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# Tracing the Right to Access to Housing: Insights from Human Rights Theory and Practice<sup>1</sup>

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➤ **Abstract** *Access to housing is a major challenge worldwide, with structural inequalities making the affordability of housing an issue and adding to the problem of homelessness. While there has been extensive research on the right to adequate housing, the issue of access to housing has not been explored in-depth. This paper addresses this gap by conceptualising access to housing as part of a broader bundle of rights. The paper also presents a typology of physical, human, and systemic or institutional barriers that hinder access to housing and discusses the responsibilities of governments under international human rights law to address these challenges. By analysing the European Court of Human Rights case law, the paper identifies the European Court's approach to cases dealing with barriers hindering access to housing and the State's obligations. Although there is a limited approach to systemic or institutional barriers in the European Court's case law, clear obligations regarding physical and human barriers are identified. Through this theoretical and empirical contribution, the paper aims to offer insights to inform policy development and reduce homelessness.*

➤ **Keywords** *human rights law, right to housing, access to housing, barriers*

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## Introduction

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Significant problems in accessing housing are being reported across the world, contributing to a rise in homelessness. The exponential increases in the cost of housing limit disadvantaged social groups' prospects of finding affordable, adequate homes (Charlampakis et al., 2022). Driven by legal, economic, and political factors, the trends are common to urban areas and have recently been coupled with growing inflation (HousingAnywhere, 2023). These affordability crises add to earlier challenges and deeper structural problems in providing a home for all, like socio-economic inequalities, discrimination, physical obstacles, and other accessibility problems (Ringelheim and Bernard, 2013). For many people, access to housing is becoming increasingly difficult.

Access is the "method or possibility of getting near to a place or a person".<sup>2</sup> It expresses both a physical reality (i.e., entering a residential space) and an abstract one (i.e., participating in the market or applying to social programmes). Barriers hindering access to housing can be inadequate layouts and facilities such as doors, walls, elevators, and stairs (Rodríguez de Santiago, 2016). Some result from human discrimination (Ringelheim and Bernard, 2013). Other barriers result from institutional regulations and practices (Ponce, 2010; Nogueira, 2020). Likewise, administrative procedures sometimes set burdens or excessive requirements, preventing those without the necessary resources and skills from accessing social housing benefits (Nogueira, 2020; Ranchordas and Scarcella, 2021). Shortages and market failures in providing affordable housing add to that list, resulting in exclusionary settings hinged on people's economic capacity (Kenna, 2010).

The alternative to adequate housing is substandard housing or the lack of a roof over one's head. Thus, barriers to access to housing may constitute a serious problem contributing to chronic and severe homelessness. In 2022, around 895 000 people were sleeping on the street or living in emergency or temporary accommodation across the European Union (Fondation Abbé Pierre and FEANTSA, 2023). Improving access to housing and addressing barriers can significantly reduce homelessness. Without an in-depth analysis of the right of access to housing and measures aimed at overcoming these barriers, the homelessness situation will only get worse.

Human rights researchers have examined different aspects of the right to adequate housing. Most studies focus on (legal protection) against losing one's home: evictions (Vols et al., 2019; Carr et al., 2018). A smaller, but still considerable, body of papers concentrates on issues such as substandard housing or the protection

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<sup>2</sup> As defined by the Cambridge Dictionary. See <https://dictionary.cambridge.org/dictionary/english/access>

of residents against a dangerous living environment (Cittadini, 2021). Surprisingly, only a few publications have explicitly addressed the access dimension of housing. Some studies have delved into the problems particular social groups face in accessing housing (Mayock et al., 2012). Other studies have analysed public policies favouring access to housing, such as the Housing First programmes (Hansson, 2021). There are also excellent studies on discrimination in a housing context (Benito, 2020). However, to our knowledge, no paper has focused on how the right to access housing could be conceptualised on a broader level. International human rights law's failure to address this issue is a symptom of a more general "normative weakness in identifying what the right to housing is and a resulting uncertainty about when, and by whom, it can be claimed" (Hohmann, 2013, p.2).

Previous research has clearly shown that a relation exists between the lack of (legal protection of) access to housing and homelessness (see, for example, Loison-Leruste and Quilgars, 2009; Anderson and Serpa, 2013; Watts, 2014; Stewart, 2019; Collins and Stout, 2021). The lack of clarity and contextual definition of rights terminology has limited the potential of a "human rights-based approach" to address issues related to accessing housing and its impact on homelessness (Kenna, 2010). We aim to deepen our understanding by defining and exploring the international right to access housing from a human rights law perspective while clarifying the corresponding state obligations. We hope that the resulting insights will help design and develop better policies and regulations to reduce homelessness.

This paper examines how access to housing could be considered part of a bundle of rights that make up the right to adequate housing. It also offers a categorisation of barriers that may prevent people from accessing housing, contributing to homelessness. Additionally, an analysis of the role of these barriers in the European Court of Human Rights (ECtHR) case law is presented. We present the results of an analysis of a sample of 79 cases, comprising both judgments and decisions, to identify whether and how the Court addresses the barriers that hinder access to housing. While previous studies have analysed the ECtHR's case law from the perspective of socio-economic rights (Palmer, 2009; 2010) and, particularly, housing (Koch, 2009; Leijten, 2018), most focus only on a limited number of ECtHR judgments and do not analyse decisions dealing with the admissibility of complaints.

The paper has the following structure: in section two, we discuss the concept of a tripartite housing rights bundle and analyse the elements that comprise it, which include access, occupancy, and exit rights. Moving on to section three, we outline some theoretical perspectives that will help us understand the concept of access rights. Here, we propose a typology of the barriers that prevent access to housing. Afterwards, we discuss the obligations of governments under international human

rights law concerning these barriers. Section four analyses the case law of the ECHR to determine whether and to what extent the court addresses access rights in the face of obstacles to housing. Finally, we provide conclusions.

## **Access to Housing in the Context of the Right to Adequate Housing**

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The right to adequate housing is well established in international human rights law. It has been recognised as a component of the right to an adequate standard of living enshrined in Article 25 UDHR and Article 11 ICESCR. It is present in various regional instruments, such as the Revised European Social Charter and the Arab Charter on Human Rights. Albeit not explicitly coded, it has also been implied through the interpretation of the African Charter on Human and People's Rights and the instruments in the Inter-American Human Rights System. Likewise, although the European Convention on Human Rights (ECHR) has not expressly codified the international right to housing, the ECtHR has upheld that Article 8, which protects private and family life, entails certain obligations relevant to safeguarding elements of the right to adequate housing (Fick and Vols, 2022).

The right to adequate housing has been studied widely. However, most studies focus mainly on legal doctrinal descriptions of the right to adequate housing in one or more specific treaties or countries. While these papers are a welcome contribution to the body of knowledge on how the right to housing should be interpreted in a certain treaty or national context, they often do not provide us with deeper insights into the meaning of the right to housing on a more abstract, conceptual level.

We hold that clear and precise concepts facilitate interoperability of reasoning and interpretations through different legal systems and documents, allowing for more efficient communication between the different spheres applying and interpreting the international right to adequate housing. Moreover, a clear conceptualisation may also reduce the margin of deference to courts and states when applying international human rights law, as they are bound to more transparent and verifiable analytical processes.

Luckily, a few publications have explored the meaning of the right to housing at a conceptual level. Hohmann, for example, distinguishes the right to housing from housing rights. According to her, the right to adequate housing should be defined as a "human right, codified or implied into international and regional rights covenants, and into domestic constitutional orders through bills or charters of rights" (Hohmann, 2022a). According to Hohmann, housing rights are "legal rights arising from the non-constitutional level domestic law of particular states", including the regulation of tenancies and social or public housing provisions (Hohmann,

2022a, p. 3). Hohmann also argues that “aspects of a person’s relationship with housing and home may be protected by other rights (such as the right to privacy, freedom of expression, and indeed property), a right to housing is based on the insistence that housing is itself fundamental, not merely instrumental, to the realisation of other needs and goods” (Hohmann, 2022b, p.128).

Fitzpatrick and others also distinguish between the right to adequate housing and housing rights. Yet, they do not define both concepts clearly but refer to housing rights as “protection from eviction and harassment for those who have housing” (Fitzpatrick, 2014, p.448). The right to adequate housing is “for those who lack minimally adequate accommodation” (Fitzpatrick, 2014, p.448). The authors acknowledge that there are rights to housing that individual citizens may enforce in domestic courts (Fitzpatrick, 2014). Besides that, a programmatic approach to the right to housing exists that “binds the state and public authorities only to the development and implementation of social policies, rather than to the legal protection of individuals” (Fitzpatrick et al., 2014, p.453).

Vols (2022) proposes the concept of multiple housing rights, which can be classified into three dimensions or types: access rights, occupancy rights, and exit rights. While these dimensions are interconnected, they relate to different housing issues. Access rights refer to the right of people to enter and acquire housing, whether through ownership, rental, or other means. This dimension’s main concerns are the lack of available housing and other barriers that hinder individuals from utilising housing. On the other hand, occupancy rights come into play when individuals already occupy housing but face limitations in enjoying their residence. Substandard housing conditions, unauthorised entry, and health hazards in the housing surroundings are some of the issues that fall under this dimension. Exit rights, the third dimension, are applicable when individuals must leave their homes voluntarily or involuntarily, mainly due to evictions.

In this paper, we build upon Vols’ typology of three rights to adequate housing. We conceptualise the right to adequate housing not as one monolithic right but as a bundle of rights. The concept of a bundle of rights is more commonly used in the context of the right to property but not in the context of the right to housing (Hohmann, 2022b). This paper will focus on access rights, but because of the close interconnectedness of the three types, we will briefly discuss the occupancy and exit rights in this section.

Occupancy rights are linked to protection against home searches and trespassing. They also entail obligations to secure all the elements necessary for enjoying adequate housing. The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has explained this idea in its General Comments No. 4, which mentions the availability of services, materials, facilities, infrastructure, habitability,

location, and cultural adequacy.<sup>3</sup> Therefore, occupancy rights can be seen as the right to peacefully enjoy a home that meets certain standards compatible with human dignity.<sup>4</sup> This also relates to the ECtHR case law on the right to private and family life (art. 8 ECHR). In cases such as *López-Ostra v. Spain*, the Court has stated that Art. 8 ECHR protects homes from environmental pollution, which can disturb private and family life.<sup>5</sup>

Exit rights, which have enjoyed particular attention in international human rights law, deal mainly with evictions (i.e., the loss of one's home). UN treaty monitoring bodies have provided interpretive General Comments to ensure that evictions occur in a way compatible with human rights. The CESCR has greatly contributed to laying down some procedural guidelines in its General Comment No. 7 on forced evictions.<sup>6</sup> In a series of decisions on individual communications, the UN Committee has examined the exit rights of vulnerable citizens affected by evictions, explicating particular and concrete eviction protections (Vols, 2023). The UN Special Rapporteur on the right to adequate housing reproduced these protections in several reports.<sup>7</sup> Similarly, in addressing collective communications relating to evictions, the ECSR has also relied on General Comment No. 7 to make recommendations to states.<sup>8</sup> Exit rights and evictions have been addressed in the ECtHR case law as well. In cases such as *McCann v. UK*<sup>9</sup>, *Yordanova et al. v. Bulgaria*<sup>10</sup>, and *FJM v. UK*<sup>11</sup>, the European Court has articulated several (positive) obligations in this regard.

The boundaries of the different rights in the bundle are somewhat fluid. Often, access rights overlap with the exercise of occupancy or exit rights. When a housing agreement ends, be it a termination of a tenancy or a mortgage foreclosure, people often have to find new accommodations. Exit rights stipulate when an eviction is

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<sup>3</sup> CESCR General Comment No. 4. *The right to adequate housing (Art. 11.1)*, (E/1992/23), 13<sup>th</sup> December 1991, para. 8

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<sup>5</sup> ECtHR, *López-Ostra v. Spain*, No. 167980/90, 1994.

<sup>6</sup> CESCR General Comment No. 7. *The right to adequate housing (Art. 11.1): forced evictions*, 20<sup>th</sup> May 1997

<sup>7</sup> Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, (E/CN.4/2004/48), 8 March 2004, p.92; Special Rapporteur on the right to adequate housing, *Guidelines for the Implementation of the Right to Adequate Housing*, (A/HRC/43/43), 26 December 2019, para. 34-38.

<sup>8</sup> ECSR, *European Roma Rights Centre (ERRC) v. Belgium*, Complaint No. 185/2019, 16 June 2023, para. 19 and 31.

<sup>9</sup> ECtHR, *McCann v. United Kingdom*, No. 18984/91, 1995.

<sup>10</sup> ECtHR, *Yordanova et al. v. Bulgaria*, No. 25446/06, 2012.

<sup>11</sup> ECtHR, *FJM v. United Kingdom*, No. 76202/16, 2018.

deemed lawful and executed following proper procedures (Sweeney et al., 2023). Access rights regulate the transfer from the previous housing to the new housing. The interconnection of the rights, for example, becomes apparent in the CESCR requirement to “ensure that adequate alternative housing, resettlement or access to productive land” is provided to those affected by an eviction who cannot provide for themselves.<sup>12</sup> Here, exit and access rights are both relevant. In other cases, there is a clear link between occupancy and exit rights. For example, in the case of *Fedeyeva v. Russia*, the ECtHR examined occupancy and exit rights in the context of individuals seriously affected by polluting and health-threatening factories close to their homes.<sup>13</sup>

International law and literature have paid less attention to access rights to housing compared to exit or occupancy rights. This may be due to the high level of discretion treaty monitoring bodies have given to states regarding their responsibilities toward providing access to housing. However, an analysis of international law shows that some international obligations can still be identified.

## **The Right to Access to Housing: Situations, Barriers, and International Obligations**

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Access rights are relevant when people want to enter, acquire, rent, or start using housing in any other way. References to access rights can be found in various treaties and other human rights documents.<sup>14</sup> For example, Article 31 of the Revised European Social Charter requires state parties to undertake measures designed to promote access to adequate housing and to make housing affordable to those without adequate resources. Article 19 of the European Pillar of Social Rights states that access to social housing or housing assistance of good quality needs to be provided for those in need.<sup>15</sup>

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<sup>12</sup> CESCR General Comment No. 7. *The right to adequate housing (Art. 11.1): forced evictions*, 20<sup>th</sup> May 1997, para. 16. See also See CESCR, *López Albán v. Spain*, Communication no. 37/2018, 11th October 2019; CESCR, *El Ayoubi v. Spain*, Communication no. 54/2018, 23 March 2021.

<sup>13</sup> ECtHR, *Fedeyeva v. Russia*, No. 55723/00, 2005.

<sup>14</sup> See Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, *Guidelines for the implementation of the right to adequate housing (A/HRC/43/43)*, 26<sup>th</sup> December 2019, p.33.

<sup>15</sup> 2017 European Pillar of Social Rights proclaimed by the European Parliament, the Council of the European Union and the European Commission, at [https://commission.europa.eu/system/files/2017-11/social-summit-european-pillar-social-rights-booklet\\_en.pdf](https://commission.europa.eu/system/files/2017-11/social-summit-european-pillar-social-rights-booklet_en.pdf)

This section begins by examining situations where access rights are applicable. Following that, we categorise barriers that may impede individuals from obtaining housing. After that, we discuss various governmental obligations arising from the right to access to housing.

### ***Situations where access rights are relevant***

Access rights are important in various situations. For example, someone living on the street (and considered roofless) may search for stable housing and rely on their right to access the housing market/system. Similarly, immigrants arriving in a new country may need to establish residence and occupy new housing. In both cases, they are essentially starting fresh in the housing context and may require their access rights to fulfil their housing needs.

The right to access housing may also play a role when someone has to relocate for other reasons. These moves can be by choice or necessity, such as when a family composition changes and requires space. In such instances, they may choose to move into a new home or make necessary adjustments after a household member becomes independent.<sup>16</sup> In cases where vulnerable household members are experiencing challenging living conditions, such as those caused by domestic violence<sup>17</sup>, moving to other adequate housing is often essential to safeguard their fundamental rights to life, liberty, privacy, and independence.<sup>18</sup>

Another situation may be that someone resides in a house, but that house is inadequate. For example, the dwelling may be severely deteriorated or damaged because of an accident, the owner's mismanagement, or a natural disaster. These substandard conditions do not meet the international right to housing standards.<sup>19</sup> While people are often not considered roofless, the European Typology of Homelessness and Housing Exclusion (ETHOS) prescribes that they may be considered homeless because their dwelling does not meet sufficient structural

<sup>16</sup> With noticeable differences deriving from cultural (family conceptions) and socio-economic (housing and labour market conditions) factors, there is a general trend and a socially accepted expectation of emancipation across European countries. For further reading see Stanojević and Tomašević, 2021.

<sup>17</sup> In this sense, it is important to consider the critique that gender studies have made of the concept of the home as a space of privacy and autonomy for everyone. Certain social groups, such as women, have found the home to be a threat to their own dignity. See Carr and Wong, 2014.

<sup>18</sup> It is likely to be the women experiencing violence who leave the household, rather than the perpetrators. This calls for special attention to these situations, which are one of the main causes of homelessness among women. See Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, *Guidelines for the Implementation of the Right to Adequate Housing* (A/HRC/43/43), 26<sup>th</sup> December 2019, para. 51; OHCHR, *Women and the Right to Adequate Housing*, p.76.

<sup>19</sup> CESCR General Comment No. 4. *The right to adequate housing* (Art. 11.1), (E/1992/23), 13<sup>th</sup> December 1991, p.8.



conditions of health and safety in accordance with the law.<sup>20</sup> One could argue that the resident needs to access adequate housing in this situation. In such a situation, occupancy rights and access rights interplay. The residents have two options. First, they may rely on their occupancy rights and demand the government or property owner to repair the house in accordance with the building regulations. Second, they may want to leave the homelessness situation and move to adequate housing by relying on their access right to adequate housing.

People in these situations may encounter various physical obstacles and human and institutional constraints hindering access to housing. Additionally, shortages of affordable housing limit any possibility of finding a home, particularly affecting those in the most disadvantaged economic situations. These obstacles, constraints and shortages can be conceptualised, for the purpose of analysis, as barriers to access to housing.

### ***A typology of barriers to access to housing***

A combination of physical, human, and institutional factors often hinders access to housing. These can be seen as barriers preventing people from realising the expectations derived from their right to adequate housing. By identifying and categorising these barriers, we can contribute further to understanding the meaning of access to housing under human rights law.

#### **Physical barriers**

The inability to enter or move freely in and out of the dwelling is a significant barrier to accessing adequate housing. Physical barriers may limit personal freedom, autonomy, and respect for life. Everyone is likely to be affected by them, but their impact is more significant on those who need physical, sensory, or cognitive support and those who cannot decide where or what kind of dwelling they live.<sup>21</sup> Physical barriers can arise from various causes. They can be doors, stairs, or walls. However, they may also arise from inadequate housing layout or the lack of elements, services, or facilities. Physical barriers can be classified depending on whether they are found within the premises (internal physical barriers) or in their surroundings (external physical barriers).

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<sup>20</sup> FEANTSA (2006) European Typology of Homelessness and Housing Exclusion (ETHOS), accessible at <https://www.feantsa.org/download/ethos2484215748748239888.pdf>

<sup>21</sup> Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, *The right to adequate housing of persons with disabilities*, A/72/128, 12<sup>th</sup> July 2017; Special Rapporteur on the rights of persons with disabilities, *Rights of older persons with disabilities*, A/74/186, 17<sup>th</sup> July 2019, para. 55-56.

The internal physical barriers derive from the configuration of the dwelling. These barriers may concern disability issues. If accessing and exiting a building requires the use of stairs or steps, it may become impossible for individuals who lack the necessary mobility skills (Rodríguez de Santiago, 2016; Nasarre and Simón, 2020; Stadler and Collins, 2023). Similarly, if the living space is not adapted to accommodate different cognitive or sensory perceptions, it may significantly affect the occupants' independence, limiting the property's usability. Poor architectural designs can also make it difficult for people to move around freely or make necessary adjustments.<sup>22</sup> However, barriers may be deemed legitimate when they aim to block the entrance of uninvited visitors, protecting the privacy of the dwelling, such as locked entrance doors.

External physical barriers refer to limitations on using a dwelling that originates from outside the premises. These limitations can make it difficult to carry out daily activities due to barriers or a lack of necessary services and facilities essential for adequate housing. Examples of such obstacles include nursing homes or other institutional homes located near highways or in peripheral areas that require the use of vehicles. While people may be accommodated in such places, they may not be free to move around as they wish (Velasco, 2018). Similarly, some houses may lack access to essential services such as water, electricity, or gas supply, which can impede the preservation of the right to life within the home (Benito, 2020). Obstacles in accessing essential items can constitute a barrier to accessing housing.

### **Human barriers**

Human barriers take the form of human actions preventing others from accessing housing. Examples include physically blocking people from entering buildings or refusing to enter into tenancy agreements or mortgage loans with prospective residents. It is important to recognise that these barriers can be intentional or unintentional. Addressing them may require a concerted effort. In a liberalised housing market, individuals are free to negotiate agreements related to the possession of residential properties (e.g., leases). Hence, property owners have the right to refuse interested parties who do not align with their interests. They may, for instance, choose certain candidates over others or deny residential use completely (Van Tongeren, 2022; Stadler and Collins, 2023). Denying a person access to housing may constitute a legitimate decision within this framework. Yet, the right to property is no absolute right (Casla, 2023). Human rights law and the pursuit of legitimate public interests may restrict the uses of real estate, including the selection of buyers or tenants.

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<sup>22</sup> Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, *The right to adequate housing of persons with disabilities*, A/72/128, 12<sup>th</sup> July 2017, para. 40.

While owners have a significant degree of control over their property, they cannot behave in a way that violates the international right to housing. When human barriers follow patterns of discrimination, such as exclusion based on racial, cultural, gender, ideological, or other grounds, they may constitute a severe breach of international law (Van der Bracht et al., 2015; Benito, 2020). Anti-discrimination law has significantly contributed to establishing clear standards that allow for identifying what comportments represent legitimate or illegitimate human obstacles (Benito, 2020; Silver and Danielowski, 2019).

### **Systemic or institutional barriers**

Systemic or institutional barriers are the third type of barriers in our categorisation and are linked to the concept of housing systems. According to Kenna, housing systems are mainly structured around markets. These systems cover various subsystems related to property rights and registration, housing finance, residential infrastructure, regulation, and housing subsidies or public housing (Kenna, 2010). A major systematic barrier to access to housing can result from the acceptance of the market as the primary producer and allocator of housing. This market-based approach may exclude individuals who lack the financial means to secure housing. Governments may intervene in the market, address market failures and excesses, and provide, for example, free or affordable housing to (parts of) the population. By doing so, these governments challenge the free market approach, where the state is only responsible for ensuring property and contract law rights (Kenna, 2010, p.103).

Yet, government interventions such as regulations, policies, and administrative practices may also legitimately or illegitimately block access to adequate housing. The efforts made by some States to realise this right through the ratification of treaties and the development of legislation can be frustrated by the lack of means or inadequate regulations and administrative conduct in other contexts. These barriers exist between individuals and their expectation of public support in securing their right to housing. They may result from planning powers, internal regulations, or administrative decision-making (or the lack thereof). These barriers involve using public authority in a manner that obstructs access to housing for individuals who often lack the means and rely on government assistance.

Urban planning regulating land use is crucial for implementing the right to adequate housing. However, these regulations are also one of the main institutional barriers to accessing housing (Lind, 2017; Haffner et al., 2008). They may limit the availability of suitable land for settlement and the development of adequate housing. Uneven administrative distribution of services and facilities, such as social housing being concentrated in adverse and peripheral areas, can also create external physical

barriers (Ponce, 2020). Additionally, zoning and housing regulations may reinforce discrimination by spatially projecting socio-economic, racial, cultural, health, and other inequalities (Van Tongeren and Vols, 2017; Lewis and Richardson, 2020).

Administrative procedures that set disproportionate eligibility requirements impose hefty bureaucratic burdens or have long response times, making it difficult for those without the necessary skills and resources to access social housing programmes (Nogueira, 2020). Roofless people and those living in inadequate housing require an administrative response proportional to their situation's emergency, which cannot depend on the availability of time, devices, and resources often needed to follow lengthy and time-consuming proceedings.<sup>23</sup>

Such administrative designs and practices may lead to what Nogueira calls 'administrative vulnerability' (Nogueira, 2020). These situations reinforce the social vulnerability of those seeking assistance due to the demand for specific skills, the imposition of documentary burdens, or the slow process. For example, the digitisation of administrative procedures for housing subsidies creates a significant disadvantage for households with low digital literacy rates. Those who have difficulty acquiring the necessary skills to handle digital resources have their inequality unfairly reinforced due to structural factors.

Administrative or political disagreements cannot justify inadequate planning, procedural barriers, or resource misallocations. Adequate public intervention is crucial to help people who lack the necessary economic means and those facing physical and human barriers in the private market to access affordable housing. These institutional barriers pose a significant hurdle to exercising the right to housing and fall outside the margin of deference conferred to the states. They have a special impact on those who rely on public support and obstruct essential channels for securing access to housing.

## **Different Governmental Obligations and Access to Housing**

It is generally accepted that various obligations flow from the international right to housing (Hohmann, 2013). These have been conceptualised and classified as obligations to "respect", "protect", and "fulfil" by the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights.<sup>24</sup> While their relationship to the right to access to housing is not clarified, we can logically reconstruct their meaning.

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<sup>23</sup> CESCR, *Ben Djazia and Bellil v España*, no. 5/2015, para 15.3.

<sup>24</sup> International Commission of Jurists, *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, 26<sup>th</sup> January 1997.

States should *respect* citizens' right to access to housing. This means that public authorities should refrain from delimiting urban property in a way that makes it impossible to develop affordable housing, impose disproportionate conditions for the establishment of one's residence through administrative licenses or discriminatory policies, or create physical barriers in public spaces that would prevent people from living or disturb their private and family life inside their homes. Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) binds States Parties to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality in the enjoyment of the right to housing. This provision has been interpreted in the sense that domestic housing policies must not engage in acts or practices of racial discrimination against persons.<sup>25</sup>

An international obligation to *protect* access rights also exists, requiring the states to prevent others from blocking access to housing. Authorities must intervene and resolve situations that hinder access to housing, such as physical or human barriers, including illegal occupation of a home or discriminatory practices in the private (rental) market. This mandate can be interpreted as a public interest reason which, in proportion and balance with other individual rights, allows intervention on property and persons. Article 9 of the Convention on the Rights of Persons with Disabilities (CRPD), for instance, obliges states to take measures to overcome physical barriers to ensure that all housing, including privately rented, is accessible to persons with disabilities.

Lastly, under international human rights law, states must also *fulfil* the right to access housing. This obligation can be achieved in many ways, including the direct public provision of adequate housing or through subsidies and allowances to facilitate access to the housing market. International law does not dictate the specific political strategies to fulfil this right.<sup>26</sup> However, the lack of affordable housing for low-income households and young people has repeatedly been a concern for the CESCR.<sup>27</sup> States must ensure the availability of resources regardless of the strategy employed to ensure the right to access housing for all. Article 28.2 CRPD also binds the State parties to take appropriate measures to "ensure access by persons with disabilities to public housing programmes". The Convention has been interpreted as requiring "access to public and subsidised housing programmes in the

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<sup>25</sup> CERD, *L.R. et. Al. v. Slovakia*, Communication No. 31/2003, 7 March 2005, p.10.9.

<sup>26</sup> CESCR General Comment No. 4. *The right to adequate housing (Art. 11.1)*, (E/1992/23), 13<sup>th</sup> December 1991, p.12 and 14.

<sup>27</sup> See for example ESCR. IX-2 Conclusions. Spain (IX-2/def/ESP/16/EN). 1986; ESCR. VIII Conclusions. Spain (VIII/def/ESP/16/EN), 1984; ESCR. XVII-1 Conclusions. Spain (XVII-1/def/ESP/16/EN). 2005.

community”, “especially for those persons with disabilities who live in poverty”.<sup>28</sup> Article 16 of the ICESCR has also been interpreted to impose such obligations.<sup>29</sup> These resources should be quantified within a “national housing strategy” and according to the appraisal of the “available resources” in the most cost-effective way.<sup>30</sup> In line with that interpretation, States are bound to reserve, either through public assets or private provision, the necessary means to provide housing for people experiencing homelessness, focusing on particularly vulnerable groups.

The various obligations related to the right to access to housing play an important role in the monitoring system of CESCR. The reporting guidelines of CESCR require States to provide information related to access to housing.<sup>31</sup> States should mention if a national survey on homelessness is conducted and present its findings. This should include the number of individuals and families who are homeless and how many lack access to adequate housing. Furthermore, states should describe the measures taken to ensure access to adequate and affordable housing for people, regardless of their income or access to economic resources.<sup>32</sup>

Besides that, CESCR requires states to provide information on the impact of social housing measures, waiting lists, and the average waiting time for obtaining low-cost social housing. States should also indicate the measures they have taken to make housing accessible and habitable for people with special housing needs, including families with children, persons with disabilities, and older people. Lastly, states need to indicate the legislative and other measures they have taken to ensure that housing is not built on polluted sites or in the immediate proximity of pollution sources threatening the health of inhabitants.<sup>33</sup>

Member States have submitted numerous reports to the CESCR with (parts of) the required information on implementing the right to access to housing. CESCR has published hundreds of recommendations for improving access to housing. Most of these recommendations can be found in the Universal Human Rights Index (UHRI) dataset. The recommendations published on UHRI have been studied before in

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<sup>28</sup> CRPD, Bellini v. Italy, Communication No. 51/2018, 27 January 2023, p.78.

<sup>29</sup> ESCR. XX-4 Conclusions. Spain (XX-4/def/ESP/16/EN). 2015; CESCR. XXI-4 Conclusions. Spain (XXI-4/def/ESP/16/EN). 2019.

<sup>30</sup> CESCR General Comment No. 4. *The right to adequate housing (Art. 11.1)*, (E/1992/23), 13<sup>th</sup> December 1991, p.10

<sup>31</sup> Secretary-General United Nations, *Compilation of Guidelines on The Form and Content of Reports to Be Submitted by States Parties to The International Human Rights Treaties*, HRI/GEN/2/Rev.6 3 June 2009, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=HRI%2FGEN%2F2%2FRev.6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=HRI%2FGEN%2F2%2FRev.6&Lang=en)

<sup>32</sup> *Ibid*, p.36.

<sup>33</sup> *Ibid*, p.36.

the context of housing for specific countries (see, for example, Vols et al., 2024). Yet, no study has exhaustively analysed all CESCR recommendations related to access to housing.

This paper is not intended to provide such a comprehensive analysis because the paper's main focus is on presenting the conceptual typology and the analysis of European case law. Still, a cursory examination of recent UHRI data indicates that it may be worthwhile to conduct a thorough analysis of the abundant data available. For example, in 2024 CESCR recommended that Ireland should take all necessary measures to ensure gender mainstreaming and budgeting in all policies and programmes. This would promote full access to adequate housing for women, especially migrant, Traveller and Roma women, women of African descent, women with disabilities, and bisexual, lesbian, intersex, and transgender women.<sup>34</sup>

In 2023, CESCR highlighted concerns about the limited access to housing for asylum-seekers, refugees, and internally displaced persons in Armenia.<sup>35</sup> Similarly, CESCR expressed several concerns about France's access to housing issues in the same year. Specifically, the French Government failed to provide enough halting sites for Travellers and did not recognise caravans as dwellings, which prevented Travellers from accessing certain rights. Moreover, migrants and asylum-seekers living in informal settlements lacked access to water and sanitation. The CESCR also noted that individuals of North African and sub-Saharan origin faced discrimination in France and had difficulty accessing housing.<sup>36</sup>

These recommendations only scratch the surface of the vast amount of data in the UHRI dataset and require further research. This paper, however, aims to delve into another relevant dataset for implementing the right to access to housing.

## **The Limited Right to Access Housing in the ECtHR Case Law**

In a European context, the case law of the ECtHR is highly relevant because aspects of the right to housing are justiciable under the ECHR. Therefore, we explore the extent to which the ECtHR discusses the State obligations in the context of different barriers to the right to access housing. We have systematically analysed 79 cases to identify mentions of the three types of barriers as conceptualised in this study

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<sup>34</sup> E/C.12/IRL/CO/4 (CESCR 2024), <https://uhri.ohchr.org/en/document/64f89e5d-83ec-4d98-bf3f-3201b61e4d43>.

<sup>35</sup> E/C.12/ARM/CO/4 (CESCR 2023), <https://uhri.ohchr.org/en/document/29a6b815-778f-4e75-ad36-48e6f1566989>.

<sup>36</sup> E/C.12/FRA/CO/5 (CESCR 2023), <https://uhri.ohchr.org/en/document/f8a46c03-f05e-4754-9eb4-0f62d9f7e95d>

(physical, human, and systemic or institutional). Furthermore, we analysed whether the ECHR holds that there are obligations to respect, protect, and fulfil the right to access to housing.

Various data collection methods were used to collect the relevant ECtHR case law. First, we analysed a dataset associated with the EVICT research project, which consisted of nearly 500 manually annotated ECtHR judgments and decisions on Art. 8 of the ECHR that deal with housing issues (Mohammadi et al., 2024). Out of these, we manually identified 56 cases related to access to housing. Additionally, we conducted a thorough literature review on housing and the ECHR and added 23 other cases related to Art. 6, 8, and 14 of the ECHR and Art. 1 of the First Protocol to the ECHR.<sup>37</sup> We then analysed this set of judgments and decisions to determine whether the European cases on access to housing dealt with physical, human, or institutional barriers. We examined the applicant's claims and the case's factual background. Finally, we analysed the ECtHR's reasoning to identify the Court's assessment of the merits and the State's obligations.

In all cases, we have found mentions of the three barriers identified in this paper (physical, human, and institutional). In many of the cases, problems arise from more than one barrier. In nearly all cases, institutional barriers played a role in the case. Human barriers played a smaller role (relevant in 19 cases), and physical barriers played an even smaller role (relevant in seven cases). The applicants brought up various issues that resulted from actions taken by private individuals, such as disputes over enforcing private contracts, discrimination, labour relationships, and squatting. However, most cases dealt with issues concerning the allocation of publicly owned housing and planning decisions.

### ***Physical barriers***

Cases dealing with physical barriers are scarce in the European case law. Five cases address internal structural obstacles hindering access to adequate housing, and two are concerned with external physical obstacles. The absence of a definition of adequate housing or minimum building standards under the ECHR may explain the low prevalence of such cases. Our analysis has not revealed obligations to respect the right to housing. However, the ECtHR case law has provided some insights into the State's obligations to *protect* and *fulfil* citizens' right to access to housing in the face of physical barriers.

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<sup>37</sup> These provisions hold a series of rights that directly intersect with the right to housing: Art. 6 ECHR recognises the right to a fair trial and encompasses a series of procedural protections. Art. 8 ECHR recognises the right to respect for private and family life, home, and correspondence. Article 14 holds a prohibition of discrimination. Art. 1 of the First Protocol to the ECHR protects the right to private property.



The Court has found obligations to *protect* the citizens by enforcing domestic judicial decisions. In the cases of *Shmatova and others v. Russia*<sup>38</sup> and *Samigulliniy and others v. Russia*,<sup>39</sup> the Court estimated the applicants' request to enforce a national judicial decision establishing obligations to fulfil and protect the right to housing in the face of external (road drainage system close to the applicant's house) and internal (central heating system) obstacles. Obligations to protect the right to access to housing facing external physical barriers could also be deduced from cases that are also relevant to occupancy rights to housing. In *López Ostra v. Spain*<sup>40</sup>, the Court found in favour of the applicants who alleged a violation of Art. 8 ECHR due to "smells, noise and pollution" caused by a waste treatment plant located "a few metres" from their home. The ECtHR established that national authorities must strike "a fair balance between the interest of the town's economic well-being (...) and the applicant's effective enjoyment of her right to respect for her home and her private and family life". Obligations to intervene against third-party activities that result in external physical obstacles could be inferred from this interpretation.

The ECtHR has declared the existence of obligations to *fulfil* the right of access to housing in the face of physical barriers. In *Marzari v. Italy*, the ECtHR examined an applicant's claim regarding the "local administrative authorities' failure to provide him with accommodation suitable for his disability".<sup>41</sup> While the application was declared inadmissible because the individual had failed to cooperate, the Court acknowledged that "a refusal of the authorities to provide assistance in this respect to an individual suffering from a severe disease might in certain circumstances raise an issue under Article 8 of the Convention".<sup>42</sup> Hence, the State could be deemed bound to obligations to fulfil the right to access housing "where there is a direct and immediate link between the measures sought by an applicant and the latter's private life".<sup>43</sup>

However, the extent of this obligation has never been clarified. In fact, the Court has recently interpreted a wide margin of appreciation for the configuration of housing benefits affecting people facing internal physical obstacles. In *J.D and A v. the UK*, two applicants complained about legislation limiting their options to access adequate housing.<sup>44</sup> Seeking to incentivise small family units to move to smaller apartments, the British Government reduced the housing allowances in

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<sup>38</sup> ECHR, *Shmatova and others v. Russia*, 11 February 2020, app no. 36539/08.

<sup>39</sup> ECHR, *Samigulliniy and others v. Russia*, 13 November 2022, app no. 61463/14.

<sup>40</sup> ECHR, *López Ostra v. Spain*, 8 July 2003, app. no. 16798/90.

<sup>41</sup> ECHR, *Marzari v. Italy*, 4 May 1999, app no. 36448/97.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> ECHR, *J.D and A v. the UK*, 24 October 2019, app. no. 32949/17 and 34614/17.

proportion to the number of empty rooms in the dwelling. Both applicants required extra rooms due to special circumstances. The first applicant demanded compensation for the reduction of the allowance or the allocation of a smaller house adapted to her daughter, who is affected by “severe physical and learning disabilities”. The Court dismissed the claim, finding the reduction and the refusal to provide those means proportionate to Art. 8 ECHR.

### *Human barriers*

Only 19 cases examined in this study address human barriers to access to housing. They concern a variety of issues, including discrimination in the private market, domestic violence, the (illegal) occupation of a dwelling by others, financial debts, and labour relationships. Our analysis shows how the Court found state obligations to respect, protect, or fulfil the right to access housing in most cases.

The ECHR has been interpreted as safeguarding citizens from State arbitrary interventions interfering with expectations derived from Art. 8 ECHR and Art. 1 Protocol to the ECHR. This entails an obligation to *respect* the right to access housing. In *Khamidov v. Russia*, the Court found in favour of applicants affected by the “unauthorised temporary occupation of his estate by State agents” during a counter-terrorist operation that prevented them from accessing their own homes.<sup>45</sup> Denied access to his home, the applicant had to live “in a refugee camp in poor conditions where his nephew, aged one year and seven months, had died of pneumonia”.<sup>46</sup> The Court found this to be a breach of Art. 8 ECHR and Article 1 Protocol No. 1 to the ECHR.

In addition to “this negative undertaking”, the Court has also acknowledged that states hold “positive obligations inherent in an effective respect (...) for Art. 8 of the Convention”.<sup>47</sup> States are, hence, bound to *protect* citizens from other private individuals blocking access to their houses. In *Cvijetić v. Croatia*, the Court declared the lack of State protection in the face of squatters as enabling or creating “a situation where the applicant was prevented from enjoying her home for a very long period of time”, and found it in breach with Art. 8 ECHR.<sup>48</sup> Similarly, in *Kontsevych v. Ukraine*, the Court declared the State’s failure to “restore the apartment to the applicant immediately” in breach of Art. 1 Protocol.<sup>49</sup> Likewise, the states are found bound to protect citizens’ right to access adequate housing from the (violent) actions of others.

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<sup>45</sup> ECHR, *Khamidov v. Russia*, 15 November 2005, app no. 72118/01, para. 133.

<sup>46</sup> ECHR, *Khamidov v. Russia*, 15 November 2005, app no. 72118/01, para. 199.

<sup>47</sup> ECHR, *Kontsevych v. Ukraine*, 16 February 2012, app. no. 9089/04, para 45.

<sup>48</sup> ECHR, *Cvijetić v. Croatia*, 26 February 2004, app. no. 71549/01, para. 53.

<sup>49</sup> ECHR, *Kontsevych v. Ukraine*, para. 44.

The Court's approach to human barriers hindering access to the private rental market has also evolved to acknowledge the State's obligations to protect citizens from discriminatory practices. It had initially held a deferential view of the national legislator in delimiting the parties' freedom to contract. In *Rööslī v. Germany*, it held that legislation excluding same-sex couples from a right to tenancy succession, which was recognised for heterosexual couples, was proportionate to Art. 8 ECHR.<sup>50</sup> However, it has progressively developed its initial position, going as far as to consider in recent judgments that "excluding a person in a same-sex relationship from succession to a tenancy in the event of the partner's death" cannot be justified "by the need to protect the traditional family."<sup>51</sup> Following this logic, in *Kozak v. Poland*<sup>52</sup> and *Karner v. Austria*<sup>53</sup>, the Court found that the regulations limiting the applicants' right to succeed their partners in the tenancy were in breach of Art. 14 in conjunction with Art. 8 ECHR. Discrimination in tenant selection is a human barrier to access to housing. The State must regulate freedom of contract in a way that impedes discriminatory selection of tenants.

Interestingly, the Court also found that the states were bound to fulfil the right to access housing when facing human obstacles. This means that states may need to provide adequate means to overcome obstacles in accessing housing, such as safe housing programmes or assistance for victims of violence. In *J.D and A. v. the UK*, the Court acknowledged that denying housing benefits to a victim of domestic abuse, which had allowed her to afford a dwelling equipped with a "panic room", was in breach of art. 8 ECHR. The Court emphasised that "in the context of domestic violence (...) States have a duty to protect the physical and psychological integrity of an individual from threats by other persons".<sup>54</sup>

### ***Systemic or institutional barriers***

Most cases in European case law refer to systemic or institutional barriers. Many are related to governments' failure to address shortages and other affordability issues. These cases are raised by citizens demanding access to social housing or lower rents in the private rental market. Some cases concern barriers arising from planning decisions limiting construction or the establishment of mobile homes. While less common, other cases deal with the malfunctioning of justice and public administration.

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<sup>50</sup> ECHR, *Rööslī v. Germany*, 15 May 1996, app. no. 28318/95.

<sup>51</sup> ECHR, *Fedotova and Others v. Russia*, 17 January 2023.

<sup>52</sup> ECHR, *Kozak v. Poland*, 2 March 2010, app. no. 13102/02, para. 99.

<sup>53</sup> ECHR, *Karner v. Austria*, 14 July 2003, app. no. 40016/98, para. 41.

<sup>54</sup> *Ibid*, para 105.

The Court has recognised the existence of obligations to *respect* the right to housing regarding different institutional barriers. For instance, it found that states are bound to enforce domestic judicial decisions facilitating access to housing in a reasonable time.<sup>55</sup> It also found states accountable for procedural errors and administrative decisions impeding owners from accessing their property.<sup>56</sup> However, no clarification of the obligations to respect the right to access to housing was provided in other instances. Twenty-four of the analysed judgments addressed domestic regulations limiting the applicants' right to temporarily settle on public land or develop a site appropriate to their cultural identity within their property. The Court dismissed all the applicants' claims, arguing that "there is no right as such under article 8 to choose the location of a home"<sup>57</sup> and that neither Art. 8 ECHR nor Art. 1 Protocol to the ECHR "necessarily go so far as to allow individuals' preferences as to their place of residence to override the general interest".<sup>58</sup> Other judgments and decisions concerning establishing informal settlements have reiterated this deferential interpretation regarding urban planning.<sup>59</sup>

The ECHR has not been interpreted as establishing a general obligation to *fulfil* the right to access housing in the face of systemic barriers like shortages and other market failures. This interpretation is clear in *Chapman v. the UK*:

Article 8 does not in terms recognise a right to be provided with a home. Nor does any of the jurisprudence of the Court acknowledge such a right. While it is clearly desirable that every human being have a place where he or she can live in dignity and which he or she can call home, there are unfortunately in the Contracting States many persons who have no home. Whether the State provides funds to enable everyone to have a home is a matter for political not judicial decision.<sup>60</sup>

The Court has given the States a wide margin of deference in the configuration of housing policies, considering that "national authorities are in a better position (...) to carry out an assessment of the priorities in the context of the allocation of limited State resources".<sup>61</sup> Provided that the housing policies are proportionate and

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<sup>55</sup> ECHR, *Lvin v. Russia*, 4 December 2018, app no. 43301/07; ECHR, *Vakhitov v. Russia*, 9 July 2019, app no. 42932/11.

<sup>56</sup> ECHR, *Frenkel and others v. Russia*, 6 April 2021, app no. 22481/18 and 38903/19.

<sup>57</sup> ECHR, *Wells v. the UK*, 16 January 2007, app no. 37794/05.

<sup>58</sup> ECHR, *Jane Smith v. the UK*, 18 January 2001, app no. 25154/94.

<sup>59</sup> ECHR, *Évangélos Tzamalís and others v. Greece*, 20 October 2009, app no. 5469/07; ECHR, *Salay and Zemanová v. Slovakia*, 28 September 2021, app no. 43225/19.

<sup>60</sup> ECHR, *Chapman v. the UK*, 18 January 2001, app. no. 27238/95, para. 99.

<sup>61</sup> ECHR, *Šaltinytė v. Lithuania*, 26 October 2021, app. no. 32934/19, para. 77

adequate in pursuing a legitimate aim, as declared in *Šaltinytė v. Lithuania*, “it is not for the Court to say whether the legislation represented the best solution for dealing with the problem”.<sup>62</sup>

Following this reasoning, the Court has not recognised a right to the allocation of free housing stemming from the ECHR, and it has only considered demands for social housing within the scope of domestic legislation recognising this right.<sup>63</sup> Faced with demands to the allocation of public dwellings grounded solely on art. 1 Protocol no.1 to the ECHR in *Kvasnevskis and others v. Latvia*,<sup>64</sup> the Court noted “that the applicants did not refer to any particular legal provisions or decisions of public authorities that would lead them to expect that they would be able to claim the right to lease a substitute dwelling”. Without a sufficient basis in domestic law, the Court declared their application inadmissible. In *Yasinskyy v. Ukraine*<sup>65</sup>, the applicant complained to “have been arbitrarily denied the right to occupy” a particular publicly owned housing unit, “and had been evicted therefrom”. The ECtHR did not address the demands concerning the allocation to public housing and dismissed the application by assessing exclusively whether the eviction was proportionate to Art. 8 ECHR. In the context of privatising public housing, the ECtHR has also declared that Art. 1 Protocol 1 “does not guarantee the right to acquire property”.<sup>66</sup>

Similarly, Art. 8 ECHR has not been interpreted as compelling to regulate rents in the private market. While states may establish proportionate rent regulations to protect the right to housing, there is no right to demand the establishment of such limitations from the national authorities. This idea can be read in the inadmissibility decision in *Straka and Others v. Slovakia*.<sup>67</sup> The applicants demanded a controlled rent in the context of a series of reforms leading to the liberalisation of rents. The reforms were found proportionate “to Article 8 of the Convention” as they were “accompanied by guarantees preventing tenants who are demonstrably in need and who cannot afford to pay the market rent from being evicted without having been provided with substitute accommodation”. The Court did not find the applicants entitled to a reduced rent.

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<sup>62</sup> ECHR, *Šaltinytė v. Lithuania*, 26 October 2021, app. no. 32934/19, para. 77

<sup>63</sup> ECHR, *Vinniychuk v. Ukraine*, 20 October 2016, app no. 34000/07, para 53.

<sup>64</sup> ECHR, *Kvasnevskis and others v. Latvia*, 27 March 2018, app no. 28848/07.

<sup>65</sup> ECHR, *Yasinskyy v. Ukraine*, 27 March 2018, app. no. 28848/07.

<sup>66</sup> ECHR, *Babenko v. Ukraine*, 4 January 2012, app no. 68726/10.

<sup>67</sup> ECHR, *Straka and Others v. Slovakia*, 4 November 2014, app no. 11809/12 and 35284/13, para. 76.

## Conclusion

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This paper argues that the right to adequate housing can be conceptualised as a bundle of access, occupancy, and exit rights. Access to housing entails both a physical and an abstract reality. It refers to the freedom to participate in a housing market/system, enter a dwelling, and move freely in and out. Therefore, access rights are not only essential to people living roofless, they also come into play regarding migrants seeking a home, households splitting up for diverse reasons, people in need of adapted internal or external facilities, and those living in inadequate housing.

Physical, human, and systematic or institutional barriers can hinder access to housing. While barriers may be legitimate (i.e., a door protecting the privacy of a home), sometimes they represent an encroachment of the right to adequate housing. These limit a person's prospects of finding adequate housing, forcing them into situations of vulnerability and homelessness. This is especially true when the barriers follow patterns of discrimination, or they constitute a significant handicap for people with mobility or sensory restrictions.

Different obligations to respect, protect, and fulfil the right to access to housing stem from international law. This paper has analysed the extent to which states' obligations concerning these barriers have been discussed by the ECtHR. Our analysis shows that the ECtHR has recognised obligations to respect the right to access to housing of citizens facing human barriers in its case law. The Court has also acknowledged the existence of obligations to protect and fulfil the right to access housing from physical and human barriers. However, the Court's approach to systemic and institutional barriers has been more nuanced. Albeit observing obligations to respect access rights (i.e., the delay in allocating social housing recognised by domestic law), the ECtHR has been largely deferential to the States. According to the Court's logic, providing housing to those in need would be "a matter for political not judicial decision". This narrow interpretation could be disputed in the light of other human rights bodies' work, such as the CESCR's conclusions and decisions or the reports of the UN Special Rapporteur on the right to adequate housing.

Moreover, it is important to note that those obligations are mostly identified when citizens already hold titles or expectations of access (i.e., ownership, social housing entitlements, debts, ownership, judicial decisions). The Court seems mainly concerned with protecting the home. In this regard, it could be argued that the ECHR has been interpreted as including a right to "recover the home". That is a right to access a place citizens hold "sufficiently close and continuing links". However, the ECtHR's findings in *Kozak v. Poland* and *Karner v. Austria* regarding states' obligations to prevent discriminatory practices in access to housing, or the positive state obligations found in *J.D and A. v. the UK* to provide the necessary

means (including housing benefits) to protect victims of gender-based violence, demonstrate that the Court's understanding of the right to housing is broader than this. It also includes elements of the complex right to access to housing.

Access rights clearly have had a limited run in ECtHR case law. Nonetheless, these interpretations are authoritative and helpful to understanding the State's obligations concerning barriers to access to housing and how to prevent and address homelessness. These barriers are complex in nature insofar as they may manifest themselves as legitimate on certain occasions. Analysing the ECtHR case law helps clarify in which situations these barriers are unjustified and how they can be addressed. This paper ultimately demonstrates to what extent the discussion on homelessness and access to housing is not only about the provision of financial means or housing units but a complex plurality of situations to which law and public policy must pay special attention.

As state practice is to be guided by international law, understanding the meaning and scope of these international mandates is important for designing regulations and public policies that align with the international right to housing. The doctrinal analysis of the ECtHR's case law, underpinned by the conceptualisation proposed in our study, leads to innovative conclusions regarding the right to access housing in the ECHR framework. However, it also opens the door to new research, which, based on the typology of barriers and state obligations proposed in our study, investigates their treatment in state practice or the decisions and reports of other international human rights law bodies, like the CESCR or the ESCR.

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