

THE RIGHT TO SUITABLE ACCOMMODATION UNDER THE TEMPORARY PROTECTION DIRECTIVE

ECRE'S ASSESSMENT OF THE RIGHT TO SUITABLE
ACCOMMODATION UNDER THE TPD, INCLUDING ANALYSIS OF
THE CONTENT OF THE RIGHT WITH REFERENCE TO THE OTHER
CEAS INSTRUMENTS AND TO JUDICIAL INTERPRETATION

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I. INTRODUCTION

During its exceptional meeting in Tampere in 1999, the European Council agreed to work towards establishing a Common European Asylum System (CEAS). Temporary protection was included as one of the instruments that could create a more efficient common response to humanitarian needs on the basis of solidarity.¹ The Temporary Protection Directive (TPD) was adopted in 2001 as a Common European Asylum System tool aiming to set the minimum standards for protection in the event of a mass influx of displaced persons, as well as to promote a balance of efforts between the Member States (MS) in receiving and bearing the consequences of receiving people.²

The Explanatory Memorandum to the Proposal for the TPD underlined the fact that temporary protection shall undermine neither Members States' international obligations nor their efforts to consolidate and harmonize other forms of protection in Europe.³ Therefore, temporary protection should not be regarded as a third form of protection alongside the refugee status originating in in the 1951 Geneva Convention and subsidiary protection. The minimum standards provided by the TPD shall be regarded as "a component of the system, and more specifically a tool enabling the system to operate smoothly and not collapse under a mass influx".⁴

The TPD is an instrument of EU secondary law and as such must be interpreted and applied in accordance with EU primary law which includes the EU treaties and the Charter of Fundamental Rights of the European Union (CFREU).⁵ The TPD remains a first phase directive that sets minimum protection standards. Unlike the TPD, other CEAS instruments were recast. This resulted in improved rights and standards in the area of asylum. Therefore, as a component of the CEAS system, the Temporary Protection Directive shall not be interpreted in a vacuum but in line with other EU law, including the CFREU.⁶

It was not until 4 March 2022 that the Council of the EU activated the TPD through its Implementing Decision⁷ aimed at providing minimum standards of protection to persons fleeing Russian military aggression against Ukraine.⁸ By March 2023, nearly five million individuals had registered for temporary protection in the EU.⁹

The right to suitable accommodation represents one of the core rights guaranteed by the Temporary Protection Directive. Nevertheless, due to the lack of a common definition as to what constitutes suitable accommodation, implementation of Article 13 of the TPD varies across member states. When analysing the right to suitable accommodation, it is essential to take into account the specific needs of vulnerable persons to ensure that everyone can enjoy their right under Article 13, without discrimination or exclusion. This requires a holistic approach that takes into account the specific needs and circumstances of each individual and provides appropriate support and assistance to help them access the suitable accommodation provided by Article 13 of the TPD.

This legal note analyses the content of the right to suitable accommodation within the framework of temporary protection. Due to the lack of judicial interpretation of this right under the TPD, its content will

1. European Union: Council of the European Union, Presidency Conclusions, Tampere European Council, 15-16 October 1999, 16 October 1999.
2. Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (TPD), OJ L 212, 7.8.2001, p. 12–23.
3. Explanatory Memorandum to the Proposal for a Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ C 311E, 31.10.2000, <https://bit.ly/3YuPFXL>.
4. *Ibid.*, par. 1.4.
5. The EU Charter of Fundamental Rights has the same legal status as the treaties, as established by Article 6 of the Lisbon Treaty. Consolidated version of the Treaty on European Union, OJ C 202, 7.6.2016, p. 19–19.
6. Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391–407.
7. Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, ST/6846/2022/INITOJ L 71, 4.3.2022, p. 1–6.
8. The Council Implementing Decision proposed that MS shall grant temporary protection to the following categories of displaced persons: Ukrainian nationals, permanent residents of Ukraine, stateless persons and beneficiaries of international protection who were residing in Ukraine before 24 February 2022, as well as their family members. However, MS are encouraged to apply this decision to a broader scope of persons, including those who were residing in Ukraine legally on a temporary basis and those who left before 24 February 2022.
9. Eurostat, Beneficiaries of temporary protection at the end of the month by citizenship, age and sex – monthly data, <https://bit.ly/3lmm1pS>.

be analysed with reference to other EU and international legal instruments.

This legal note includes: 1) analysis of the origins and content of the right to suitable accommodation as part of the TPD; 2) interpretation of the right to suitable accommodation in the light of other CEAS instruments; 3) judicial interpretation of this right by the Court of Justice of the European Union (CJEU); 4) the right to suitable accommodation under Council of Europe (CoE) standards; 5) analysis of the right to suitable accommodation in light of international law.

II. ANALYSIS

A. THE RIGHT TO SUITABLE ACCOMMODATION UNDER ARTICLE 13 OF THE TPD

Article 13 of the Temporary Protection Directive sets out 1) the obligation of the member state concerned to provide temporary protection beneficiaries (TPBs) with suitable accommodation or, alternatively, 2) to provide TPBs with the means to enable them to obtain housing. It also includes the requirement to provide “necessary assistance” with regards to “social welfare and means of subsistence” if displaced persons do not have sufficient resources.

Neither the TPD nor the Council Implementing Decision provide any further details on application of the right to suitable accommodation, the substance of any potential assistance or what constitutes sufficient resources. However, the *travaux préparatoires* may provide more information about the drafters’ intentions.

The right to accommodation was included in Article 11 of the Proposal for the Temporary Protection Directive.¹⁰ The Explanatory Memorandum to the Proposal indicates that the first paragraph of the article is related to the principle of shelter or accommodation and “[t]he minimum standards laid down in this paragraph enable the member states to provide accommodation or housing for persons enjoying temporary protection as part of their national reception scheme”.¹¹

The Explanatory Memorandum suggests that the right to suitable accommodation can be implemented through reception systems already in place for the international protection purposes. The Explanatory Memorandum for the TPD proposal was drafted in 2000, prior to adoption of the Reception Conditions Directive¹² in 2003 which set the minimum reception standards for asylum applicants in the EU. This directive was recast in 2013.¹³ Consequently, a common approach to and understanding of suitable accommodation within national reception schemes were lacking in 2000. However, the memorandum does subsequently indicate that “these provisions may in some cases allow for temporary accommodation centres for refugees. They may also take the form of collective structures or separate flats”.¹⁴ The Explanatory Memorandum sets out that “[t]he Member States’ obligations as to the conditions of reception and residence of persons enjoying temporary protection in the event of a mass influx of displaced persons should be determined. These obligations should be fair and offer an adequate level of protection to those concerned”.¹⁵ However, these conditions were not determined within the context of temporary protection and they remain at the discretion of member states.

The aims of the Directive Proposal, as per the Opinion of the Economic and Social Committee, guarantee minimum common standards within member states in order to ensure that people fleeing “are treated humanely and receive assistance and protection allowing them to recover from the traumas they have suffered, and to provisionally enter into social, cultural and human relations in the host country or countries,

10. Proposal for a Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ C 311E, 31.10.2000, p. 251–258, <http://bit.ly/424z6vl>.

11. Explanatory Memorandum, op. cit.

12. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ L 31, 6.2.2003, p. 18–25.

13. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180, 29.6.2013, p. 96–116.

14. Explanatory Memorandum, op. cit.

15. *Ibid.*, rec. 16.

on the same footing as refugees”.¹⁶ During debates at the European Parliament on the issue of shared responsibility between member states, the EP Rapporteur on the Directive Proposal emphasised that individuals seeking protection “deserve a dignified reception”.¹⁷

The TPD does not define the form or level of accommodation to be provided. It does, however, indicate that the special needs of displaced persons have to be taken into consideration and necessary assistance has to be provided to unaccompanied minors or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence.¹⁸ The right to suitable accommodation implies that the special needs of temporary protection beneficiaries are assessed. There is no established identification mechanism for the special needs of TPBs. However, the “minimum standards” that the Directive aims to provide shall be implemented in view of already established obligations and standards under international law.¹⁹

The right to suitable accommodation must be scrutinized against the provisions of the EU Charter of Fundamental Rights,²⁰ as well as EU secondary law and including the CEAS instruments of which the TPD is a part.²¹

i. The right to suitable accommodation under the EU Charter of Fundamental Rights

As EU primary law, the Charter of Fundamental Rights lays down the main legal protection standards. While it does not explicitly provide for the right to suitable accommodation,²² its provisions are applicable when interpreting this right under the TPD. Moreover, member states are required to ensure that their interpretation of the TPD complies with the EU Charter.²³

Article 1 of the Charter providing for the right to human dignity is relevant for interpretation of Article 13 of the TPD. Thus far, assessing the right to dignity of persons seeking protection has only been interpreted by the Court of Justice of the European Union within the context of the reception conditions set out in the recast Reception Conditions Directive.²⁴ The right to dignity is a fundamental right that underlies all other human rights, including the right to a dignified standard of living.²⁵

The right to suitable accommodation for persons with specific needs shall be interpreted in light of Article 24 protecting the rights of the child, Article 25 on the rights of the elderly and Article 26 on the rights of persons with disabilities.

Article 24 of the EU Charter recognises the primacy of children’s best interests and the right to protection necessary for their well-being. The right to suitable accommodation is closely linked to these principles. Member states have an obligation to be guided by the child’s best interests as their primary consideration²⁶ and ensure that children are housed in conditions that are appropriate for their age and development, taking into account their physical, mental, spiritual, moral and social needs.²⁷

Article 25 provides for the right of the elderly to live with dignity and independence. This includes ensuring

16. Opinion of the Economic and Social Committee on the “Proposal for a Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof”, Document 52001AE0402, <http://bit.ly/3JrKG1h>.
17. European Parliament Debates on Temporary protection for displaced persons, Intervention by the Rapporteur on Directive Proposal Jan-Kees Wiebenga, 13 March 2001 – Strasbourg, <http://bit.ly/3Tv1rXE>.
18. Temporary Protection Directive, Article 13.4.
19. *Ibid.*, rec. 16.
20. Charter of Fundamental Rights of the European Union, op. cit.
21. The recast Reception Conditions Directive sets out the standards for the reception of applicants requiring Member States to ensure them dignified living standards. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180, 29.6.2013, p. 96–116, rec. 11.
22. It is also argued that “the right to housing is absent from the Charter.” Arturs Kuocs, Zane Sedlova, Liene Pierhurovica, *The Right to Housing: International, European and National Perspectives*, Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol n° 64/65, 2008, p. 117.
23. See e.g. ECRE and Dutch Refugee Council, *The Application of the EU Charter of Fundamental Rights to asylum procedural law*, October 2014, <https://bit.ly/3YDMtQE>.
24. CJEU, Judgment of 27 September 2012, *Cimade and GISTI*, Case C-179/11, ECLI:EU:C:2012:594, par. 56.
25. CJEU, Judgment of 27 February 2014, *Saciri and Others*, Case C-79/13, ECLI:EU:C:2014:103, par. 35.
26. CJEU, Judgment of 6 June 2013, *MA, BT, DA*, Joined case C-648/11, ECLI:EU:C:2013:367, par. 57.
27. CJEU, Judgment of 11 March 2021, *M.A.*, Case C-112/20, ECLI:EU:C:2021:197, par. 27.

that their housing is adapted to their physical and mobility needs, as well as providing access to social and medical services as necessary.²⁸ Similarly, under Article 26 member states shall ensure the right of persons with disabilities to live in the community with dignity and autonomy, meaning that their housing should be accessible, appropriate and equipped with the necessary support services.²⁹

Moreover, Article 34 (3) of the Charter provides for the right to social and housing assistance to “ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices”.³⁰ Explanations relating to the Charter of Fundamental Rights note that Article 34 (3) is based on Article 13 of the European Social Charter³¹ on the right to social and medical assistance and Article 30 guaranteeing protection against poverty and social exclusion, as well as Article 31 of the revised Social Charter³² ensuring the effective exercise of the right to housing.³³

Article 34 applies to “[e]veryone residing and moving legally within the European Union”³⁴ and provides that they should be entitled to social security benefits and social advantages in accordance with Union law and national laws and practices. Social security benefits potentially include housing support that is relevant within the context of the obligation of states to provide means to obtain housing under Article 13 (1) of the TPD. The Directive provides for the exceptional circumstance of a large number of people seeking protection entering a country’s territory. One of the major differences between the protection provided under the Qualification Directive and the Temporary Protection Directive is that temporary protection shall be granted immediately upon arrival. Member States agreed not to apply Article 11 of the TPD proposing that persons eligible for temporary protection should be able to reside in and move freely within the EU.³⁵

The right to housing assistance is one of the principles of the European Pillar of Social Rights, a soft law document for member states, citizens and residents of the EU that serves as guidance for strengthening social rights within the EU. Principle 19 is aimed at combatting homelessness and provides that:

- » Access to social housing or housing assistance of good quality shall be provided for those in need.
- » Vulnerable people have the right to appropriate assistance and protection against forced eviction.
- » Adequate shelter and services shall be provided to the homeless in order to promote their social inclusion.³⁶

Consequently, member states should secure the right of all individuals, regardless of their residency status, to live in conditions of dignity and respect, and to access suitable accommodation that is adequate, affordable and accessible, and that meets the specific needs of each person. This includes taking into account any disabilities or other vulnerabilities individuals may have. Categorized as a “principle”, the right to housing assistance in this case cannot be enforced in court. However, it does serve as guidance for legislative work and judicial interpretation.³⁷

ii. Judicial interpretation of the right to suitable accommodation by the CJEU: suitable accommodation under the RCD and parallels with the TPD.

According to Article 78 of the Treaty on the Functioning of the European Union (TFEU),³⁸ the TPD is a part of

28. Explanations relating to the CFREU indicate that Article 25 of the Charter draws on Article 23 of the Revised European Social Charter that encourages parties to adopt measures enabling elderly persons to live their lives under dignified conditions. Among the measures indicated in the Revised Social Charter, parties should provide suitable housing based on the health and physical needs of elderly persons, offer assistance with adapting their housing to accommodate them, and provide necessary healthcare and services to support their well-being.
29. As highlighted in the Explanations relating to the CFREU, Article 26 of the CFREU is based on Article 15 of the Revised Social Charter which emphasizes the importance of promoting social inclusivity for individuals with disabilities, including but not limited to access to appropriate housing.
30. Charter of Fundamental Rights of the European Union, op. cit.
31. European Social Charter, ETS No. 035, 26 February 1965.
32. European Social Charter (revised), ETS No. 163, 01 July 1999.
33. Explanations relating to the Charter of Fundamental Rights, OJ C 303, 14.12.2007, p. 17–35.
34. Charter of Fundamental Rights of the European Union, op. cit.
35. Article 11 of the TPD imposes an obligation to take back TP beneficiaries if they travel to or try to enter another country without permission while their protection is in effect.
36. The European Pillar of Social Rights in 20 principles, <http://bit.ly/3IzN7YL>.
37. Marie-Pierre Granger, Coming 'Home': the right to housing, between redistributive and recognitive justice, ETHOS consortium, 2019, p. 34.
38. Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47–390.

the CEAS. Consequently, the Temporary Protection Directive is aligned with the overall goals and principles of the CEAS and is subject to the same level of scrutiny and review as other CEAS legislation. The CEAS is an evolving system. However, and as indicated above, unlike other instruments the TPD was never recast and, in addition, the adoption of the TPD predates the moment the Charter of Fundamental Rights became legally binding on member states. In this context, to ensure that it continues to meet the changing needs and requirements of the EU asylum system, the TPD should be interpreted in line with contemporary interpretation of the other CEAS instruments. .

As the TPD was only invoked in March 2022, the CJEU has not yet provided a judicial interpretation of its provisions, including Article 13. To clarify the meaning and scope of the right to suitable accommodation, as well as to help understand the evolution of this right within the CEAS, it is useful to draw on the judicial interpretation of other CEAS-related case law on similar issues.

Access to accommodation as a basic need and a core benefit that is indispensable for dignified living standards within the meaning of Article 1 CFREU³⁹

The CJEU has issued several rulings on the provision of accommodation for asylum applicants as a basic need and a core benefit under EU law. These rulings have helped clarify that suitable accommodation is a fundamental right for asylum applicants and a crucial component of the right to an adequate standard of living. In *Cimade and GISTI (C-179/11)*, the CJEU recognised that the right to accommodation is a basic need that has to be ensured to all persons in the context of the right to human dignity.⁴⁰

Similarly, in *Haqbin (C-233/18)* the CJEU stated that ensuring a dignified standard of living is necessary to fully respect human dignity as required by Article 1 of the EU Charter:

“With regard specifically to the requirement to ensure a dignified standard of living, [...] respect for human dignity within the meaning of that article requires the person concerned not finding himself or herself in a situation of extreme material poverty that does not allow that person to meet his or her most basic needs such as a place to live, food, clothing and personal hygiene, and that undermines his or her physical or mental health or puts that person in a state of degradation incompatible with human dignity.”⁴¹

Housing assistance was viewed as a core benefit by the CJEU in *Kamberaj (C-571/10)*, where the Court underlined that:

“According to Article 34 of the Charter, the European Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources. It follows that, in so far as a benefit fulfils the purpose set out in that article of the Charter, it cannot be regarded, under EU law, as not forming part of the ‘core benefits’ within the meaning of Article 11(4) of Directive 2003/109.”⁴²

The TPD does not refer to human dignity expressly. However, the Implementing Decision makes it clear that the TPD “respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union”.⁴³ Moreover, the TPD sets out that the obligations of MS with regard to the conditions of reception and residence of TPBs should be determined⁴⁴ and that “these obligations should be fair and offer an adequate level of protection to those concerned”.⁴⁵

The CJEU clarified the meaning of the verb “ensure” within the context of providing a dignified standard of living. In *Haqbin (C-233/18)*, the Court stated that the verb is used:

- » To guarantee a dignified standard of living “continuously and without interruption;”
- » To ensure that authorities are responsible for “the provision of material reception conditions

39. Charter of Fundamental Rights of the European Union, op. cit.

40. CJEU, Judgment of 19 September 2012, *Cimade and GISTI*, op. cit., par. 56.

41. CJEU, Judgment of 12 November 2019, *Zubair Haqbin*, Case C233/18, ECLI:EU:C:2019:956, par. 46.

42. CJEU, Judgment of 24 April 2012, *Servet Kamberaj*, Case C-571/10, EU:C:2012:233, par. 80, 92.

43. Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine, op. cit., rec. 24.

44. Temporary Protection Directive, op. cit. rec. 15.

45. *Ibid.*

guaranteeing such a standard of living, including when they have recourse, where appropriate, to private natural or legal persons in order to carry out, under their authority, that obligation.”⁴⁶

The obligation to provide suitable accommodation primarily rests with states. However, there are also public sector support initiatives that can help address housing needs. The European Union encourages states to coordinate efforts on access to private accommodation. The European Commission’s “safe homes” initiative⁴⁷ aims to support MS and local authorities. It facilitates access to accommodation offered by private individuals. However, some concerns may arise when it comes to ensuring the suitability of private accommodation. The European Union Asylum Agency (EUAA) published a Practical Guide on Private Accommodation for displaced persons from Ukraine⁴⁸ to ensure that measures are taken in a coordinated, effective and systematic way to provide protection for individuals who require emergency housing and for those who offer such accommodation.⁴⁹ The Guide includes a list of recommendations surrounding the suitability of accommodation and indicates that “[b]efore any placement is agreed upon, it is recommended to assess the profile of the host and to verify that the house at disposal is suitable for accommodation purposes”.⁵⁰

Member state obligation to provide accommodation either in kind or in the form of a financial allowance

Article 17 of the RCD allows member states to provide material reception conditions in the form of a financial allowance to ensure adequate standards of living for the applicants for international protection. In parallel, Article 13 of the TPD stipulates that persons enjoying temporary protection can receive the means to obtain housing (13.1) or “to receive necessary assistance in terms of social welfare and means of subsistence, if they do not have sufficient resources” (13.2).⁵¹

In *Ayubi (C-713/17)*, the CJEU confirmed that EU law provides for the right to a minimum standard of living, including the right to accommodation and means of subsistence.⁵² The Court held that EU law requires member states to ensure that individuals in need are provided with adequate and accessible social protection measures to secure their right to a minimum standard of living. The right to accommodation and means of subsistence must be interpreted in a way that takes into account an individual’s personal circumstances, including their age, state of health and any other factors that may affect their needs.

The form and the amount of assistance can be determined by states. However, in *Saciri (C-79/13)* the CJEU confirmed that the financial allowance must ensure a dignified standard of living, be sufficient to meet basic needs and be adequate for the health of the applicants (par. 48). The CJEU underlined that:

“Given that the Member States have a certain margin of discretion as regards the methods by which they provide the material reception conditions, they may thus make payment of the financial allowances using the bodies which form part of the general public assistance system as intermediary, provided that those bodies ensure that the minimum standards laid down in that directive as regards the asylum seekers are met.”⁵³

In *FMS (C-924/19 PPU and C-925/19 PPU)*, the Court reiterated that an applicant for international protection who is unable to provide for their subsistence “must be given either a financial allowance enabling him or her to be housed or housing in kind in one of the places referred to in Article 18 of that directive, which cannot be confused with the detention centres referred to in Article 10 of that directive.”⁵⁴

Moreover, the Court came to the conclusion that, according to interpretation of Article 26 of Directive 2013/33, an individual seeking international protection who has been unlawfully detained and released “may

46. CJEU, Judgment of 12 November 2019, *Zubair Haqbin*, op. cit., par. 50.

47. European Commission, Safe Homes initiative: guidance on the provision of accommodation to those fleeing Ukraine, 14 July 2022, <http://bit.ly/3TS3Wnd>.

48. EUAA, Practical recommendations on the provision of emergency placement in private accommodation for persons displaced from Ukraine, EUAA Practical Guide Series, May 2022, <https://bit.ly/42K8ShP>.

49. *Ibid.*, p. 6.

50. *Ibid.*, p. 8.

51. Temporary Protection Directive, op. cit.

52. CJEU, Judgment of 21 November 2018, *Ahmad Shah Ayubi*, Case C-713/17, ECLI:EU:C:2018:929, par. 44.

53. CJEU, Judgment of 27 February 2014, *Saciri and Others*, op. cit., par. 49.

54. CJEU, Judgment of 14 May 2020, *FMS and Others*, Joined cases C-924/19 PPU and C-925/19 PPU, ECLI:EU:C:2020:367, par. 254.

rely, before the court with jurisdiction under national law, on his or her right to receive either a financial allowance enabling that applicant to house himself or herself, or housing in kind, as that court has, under EU law, the possibility to grant interim relief pending its final decision.”⁵⁵

The context of the TPD implementation implies that there is a situation of arrival *en masse* of people in need of immediate protection in member states which may not have sufficient facilities in place. However, failure by MS to provide dignified reception conditions would be a breach of EU and international law, and cannot be justified by the large number of persons arriving in the country. In *Saciri (C-79/13)*, the CJEU stated that:

“In that regard, it must be pointed out that it is for the member states to ensure that those bodies meet the minimum standards for the reception of asylum seekers, saturation of the reception networks not being a justification for any derogation from meeting those standards.”⁵⁶

The Court underlined that there can be no derogation from the minimum standards of protection provided by the Reception Directive, even on a temporary basis. It emphasised the overarching aim and design of the Directive and the need to implement the requirements of Article 1 of the EU Charter under which human dignity must be protected and respected.⁵⁷ A parallel can be drawn with the aims of the TPD, designed to ensure minimum standards of protection in the event of high numbers of displaced persons. The right to suitable accommodation and means of subsistence are included in the list of minimum standards and should be provided by the authorities with due regard to the special needs of temporary protection beneficiaries.

Lack of access to means of subsistence may also entail application of Article 4 of the CFREU prohibiting torture, inhumane and degrading treatment. In *Ibrahim and Others (C-297/17, C-318/17, C-319/17 and C-438/17)*, the CJEU found that, despite the fact that the applicants were granted subsidiary protection in another member state and that their application in a different state may be recognised as inadmissible,⁵⁸ lack of access to a subsistence allowance or an allowance that “is markedly inferior to that in other member states”⁵⁹ when they are not treated differently from other nationals of that state can expose them to the risk of ill-treatment under Article 4 of the CFREU. The CJEU sets a high threshold, stating that protection under Article 4 is applicable “only if the consequence is that that applicant would, because of his or her particular vulnerability, irrespective of his or her wishes and personal choices, be in a situation of extreme material poverty.”⁶⁰ In *Hamed and Omar (C-540/17 and C-541/17)*, the Court confirmed that living conditions have to be assessed in view of all the circumstances of the case and reach the level of “extreme material poverty” to fall within the scope of Article 4 of the CFREU.⁶¹

Despite the high threshold set by the Court, this argument is also relevant in terms of temporary protection beneficiaries who decide to apply for TP in another member state due to the lack of access to accommodation or means of subsistence. While the TPD does not preclude TPBs from doing so, some MS deny them this possibility and reject such applications on the basis of inadmissibility.⁶²

Access to effective remedies within the context of access to suitable accommodation

Article 26 of the RCD provides for the “possibility of an appeal or a review, in fact and in law, before a judicial authority”⁶³ of decisions relating to the granting, withdrawal or reduction of benefits under the Directive. The TPD does not include a separate provision allowing for judicial review of decisions related to TPBs, including those surrounding social assistance and access to suitable accommodation. However, national laws have to incorporate the norms set out in the TPD and ensure their full effect in order to achieve the objectives of the

55. *Ibid.*, par. 298.

56. CJEU, Judgment of 27 February 2014, *Saciri and Others*, op. cit., par. 50. See by analogy: ECtHR, *M.S.S. v. Belgium and Greece* [GC], Application no. 30696/09, 21 January 2011, par. 263.

57. *Ibid.*, par. 35.

58. Article 33 (2) (a) of the Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ L 180, 29.6.2013, p. 60–95.

59. CJEU, Judgment of 19 March 2019, *Ibrahim and Others*, Joined cases C-297/17, C-318/17, C-319/17 and C-438/17, ECLI:EU:C:2019:219, par. 101.

60. *Ibid.*

61. CJEU, Order of the Court (Tenth Chamber) of 13 November 2019, *Bundesrepublik Deutschland v Adel Hamed and Amar Omar*, Joined Cases C-540/17 and C-541/17, ECLI:EU:C:2019:964, par. 39.

62. E.g. Czech Republic, Poland. See: ECRE, Information Sheet: Measures in Response to the Arrival of Displaced People Fleeing the War in Ukraine, <http://bit.ly/3SbSGRF>.

63. Recast Reception Conditions Directive, op. cit.

Directive.⁶⁴ This concept is also grounded in Article 19 (1) of the Treaty on European Union (TEU) which states that “Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.”⁶⁵

When implementing the right to suitable accommodation, member states need to ensure access to effective remedies if the standards provided by the Directive are not met. If such remedies are not spelled out explicitly in national law, the right to access effective legal remedies shall be drawn directly from Article 47 of the CFREU.

In *H. A. (C-194/19)*, the Court underlined that:

“[...] when the Member States implement EU law, they are required to ensure compliance with the right to an effective remedy enshrined in the first paragraph of Article 47 of the Charter, a provision which constitutes a reaffirmation of the principle of effective judicial protection [...]”⁶⁶

The CJEU also confirmed the direct applicability of Article 47 of the CFREU in *N.S. and Others (C-411/10 and C-493/10)*, maintaining that the right to an effective remedy and to a fair trial must be guaranteed in relation to all decisions taken by national authorities concerning asylum applicants, including decisions related to reception conditions.⁶⁷

In *F.M.S. (C-924/19 PPU and C-925/19 PPU)*, the CJEU referred to the principle of primacy of EU law and the right to an effective judicial remedy with regards to housing rights by stating that:

“The principle of primacy of EU law and the right to effective judicial protection, guaranteed by Article 47 of the Charter, must be interpreted as requiring the national court, in the absence of a national provision providing for judicial review of the right to housing, within the meaning of Article 17 of Directive 2013/33, to declare that it has jurisdiction to hear and determine the action seeking to guarantee such a right.”⁶⁸

Therefore, the lack of legal remedy in EU secondary law or national implementing legislation does not preclude the person whose right to access to suitable accommodation was violated from directly relying on Article 47 of the CFREU before the national court.

A requirement to take into consideration the vulnerability of displaced persons and their special needs

The vulnerability of persons seeking protection originates both from their displaced status⁶⁹ and the special needs that a particular person might have due to additional individual circumstances.⁷⁰ Article 13 (4) of the TPD requires the provision of necessary assistance to persons with special needs. The article lists several examples of individuals who might have special needs, including unaccompanied minors or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence.⁷¹ The TPD does not refer to the definition of vulnerable persons, something that was further developed in second generation CEAS instruments. For instance, Article 21 of the recast RCD includes a larger, non-exhaustive list of vulnerable persons who may be considered to have special reception needs.⁷² At the same time, Article 22 (3) of the recast RCD sets out that “[o]nly vulnerable persons in accordance with Article 21 may be considered to have special reception needs.”⁷³ As the TPD remains a first generation CEAS instrument, its provisions surrounding necessary assistance for persons with special needs should be interpreted consistent

64. See: ECRE, *The application of the EU Charter of Fundamental Rights to asylum procedural law*, October 2014, p. 29.

65. Consolidated version of the Treaty on European Union, *op. cit.*

66. CJEU, Judgment of 15 April 2021, *H. A. v État belge*, Case C-194/19, ECLI:EU:C:2021:270, par. 43.

67. CJEU, Judgment of 21 December 2011, *N.S. v United Kingdom and M.E. v Ireland*, Case C-411/10 and C-493/10, ECLI:EU:C:2011:865, par. 114.

68. CJEU, Judgment of 14 May 2020, *FMS and Others*, *op. cit.*, par. 301.

69. ECtHR, *M.S.S. v Belgium and Greece*, *op. cit.*, par. 251.

70. ECRE, *The concept of vulnerability in European asylum procedures*, Asylum Information Database (AIDA), August 2017.

71. Temporary Protection Directive, *op. cit.*

72. The list includes: minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.

73. Recast Reception Conditions Directive, *op. cit.*

with interpretation of other CEAS instruments and the CFREU.

In *Ministero dell'Interno (Case C-422/21)*, the CJEU addressed the issue of vulnerability from the perspective of the principle of non-discrimination, setting out that access to dignified living standards, basic needs and protection of dignity shall be provided to “any applicant for international protection and not only to those applicants who are ‘vulnerable persons’ within the meaning of Article 21 of Directive 2013/33.”⁷⁴

Further, in his opinion in *Jawo (C-163/17)* the Advocate General stated that, in order to ensure the objectives laid down in Directive 2011/95 are met, it is not mandatory for member states to offer equal treatment to international protection beneficiaries with regards to access to accommodation. However, “it may be that the only way of achieving those objectives in the Member State responsible is to provide national treatment for access to accommodation to beneficiaries of international protection” and a thorough and rational analysis must be conducted before reaching that decision.”⁷⁵

In *Saciri (Case C-79/13)*, the CJEU established that the special needs of applicants have to be taken into consideration, stating that:

“[The] Member State must ensure that the total amount of the financial allowances covering the material reception conditions is sufficient to ensure a dignified standard of living and adequate for the health of applicants and capable of ensuring their subsistence, enabling them in particular to find housing, having regard, if necessary, to the preservation of the interests of persons having specific needs, pursuant to Article 17 of that directive.

[...] the amount of those allowances must be sufficient to enable minor children to be housed with their parents, so that the family unity of the asylum seekers may be maintained.”⁷⁶

In his opinion in *Abdida (C-562/13)*, the Advocate General underlined that, despite the fact that states may decide upon the extent of the provision of basic needs, they are obliged to make sure that the subsistence needs of the person in question are met, as well as to provide a decent standard of living “adequate for that person’s health, by enabling him, inter alia, to secure accommodation and by taking into account any special needs that he may have.”⁷⁷

The Court confirmed on several occasions that the best interests of the child must be a primary consideration in all actions and decisions concerning children.⁷⁸ It underlined that, when deciding on cases involving children, “all the specific circumstances, including the age of the child, the child’s physical and emotional development” must be taken into account.⁷⁹

Exercising the right to suitable accommodation under Article 13 of the TPD should be tailored to the specific needs of vulnerable persons and those needs should represent the decisive criteria for setting the minimum standards for their protection. While the TPD does not establish any procedural guarantees with regard to the identification of specific needs of TPBs, such guarantees are embedded in the right to good administration insofar as it reflects the general principle of EU law,⁸⁰ as well as the right to be heard whereby every individual must have the opportunity to express their opinions effectively during an administrative process and prior to the adoption of any decision that could potentially affect their interests.⁸¹ Therefore, the right to be heard entails the possibility for TPBs to indicate their special needs while decisions surrounding suitable accommodation are being taken.

74. CJEU, Judgment of 1 August 2022, Case of Ministero dell'Interno, Case C422/21, ECLI:EU:C:2022:616, par. 46. See by analogy: CJEU, Judgment of 12 November 2019, Haqbin, op. cit., par. 53-55.

75. CJEU, Opinion of Advocate General Wathelet of 25 July 2018, Abubacarr Jawo, Case C-163/17, ECLI:EU:C:2018:613, par. 139.

76. CJEU, Judgment of 27 February 2014, Saciri and Others, op. cit., par. 46.

77. CJEU, Opinion of the Advocate General of 4 September 2014, Centre public d'action sociale d'Ottignies-Louvain-la-Neuve v Moussa Abdida, Case C-562/13, ECLI:EU:C:2014:2167, par. 157.

78. CJEU, Judgment of 1 August 2022, XC, Case C-279/20, ECLI:EU:C:2022:618, par. 48. CJEU, Judgment of 11 March 2021, M.A., Case C-112/20, ECLI:EU:C:2021:197, par. 38. CJEU, Judgment of 26 March 2019, SM, Case C129/18, EU:C:2019:248, par. 67.

79. CJEU, Judgment of 10 May 2017, Chavez-Vilchez and Others, Case C133/15, ECLI:EU:C:2017:354, par. 71.

80. CJEU, Judgment of 9 November 2017, Valsts ierēnumu dienests, Case C-46/16, ECLI:EU:C:2017:839, par. 39-40.

81. CJEU, Opinion of Advocate General Hogan, 19 March 2020, Milkias Addis, Case C-517/17, ECLI:EU:C:2020:225, par. 91-94. CJEU, Judgment of 17 July 2014, YS v. Minister voor Immigratie, Integratie en Asiel, and Minister voor Immigratie, Integratie en Asiel v. M. S., Joined cases C-141/12 and C-372/12, ECLI:EU:C:2014:2081, par. 66-69.

B. RIGHT TO SUITABLE ACCOMMODATION UNDER COUNCIL OF EUROPE STANDARDS:

i. Relevant standards from the European Court of Human Rights

The right to accommodation is not explicitly included in the European Convention on Human Rights (ECHR). However, the European Court of Human Rights (ECtHR) has interpreted access to accommodation within the context of Article 8 providing for respect for one's private and family life, as well as Article 3 prohibiting torture and Article 14 guaranteeing protection from discrimination.

The ECtHR confirmed in *Chapman v. The United Kingdom* that neither Article 8 nor jurisprudence of the Court recognise the right to be provided with a home. However, the Court also indicated that "it is clearly desirable that every human being have a place where he or she can live in dignity."⁸² The right to a dignified standard of living was considered in the landmark case of *M.S.S. v. Belgium and Greece* on the transfer of asylum applicants to Greece under the Dublin II Regulation. The ECtHR underlined the fact that states are responsible for considering whether living conditions in the country of transfer are sufficient to be in line with human rights.⁸³ While determining whether a situation of extreme material poverty can raise an issue under Article 3, in *M.S.S. v. Belgium and Greece* the ECtHR attached "considerable importance to the applicant's status as an asylum-seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection."⁸⁴ The ECtHR therefore considered the right to accommodation to be the most basic of needs,⁸⁵ deprivation of which can lead to a state of degradation incompatible with human dignity.⁸⁶

However, in *M.S.S. v. Belgium and Greece* the Court set a high threshold for what could be considered degrading treatment under Article 3 of the ECHR. In *Tarakhel v. Switzerland*, the Court stated that the overall reception situation in the country of transfer cannot preclude transfer of the applicants, but "the possibility that a significant number of asylum seekers may be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions, cannot be dismissed as unfounded."⁸⁷ The Court indicated that, as the Swiss authorities had requested individual guarantees from the Italian authorities that the applicants would be taken care of according to their special needs, there was no violation of Article 3 of the ECHR.

In the following judgments on reception conditions, the Court examined the state's efforts in terms of the measures taken to improve the living conditions of the applicants. In *N.T.P. and others v. France*, the Court recognised that the applicants had no stable accommodation. However, it underlined the fact that they were able to satisfy their basic needs with the assistance of state-financed facilities. In the view of the Court, the authorities were taking the necessary measures to resolve the applicants' situation and "the applicants were not devoid of prospect of seeing their situation improve."⁸⁸

In contrast, in *H. and others v. France* the Court decided that the authorities had breached their obligations and had failed to provide the basic needs of the applicants requesting asylum. The Court stated that the authorities must be held responsible for the conditions in which the applicants had to live for months before their asylum applications were registered. The Court underlined the fact that the living conditions of the applicants induced feelings of fear and despair, and led to degrading treatment and a lack of respect for their dignity. The Court stated therefore that, given the applicants' living conditions, the level of severity for the purposes of Article 3 had been reached and the lack of an appropriate response from the authorities could not be justified by "the competent bodies' lack of resources as seen against the fact that the applicants were young, single adults in good health with no dependent family members."⁸⁹

Moreover, according to Court's jurisprudence, individuals' living conditions must be adapted to their specific

82. ECtHR, *Chapman v. The United Kingdom*, Application no. 27238/95, 18 January 2001, par. 99.

83. Ingrid Westendorp, A Right to Adequate Shelter for Asylum Seekers in the European Union, *Nordic Journal of Human Rights*, 2022, p. 10-11.

84. ECtHR, *M.S.S. v. Belgium and Greece*, op. cit., par. 251.

85. *Ibid.*, par. 254.

86. *Ibid.*, par. 263.

87. ECtHR, *Tarakhel v. Switzerland* [GC], Application No. 29217/12, 4 November 2014, par. 115.

88. ECtHR, *N.T.P. and others v. France*, Application No. 68862/13, 24 August 2018, par. 48. See by analogy: ECtHR, *B.G. v. France*, Application No. 63141/13, 10 September 2020, par. 88.

89. ECtHR, *N.H. and others v France*, Application no. 28820/13, 2 July 2020, par. 184.

needs.⁹⁰ In the aforementioned case law, the Court underlined the fact that level of severity within the scope of Article 3 is assessed on the basis of the circumstances of the case, including the applicants' particular situations⁹¹ and whether or not they belong to a vulnerable population group.⁹² Despite not concluding that Article 3 of the ECHR had been violated in *B.G. and others v. France*, the Court underlined the fact that:

"In all decisions concerning children, their best interests must take precedence [...]. It also notes that Article 3 taken in conjunction with Article 1 of the Convention must allow effective protection, in particular of children and other vulnerable persons, and include reasonable measures to prevent ill-treatment of which the authorities had or should have had knowledge."⁹³

In *Rahimi v. Greece*, the ECtHR emphasized the importance of the principle of the best interest of the child being a primary consideration in all decisions concerning children.⁹⁴ Application of the principle includes, amongst other things, an assessment of a child's specific circumstances and needs within the reception context. In *Darboe and Camara*, the Court recognised that "his placement in an adult reception centre for more than four months must have affected his right to personal development and to establish and develop relationships with others"⁹⁵ and was in violation of Article 8 of the ECHR. Moreover, the Court underlined the fact that the best interests of the child were paramount in the case and placing the child in a former military facility, converted into an adult reception centre due to a large number of asylum-seekers, disregarded the applicant's vulnerability and dignity, and led to his inhuman and degrading treatment.⁹⁶

The obligation to consider the special needs of vulnerable persons was reiterated in *Sh. D. and others v. Greece, Austria and others*. The Court came to the conclusion that the state had failed to provide living conditions suitable for the adolescent applicants. The state had therefore failed to fulfil its obligation to care and protect applicants who were vulnerable and found themselves "in a precarious situation incompatible with their young age."⁹⁷

Drawing on the above, the ECtHR has emphasized that states have a positive obligation to ensure that displaced persons have access to suitable accommodation that meets their basic needs. The challenges arising from the growing number of protection applicants do not absolve states from fulfilling their responsibilities under the Convention, including Articles 3 and 8. Indifference on the part of the authorities on whom an individual is completely reliant and a lack of consideration of vulnerability and special needs can result in violation of Article 3 of the ECHR and Article 8 of the ECHR, as well as within the context of Article 13 of the TPD.

ii. Relevant standards under the European Social Charter as interpreted by the European Committee of Social Rights

The revised European Social Charter (RESC) was adopted in 1996 and updated the original charter by including additional rights and establishing a system for monitoring compliance. The RESC is currently binding for 42 Council of Europe member states and contains provisions on a wider range of economic and social rights, including the right to decent working conditions, the right to fair remuneration and the right to housing.

The right to housing is included in Article 31 of the RESC which sets out that:

"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; [...]."⁹⁸

90. ECtHR, *Chapman v. The United Kingdom*, op. cit., par. 71.

91. ECtHR, *Tarakhel v. Switzerland*, op. cit., par. 101.

92. ECtHR, *NTP and others v. France*, op. cit., par. 44.

93. ECtHR, *B.G. v. France*, op. cit., par. 80.

94. ECtHR, *Rahimi v. Greece*, Application no. 8687/08, 5 April 2011, par. 108.

95. ECtHR, *Darboe and Camara v. Italy*, Application no. 5797/17, 21 July 2022, par. 156.

96. *Ibid.*, par. 179-183.

97. ECtHR, *Sh.D. and others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, Application no. 14165/16, 13 June 2019, par. 61.

98. Council of Europe, *European Social Charter (Revised)*, European Treaty Series, No. 163, 3.V.1996.

Although the provisions of Article 31 of the RESC were directed at all member states, some of them decided not to be bound by the article or only ratified some parts of it.⁹⁹ Nevertheless, the Charter is an international treaty and should be interpreted in a way that achieves its objectives. This means that other international and European instruments that share similar rights must also be considered. Interpretation of Article 31 of the RESC can provide guidance on the substance of the right to adequate housing for states that have not yet ratified the article but are bound by other human rights instruments that include corresponding rights to those in the Charter.¹⁰⁰

Reference is made to the provisions of the RESC, including Article 31, in the judgments of the ECtHR that “acknowledges the importance of the economic and social rights laid down in the Charter.”¹⁰¹ Moreover, the ECtHR takes into consideration¹⁰² the interpretation of the Charter by the European Committee of Social Rights (ECSR). The ECSR acts as the monitoring body considering collective complaints regarding violation of the rights guaranteed by the RESC.

The Committee has provided some clarification covering both the substance and the standards of the right to adequate housing and the obligations of states in terms of its implementation. It underlined that “the right to shelter is closely connected to the right to life and is crucial for the respect of every person’s human dignity.”¹⁰³

Living conditions must meet certain standards to ensure that dignity of the person is respected. In *Defence for Children International (DCI) v. The Netherlands*, the ECSR indicated that the requirement for dignity means that “shelters must fulfil the demands for safety, health and hygiene, including basic amenities, i.e. clean water, sufficient lighting and heating.”¹⁰⁴ In *CEC v. the Netherlands*, the ECSR came to the conclusion that access to water, food and shelter represents a basic human need and persons excluded from such access “undeniably find themselves at risk of serious irreparable harm to their life and human dignity.”¹⁰⁵ In the same case, the Committee established that access to adequate shelter shall be provided regardless of an individual’s resident status:

“Shelter must be provided also to adult migrants in an irregular situation, even when they are requested to leave the country and even though they may not require that long-term accommodation in a more permanent housing be offered to them.”¹⁰⁶

The ECSR has elaborated on the meaning of “adequate” housing to encompass several aspects, such as ensuring enough housing for families, a satisfactory quality of housing with basic facilities and housing that is appropriately sized to accommodate the family living in it. The concept of adequate housing also includes the state’s responsibility to consider the requirements of families when formulating and executing housing policies.¹⁰⁷

Given that states often create temporary housing solutions within a displacement context, the Committee concluded that the temporary nature of accommodation, even if considered “decent”, cannot be accepted as a satisfactory solution and that adequate living conditions should be provided.¹⁰⁸

In *ICJ and ECRE v. Greece*, the Committee found that the excessively long stay of asylum-seeking and refugee children in reception and identification centres was contrary to Article 31 (1) of the RESC. According to the ECSR, the living conditions at the emergency accommodation did not fulfil the requirements for

99. Reservations and Declarations for Treaty No.163 - European Social Charter (revised) (ETS No. 163), Status as of 21/02/2023, <http://bit.ly/3kuUp87>.

100. See, for example, Olivier De Schutter, *The European Social Charter in the context of implementation of the EU Charter of Fundamental Rights*, EU Directorate General For Internal Policies, Study, 2016, p. 5, <https://bit.ly/3SXX14w>.

101. ECtHR, *Gadaa Ibrahim Hunde v the Netherlands*, Application no. 17931/16, 5 July 2016, par. 53.

102. ECtHR, *V.M. and others v. Belgium*, Application no. 60125/11, 7 July 2015, par. 159.

103. ECSR, *Defence for Children International (DCI) v. The Netherlands*, Collective Complaint No.47/2008, Decision on the merits, 20 October 2009, par. 47.

104. *Ibid.*, par. 62.

105. ECSR, *Confederation of European Churches (CEC) v. the Netherlands*, Decision on the merits, Complaint No. 90/2013, 01 July 2014, par. 122.

106. *Ibid.*, par. 144.

107. ECSR, *European Roma Rights Center (ERRC) v Greece*, Collective Complaint No. 15/2003, Decision on the merits, 8 December 2004, par. 24.

108. ECSR, *European Federation of National Organisations working with the Homeless (FEANTSA) v. France*, Collective Complaint No. 39/2006, Decision on the merits, 05 December 2007, par. 106.

adequate shelter as provided for in Article 31 (1) and cannot be recognised as a sustainable accommodation solution. The Committee recognised that:

“The situation of these children is caused by the failure of the respondent State to provide sufficient non-emergency accommodation on the islands pending the examination of their asylum applications or those of their parents.”¹⁰⁹

This interpretation of Article 31 of the ESC is applicable to the situation of Temporary Protection Beneficiaries placed in temporary shelters. As temporary protection was granted due to the large number of persons fleeing war, immediate provision of temporary shelters was often used as a response to housing needs. However, a lack of sustainable housing solutions in some countries¹¹⁰ leads to a situation where displaced persons spend long periods of time in conditions that were only meant to provide a temporary solution. On several occasions, the ECSR established that “the temporary supply of shelter cannot be considered as adequate and individuals should be provided with adequate housing within a reasonable period of time.”¹¹¹

The Committee agrees that the state can delegate a particular function to the local or regional authorities, including with regards to the provision of adequate housing. However, according to ECSR “States Parties remain responsible under their international obligations to ensure that their responsibilities are properly exercised.”¹¹²

The Committee also clarified a state’s positive procedural obligations under Article 31 of the RESC. In *FEANTSA v. the Netherlands*, the Committee set out the criteria for a state to comply with Article 31 (2) of the RESC with regards to the prevention of homelessness. According to the Committee, states must take the necessary legal, financial and operational measures to ensure consistent progress towards the goals outlined in the Charter.¹¹³ In this case, the ECSR discovered that there was a shortage of information regarding available shelter places.¹¹⁴ The Committee therefore specified that the right to adequate housing requires a state to keep track of significant statistics regarding persons’ needs in terms of adequate housing, available resources and the outcomes of any measures taken by the authorities. It found that even though the authorities had recognised the inadequacy of the shelter for vulnerable individuals, they had not taken any steps to rectify the issue.¹¹⁵

Measures on access to adequate housing should consider the special needs of vulnerable groups. The ECSR particularly highlights the problems vulnerable persons (including minors and unaccompanied children, persons with disabilities and minorities) face in terms of accessing adequate housing.¹¹⁶ In *FEANTSA v. the Netherlands*, the Committee underlined the fact that the emergency shelters available to vulnerable groups must meet the safety requirements indicated in *DCI v. the Netherlands* and in particular: health and hygiene, including basic amenities (i.e. clean water), sufficient lighting and heating, and the security of the immediate surroundings.¹¹⁷ Moreover, in the view of the Committee:

“States Parties should provide members of vulnerable groups in shelters that are adapted to the needs of those belonging to such groups, as well as ascertain the availability and suitability of special shelters.”¹¹⁸

109. ECSR, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, Decision on the merits, 26 January 2021, par. 135.

110. OECD Policy Responses on the Impacts of the War in Ukraine: Housing support for Ukrainian refugees in receiving countries, 27 July 2022, <http://bit.ly/3Z7jQvJ>.

111. ECSR, *Defence for Children International (DCI) v. The Netherlands*, op. cit., par. 43. See by analogy: ECSR, *ERRC v. Italy*, Complaint No. 27/2004, Decision on the merits, 7 December 2005, par. 35. ECSR, *ERRC v. Bulgaria*, Complaint No. 31/2005, Decision on the merits, 6 December 2006, par. 34.

112. ECSR, *European Roma Rights Centre v. Greece*, Collective Complaint No. 15/2003, Decision on the merits, 8 December 2004, par. 29.

113. ECSR, *European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands*, Collective Complaint No. 86/2012, Decision on the merits, 2 July 2014, par. 111.

114. *Ibid.*, par.114.

115. *Ibid.*, par. 130.

116. The Committee referred to vulnerable persons at particularly high risk as: homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons and persons with an irregular migration status. See: ECSR, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, par. 218.

117. ECSR, *Defence for Children International (DCI) v. The Netherlands*, op. cit., par. 62.

118. ECSR, *European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands*, Collective Complaint No. 86/2012, op. cit., par. 135.

A pending complaint lodged by the *European Disability Forum* against *France* concerned, amongst other things, a violation of the rights of persons with disabilities to have equal and effective access to housing adapted to their needs and the placement of such persons in institutions far away from their homes, preventing them from participating in family life.¹¹⁹

In terms of access to adequate accommodation for people belonging to minority groups, the ECSR emphasized in its decision regarding representatives of the Roma minority the fact that “States must respect difference and ensure that social arrangements are not such as would effectively lead to or reinforce social exclusion.”¹²⁰

State authorities shall therefore take into account the necessity of creating enough stopping places for Roma camps, as well as protecting Roma people from forced evictions without providing alternative adequate accommodation. It is worth noting within the context of implementation of Article 13 of the TPD that Roma people can become subject to discriminatory practices limiting their access to housing rights.¹²¹ Moreover, in view of Article 32 (2) of the RESC, the Committee underlined the fact that equal treatment also implies that a state should “take measures appropriate to Roma’s particular circumstances to safeguard their right to housing and prevent them, as a vulnerable group, from becoming homeless.”¹²²

This interpretation of the right to adequate housing under Article 31 of the RESC can be referred to within the context of Article 13 of the TPD. Both provisions acknowledge the right of persons to have access to suitable accommodation, while the case law of the Committee of Social Rights sheds some light on what conditions can be considered adequate and what obligations have to be fulfilled by the state in order to protect the dignity and well-being of vulnerable individuals who have fled their homes in search of safety and protection.

C. RELEVANT STANDARDS IN INTERNATIONAL LAW WHEN IMPLEMENTING THE RIGHT TO SUITABLE ACCOMMODATION

This section covers some select international legal instruments that are relevant for addressing the challenges arising from implementation of Article 13 of the TPD. The right to housing is embedded in Article 25 of the Universal Declaration of Human Rights: “1. Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services [...]”¹²³

The International Covenant on Economic, Social and Cultural Rights (ICESCR) sets out that state parties must recognise the right to an adequate standard of living, including housing and the continuous improvement of living conditions, and must put in place the necessary legislative measures to guarantee that these rights are fully realised.¹²⁴ The Committee on Economic, Social and Cultural Rights (CESCR) has noted that the right to housing does not equate to “shelter provided by merely having a roof over one’s head” and warns against interpreting this right narrowly and restrictively, stating that “it should be seen as the right to live somewhere in security, peace and dignity.”¹²⁵ Moreover, General Comment No. 4 also defines some elements of the concept of adequate housing that may be relevant for the purposes of interpretation of Article 13 of the TPD. As per the Comment, adequate housing includes: a) security of tenure, b) availability of services, c) affordability, d) habitability, e) accessibility, f) location, and g) cultural adequacy.¹²⁶ The UN Special Rapporteur on the right to adequate housing has elaborated on each of these criteria, underlining the fact that they must be viewed as a minimum and the right to adequate housing entails a set of freedoms and

119. ECSR, *European Disability Forum (EDF) and Inclusion Europe v. France*, Complaint No.168/2018, Decision on admissibility 16 October 2018.

120. ECSR, *European Roma Rights Centre v. Greece*, op. cit., par. 19.

121. Oxfam international, *Roma refugees from Ukraine face Europe’s coming winter with added burden of hostility and discrimination*, 26 October 2022, <http://bit.ly/3IVCota>.

122. ECSR, *European Roma Rights Centre v. Italy*, Collective Complaint No. 27/2004, Decision on the merits, 07 December 2005, par. 21.

123. United Nations General Assembly, *The Universal Declaration of Human Rights (UDHR)*, New York: United Nations General Assembly, 1948.

124. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, Article 11.1.

125. Committee on Economic, Social and Cultural Rights, *General comment No. 4: The right to adequate housing (Article 11 (1) of the Covenant)*, Sixth session, 1991, <https://bit.ly/3kyTu6F>.

126. *Ibid*, par. 8.

entitlements that must be ensured.¹²⁷ Moreover, the Committee on Economic Social and Cultural Rights has underlined the fact that particularly disadvantaged groups¹²⁸ must have “full and sustainable access to adequate housing resources” and their special housing needs should be taken into consideration.¹²⁹

The right to adequate accommodation must be exercised in line with international standards on protection against discrimination. The Convention on the Elimination of All forms of Racial Discrimination obliges states to prohibit and eliminate discrimination in all of its forms, including within the context of enjoyment of the right to housing.¹³⁰

International norms offer a set of standards relating to access to suitable accommodation by vulnerable persons, including children and persons with disabilities.

a) Suitable accommodation for children

The Convention on the Rights of the Child provides for “the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”¹³¹ It stipulates that states shall assist parents with ensuring that these rights are fulfilled.

The Committee on the Rights of the Child (CRC) is a body of independent experts that monitors implementation of the Convention on the Rights of the Child by its state parties. The CRC has issued a number of recommendations and general comments on the right of children to suitable accommodation. The CRC’s recommendations and general comments inform and guide interpretation and application of international law related to children’s rights, including the right to an adequate standard of living.

The key recommendations and general comments from the CRC relevant for implementation of the right to suitable accommodation for children include a requirement for state parties to take all necessary measures to ensure that all children have access to adequate and affordable housing that is safe and has access to safe drinking water, sanitation and hygiene facilities.¹³² Moreover, state parties should take measures to ensure that children are not separated from their families as a result of inadequate housing and that children who are temporarily or permanently deprived of their family environment have access to suitable alternative care.¹³³ All legal and policy measures and decisions, including those surrounding accommodation, must take the best interests of the child into account.¹³⁴

With regards to suitable accommodation for displaced children, the CRC set out that “states should ensure that children [...] have a standard of living adequate for their physical, mental, spiritual and moral development,” providing them with reception conditions with adequate space and privacy.¹³⁵ Temporary reception facilities must be accessible for children, must not restrict their day-to-day movements and must take into account the special needs of the residents.¹³⁶

In General Comment No. 14, the Committee on the Rights of the Child refers to situations of specific vulnerability, underlining the fact that “[t]he best interests of a child in a specific situation of vulnerability will

127. UN Habitat, The Right to Adequate Housing, Fact Sheet No.1, <https://bit.ly/3Y8XOaD>.

128. Disadvantaged groups mentioned in par. 8 (e) of the General comment No. 4 include: “the elderly, children, the physically disabled, the terminally ill, HIV positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster prone areas and other groups.”

129. *Ibid.*

130. UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, Article 5 (e) (iii).

131. UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, Article 27.

132. Committee on the Rights of the Child, General comment No. 21 (2017) on children in street situations, p. 18, par. 51.

133. Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, p. 14, par. 62.

134. Committee on the Rights of the Child, General comment No. 7 (2005) Implementing child rights in early childhood, par. 13, p. 6.

135. UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW): Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, par. 49.

136. *Ibid.*, par. 50.

not be the same as those of all children in the same vulnerable situation.”¹³⁷ Children in a specific situation of vulnerability should be provided with reasonable accommodation throughout their development.¹³⁸

The obligation to guarantee migrant children access to social services, including adequate housing, was underlined by the Committee in *S.E.M.A v. France*. The CRC emphasised the fact that states “are obliged to ensure the protection of any migrant child deprived of his or her family environment, by guaranteeing, inter alia, their access to social services, education and adequate housing.”¹³⁹

Similarly, in *R.A.A. and Z.M v. Denmark* the Committee on Civil and Political Rights requested that the state ensure that the applicants and their child will be able to reside in conditions “adapted to the baby’s age and the family’s vulnerable status.”¹⁴⁰

b) Suitable accommodation for persons with disabilities

The right to suitable accommodation for persons with disabilities is recognised under international law, including the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Although the CRPD does not explicitly recognise the right to suitable accommodation as an independent right, various provisions do mandate access to housing. These provisions are significant in determining what constitutes suitable accommodation for individuals with disabilities.

Article 9 of the CRPD recognises the right of persons with disabilities to live independently and to be included in the community. It calls on states parties to take appropriate measures to ensure the accessibility of the physical environment, transportation, information and communications, and other facilities and services.¹⁴¹ The CRPD also recognises the right of persons with disabilities to an adequate standard of living and social protection,¹⁴² including the right to adequate housing, as well as the right to enjoy the highest attainable standard of health.¹⁴³ Moreover, reasonable accommodation under Article 2 of the Convention on the Rights of Persons with Disabilities is understood to be any “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure [...] the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”¹⁴⁴

The Committee on the Rights of Persons with Disabilities, which monitors implementation of the CRPD, has issued several recommendations and general comments that are relevant when interpreting the right to suitable accommodation for TPBs with disabilities. These recommendations and general comments emphasise the need to ensure that housing policies, programmes and services are accessible, inclusive and designed to meet the specific needs of persons with disabilities. General Comment No. 5 sets out that state parties should take measures to ensure that persons with disabilities have access to affordable, accessible and appropriate housing, including supportive and accessible housing options that enable independent living.¹⁴⁵

The right to suitable accommodation is intertwined with other rights, including the right to home and family. In the case of *Bellini v. Italy*, the Committee came to the conclusion that “the failure by the State Party to provide the family with adequate support in their right to home and family amount to a violation of the rights of the author’s daughter and partner under article 23 of the Convention.”¹⁴⁶

137. Committee on the Rights of the Child, General Comment No. 14 (2013), op. cit., par. 76.

138. *Ibid.*

139. Comité des droits de l’enfant, Constatations adoptées par le Comité au titre du Protocole facultatif à la Convention relative aux droits de l’enfant établissant une procédure de présentation de communications, concernant la communication no. 130/2020, *S.E.M.A. v. France*, 25 janvier 2023, p. 14, par. 8.11. “Committee on the Rights of the Child, Views of the Committee adopted under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning Communication No. 130/2020, *S.E.M.A v. France*, 25 January 2023, p. 14, par. 8.11 (available in French only).

140. CCPR, Views adopted by the Committee under Article 5 (4) of the Optional Protocol, concerning Communication No. 2608/2015, *R.A.A. and Z.M. v Denmark*, No. 2608/2015, 28 October 2016.

141. UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106.

142. *Ibid.*, Article 28.

143. *Ibid.*, Article 25.

144. Convention on the Rights of Persons with Disabilities, op. cit.

145. Committee on the Rights of Persons with Disabilities General comment No. 5 (2017) on living independently and being included in the community, p. 8, par. 34.

146. Committee on the Rights of Persons with Disabilities Views adopted by the Committee under Article 5 of the Optional Protocol, concerning Communication No. 51/2018, *Maria Simona Bellini v. Italy*, par. 7.7.

The special regime that was created by the TPD does not provide for an assessment procedure where individuals' special needs can be identified. Displaced persons with disabilities encounter significant obstacles in terms of having their disabilities recognised in a host country, particularly if their disabilities are not visible. In many cases, their disabilities may not be visible or may not fit within the framework of the host country's definition of disability. This can lead to a lack of access to critical services and support, including access to accommodation suitable for their special needs.

Access to suitable accommodation shall be provided on the basis of the principle of non-discrimination. In the case of *Z. H. v. Sweden*, the Committee on the Rights of Persons with Disabilities underlined the fact that state parties are required to "ensure that the rights of persons with disabilities, on an equal basis with others, are properly considered in the context of asylum decisions."¹⁴⁷ In *H. M. v. Sweden*, the Committee pointed out that the state party needs to ensure that "its legislation and the manner in which it is applied by domestic courts is consistent with the State Party's obligations to ensure that legislation does not have the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise of any right for persons with disabilities on an equal basis with others."¹⁴⁸ Moreover, the Committee underlined the fact that discrimination on the basis of disability includes "all forms of discrimination, including denial of reasonable accommodation."¹⁴⁹

III. CONCLUSION

The Temporary Protection Directive has proved to be an adequate instrument when hosting a large number of people fleeing war or persecution. This CEAS instrument was invoked for the first time, something which led to certain challenges in terms of its application. One such challenge is securing suitable accommodation, as required by Article 13 of the TPD.

Despite the lack of a universal definition of suitable accommodation and the lack of CJEU jurisprudence clarifying this concept under EU law, when ensuring this right member states are bound by their legal obligations under international and EU law. It is therefore essential when interpreting and applying the TPD that the broader legal context in which it operates is considered to ensure a coherent and effective system of protection for displaced persons in Europe.

As a minimum, the right to suitable accommodation must be interpreted with a view to guaranteeing the right of each person to live in dignity and security, and in accordance with the principle of equal treatment and non-discrimination. This is especially important within the context of access to suitable accommodation for vulnerable persons.

When implementing Article 13 of the TPD, states should take into account the vulnerabilities and special reception needs of displaced persons as what may be suitable for people without such needs may not be adequate for those with disabilities, mental health conditions or other special needs. Access to temporary shelter does not equal access to adequate accommodation. Temporary shelter in collective reception centres cannot be considered an adequate long-term solution and access to suitable accommodation must be ensured within a reasonable timeframe. While these centres can be an effective way of providing temporary shelter, they may not be suitable for persons with special needs or may even intensify their health-related difficulties.

In some cases, placing persons with special needs in a collective reception centre may exacerbate their condition, leading to further trauma or harm. For example, individuals with post-traumatic stress disorder may find the communal living spaces in a collective reception centre overwhelming and triggering.¹⁵⁰ Individuals with physical disabilities may find it difficult to navigate the facility's infrastructure. It is therefore crucial that authorities take the specific needs of vulnerable persons into account and provide them with appropriate accommodation suitable for their health. This may include alternative housing

147. Committee on the Rights of Persons with Disabilities, Views adopted by the Committee under Article 5 of the Optional Protocol, concerning Communication No. 58/2019, *Z. H. v. Sweden*, 6 September 2021, par. 10.2.

148. Committee on the Rights of Persons with Disabilities, Communication No. 3/2011, Views adopted by the Committee at its 7th session, *H. M. v. Sweden*, 16 to 27 April 2012, p. 13, par. 9.2.

149. *Ibid.*, par. 8.4.

150. BE: Labour Tribunal [Tribunal du travail/Arbeidsrechtbanken], 22/3209/K, 18 August 2022, <http://bit.ly/42kZ8up>. The Tribunal came to conclusion that the conditions in the collective centre posed harm and did not respect the medical condition of the applicant who experienced trauma.

arrangements with easy access to specialised medical care or mental health services.

With regards to children, the right to suitable accommodation should be implemented in line with the best interests of the child. Children should live in safety and security in conditions that can ensure their well-being and development. The right of children to live in suitable conditions is intertwined with other fundamental rights, such as the right to education, rehabilitation and social inclusion. Children with special needs require access to appropriate education and support services to ensure that they can reach their full potential. It is therefore essential that the accommodation provided is suitable for the specific needs of each child and that appropriate support services are available and accessible to ensure that displaced persons can fully exercise their rights.

The right to suitable accommodation also includes procedural obligations for states that must take the necessary measures to ensure that there are relevant mechanisms enabling temporary protection beneficiaries to have access to the rights guaranteed by the TPD. Moreover, states shall ensure that effective legal remedies are available to them.

While there is no identification or screening procedure for TPBs, they should have access to the right to be heard and receive a reasoned decision regarding measures affecting them. The absence of national legal remedies in terms of access to suitable accommodation should result in direct applicability of Article 47 of the CFREU. National courts are required to take Article 47 of the CFREU into account and ensure its effective implementation. If necessary, guidance on interpreting and applying the right to suitable accommodation under Article 13 of the TPD, read in light of Article 47 of the CFREU, should be sought before the CJEU on the basis of Article 267 of the TFEU.

Overall, the right to suitable accommodation is a critical element in ensuring that displaced persons are able to enjoy their fundamental rights and live in dignified conditions. Policymakers, service providers and other stakeholders should take into account the specific needs of these individuals when designing and implementing accommodation programmes and services, and verify that they work, to ensure that the rights of all individuals are protected and promoted.

The right to suitable accommodation, as enshrined in the TPD, is vital to the successful integration of displaced persons and can have positive effects on the hosting communities. By guaranteeing access to adequate accommodation, the Directive can promote social cohesion and facilitate mutual understanding and respect between displaced persons and host communities.