

The right to suitable accommodation under Article 13 TPD





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- The TPD is an instrument of EU secondary law and as such must be interpreted and applied in accordance with EU primary law which includes the EU treaties and the Charter of Fundamental Rights of the European Union (CFREU).
- The TPD remains a first phase directive (proposal drafted in 2000) that sets minimum protection standards.
- Unlike the TPD, other CEAS instruments were recast. This resulted in improved rights and standards in the area of asylum.
- Temporary Protection Directive shall not be interpreted in a vacuum but in line with other EU law, including the CFREU.

Art. 13 Temporary Protection Directive

- 1) the obligation of the member state concerned to provide temporary protection beneficiaries (TPBs) with suitable accommodation or,
- 2) to provide TPBs with the means to enable them to obtain housing. It also includes the requirement to provide “necessary assistance” with regards to “social welfare and means of subsistence” if displaced persons do not have sufficient resources.

Art. 13 Temporary Protection Directive

- Article 13 of the TPD  one of the core rights guaranteed by the TPD.
- Lack of common definition  implementation varies across member states.
- The TPD does not define the form or level of accommodation to be provided.
- Special needs of displaced persons have to be taken into consideration and necessary assistance has to be provided to unaccompanied minors or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence.

Explanatory memorandum

- “[t]he Member States’ obligations as to the conditions of reception and residence of persons enjoying temporary protection in the event of a mass influx of displaced persons should be determined. These obligations should be fair and offer an adequate level of protection to those concerned”.

EU Charter

- Article 1 of the Charter providing for the right to human dignity: a fundamental right that underlies all other human rights, including the right to a dignified standard of living. (Saciri, Case C-79/13).
- The right to suitable accommodation for persons with specific needs shall be interpreted in light of:
 - ✓ Article 24 protecting the rights of the child,
 - ✓ Article 25 on the rights of the elderly and
 - ✓ Article 26 on the rights of persons with disabilities.
- Article 34 (3) of the Charter provides for the right to social and housing assistance to “ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices”.
- The absence of national legal remedies in terms of access to suitable accommodation should result in direct applicability of Article 47 of the CFREU.

As a basic need and a core value

- “With regard specifically to the requirement to ensure a dignified standard of living, [...] respect for human dignity within the meaning of that article requires the person concerned not finding himself or herself in a situation of extreme material poverty that does not allow that person to meet his or her most basic needs such as a place to live, food, clothing and personal hygiene, and that undermines his or her physical or mental health or puts that person in a state of degradation incompatible with human dignity.”

Haqbin (C-233/18)

Ensuring dignified standard of living

- The CJEU clarified the meaning of the verb “ensure” within the context of providing a dignified standard of living.

In *Haqbin* (C-233/18), the Court stated that the verb is used:

- ❖ To guarantee a dignified standard of living “continuously and without interruption;”
- ❖ To ensure that authorities are responsible for “the provision of material reception conditions guaranteeing such a standard of living, including when they have recourse, where appropriate, to private natural or legal persons in order to carry out, under their authority, that obligation.”

Providing accommodation either in kind or in the form of a financial allowance

- The form and the amount of assistance can be determined by states.
- In *Saciri* (C-79/13) the CJEU confirmed that the financial allowance must ensure a dignified standard of living, be sufficient to meet basic needs and be adequate for the health of the applicants.
- Failure by MS to provide dignified reception conditions would be a breach of EU and international law, and cannot be justified by the large number of persons arriving in the country.
- *Saciri* (C-79/13): *“In that regard, it must be pointed out that it is for the member states to ensure that those bodies meet the minimum standards for the reception of asylum seekers, saturation of the reception networks not being a justification for any derogation from meeting those standards.”*

Access to justice

- TPD does not include a separate provision allowing for judicial review of decisions related to TPBs, including those surrounding social assistance and access to suitable accommodation.
- When implementing the right to suitable accommodation, member states need to ensure access to effective remedies if the standards provided by the Directive are not met.
- If such remedies are not spelled out explicitly in national law, the right to access effective legal remedies shall be drawn directly from Article 47 of the CFREU.

- The TPD does not refer to the definition of vulnerable persons, something that was further developed in second generation CEAS instruments.
- “[The] Member State must ensure that the total amount of the financial allowances covering the material reception conditions is sufficient to ensure a dignified standard of living and adequate for the health of applicants and capable of ensuring their subsistence, enabling them in particular to find housing, having regard, if necessary, to the preservation of the interests of persons having specific needs, pursuant to Article 17 of that directive. [...] the amount of those allowances must be sufficient to enable minor children to be housed with their parents, so that the family unity of the asylum seekers may be maintained.” Saciri (Case C-79/13)

Conclusion

- There can be no derogation from the minimum standards of protection provided by the Reception Directive, even on a temporary basis.
- A parallel can be drawn with the aims of the TPD, designed to ensure minimum standards of protection in the event of high numbers of displaced persons.
- The right to suitable accommodation and means of subsistence are included in the list of minimum standards and should be provided by the authorities with due regard to the special needs of temporary protection beneficiaries.