This year saw a widening gap between the housing rights guaranteed by international and European legal texts and the reality as experienced at national and local level. Breaches of housing rights vary in type and intensity; from the harsh reality of people sleeping rough to difficulties accessing affordable housing. Situations such as discrimination based on administrative status are also common. As has been said in other parts of this report, a wider section of the population than before are being affected by the problem of access to housing due to the financial crisis. This chapter will look at the right to housing in Europe in 2017. While international and European instruments are trying to develop housing rights, Member States continue to disregard them. International and European institutions must be tougher with those States that do not respect their obligations. This chapter also presents several recent developments relating to the implementation of the right to housing for undocumented migrants and the criminalisation of homeless people in Europe. Lastly, we look at the vital role of strategic litigation against austerity measures in holding Member States and EU institutions accountable for the failure to enforce social rights.

THE SPECIAL RAPPORTEUR ON ADEQUATE HOUSING, AN INFLUENTIAL ADVOCATE FOR THE RIGHT TO HOUSING

The Special Rapporteur has been a constant reminder to States of their international obligations in relation to the right to housing. Concerned by the gap between current standards regarding the right to housing and the reality, the Special Rapporteur focuses on concrete obligations that can be implemented, including measuring progress, and that are useful for those advocating for housing rights on the ground.

In her 2015 report on homelessness and adequate housing as a component of the right to an adequate standard of living, she called for States to commit to eradicating homelessness by 2030, in line with the Sustainable Development Goals. In November 2016, the Special Rapporteur launched a worldwide campaign called Make the Shift. “The Shift” calls for us to see housing as a human right and a social good, rather than a commodity. It calls for an end to the financialisation of housing and condemns forced evictions and displacement without alternative housing. In 2017 she focused on the financialization of housing, exploring its detrimental impact on human rights and on the right to housing. She called for governments to ensure markets serve housing needs rather than financial priorities.

In committing to the Sustainable Development Goals, governments worldwide undertook to ensure access to adequate, secure and affordable housing for all by 2030. To meet this ambitious pledge, governments will have to design housing strategies based on human rights. The Special Rapporteur’s next report will focus precisely on human rights-based housing strategies and she will provide guidance on how to design and implement them in an effective way. Considering the scale and depth of homelessness and inadequate housing, it is no longer reasonable for governments to treat these realities as simple policy failures.

Her reports are useful for civil society organisations advocating for housing rights, setting out clear obligations for States; where they are failing and how can they do better. Apart from her reports, she also makes visits which could potentially have an impact in advancing housing rights in Europe, e.g. her recent mission to Portugal, where she has visited as part of her mandate.
of torture or inhuman or degrading treatment, and the right to respect for private and family life, to housing.

The Special Rapporteur welcomed the Canadian decision to recognize the right to adequate housing. This strategy is ambitious in scope, involving the implementation of a comprehensive plan to guarantee the right to adequate housing for people with low incomes. A multi-society monitoring group has been established to make sure the country is implementing a comprehensive plan to guarantee the right to adequate housing according to the Committee. The Committee requested that the country take all necessary measures to implement a comprehensive plan to guarantee the right to adequate housing for people with low incomes. A multi-society monitoring group has been established to monitor compliance with the right to adequate housing.

The European Court of Human Rights has created the European Social Charter, which recognizes the onus on the State to protect the right to adequate housing, and the rights of the European Convention of Human Rights. This applies equally to tenants. The Committee ruled that Spain had violated the right to housing and recommended that the country take all necessary measures to avoid similar situations in the future. It also recommended that the country adopt a comprehensive plan to guarantee the right to adequate housing for people with low incomes.

The participation of civil society is crucial in this process. The Committee urged Spain to take all necessary measures, including financial and administrative, to implement the right to adequate housing for people with low incomes. The participation of civil society is particularly relevant in this context. The Committee recommended that the country take all necessary measures to implement the right to adequate housing for people with low incomes.

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The number of countries that have ratified the Protocol remains low so NGOs are campaigning for more widespread ratification. In Spain, for example, in a joint letter sent in December 2017 to the Deputy Prime Minister several Spanish NGOs (such as Canarias España, ATD Cuarto Mundo, la Plataforma del Tercer Sector and EAPN Spain) called for full ratification of the European Social Charter and the Optional Protocol.

The European Pillar of Social Rights at the social summit in Gothenburg in November 2017. This non-binding declaration includes twenty major institutional principles including Principle 19 on housing and assistance for the homeless:

a. Access to social housing or housing assistance of good quality shall be provided for those in need.

b. Vulnerable people have the right to appropriate assistance and protection against forced eviction.

c. Adequate shelter and services shall be provided to the homeless in order to promote their social inclusion.

This provision makes use of Article 34.3 of the Charter of Fundamental Rights of the European Union which recognises the right to social and housing assistance to ensure a decent existence. Although the Commission’s initiative was welcomed, a point of concern was that of the legal nature of the principles. The principles and rights enshrined in the Pillar are not directly enforceable and non-binding. They need to be translated into concerted action and legislation.

The Secretary General of the Council of Europe believes that the Pillar is an opportunity. However, he expressed concerns that “...”.

Many European stakeholders believe that the provisions of the European Social Charter should be formally incorporated into the European Pillar of Social Rights as a common benchmark.

The United Kingdom adopted legislation that made sleeping rough a sufficient reason to forcibly deport EU citizens and their family members on the basis that they “are an abuse” of the right to residence. On 19 June 2017, FEANTSA, the Migrants’ Rights Network and Praxis brought a complaint before the European Commission against the UK Government legislation. These advocacy organisations believe that interpreting sleeping rough as a form of abuse of the right to residence contravenes EEA rules. This needs to be condemned at EU level to prevent measures targeting destitute mobile EU citizens being adopted by other EU Member States.

You can read more about this in the UK Country Close-up in Chapter 2.
The fact is that penalisation strategies can push homelessness and poverty. Criminalising homelessness and exclusion. Rather than punishing people, local authorities should encourage homeless people to claim their rights. Governments must ensure the people out of public spaces and to claim that homelessness has been solved. Begging bans are often the tip of an iceberg: a wide range of antisocial behaviour measures that can be used to punish or fine people in the name of disrupting public order and measures that criminalise the use of public space by people considered “undesirable” by policy makers and business owners.

Against this backdrop, FEANTSA and Foundation Abbé Pierre have launched a Europe-wide campaign to mobilise citizens in connection or legal residence to refuse access to emergency accommodation services to check the administrative status of migrants and act. Such decisions go against the values and mission of the homelessness sector and, for this reason, a coalition of NGOs led by FEANTSA addressed a letter to the European Commissioner for Migration, Dimitris Avramopoulos, to combat and eliminate its criminalisation and for “the progressive realisation of the right to adequate housing.”

However, cities, regions and countries across Europe continue to use the criminal and administrative justice systems to minimise the visibility of people experiencing homelessness in public spaces. Governments continue to establish formal and informal measures and enforce policies to limit where homeless people can congregate, often punishing those who try to earn a living in public spaces.

Begging bans are gaining credence amongst policy makers as a convenient way to “solve” the problems associated with homelessness and poverty. Most homeless people do not beg for money, however, so making it illegal to beg criminalises homelessness and poverty. Criminalising homelessness opens the door for law enforcement agencies, policy makers and others to push poor people out of public spaces and to claim that homelessness has been solved. Begging bans are often the tip of an iceberg: a wide range of antisocial behaviour measures that can be used to punish or fine people in the name of disrupting public order and measures that criminalise the use of public space by people considered “undesirable” by policy makers and business owners.

A Written Question before the European Parliament condemned Denmark, which has enacted a law against all types of begging, following from similar laws in Greece and Romania. Although these laws target all kinds of begging, it can constitute indirect discrimination by disproportionately affecting Roma people. The situation worsened in Romania after a documentary depicted the Roma as organised beggars. A human rights platform was set up to promote the rights of the Roma. In Sweden, there is growing public debate on a proposal to ban begging. Such laws are spreading, the Commission should therefore react to these discriminations in relation to wealth, not only because this is condemned by European law, but also because it indirectly targets the Roma population, a vulnerable group that EU seek to protect.

Other worrying developments in relation to criminalisation are happening around Europe. In the United Kingdom, there is growing debate about the increasing use of Public Space Protection Orders. In Nottingham (UK), anti-begging posters published by a council were banned by the Advertising Standards Authority (ASA) for “reinforcing negative stereotypes.” In Italy, a municipal ordinance punishing begging was withdrawn by the Council of State and the President of the Republic following a complaint made by Avvocato di Strada.

The fact is that penalisation strategies can push homeless people further into poverty and social exclusion. Rather than punishing people, local authorities should encourage homeless people to claim their rights. Governments must ensure the right to adequate housing and a decent standard of living for all citizens. Public funding should be used to assist and protect households, not to carry out costly penalisation measures.

People on the move, irrespective of whether they are refugees, asylum-seekers, or migrants, are particularly vulnerable to a range of human rights violations, including violations of the right to adequate housing. It is the EU States’ duty to promote and protect the human rights of migrants. Whereas EU states must provide minimum reception conditions for asylum seekers, migrants in transit risk a range of human rights violations and do not receive the same protection.

In many countries, large parts of the homeless population are migrants. In France in particular, shelter and accommodation providers are facing growing pressure from the authorities to participate in deportation procedures. The unconditional right to accommodation is being questioned. On 12 December 2017, the French Government announced the introduction of a mechanism whereby mobile teams led by law enforcement have access to emergency accommodation services to check the administrative status of migrants and act. Such decisions go against the values and mission of the homelessness sector and, for this reason, a coalition of NGOs led by FEANTSA addressed a letter to the European Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos. The Netherlands adopted the use of the local connection or legal residence to refuse access to accommodation, which has been questioned by different decisions of the European Committee of Social Rights such as the Collective Complaint FEANTSA v the Netherlands. Municipalities indicated in their policies criteria on which eligibility for emergency accommodation is based. In the Collective Complaint, the European Committee of Social Rights ruled that there could be no restrictions on access to emergency social services (no criteria requiring local connection or residence permit).

Criminalisation of Homeless People

In 2016 different UN documents and reports at national level have given the impression that things are changing in this area. We are referring to the UN resolution adopted by the Human Rights Council in March 2016 that contained a call for states “to take all measures necessary to eliminate legislation that criminalizes homelessness” and “to combat and eliminate its criminalisation” and “to promote the right to adequate housing.”

However, cities, regions and countries across Europe continue to use the criminal and administrative justice systems to minimise the visibility of people experiencing homelessness in public spaces. Governments continue to establish formal and informal measures and enforce policies to limit where homeless people can congregate, often punishing those who try to earn a living in public spaces.

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3. IS STRATEGIC LITIGATION AGAINST AUSTERITY MEASURES A SOLUTION?

The financial crisis has disproportionally impacted the rights of citizens, especially women, children, and vulnerable and marginalised persons. States have largely failed to address the root causes of the financial crisis, including the deregulation of the financial sector, rising inequality and other systemic weaknesses. The bank bailouts and widespread imposition of austerity measures that followed the crisis reduced government expenditures on human rights development and social welfare when and where they were most needed.

The United Nations Office of the High Commissioner for Human Rights published ‘Austerity measures and economic, social and cultural rights’ which affirms that States should fulfil the following criteria when adopting austerity measures in order to ensure compliance with human rights obligations: “the existence of a compelling state interest; the necessity, reasonableness, temporariness and proportionality of the austerity measures; the exhaustion of alternative and less restrictive measures; the non-discriminatory nature of the proposed measures; the protection of a minimum core content of the rights; and the genuine participation of affected groups and individuals in decision-making processes” (page 12).

In Europe, both the European Court of Human Rights (ECHR) as well as the European Committee of Social Rights (ECSR) had to address austerity measures and other responses to the crisis in their decisions. The ECHR has handed down numerous judgments where the economic factor can be discerned. It grants wide discretionary powers to States when introducing austerity measures, but the Committee of Ministers of the Council of Europe has drawn on several general principles which are used by the Court when applying and interpreting the Convention as mentioned at UN level: “public interest”, “necessity”, “proportionality”, “effectiveness” or “discriminatory measures”.

Legal mobilisations against austerity policies in Europe have tried to hold Member States and EU institutions accountable for the failure to enforce social rights. Although some progress has been made, legal stakeholders recognise the restrictions the courts face in shaping policy. Experts from academia and the voluntary sector discussed this at a conference held in Brussels in September 2017 entitled “Austerity on trial. Legal mobilisations and austerity policies in Europe”. The wide search project explores the cross-border movement in relation to the practice of strategic litigation. The event focused primarily on the fight against poverty and austerity policies.

The case of Spain was a paradigmatic shift with regard to the housing crisis. Many mortgage foreclosure cases have been brought up before the Spanish courts and judges have used preliminary rulings before the European Court of Justice to determine whether national mortgage law was in line with EU consumer law. The European Court of Justice in the Aziz case ruling on March 2013 forced Spanish authorities to change the foreclosure system. The Spanish foreclosure legal system did not allow consumers to oppose abusive clauses within the procedure, and it should, on the contrary, allow judges to analyse abusive clauses and rule according to EU directive 13/93 of Unfair Terms in Consumers Contracts. In the case of residential mortgages, unfair terms are forbidden, and should therefore be eliminated from contracts.

But the legal struggle could not have had the same momentum without the support of a social movement, the P AH (Plataforma de Afectados por la Hipoteca) which has brought together thousands of victims of evictions/mortgage foreclosures across Spain. The P AH movement fights against mortgage foreclosures, forced evictions and abusive lending practices, and for the right to housing for all. Some of their legal strategies include a mass dissemination of judicial decisions on foreclosures procedures.

Legal mobilisations did not start with the crisis. There has been a wide range of case law in previous periods including case law emerging from the global south that can be used in severely resource-poor contexts. Austerity is a global problem and having a narrow regional focus fails to capture the real impact of the global economic recession. Legal mobilisations have not been able to stop austerity measures, and some questioned whether it was worth squandering so much talent and resources that could be used to sustain the activist political movement.

A critical issue is access to the courts. Often, the more vulnerable people, i.e. homeless people, cannot access the courts. There is a need for professionals, judges and lawyers to receive more training on international and European obligations and how they can be applied at national and local level.

Furthermore, key players such as the IMF and the ECB have a relative “immunity” which reduces the impact of strategic litigation. The role of the ECB in austerity agreements with States as well as its instructions to national central banks regarding repossessions have a clear impact on housing rights. We need to ensure that all EU institutions, including the ECB, comply with their human rights obligations.