newsletter

HOUSING RIGHTS WATCH

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Editorial

Dear Readers,

This issue of the Housing Rights Watch newsletter we bring you thought provoking articles on the structure of Europe's housing market, responses to the housing crisis in Spain, and a reflection on the dilemma that migration to Sweden has forced onto housing and homeless services. Also featured is a discussion of the proportionality principle in evictions in France, where fundamental rights are at risk of being ignored, or worse, violated.

Christophe Andre's article re-visits his presentation at the Housing Rights Watch expert seminar on housing solutions last June. Spain has suffered disproportionately from the housing crisis since the economic crisis struck in 2008. Though there has been little substantial improvement for people facing eviction, or those who have lost their jobs and their homes, Spaniards have come together to stand up against the banks and sometimes their own government. As you will have read here and elsewhere, the Spanish government and banks have been tried in the European Court of Justice, the European Court of Human Rights and in the court of public opinion. The Plataforma de Afectados por la Hipoteca (PAH) – a platform of local organizations fighting evictions, has grown across the country and now provides support to thousands of people struggling with the threat or fact of eviction and all of the associated complications. The PAH has used legal avenues, as well as civil disobedience to demand changes to legislation and processes used by landlords and banks. Rafael Carmona and Sonia Olea Ferreras speak to HRW about the PAH and its place in Spain's fight for human rights and justice.

Carl Wirehag and Fabrizio Vittoria provide us with a thoughtful piece on the new dilemma social workers face when supporting migrants in Sweden. The question of rights is at the core of their work, but can the current system respond to new needs and new issues that migrations has brought to Sweden?

Annabelle Dumoutet tackles the question of proportionality in her piece which examines rights of people in adverse possession of property in France as regards the right to housing.

This year, Housing Rights Watch, along with Fondation Abbé Pierre, FEANTSA and Caritas Spain, hosted an expert workshop in Madrid in June 2014 on housing rights and housing solutions for homeless people in times of economic crisis. We started with the premise that the economic crisis is a housing crisis which has had a terrible impact on the respect of human rights in Europe – a theme that you have seen in the pages of this newsletter over the past several years. So, if we take the violation or the non-respect of housing rights as given, and we know that thanks to austerity measures across Europe there is less public money for services and housing, what can we do? We wanted to create a space to talk about possible solutions

or new ways of working together, because we know that the problems are not going away anytime soon.

Experts worked together in intensive sessions to share promising practice and to consider the following questions:

- How can we make more housing available for homeless people, for people who are most severely affected by the financial and housing crisis?
- How can we free up social housing stock that needs to be renovated?
- Can we convince banks and local authorities to open up the empty housing they hold to families who need it?
- What regulations and policies are in place in Europe to ensure a healthy balance between homeownership and rental properties in the housing market?

The goal of the expert workshop was to find new partners and consider these questions from different perspectives. We also found ourselves with a long list of interesting possibilities for future cooperation. There is a clear demand to share information about different policies and practices – both from NGOs and policy-makers – with the goal of improving and increasing the stock of affordable housing. Housing Rights Watch will help to stimulate discussion amongst new partners so that these ideas for housing solutions can become just that: real housing for people who need it.

Check out the Housing Rights Website where we have posted presentations from the Madrid workshop: www.housingrightswatch.org

For jurisprudence updates, we invite you to visit the Jurisprudence Database on the Housing Rights Watch website - http://www.housingrightswatch.org/jurisprudence. We'll provide you with an overview of developments in the next edition of the newsletter.

As always, we welcome your comments and suggestions.

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Understanding the challenge: changing housing systems

By CHRISTOPHE ANDRÉ [1]

Seven years after the global financial crisis which triggered the worst recession in industrialised countries since the Great Depression of the 1930s, the world economy is recovering, albeit at a different pace across countries and amid significant uncertainties. Housing markets played an important part in the recession, from the meltdown of the US subprime market to the collapse of housing prices and construction in Ireland and Spain. This article starts with a short description of the drivers of the pre-crisis housing boom. Even though every national or even regional or local housing market is specific, common factors can be identified. As the crisis has driven housing prices down in many places and monetary policy interventions have cut interest rates to exceptionally low levels, dwellings now look generally more affordable. However, several countries suffer from a structural shortage of housing, which the collapse of construction over recent years has exacerbated, and which keeps prices and rents high. Moreover, the protracted economic downturn has eroded real household income, increased unemployment and poverty, while in some cases government support for housing has been scaled back, leaving the most vulnerable population groups with limited suitable housing solutions. Rethinking housing policies is hence crucial, both to avoid that adverse housing market developments destabilise the economy again and to allow access to decent housing for all.

Easy access to credit boosted demand for housing before the crisis

Falling interest rates since the 1990s have allowed households to borrow increasingly high amounts to finance dwelling acquisitions. For example, a household committing to repay the same annuity over 20 years can borrow almost twice as much at a nominal interest rate of 4% as at a rate of 12%. Furthermore, as housing prices increased, the term of loans tended to lengthen. As an illustration, in Spain the average term of mortgages was 12 years in 1990, 22 years in 2000 and 28 years in 2007. By that time 50-year mortgages were not uncommon. The lengthening of the mortgage term increases further the borrowing capacity. For the same reimbursement annuity, a 50-year mortgage at a rate of 4% allows borrowing almost three times the amount that could be borrowed at a rate of 12% over 20 years. Strict limits on loan-to-value (LTV) ratios would have limited the expansion of borrowing capacity. However, maximum loan-to-value ratios were often raised during the boom. Maximum LTV ratios have now returned to more conservative levels, making the build-up of a deposit challenging for first-time buyers.

Other mortgage market innovations flourished prior to the crisis, including an expansion of adjustable-rate mortgages, interest-only loans and housing equity withdrawal. More generally, lending standards were relaxed in many countries, even though rarely to the extent reached in the United States subprime market. Household debt increased spectacularly in most OECD countries. While low interest rates are keeping debt servicing costs down, indebtedness entails some risks for households and the financial system. Even if households are able to repay their debts in the face of an adverse shock, such as a rise in interest rates or a fall in income, they will need to reduce consumption, with a negative impact on economic activity and employment.

Increasingly global financial markets have also facilitated the expansion of mortgage lending in some countries and strengthened international synchronisation of housing cycles. In many countries, a significant share of long-term mortgage lending was financed by foreign capital, notably through short term securities. This maturity mismatch caused the collapse of several financial insti-

1 Organisation for Economic Co-operation and Development (OECD). The views expressed in this article are those of the author and do not necessarily reflect those of the OECD or its member countries.

tutions when liquidity evaporated in the wake of the US subprime crisis. While complex securitisation structures proved particularly vulnerable in the financial crisis, covered bonds have been resilient and are an increasingly popular instrument to fund mortgages in Europe. Residential mortgage-backed securities also have a role to play, provided sound underwriting standards ensure the quality of assets and transparency standards are high.

Supply responses varied across countries

The expansion of housing demand resulted in varying housing market developments across countries, depending on structural features and notably the responsiveness of supply. In countries where supply is tight, for example because of stringent land-use regulations (e.g. the United Kingdom), higher demand leads to higher prices both in the short and medium-term. In countries where supply is responsive to demand (e.g. Ireland, Spain), prices also increase in the short term, because of construction lags. However, higher housing prices boost construction, which tends to overshoot. Oversupply then brings prices down in the medium term. While this short explanation is overly simplistic, as it overlooks feedback effects through economic activity, employment, impacts on balance sheets and financial sector conditions, it matches well recent evolutions across OECD countries. Overall, large shifts in demand for housing tend to result either in permanently high prices, making access problematic for low-income households, or in destabilising construction booms.

The legacy of the global financial and economic crisis

The deep and protracted downturn will have lasting repercussions on the economic and financial system, ranging from losses in potential output to reforms in financial regulation and management of public finances. Here, we focus on consequences for housing markets. Housing prices have fallen sharply in some countries (e.g. Denmark, Ireland, Spain), but remain high in others (e.g. France, United Kingdom, Norway, Sweden), where they are supported by low interest rates and fairly tight supply, at least in some areas. Contraction of construction has been more widespread than price falls. Building activity is extremely low in countries that had experienced a construction boom (e.g. Ireland, Spain), but also weak in countries which tend to suffer from a structural shortage of dwellings (e.g. France, United Kingdom). This is likely to worsen affordability problems in the medium term.

The number of mortgages in arrears varies across countries. Low interest rates have generally alleviated the reimbursement burden, especially in countries where variable rate mortgages are predominant. Hence, in many countries arrears have been lower during the current crisis than in the early 1990s when interest rates were much higher. Nevertheless, arrears are high in some euro area and central European countries. Foreclosures have been much less frequent in Europe than in the United States, partly because of the absence of non-recourse loans[2] and because of lenders' forbearance. Some measures have also been taken in some countries to facilitate household debt restructuring, although they have generally been modest.

How affordable is housing?

A critical question as OECD countries are slowly emerging from the crisis is how affordability and access to housing has been affected. On the one hand, housing has become cheaper in many places and very low interest rates benefit households with good borrowing capacity. On the other hand, access to credit has become tight, often requiring large deposits, which are difficult to build up for first-time buyers. High unemployment, stagnating or even falling real income and rising poverty further hamper access to housing, even in the rental market. Government support for housing has also been scaled back in some countries facing tight budget constraints. Altogether, access to decent housing is a challenge for many low income households across Europe. Beyond the obvious social consequences, this is likely to affect economic performance, notably through a negative impact on employment.

Rebuilding housing systems

Although each housing system is different and some have been more severely affected by the recent economic

2 In some US States, mortgages are non-recourse, in the sense that if the house foreclosed is worth less than the mortgage debt, the lender has no recourse to claim the difference. Even in States where recourse exists, it is often difficult in practice.

crisis than others, a number of lessons can be learnt from recent events, both for mortgage finance and housing policies. Large changes in interest rates and credit conditions have a huge impact on housing markets. As housing supply is rigid in the short term due to building delays, increases in demand made possible by cheaper and more accessible credit result in prices increases. In turn, rising prices tend to generate additional demand, as price expectations tend to be extrapolative. This can fuel housing price bubbles. Hence, there is a need to smooth the credit cycle. Although monetary policy may have a role to play, it is a crude instrument to dampen the housing cycle and its use for that purpose could entail large costs in terms of economic activity and employment. Therefore, policymakers are increasingly turning to macro-prudential policy instruments – e.g. limits to loan-to-value ratios, counter-cyclical capital buffers – to try to limit housing market volatility and unsustainable debt accumulation. Such instruments are promising, although they are largely untested in OECD economies. Risky lending should be monitored closely, all the more as lending standards tend to be relaxed when the market is buoyant. Prudent underwriting and transparency, as well as amortisation of mortgages, should be encouraged. High loan-to-value loans should attract higher capital requirements for lenders or be backed by well-designed mortgage insurance. Such rules are essential both for financial stability and consumer protection. Developments in commercial property, loans to developers and construction companies and mortgage lenders' maturity mismatches call for close monitoring, as they are often at the heart of financial meltdowns. Finally, it is crucial to make sure measures taken to strengthen the financial system are not circumvented through shadow banking.

Structural features and housing policies can amplify or dampen housing cycles. Across OECD countries a balanced tenancy structure is associated with more stable housing markets. Most highly volatile housing markets in recent years had high home-ownership rates, often pushed up by unsustainable household debt accumulation. Countries with well-functioning rental markets, such as Germany and Switzerland, have been less prone to housing price volatility. Notwithstanding, government policies tend to be biased towards homeownership. Tax advantages, such as mortgage interest deductibility and the absence of taxes on capital gains and imputed rents, have boosted demand for owner-occupied property in many countries. Such tax advantages tend to be, at least to some extent, capitalised into housing prices. In addition to increasing the level of housing prices, they seem to increase their volatility. Furthermore, they tend to disproportionately benefit higher income households, which buy more expensive houses, while most low-income households rent.[3] Hence more tenure-neutral taxation would be advisable. Effective and efficient rental market regulations, which strike the right balance between tenants' and landlords' rights, are also crucial for the development of a well-functioning private rental market. On the one hand, ensuring security of tenure is key to making renting an attractive long-term alternative to homeownership. On the other hand, excessively tight regulations are likely to discourage the supply of private rental housing. Supply of affordable housing is often low, which calls for government intervention, which needs to be carefully designed to avoid perverse effects such as spatial segregation and unemployment and poverty traps. Finally, stringent land-use regulations and insufficient investment in infrastructure can lead to a chronic shortage of dwellings.

Concluding remarks

In a low interest rate and globalised finance environment, housing prices are increasingly volatile. This generates risks for households, the financial system and the wider economy, which need to be monitored carefully. At the same time, access to housing is increasingly problematic for some segments of the population in many countries, which has significant social and labour market consequences. Policymakers are facing a tough challenge to prevent housing market instability and to improve access to decent housing. Nevertheless, as outlined in this article, a number of lessons can be drawn from recent history to build more resilient and inclusive housing systems.

3 This is mitigated in some cases by ceilings on mortgage interest deductibility and specific measures targeting low-income households.

FEATURE INTERVIEW:

Plataforma de Afectados por la Hipoteca: A new social movement for housing rights

In the light of the current housing crisis in Spain, HRW interviewed two experts: ***Rafael Carmona****, a member of civil society solidarity movements, and the PAH - the Plataforma de Afectados por la Hipoteca (Movement of People Affected by the Mortgage Crisis) in Cordoba* [1] *and* ***Sonia Olea Ferreras****, member of the Legal Support Group at Caritas Spain* [2]*, specialised in homelessness and working with vulnerable people and member of FEANTSA's Housing Rights Expert Group and Housing Rights Watch.*

Background

In recent years hundreds of evictions have been carried out in Spain leaving entire families on the street without resources. Property market policies have been abusive and uncontrolled, and have allowed housing prices to skyrocket above their real value and people's means. Banks in Spain granted loans to families who both did not have, or have since lost their ability to bear the economic costs [3] of mortgages; some banks have engaged in fraudulent lending.

As a result, several citizens groups have been formed in Spain which focus on the housing situation, and the impact of the management the housing market and the lack of oversight by the state on people's lives. The PAH - Plataforma de Afectados por la Hipoteca (Platform of those Affected by the Mortgage Crisis), which grew out of local chapters, now operates on a national level. The movement promotes active strategies to use the rights and responsibilities of citizenship to change the relationship between state, market and civil society, and to take on a more important role in housing and urban policy issues.

Interview

HRW: How was the Paltaforma de Afectados por la Hipoteca (PAH) created?

Rafael Carmona (PAH): The PAH started in 2007, following an eviction. All of us understand housing as a human and fundamental right, so we came together to support and help the first families affected by this eviction, and established PAH collective in Cordoba. Since then, more people have been organizing themselves, in response to the avarice of the banks.

HRW: The PAH helps families find homes – sometimes as occupiers of bank-owned buildings – why and how?

Rafael Carmona (PAH): The aim of the PAH groups is to look after the affected families, to strengthen each other, to prepare actions, to publicize actions, to accompany the affected families when they go to banks and financial institutions, etc. These support groups are fundamental, because the families we are supporting are in a very precarious situations. They may have been living for in their cars for several days; forced to stay at friends' houses with their children, some parents have even had to sleep in the entrance hallway of the buildings they used to live in.

We are fighting because local, public administrations are not doing their jobs: they should be resolving these situa-

1 http://pahcordoba.wordpress.com/

2 http://www.caritas.es/

3 Foreclosures have led to the eviction of thousands of families. In 2011 the Spanish courts ordered 58,241 evictions, representing an increase of 20% over the previous year. Around 150,000 families have lost their homes during the crisis, in addition to the 135,000 who are suffering foreclosure proceedings today. More than 430,000 families could lose their homes within the next four years.

tions. City councils, the Andalusian regional government, as well as the Spanish government – none of them are doing enough. So, we have to look for alternatives. In our city there are plenty – more than one thousand – empty housing units owned by the banks. We help families to re-house themselves in those flats.

We address housing in its integrity, understanding "decent housing" as one with the basic services included, which means that we also organize access to utilities - electricity, water and gas.

Sonia Olea Ferreras (Caritas): The PAH - Plataforma de Afectados por la Hipoteca is a model organization, both in terms of its political impact as well as their proposals for legislative changes. They have been successful in the difficult task of empowering families, sharing good practices, influencing politics, organizing "escarches [4]" and demonstrations. They have even produced manuals to explain to people what to do when they receive an eviction notice from the bank. They are calling for more social rental housing, "dación en pago [5]", stopping evictions and important legislative changes [6].

HRW: How has the economic crisis affected housing?

Rafael Carmona (PAH): The crisis has affected the whole society. Over the past three years, the profile of people seeking help has changed: At the beginning, migrants to Spain came to ask for help, then young people. Next came those people who had signed mortgages as guarantors, and most recently, self-employed people and small business owners are now also being affected by evictions. We don´t think that this is just a crisis. We think that it is an organized scam!

Sonia Olea Ferreras (Caritas): Many people have lost their jobs. There are hundreds of people who are slipping into situations of poverty and social exclusion. Today, poverty in Spain is more serious and more deeply rooted than before; it is permanent and structural now. The supposed signs of economic recovery are not going to make this problem go away. The damage is widespread and it will take years to recover from the violations of human rights that have been committed in recent years.

HRW: Where do evicted families go after losing their homes?

Rafael Carmona (PAH): Here in Cordoba there are only a few people living on the street. Most people who are evicted go to live with their family or friends. The family plays a very strong role in supporting the social structure in Spain, which is why we haven't seen even bigger public protests about the crisis and the evictions. But this means that families, particularly parents of grown children, are having to bear the weight of severe social problems with very limited means. The results are stretched resources for all, for example, families of 5 -6 adults, plus children, trying to live off one or two basic state pensions. There is overcrowding in apartments and houses and people are forced to move away from schools and potential employment to find a place to stay.

The PAH is negotiating and putting pressure on the banks to make it possible for evicted families to stay in their homes, even if they no longer own the property . We are also hosting more and more families - who did not contact the PAH on time and lost their house - in bank owned housing units.

HRW: How are public authorities responding to these problems?

Rafael Carmona (PAH): Public authorities are ignoring the problem. However, we have made some progress with the regional government of Andalusia. Unfortunately, the Spanish central government challenged the new law issued in Andalusia, and has taken the regional government to the Constitutional Court of Spain – rather than help the region to support people in need…

4 "Escrache" is the name given in Argentina, Paraguay, Uruguay and Spain to a type of demonstration in which a group of activists go to the homes or workplaces of those whom they want to condemn and publicly humiliate in order to influence decision makers and governments into a certain course of action. This term was born in Argentina in 1995 and has since spread to other Spanish-speaking countries.

5 When people lose their homes in Spain, they are still liable to pay their mortgage. Families who have lost their homes frequently still have a debt pending with the bank, which has the power to change the conditions and require that the debt is repaid at a faster rate. Guarantee practices used by the banks, mean that in many cases family members and friends are drawn into the financial problems of the family who has been evicted. "Dacion en pago" means handing back the keys to their lender and involves signing a deed with a Notary Public in exchange of being discharged of the remaining mortgage debt. The lender will fully discharge all mortgage debt, not holding the owner liable in the future.

6 http://afectadosporlahipoteca.com/category/propuestas-pah/iniciativa-legislativa-popular/.

HRW: In 2012 the government issued a moratorium on evictions and allocated some social housing – what is your take on this development?

Sonia Olea Ferreras (Caritas): The housing units on offer are not in the right place –they are far from the city centres, where people work and children go to school. The very small number of units – 500 – are only available to families who meet stringent criteria. The moratorium should apply in ALL cases where there has been good will and for all the cases where the evicted housing unit constitutes the family's primary residence. Moratoria should be in effect until the affected person finds a job and is able to re-start his or her life. The regulation for moratoria should be accompanied by changes in mortgage laws, the Civil Code and the eviction procedure. But up to now, only the most abusive clauses have been modified. The procedures are the same: too fast and with out a basis in human rights.

HRW: How would you describe the role of the banks in this housing crisis?

Rafael Carmona (PAH): The banks are impeding positive government changes. It is the banks who have perpetrated this big scam, and after taking advantage of the situation, it's the public who is bailing the banks out.

We can't expect anything from the banks. These eviction procedures are causing problems and tragedy for hundreds of families. Suicide rates have grown enormously in our country [7]. In Andalusia last year there was a growth of 25%; more people are seeking psychological and psychiatric treatment.

HRW: How does public policy need to change?

Rafael Carmona (PAH): For example, in Andalusia, we – together with the social movements for housing and the PAH organisations – are calling for a tax on all empty housing units owned by the banks. This way, the banks, who are profiting from the situation (i.e. they are leaving the properties empty as it's to their financial advantage) would be forced to pay. The other option is to make the homes available to the Andalusian government as social rental units. The law was passed by the Andalusian parliament. These changes are small, but at least they responded to some of our demands in terms of housing rights. It was a victory, until the President of Spain challenged the measures in the constitutional court – so we are again campaigning for these measures to be implemented.

HRW: Does the Spanish law guarantee the right to housing?

Sonia Olea Ferreras (Caritas): There is no Spanish law that really guarantees the right to housing. Our principal problem in Spain is this bitter division between fundamental rights and guiding principles. Housing is a guiding principle, but it is not implemented, which means that we have to fight very hard to push the government to enforce rights that it has signed up to in international instruments.

HRW: What impact have recent legal changes had?

Sonia Olea Ferreras (Caritas): The legislative changes have had no impact. In some case things are worse now. For example, previously, landlords were restricted when raising rents to stay in line with the cost of living index. This is no longer the case. Furthermore, "express trials" make it is easier to evict people. Modifications to the foreclosures procedure have not been structural; just papering over the cracks. How have these minor changes helped the over 400,000 families who have been evicted? We have to accept that our legal system

7 Although there are no official figures and many of these cases are camouflaged as accidents, according to EURES (the network created by the European Commission to facilitate labour mobility) there is a daily suicide in the country linked to a situation of economic uncertainty (http://www.alertadigital.com/2012/07/29/alarmante-incremento-del-numero-de-suicidios-en-espana-motivados-por-la-crisis-y-silenciados-por-los-medios/).

is not solving the actual problems, which means we have to create useful, relevant legislation that can ensure that people can find a new home and get on with their lives.

HRW: How do judges react when an eviction takes place?

Rafael Carmona (PAH): Some judges react well; they are sensitive to the social issues that have prompted these evictions. Others, however, simply apply the law, with due respect for the law, of course, but without looking at the human side.

Sometimes it's hard to understand the logic a judge is using when deciding a case. For example, in cases where a judge decides in favour of the eviction of a family with a minor child, no one intervenes to protect the child, not even the judge him or herself. These children will end up on the streets with their families. The local authorities should be obliged to look for an alternative accommodation, because one a family is forced out of their home and into homelessness, parents are no longer able to retain custody of their children, which starts a whole process of interventions that could have been avoided.

HRW: What about international and European institutions?

Sonia Olea Ferreras (Caritas): The UN has commented on the situation – both in 2008 and 2012, and European Commission, the Committee of the Regions and Human Rights Watch have published several reports condemning the evictions.

Rafael Carmona (PAH): Some institutions have been sympathetic, for example the Euroepan Court of Human Rights found in favour of the families from the Bolc Salt building in Catalunya and published an order to stop the eviction – see elsewhere in this newsletter for a detailed account.

The PAH marched all the way to Brussels to get the attention of the European institutions. On the way we had the opportunity to talk to others about the need to organise ourselves and to fight. We wanted also other countries and the European Institutions to gain more consciousness on the situation and the magnitude of the housing problem that are being experienced in Spain. When we reached Brussels, we met with MEPs who are working on the issues we brought to them.

HRW: How would you asses the impact of citizen mobilization?

Rafael Carmona (PAH):. Mobilisation means raising awareness: constant mobilisation, creating networks in the neighbourhoods which have their own working groups, research groups, and space to debate and consider what action to take. It is the only way to shift the priority from property to people. People in Spain know more now and are starting to act together.

Sonia Olea Ferreras (Caritas): I am convinced that the changes to the legislation is a result of citizen mobilization. It is also a result of the deaths and the dreadful situations of children yelling, mothers crying, grandparents being evicted from houses they have been paying for over 40 years… We have all seen these dramatic situations as our own and it hurts us all.

Stopping evictions in Spain: The Platform for those affected by Mortgage (PAH) uses a resolution of the European Court of Human Rights to persuade the Spanish courts

European Court of Human Rights Application number: 62688/13

By PAULA CABALLERO FERNÁNDEZ, Policy Assistant - FEANTSA, Brussels

In February of this year, the Spanish PAH (Plataforma de Afectados por la Hipoteca – Platform of People Affected by the Mortgage Crisis - http://afectadosporlahipoteca.com/) and the DESC Observatory on Social, Economic and Cultural Rights, used the specific eviction case from the Bloc Salt [1] building to draft a practical document based on a recent resolution of the European Court of Human Rights (res. 856/2013) that protects citizens from future evictions.

In Spain, the economic crisis was and still is a housing crisis [2]. Property market policies have been abusive and uncontrolled, pricing homes above their value. Banks have granted loans to families who have lost their ability to bear the economic costs. In recent years hundreds of evictions were carried out in Spain leaving entire families on the street without resources.

Within this context, squatting (among other strategies) is practically and ideologically becoming normalized for people who have lost their homes. These are individuals and families who likely would never have considered the possibility of occupying a building before the mortgage crisis. With the support of the PAH, people occupy disused buildings that are owned by those banks that ordered the evictions (specifically state-owned asset management companies or "bad banks", for example the Sareb).

These initiatives create family housing, publicly denounce the injustice of these evictions, and mitigate real estate speculation. The argument is as follows: Banks that have been bailed out with public money are public – belong to the people. Banks should not continue making profits from evictions. Their real estate properties must be used to host homeless families. In most of the cases, banks refuse to use their properties to re-house homeless families.

Last year 1,500,000 signatures were collected to change Spanish legislation on evictions and mortgages. The campaign gathered more than enough signatures to launch a citizen proposition, however the Spanish Government refused to accept the entire proposition. The PAH decided to take a case to the European Court of Human Rights (ECtHR) claiming that, through the evictions, the Spanish government is breaching human right provisions concerning civil rights.

Up to now, evictions have been prevented through civil disobedience or by pressing the banks to negotiate. In October 2013 the PAH appealed to the ECtHR to immediately stop the eviction of several families living in the building Bloc Salt (you can find the text sent by the PAH here). The Plataforma de Afectados por la Hipoteca exposed that facts the eviction was violating the human rights of the affected families.

1 Videos on the public protests in support of stopping the eviction of the Bloc Salt building (language: Spanish and Catalan) https://www.youtube.com/watch?v=wekMLk6_1VE & https://www.youtube.com/watch?v=AqR7Cyl1RvQ

2 Report on the state of the housing emergency in Spain http://afectadosporlahipoteca.com/2013/12/17/informe-emergencia-habitacional/

The European Court of Human Rights responded, calling for a precautionary cancellation of the eviction. The Acting President of the section to which the case had been allocated decided, in the interests of the parties and the proper conduct of the proceedings before the Court, to inform the Spanish government, under Rule 39 of the Rules of the Court, that the applicants should not be evicted until 29 October 2013.

The parties' attention was drawn to the fact that failure of a Contracting State to comply with a measure indicated under Rule 39 may entail a breach of Article 34 of the European Convention on Human Rights. In this connection, reference is made to paragraphs 128 and 129 of the Grand Chamber judgment of 4 February 2005 in the case of Momatkulov and Askarov v. Turkey (applications nos. 46827/99 and 46951/99) as well as point 5 of the operative part. (http://afectadosporlahipoteca.com/wp-content/uploads/2013/10/Diligencia-PAHpag6.pdf)

It gave the Spanish Government 20 days to explain the measures that the local authorities would carry out in order to not violate Articles 3 (prohibition of torture, and "inhuman or degrading treatment or punishment) and Article 8 (Right to respect for private and family life) of the European Convention of Human Rights, specially referring to children, housing and social aid.

"The Acting President also decided to request the Spanish government, under Rule 54 § 2 (a) of the Rules of the Court, to submit information about the measures that the domestic authorities intended to implement with regard to the applicants, particularly children, in light of their vulnerability, in order to prevent the alleged violation of Article 3 and 8 of the Convention. In particular, it asked for arrangements regarding housing and social care envisaged by the domestic authorities."(http://afectadosporlahipoteca.com/wp-content/uploads/2013/10/Diligencia-PAHpag6.pdf)

The resolution of the Court in Strasbourg recognized the structural deficiency of the Spanish public administrations: an absence of any feeling of responsibility for responding to the human right violations that evictions pose. For several years the PAH has been reporting that the Spanish government and local administrations default on housing rights and on international engagements.

The case that the PAH built can be used for other evictions. The PAH is not strong enough to intervene in all the evictions that are taking place in Spain. Therefore, with this model, the platform has created an important legal tool that citizens and other organizations can use. This model might help to fight evictions across Spain and elsewhere in Europe, as well as providing an excellent opportunity to create jurisprudence. For more information please find the model here.

The goal is for other campaigns and cases to use this model, to this end, the PAH has meet with organizations including the Spanish Bar Association. The aim is to build tools to mitigate the administrations apathy and start to address the reality of evictions in Spain.

REFLECTIONS ON A SWEDISH DILEMMA

Deportations of EU migrants force us to confront a troubling question, What type of country do we want to be?

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As in many parts of Europe, there is a growing discussion in Sweden among policymakers, academics and in the media concerning the social rights of EU-migrants. In Sweden this debate has sprung from increase in begging on the streets of major Swedish cities and EU migrant-settlements in and around some Swedish cities. Recent events, where groups of EU-migrants living in temporary camps around Stockholm, Borås and Gothenburg have been forced to move, or have been offered tickets to return to their country of origin, have provoked calls for a wider and more nuanced debate on how to address this issue.

If looking at free movement and social rights from a wider EU perspective, the question is, does Sweden want to take the same route as France, which deported over 20,000 EU-migrants in 2013, or as the UK which has proposed legislative changes to benefit rights of foreign workers? Or should Sweden set ourselves a higher standard when it comes to free movement, social and housing rights of EU-citizens? Looking at the current public debate it seems that Sweden, like France is moving towards more restrictive national policies while arguing for progress at EU-level. Has it been forgotten that Sweden, along with all other member states who signed the Schengen agreement, accepted the terms of free movement? This makes us equally responsible, and if not yet legally, at least morally responsible, to assure the same standard of living for EU-migrants as for as other precarious groups in Sweden.

We also need to accept that the free movement of people is a reality which cannot be negotiated or just apply to some. There are across Europe large groups of people living in extreme poverty whom have always had migratory routes across the European continent in search for work or temporary income. These migratory routes have, with the enlargement of the EU, changed and opened up not only an east-west dimension, but since the late 1990's a south-north dimension. This is a fact that will not change. If we don't start talking about real, long-term solutions, we will continue to face issues like begging in the streets, and temporary settlements in inadequate housing in Sweden for a long time. Eviction is not one of these solutions.

Unfortunately, the solution is not as simple as an influential Swedish academic recently suggested, arguing that we should forbid the act of giving money to people begging on the streets and that this would in the long run create some sort of people's movement enforcing social justice. This type of argument, coloured by both a short-sighted national perspective, and by a recklessness where making an illustrious point seems far more important than making a change, is typical of for the current Swedish debate.

Local civil servants often use the 'pointing the finger solution'. They argue that the countries of origin or the EU-level should solve this problem, often naming Romania and Bulgaria in the next sentence. However, this type of 'out of sight out of mind' argument is beginning to lose its power in a more and more integrated Europe, where the social inequalities in some countries are becoming a problem for all countries. Evidence from one of the few organisations working with EU migrants in Sweden, Crossroads (in Stockholm), demonstrates that the EU-migrant population

in Sweden comes from over a hundred different countries, both EU and non EU-citizens, many in possession of work visas for all of the EU. So, it is not only an issue of Roma people coming from Bulgaria or Romania.

This article does not claim to have a solution to this problem. However, it argues for the need to accept that the issue of EU-migration is a right that applies to all European citizens and persons with EU-working permits, and accept the fact that the rules of free movement have been in place for almost two decades. We also need to accept that there will always be new EU-migrants in need of some type of social assistance coming to Sweden. Under current EU regulation (the Directive 2004/38) a jobseeker or an economically-active person has the right to stay in Sweden for up to six months, sometimes longer, if you can show that you are looking for a job and have a good chance of securing employment. While in Sweden, jobseekers are also entitled to apply for financial benefits to facilitate access to employment in the labour market of a Member State. However, since current EU regulations specify that jobseekers should not be "a considerable weight" on the Member States' welfare system, many governments including Sweden have interpreted this very narrowly. As a result, EU-migrants looking for work have very restricted access to financial benefits when coming to Sweden and have a long "quarantine period" before they can qualify for social assistance. What this means is that we will have a constant inflow of people in need of temporary help and if we don't start providing structured ways to help these groups find jobs and housing, begging and temporary settlements will be a problem that is here to stay. Evicting these people from temporary settlements or giving them a ticket to go 'home' will never be the solution.

Current practices at the local level often referr to health and safety standards when evicting these groups, while at the same time arguing that current EU regulations limit possibilities to provide more help than a ticket home. In fact the current EU regulation which coordinates the social security systems in all EU Countries (Reg. 883/2004) does not restrict this but lets the Member States determine the specific benefits to put in place and the which conditions must be fulfilled by the applicants to qualify for social benefits. So, we now have a group of people living in Sweden which is totally left to their own devices because Swedish authorities are afraid to follow the regulations, and when they do, they often misinterpret or interpret these very narrowly. Rather than saying, let's do as much as possible until clear regulation has been established either on national or at EU level, the public bodies instead do nothing or very little, leaving the job up to NGO's.

This article argues therefore that we need to redirect both our focus and efforts in to creating a functional system, which considers the social needs of EU-migrants as a social injustice that we as policy-makers, social workers and stakeholders must deal with as effectively and decisively as we with all other social injustices that exists in Sweden. What we also need to understand is that this is not mainly an individual problem for the persons begging on our streets, but a structural problem connected regulation and to policy. Firstly, Sweden should try to make the labour market more open and flexible, taking away the barriers to low-skilled jobs that exist today. For example, the language requirement is a major barrier in most sectors (restaurant, construction, cleaning) which makes it almost impossible for EU-citizens to get a job. Secondly, we need to stop using regulations and laws created to ensure higher standards such as health and safety-regulations as excuses to tear down EU-settlements, which in fact forces people in to less secure and more unhealthy situations. We need to consider the consequences of these actions in a wider European setting. What do these kinds of actions mean for other countries in Europe looking at Sweden for "good practice". Is this really the message we want to send to the rest of Europe?

The "proportionality principle" in the evictions of persons in adverse possession of property in France: the blurred line between the law and fundamental rights

BY ANNABELLE DUMOUTET - Université Lyon II (a.dumoutet@gmail.com)

Introduction

The issue of evictions is linked to the protection of the right to property: if an eviction is conducted, it is because an individual is occupying a dwelling or a plot of land belonging to either natural person or legal person, and in doing so, preventing this person from enjoying his property.

Property is a natural right but also a medium through which inequalities are perpetuated: it is a means through which an individual can increase the wealth in his possession to the detriment of others. It is for this reason that the exercise of this right must occur within a strict legal framework. According John Rawls' classic theory, social and economic equalities can only be permitted if two conditions are met: (1) equality of opportunity must be present, allowing each individual to choose whether or not to access posts or offices which are themselves unequally distributed among society (such equality of opportunity removes the desire to do just that); and the greatest benefit for the least advantaged members of society must be guaranteed. [1]

Housing is an expensive item, the possession or lack of which constitutes one severe forms of inequality of opportunity. It is in order to reduce these inequalities that public authorities must intervene upstream, namely through the construction of housing, the adoption of a legal framework for tenancy relationships and the introduction of housing benefits (cash benefits or benefits in kind). At the same time, the courts must intervene downstream, through the provision of a legal remedy in the case of disputes or failure to comply with sanitary standards, the conditions of occupation, urban planning, etc. In cases involving the eviction of either tenants or persons in adverse possession, the judge intervenes to settle a dispute between the occupant and the owner. Whilst the judge is, of course, bound to enforce the law, he or she is also obliged to reconcile opposing interests as fairly as possible, given the seriousness of the consequences which could arise from his or her decision. In order to ensure he or she does just that, the judge must apply the proportionality principle.

A portrait of the proportionality principle as applied by a constitutional judge in France

Overview

The proportionality principle is firstly a mathematical concept, according to which one measurement must always be taken in relation to another; and the difference between the two must always remain the same. In his book, The Proportions of Man, Leonardo da Vinci contends that "four fingers make one palm". The proportionality principle implies that if the palm is particularly large, the fingers must be similarly sizeable in order to avoid this equivalence being distorted. Proportionality is a matter of reason and harmony, of the relationship between a measure taken and the goal pursued. It is a question of "not using a drop forge hammer to squash a fly". [2] In law, it is incumbent upon the judge to ensure that this

1 John Rawls, Political Liberalism, 1993

2 Félix Marc, "Subsidiarité, proportionnalité et construction européenne", Essai de généalogie des principes, Revue d'éthique et de théologie morale, 2011/4, no267, pp. 59-70

harmony is maintained. It is vital that as a result of the judge's decision, the strict enforcement of the law does not cause excessive injury to the losing party, given the fact that such injury would be of little benefit to either the prevailing party, or to the community at large when the law in question seeks to restrict the rights of those seeking access to justice in the courts.

The control of proportionality by the French constitutional judge

In France, the Constitutional Council evaluates the relationship between the extent to which a law violates a right and the goal pursued, according to three cumulative conditions: appropriateness (the restriction of the right to ensure that it is adapted to the goal pursued), necessity (the measure's spatial, temporal or material scope, to ensure that its application does not exceed that which is necessary, so as to protect of the opposing interest), and proportionality stricto sensu (the law provides sufficient guarantees).

Fundamental rights are subsequently placed into three categories, according to which the minimum threshold of protection established is higher or lower. In the first category, that which pertains to freedoms of communication and expression, thought and opinion, as well as individual freedom; the restrictive measure introduced is only proportional if the reason behind its introduction is of constitutional value. This area is afforded particular protection and, when evaluating whether or not the condition of necessity has been met, the judge can even go as far as to invalidate a law if other less detrimental solutions are at all feasible. In principle, the judge has total control: he or she takes all elements of fact and of law into account. In certain cases, when his or her intervention is less intrusive in nature, the judge can limit his or her control, sanctioning no more than a finding that there was been a manifest error in judgment. [3]

In the second category, comprising the principle of equality, the right to property and freedom of enterprise, a law may infringe a right, in pursuit of a goal whose value is less than that of a constitutional value. The law must serve the general interest. The judge's control in this case is limited.

Finally, the third category encompasses legal certainty. As far as this category is concerned, a law must seek, at least, to achieve a goal of sufficient general interest. Such an obligation is stronger than that of serving general interest alone, but weaker than that according to which the reason for a law's introduction must be of constitutional value. Thus, the degree of control exercised by the judge varies according to the legitimacy of the goal pursued. If this goal is of constitutional value, the judge will sanction only a manifest error in judgment. In all other cases, the judge can assess the law in detail, and indicate if Parliament has made a mistake; judges can sanction any mistake, not only a manifest error. The rights concerned are defined; they move along a continuum whose two extremes are demarcated by primary and secondary rights. [4]

The portrait provided here is thus made up of very subtle lines – the judge adapts his brushstrokes to suit the case submitted for his consideration. National and European courts return to the same sketch, adding certain nuances of their own.

The nuances of the proportionality check…

…before the European Court of Justice

The European Court of Justice (ECJ) applies the proportionality principle in disputes concerning the internal market (article 36 of the TEU). The adoption of the Charter of Fundamental Rights of the European Union (CFREU) extended the principle's scope of application, insofar as the Charter obtained full legal value with the entry into force of the Lisbon Treaty. The judge verifies that any violation of one of its provisions "genuinely meet[s] objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others" [5]. In order to do so, the judge has not three, but five colours in its palette: he evaluates the legitimacy in itself of the goal pursued; the appropriateness of the measure; necessity; proportionality stricto sensu; and the possibility that the member state concerned is acting in bad faith. [6] If this member state enjoyed a significant margin for manoeuvre in the area

3 Considered as such is, for example, the possibility to undertake a vehicle search (decision no 2003-467 DC, 13th March 2003, Lois sur la sécurité intérieure)

4 Primary rights correspond to the first category: freedoms of communication and expression, thought and opinion, individual freedom. Secondary rights correspond to the second.
Valérie Goesel-Le Bihan, Contentieux constitutionnel, Paris, Ed Ellipses, 2010, p. 153

5 Article 52 of the CFREU

6 Denys Simon, "Le contrôle de proportionnalité exercé par la Cour de justice des Communautés européennes", Actes de colloque, "Les figures du contrôle de proportionnalité en droit français", Les petites affiches, Ed Lextenso, Paris, 2009, no46, pp. 17-25

concerned, the Court sanctions only the manifest error of judgement. If, on the contrary, this margin for manoeuvre was small, the Court exercises full control.

…before the European Court of Human Rights

In the second sub-paragraphs of several articles [7], the European Convention of Human Rights (ECHR) provides for the possibility of violating certain fundamental rights provided that the measure taken is authorised by law, that it pursues one of the legitimate goals formulated in the text (national security, public safety, the economic welfare of the nation, etc.), and that it is necessary in a democratic society, a locution incurring the need for the proportionality check. In spite of these provisions, the European Court of Human Rights (ECtHR) has developed its analysis on a case by case basis, considering various factors which are neither precisely defined nor systematised. Consequently, the portrait produced is nuanced in nature. The greater the state's margin for manoeuvre in the domain in question, the less vigilant the judge will be. However, that is not the case when a European consensus on the issue exists [8], or when the Court has placed a positive obligation on member states [9].

…before the judicial judge

Within the internal national legal order, the judicial judge acts as guarantor of individual freedom [10], private property [11] and the rights and freedoms enshrined in the ECHR and the CFREU when verifying that laws comply with these standards. Within this framework, the proportionality check can be material, and applied either to the relationship between the public authority and the private individual (vertical), or to that between two private individuals (horizontal); but this hypothesis is still rare. The proportionality check can also be formal, and relate to the procedure rather than the substance of the case in question. Such a check is conducted when an administrative measure is declared to be unlawful conduct. It must constitute a violation of a fundamental freedom so grave that the measure adopted is no longer proportional to the goal pursued [12].

… before the administrative judge

The administrative judge conducts very stringent checks indeed when it comes to verifying the proportionality of police measures [13], and more generally, the proportionality of any administrative act or activity. Like the Constitutional Council, the administrative judge evaluates the appropriateness, the necessity and the proportionality *stricto sensu* of a measure, sanctioning any manifest error of judgment when the administration has discretionary power [14]. If the administration has been endowed with circumscribed powers (the public authority has no margin for manoeuvre regarding the decision to be taken), the administrative judge has total control [15].

What is unique about administrative litigation is that it has established the theory of evaluation, making it possible to compare the advantages and disadvantages of a given measure (namely the violations of the right to private property, the financial cost involved, the social disadvantages incurred and other public interests) [16]. This technique of conducting a comparative analysis extends beyond proportionality, incorporating the idea of a multiplier effect: it is not a question of ensuring a measure has as an equal number of advantages and disadvantages – if this is the case, the relationship of proportionality is dissolved and there is no longer any great benefit to be derived from introducing the measure as no gain can be made – but the advantages

7 This refers to the second sub-paragraphs of all provisions of the European Convention on Human Rights concerning fundamental rights, with the exception of articles 2, 3, 4 and 7

8 ECtHR, 25th April 1978, Tyrer v. The United Kingdom, no 5856/72: example of European consensus; the judges noted that the ban on corporal punishment had been adopted by the vast majority of member states. The margin for manoeuvre enjoyed by the Isle of Man was thus very limited indeed.

9 ECtHR, 13th June 1979, Marckx v. Belgium, no 6833/74: example of a positive obligation; it follows from article 8 that member states are bound by the positive obligation to guarantee the right to a normal family life.

10 Article 66 of the constitution

11 Decision no 89-256 DC, 25th July 1989, Loi portant dispositions diverses en matiere d'urbanisme et d'agglomerations nouvelles

12 TC 23rd October 2000, Préfet de police c/ M. Boussadar, no 03227 and TC 17th June 2013, M. Bergoend c/ Société ERDF Annecy Léman, no 3911: Whilst, in principle, the administrative judge is the only judge able to determine the legality of administrative legislation, the judicial judge is competent in two situations: either when the administration forcefully implements a decision (even a legitimate decision), in an unlawful fashion, and in doing so gravely violates a fundamental freedom or ultimately causes the extinction of the right to property; or when the administration has taken a decision which produces either one of these effects, provided that it is manifestly obvious that this decision is unlikely to be one which he has the power to make.

13 CE 19th May 1933, Benjamin, no 17413 17520

14 CE sect 4th May 1971, Préfet de Police (Police Commissioner) v.. Guez, no 49153

15 CE, Ass, 13th November 2013. M. Dahan, no. 347704 (a disciplinary error made by a public official)

16 CE 28th May 1971, Ville Nouvelle Est, no 78825

involved must far outweigh the disadvantages that will be subsequently endured. There is no reason to why the use of this mechanism should be limited to human rights litigation.

The advantage of drawing up a table summarising the application of the proportionality principle by the various judges is that it highlights the relationships which may be established between them, in the light of the increasingly intricate nature of the process of normative integration for European law. The increasing complexity of this process means litigation regarding the eviction of persons in adverse possession of property is, consequently, liable to evolve.

The normative integration of European law and the proportionality check of the judge ordering the eviction

The litigation pertaining to the eviction of the persons in adverse possession of private accommodation very often sets the right to housing against the right to property, both of which are enshrined in European legal texts (ECHR, CFREU [17] and the European Social Charter). It is for this reason that the normative integration process can impact upon the proportionality check that the judge must perform in order to reconcile the two rights.

The pathways between the law of the Council of Europe and the law of the European Union

The CFREU states that the rights it contains which are similar to those enshrined in the CESDH and must be interpreted in the same way – the protection of one set cannot be deemed less important than that of the other[18]. In order to ensure that similar interpretations are produced, the Luxembourg court can draw inspiration from the jurisprudence of the court in Strasbourg, but also from the findings of the European Committee of Social Rights, bearing in mind that links are also present between the two organs of the Council of Europe. This mechanism is complex, but offers interesting possibilities for legislation to both evolve and become increasingly harmonised – an observation which is increasingly relevant in view of the European Union's likely accession to the ECHR in the very near future (an accession which will see its entire body of legislation placed under the control of the ECtHR).

This mechanism is able to impact upon eviction cases thanks to the connections which have been forged between the Union and the Council of Europe [19] regarding the ban on inhuman and degrading treatment (making it possible to oblige member states to guarantee minimum housing conditions for all individuals) [20], the protection of property [21] and of the family (which, according to the European Committee of Social Rights, includes the obligation for states to provide an adequate supply of family accommodation) [22].

The normative integration of European law in Union member states

The normative integration process in European Union member states is a process characterised by the primacy of European legislation and by the fact it that this legislation is directly applicable to member states, particularly when the national judge has to declare that a law is compliant with the treaties of the European Union [23]. This process can impact upon eviction litigation, whether a particular case falls within the purview of the judge in private law proceedings (tenants, or occupants of private land) or the administrative judge (travellers or the occupancy of land belonging to the public domain of a public legal person).

This integration process has been strengthened by the implementation of new judicial remedies allowing European courts to sanction the violation of the treaties. These remedies mean that, pursuant to article 34 of the ECHR, the ECtHR can be called upon to examine a case "by any natural person, non-governmental organization or any group of individuals who claims to be the victim of a violation by one of the High Contracting Parties of the rights recognised in the Convention or its protocols". For a case to be brought before the ECJ, the most advanta-

17 The right to housing is granted indirectly through the respect of private and family life (article 8 of the CESDH), as well as through the right to housing benefit (article 34.3 of the CFREU).

18 Article 52.3 of the CFREU

19 See the article by Nicolas Bernard, "Les ressources qu'offre l'article 34.4 de la Charte des droits fondamentaux de l'Union Européenne (droit à une aide au lodgement)- Autour de l'arrêt Kamberaj", RTDH, no97, 2014, p.81

20 See article 4 of the CFREU corresponding to article 3 of the CESDH.

21 See article 17 of the CFREU corresponding to article 1 of Protocol 1 of the CESDH.

22 See article 33 of the CFREU corresponding to articles 16 and 31 of the European Social Charter.

23 Article 1 of the ECHR; ECSR 8th December 2004, CEDR v.. Greece, no 15-2003; Article 6 of the TEU.

geous course of action appears to be that of referral for preliminary ruling, which allows a national judge to call upon the Court to consider a matter regarding the interpretation or validity of a piece of European legislation[24]. The recent *Kamberaj* case [25] provides a clear illustration of the effectiveness of this mechanism. Indeed, the Court ruled that the Italian authorities were obliged to take the provisions of the Charter into account (in this instance, article 34 guaranteeing the right to housing assistance) when transposing the directive into national legislation.

This process of the integration of European law opens up the possibility for the interpretation of the right to housing and the right to property by a national judge to evolve over time.

The emergence of a real right to housing

In France, the Constitutional Council has declared that the right to decent housing is an objective of constitutional value [26]. Consequently, whilst the right to housing is enshrined in law [27], it is not enshrined in the French Constitution (the situation is similar in other European states such as Italy, Spain or Belgium). The Council of State cannot have recourse to the constitution in order to declare this right a fundamental freedom within the meaning of article L521-2 of the Administrative Justice Code, which governs the procedure according to which an interim judge can order that all measures necessary be taken to safeguard a fundamental freedom which has been violated by a legal person governed by public law or a private body responsible for a public service.[28] However, it can nevertheless oblige "*state authorities to implement the right to emergency housing granted by law to any homeless person in a situation of medical, psychological and social distress* [29]".

European Union law is ambitious on this issue insofar as housing is not among its own competences. Despite the domain's absence from these competences, article 38.3 of the CFREU enshrines "the right to social assistance and housing benefits designed to ensure a decent existence for all those who do not have sufficient resources". The advantage of this provision is that it considers the right to housing from a pecuniary perspective: it does not oblige the state to provide housing itself, simply to provide assistance with the search for accommodation. Finally, the right to housing must be considered from the perspective of human dignity [30]. Through the mechanism of normative integration, and particularly the request for a preliminary ruling, this concept could be integrated into the proportionality check performed by the judge presiding over an eviction case.

The right to housing is also protected by article 8 of the ECHR. The European Court of Human Rights' interpretation of this right in the recent *Winterstein* [31] case was ground-breaking in nature. The case involved the eviction of travellers, who had set up home on plots of land. In its ruling, the Court recalled that the right to housing is not limited to the simple possession of a roof over one's head. Rather, it is the "right to a place in which to live safely, in peace and in dignity". The travellers' caravans were thus classed as a home within the meaning of the Convention, leaving states no more than a limited margin for judgement should they decide to intervene. The Court assessed the proportionality of such a measure considering the legality of the dwelling's existence, any offers of housing made by the national authorities, the number of people affected by the measure, the length of the period for which they had occupied the land under dispute, and the fact they belonged to a socially disadvantaged group.

This decision appears similar to a ruling issued by the Bobigny district court on January 24th 2013. The court with jurisdiction was called upon to consider a case involving the adverse possession of a piece of land belonging to the Land and Technical Agency of the Paris

24 Article 267 of the TFEU

25 ECJ 24th April 2012, Kamberaj, case C571/10

26 Decision no 98-403 DC, 29th July 1998, Taxe d'inhabitation (Dwelling Tax)

27 Article 1 of Law no82-526 on the rights and obligations of tenants and landlords, and article 1 of Law no89-462 of 6th July 1989 aimed at improving tenancy relationships

28 CE ruling no245697, 3rd May 2002, Association de reinsertion sociale du Limousin et autres

29 CE 10th February 2012, no 356456, Karamoko F. c/Ministre des solidarities et de la cohesion sociale

30 According to Nicolas Bernard, it is out of respect for human dignity that "consequently, the individual is granted the right to housing benefit, and the right to healthcare" (op. cit., p.81).

31 European Court of Human Rights 17th October 2013, Winterstein and others v.. France, no 27013/07

Region. The judge evaluated the degree of proportionality between the respect of the right to property and the respect of the fundamental rights of the occupants as enshrined in the ECHR (the respect of family life and home life). He ordered that the deadline for eviction be extended. Whilst this type of decision remains incredibly rare, it appears nevertheless that the normative integration process is underway, and could make it possible to begin sketching the broad outline of a more successful right to housing.

The evolution of the concept of property

The eviction procedure sets the right to housing against the right to property in the case of a dispute between two individuals. However, the right to property may also be mobilised by occupiers. The right to property is enshrined in article 1 of Protocol 1 of the EHCR, and has an independent scope which is not limited to the ownership of tangible assets, just as it is not so limited in French law. In the *Oneryildiz versus Turkey* case, [32] the plaintiff had built his slum dwelling on a piece of land belonging to the Public Treasury, near to a rubbish dump. The accidental explosion of a gas cylinder caused the death of 13 members of his family. Consequently, despite the fact that it was not compliant with urban planning regulations, *"the dwelling built by the plaintiff and the ability to remain in this dwelling with his family constituted a substantial economic interest. Such an interest, whose protection over time had been tolerated by the authorities, constitutes an "asset" within the meaning of the standard expressed in the first phrase of article 1 of the Additional Protocol"* [33].

Where persons in adverse possession see their right to property recognised in cases concerning constructions which provide accommodation, such persons may seek to enforce this right against that of the owner of the land. In the light of the fact that, within the internal legal order, the right to property is deemed more worthy of protection than the right to housing, it will be given all the more weight when the interests of both parties are considered by the presiding judge. Furthermore, the national judge could draw inspiration from the proportionality check performed by the European Court of Human Rights, the extent of which depends on the nature of the human rights violation in question. If the issue under consideration is a deprivation of this right (to property) pure and simple, the Court examines the length of the procedure and the compensation granted (this compensation must be strictly equal to both the material and moral injury caused). If the case under consideration involves the simple regulation of asset use, the Court sanctions no more than "manifestly unreasonable conduct" [34].

In conclusion, the right to property could be added to the toolbox whose contents are used in the defence of the interests of adverse possessors, and would help to ensure improved recognition of the right to housing, as interpreted, for example, in the Winterstein case. Such a development would see an evaluation of the consequences of an eviction included among the factors considered as part of the judge's proportionality check – consequences which, in certain cases, may be worse than the original situation. If such consequences were systematically considered, this could lead to the emergence of an obligation to rehouse the individuals evicted – an obligation which would stand in the direct line of descent of the movement which follows on from the implementation of the right of an enforceable right to housing.

32 European Court of Human Rights, 18th June 2002, Oneryildiz v.. Turkey, no 48939/99

33 Oneryildiz v. Turkey, 142

34 European Court of Human Rights, 23rd September 1982, Sporrong and Lönroth, no 7151/75 and 7152/75

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