic crisis.

152 The protocol 14 of the European Court (1st june 2010), and the Lisbon Treaty (1st december 2009)

153 Recommendation 1415, Additional protocol to the European Convention on Human Rights concerning fundamental social rights, the Official Gazette of the Council of Europe – June 1999, paragraph 5.

154 http://assembly.coe.int/ASP/NewsManager/FMB_NewsManagerView.asp?ID=8728&L=1

The European Court recognized “such laws are especially called for and usual in the field of housing, which in our modern societies is a central concern of social and economic policies¹⁵⁵.” This importance and the political dimension justify the wide margin of appreciation “both with regard to the existence of a problem of public concern warranting measures of control and as to the choice of the detailed rules for the implementation of such measures.” On this national level, we can distinguish that the right to housing as an economic, social and cultural right must be implemented in different steps: short, medium or long term¹⁵⁶.

b) Pressure from an the international level: credibility by political promotion of human rights

International help with United Nations Habitat

Russia, The United Kingdom and France have a particular position in the United Nations with the Veto. Politically, these countries have an important position. It is contradictory to promote and to impose the policy on other counties if they themselves do not try to implement human rights such as the right to housing. It can be surprising when we see the Constitutional Court of South Africa in the famous case Grootboom¹⁵⁷, supports the protection of the right to housing while in Europe it is such a sensitive issue. The interesting point in the Grootboom case was that it was against the government.

The non-governmental organisations promote the respect for right to housing. This is important indirect support for the states in different geographic level¹⁵⁸.

155 ECtHR, Mellacher and others v. Austria, on 19 December 1989 (application n° 10522/83, 11011/84 and 11070/84) - paragraph 45

156 BREMS (E.). Human Rights Law Review 9:3. 2009 Human Rights: Minimum and Maximum Perspectives - p.357 about the Case Law grootboom of the Constitutional Court of South Africa

157 Constitutional Court of Africa, Government v. grootboom, on 4 October 2000. 2001 (1) SA 46 (CC); ILDC 285 (ZA 2000)

158 National level:

http://england.shelter.org.uk/get_advice/renting_and_leasehold/housing_association_tenancies

Regional level:

<http://www.housingeurope.eu/news/2658>

International governmental organisations give aid to many countries, such as UN-Habitat. We can note in the web site of this organisation¹⁵⁹, “UN-Habitat around the world” the Kosovo and other countries but no European Countries' member of the Convention. We can believe there are no issues of housing in this area...

This information shows that governments of the Council of Europe are not alone in the struggle to improve human life through the respect and access of the right to housing.

SECTION III: Democratic dimension of the protection of the right to housing: the rationalisation

According to Dominique Rousseau who calls the democracy the "démocratie continue"¹⁶⁰, a democracy is a moving process. This means democracy can still be improved. Full democracy does not exist.

Abbe Pierre the French, emblematic figure for the defense of the right to housing and against exclusion in France said “That's the beauty of democracy to take into account the power of public opinion, but the misery of democracy is everything has to be accepted by the majority, so 50% plus one. But most people do not care about the plight of others¹⁶¹.”

If democracy is people, the aim of democracy has to be to take care of all people. This should include the right to housing as a part of living in dignity.

The jurisprudence of the European Court defines democracy as the only type of regime possible in accordance with the scope of the Convention “Democracy thus appears to be the only political model contemplated by the Convention and, accordingly, the only one compatible with it¹⁶².”

159 <http://www.unhabitat.org/categories.asp?catid=9>

160 OST (F.). « Le temps, quatrième dimension des droits de l'homme », Le journal des tribunaux, Bruxelles, janvier 1999 (p.13)

161 Abbe Pierre 2002, Confession

162 ECtHR, United Communist Party of Turkey and others v. Turkey, on 30 January 1998, (application n°133/1996/752/951), paragraph 45

Moreover the Court specifies “democracy is without doubt a fundamental feature of the European public order¹⁶³”

Democracy justifies a kind of will to improve human rights in each country. The same thing should apply to the right to housing.

Alternatively the Parliamentary Assembly pointed out in paragraph 9 of the Recommendation 1415 “that effectiveness and greater enforceability of social rights for the guarantee of democracy in Europe.”

The Court recognises the current social injustice in Europe but explains in its jurisprudence that is a role for each nation with a margin of appreciation. However it said, “Eliminating what are judged to be social injustices is an example of the functions of a democratic legislature. More especially, modern societies consider housing of the population to be a prime social need, the regulation of which cannot entirely be left to the play of market forces. The margin of appreciation is wide enough to cover legislation aimed at securing greater social justice in the sphere of people’s homes, even where such legislation interferes with existing contractual relations between private parties and confers no direct benefit on the State or the community at large¹⁶⁴.”

The Court said only on one occasion that the “fundamental objective of the Convention, the very essence of which is respect for human dignity and human freedom¹⁶⁵.” We know the principle of dignity is a guidance to support the implementation of human rights, but it is not a legal principle. We cannot make a claim about this principle in the Court, neither on a national or European level; even if the principle of dignity is part of each article of the Convention.

The opposite argument that “To include housing rights within the international system of human rights, would “weaken and dilute all human rights¹⁶⁶” can be discussed

163 ECtHR (chamber), *Loizidou v. Turkey* (preliminary objections) on 23 March 1995 (application n°15318/89), paragraph 75

164 ECtHR, *James v. The United Kingdom*, on 21 February 1986, paragraph 47 (application n°8793/79)

165 ECtHR (Chamber), *S.W v. The United Kingdom* (application n°20166/92), paragraph 44.

166 Clarence J. Dias & Scott Leckie, Part II : Housing Rights and Human Development: Intertwined and Inseparable from “Human Development and Shelter: A Human right perspective”, p.22

because if the right to housing is recognised as a human right its protection could strengthen the promotion of human rights including social rights.

The European level can create a link between the national and the international level. In this way they would not dilute the human rights. The civil and political rights are “essential for a democratic way of life¹⁶⁷”, but the right to housing can contribute to the implementation of these rights.

Others argue that housing is more a goal than a human right¹⁶⁸. This does not make sense because all human rights need a State policy. The right to housing needs “a market policy” because of its economic dimension. However if we take the example of education; education needs money for correct provision of schools, teachers etc... This is the basic step to guarantee real access to education.

Every year each government in each state decides on the amount of budget for each policy, including the policy of education, social policy etc... Correct implementation remains a goal for the states, even if the manner of allocating the budget is not exactly the same for different countries.

If the implementation of all human rights was carried out correctly we would no longer need control of jurisdiction. This is the same reasoning for the right of housing.

According to the principle of democracy the Court should support the states concerning the legislation of the right to housing. According to the same principle the member states should improve their legislation in the spirit of the Convention for the guarantee of effective protection of civil and political rights.

CONCLUSION

¹⁶⁷ TEITGEN (M.), CE Consult.Ass, Debates, 1st Session, p.408 August 1949.

¹⁶⁸ Idem. (previous)

“The will” is essential to put any project into action. Concerning human rights the will to be a democratic country is not sufficient to create a project to implement this right. The right to housing is an economic and social right and the first idea to implement this right properly is the economic commitment.

The right to housing imposes many obligations. To have the will to protect this right it is important to show some concrete interests of the states. The states and the Court have to be aware of the necessity for the promotion of human rights, to revive the economic context, for political credibility. The states have an obligation to protect people on their territory, even if there is a mix of people, by age, by ethnicity, etc.

Concerning the right to housing, minorities are the most vulnerable groups. Most often it is due to an economic crisis that they become the first victims of the situation. The number of people affected by the economic crisis is increasing. If the governments do not change or make an effort to guarantee the right to housing despite this difficult context, these minorities will become a majority and will protest. Everyone would lose out: governments, citizens and human rights.

When governments do not respect and support citizens’ dignity such as a roof over their heads, the people can be violent in their struggle for their minimum rights.

CHAPTER III

The Power: Legal issues of the right to Housing by the European Court of Human Rights

“Justice and power must be brought together,
so that whatever is just may be powerful,
and whatever is powerful may be just¹⁶⁹.”

Blaise Pascale

INTRODUCTION

The Court follows legal reasoning. This is “the power” to protect rights.

Ten years ago Professor Frédéric Sudre developed an idea about “jurisprudence fiction¹⁷⁰” in his comments about social rights in the European Convention, including the right to housing. At the time in a context of liberalism when economic rights were more important than social rights this statement was true, however it is an interesting challenge to see the new options in the current context of emergency and with the Court now showing more audacity in its jurisprudence.

The first two Chapters of this thesis were necessary to support this third chapter as well as to recognize the notion of housing in Great Europe, the current economic context and the different kind of interests which the protection of right to housing supports.

169 BLAISE (P.); “Thoughts on religion and other subjects” p.330

170 SUDRE (F.). “La protection des droits sociaux par la Cour Européenne des Droits de l’Homme: un exercice de jurisprudence fiction?”, *Revue trimestrielle des Droits de l’Homme* (55/2003) p.755.

For the right to housing to be a right covered by the protection of the Court, it has to follow legal reasoning. The texts of the Convention have incredible material for interpretation, which would allow us to extend the existing rights.

This is essential concerning the right to housing¹⁷¹. This chapter is a demonstration of the protection of the right to housing from the different legal techniques from the European Court of Human Rights.

We can also note that the legal part is the most important way for legitimate implementation of the right to housing because the scope, the techniques, the jurisprudences, used for judgments since 1950 will be included.

The right to housing as an economic social and cultural right has a presumption of non justiciability. However the different jurisprudences from the Court illustrate a reversal of this presumption. This phenomenon seems to be in spite of itself because the development of the protection of economic and social rights occurs very sparingly. We should add that reversal of the jurisprudence is not enough to support the protection of this specific right. The right to housing is confronted with two concepts. Namely: the objective character of the Convention, which presumes the extension of an effective protection of the human right as “the maintenance and further realization of human rights and fundamental freedoms¹⁷²” and the criteria of the Court’s competence to limit the access to judgment.

These two opposite views determine the justiciability of the right to housing (Section 1). The justiciability is an opportunity for the Court to rule on the right to housing in a direct and voluntary way and not to present of the issue of housing as secondary but as a full legal issue.

Another key to succeeding in this approach would be to highlight the incoherence of some of past reasoning.

171 HOHMANN J. (2013) *The Right to Housing: Law, Concepts, Possibilities*. Oxford and Portland, Oregon p.67

172 Preamble of the European Convention of the Human Rights and Fundamental Freedoms, paragraph 4.

These two approaches could justify the possible justiciability for claims for the right to housing.

We cannot deny that the approach is a kind of “intellectual gymnastics” because this right is not included in the original text of the Convention and it is the first time that we are following a complete set of steps in the reasoning the Courts should have.

To make the reasoning complete, the justiciability of the right to housing cannot mean the protection of this right. The Court has to analyze the balance of the protection of this right and the impact or burden it has on member states. This is the sensitive part of the reasoning is to find a balance between the obligation of protection of this right to housing and the principle of subsidiarity. This is the fundamental condition to guarantee the effectiveness of the Convention. This analysis will create a new obligation or, in other words, a redefinition of the original obligations the states have. (Section 2).

By these two substantial reasonings: justiciability and the balance of the burden caused by this right, we will see the different opportunities that the Court has to protect the right to housing in an effective and legitimate way.

SECTION I. Justiciability of the right to housing: Objective Character of the European Convention on Human Rights Versus Competence of the Court

The notion of justiciability of the right to housing determines whether or not the Court can recognize the right.

Initially, the right to housing was deprived of this control by the presumption of “non justiciability.” This is explained by its character of being part of the economic, social and cultural rights.

However the jurisprudence of many cases of the Court has demonstrated the opposite. It is a good opportunity to reverse the principle of presumption of non-justiciability (§1). The reversal of presumption of non-justiciability cannot have a real meaning of direct justiciability of the right to housing. The potential justiciability has to be confronted

with the objective character of the Convention which is the essence of the Convention as well as the different criteria of competence of the Court which are the legal limitations of its control.

These concepts have different points, because the first one is a fundamental ideology of the Court and the second one is a legal limitation. This limitation provides a necessary framework for the Court which is already overburdened by applications (§2).

To correctly analyze the right to housing as a justiciable right for the European Convention we must apply these restrictions the right to housing (§3).

§1. Challenge from the presumption of " non-justiciability" of the right to housing: relative justiciability from social rights

According to Kelsen, "all legal norms require interpretation as they must be applied¹⁷³." The European system of the Court is based on interpretation. There are different kinds of interpretation and "conservative" thinkers are critical of some versions of this doctrine¹⁷⁴.

The difficult mechanisms to include social rights, such as the right to housing, in European protection need to demonstrate the presumption of "non-justiciability."¹⁷⁵

This is reversible because it is only a presumption. If we look at the text of the Convention, we can note there is already protection of many economic, social and cultural rights. The Court protects economic rights as the right to property (article 1 protocol 1). It also guarantees cultural and social rights such as education (article 2 protocol 1), equality between the spouses (article 5 protocol 7), the right to respect the family life (article 8), freedom of association (article 11), freedom from forced labor (article 4)

173 (H.) KELSEN, *Théorie pure du droit*, 2^o éd., trad. C. Eisenmann, Dalloz, 1962, p. 454

174 B. EDELMAN, « La Cour européenne des droits de l'homme : une juridiction tyrannique ? », Dalloz, 2008, n^o 28, p. 1946 or des « juges littéralement irresponsables » Y. LEQUETTE, *Des juges littéralement irresponsables*, Mélanges dédiés à la mémoire du Doyen Jacques Héron, LGDJ, 2009, p. 309

175 *Idem* p.757.

From European Court jurisprudence we can see an increase in the importance of these rights from the interpretation of the Court. Favourable interpretation linked with the articles of the Convention allows a protection to be developed.

The Convention does not guarantee social rights (such as housing) but indirectly the Court protects from gender discrimination concerning the parental leave allowance to a father¹⁷⁶ for example and in that instance the contested right is a social right. This allowance is a social right.

The Vienna Convention supports the idea of the indivisibility of human rights¹⁷⁷. This text has international scope that nobody questions. This follows the concept of the interdependence of human rights and supports the justiciability of the right to housing as a human right.

The right to housing needs justiciability. Professor Braibant distinguishes the difference between “normative justiciability” and “subjective justiciability¹⁷⁸.” We will hereby find how to demonstrate if there is “subjective justiciability” which protects the individual. This allows an applicant to make a claim by a subjective right to the European Court, and get satisfaction.¹⁷⁹

This legal reasoning is fundamental to improve the protection of human rights as “the rights and powers to ensure the freedom and dignity of the human person and benefiting from institutional guarantees¹⁸⁰.” For an effective protection we must include the right to housing.

By continuing the Court’s progress in adapting the European Convention¹⁸¹, we can have hope for an indirect protection of the right to housing in the near future.

176 ECtHR Petrovic v. Austria on 27 March 1998 (application n°156/1996/775/976)

177 United Nations, Vienna Declaration and Programme of Action A/Conf.157/23 (1993) Part1 paragraph 5 “the Human rights are indivisible, interdependent, and interrelated”

178 G. BRAIBANT, La Charte des droits fondamentaux de l’Union européenne, Éd. du Seuil, 2001, p. 46 et 85 ; G. BRAIBANT, « L’environnement dans la Charte des droits fondamentaux de l’Union européenne », Cahiers du Conseil constitutionnel, n° 15, 2003, p.160

179 NIVARD, C. La justiciabilité des droits sociaux en Europe (Thèse) p.14

180 F. SUDRE, Droit européen et international des droits de l’homme, PUF, 10ème éd., 2011, p. 13.

181 Cour EDH, 18 December. 1986, Johnston et others v. Irlande, A 112, § 53, GACEDH n° 48 ; AFDI, 1987, 239, obs. C. Coussirat-Coustère ; JDI, 1987, 812, obs. P ; Rolland

We can also note that classical justiciability has allowed Europe to develop a jurisprudence of living comfort. We can be surprised about a regional jurisdiction which supports the protection of “fundamental freedom” as the complete term of the Convention: Convention for the Protection of Human Rights and Fundamental Freedoms. This point shows the gap between the interests of the “logical” admissibility of the right to housing as a shelter for the security and development of the people and other protection such as noise¹⁸² which is an external factor from the home. If the Court has made an effort to protect from noise for 35 years, it is normal to expect an evolution in favour of the right to housing.

According to Professor Burgorgue-Larsen, social rights have benefitted from “indirect justiciability” because those rights could only be protected through subjective rights¹⁸³. That is the case for the European Court of Human Rights.

We can show this indirect protection from the above-mentioned case about noise.

The term of indirect justiciability is more coherent with the atypical right to housing.

However the justiciability of the right to housing according to the rules of admissibility can be effective thanks to the objective character of the Court within its criteria of competence and the admissibility of the claim.

§2. Ideological and legal opposition of justiciability of the right to housing: objective character of the Convention and the competence of the European Court

The objective character of the European Convention is specific to this text if we compare with other judicial instruments. The first Case of the Court concerning the objective character of the European Convention is Austria v. Italy in 1961, when the Court said the “obligations undertaken by the High Contracting Parties in the Convention are essentially of an objective character, being designed rather to protect the

¹⁸² ECtHR, Arrondelle v. The United Kingdom, on 15 July 1980 (application n°7889/77) p.193

¹⁸³ BURGORGUE-LARSEN (L.), Libertés fondamentales, Montchrestien, 2003, p. 324. She use is expression, mostly for articles 2 et 8 of European Convention about the healthy environment

fundamental rights of individual human beings from infringement by any of the High Contracting Parties than to create subjective and reciprocal rights for the High Contracting Parties themselves¹⁸⁴.” This highlights the specific and the strong commitment of the Court and the member states to guarantee the protection of human rights.

The Soering case can remind us of this character “in interpreting the Convention regard must be had to its special character as a treaty for the collective enforcement of human rights and fundamental freedoms¹⁸⁵.”

To quote the European Court, the text of the Convention “creates, over and above a network of mutual, bilateral undertakings, objective obligations which, in the words of the Preamble benefit from a ‘collective enforcement’¹⁸⁶.” That means a collective implementation of human rights.

The objective character of the convention justifies the development of the protection of human rights for the right to housing. A teleological approach shows the “object and the propose” of the Convention and defines the “Convention and with the general spirit of the Convention itself, an instrument designed to maintain and promote the ideals and values of a democratic society¹⁸⁷”

The same case specifies “thus, the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective¹⁸⁸.” The objective character justifies the concrete and effective protection, as the Airey case demonstrated¹⁸⁹.

184 ECtHR, *Austria v. Italy* 1961 (application n°788/60) p.19 paragraph 1

185 ECtHR (plenary), *Soering v. The United Kingdom* on 7 July 1989 (application n°14038/88), paragraph 87

186 ECtHR (plenary), *Ireland v. The United Kingdom* on 18 January 1978 (application n°5310/71) paragraph 239

187 ECtHR (chamber), *Kjedsen , Busk Madsen and Pedersen v. Denmark* on 7 December 1976, (application n°5095/71; 5920/72; 5926/72) paragraph 53

188 ECtHR (plenary), *Soering v. The United Kingdom* on 7 July 1989 (application n°14038/88), paragraph 87 or see also ECtHR (chamber), *Artico v. Italy* on 13 May 1980 (application n°6694/74) paragraph 33

189 ECtHR, *Airey v. Ireland*, on 9 October 1979 (application n°6289/93), paragraph 24; see also ECtHR (plenary) *Belgian Linguistic v. Belgium* on 23 July 1968 (application n°1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64); and ECtHR *Marckx v. Belgium* on 13 June 1979 (application n°6833/74) paragraph 31 (“effective respect on family life”)

The individual application (article 34, ex article 25) illustrated the scope of the European Convention as a “provision which is essential to the effectiveness of the Convention system since they delineate the responsibility of the Commission and Court, “to ensure the observance of the engagements undertaken by the High Contracting Parties”¹⁹⁰.” The objective character of the Court entails the development of a Pretorian category of victim: migrants¹⁹¹. Migrants do not have any protection in the text of the Convention. It is, therefore, possible to extend the text to cover homeless people in a category in general.

This objective character was also developed from the postulate of the universality of humans, because even if the European Convention is a regional text, the extra-territoriality allows the Court to exceed the European frame.

Furthermore, the indivisibility of rights supports this objective character. “The Assembly is deeply conscious of the indivisibility of economic and social rights, and political and civil rights¹⁹².”

The Council of Europe adds “to promote the indivisibility of human rights, including the social, economic and cultural rights, and their implementation¹⁹³,” necessary to support the “international dignity. This excludes the notion of “primary rights” of civil and political rights.

Giving the possibility to make a claim to 800 million potential applicants should be limited, because the Court is already overburdened. The competence of the European Court on Human Rights is edited article 32 of the Convention. This opposition between the promotion of protection and limitation to access to the Court directly concerned the right to housing because this right is not protected by the text of

190 ECtHR (chamber), *Loizidou v. Turkey* (preliminary objections) on 23 March 1995 (application n°15318/89), paragraph 70 (it concerning also the ex article 46)

191 from the article 14 of the European Convention on Human Rights.

192 Resolution 1181 (1999) North-South development co-operation in the twenty-first century: a contribution to the Council of Europe’s second Campaign on Global Interdependence and Solidarity – Europe against poverty and social exclusion, Official Gazette of the Council of Europe – January 1999 (or <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta99/ERES1181.htm>)

193 Council of Europe Campaign on Global Interdependence and Solidarity: Europe against Poverty and Social Exclusion, Final report, 20 November 2000. Paragraph 102 (SG/Inf(2000)45)

the Convention. These conditions are a real obstacle because they are attached to an ideological admissibility rather than an objective one.

Here, we must clarify the term of justiciability when it concerns the competence of the Court and the admissibility of the application. Justiciability allows people to claim rights which come into the competences of the European Court. The admissibility of the application includes many criteria concerning the competence of the Court as well as criteria concerning the claim itself. It is necessary to focus more on the justiciability of the right to housing than the admissibility of the application because the second part seems more remote in the implementation of the protection of the right to housing.

§3. Reflexive analysis of the competence of the Court regarding the right to housing

The application for the right to housing respecting the competence of the Court as a jurisdiction would, as for every application, depend on four conditions. The rules of the competence of the Court are defined in article 35 paragraph 3 (a) of the Convention: “The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that: (a) The application is incompatible with the provisions of the Convention or the Protocols there to.” There are the conditions *ratione temporis* (a), *ratione loci* (b), *ratione personae* (c), *ratione materiae* (d). These conditions are fundamental for the applicability of a claim and for the possible control of the European Court concerning the right to housing.

- a) *Ratione temporis*: favourable competence to the justiciability of cases concerning the right to housing by continuous violation

The *ratione temporis* competence means the international principle of non-retroactivity of treaties. Violation cannot concern facts before the ratification of the

respondent states¹⁹⁴. That means the Court cannot force the states to redress the damage before the ratification¹⁹⁵. However if it is question of an extension of an already existing situation, that violation is attributable for the states¹⁹⁶, also any situation extending beyond that date or one which may be relevant for the understanding of facts occurring after that date¹⁹⁷.

An important detail here is that the *ratione temporis* criteria usually concerns housing as a property.

The “continuous” character of the violation can be noted from all articles from the European Convention (including the intangible article 2¹⁹⁸).

It is important to not neglect the *ratione temporis* competence because we can observe much migration in Europe caused by the civil conflict in the Balkans. Many people left Croatia, or Bosnia during the conflict and now want to return home, but the legislation has changed and these people cannot recover their housing.

There is a recent case about a flat in Croatia¹⁹⁹ where the Parliament continues to violate the law by using property of those who left Croatia during the conflict.

The admissibility of *ratione temporis* by its continuous violation was the key to justify the admissibility of the case because the Court concluded the violation of the article 1 protocol 1. This shows the recognition of the continuous violation about housing (and not the right to housing) because there is a link with the article from the Convention. That is an indirect protection of “the right to keep one’s housing.”

b) *Ratione loci*: competence which reveals the unclear notion of
“residence”

194 ECtHR (grand chamber), *Blečić v. Croatia* on 8 March 2006, (application n°59532/00) paragraph 70

195 ECtHR, *Kopeccky v. Slovakia* on 28 September 2004 (application n°44912/98) paragraph 38

196 ECtHR, *Almeida Garrett, Mascarenhas Falcão and others v. Portugal* on 10 April 2001 (application n°29813/96 and 30229/96) paragraph 43 about the deprivation of property.

197 ECtHR, *Hutten Czapska v. Poland* on 19 June 2006 (application n° 35014/97) from paragraph 147 to 153

198 ECtHR, *Ilascu and others v. Moldova and Russia* on 8 July 2004 (application n°48787/99) from paragraph 406 to 408

199 ECtHR, *Brajović-Bratanović v. Croatia* on 9 January 2009 (application n°9224/06) paragraph from 28 to 30 - In this case the applicant lived the Croatia and when he come back the Municipality give its flat of a policeman forcibly moved by refugee statute.

The *ratione loci* competence means a violation of the rights of the Convention under the jurisdiction of the respondent states or the territory effectively controlled by member states²⁰⁰.

Generally, if we follow the classical approach of the principle of territoriality this criteria is not a main issue. However, the respondent government can support the inadmissibility of *ratione loci* if the applicant is a resident in country other one of the European Convention. The problem is the term “resident” because it presumes an address or a legal status.

Does this exclude the homeless, the “travelers” (Roma and Gypsies people) or the paperless? This means the people who need a home or have a specific “home” (which can move: a caravan, or a slum) cannot have access to the protection of the European Court according the *ratione loci* criteria?

The argumentation of the government in case Haas²⁰¹ talked about “state domicile.” The European Court also uses the term of “a national,” these exclude the question of “residence.”

The view of the Court is also interesting in this case because the Court confirmed the inadmissibility of the *ratione loci* competence but added the “The Court finds that the issues raised in this motion entering the “jurisdiction” of the respondent State within the meaning of Article 1 of the Convention, and therefore they engage its international responsibility (...) It considers, in the light of all the arguments of the parties that the complaint made by the applicant raises serious issues of fact and law, which cannot be resolved at this stage of the examination of the application, but require an examination of the merits”

c) *Ratione personae*: favorable competence for the right to housing through the notion of victim

200 ECtHR, *Cyprus v. Turkey* on 10 May 2001 (application n°25781/94) from paragraph 75 to 81 and ECtHR, *Drozd and Janousek v. France and Spain* on 26 June 1992 (application n°12747/87) from paragraph 84 to 90

201 ECtHR, *Ernst G. Haas v. Switzerland* on 20 May 2010, Decision of admissibility (application 31322/07) Case only in French

The *ratione personae* competence (paragraph of the article 35) means two things. On the one hand a claim should be against a member state of the Convention. This state must have ratified the Convention (article 33)²⁰² and protocols²⁰³. For example protocol 12 concerning the general prohibition of discrimination is not ratified by the Belgium, Germany, France, Italy, Russia, United Kingdom for example. Only eighteen countries have ratified this Protocol.

Secondly, the *ratione personae* means the individuals must live on the territory of one the member states.

Nevertheless this condition is subordinated to other main conditions. This is the notion of victim of the applicant in article 34 of the Convention. This article is fundamental for the effectiveness of the system of the European Convention but depends on article 36 which concerns interstate appeals and has been used fewer than ten times.

This article states “from any person, non-governmental organization or group of individuals.” That means that it not possible to make a claim against an international organization²⁰⁴. The interpretation of this article by the Court is broad.

The European Court has to control this notion of a victim. This in an “*ex post facto*”²⁰⁵

The notion of victim is an autonomous and independent notion that means the definition in domestic law is not necessary to understand this notion²⁰⁶. The existence of prejudice is not necessary²⁰⁷. That is a “potential” victim. For example the Mayor of Argenteuil in

202 Decision of the Commission, E.S v. Federal Republic of Germany on 28 August 1957 (application n°263/57) - the application concerned the Czechoslovak Republic non part of the Convention (ratification only in 18 March 1992)

203 ECtHR, *De Saedeleer v. Belgium* on 24 October 2007 (application n°27535/04) paragraph 68 - non ratification of the additional protocol 7

204 Decision to admissibility *Kyriakoula Stephens v. Cyprus, Turkey and the United Nations* on 11 December 2008 (application n°45267/06) - last paragraph.

205 ECtHR (Grand Chamber), *Scordino v. Italy (No.1)* on 29 April 2006 (application n°36813/97) paragraph 181

206 ECtHR, *Gorraiz Lizarraga and others v. Spain* on 10 November 2004 (application n°62543/00) paragraph 35 “the concept of “victim” must be interpreted autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act”

207 ECtHR, *Brumărescu v. Romania* on 28 October 1999 (application n°28342/95), paragraph 50 but for the famous case *Dudgeon v. The United Kingdom* on 22 October 1981 (application n°7525/76) - by the only existence of the discriminatory criminal legislation (paragraph 34 and 35) or also ECtHR (Plenary), *Klass v. Germany* on 6 September 1978 (application n°5029/71) - legislation on wiretapping

France in 2005 made a decree to use a repellent (with an unpleasant smell) against homeless people. This legislation was not effective because the law enforcement officer of the municipality had never used this repellent. The officer and the French community were shocked by this decision. Fortunately, public pressure managed to stop the establishment of this decision because it had an impact on the dignity of homeless people. This case was not studied by the Court but concerning the notion of victim and the issue of housing we can see a necessity of the non-existence of the prejudice.

What about the homeless who are victims of the non-action of states to find them a shelter in winter? They are potential victims of article 3, by degrading treatment, or even worse article 2, if they die in this hostile environment.

A temporary judicial effect can be enough to justify the notion of victim²⁰⁸.

The notion of victim is a changing notion²⁰⁹, this provides a good reason to expand the victim status to those who do not have the right to housing.

Even if the European Court does not recognize the *actio popularis*²¹⁰, in the Gorraiz Case²¹¹ we observe that an Association for the environment can also be a victim. This is interesting because there are, in Europe, many (non-governmental) Associations for the protection of homeless people²¹², or for minorities group²¹³.

208 ECtHR, *Monnat v. Switzerland* on 21 December 2006 (application n°73604/01) paragraph 33

209 ECtHR, Decision of the admissibility *Collectif National d'information et d'opposition à l'Usine Melox - Collectif stop Melox et Mox v. France* on 28 March 2006 (application n°75218/01) in Law paragraph 3 only in French "la Cour procède à une « interprétation finaliste et évolutive de la Convention », laquelle est un « instrument vivant » qu'il convient d'interpréter d'une manière « qui en rende les exigences concrètes et effectives », c'est-à-dire de manière évolutive. Il en irait en particulier ainsi quant à la notion de « victime » au sens de l'article 34 de la Convention"

210 *Actio popularis* is a latin term which means the collective application concerning the common interest. The Court precise in the case ECtHR, *Michaud v. France* on 6 March 2013 (application 12323/11) paragraph 51 "The Convention does not envisage the bringing of an *actio popularis* for the interpretation of the rights set out therein, or permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention"

211 ECtHR, *Gorraiz Lizarraga and others v. Spain* on 11 November 2004 (application n°62543/00) - the association which defend common interest can be appreciate as victim according to the Court. paragraph 36

212 Example:

http://www.fondation-abbe-pierre.fr/toits_dabord.php?id=669

213 Examples:

<http://www.nationalromacentrum.org/en/> (rome)

<http://www.nationalgypsytravellerfederation.org> (gypsy)

If we follow the reasoning of the Court an Association just needs to present its case before domestic jurisdictions for them to be qualified as a victim. This includes being a direct victim.

An example of an indirect victim can be illustrated with the family of the direct victim, under some specific conditions.

Under article 2 (the right to life) the Court has considered that the spouse of a direct victim can be a victim²¹⁴. We understand that the spouse of the homeless dead person on the street can claim to be a victim, but so can the other members of the family of the direct victim²¹⁵.

Do the undocumented migrants have to commit a crime to be heard by the Court? This leads to a paradox, recognising the *ratione loci* leads to social and civil rights while others are not recognised.

d) *Ratione materiae*: favourable competence for the justiciability of the right to housing by autonomous notions and the extension of article 14 of the Convention

The main issue concerning the right to housing is the *ratione materiae* competence because the right to housing does not exist in the Convention, or in the additional protocols. The problem is to find a link because the violation of the right to housing and the articles of the Convention and protocols.

We can note, that the European Court presided in the *Handyside Case*, it is “Master of the characterization to be given in law to these facts, the Court is empowered to examine them, if it deems it necessary and if need be *ex officio*, in the light of the Convention and the Protocol as a whole²¹⁶.” This exercise to re-qualify the case can be

214 ECtHR (grand chamber), *McCann and others v. The United Kingdom* on 27 September 1995 (application n°18984/91); also in case if the direct victim is dead see ECtHR (second session of the admissibility), *Kaya and Polat v. Turkey* on 21 October 2008 (application n°2794/05 and n°40345/05); or the applicant is dead before for application *Fairfield v. The United Kingdom* on 08 March 2005 (application n°2479/04)

215 ECtHR, *Yasa v. Turkey* on 2 September 1998 (application n°22495/93) paragraph 66. Nephew can be victim of the direct victim

216 ECtHR (plenary), *Handyside v. The United Kingdom* on 7 December 1976 (application n°5493/72), paragraph 41 or ECtHR (plenary), *Wilde, Ooms and Versyp v. Belgium*, on 18 June 1971 (application

interesting concerning the right to housing. If the Court has this competence it should take the initiative to develop an opinion (in favour of) the right to housing.

The “intellectual gymnastics” include finding a source of the convention which can be interpreted as housing in the part of the Convention. There are the autonomous notions which help us find a link with the text of the Convention (1) and article 14 via the non-discrimination (2).

1. The autonomous notion and the right to housing

The technique of the autonomous notion determines the justiciability from the text of the Convention. The European Court recognizes this technique as a European definition, without considering the definition in domestic law. The aim of this technique is to clarify the wide terms of the Convention in a concern of uniformity of the interpretation.

It develops this technique for different terms on the text of the Convention, even if the Court said “the article 8 does not in terms give a right to be provided with home. Nor does any of the jurisprudence of the Court acknowledge such a right²¹⁷.”

We can use this autonomous notion for the justiciability of the right to housing. We will observe specifically the article 8 with the notion of “home” and “family” but also article 1 protocol 1 “possession”²¹⁸.

- Autonomous notion of the right to respect private and family life (article 8)

The right to housing needs to be lawfully established even if the Court reminds “that Article 8 does not in terms recognize a right to be provided with a

n°2832/66; 2835/66; 2899/66) paragraph 49 as “the Court is endowed with full jurisdiction and may thus take cognisance of all questions of fact and of law which may arise in the course of the consideration of the case”

217 ECtHR, Chapman v. The United Kingdom 18 January 2001 (application n°27238/95) paragraph 99

218 ECtHR (Former First Section), Öneriyildiz v. Turkey, 30 November 2004 (Application n°48939/99) - paragraph 139 - the term possession “has an autonomous meaning”

home. Nor does any of the jurisprudence of the Court acknowledge such a right. While it is clearly desirable that every human being have a place where he or she can live in dignity and which he or she can call home, there are unfortunately in the Contracting States many persons who have no home. Whether the State provides funds to enable everyone to have a home is a matter for political not judicial decision²¹⁹.”

We must remember that article 8§1 states “everyone has the right to respect for his private and family life, his home and his correspondence.”

This first paragraph determines the justiciability of the article 8²²⁰.

The European Court explains that the existence of the private life or family life (article 8) cannot enable each family to have a home for themselves alone and it does not go so far as to oblige the State to give a landlord the right to recover possession of a rented house on request “in any circumstance.” The term “home” suggests an opening up to justiciability²²¹.

There are three ways to demonstrate the justiciability of the right to housing through article 8: the notion of private life, notion of family life and notion of home.

We will only discuss the notion of home to concentrate on the right to housing. Even if there is obviously there are a kind of interdependence between the notion of home and the private and the family life.

The violation of the respect to the home has a direct consequence of the private and family life. And the respect of private and family life is the essence of the respect of the home. The private life is at the heart of the notion of the private space into which no-one is entitled to enter²²², consequently the notion of home (as a private space) is important to people, or of central importance²²³.

219 Cour EDH, GC, 18 janv. 2001, Chapman c. Royaume-Uni, Rec. 2001-I, § 99, GACEDH n° 46 ; RTDH, 2001, 887, obs. F. Sudre ; RTDciv., 2001, 448, chron. J.-P. Marguénaud ; L’Europe des Libertés, mai 2001, 2, note M. Levinet.

220 The article 8§2 is about the limitations the this rights. However this second paragraph does not concerning the justiciability of the complain but is necessary concerning the control from the Court.

221 ECtHR (Court), Velosa Barreto v. Portugal, 21 November 1995 (application n°18072/91), paragraph 24

222 DJ Harris and al, Harris, O’Boyle and Warbrick: Law of the European Convention on Human Rights, 2nd ed. Oxford University Press 2009 p.367

223 HOHMANN J. (2013) The Right to Housing: Law, Concepts, Possibilities. Oxford and Portland, Oregon p.68

The *Mentes and others* Case explained this strong link between these three notions such as the Court recognizes “it has accepted to disclose a particularly grave interference (...) right to respect for private life, family life and home, as guaranteed by Article 8 and that the measure was devoid of justification²²⁴” from the destruction of the houses²²⁵.

The relation of the right to housing and the notion of “home” seem obvious because of the terminology.

This notion of “home” as an autonomous notion is wide and can include different types of home. For example one case specified: “whether the flat in question may be considered as the applicant’s home²²⁶”.

However to define if a kind of shelter has the meaning of home the Court must analyze the link of the existence of sufficient and continuous links with a specific place²²⁷.

The Court recognizes many different places as home.

Today, the Court has recognized social housing²²⁸ as home, together with residences that are legally established (like caravans²²⁹). This is important for the Gypsy community.

Sometimes the Court seems confused because it does not recognize “camper vans²³⁰” as “home” in the meaning of article 8, but the Court did say that this kind of “material space” can be identified as a “holiday house²³¹.”

Moreover, the Court has recognized the sentimental character relative to a house even if it is a secondary residence.

224 ECtHR, *Mentes and other v. Turkey* on 28 November 1997(application n°58/1996/677/867) paragraph 73

225 from the serious disturbances have raged in the south-east of Turkey between the security forces and the members of the PKK (Workers’ Party of Kurdistan)

226 ECtHR, *Bjedov v. Croatia* on 29 August 2012 (application n°42150/09) paragraph 56

227 ECtHR, *Prokopovich (ARBITRARY EXPULSION) v. Russia*, 18 February 2005, (application n° 58255/00) - paragraph 36; ECtHR (chamber), *Gillow v. The United Kingdom* 24 November 1986 (application n°9063/80) paragraph 46 - almost nineteen years without live in the house in question or ECtHR, *Mckay-Kopecka v. Poland* on 19 September 2006 (application n°45320/99) ““Home” is an autonomous concept which does not depend on the classification under domestic law. Whether or not a particular habitation constitutes a “home” which attracts the protection of Article 8 § 1 will depend on the factual circumstances, namely the existence of sufficient and continuous links with a specific place”

228 ECtHR (grand chamber), *McCann and others v. The United Kingdom* on 27 September 1995 (application n°18984/91) paragraph 46.

229 ECtHR, *Buckley v. The United Kingdom* (application n°20348/92)

230 ECtHR, *Kanthak v. Republic Federal of Germany* (application n°12474/86). p.103

231 ECtHR, *Demades v. Turkey* on 31 October 2003 (application n°16219/90) from paragraph 32 to 34.

If we follow the sentimental value²³², its value for a first house is huge, even fundamental. We can also make a link with the construction of a family: the house holds all the memories of the family. It is also for this reason that the house can have a sentimental character. Consequently the housing of Gypsies, such as caravans, could be protected by article 8.

The protection of the respect of home presumes the possession of the home before the violation. We can say the *ratione materiae* competence of article 8 is useful concerning the violation from expulsion.

The number of expulsions is increasing because of the current context of the economic crisis. This is a part of the right to housing to maintain a standard of living despite the economic context.

Another point is the problem of the poorly housed. Article 8 mentions the “respect” of the home, and the Court has developed a jurisprudence about welfare, without noise²³³, smell²³⁴ or other pollution²³⁵... This extension is important, because that creates a protection of “external” acts which disrupt the welfare of living. However, the strange point it is that Court has not recognised living in poverty, or the protection from the bad living conditions; except in detention, in article 3 of the Convention.

The Court has also recognised detention as home in the meaning of article 8 because jail is “the living space” of the applicant²³⁶.

232 ECtHR, *Demades v. Turkey* on 31 October 2003 (application n°16219/90) paragraph 32: “person may divide his time between two houses or form strong emotional ties with a second house, treating it as his home”

233 ECtHR, *Deés v. Hungary* on 9 February 2011 (application n°2345/06) from paragraph 21 to 24 - nuisance caused by the heavy traffic or ECtHR, *Moreno Gómez v. Spain* on 16 February 2005 (application n°4143/02) from paragraph 53 to 56 - noise of the pubs and clubs.

234 ECtHR, *López Ostra v. Spain* on 9 December 1994 (application n° 16798/90) paragraph 8: “its start-up released gas fumes, pestilential smells” and concluded on the violation on the article 8

235 ECtHR, *Hatton and others v. The United Kingdom* on 8 July 2003 (application n°36022/97) - noise from the Heathrow airport or also ECtHR *Fadeyeva v. Russia* on 30 November 2005 (application n°55723/00) - industrial pollution.

236 ECtHR, *Brândese v. Romania* on 7 July 2009 (application n°6586/03) from paragraph 64 to 67 - espace de vie

It is surprising the Court does not pay attention to the hygiene (electricity, water, unhealthy) of the housing in family life.

This point has also an important impact when vulnerable people such as children are concerned. Basic living conditions are fundamental for the development of each person. These many contradictions concerning the extension of the justiciability of article 8 about the home excluding the essential environment of a home are damaging for the complete effectiveness of article 8.

It is the competence of the state to create laws concerning the maintaining of suitable housing by the owner.

If there is a conflict concerning the owner and the tenant, the first reaction is to stop the water or electricity supply.

The respect to the home should also presume the respect of the function of the home.

Some commentators think the Court excludes the homeless²³⁷

Of course this reasoning does not apply to people who have bought a house, because in this case it is their responsibility. Except if it is the company of gas and electricity which cuts the supply without warning.

The relation between the right to housing and family life is also important, because they have an interdependent link in the contribution to the success of family life.

The term of family is an autonomous notion according to the jurisprudence of the European Court²³⁸.

In the private sphere the Court protects those at the end of their life²³⁹ through personal development and personal autonomous but it does not extend this right to housing which is the framework of the development and the autonomous of every person.

237 P. Kanna, "Housing Rights: Positive Duties and Enforceable Rights at the European Court of Human Rights" 2008 European Human Rights Law Review 193, 203; Harris et al, above 141 at 379

238 ECtHR (Plenary), *Marckx v. Belgium* on (application n°6833/74) 13 June 1979 paragraph 31

239 ECtHR, *Pretty v. The United Kingdom* on 29 July 2002 (application n°2346/02) paragraph from 61 to 67.

To be clear the Court protects the liberty to die in dignity but not to live in dignity: this seems very ironic.

The Court recognises the violation of the respect of the home from the environment can create a difficulty to enjoy the family life²⁴⁰, by an extension of this we can understand the home is fundamental to have, build and enjoy the family life.

The Court recognises the family allowance which is an illustration of the respect of the family life from the state.²⁴¹ Consequently, help from the state to find housing for a family could and should be part of this respect for family life.

- Autonomous notion of the respect of property (article 1)

The protection of property from the article 1 Protocol 1 provides “Every natural or legal person is entitled to the peaceful enjoyment of his possessions.”

This article implies the enjoyment of the right to housing. Larceneux noted that the emotional dimension of buying housing, a main residence, is fundamental²⁴².

The autonomous notion²⁴³ concerning article 1 protocol 1 is about the term “possession” as a property good.

The Court has developed its European definition to include many types of material property and included the respect of the substance of the property. For this reason this article was used about the destruction of the homes²⁴⁴.

240 ECtHR, López Ostra v. Spain on 9 December 1994 (application n° 16798/90) paragraph 51 “Naturally, severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health”

241 ECtHR, Fawsie v. Greece on 28 January 2011 (application n°40080/07) paragraph 28: “témoigner son respect pour la vie familiale » au sens de l'article 8”

242 LARCENEUX (F.), “J’habite donc je suis,” Etudes foncières, 2011 23-26. p.1

243 ECtHR, Teteriny v. Russia on 30 September 2005 (application n° 11931/03) paragraph 45

244 ECtHR, Akdivar v. Turkey on 16 September 1996 (application n°21893/93); ECtHR Ayubov v. Turkey on 30 November 2004 (application n°48939/00)

The Teteriny Case²⁴⁵ brings hope because the Court said “is therefore satisfied that the applicant's claim to a “social tenancy agreement” was sufficiently established to constitute a “possession” falling within the ambit of Article 1 of Protocol No. 1.”

It is interesting to link the respect of property and the right to housing concerning the relation between the landlord and tenant from the domestic legislation in violation to this article. This right cannot give a right to access to housing. This article is also interesting because it makes it possible to recognise the notion of property concerning slums. However this kind of recognition should not have the aim to normalise or support the installation of slums.

The P. Kenna said this breach can be beneficial to the right to housing for “the eviction or compulsory purchase, partial reduction of possession or prohibiting eviction²⁴⁶”

The J.LS Admissibility Decision is a black point because the Court said “the right to live in a particular property not owned by the applicant does not constitute a ‘possession’ within the meaning of Article 1 of Protocol No. 1 to the Convention²⁴⁷” and concluded by the non-admissibility of the *ratione materiae*. This concerned a vulnerable person: a member of the armed forces.

2. Reinterpretation of the articles from the convention by different types of interpretation.

The European Court sometimes reinterprets articles from the European Convention to extend the justiciability of many human rights but also to bring more precision to the broad lines of the Convention. We can distinguish different types of interpretation from the Court. In the case of the right to housing negative interpretation is the most relevant.

245 ECtHR, *Teteriny v. Russia* on 30 September 2005 (application n° 11931/03) violation of the article 1 protocol 1 => paragraph 50.

NOTE paragraph 47 “In particular, the Court has consistently held that a “claim” — even to a particular social benefit — can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable”

246 P. KENNA, “New Benchmarks for Housing Policy in Europe” (2005) *Urban Lawyer* 83 page 104.

247 ECtHR (Admissibility Decision), *J.LS v. Spain* on 27 April 1999 (application n° 41917/98)

Concerning the right to housing, the negative interpretation leads to concrete justiciability. Negative interpretation consists in reversing the initial meaning of the article.

For example, it was the situation for the case for the right to education. The text of the Convention said from paragraph 1 of the article 2 Protocol 1, “No person shall be denied the right to education” and the Court reversed this negation to be a positive right as it evokes the right to education and the access to education²⁴⁸. The Court has the possibility to reverse a meaning of the text of the Convention and that without any major criticism, because the Court maintains its role to protect human rights.

The Court can therefore do the same for the right to housing with article 1 protocol one. With the sentence “no one shall be deprived of his possessions” (paragraph 1), the Court can said, “the right to have a possession as property.” The term “have” supposes an investment, just as in the right to education. We presume this right is not always free: there can be a cost (higher education - private schools).

The possibility to access would be more reasonable to defend if we reversed its interpretation.

In *Stec v. The United Kingdom* (about article 1 first protocol, the Court said “the Convention must also be read as a whole, and interpreted in such a way as to promote internal consistency and harmony between its various provisions²⁴⁹.”

By this sentence it seems coherent to include the right to housing, because this right fulfills article 1 protocol 1, because to be “entitled to the peaceful enjoyment of his possessions²⁵⁰,” we need access to this possession.

248 ECtHR *Belgian Linguistic v. Belgium* on 23 July 1968 (application n°1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64) p.28 paragraph 3 and 4 as “The negative formulation indicates, as is confirmed by the "preparatory work", that the Contracting Parties do not recognize such a right to education as would require them to establish at their own expense, or to subsidize, education of any particular type or at any particular level. (...) The first sentence of Article 2 of the Protocol (P1-2) consequently guarantees, in the first place, a right of access to educational institutions existing at a given time, but such access constitutes only a part of the right to education.”

249 ECtHR (grand chamber), *Stec and others v. The United Kingdom*, 12 April 2006 (application n°65731/01 and 65900/01)

250 First sentence of the Article 1, protocol 1

Furthermore, this right participates also in the gain of other rights, such as the development of family and private life (article 8), for example, but also the right to life (to not die on the street during the winter) or the prohibition of degrading treatment (to live on the street or under a bridge).

The broad interpretation of the “respect of home” from the reversal of the interpretation of the article 8 could provide access to a home with the “possession” aspect. The extension of this right means more the access to live under shelter with the function to protect the development of the family and personal life (as in renting or social housing) than the fact to “have.” This approach satisfies the respect of the living in a social aspect more than an economic one.

The negative interpretation of article 8 according is commented by Hohmnam “the property rights or conceived as respect for the privacy of family life (...) could be inherent in a right to housing.

The right to live (article 2 of the European Convention) was used to defend the life relating to housing²⁵¹. The Court should engage in a deep reasoning and extend this protection to the non-action of the states not only for the violation by industries or environmental disasters but also from the violation of article 2 for the environmental context. For example, if the winter is very cold and homeless people die on the street because the state authorities did not find them shelter (in a public space such as a gym or a community hall), this involves the responsibility of the states.

“The object and purpose of the Convention as an instrument for protecting human beings also requires that Article 2 be interpreted and applied in a manner which renders its rights practical and effective²⁵².” According to this interpretation of article 2 of the European Convention, what about the people who die on the street every year in Europe?

251 ECtHR, (Former First Section), Öneriyildiz v. Turkey, 30 November 2004 (Application n°48939/99); ECtHR, Budayeva and others v. Russia on 20 March 2008 (application n°15339/02)

252 ECtHR, Berktaş v. Turkey, 1 June 2001, (application n°22493/93) paragraph 151 (only in french) or ECtHR (grand chamber) McCann et others v. The United Kingdom on 27 September 1995 (application n°18984/91) paragraph 146 and 147

It is difficult to show the importance of this situation because there are no official statistics concerning the homeless.

The prohibition of torture in article 3 of the European Convention states “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” Living without housing can be considered as degrading treatment because in this situation the person is excluded from society.

The definition of the “degrading treatment” from the jurisprudence of the Court is “when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance²⁵³.”

Today, living without shelter means improper hygiene and/or food, this has an impact on finding a job and integrating the cycle of the “normal” live in the society.

The European Court has never recognised this situation in violation of article 3. However since the Tomasi Case²⁵⁴ the Court has only analysed the minimum level of severity for the application of article 3 in relative way.²⁵⁵ For example, the Court pays attention to the sex, the age, the health of the applicant, but not the degree of physical suffering.

This is the obstacle to the justiciability of living without housing.

But what is physical suffering? Can it be caused by difficult weather conditions? Can it be on a psychological level caused by suffering from living without shelter. The Court must consider these questions and pay attention to this breach to extend the protection to the right to housing. Knowing this the European Court considers the destruction of a house as a violation of article 3: inhuman treatment²⁵⁶.

253 ECtHR, Jalloh v. Germany (application n° 54810/00) paragraph 68

254 ECtHR, Tomasi v. France on 27 August 1992 (application n°12850/97) paragraph 115 reversal jurisprudences ECtHR, Ireland v. The United Kingdom on 18 January 1978 (application n°5310/71) and ECtHR, Tyrer v. The United Kingdom on 25 April 1978 (application n°5856/72)

255 ECtHR, Kudła, v. Poland on 26 October 2000 (application n° 30210/ 96) paragraph 91

256 ECtHR, Selçuk and Asker v. Turkey on April 1998, (application n°20132/92) paragraph 78 (context of the destruction is also important in this case)

The Court is aware of the importance of the housing in people's lives. The Moldovan Case supports this point. This case concerns the destruction of the housing of a Roma community. The Court concluded the violation of article 3 (and article 8) because the authorities did not rebuild the house²⁵⁷. Paragraph 110 is very hopeful for our case about living without a house because the Court “ considers that the applicants' living conditions in the last ten years, in particular the severely overcrowded and unsanitary environment and its detrimental effect on the applicants' health and well-being, combined with the length of the period during which the applicants have had to live in such conditions and the general attitude of the authorities, must have caused them considerable mental suffering, thus diminishing their human dignity and arousing in them such feelings as to cause humiliation and debasement.”

In the Stanev Case, the applicant claims against the bad conditions of the social care home not respecting article 3 “in particular the inadequate food, the deplorable sanitary conditions, the lack of heating, the enforced medical treatment, the overcrowded bedrooms and the absence of therapeutic and cultural activities ²⁵⁸.” The complainant has a specific situation because he was diagnosed schizophrenic with 90% degree of disablement. The Court concluded violation of article 3. This is very important, because the Court recognised from article 3 the minimum living conditions for a “sick” person but has not done so for “normal” people, with a family for example.

The Court has also recognised a specific protection of article 3 regarding foreigners (policy concerning foreigners such as their entry, residence and expulsion) and prisoners.

257 ECtHR, *Moldovan v. Romania* (N°2) on 30 November 2005 (application n°41138/98 and 64320/01) from paragraph 108 to 114

258 ECtHR, *Stanev v. Bulgaria* on 17 January 2012 (application n°36760/06) paragraph 197:

We must note that a domestic Court in africa recognize also the necessity of the adequate housing (this continent is not rich as Europe): Case Law grootboom of the Constitutional Court of South Africa - “Housing "entails more than bricks and mortar". It requires available land, appropriate services such as the provision of water and the removal of sewage and the financing of all of these, including the building of the house itself. For a person to have "access to" adequate housing all of these conditions must be met: "there must be land, there must be services, there must be a dwelling”

The Court should also pay attention to specific minorities already established in all Great Europe, and the persons who are not in infraction.

In an indirect way, the current reasoning of the Court nearly supports people who commit a crime because it has recognised an interest in their living situation. Criminals are protected, when their housing is concerned.

The right to housing requires us to go one step further in the reasoning of this right in article 3 for it to be justiciable.

This demonstration has for aim to prove the existence of many solutions to implement the justiciability of the right to housing. All these arguments should be considered by the European Court to provide the right to housing itself.

3. The specificity of article 14 and the right to housing

The Prohibition of discrimination as enacted in article 14 of the Convention concerns the rights already protected by the Convention. This article reflects the scope of article 1 of the Universal Declaration on Human Rights as “the inherent dignity and of the equal and inalienable rights of all members of the human family.” The list of type of discrimination is indicative²⁵⁹. This article is important concerning the justiciability of the right to housing because it is a type of opening up because the right to housing in Great Europe is like a privilege and there is much discrimination in its allocation and its respect. The discrimination from the right to housing and the issues about housing such as eviction, renting, enjoyment affect vulnerable people like ethnic minorities which have an atypical “life style” (see the Chapter II - ethnic, age etc..).

Article 14 is not an independent article. This means that to be invoked before the Court, this article has to be combined with another right of the European

259 ECtHR (plenary), *Engel and other v. The Netherlands* on 7 June 1976 (application n°5100/71; 5101/71; 5102/71; 5354/72; 5370/72) paragraph 72

Convention. Nonetheless, the substantial combined article is not required to be violated²⁶⁰.

This leads us to the useful effect of article 14, with its autonomous scope.

Article 14 is a protection by “ricochet,” and it allows it to meet the *ratione materiae* criteria to make the right to housing justiciable. For example concerning housing, article 14 in the Petrovic Case²⁶¹ the Court did not check article 8 but only article 14. This protection by “ricochet” can be applied to the discrimination of the right to housing and can lead to extending the social rights.

However if we study the jurisprudence of the Court we can observe many important points. The dissenting opinion of Judge Pettiti in the Buckley Case²⁶² is interesting, because he noted that case was the first one when the Court answered questions about Gypsies and “travelers” in Europe. He added “the aspects of discrimination and breach of the right to accommodation and a home, inasmuch as they necessarily have an impact on the right to respect for family life, are inseparable from such respect” and that was not noted by the Court.

The Juge Lohmus also said that concerning a specific case of minority it could be necessary, in a concern for equality, to have different treatment (in this case for the protection of their cultural heritage).

However, we can also note a negative point in the Case Bah, indeed, the European Court did not pay attention to the particular situation of the applicant who claimed housing. In this fact the Sierra Leone mother had an underage child.

Almost twenty years separate these two cases, and we have to mention the very limited change in the Court’s reasoning.

260 Landmark judgment: ECtHR (plenary), Abdulaziz, Cabales and Balkandali v. The United Kingdom on 28 May 1985 (application n°9214/80; 9473/81; 9474/81) paragraph 71 or ECtHR (GC), Sommerfeld v. Germany on 8 July 2003 (application n° 31871/96)

261 ECtHR Petrovic v. Austria on 27 March 1998 (application n°156/1996/775/976)

262 Dissenting opinion of Judge Pettiti (France) from the ECtHR (Chamber), Buckley v. The United Kingdom (application n°20348/92), p.27 (no violation of the article 8 and 14)

The European Court has developed a protection of article 14 via a procedural dimension. This point was made from the case concerning Roma people.²⁶³ As noted the judges in the partly dissenting opinion, the attention about the procedural shortcomings should not exclude the analysis of factual evidence²⁶⁴. This approach can be understood as being the fear of the Court to take a stand about Roma people in the context of the substantial article 2 (right to life).

We also have to mention a negative point of the Convention concerning the non-discrimination of article 1 Protocol 12 which defines a general prohibition of discrimination²⁶⁵. The general prohibition of discrimination means the European Court can control all domestic legislation as “any right set forth by law” when a difference could be made concerning “sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” The list is not exhaustive²⁶⁶.

There have been only 18 ratifications for these protocols²⁶⁷. The protection of discrimination is restrained and this low number of ratification is regrettable for two reasons. On one hand, it means the big difference between the member states concerning the control of the Court and the definition of obligation. On the other hand, different geographical protection “amputates” the harmonisation of European protection of human rights (as a collective guarantee), just as for a minimum standard of protection which becomes flexible.

263 ECtHR, *Nachova and others v. Bulgaria* (application n°43577/98 and 43579/98) paragraph 168

264 Judges: Casadevall, Hedigan, Mularoni, Fura-Sandström, Gyulumyan and Speilmann - page 47 paragraph 6 and 7

265 4 November 2000. Entrance into force the 1 April 2005

266 This is the same list of criteria as the article 14, and the Council of Europe had precise “the list of non-discrimination grounds is not exhaustive” in Explanatory report (EST N°177) - paragraph 20

267 <http://conventions.coe.int/Treaty/Commun/ChercheSig.aspCL=ENG&CM=&NT=177&DF=08/05/2013&VL=>

SECTION III: Redefinition of Obligation for the member states: Subsidiarity principle versus European Public Order (Interpretation of the balance)

The minimum European standard on human rights means a general level of protection expected from the Court to create a strong protection of the rights from the Convention. This minimum European standard is illustrated in the European Public Order²⁶⁸.

The European public order is the minimum level of protection provided in a uniform way for all Member States which has the aim to harmonise the national legal order.²⁶⁹ This is the cornerstone principle of the scope of the Convention, to develop a harmonisation of the protection of rights through the obligations imposed on member states. This fundamental approach to rights has a link with another fundamental principle in the European system: the subsidiarity.

The subsidiarity creates a responsibility for member states “for implementing and enforcing the rights and freedoms guaranteed by the Convention²⁷⁰.” This gives a free margin of manoeuvre to member states.

Both of these concepts guarantee the “effective protection” from the Convention and from the Court which control the respect of these principles: the balance of these principles makes a compromise.

The implementation of the right to housing creates a real opposition of these major principles. Today, these different principles are becoming more distant in an ideological aspect (§1), but could find a reconciliation with control of the balance (§2). The effectiveness of the control of the Court concerning the right to housing should be in accordance with the preventive measures (§3).

268 First apparition on the jurisprudence ECtHR, *Austria v. Italy* on 11 January 1961 (application n° 788/60) “to achieve the aims and ideals of the Council of Europe, as expressed in its Statute, and to establish a common public order of the free democracies of Europe with the object- of safeguarding their common heritage of political traditions, ideals, freedom and the rule of law”

269 SUDRE (F.). *Droit européen et international des droits de l'homme* p.203

270 ECtHR (grand chamber), *Scordino v. Italy* (N°1) on 29 March 2006 (application n°36813/97) paragraph 140 - “The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. This subsidiary character is articulated in Articles 13 and 35 § 1 of the Convention”

§1. The ideological issue for the right to housing

The European public order ²⁷¹ concerns all the social aspect of life.

According to the Judge Tulken, the common public order in Europe “comes across different devices that are “the ideal of justice,” namely, equality, the rule of law, human dignity, fairness²⁷².” This framework is an opening to an inclusion of the right to housing. This right determines what living in dignity is and supports the ideal of justice.

The European public order must be analysed in different levels. These levels are variable regarding the principle of subsidiarity. Subsidiarity appears in different parts of the Convention and Court’s control. In the Convention in paragraph 2 Article 8 for example. In the jurisprudence the control of the balance of the Court is illustrated. This is a problem.

The subsidiarity conserves the plurality in the European society and “reflects a European diversity and judicial and cultural²⁷³.”

The principle of subsidiarity can be found in different techniques of the Court’s interpretation.

The national margin of appreciation is an essential liberty for the state to implement actions as it also involves an ideology approach.

§2. National Margin of Appreciation v. fair respect of the right to housing

271 ECtHR (chamber), *Loizidou v. Turkey* (preliminary objection) 23 March 1995 (application n°15318/89) - paragraph 93 “In addressing this issue the Court must bear in mind the special character of the Convention as an instrument of European public order (*ordre public*) for the protection of individual human beings and its mission, as set out in Article 19 (art. 19), "to ensure the observance of the engagements undertaken by the High Contracting Parties".

See also Jean René DUPUY, *un ordre public international, “un ordonnancement juridique fondé sur le primat de normes essentielles auxquelles nul ne peut déroger”*

272 F. TULKENS (former vice-president of the European Court on Human Rights, intervention à la table Ronde sur le thème « Vers un droit commun européen ? » in TETTGEN-Colly, *Op Cit.*, p 305

273 Landmark judgement: ECtHR (Plenary), *Sunday Times v. The United Kingdom* on 26 April 1979 (application n°6538/74)

The national margin of appreciation in a functional necessity because members states are in the best place to analyse their needs in the application of rights from the European Convention. Indeed, the states have a direct link with the living force in their country. This national margin of appreciation is a kind of limitation of the Court's control. This technique of control comes from the inspiration of the principle of subsidiarity and is made from the jurisprudence²⁷⁴ and not from the texts of the Convention or from preparatory work²⁷⁵.

We have to specify that the concept is only on the jurisprudence and consequently not from the text of the European Convention. The national margin of appreciation presumes a particular interpretation of the European Court²⁷⁶. It is even a “crucial²⁷⁷” role in the interpretation of the Court. The margin of appreciation defines the freedom of state to interfere concerning the rights protected by the Convention. This margin is variable.

The margin is limited concerning the substantial (absolute) rights of the Convention such as the right to life and the abolition of the death penalty (article 2, protocol 6 (in time of war) and protocol 13 (any time), prohibition of torture (article 3), prohibition of slavery and forced labour (article 4), no punishment without law (article 7) and the right not to be tried or punished twice (article 4 protocol 7 - non bis in idem).

We have already seen the different possible cases to make a claim against article 2 and 3 for the housing issue. When it is question of life or degrading treatment the member states should have a low margin of appreciation even when it means protecting the life of homeless.

274 For the first time in the Cyprus case: ECtHR, *Greek v. The United Kingdom*

275 H.C. Yourow, *The Margin of Appreciation Doctrine in the Dynamics of European Human Rights Jurisprudence*, La Haye, Boston, Londres : Kluwer, 1996, p. 14

276 Landmark judgement: ECtHR, *Handyside v. The United Kingdom*, on 7 December 1976

277 HARRIS (D.J.), O'BOYLE (M.) & WARBRICK (C.M.) *Law of the European Convention on Human Rights* second Edition Oxford p.11

Concerning the “classical” rights, the margin of appreciation is more flexible.

There is continuous interpretation “the Convention is to be interpreted in the light of the notions currently prevailing in democratic States²⁷⁸”,

Concerning the obligation of Roma people and travellers to leave the place where they live the Buckley case made an “overall balancing test” and concluded by the importance of road safety and environmental aesthetics.

The point noted by the Court in the Stanev Case ²⁷⁹ is interesting. It concerned a Social care house which did not respect the minimum standard of living and the Court rejected the argument from the Government as “the lack of financial resources²⁸⁰”

We must mention the fact in Europe concerning the policy on housing that there is a wide margin of appreciation in opposition to the solution from the grootboom Case²⁸¹. This case is interesting. It was an inadmissible application about article 8, paragraph 1-14 “The Court considers that no positive obligation for the local authorities can be inferred from Article 8 to provide the applicant with a specific apartment²⁸²” for a disabled person.

The effective protection of human rights rather than the implementation of mutual obligations between States, its provisions should not be interpreted strictly in deference to national sovereignty²⁸³

278 ECtHR (Plenary) *Guzzardi v. Italy* on 6 November 1980 (application n°7367/76) paragraph 95; see also ECtHR (chamber), *Tyrer v. The United Kingdom* on 25 April 1978, (application n°5856/72) paragraph 31 such as “the Commission rightly stressed, must be interpreted in the light of present-day conditions”

279 ECtHR, *Stanev v. Bulgaria* on 17 January 2012 (application n°36760/06) paragraph 210

280 ECtHR, *Buckley v. United Kingdom* on 25 September 1996 (application n° 20348/92)

281 Case Law grootboom of the Constitutional Court of South Africa “They applied to the Cape High Court for an order requiring the government to provide them with adequate basic shelter or housing until they obtained permanent accommodation”

282 ECtHR, *Marzari v. Italy* on 4 May 1999 (application n°36448/97)

283 P. Van Dijk et G.J.H. Van Hoof, *Theory and practice of the European Convention on Human Rights*, The Hague/London/Boston, Kluwer, 1998 p. 74-76

§3. Principle of proportionality v. Burden for the states concerning the implementation of the right to housing: redefinition of obligations for the member states

Paragraph 56 on *Mallacher Case*²⁸⁴, the European Judge, makes a point about the social policy made by the legislator of the Austria; even if there was no violation in the conclusion by the Court. The article 1 protocol 1 is a part of the legislation. It is a type of burden for the states

The Judge Pettiti noted in dissenting opinion²⁸⁵ that protection by the Court concerning the house or “domicile” seems higher when the stakes have less risk for the family. This is a case study²⁸⁶ or a decision by the authority to refuse the applicants permanent and temporary license to occupy their home²⁸⁷. The balance of interest is sensitive.

The question of the family life in a “house” should be more important than the question of urbanism.

The balance is variable regarding the common denominator, the right in question.

The right to housing has a domestic standard, a regional standard, a European standard and an international standard, because is essential for the development of all human beings.

We saw in the Chapter I the issue of housing concerns all countries in Great Europe on different levels and to different extents. This issue is common to all member states.

There is a common denominator concerning the housing. The margin of appreciation should be wide, but effective.

284 ECtHR, *Mellacher and others v. Austria*, on 19 December 1989 (application n° 10522/83; 11011/84; 11070/84) - article 1 of protocol 1 control of proportionality of the second paragraph

285 Dissenting opinion of Judge Pettiti (France) ECtHR (Chamber), *Buckley v. The United Kingdom* (application n°20348/92), p. 30

286 ECtHR (Chamber), *Niemietz v. Germany*, on 16 December 1992, Application n°13710/88)

287 ECtHR, *Gillow v. The United Kingdom* 24 November 1986 (application n°9063/80)

New obligations for the member states for an effective protection of the right to housing by the European Court of Human Rights

The main new obligations for the states will be the implementation of equal access to shelter or providing an alternative place (in case of the pollution²⁸⁸)

“The Convention may impose a positive duty to provide housing when it is established that the State is directly guilty of causing homelessness. In such a situation the Convention’s obligation to provide may be more accurately characterized as remedial - to compensate for deprivation of housing²⁸⁹.” This argument is of interest, but for the implementation of an effective protection of the right to housing, the essential point is to find a compromise between all possible applicants and the member states.

On one hand it is easy to condemn the state because it has created a policy of housing but the global context of economy has a real impact on this policy and the member states are also victims. The reasoning is fair but illusory.

We must note that the right to housing should not create a conflict of law, because the implementation of this right will allow to the complete the protection of other rights.

§4. The necessity of the respect of preventive measures regarding the housing issues

We must mention the importance of the preventive measures concerning the right to housing. The preventive measures are provided by rule 39 of the rules of the Court (former rule 36). Paragraph 4 provides control of the preventive measures. The Court reminds us “the object of a preventive measure is to maintain the status quo pending the Court's determination of the justification for the measure²⁹⁰”

288 ECtHR *Fadeyeva v. Russia* on 30 November 2005 (application n°55723/00); ECtHR (Fourth Section), *Moreno Gomez v. Spain* on 16 February 2005 (application n°4143/02)

289 L Clements and A Simmons, “European Court of Human Rights: Sympathetic Unease” in M Langford (ed) *Social Rights jurisprudence: Emerging Trends in International and Comparative Law*, Cambridge University Press 2008 p.413

290 ECtHR, *Aloumi v. France* on 17 April 2006 (application n°50278/99) paragraph 103

The Mamatkoulov and Askarov Case²⁹¹ created a departure from a precedent²⁹² about preventive measures, which created an “obligation,” because in some cases it stops the useful effect of article 34 (individual complaint)²⁹³. This development can evolve and be a protector of the rights of the European Convention. However preventive measures are used more for intangible rights (particularly article 2 and 3). Rule 39 is used in many cases concerning migrants and should be applied to the “standard” citizen.

Preventive measures are fundamental concerning the expulsion from a home. There is direct link with the right to housing.

For example, the expulsion of a family, with children, could have an important effect on the family live. Just like the dispossession of home due to financial debts. But these cases are not really “irreparable damage” as mentioned in the jurisprudence of the Court²⁹⁴.

The preventive measures from article 8 remain rare.

CONCLUSION

The European Court of Human Rights has already accepted claims concerning the right to housing but not for the direct protection of the right to housing

The legal part is so far a fictive part, but proved here to become the concrete part of the reasoning. On one hand it is a fiction because the reasoning is the innovation of applicability concerning the right to housing. On the other hand the reasoning follows application with the mechanisms of the European Court. The system of the European

291 ECtHR, Mamatkoulov et Askarov v. Turkey on 4 February 2005 (application n° 46827/99 and n°46951/99) paragraph 103 and 104 - “interpretation de façon strict”

292 ECtHR (Plenary), Cruz Varas and others v. Sweden on 20 March 1991(application n°15576/89) - before the interim measures were “optional”

293 ECtHR, Aloumi v. France on 17 April 2006 (application n°50278/99) paragraph 103 “the interim measure is sought by the applicant, and granted by the Court, in order to facilitate the “effective exercise” of the right of individual petition under Article 34 of the Convention in the sense of preserving the subject matter of the application when that is judged to be at risk of irreparable damage through the acts or omissions of the respondent State”

294 See previous footnote

Convention has the mechanisms to include the right to housing, even if this “gateway” has not already been established to extend the protection of all human rights.

Today, the European Court offers three types of interpretation

Even if we demonstrate indirect protection of the right to housing, from the justiciability of the competence of the Court to control this kind of violation that means it is effective protection.

Indirect protection of the right to housing is the only way to protect this right because it is not part of the original text of the Convention.

We can see with this reasoning the positive impact of the system of the European Court to protect human rights.

Admittedly, the most criticism is about the instrumentalization of the technique of the European Convention in favour of the protection of human rights. However the Court is the jurisdiction of the protection of human rights, including the right to housing which is a right which would contribute to the efficiency of other rights of the Convention.

The issue of the burden for the member states is the sensitive point to implement the right to housing as a consubstantial right in an effective way.

GENERAL CONCLUSION

The right to housing is a part of the minimum rights of human beings. This right is a cornerstone as it contributes and determines the proper application and enjoyment of the other European Convention human rights such as the respect of a right to property, the prohibition of torture, the respect of the private and family life.

The social aspect of the right to housing is explained by the role housing has in people's integration in society. Vulnerable people by ethnicity, age (old and young), the disabled are the first victims of exclusion from society. This encourages discrimination.

The economic aspect of the right to housing is a major issue. Today the Governments' action is a sensitive issue because it supposes an important financial investment due to the high number of people concerned.

With the current economic crisis the standard of living in the area of the European Convention is worsening rapidly. Nonetheless, this context should be perceived as the right moment for the European Court and the Member States to react before the situation worsens still and citizens protest.

The right to housing, as a legal right, exists more or less everywhere in the Europe of 47 but even in the European Union there is no real enforcement of the right to housing.

Although the right to housing does not exist in the original text of the Convention I have shown that the Court has many techniques and methods of interpretation to extend the protection in favour of the right to housing, especially by the criteria of admissibility of the Court's competence and the Convention's articles and protocols.

I have demonstrated the contradiction of many cases which hereby supports the idea that the Court could, if it follows its objective character, create an official protection through new judgments by taking into account this approach.

The justiciability of the right to housing is the role and the responsibility of the European Court of Human Rights.

We cannot deny the current progress of the Court to create better justiciability concerning housing. However, after this analysis we can clearly say that the Court needs to be encouraged to guarantee the protection of the right to housing and it is legitimate in doing so. This protection can only be genuine if the States confirm their support of human rights by implementing the Court's decision and they will, thereby, provide the "effective" aspect of the protection of this human right to housing.

BIBLIOGRAPHY

Books

ASIMOV (I.). Quoted on p.70 of Mardy Grothe's *ifferrisms: an anthology of aphorisms that begin with the word if*

BRAIBANT, *La Charte des droits fondamentaux de l'Union européenne*, Éd. du Seuil, 2001

BURGORGUE-LARSEN (L.), *Libertés fondamentales*, Montchrestien, 2003

COWAN (D.). 2011. *Housing Law & Policy. Law in Context*, Cambridge University Press.

DELMAS-MARTY (M.). 2009. *Les forces imaginantes du droits (Livre III)*, "La refondation des pouvoirs", Ed. Le Seuil

DIAS (C.J.) & LECKIE (S.), Part II : *Housing Rights and Human Development: Intertwined and Inseparable* from "Human Development and Shelter: A Human right perspective"

HARRIS (D.J.), O'BOYLE (M.) & WARBRICK (C.M.) *Law of the European Convention on Human Rights second Edition* Oxford

HUGO (V.), *Philosophie prose*, in *Océan*, Éd. Robert Laffont coll. Bouquins

NIVARD (C.) *La justiciabilité des droits sociaux en Europe (Thèse)* 2012

ODERZO (J.C) 2002 *Des Vagabonds au SDF: Approche d'une marginalité*, publication Université de Saint Etienne

KELSEN (K.), *Théorie pure du droit*, 2^o éd., trad. C. Eisenmann, Dalloz, 1962

KOLLEGOVAP (A). 2011. *Changes in Russian Housing Policy after the Crisis 2008*

PALMER (E.), "Judicial Review, Socio-Economic Rights and the Human Rights Act", Oxford and Portland Oregon, 2009

RIGAUX (F). 1997. *La loi des juges*, ed. O. Jacob

SUDRE (F.), Droit européen et international des droits de l'homme, PUF, 10ème éd., 2011

STRUYK (R.J.) and KOSAREVA (N.B.), The Russian housing market in Transition. (1993)

VAN DUJK (P.) and VAN HOOFF (G.J.H.), Theory and practice of the European Convention on Human Rights, The Hague/London/Boston, Kluwer, 1998

YOURROW (H.C.), The Margin of Appreciation Doctrine in the Dynamics of European Human Rights Jurisprudence, La Haye, Boston, Londres : Kluwer, 1996,

Documents

Commissariat général du développement durable, Compte du logement 2011, Service de l'observation et des statistiques

P. KENNA, "New Benchmarks for Housing Policy in Europe" (2005) Urban Lawyer 83

LARCENEUX (F.), "J'habite donc je suis", Etudes foncières, 2011 23-26

OST (F.). « Le temps, quatrième dimension des droits de l'homme », Le journal des tribunaux, Bruxelles, janvier 1999

Report prepared for the Steering Committee on Local and Regional Authorities (CDLR) Definition and limits of the principle of subsidiarity, Local and regional authorities in Europe, No. 55

Kosovo Agency of statistics - Statistic of Livings Standard in 2007, publish by Statistical Office of Kosovo in November 2008.

Articles of legal journals

- AGUILA (Y.), Cinq questions sur l'interprétation Constitutionnelle, RFDC, 21, 1995
- BREMS (E.). Human Rights Law Review 9:3. 2009 Human Rights: Minimum and Maximum Perspectives
- BUYSE (A.).European Human Rights Law Review. 2006. Strings attached: the concept of "home" in the case law of the European Court of Human Rights, American University International Law review, Vol 9, issues 3 Article 7, (1995)
- CAMUS (A.), Le Mythe de Sisyphe (chapter "le suicide philosophique")
- DE HERT (P.), and EUGENIO (M), Specific human rights for older persons? 2011, European Human Rights Law Review
- KANNA (P.), "Housing Rights: Positive Duties and Enforceable Rights at the European Court of Human Rights" 2008 European Human Rights Law Review 193
- LOVELAND (I.). 2003. Does homelessness decision making engage Article 6(1) of the European Convention on Human Rights?, European Human Rights Law review
- GARDÓ (S) and MARTIN (R), Impact of the global economic and financial crisis on Central, Eastern, South-Eastern Europe European Central Bank, Occasional paper series n°114 / June 2010
- MARSH (A.) and MULLINS (D.)The Social Exclusion Perspective and Housing Studies: Origins, Applications and Limitations Housing Studies, Vol. 13, No. 6, 1998
- MEGRET (F.), The Human Rights of Older Persons: A Growing Challenge, Human Rights Law Review 11:1 on 29 January 2011
- MELIOUH (F.) and TABET AOUL (K.), "L'habitat espaces et repères conceptuels", Courrier du Savoir, November 2001
- MIKKOLA (M.), "Housing as Human Right in Europe", European journal of Social Security, Volume 10 (2008), No. 3
- O'LEARY (S.), The Constitutional Right to Housing in the Russian Federation: Rethinking the Guarantee in Light of Economic and Political Reform by Sheila O'Leary. Current Digest of the Post-Soviet, N°8, Vol.38, March 26, 1986, Minneapolis,USA

SUDRE (F), Les colloques du Sénat 29 and 30 September 2006, Interprétation
Dynamique de la Cour Européenne des Droits de l'Homme

TAVERNIER (P). 2001. "Chronique de jurisprudence de la Cour européenne des droits
de l'homme", Journal du droit international (Clunet) n° 3, July 2012

Legal documents

=> International

Universal declaration of Human rights and citizens, 1789

Universal Declaration of Human Rights on 10 December 1948

UN International Covenant on Economic Social and Cultural on 16 December 1966

International Convention on the Elimination of All Forms of Discrimination
Against Women

Vienna International Plan of Action on Aging on 1983, was adopted by the World
Assembly on Aging held in Vienna, Austria from 26 July to 6 August 1982

UNMIK/REG/1999/23 on the establishment of the Housing and Property Directorate
and the Housing and Property Claims Commission, on 15 November 1999

=> European

Basic texts

European Social Charter of Council of Europe adopted in 1961

Charter of Fundamental Rights of the European Union of 18 December 2000, (2000/C
364/01)

Lisbon Treaty

Recommendations

Recommendation 1415, Additional protocol to the European Convention on Human Rights concerning fundamental social rights

Reports

Draft report on social housing in the European Union by Committee on Employment and Social Affairs, on 28 January 2013, 2012/2293 (INI)

European Parliament Amendment 1-326, Draft report Karima Delli (PE504.103v01), Social housing in the European Union (2012/2293(INI)) on 28 February 2013- Reference AM\929261EN.doc

Council Regulation (EC) n°168/2007 of 15 February 2007

Council of Europe Campaign on Global Interdependence and Solidarity: Europe against Poverty and Social Exclusion, Final report, 20 November 2000. Paragraph 102 (SG/Inf(2000)45)

European Union Agency for Fundamental Right, Housing discrimination against Roma in selected EU Member States, An analysis of EU-MIDIS data 2009

Draft Resolution point 10.7 by the Committee on Political Affaire and Democracy (AS/Pol (2011) 35) on 14 December 2012. (adopted unanimously). Rapporteur: Mr Björn VON SYDOW

Parliamentary Assembly, The situation in Kosovo* and the role of the Council of Europe (Doc n° 13088) on 07 January 2013

Resolution 1181 (1999) North-South development co-operation in the twenty-first century: a contribution to the Council of Europe's second Campaign on Global Interdependence and Solidarity

=> National

French Republic

French Constitution of 4 October 1958

Loi 48-1360 du 1 septembre 1948 (France)

Loi n° 2007-290 du 5 mars 2007 instituant le droit au logement opposable

Loi n° 2013-61 du 18 janvier 2013 relative à la mobilisation du foncier public en faveur du logement et au renforcement des obligations de production de logement social

United Kingdom

Housing Act of 1996 (United Kingdom)

Scottish Social Housing Charter

Russia

The Constitution of the Russian Federation on 12 December 1993

Kosovo

Kosovo Agency of statistics - Statistic of Livings Standard in 2007, publish by Statistical Office of Kosovo in November 2008

The program of the government of the republic of Kosovo 2011-2014

Declaration of medium-term policy priorities 2014-2016 on 15 April 2013

Jurisprudences

=> Jurisprudences of the European Court of Justice

Costa/ENEL, 15 July 1964 (6-64)

Defrenne, 15 June 1978 (149/77)

=> Jurisprudences of the European Court on Human Rights

Abdulaziz, Cabales and Balkandali v. The United Kingdom (plenary), 28 May 1985
(application n°9214/80; 9473/81; 9474/81)

Airey v. Ireland, 9 October 1979 (application n°6289/93)

Akdivar v. Turkey, 16 September 1996 (application n°21893/93)

Almeida Garrett, Mascarenhas Falcão and others v. Portugal, 10 April 2001
(application n°29813/96 and 30229/96)

Aloumi v. France, 17 April 2006 (application n°50278/99)

Antonyan v. Armenia, 2 October 2010, (application n°3946/05)

Arrondelle v. The United Kingdom, 15 July 1980 (application n°7889/77)

Austria v. Italy, 1961(application n°788/60)

Ayubov v. Turkey, 30 November 2004 (application n°48939/00)

Bath v. United Kingdom, 27 September 2011, application n° 56328/07

Belgian Linguistic v. Belgium (plenary), 23 July 1968 (application n°1474/62;
1677/62; 1691/62; 1769/63; 1994/63; 2126/64)

Berktaş v. Turkey, 1st June 2001, (application n° 22493/93)

Bjedov v. Croatia, 29 August 2012 (application n°42150/09)

Blečić v. Croatia (grand chamber), 8 March 2006, (application n°59532/00)

Bosphorus Hava Yolları Turizm Ve Ticaret Anonim Şirketi v. İrlanda, 30 June 2005,
(application n°4536/98)

Brajić-Bratanović v. Croatia, 9 January 2009 (application n°9224/06)

Brândese v. Romania, 7 July 2009 (application n°6586/03)

Brumărescu v. Romania, 28 October 1999 (application n°28342/95)

Buckley v. The United Kingdom, 29 September 1996 (application n°20348/92)

Budayeva and others v. Russia, 20 March 2008 (application n°15339/02)

Chapman v. The United Kingdom, 18 January 2001 (application n°27238/95)

Collectif stop Melox et Mox v. France, 28 March 2006 (application n°75218/01)

Connors v. The United Kingdom, 27 August 2004, (application n°66746/01)

Cyprus v. Turkey, 10 May 2001 (application n°25781/94)

De Saedeleer v. Belgium, 24 October 2007 (application n°27535/04)

Deés v. Hungary on 9 February 2011 (application n°2345/06)

Demades v. Turkey, 31 October 2003 (application n°16219/90)

Demir and Baykara v. Turkey (Grand Chamber), 12 November 2008 (application n°
34503/97)

Drozd and Janousek v. France and Spain, 26 June 1992 (application n°12747/87)

Dudgeon v. The United Kingdom, 22 October 1981 (application n°7525/76)

Engel and other v. The Netherlands (plenary), 7 June 1976 (application n°5100/71; 5101/71; 5102/71; 5354/72; 5370/72)

Ernst G. Haas v. Switzerland, 20 May 2010, Decision of admissibility (application 31322/07)

E.S v. Federal Republic of Germany (commission), 28 August 1957 (application n°263/57)

Fadeyeva v. Russia, 30 November 2005 (application n°55723/00)

Fawsie v. Greece, 28 January 2011 (application n°40080/07)

Gillow v. The United Kingdom, 24 November 1986 (application n°9063/80)

Godfrey v. The United Kingdom (Commission Decision) (article 8), 4 February 1982, (application n°8542/7)

Gorraiz Lizarraga and others v. Spain, 10 November 2004 (application n°62543/00)

Guzzardi v. Italy, 6 November 1980, (application n°7367/76)

Handyside v. The United Kingdom, 7 December 1976 (application n°5493/72)

Hatton and others v. The United Kingdom on 8 July 2003 (application n°36022/97)

Hutten-Czaska v. Poland, 28 April 2008 - friendly settlement, (Application n°35014/97)

Ilascu and others v. Moldova and Russia, 8 July 2004 (application n°48787/99)

Ireland v. The United Kingdom, 18 January 1978 (application n°5310/71)

J.LS v. Spain, 27 April 1999 (application n° 41917/98)

Jalloh v. Germany (application n° 54810/00)

Jamaa and other v. Italy (Grand Chamber), 23 February 2012, (application n°27765/09)

James v. The United Kingdom, 21 February 1986, paragraph 47 (application n°8793/79)

Johnston and others v. Ireland, 18 December 1986 (application n°9697/92)

Kafkaris v. Cyprus (Grand Chamber), 12 February 2008, (application n°21906/04)

Kanthak v. Republic Federal of Germany (application n°12474/86)

Kaya and Polat v. Turkey, 21 October 2008 (application n°2794/05 and n°40345/05)

Kjedsen, Busk Madsen and Pedersen v. Denmark, 7 December 1976, (application n°5095/71; 5920/72; 5926/72)

Klass v. Germany, 6 September 1978 (application n°5029/71)

Kopecky v. Slovakia, 28 September 2004 (application n°44912/98)

Kress v. France, 7 June 2001 (application n°39594/98)

Kyriakoula Stephens v. Cyprus, Turkey and the United Nations, 11 December 2008 (application n°45267/06)

Krvitsky v. Ukraine, 2 March 2011, (application n°30856/03)

Kryvitska and Konstantin Markin v. Russia (Grand Chamber), 22 March 2012 (application n°30078/06)

Kudla, v. Poland, 26 October 2000 (application n° 30210/ 96)

Loizidou v. Turkey (preliminary objections), 23 March 1995 (application n°15318/89)

López Ostra v. Spain, 9 December 1994 (application n° 16798/90)

Mago and others v. Bosnia and Herzegovina, 24 October 2012 (applications n°12959/05, 19724/05, 47860/06, 8367/08, 9872/09 and 11706/09)

Mamatkoulov et Askarov v. Turkey, 4 February 2005 (application n° 46827/99 and n°46951/99)

Marckx v. Belgium, 13 June 1979 (application n°6833/74)

Martine v. France, 12 April 2006 (application n°5867/00)

Marzari v. Italy, 4 May 1999 (application n°36448/97)

McCann et others v. The United Kingdom (grand chamber), 27 September 1995 (application n°18984/91)

Mckay-Kopecka v. Poland, 19 September 2006 (application n°45320/99)

Mellacher and others v. Austria, 19 December 1989 (application n° 10522/83, 11011/84 and 11070/84)

Mentes and other v. Turkey, 28 November 1997(application n°58/1996/677/867)

Michaud v. France on 6 March 2013 (application 12323/11)

Moldovan v. Romania (N°2), 30 November 2005 (application n°41138/98 and 64320/01)

Monnat v. Switzerland, 21 December 2006 (application n°73604/01)

Moreno Gomez v. Spain, 16 February 2005 (application n°4143/02)

Nachova and others v. Bulgaria (Grand Chamber), 6 July 2005, (application n°43577/98 and 43579/98)

Neuinger v. Switzerland (Grand Chamber), 6 July 2010, (application n°41615/07)

Niemietz v. Germany, 16 December 1992, Application n°13710/88)

Öneryildiz v. Turkey,(Former First Section), 30 November 2004, (application n°48939/99)

Paneenko v. Latvia, 28 October 1999, (application. n° 40772/98)

Petrovic v. Austria, 27 March 1998, (application n°156/1996/775/976)

Pretty v. The United Kingdom, 29 July 2002 (application n°2346/02)

Prokopovich v. Russia, 18 February 2005, (application n° 58255/00)

Saadi v. Italy (Grand Chamber), 28 February 2008, (application n°37201/06)

Salvetti c. Italy, 9 July 2002, application. n° 42197/98

Scordino v. Italy (No.1), 29 April 2006 (application n°36813/97)

Selçuk and Asker v. Turkey, April 1998, (application n°20132/92)

Silver and others v. The United Kingdom, 25 March 1983, (application n°5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75)

Sorensen and Rasmussen v. Denmark, 11 January 2006 (application n°52562/99 and n°52620/99)

Soering v. The United Kingdom (plenary), 7 July 1989 (application n°14038/88)

Stanev v. Bulgaria, 17 January 2012 (application n°36760/06)

Stec and others v. The United Kingdom (grand chamber), 12 April 2006 (application n°65731/01 and 65900/01)

Sunday Times v. The United Kingdom, 26 April 1979 (application n°6538/74)

S.W v. The United Kingdom (application n°20166/92)

Teteriny v. Russia ETERINY, 30 October 2005, (application n°11931/03)

Tomasi v. France, 27 August 1992 (application n°12850/97)

Tyrer v. The United Kingdom, 25 April 1978, (application n°5856/72)

United Communist Party of Turkey and others v. Turkey, 30 January 1998,
(application n°133/1996/752/951)

Velosa Barreto v. Portugal, 21 November 1995 (application n°18072/91)

Wilde , Ooms and Versyp v. Belgium (plenary), 18 June 1971, (application
n°2832/66; 2835/66; 2899/66)

X v. Belgium, 30 May 1974, (application n°5488/72)

Yasa v. Turkey, 2 September 1998 (application n°22495/93)

Z and Others v. The United Kingdom (grand chamber), 10 May 2001 (application
n°29392/95)

Z.H v. Hungary, 8 February 2013, (application n°28973/11)

=> Jurisprudence of the Constitutional Court of South of Africa

Government of the Republic of South Africa and Others v. Grootboom and Others

Websites

<http://www.assemblee-nationale.fr>

<http://www.legislation.gov.uk>

<http://www.vie-publique.fr>

<http://www.globalresearch.ca>

<http://www.insee.fr>

<http://articles.washingtonpost.com>

<http://www.hrw.org/>

www.unmikonline.org

<http://www.unhabitat.org>

<http://assembly.coe.int>

<http://www.nationalromacentrum.org/en/>

<http://www.nationalgypsytravellerfederation.org> (gypsy)

<http://www.fondation-abbe-pierre.fr>

ACKNOWLEDGEMENTS

I wish to express my gratitude to:

Angela Melchior, the director of E.MA, for offering me the opportunity to exist as a lawyer defending human rights because this thesis is a concrete and material part of myself.

Nell Munro, my supervisor, for supporting me during our meetings, coping with the mix of my passion for my topic and my English mistakes.

My sisters for inspiring me for this topic through their fight to live in my grandmother's house.

My father for making him listen to me talk for hours about my thesis without him ever understanding.

My mother for her words of unwavering support.