

СУЧАСНА СИСТЕМА МІЖНАРОДНОГО ПРАВА

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THE EUROPEAN SOCIAL CHARTER STANDARDS OF RIGHT TO HOUSING: UKRAINE'S COMPLIANCE WITH COMMITMENTS

СТАНДАРТИ ПРАВА НА ЖИТЛО ЄВРОПЕЙСЬКОЇ СОЦІАЛЬНОЇ ХАРТІЇ: ВИКОНАННЯ УКРАЇНОЮ ВЗЯТИХ ЗОБОВ'ЯЗАНЬ

СТАНДАРТИ ПРАВА НА ЖИЛЬЕ ЕВРОПЕЙСКОЙ СОЦИАЛЬНОЙ ХАРТИИ: ВЫПОЛНЕНИЕ УКРАИНОЙ ВЗЯТЫХ ОБЯЗАТЕЛЬСТВ

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Abstract. *The article is devoted to the protection of the human right to housing in Ukraine in the context of the analysis of the fulfillment of obligations of Ukraine under the article 31 of the European Social Charter revised. Ukraine accepted the first two paragraphs of Article 31 devoted to the right to housing, avoiding the provision enshrined under third paragraph. Since the time of ratification of the ESC, the fulfillment of these obligations has remained problematic for Ukraine in spite of including the key aspects of the right to housing in the Constitution of Ukraine, detailing in numerous national legal acts. European Committee of Social Rights' recommendations issued following the consideration of Ukraine reports for different periods, including the latest recommendations in 2020 for 2014-2017 are analyzed in the article. The main problems of bringing*

Ukrainian legislation into accordance of ESC standards in the sphere of right to housing have been identified and highlighted.

By comparing the main comments of the European Committee of Social Rights of different years on the right to housing, authors concluded that the lack of significant progress in the implementation of Committee's recommendations in Ukraine is associated with many factors, among which the total lack of Ukrainian translation of the decisions and conclusions of the Committee, the lack of understanding of the Committee's interpretation of the right to housing and as a result, delays in the submission of state reports, not providing sufficient information in reports, even statistical (for example, data of the number of homeless people), as well as the lack of an integrated complex understanding of the necessary changes in national legislation and practice for the adequate implementation of the Charter standards.

Keywords: *the right to housing, social rights, European Social Charter revised, European Committee of Social Rights, adequate standard of living, homelessness.*

Анотація. *Стаття присвячена захисту права людини на житло в Україні у контексті аналізу виконання взятих зобов'язань за Європейською соціальною хартією переглянutoю. Основні аспекти права на житло закріплено у Конституції України, деталізовано у численних нормативно-правових актах. Це дозволило Україні при ратифікації Європейської соціальної хартії у кінці 2006 року погодитися на обов'язковість перших двох пунктів статті 31 щодо права на житло, однак, виконання взятих зобов'язань залишається проблемним для України питанням. У статті аналізуються рекомендації, надані за результатами розгляду доповідей України за різні періоди, включаючи останні рекомендації 2020 року за 2014-2017 рр.*

Порівнюючи основні зауваження Європейського комітету з соціальних прав різних років щодо права на житло автори доходять висновку, що відсутність суттєвого прогресу їх виконання Україною пов'язана з багатьма чинниками, серед яких можна виділити відсутність перекладу українською мовою рішень та висновків Комітету, недостатнє розуміння тлумачення Комітетом права на житло та, як наслідок, затримки у представленні державних доповідей, ненадання достатньої інформації у доповідях, у тому числі статистичної, наприклад, щодо кількості бездомних осіб, а також відсутність комплексного бачення необхідних змін національного законодавства і практики для імплементації стандартів Хартії.

Ключові слова: *право на житло, соціальні права, Європейська соціальна хартія переглянута, Європейський комітет з соціальних прав, достатній життєвий рівень.*

Аннотация. *Статья посвящена защите права человека на жилье в Украине в контексте анализа выполнения взятых обязательств по Европейской социальной хартии пересмотренной. Основные аспекты права на жилье закреплены в Конституции Украины, детализированы в многочисленных нормативно-правовых актах. Это позволило Украине при ратификации Европейской социальной хартии в конце 2006 года согласиться на обязательность для нее первых двух пунктов статьи 31, предусматривающей право на жилье, тем не менее, исполнение взятых обязательств остается проблемным вопросом для Украины. В статье анализируются рекомендации, предоставленные по результатам рассмотрения докладов Украины за разные периоды, включая последние рекомендации 2020 года за 2014-2017 гг.*

Сравнивая основные замечания Европейского комитета по социальным правам разных лет о праве на жилье, авторы приходят к выводу, что отсутствие существенного прогресса их выполнения Украиной связано со многими факторами, среди которых можно выделить отсутствие перевода на украинский язык решений и выводов Комитета, недостаточное понимание толкования Комитетом права на жилье и, как следствие, задержки в предоставлении государственных докладов, не предоставление достаточной информации в докладах, в том числе статистической, например, по количеству бездомных

лиц, а также отсутствие комплексного видения необходимых изменений национального законодательства и практики для имплементации стандартов Хартии.

Ключевые слова: право на жилье, социальные права, Европейская социальная хартия пересмотренная, Европейский комитет по социальным правам, достаточный уровень жизни.

Research problem setting. In today's world, one of the basic human rights, which is directly related to the satisfaction of its basic needs, is the right to housing. The European Court of Human Rights in its judgment “James and Others v. The United Kingdom” emphasized that:

[...] modern societies consider housing of the population to be a prime social need, the regulation of which cannot entirely be left to the play of market forces. [European Court of human Rights, James and Others v. the United Kingdom: 1986]

This highlighted the importance of this right and the need for states to guarantee the right to housing. Today, this human right is enshrined in many international legal instruments, mentioned in the constitutions of more than a hundred countries [Golay C., Özden M.: 2008]. At the same time, more than a billion people do not have adequate housing [Office of the United Nations High Commissioner for Human Rights: 2014], and states continue to face the need to solve the problems of homeless people, people who are in need, who do not have their own housing and / or enough income to rent it or who are representatives of vulnerable groups etc. States create various housing funds, programs for certain categories of population, try to solve housing issues during crises, armed conflicts, disasters, and so on. However, in many cases, the measures taken by States are not sufficient for individuals to exercise their right to housing.

Different types of violations of the international legal obligations regarding to the right to housing by Ukraine are stated; this requires further analysis of compliance of national legislation with international legal standards of the right to housing, in particular, outlined in the European Social Charter revised.

The purpose of the article. The purpose of the article is to provide a detailed analysis of the recommendations of the European Committee of Social Rights to Ukraine considering the Article 31 of the ESC on the right to housing in the context of repeated violations, despite the clear enshrinement of this right in the national Constitution and legislation.

Analysis of the latest researches and publications. Despite the importance of this issue and the attention of Ukrainian scientists, practitioners to national pension reform and social security system in general, the attention has not been paid to social human rights, including the right to housing, in the context of international standards and their implementation in Ukraine. Most domestic scholars such as N. Bolotina, K. Borisova, S. Verlanov, V. Zhernakov, L. Lichman, N. Sidorenko, E. Kharitonov, M. Shumylo and others analyze this right exclusively through the national provisions or pay attention to various aspects of the right to housing in the context of the analysis of social rights in general, examining the European Convention on Human Rights. However, the ESC and ECSR recommendations remain unexplored in Ukraine.

Ukraine undertook the obligations to respect the right to housing under the European Social Charter revised almost 15 years ago in earlier 2007 [Verkhovna Rada of Ukraine: 2006], but monitoring bodies have been stated the lack of sufficient progress and failure commitments under this article during all this time. Gaps in the study of international legal standards of right to housing and obligations arising for Ukraine from international treaties, in particular, under the European Social Charter revised, impact on people's misunderstanding of the scope of this right, and on the other hand, the corresponding misunderstanding by state representatives of the difficulties in the process of fulfilling commitments taken in this sphere and guaranteeing its citizens the right to housing. Therefore, this situation, in combination with the urgent need to solve the housing problems of more than 1 million internally displaced persons, indicates the necessity for detailed consideration and analysis of relevant Ukrainian legislation and international standards.

Basic research material.

The history of the right to housing in international documents. The right to housing as a human right of second dimension is a part of social rights, along with the right to social security, pension, health care and medical assistance, a decent standard of living, protection of motherhood and childhood, protection against unemployment and so on. Social rights are aimed at provide a person with social security and a decent standard of living. Namely the right to a decent or sufficient standard of living is contained in international legal universal documents. Thus, the right to a decent standard of living, family protection and assistance is enshrined in Article 25 of the Universal Declaration of Human Rights 1948:

...Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social service, as well as the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control... [The United Nations General Assembly: 1948]

Similarly, the right to housing is incorporated into the text of the right of everyone to an adequate standard of living in the International Covenant on Economic, Social and Cultural Rights, Article 11 of which provides for the right to housing along with adequate food, clothing and the right to adequate living conditions [The United Nations: 1966]. Thus, despite the non-enshrinement of the right to housing as an independent separate article into the texts of the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, it was included as a component of broader right, forming part of the right to a sufficient standard of living. The right to housing for various vulnerable groups in the context of equality and non-discrimination in its exercise was provided for numerous other international treaties: the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention on the Rights of All Migrant Workers and their Families, the Convention on the Rights of Persons with Disabilities, etc.

At the regional level, the right to housing is included in the African Charter on Human and Peoples' Rights, the American Convention on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the EU Charter of Fundamental Rights, the European Convention on the Legal Status of Migrant Workers and others. Moreover, if the right to housing was not directly enshrined in some documents, the monitoring bodies separated it from the scope of other rights. In particular, in conclusions in the case against Nigeria in 1996 the African Commission on Human and Peoples' Rights acknowledged that destroying housing has a negative impact on rights such as property rights, health, privacy and, consequently; the cumulative effect of articles providing for the abovementioned rights lead to the African Charter guaranteeing both the right to housing and asylum. [Office of the United Nations High Commissioner for Human Rights: 2014] The article 8 of the ECHR enshrined the right to respect for private and family life, which consists of four elements. Respect for housing is one of them:

[...Everyone has the right to respect for his private and family life, to their housing and correspondence ... [The Council of Europe: 1950]

The European Court widely interpreted the definition of housing and emphasized that in exceptional cases the obligation to provide some vulnerable persons with shelter / adequate housing may also arise from the provisions of Article 8 of the European Convention on Human Rights [European Court of human Rights, Budina v. Russia: 2009]. Furthermore, the Court considered that the term "housing" should be interpreted broadly and includes the guarantees of the of the Article 8 to those who do not have their own home but live with the permission of the owner with whom they have strong family ties, or if they regularly spent a significant part of their time in such a "non-own house" [European Court of human Rights, Mentés and Others v. Turkey:1998, Dogan and others v. Turkey: 2004, Diogenous and Tseriotis v. Turkey: 2009, Demades v. Turkey: 2003], etc. The state's failure to provide a person with basic/adequate housing in certain circumstances can be considered as inhuman and degrading treatment, which is prohibited by Article 3 of the ECHR.

Bearing in mind that the realization of the vast majority of social rights as positive rights depends on active action by the state and its financial and economic situation, it is important to understand the content of the right to housing, including the obligation of the state to provide it. According to the analysis of the Office of the UN High Commissioner for Human Rights, one of the most common mistakes of people within the meaning of the right to adequate housing is considered the idea of the possibility of those who do not have housing, to require an automatic grant an adequate housing for free from the state authorities [Office of the United Nations High Commissioner for Human Rights: 2014]. The answer to the question of the unconditional direct obligation of the state to provide all persons under its jurisdiction or at least to all its citizens who do not have it with adequate housing is obvious. Ensuring the right to housing, states are not obliged to create the entire national housing stock, although states are involved in this process. The proper fulfillment of States' obligations in this sphere includes the elaboration of programs, provide assistance, reduction and prevention of homelessness, forced evictions, combating discrimination, protection of vulnerable groups of population, ensuring security of the housing for all and so on.

The Committee on Economic, Social and Cultural Rights explains the right to housing as the right to live anywhere in security, peace and dignity. The Committee applies a broad interpretation of this term that includes the concept of adequate housing protection against forced evictions and arbitrary destruction and / or demolition, as well as protection from unlawful interference with housing, private and family life, the right to choose the place of residence, to determine the place of residence and freedom of movement [Office of the United Nations High Commissioner for Human Rights: 2014].

The right to housing and the requirements for adequate housing or basic shelter for certain vulnerable categories of persons are also defined in other international legal instruments. Thus, the Guiding Principles on Internal Displacement provides for the right of internally displaced persons to housing with the interpretation of “adequate standard of living”, meaning housing that provides the occupants with the facilities and necessary elements such as following:

- legal security of residence, especially the protection against forced eviction;
- availability of services and infrastructure (availability of water, electricity, heating, etc.);
- affordable price that does not risk the other basic needs;
- suitability for living in terms of sufficient space, physical security, as well as protection from cold, moisture, heat, rain, wind, structural hazards of the building, protection from diseases;
- an adequate level of accessibility, which should guarantee that vulnerable groups could enjoy the housing which meets their specific needs;
- physical location, which provides low-cost access to employment options, health services, school education, childcare centers and other social facilities, as well as the absence of sources of environmental pollution;
- possibilities to express cultural identity;
- compliance with safety standards aimed at minimizing damage from natural disasters that could occur in future. [Revised Baseline analysis: 2019]

The right to housing under the ESC and the constitutions of the state-members. Despite the abovementioned approaches to understanding the right to housing, this right in the most detailed form is enshrined in the European Social Charter revised (ESC) in 1996 and interpreted by its monitoring body - the European Committee of Social Rights (ECSR). The Charter was elaborated and adopted within the Council of Europe shortly after the adoption the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1950, which included civil and political rights. Over time, under the influence of the development and popularization of the concept of welfare state, social function of the state and changes towards importunacy of social rights, the number of rights protected by the Charter has been supplemented and expanded in new revised European Social Charter adopted in 1996.

The revised Charter incorporates all the major European standards in the social and labor spheres that the Council of Europe achieved in the mid-1990s. These standards remain relevant today for almost all 47 member states of the Council of Europe, of which only four states

(Liechtenstein, Monaco, San Marino, Switzerland) have not ratified either the original Charter 1961 or Revised Charter. The refusal to be a party of the European Social Charter is mainly due to the fact that these states do not enshrine social rights at the constitutional level and, therefore, try not to impose any international obligations in this sphere.

For instance, the Swiss Federal Constitution does not enshrine the right to housing, which is a logical continuation of its national approach not to recognize social rights as rights and treat them as the intentions of the state formulated as social goals which couldn't guarantee direct social rights and benefits to all. The right to housing is formulated as follows:

...any person seeking accommodation for themselves and their family can find suitable accommodation on reasonable terms. [The Federal Constitution of the Swiss Confederation: 1999]

Two more articles of the Swiss Constitution are about encouraging the housing construction and ownership, prohibits arbitrary rent fees and other abuses at the same time (Art. 108, 109).

Upon ratification of the ESC, States have the option of choosing a certain minimum number of articles, paragraphs and, accordingly, will not be bound by obligations under all articles. Once ratified, States may accede to other provisions at their own discretion at any time. Namely, states, when ratifying, may not even fully ratify the whole article, but may choose only certain paragraphs which will be bound for them. Thus, Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Georgia, Hungary, Ireland, Malta, Moldova, Montenegro, Romania, Russia, Serbia, Slovakia, Northern Macedonia have totally not ratified Article 31, which provides for the right to housing. Countries such as Andorra, Lithuania, Latvia and Ukraine have partially recognized the right to housing. Among the states that have fully ratified Article 31, only 10 states, most of which are Western European countries. This situation reflects the possibility of choice of articles and parts during the ratification, as has been mentioned above and the absence of this right in ESC 1961 because some states are still parties of the Charter 1961.

Such selectivity, introduced during the drafting of the Charter, was aimed at facilitating the ratification process and increasing the number of States parties. However, states still use the established mechanism to avoid problematic issues and show unwillingness to take on responsibilities that will be difficult to fulfill.

When choosing the provisions of the Charter for ratification, states take into account the interpretation of relevant articles by the European Committee of Social Rights, which like the European Court of Human Rights, interprets the provisions of the Charter in broad, expanding, evaluative and supplementing meaning, including the interpretation of terms of "fair remuneration", "reasonable working hours", "decent, sufficient standard of living", "price of housing accessible to those without adequate resources", etc.

The European Committee of Social Rights in the one of cases the European Roma Rights Center against Bulgaria has outlined the main tasks for states to fulfill their obligations under Article 31 of the Charter:

- a) take the necessary legal, financial and operational measures to ensure continued progress in achieving the objectives set out in the Charter;
- b) keep meaningful statistics on needs, resources and results;
- c) regularly review the effectiveness of adopted strategies;
- d) establish a work schedule and do not indefinitely postpone the achievement of the goals of each stage;
- e) pay attention to the consequences of the policy established for each of the categories of persons, especially the most vulnerable groups of the population. [European Committee of Social Rights: 2018]

However, legal measures should not be the main things, but the availability of resources and the introduction of procedures is necessary for the actual implementation of the law. [European Committee of Social Rights, International Movement ATD Fourth World (ATD) v. France: 2007] The Committee, while acknowledging the complexity of the requirements and the financial component, also points to the need to use the maximum possible resources available and to set reasonable deadlines for States to meet their commitments.

The main requirements for the implementation of the article 31 of the ESC and its interpretation by the ECSR. In general, the right to housing fixed in Article 31 of the ESC revised consists of 3 parts: facilitating access to housing of an adequate standard; prevention of homelessness and its reduction with the purpose of its gradual elimination; setting prices of housing affordable for people without adequate resources.

There are a number of requirements for adequate housing mainly for the inclusion into national legislation the safe, healthy conditions of housing and its minimum size. States undertake to promoting access to housing for various vulnerable groups, such as the low-income, the unemployed, single-parent families, young people, people with disabilities, including those with mental health problems.[European Committee of Social Rights: 2018] The ECSR, in its recommendations to Ukraine and France in particular, recalled that the requirements and definition of "adequate housing" should apply not only to new constructions, buildings, but also to existing housing stock, rental housing. The Committee consider as important to ensure the safety of housing from a sanitary and hygienic point of view, the availability of all basic facilities, such as water, heating, waste disposal, electricity, sanitation. In addition, the construction of housing should be safe and the housing itself should not be overcrowded. [The Government of Ukraine, European Social Charter (revised): 2017]

In interpreting the first paragraph of Article 31 on adequate housing, the ECSR draws attention to the effectiveness of measures taken by States and the legal protection of those in housing. The implementation of an effective policy to prevent homelessness, providing adequate housing for emergencies for the homeless is also important. The ECSR has repeatedly defined in its conclusions and decisions the definition of a homeless person as a person who legally does not have any adequate (proper) housing. [European Committee of Social Rights: 2003, Conference of European Churches (CEC) v. the Netherlands: 2013, European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands: 2014]

Among the methods of preventing homelessness, the Committee considers the provision of social housing to vulnerable groups, the right to shelter, including temporary, which is linked to the right to life and is considered extremely important in the context of respect for human dignity. The shelter should be provided to all persons, including those who were in the state illegally. Moreover, in its decisions, the Committee emphasizes the absence of any maximum period, arguing that this obligation applies to the State for as long as the person is under its jurisdiction [European Committee of Social Rights, European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands: 2014], however, the obligation to provide migrants with permanent housing does not arise from Article 31 of the ESC.

Part 2 of article 31 does not textually fixed the protection against eviction, but the ECSR includes to its scope the protection against forced evictions, imposing on states the obligation to create legal and procedural guarantees in the case of eviction and allowing only a narrow range of grounds to do so. Thus, forced evictions should be prohibited in the winter time, at night; a person who is evicted should receive free legal aid and compensation in case of illegal eviction.

The content of the right to housing includes, as noted above, the States' obligation to guarantee affordable prices for housing for some vulnerable, impoverished people; affordable housing should be provided through social housing of adequate quality and quantity and by other means. ECSR emphasized that such affordable prices should be determined for people with limited financial recourses, reaffirming the state's obligation to provide social housing for the most disadvantaged vulnerable people, to provide benefits and housing on a non-discriminatory basis. [European Committee of Social Rights, International Movement ATD Fourth World (ATD) v. France: 2007]

The process of implementation the obligation of the Article 31 of the ESC by Ukraine. Ukraine has ratified the first two paragraphs of Article 31 of the Charter revised, and has enshrined the right to housing in the national legislation of Ukraine, devoting to the guarantees of this right article 47 of the Constitution of Ukraine. It proclaims the right of everyone to housing, as well as the obligation of the state to create conditions under which every citizen will be able to build a

house, buy it or rent it. The article declared a ban on forced deprivation of housing other than on the basis of the law under the court decision. In addition, citizens in need of social protection are provided with housing by the state and local governments free of charge or for a fee available to them in accordance with the law. [Verkhovna Rada of Ukraine: 1996]

Although the cited article of the Constitution of Ukraine does not directly address the requirements for the quality of housing, it follows from a number of other articles of the Constitution and the norms of Ukrainian legislation. Thus, at present time in contrast to the Soviet times, when the right to housing was mostly limited to the right to premises area, its content has been significantly expanded and is not limited to the availability of living space, but requires quality of housing. The change of the state's concept affected also the content of the right to housing. Satisfaction of housing needs, first of all, means providing the minimum level of living space, it's appropriate level: the availability of water supply, heating, sewerage, and even the Internet in modern time, the availability of social infrastructure and the healthy environment. It means that in Ukraine, like in other European countries during last years, there has been developing an approach in which the constitutional right to housing is multifaceted and includes a number of interrelated rights:

- 1) opportunity to have housing for person's residence and the residence of family members, to use and dispose of it;
- 2) opportunity to improve housing conditions, to receive other housing if necessary;
- 3) right to a healthy and safe environment for living, worthy of a civilized person, in accordance with international law, which has been repeatedly emphasized in the national judicial documents and papers [Lichman L. : 2005, Solomyiany V.: 2006].

The multifaceted nature of the right to housing is also evidenced by lawsuits demanding the ensure housing of proper quality, size, recognition of buildings as inappropriate for habitation, and so on.

In general, the constitutions of European countries guarantee the right to housing in different ways. Many constitutions do not contain special provision devoted to the right to housing. This concept used in the constitutions of Austria, Bulgaria, Georgia, Estonia, Latvia, Lithuania, Romania, Slovakia, Croatia and other countries. Some constitutions include the right to housing into article on decent living conditions. For example, Article 23 of the Belgian Constitution states that "Everyone has the right to lead a life in keeping with human dignity" which, inter alia, includes the right to decent the right to decent accommodation..." [Belgian Constitution: 2019]. The third group of countries enshrines the right to housing as a separate right. These include Ukraine (Article 47), Azerbaijan (Article 43), the Republic of Belarus (Article 48), Venezuela (Article 82), etc. According to Art. 47 (section 47) of the Spanish Constitution: "All Spaniards have the right to enjoy decent and adequate housing..." [Spanish Constitution: 1978]

However, the realization of this right does not depend on its proclamation in the Constitutions. So, despite the Constitution of Ukraine explicitly guarantees the right to housing, its realization is still at a low level. Thus, in 2015 and 2017 the ECSR acknowledged that Ukrainian legislation and its application did not meet the requirements of the Charter to promote access to adequate housing and it was found that the right to adequate housing was not guaranteed, there was a lack of adequate supervision of housing and that the authorities failed to improve housing conditions for Roma. [European Committee of Social Rights: 2016] ECSR has requested the additional information on measures to ensure adequate housing for internally displaced persons and measures to provide adequate housing for Roma.

The European Committee of Social Rights has found that Ukraine has also failed to comply with the second paragraph of Article 31, which provides for the prevention of homelessness, by finding the lack of legal protection for persons subject to eviction. The Committee did not recognize that the right to shelter is adequately guaranteed in Ukraine and requested statistical information on the number of homeless people. [The Government of Ukraine, European Social Charter (revised): 2017] Having enough time to analyze the recommendations and gather information on the Committee's requests, Ukraine submitted another state report in 2019 under the 4th thematic theme

(children, families and migrants), which includes the right to housing. New recommendations to states, including Ukraine, and general conclusions for the reporting period from 2014 to 2017 were published by the European Committee of Social Rights in March 2020.

Unfortunately, in its recommendations to Ukraine the Committee once again drew attention to the delay in submitting the report, which has been presented on June 6, 2019, despite the deadline of October 31, 2018, and, what is even more important, once again to the failure to provide sufficient information for the conclusion on 5 situations.

Current situation in Ukraine: is there any progress in the fulfilment of obligations in the sphere of housing under the ESC? Therefore, it is obvious to state that the general situation in implementation of the commitments remained unchanged and ECSR recommendations constituted again and again non-fulfilment of majority of Ukraine's commitments, including obligations under the right to housing. Thus, ECSR analyzed 23 situations and there were only 7 conclusions of conformity, 11 situations were found not to meet the requirements of the ESC, and in respect of 5 situations, as were already mentioned, Ukraine did not provide the Committee with sufficient information to. [European Committee of Social Rights: 2020]

Analyzing the Ukrainian report on paragraph 1 of Article 31 of the ESC, the Committee has drawn attention to the need to apply the requirements of adequate housing not only to new buildings, but also to housing in stock. It was proposed to reflect the application of the established requirements or similar requirements to the housing stock in the next report, that existed before the entry into force of the national standards specified in the report (i.e. until 2006). Also in the next report, the Committee requests updated information on the minimum size of housing. In general, the Committee did not reach a positive conclusion on this aspect of paragraph 1, leaving previous negative conclusions until further information is available.

The Committee's negative previous conclusions about the proper control of housing standards were also reserved until further information on the bodies generally responsible for ensuring compliance with housing rules and requirements (for the entire housing stock, regardless of rent, form of ownership) would be provided; as well as the powers of the relevant authorities to carry out inspections, the frequency of such inspections and audits, and the implementation of decisions establishing that housing does not meet the standards. There were made no conclusions for the appropriate legal protection of the right to housing by the ECSR. The Committee underlined that it is interested in information on any national judicial cases on the right to adequate housing and the information about the categories of cases are allowed to be brought before the courts and whether non-judicial remedies are available.

In the conclusions, the Committee also considered the measures taken to protect the right to housing for vulnerable groups. In particular, it was emphasized that only 7% of internally displaced persons live in state-provided accommodation, such figures require additional information on guaranteeing the right to housing for this category of persons by Ukraine. According to the ECSR, Ukraine has not taken sufficient measures to improve the living conditions of Roma that had been determined in previous conclusions. In fact, no positive developments in the implementation of the requirements under Article 31 § 1 of the ESC have been identified by Ukraine in comparison with the previous cycle of conclusions.

Ukraine has fulfilled its obligations under paragraph 2 of Article 31 of the ESC no better than under paragraph 1 of the Article 31. Identifying the lack of information provided on the prevention of homelessness the Committee reserved the situation until receiving further information and reiterated its previous unsatisfactory findings about non-conformity. The Committee assumed that the legal protection of persons threatened by forced eviction is insufficient and the fact that the right to shelter is adequately guaranteed in Ukraine cannot be recognized. [European Committee of Social Rights: 2020]

As already mentioned, Ukraine has not ratified paragraph 3 of Article 31 of the ESC, which concerns the establishing prices affordable for the low-income citizens. Nowadays, States present their annual report only on the ratified provisions of the ESC; however, the ECSR periodically reviews national laws and practices of States on compliance with non-ratified provisions of the

Charter. In 2017, the ECSR analysis stated that among other issues the situation in Ukraine had not fully complied with paragraph 3 of Article 31 of the European Social Charter. [European Committee of Social Rights: 2017]

Conclusions. Ukraine's failure to fulfil its commitments under the European Social Charter, including the obligations under the article ensuring right to housing, no providing sufficient information to the Committee for its conclusions and delays in reporting, depends on many factors. And a lack of understanding of the Charter's basic requirements among a wide range of people in Ukraine is one of such factors. Taking into account that the provisions of the ESC, as many other human rights treaties has been formulated in a rather general abstract manner, the content and scope of its provisions are disclosed in interpretations, legal positions of the European Committee of Social Rights. Neither decisions, no conclusions of the ECSR have not been translated into Ukrainian, as well as general recommendations for any cycle and recommendations to any state-parties. All these factors, combined with the lack of proper attention to this fundamental international treaty in human rights sphere, affect the overall situation of implementation of the provisions of the ESC in Ukraine.

Thus, despite the declaration of the right to housing by the Constitution of Ukraine, the functioning of the developed national legislation which provide for social protection of homeless people and homeless children, the creation of social housing, temporary housing, etc., as well as commitments taken under the revised European Social Charter, ensuring the right to housing, remains unsatisfactory in Ukraine. This is confirmed by the European Committee of Social Rights conclusions, which have been repeated for almost 15 years for many provision, including the Article 31. The ECSR has stated the lack of appropriate positive developments and a lack of comprehensive understanding of necessary changes in national legislation and practice to implement ESC standards concerning the housing.

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