



PORTUGUESE CATHOLIC UNIVERSITY

**The right to housing as defined on article 31 of the (Revised)
European Social Charter**

**Digest of the latest Conclusions of the European Committee of Social
Rights – Is Portugal taking the legal and practical measures to ensure
the protection of this right?**

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I. Introduction – The European Social Charter (Revised)

The European Social Charter (ECS) is a treaty of the Council of Europe (COE), signed in 1961, in Turin that integrates a set of international standards concerning social rights and a mechanism for monitoring their implementation within the States concerned.

In this order the ESC represents an European regional instrument that has as main objective the protection of social rights that accompanies and complements the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

Throughout the time Europe has progressed in social and labour laws, which contributed to the adaption of the ESC, that was further revised in 1996 in order to keep up with the changes until this day.

The COE has currently 47 Member States, of which 43 are parties to either the 1961 Charter or the Revised Charter, assuring this way the support for social rights. Only Liechtenstein, Monaco, San Marino and Switzerland have not ratified the treaty.

Portugal ratified the ESC on the 30 of September of 1991 by accepting all its provisions and since 1996 has submitted annual implementation reports.

In line with what had already happened in relation to the ESC, Portugal ratified the revised Charter on 30 may of 2001.

Hereupon, from 2005 the national reports started to refer to the new Charter, with the Ministry of Labor and Social Solidarity being responsible through the Office of Strategy and Planning to ensure the elaboration of national reports on the implementation of the Charter.

All things considered, the ESCR is possible the most recognized catalog of european social rights, as a basis for the European Union's own social policy (EU), recognized in article 151° of the Treaty on the Functioning of the European Union (TFUE).

II. The European Social Charter and the right to housing (article 31 ESCR)

Social rights are state commitments assumed in a certain historical period and in a certain political-constitutional situation and have, as a traditional characteristic, dependence of a state action that occurs trough public policies. This means that the materialization of fundamental rights occurs through public policies.

In other words and in order to make it intelligible, the social rights are related with the idea of equality and impose a state action – they establish a specific conduct of *facere*

rights, on the contrary liberty rights imply a *non facere* conduct. They are therefore rights of supply.

The article that will be analysed (article 31 of the ESC) at the present paper is envisaged on the 65th article of the Constitution of the Portuguese Republic.

1. Article 31 of the European Social Charter: The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

- 1) to promote access to housing of an adequate standard;*
- 2) to prevent and reduce homelessness with a view to its gradual elimination;*
- 3) to make the price of housing accessible to those without adequate resources.*

It is of great importance to mention that the European Committee on Social Rights (ECSR) has played a major role in the effective realization of the right to housing, either by densification the objectives that are defined in the Charter, or by the process of collective complaints.

Thus, according to the interpretation of article 31st, which is carried out by the ECSR, States should adopt the legal and practical measures that are necessary to effectively protect the right to housing.

Therefore, the Committee highlights that the Charter rights must take a concrete and effective form and not just a theoretical method.

1.1 The Interpretation of article 31§1 ¹

According to the ECSR, the right to adequate housing must be guarantee to everyone by the States.

Besides that, they should promote access to housing in particular to the different groups of vulnerable persons, such as low-income persons, unemployed persons, single parent households, young persons, persons with disabilities including those with mental health problems.

In this sense, in order to understand the first paragraph of this article, it is of great importance to recognize the meaning of “adequate housing”, according to law:

¹ *Digest of the Case of Law of the European Committee of Social Rights*, available at: <https://rm.coe.int/168049159f>

Firstly, it is versed by “adequate housing” a healthy housing, that is, hygienic and healthy, that has all the essential elements of comfort (such as water, heating, sanitation and electricity).

Secondly, a not overcrowded dwelling (size adapted to the number of members).

Lastly, an assisted dwelling of legal guarantee of permanence in the places.

The Committee declares that the public authorities must ensure that housing has a adequate standard, using various means, for instance: avoiding interruption of essential services such as water, telephone, and electricity.

Beyond that, according to the Committee, in order for a dwelling to be adequate, it must, moreover, be situated in a place which allows access to the public services (like health, education institutions, social services), as well as probable places of employment.

1.2 The Interpretation of article 31§2²

As claimed by the Committee the signatory Parties have to take the necessary measures to prevent and reduce homelessness, aiming at its progressive elimination.

But what does the concept of homelessness mean? This precept means that the State party must prevent vulnerable people from being deprived of shelter. The question that arises is: how can that be done with the help of States? And the Committee responds, beginning by saying that it can be done via the adoption of procedures to limit the risk of eviction and through the granting of access to social housing for the disadvantaged people.

For a better understanding of this paragraph the Committee clarifies, in addition to these, other concepts, such as:

- Forced eviction: that can be defined as the deprivation of housing which a person occupied due to insolvency or wrongful occupation.

The Committee has the need to reinforce that **illegal occupation** of a site or dwelling may justify the eviction of the illegal occupants. However, the criteria of illegal occupation must not be unduly wide.

As stated by the Committee, people who are threatened with expulsion, legal protection must be provided, alternative solutions must be sought and a reasonable notice period before eviction must be given.

² *Digest of the Case of Law of the European Committee of Social Rights*, available at: <https://rm.coe.int/168049159f>

If evictions do take place, they must be carried out under conditions which respect the dignity of the persons concerned. Thus, they will have to be relocated or receive financial assistance and should be able to have legal assistance by the authorities.

- Reduction: As Committee says, in order to reduce the number of homeless people, and as an emergency measure, it will have to be immediately granted a shelter. There must be enough places and the conditions in the shelters should be such as to enable living in keeping with human dignity. That being said, the requirements are not the same as for permanent forms of housing with regard to privacy and the possibility of family life.

The Committee also declares that the temporary supply of shelter, however adequate, cannot be considered satisfactory; Individuals who are homeless should be provided with adequate housing within a reasonable period.

In addition, measures should be taken by the States to help such people overcome their difficulties and to prevent them from returning to a situation of homelessness.

1.3 The Interpretation of article 31§3³

In this substance the Committee has to say that an adequate supply of affordable housing must be ensured for persons with limited resources. Which leads us to a question: When is housing affordable? According to the Committee housing is affordable when the household can afford to pay initial costs (like deposit and advance rent), current rent and other housing-related costs (e.g. utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located.

So that it is possible States must:

- provide benefit systems to allow access to housing for the most disadvantaged or low-income sectors of the population, which will include: granting financial support (loans or subsidies) for the purchase of the first home, or discounts on services such as electricity, water and communications.

³ *Digest of the Case of Law of the European Committee of Social Rights*, available at: <https://rm.coe.int/168049159f>

In addition, on the authority of the Committee, all the rights thus provided must be guaranteed without discrimination, in particular as in respect of Roma or travellers.

2. The interpretation of 31st article given by the Committee and Considerations taken

All in all, even though the obligation to promote the right to housing does not constitute an obligation of result, but rather the commitment of States parties to make available legal, financial and operational means to achieve this aim, the Committee considers that these are genuine results obligations:

- the provision of temporary accommodation for anyone who needs it;
- the establishment to the right of housing for those who do not have an adequate income;
- the observance of a minimum set of habitable conditions, even if it is a temporary accommodation;
- the definition of a reasonable waiting time to access an adequate housing;
- the compliance with a principle of equal treatment (article 19th, §4, c)) or non-discrimination (E) in the fulfilment of these obligations.

III. The application of article 31 §1 in Portugal

1. The Conclusions of 2011

The question that prevails is the following one: Is The situation of the Portuguese State regarding the obligations assumed by the ratification of the European Social Charter in accordance with it? That is what we, actually, want to know and in order to obtain that response we have consider the analysis report, in which the European Committee on Social Rights gave the conclusions in that matter.

Having said that, the Committee concluded that there were important ongoing measures, but that information was lacking on various elements.

Certainly, the Committee was of the opinion that, despite the existence of a varied set of programs to respond to situations of housing shortages (for instance, during the reference period (in 2007) the Institute for Housing and Urban Rehabilitation (IHRU) was entrusted with the implementation of the Government's policy for housing and rehabilitation, which includes the management of a variety of programmes designed to respond to situations of housing hardships (Article 31§3)), their accounting data were

lacking, as well as information on the impact of the measures adopted on the most vulnerable population groups.

The Committee also considered that there was a lack of information about the access to affordable and impartial legal and non-legal remedies.

Moreover, the Committee has concluded that many families live in precarious conditions. Likewise notes from the report that in 2009, 6 million euros were invested in the rehabilitation of housing units of 20-30 years of age.

In the light of the above, the Committee asks the Government to explain what measures have been taken and are planned to improve the situation of inadequately housed persons.

Last but not least, the commission concluded that it is estimated that about 31% of all Roma in Portugal live in substandard housing conditions, often without the same basic amenities. In addition, the Committee noticed that re-housing policies supposedly aimed at improving housing conditions have resulted in the segregation of Roma on the outskirts of cities and this in turn has contributed to their stigmatization.

Consequently, the Committee requests the next report to supply detailed information on the steps taken to improve this situation. Meanwhile, it states that the housing conditions of many Roma do not meet the requirements of Article 31§1.

1.1 Final Conclusion of the enforcement of article 31 §1 in Portugal

The Committee concludes that the situation in Portugal is not in conformity with Article 31§1 of the Charter because measures taken by public authorities to improve the substandard housing conditions of most Roma in Portugal are inadequate.

IV. Decision of the European Committee on Social Rights on the Complaint presented by the European Roma Rights Centre (the “ERRC”) v. Portugal

Following the collective complaint, no. 61/2010, presented by the CEDR against Portugal, the European Committee for Social Rights unanimously concluded that there had been an infringement of the European Social Charter, in particular as regards non-discrimination (Article E), the right to housing (Article 31), family law (regarding social, legal and economic protection – Article 16), as well as the right to protection against poverty and social exclusion (Article 30°).

Firstly, the Committee begins by saying that the right to housing must not be subject to any kind of discrimination on any of the grounds mentioned by Article E of the

Charter. In this regard, discrimination on the grounds of racial and ethnic origin is forbidden explicitly with regard to access to housing as a result of the transposition in national law of Council Directive 2000/43/EC.

However, regarding discrimination based on ethnic origin, the Committee found that the specific differences of Roma had not been sufficiently taken into account when implementing housing programmes, and that some of such programmes had led to the segregation of Roma which is contrary to Article 31§1. As an example of the insufficient measures taken by the Government, the Committee refers to Bragança, where one Romani community lives on the former rubbish dump on the outskirts of the town. Despite of the various housing and slum eradication programs outlined by the municipality of Bragança in the Government's observations, there has still been no relocation of the Romani residents from the former rubbish dump.

Moreover, with regard to Roma in particular, the Committee has held that as a result of their history, the Roma have become a specific type of disadvantaged group and vulnerable minority. They therefore require special protection.

According to the Committee's view, social housing solutions proposed to Roma should, as far as possible, be adapted to the cultural specificity, taking into account, in particular, the size of families in rehousing.

All things considered, it is particularly important to enhance that the Committee reiterates that States Parties shall guarantee equal treatment with respect to housing on the grounds of Article E of the Charter. Article E prohibits discrimination and therefore establishes an obligation to ensure that, in the absence of objective and reasonable justifications, any individual or groups with particular characteristics enjoys in practice the rights secured in the Charter. Moreover, Article E not only prohibits direct discrimination but also all forms of indirect discrimination.

The signatory parties must therefore ensure equal treatment in the defence of the right to housing, based on Article E of CSER, what was not by any means happening in Portugal.