

## **The Housing right : What Obligations for States in the face of housing poverty?**

di

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### **1.Introduction**

Recent empirical evidence indicates that housing poverty constitutes a structural challenge for democratic inclusion in the European Union. According to the latest estimates, 8.2 per cent of the EU population lives in households that allocate at least 40 per cent of their disposable income to housing costs (housing cost overburden rate); 16.9 per cent lives in overcrowded housing conditions; and 9.2 per cent is unable to keep its home adequately warm<sup>1</sup>.

Taken together, these indicators do not merely reflect adverse social conditions, but point to a form of deprivation that directly affects the effective enjoyment of fundamental rights and, more broadly, the constitutional foundations of European democracies.

Housing poverty should therefore be conceptualised as a multidimensional phenomenon, unfolding along a continuum of situations that range from overcrowding and excessive housing costs to residence in inadequately serviced neighbourhoods, informal or unlawful occupation of dwellings, and structurally

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<sup>1</sup> Eurostat, *EU Statistics on Income and Living Conditions (EU-SILC)* (2024), <https://ec.europa.eu/eurostat/web/income-and-living-conditions/data/database>

inadequate housing, culminating in the complete absence of a home. At the extreme end of this continuum lies homelessness, which represents the most severe form of housing exclusion<sup>2</sup>.

Current estimates indicate that more than 1.1 million people are homeless in Europe, including both individuals sleeping rough and those accommodated in emergency or temporary facilities<sup>3</sup>.

Homelessness is widely recognised as a condition of multifactorial origin, combining extreme material deprivation with immaterial forms of poverty and social exclusion. Its consequences extend beyond the sphere of primary needs and affect relational, emotional, and affective dimensions of human life. Against this background, access to housing emerges not merely as a welfare measure, but as a prerequisite for any meaningful process of social reintegration<sup>4</sup>.

The constitutional significance of access to housing becomes particularly apparent when examined through national legal systems. The Italian legal order offers a paradigmatic illustration in this respect. In Italy, homeless persons typically lack a certified and stable residence, which constitutes a legal prerequisite for registration in the municipal population register. Such registration, in turn, operates as a gateway condition for access to a wide range of services connected to fundamental rights, most notably healthcare services (Article 32 of the Italian Constitution) and social assistance services (Article 38)<sup>5</sup>

The absence of a registered residence also produces wider constitutional repercussions. It restricts access to legal aid and the effective exercise of the right of

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<sup>2</sup> FEANTSA and Housing Rights Watch, *Tenth Overview of Housing Exclusion in Europe (Brussels, 2025), Executive Summary and country data*, <https://www.housingrightswatch.org/content/overview-housing-exclusion-europe>

<sup>3</sup> On this point, the European Federation of National Organisations Working with the Homeless (FEANTSA) has developed the ETHOS classification (European Typology of Homelessness and Housing Exclusion), which distinguishes four main conceptual categories of housing exclusion: rooflessness, houselessness, insecure housing, and inadequate housing

<sup>4</sup> See Federazione Italiana degli Organismi per le Persone Senza Dimora (fio.PSD), *Homeless People in Italy*, <https://www.fiospd.org/persona-senza-dimora/>, September 2025

<sup>5</sup> The 2023 Italian Budget Law included residence among the essential levels of performance (livelli essenziali delle prestazioni), although significant implementation difficulties persist. See *Dai diritti sociali alla cittadinanza. La condizione giuridica dello straniero tra ordinamento italiano e prospettive sovranazionali*, Torino, Giappichelli, 2014, p. 64 ff.

defence (Article 24), prevents registration with employment services and thereby undermines the right to work (Articles 4 and 35), and—most critically—impedes the acquisition of identity documents, thus affecting the right to vote (Article 48). Although Italian legislation formally provides for the establishment of a non-territorial special register enabling homeless persons to obtain legal residence, this mechanism has been implemented only sporadically at the municipal level<sup>6</sup>.

Even at this initial level of analysis, a deep fracture produced by housing poverty becomes visible: a divide between those who are fully part of society—free and equal—and those who, in growing numbers, remain excluded, not free from material need and not equal in the effective enjoyment of rights. This fracture undermines the resilience of democratic States, as poverty erodes not only social rights, but also political and even civil rights. Yet, fundamental rights define the constitutional identity of the democratic States belonging to the European Union and constitute the common European constitutional heritage upon which the Union itself is founded (Articles 2 and 3 TEU). For this reason, housing poverty generates a set of normative questions that require careful legal analysis: Which pathways are available to counter housing poverty? What contribution can courts offer to the protection of the right to housing? And what is the impact of supranational legislation and case law on States' obligations in this field?

This article seeks to address these questions by highlighting the centrality of the fight against housing poverty to the protection of a life in dignity and to the realisation of a society of free and equal persons, as envisaged by the Treaties of the European Union.

## **2. The right to housing within the supranational normative mosaic**

At the supranational and European level, the issue of housing poverty is absorbed into broader themes related to inclusion and social cohesion policies or

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<sup>6</sup> Explanatory notes to the Population Registry Act of 1954 and to Presidential Decree no. 223 of 30 May 1989. On this issue, see E. Gargiulo, *I poveri di fronte all'anagrafe*, in L. COCCOLI (a cura di), *I poveri possono parlare?*, Roma, Futura, 2021, p.89 ff.

employment policies; for this reason, it is necessary to narrow the focus of analysis to the principal right denied by housing poverty: the right to housing.

The right to housing is recognised by Article 25 of the Universal Declaration of Human Rights (New York, 10 December 1948), by Article 11 of the International Covenant on Economic, Social and Cultural Rights (United Nations, 1966, ratified by Italy on 15 September 1978). To these are added the Convention on the Rights of the Child of 20 December 1989 (Article 27) and the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979 (Article 14)<sup>7</sup>.

More concretely, the right to housing acquires relevance within a normative mosaic whose fundamental components consist of the European Convention on Human Rights (ECHR), the European Social Charter (ESC), and the Charter of Fundamental Rights of the European Union (CFREU)<sup>8</sup>.

The ECHR, originally conceived for the protection of civil and political rights, does not contain any explicit reference to the right to housing<sup>9</sup>; however, the European Court of Human Rights has demonstrated the Convention's permeability to social rights through an extensive body of case law relating to Article 1 of Protocol No. 1 and to Article 8 of the ECHR<sup>10</sup>.

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<sup>7</sup> Cfr. R. ROLLI, *Il diritto all'abitazione nell'Unione europea*, in A. BUCCELLI (a cura di), *L'esigenza abitativa. Forme di fruizione e tutele giuridiche. Atti del Convegno in onore di Gianni Galli. Firenze 19-20 ottobre 2012*, Padova, 2013, p. 45; P. DURET, *Nuove sinergie nel crocevia dell'housing sociale*, in ID., (a cura di), *Nuove sinergie per il social housing*, Napoli, 2020, p. 3 e ss.

<sup>8</sup> Cfr. A. BARBERA, *La Carta dei diritti: per un dialogo tra la Corte italiana e la Corte di Giustizia, Relazione all'incontro di studio fra i Tribunali e le Corti costituzionali di Spagna, Portogallo, Francia e Italia*, Siviglia 26-28 ottobre 2021, in [www.cortecostituzionale.it](http://www.cortecostituzionale.it)

<sup>9</sup> G. REPETTO, *Tra continuità e nuovi scenari: l'efficacia della Cedu alla luce delle sentenze nn.80 e 113/2011 della Corte costituzionale*, in [diritti-cedu.unipg.it](http://diritti-cedu.unipg.it)

<sup>10</sup> . With regard to Protocol No. 1, the case law of the European Court of Human Rights has derived three distinct rules:

the first concerns the principle of respect for property, set out in the first sentence of the first paragraph; the second relates to cases of deprivation of property, provided for in the second sentence of the first paragraph; finally, the third concerns the right of States to regulate the use of property in accordance with the general interest or for fiscal purposes; see European Court of Human Rights, *Sporrong e Lönnroth v. Svezia*, ric. n. 7151/75, 23 september 1982; *James and others v. Regno Unito*, ric. n. 8793/79, 21 february 1986; F. BUONOMO, *La tutela della proprietà dinanzi alla Corte Europea dei Diritti dell'uomo*, Milano, 2005; B. CONFORTI, *La giurisprudenza della Corte di giustizia di Strasburgo in tema di proprietà*, in M. COMPORTE (a cura di), *La proprietà nella carta europea dei diritti fondamentali*, Milano, 2005, 113

The other component of the normative mosaic protecting the right to housing is constituted by the European Social Charter (hereinafter ESC), which, in its revised 1996 version, makes an explicit reference to the right to housing (Article 31)<sup>11</sup>.

The provisions that the European Social Charter devotes to the right to housing (Article 31) contribute to completing its system of protection at the European level, since the Charter displays “marked elements of specialisation compared to ordinary international agreements, elements that connect it to the ECHR, of which the ESC represents the natural social complement, insofar as, as stated in the Preamble, the member States of the Council of Europe intended to extend protection also to social rights, recalling the indivisible nature of all human rights.”<sup>12</sup>.

As will be discussed further below, Article 31 of the Revised European Social Charter does not configure the right to housing as an immediately justiciable individual subjective right; consequently, there is no obligation of result corresponding to a subjective right.

The logic underpinning the Charter is instead that of positive obligations of conduct: States are required to act through legislative, economic, administrative and operational measures aimed at ensuring real and effective access to housing, and at preventing individuals from being unjustly excluded from, or deprived of, such access.

More specifically, the Revised European Social Charter primarily establishes an obligation of progressive realisation, following a constant and articulated path designed to gradually make effective access to adequate housing for all.

This logic clearly emerges from the wording of Article 31, which commits States to: promote access to housing that meets standards of adequacy; prevent and reduce

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<sup>11</sup> C. PANZERA-A. RAUTI-C. SALAZAR-A. SPADARO (a cura di), *La Carta sociale europea tra universalità dei diritti ed effettività delle tutele*, Napoli, 2017; G. GUIGLIA, *Il diritto all’abitazione nella Carta sociale europea: a proposito di una recente condanna da parte del Comitato europeo dei diritti sociali*, in *Riv. AIC*, n. 3/2011

<sup>12</sup> Corte cost. sent. n. 120, 1 aprile 2018, p. 10.1; sent. 194, 26 settembre 2018, p.14; C. SALAZAR, *La Carta sociale europea nella sentenza n.120/2018 della Consulta: ogni cosa è illuminata?*, in *Quad. cost.*, 2018, p. 905

homelessness, with a view to its progressive elimination; and ensure the affordability of housing for low-income groups.

At the same time, the provision for gradual implementation does not entail a relaxation of State responsibility. On the contrary, it implies a stringent legal obligation to mobilise available resources, to adopt appropriate legislative, administrative and financial measures, to monitor the effectiveness of the policies adopted, and to promptly correct any shortcomings identified.

States are therefore bound by a concrete and continuous commitment, oriented not only towards the progressive achievement of results, but also towards the non-regressivity of protection: this means that any setbacks in the guarantees provided must be justified by serious and proportionate reasons, in accordance with the general principles of European social law.

These obligations are also reaffirmed by the Charter of Fundamental Rights of the European Union (CFREU), to which the Treaty of Lisbon accords the same legal value as the Treaties (Article 6 TEU). In particular, Article 34(3) CFREU states that the right to housing assistance, alongside the right to social assistance, constitutes a means to combat social exclusion and poverty, to ensure a dignified existence, and entrusts legislation and practice with defining the modalities of protection<sup>13</sup>. Such modalities of protection by public authorities must be implemented in compliance with the limits of their competences, in particular those based on Article 153 TFEU.

The Explanations of the Praesidium, in fact, specify that “paragraph 3 draws inspiration from Article 13 of the European Social Charter and from Articles 30 and 31 of the Revised Social Charter, as well as from point 10 of the Community

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<sup>13</sup>The most significant contribution to the enhancement of **Article 34 of the Charter of Nice** is provided by a number of important judgments of the Court of Justice. For example, in the **Kamberaj** case, for the first time the Court relied on Article 34 of the Charter of Fundamental Rights to interpret Union law, while nevertheless leaving open the possibility for Member States to establish that housing does not, under certain conditions, constitute an “essential service” (ex art. 11(4), Directive 2003/109); *Judgment of 24 April 2012, Kamberaj, C-571/10, EU:C:2012:233*. More recently, the Court of Justice has had the opportunity to clarify the position expressed in that judgment, specifying that “housing assistance thus appears to be a benefit that contributes to combating social exclusion and poverty, it being intended to ensure a decent existence for all those who lack sufficient resources, as referred to in Article 34(3) of the Charter”; *10 June 2021, Land Oberösterreich (Aide au logement), C-94/20, EU:C:2021:477*. Both decisions are cited by L.S. Rossi, *Member States’ obligations in relation to housing rights – Views of the CJEU*, cit., p. 25.

Charter, and that the Union must respect it in the context of policies based on Article 153 of the Treaty on the Functioning of the European Union.”

It follows that, as highlighted in legal scholarship, “while the right to housing does not exist as such in the EU Treaties, Article 34 of the Charter of Fundamental Rights refers to social assistance, including housing. However, the application of this article depends on the laws and practices of the Member States and cannot go beyond them. Therefore, the Court of Justice must follow the legislator (...) can only rule on conduct of the Member States that falls within the scope of Union law, by implementing a directive or regulation.(...) However, indirect protection of the right to housing can also arise from Union acts that regulate other matters. Indeed, in addition to the examples mentioned in relation to the movement of citizens, migrants and refugees, other aspects of EU law indirectly relate to housing, and these are highly harmonised and technical, such as security, regulation of the mortgage market, certain elements of consumer protection, state aid rules, environmental issues, electricity and climate. For all these aspects, the Charter can be applied and the Court has full jurisdiction”<sup>14</sup>

### **3. European Union competences with regard to housing right and the emergence of housing poverty in soft law**

The European Treaties do not explicitly recognise Union competences with regard to the right to housing. However, the guarantee and protection of access to housing are functional both to the objectives of social policy, whose competences are shared with the Member States (Article 4 TFEU), and to the objectives of employment, social protection and the fight against social exclusion (Article 9 TFEU and Article 153 TFEU). These objectives are complementary to the improvement of living and working conditions (Article 151 TFEU) and fall within the scope of economic, social and territorial cohesion policies (Article 174 TFEU), as well as, more generally,

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<sup>14</sup> L.Serena Rossi, Member States’ obligations in relation to housing rights -Views of the CJEU, in N. Derdeck and P.Kenna (edt),The European and International Contribution to the Right to Housing: Standards, Litigation and Advocacy, (Brussels, FEANTSA, Abbé Pierre Foundation, University of Galway), 2023, p.25 -28

within the objectives of dignity and equality (Article 2 TEU) and of combating social exclusion (Article 3 TEU). The protection of the right to housing also has implications for the freedom of movement of workers (Article 45 et seq. TFEU), the right of establishment (Article 49 et seq. TFEU), and the freedom to provide services (Article 56 TFEU), all of which are instrumental to the construction of the internal market and to the development of a social market economy.<sup>15</sup> It should also be recalled that Union competences in the fields of the environment, energy, transport, competition, taxation and social policy—particularly with regard to the fight against discrimination—have an impact on the housing policies of the Member States<sup>15</sup>. The latter, moreover, enjoy a wide margin of discretion in the organisation and financing of social housing, since Article 14 and Protocol No. 26 TFEU on services of general economic interest remove this field from the application of State aid rules<sup>16</sup>.

Even in the absence of specific competences in the field of housing, its transversal nature has enabled the Union to intervene through directives and soft law instruments aimed at harmonising Member States' legislation in ensuring Union principles in access to housing<sup>17</sup>.

An early example is provided by Council Directive 2000/43/EC of 29 June 2000, which reaffirmed that discrimination in access to goods and services, including

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<sup>15</sup> R. ROLLI, *Il diritto all'abitazione nell'unione europea*, in *Contratto e Impresa/Europa*, no. 2/2013, p. 727; P. KENNA, *Housing Rights after the Treaty of Lisbon – Are there Minimum Core Obligations?*, in *The Cyprus Human Rights Law Review*, 2014, p. 13 ff.; with regard to the social market economy, see the Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Verso un atto per il mercato unico. Per un'economia sociale di mercato altamente competitiva*, COM (2010) 608 final, of 27 October 2010, which contains 50 proposals put forward by the then Barroso Commission for a strategy aimed at relaunching the European single market; on this point, P. PICONE, *Origine ed evoluzione delle regole di concorrenza comunitarie: l'apologia del mercato "sociale" europeo*, in *Critica del diritto*, 1974, p. 69 ff.; more recently, S. GIUBBONI, *Diritti sociali e mercato. La dimensione sociale dell'integrazione europea*, Bologna, 2003, pp. 27–29 and p. 165; E. DICIOTTI, *Stato di diritto e Diritti sociali*, in *Diritto e questioni pubbliche*, 2004, p. 50 ff

<sup>16</sup> Cfr. G. MARCHETTI, *La tutela del diritto all'abitazione tra Europa, Stato e Regioni e nella prospettiva del Pilastro europeo dei diritti sociali* in [www.federalismi.it](http://www.federalismi.it), n. 4/2018, pp. 184 e ss., specie p. 188.

<sup>17</sup> Cfr. E. OLIVITO, *Il diritto costituzionale all'abitare*, Jovene, Napoli, 2017, p. 94; G. DELLA SCALA, *Il social housing come servizio d'interesse generale tra tutela multivello del diritto sociale all'abitare e imperativi della concorrenza*, in *Riv. giur. edil.*, n. 2/2019, p. 179.

housing, risks undermining Union objectives, first and foremost a high level of employment and social protection, as well as economic and social cohesion. Subsequently, Directive 2012/29/EU of the European Parliament and of the Council provided that victims of crime must be guaranteed housing or, at least, temporary accommodation<sup>18</sup>.

In reality, as is generally the case with European social rights and policies, the protection of the right to housing finds its most significant development in soft law instruments,<sup>19</sup> which, if understood as expressions of the “Union’s political guidance,”<sup>20</sup> reveal that even prior to the Treaty of Lisbon attention to the right to housing had progressively increased. This evolution began with the attribution of competences in the field of economic cohesion policy (Single European Act) and was consolidated in the Lisbon Strategy of 2000, reinforced in 2005, whose objective of building a knowledge-based economy by 2010 was to be pursued through the

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<sup>18</sup> The need to strengthen the right to housing had long been perceived by the Commission on Employment and Social Affairs, *Relazione sugli aspetti sociali dell’edilizia residenziale*, 18 March 1997, available at [www.europarl.europa.eu](http://www.europarl.europa.eu), which, in the context of a proposed resolution to the Parliament, considered it to be the duty of States, in compliance with the competences defined by the Treaties, to recognise an effective and enforceable right; P. KENNA, *Housing Rights – The New Benchmarks for Housing Policy in Europe?*, in *The Urban Lawyer*, vol. XXXVII, no. 1, 2005, p. 87 ff.

<sup>19</sup> Cfr. E. BARGELLI, *Abitazione (diritto alla)*, in *Enc. dir.*, VI, 2007, p. 1 e ss., specie p. 6.

<sup>20</sup> See S. GIUBBONI, *Appunti e disappunti sul pilastro europeo dei diritti sociali*, in *Quad. cost.*, no. 4/2017, p. 953 ff., especially p. 954; although these are not legally binding acts and cannot be assimilated to sources of law, see, inter alia, R. BIN, *Soft law, no law*, in A. SOMMA (ed.), *Soft law e hard law nelle società post moderne*, Giappichelli, Turin, 2009, p. 37; it should also be taken into account that the Court of Justice, in the Grimaldi case of 1988 (judgment of 13 December 1989, Case C-322/88, *Salvatore Grimaldi v Fonds des maladies professionnelles*), established that this type of act must be taken into consideration by national courts when resolving disputes brought before them, which, according to another strand of legal scholarship, effectively entails their transformation into a source of domestic primary law; in this sense, M. RAMAJOLI, *Soft law e ordinamento amministrativo*, in *Dir. amm.*, no. 1/2017, p. 1 ff.; for a more in-depth analysis of the issue, see A. POGGI, *Soft law nell’ordinamento comunitario*, in *Convegno annuale AIC – 2005, L’integrazione dei sistemi costituzionali europeo e nazionali*, Catania, 14–15 October 2015, available at [www.archivio.rivistaaic.it](http://www.archivio.rivistaaic.it); more generally on soft law, L. SENDEN, *Soft Law in European Community Law*, Oxford, 2004, p. 118 ff.; F. TERPAN, *Soft Law in the European Union: The Changing Nature of EU Law*, in *European Law Journal*, no. 1/2015, p. 68 ff.; E. MOSTACCI, *La soft law nel sistema delle fonti. Uno studio comparato*, Wolters Kluwer-Cedam, Padua, 2008, p. 71 ff.; U. MATTEI, *The European Codification Process. Cut and Paste*, Kluwer, The Hague, 2003, especially p. 107 ff.

strengthening of social inclusion and sustainable development<sup>21</sup>. In this framework, for the construction of an inclusive and cohesive Europe, the centrality of protecting the right to housing—understood as a guarantee of access to decent and affordable housing—has increasingly emerged, a centrality particularly emphasised by the European Parliament, which has highlighted the strategic importance of housing by situating it within the broader debate on urban issues. Thus, already in the work of the European Parliament's Urban Lodgement Intergroup, author of the European Housing Charter of 2006, and in several resolutions of the European Parliament, the right to housing has been recognised as a "fundamental right," whose protection constitutes a "precondition for the exercise of and access to other fundamental rights and to a dignified life"<sup>22</sup>.

In this context, following the devastating effects of the financial and economic crisis of 2008, the link between the right to housing and social inclusion began to emerge more forcefully. This link led to increased attention to extreme housing poverty, namely homelessness, in response to which the first specific initiatives were launched within the framework of the Europe 2020 Strategy, through the European Platform against Poverty and Social Exclusion and the accompanying Communication, which identifies homelessness as the most severe form of poverty and deprivation<sup>23</sup>.

The link between the right to housing and social inclusion through the fight against homelessness has translated, at the political level, into a number of initiatives. Among these, particular mention should be made of the European Consensus Conference on Homelessness, held in Brussels on 10 December 2010, at the

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<sup>21</sup>R. MICCÙ, *Finalismo dell'unione ed economia sociale di mercato: modello (obsoleto) o "principio speranza" del costituzionalismo europeo?*, in V. ATRIPALDI-R. MICCÙ-I. PERNICE (a cura di), *Quale Costituzione per l'Europa. Consolidamento e innovazione costituzionale nel "secondo" Trattato di Roma*, in *Dir. cult.*, nn. 1-2/2003, p. 129 e ss.

<sup>22</sup>**European Parliament Resolution**, *Housing and Regional Policy*, of 10 May 2007 (2006/2108); more recently, **European Parliament Resolution** of 11 June 2013, *Social Housing in the European Union* (2012/2293); similarly, in the **Urban Agenda for the EU** adopted in Amsterdam on 30 May 2016, the right to housing is reaffirmed as the right to affordable, adequate and decent housing, developed in accordance with criteria that respect the principles of sustainability.

<sup>23</sup> Commission Communication COM(2010) 2020 final on Europe 2020 A Strategy for Smart, Sustainable and Inclusive Growth.

initiative of the Belgian Presidency of the Council of the EU, in cooperation with the European Commission and FEANTSA (the European Federation of National Organisations Working with the Homeless). This conference aimed to create a common knowledge base to frame the phenomenon and to identify appropriate policy responses and benefited from the contributions of scholars and practitioners in the field; however, despite laying the foundations for shared understanding among stakeholders, it was not followed in subsequent years by adequate policies on the part of the Member States<sup>24</sup>.

From that point onwards, recommendations, resolutions, opinions and reports have followed in close succession, in which the urgency of adopting measures to combat housing poverty has been emphasised in direct proportion to the spread of the phenomenon<sup>25</sup>.

#### **4. The housing issue within the European Pillar of Social Rights**

Within this framework, characterised by an asymmetry between the ineffectiveness of policies aimed at combating homelessness and the proliferation of soft-law measures, the European Pillar of Social Rights is also situated, particularly because of the explicit attention it devotes to the most disadvantaged, namely homeless persons<sup>26</sup>.

In particular, Principle 19 of the Pillar initially refers to persons in an unspecified state of need, for whom intervention may take the form of guaranteeing access to social housing or providing quality housing assistance. Within this category,

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<sup>24</sup> See V. BUSCH-GEERTSEMA-W. EDGAR-E. O'SULLIVAN-N. PLEACE, *Homelessness and homeless Policies in Europe: Lesson from Research*, in *ww.feantsa.org*.

<sup>25</sup> Commission staff working, *Confronting homelessness in the European Union - Accompanying the document - Communication from the commission to the European parliament, the Council, the European economic and social Committee and the Committee of the regions. Towards social investment for growth and cohesion - including implementing the european social fund 2014-2020*, Brussels, 20.2.2013, SWD(2013) 42 final.

<sup>26</sup> See J. LUTHER, *Il futuro dei diritti sociali dopo il summit di Goteborg: rafforzamento o impoverimento?* in P. BILANCIA (a cura di), *I diritti sociali tra ordinamento statale e ordinamento europeo, in federalismi.it*, numero speciale n. 4/2018, p. 49 e ss.; F. BALAGUER CALLEJON, *La prospettiva spagnola sul pilastro sociale europeo*, pp. 69-79, *ibidem*.

specific attention is paid to vulnerable persons who, although currently housed, are at risk of losing their accommodation due to their situation of fragility<sup>27</sup>..

Finally, a further specification concerns homeless persons, whose condition requires forms of support that do not end with access to housing, but must encompass all the services necessary for their inclusion, in line with what has already been envisaged by various soft-law measures<sup>28</sup>. In the literature, strong criticism has been advanced regarding both the way in which the 20 principles and rights have been ordered and their incorporation into a soft-law instrument<sup>29</sup>.

In particular, it has been pointed out that this ordering, in addition to reiterating rights already recognised by the CFREU, appears consistent with a system inspired not so much by social justice as by the guarantee of an “access justice” to the market<sup>30,49</sup>. From this perspective, the placement of the principles of equal opportunities and non-discrimination in access to the labour market in Chapter I may be read alongside the location of principles and rights relating to social protection and social inclusion in the final Chapter III.

As has been observed, this approach reflects a neoliberal imprint<sup>31</sup> that has progressively characterised the European Union, as evidenced by the impact that

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<sup>27</sup> P. KENNA-S. NASARRE AZNAR-P. SPARKES-C.U. SCHMID, *Loss of Homes and Evictions across Europe. A Comparative Legal and Policy Examination*, Elgar Publishing, 2018, *passim*.

<sup>28</sup> *European Parliament Resolution of 16 January 2014 on an EU strategy on homelessness*, in *Official Journal of the European Union*, 23 December 2016.

<sup>29</sup> S. GIUBBONI, *Appunti e disappunti sul pilastro europeo dei diritti sociali* cit., specie p.958; e ID., *L'insostenibile leggerezza del pilastro europeo dei diritti sociali*, in *Pol. dir.*, n. 4/2018, p. 557 e ss., specie p. 568

<sup>30</sup> The concept of *access justice* originates with H.-W. MICKLITZ, (ed.), *The many concepts of social justice in European Private Law*, Edward Elgar Publishing, London, 2011; it was subsequently taken up by K. TUORI, *European Constitutionalism*, Cambridge University Press, 2015, p. 227 ff., especially p. 266, who observes that EU law—particularly private law, with specific regard to labour law, consumer law, and the body of legislation developed around the principles of non-discrimination and access to the market—clearly delineates a model of “access justice” distinct from that of social justice proper; the issue of social justice in Europe and the inability of the market to fulfil such a function is highlighted by A. GUAZZAROTTI, *Crisi dell'euro e conflitto sociale. L'illusione della giustizia attraverso il mercato*, Franco Angeli, Milan, 2016, *passim*; S. GIUBBONI, *Stato sociale e integrazione europea: una rivisitazione teorica*, in *Quaderni fiorentini per la storia del pensiero giuridico moderno*, no. 46/2017, p. 553 ff.

<sup>31</sup> S. GIUBBONI, *L'insostenibile leggerezza del Pilastro europeo dei diritti sociali*, in *Pol. dir.*, n. 4/2018, cit., specie p. 561; le conseguenze negative del neoliberismo e dell'austerità sui diritti dei lavoratori sono state oggetto di una ricerca in chiave comparata svolta da M.M. LUCIO-A. KOUKIADAKI-I. TAVORA, *The Legacy of Thatcherism in European Labour relations. The impact of the*

the principles of flexicurity and austerity have had on workers' rights and on social rights more generally<sup>32</sup>.

Unsurprisingly, the scourge of poverty—and homelessness in particular—has progressively worsened in Europe<sup>33</sup>, with marked intensifications following the financial and economic crisis of 2008 and the related austerity measures, and even more so after the Covid-19 pandemic. These developments have affected a social fabric in which employment, rendered precarious and fragile also by so-called flexicurity, has culminated in the phenomenon of the working poor, an expression of the inability of labour income to sustain the costs of decent housing<sup>34</sup>.

The issue has become so central that the European Commission itself, in the *European Pillar of Social Rights Action Plan*, published on 4 March 2020, highlights

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politics of neo-liberalism and austerity on collective bargaining in a fragmenting Europe, in *Institute of Employment Rights Journal*, vol. II, n. 1/2019, p. 28 e ss.; più in generale per una analisi dell'evoluzione in senso neoliberista e sulla necessità di un ritorno ad un approccio keynesiano T. PIKETTY, *Il capitale nel XXI secolo*, Bompiani, Firenze, 2016 (ed. or.: T. PIKETTY, *Le capitale au XXIe siècle*, Seuil, Paris, 2013); una ricostruzione storico giuridica sin dalla nascita del pensiero neo liberale della scuola di Friburgo, D.J. GERBER, *Constitutionalising the economy: German Neo-liberalism, Competition Law and the "New" Europe*, in *The American Journal of Comparative Law*, vol. 42, n. 1/1994, p. 25 e ss.; più recentemente C. PINELLI, *I rapporti economici-sociali fra Costituzione e Trattati europei*, in C. PINELLI-T. TREU (a cura di), *La costituzione economica: Italia, Europa*, Bologna, 2010, p. 26 e ss.; A. LUCARELLI, *Il modello sociale ed economico europeo*, in A. LUCARELLI-A. PATRONI GRIFFI (a cura di), *Dal Trattato costituzionale al Trattato di Lisbona. Nuovi studi sulla costituzione Europea*, Napoli, 2009; A. GUAZZAROTTI, *Neoliberalismo e difesa dello Stato di diritto in Europa*, Milano, 2023, specie p. 82.

<sup>32</sup> S. SCIARRA, *L'Europa e il lavoro. Solidarietà e conflitti in tempo di crisi*, Laterza Roma-Bari, 2013, p. 7 e ss.; L. ZOPPOLI, *La flexicurity dell'Unione europea: appunti per la riforma del mercato del lavoro in Italia*, Working Paper in C.S.D.L.E "Massimo D'Antona".it n. 141/2011; E. REYNERI, *Anti-poverty and (decreasing) social cohesion in Europe. A comment*, in *Stato e Mercato*, n. 103/2015, p. 97 e ss.; G. BRONZINI, *Lavoro, tutela dei diritti fondamentali nelle politiche europee del "dopo Lisbona"*, in *Pol. dir.*, n. 1/2008, p. 141 e ss.

<sup>33</sup> According to *Fondation Abbé Pierre-FEANTSA*, *Fifth overview of housing exclusion in Europe 2020*, July 2020, available at [www.feantsa.org](http://www.feantsa.org), in 2020 there were at least 4 million homeless people in Europe, with an increase of 70 per cent between 2009 and 2019.

<sup>34</sup> Il tema è trattato con riguardo all'Italia da C. LUCIFORA, *"Working poor" e politiche per l'occupazione* in C. DELL'ARINGA-P. GUERRIERI (a cura di), *Inclusione, produttività, crescita. Un'agenda per l'Italia*, Bologna, 2019, p. 426 ss.; A. LASSANDRI, *Oltre la "grande dicotomia"? La povertà tra subordinazione e autonomia*, in *Lavoro e diritto*, n. 1/2019, p. 81 e ss.; M. RAITANO-M. JESSOULA-E. PAVOLINI-M. NATILI, *In-work poverty in Italy*, European Commission 2019 in: <https://ec.europa.eu/social/Blobservelet?docId=21106&langId=en>; W.S. CONEN, *In-work poverty, among self employed and non standard workers in europe: Working multiple jobs as a survival strategy*, in *Pol. soc.*, n. 1/2021, p. 143 e ss.

the need to combat housing distress by guaranteeing access to quality and affordable housing.

Thus, against the backdrop of a Europe still unbalanced in favour of the protection of economic freedoms, renewed attention to housing poverty can be observed, including in its increasingly widespread extreme forms.

With regard to the latter, on 21 June 2021 in Lisbon, during the conference organised by the Portuguese Presidency of the Council of the EU, the European Commission and FEANTSA (the European Federation of National Organisations Working with the Homeless), national ministers and representatives of EU institutions signed the *Lisbon Declaration on the European Platform on Combatting Homelessness*.<sup>54</sup>

States, together with regions and local authorities, have committed themselves to sharing knowledge and best practices in combating homelessness, also through improved data collection on the extent of the phenomenon, in order to design adequate social policies. The aim is to promote the prevention of housing poverty and to guarantee access to permanent housing, in addition to providing support services for homeless persons. This activity also envisages the involvement of so-called stakeholders, in particular private actors who may be engaged in the design and implementation of such socio-housing policies, the financing of which may draw on resources allocated under the 2021–2027 financial framework, as well as on resources from Next Generation EU<sup>35</sup>.

Once again, these are not legislative actions, but programme-oriented initiatives, whose binding force may derive from compliance with the principle of sincere

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<sup>35</sup> *Next Generation EU* amounts to EUR 800 billion and is divided into two funding streams: the Recovery and Resilience Facility (RRF) and the Recovery Assistance for Cohesion and the Territories of Europe (REACT-EU). The RRF constitutes the core of *Next Generation EU*, with EUR 732.8 billion to be deployed in the form of loans and grants to support Member States' reforms and investments. REACT-EU consists of EUR 50.6 billion allocated to Member States through the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Fund for European Aid to the Most Deprived (FEAD) and the Youth Employment Initiative. Of these resources, the Commission allocates EUR 150 billion to "social expenditure", which includes measures relating to employment and training, education and childcare, health and long-term care, as well as social policies. It is therefore very difficult to ascertain what proportion is actually devoted to combating homelessness; cf. *Feantsa, Working together to end homelessness*, 12 November 2021, p. 1 ff., available at [www.feantsa.org](http://www.feantsa.org).

cooperation, but which ultimately depend on the political will of the Member States and their capacity to implement them. Nevertheless, this represents a noteworthy commitment, pursuing the ambitious objective of ending homelessness by 2030—an objective which, however desirable, already appears difficult to achieve in the absence of upstream changes to the European development model, so as to redress the imbalance between the protection of social rights and market freedoms, in line with the values and objectives of equality, dignity and well-being of the European project set out in Articles 2 and 3 TEU.

Indeed, the issue of homelessness itself—its spread across many European countries—reveals the malfunctioning of a development model that must be corrected not only for reasons of coherence with Union principles and values, but also because, paradoxically, it is the financial system that risks implosion as a result of policies insufficiently attentive to social rights.

The European Commission is aware of this, as shown by the Communication included in the Spring Package of the European Semester of 23 May 2022, which warns that “house prices are growing at their fastest pace in over a decade” and that, although the banking sector has weathered the pandemic crisis well, certain risks may arise with the end of mortgage repayment moratoria and the phasing-out of support measures<sup>36</sup>.

Policies and investments aimed at ensuring the effectiveness of the right to housing thus reveal, also from this perspective, that combating housing poverty has become a necessary pathway not only for an inclusive and cohesive society, but also for the stability of the financial system itself. After all, the financial and economic crisis triggered in 2008 in the United States by sub-prime mortgages—which significantly contributed to expanding the scourge of homelessness on both sides of the

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<sup>36</sup> European Commission, *Communication From the Commission to the European Parliament, The Council, The European Central Bank, The European Economic and Social Committee, The Committee of the Regions and the European Investment Bank*, COM (2022)600 final, par. 4.4, p. 14.

Atlantic—represents one of the consequences of a form of “cannibal capitalism”, whose contradictions are exacerbated by neoliberal doctrine<sup>37</sup>.

### 5. The role of supranational courts to the strengthening of housing right

With respect to the legal framework outlined above, the contribution of supranational courts and of the European Committee of Social Rights (ECSR) to the strengthening of the right to housing has been significant. The decisions of the latter, although not binding for the interpretation of the European Social Charter, are characterised by such “authoritativeness” as to enrich the body of case law contributing to the reinforcement of that right (Italian Constitutional Court, judgment no. 120/2018, *considerato in diritto*, para. 10)<sup>38</sup>.

As regards the case law of the European Court of Human Rights, it should be recalled that, starting with *Airey v. Ireland* (ECtHR, 9 October 1979, no. 6289/73), the Court clarified that, although the Convention primarily enshrines civil and political rights, many of those rights have social and economic implications.

The inclusion of economic and social rights within the scope of the Convention was later reaffirmed in *Demir and Baykara v. Turkey* (ECtHR, 12 November 2008, no. 34503/97), where the Court specified that: “85. The Court, in defining the meaning of terms and notions in the text of the Convention, can and must take into account elements of international law other than the Convention, the interpretation of such

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<sup>37</sup> N. FRASER, *Capitalismo cannibale. Come il sistema sta divorando la democrazia, il nostro senso di comunità e il pianeta*, Bari–Rome, 2022, p. 27, and, with reference to the self-destructive tendencies of capitalism exacerbated by neoliberalism, particularly during the Covid-19 pandemic, p. 179; on this topic, see the well-known contribution by K. POLANYI, *The great transformation. Economic and Political Origins of Our Time*, Boston, 2001; (Italian trans.), *La grande trasformazione*, Turin, 2010; P. KENNA, *Globalization and Housing Rights*, in *Indiana Journal of Global Legal Studies*, vol. XV, No. 2/2008, p. 397 ff., esp. p. 406

<sup>38</sup> G. GUIGLIA, *Il diritto all’abitazione nella Carta sociale europea: a proposito di una recente condanna da parte del Comitato europeo dei diritti sociali*, cit., p. 12; more generally, with regard to the activity of the ECSR, ID., *Il ruolo del Comitato europeo dei diritti sociali al tempo della crisi economica*, in *Riv. AIC*, no. 2/2016; L. MOLA, *La prassi del Comitato europeo dei diritti sociali relativa alla garanzia degli standard di tutela sociale in tempi di crisi economica*, in N. NAPOLETANO – A. SACCUCCI (eds.), *Gestione internazionale delle emergenze globali. Regole e valori*, Naples, 2013, p. 195 ff.; as well as J.-F. AKANDJI-KOMBÉ, *Actualité de la Charte sociale européenne*, RTDH 2008, p. 507.

elements by competent organs, and the practice of European States reflecting their common values. The consensus emerging from specialised international instruments and from the practice of Contracting States may constitute a relevant consideration for the Court when it interprets the provisions of the Convention in specific cases.”

These are two emblematic decisions which attest to a social reading of the Convention that also extends to the right to housing, and which clearly emerges in the case law relating to Article 8 ECHR. In that context, the protection of the right to housing is derived from the safeguards afforded to other rights—private life, home and family life—of which the dwelling, understood as the “home”, constitutes the very core<sup>39</sup>.

Moreover, from this perspective, by interpreting the right to respect for private life broadly, the Court has gone so far as to recognise a right to housing protected from pollution caused by nearby industrial plants, from noise pollution, from arbitrary evictions, and similar interferences<sup>40</sup>.

From another perspective, in the case law relating to Protocol No. 1 (“every natural or legal person is entitled to the peaceful enjoyment of his possessions”), the Strasbourg judges, starting in the late 1970s with the decision in *James v. the United Kingdom*, affirmed that in modern society housing constitutes a primary social need whose regulation cannot be left entirely to the market. Accordingly, limitations on the right to property imposed by the State have not been considered

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<sup>39</sup> DJ. HARRIS – M. O’BOYLE – C. WARBRICK, *Law of the European Convention on Human Rights*, 2nd edition, Oxford University Press, 2009, p. 367; P. KENNA, *Globalization and housing Rights*, in *Indiana Journal of Law*, no. 15/2008, p. 430 ff., esp. p. 448; a reconstruction of the relationship between Article 8 ECHR and the right to housing in the case law of the European Court is provided by the *Council of Europe and European Court of Human Rights, Guide on Article 8 of the Convention – Right to respect for private and family life*, 2019, available at [http://www.echr.coe.int/Documents/Guide\\_Art\\_8\\_ENG.pdf](http://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf).

<sup>40</sup> F. BESTAGNO, *La dimensione sociale dell’abitazione nella giurisprudenza della Corte europea dei diritti dell’uomo*, in G. VENTURINI – S. BARIATTI (eds.), *Diritti individuali e giustizia internazionale. Liber Fausto Pocar*, Milan, 2009, p. 19 ff

contrary to the Convention when they pursue objectives of social justice, provided that they are non-discriminatory<sup>41</sup> and proportionate to the aim pursued<sup>42</sup>.

As is well known, unlike the European Court of Human Rights, which “can rule on any conduct of the Member States, the Court of Justice can only rule on conduct of the Member States that falls within the scope of Union law, by implementing a directive or regulation”<sup>43</sup>. Nevertheless, certain convergences can be identified between the case law of the two Courts concerning the protection of the right to housing<sup>44</sup>. Moreover, the rights enshrined in Article 7 of the Charter of Fundamental Rights of the European Union, within which that right may be situated, correspond – according to the Explanations relating to the Charter – to the rights protected by Article 8 ECHR.

In particular, with the intensification of the financialisation of the housing market and the ensuing crisis, the Court of Justice has moved in a direction similar to that of the European Court of Human Rights, placing at the centre of its decisions concerning the right to housing the concept of home, understood as a necessary precondition for the right to respect for private and family life under Article 7 of the Charter<sup>45</sup>.

Indeed, starting from the case law on Directive 93/13/EEC on unfair terms in consumer contracts, priority has been accorded to the protection of the right to

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<sup>41</sup> M.L. PADELLETTI, *Protocollo 1-Art.1. Protezione della proprietà*, in S. BARTOLE-P. DE SENA-V. ZAGREBELSKY (a cura di), *Commentario breve alla Convenzione europea per la salvaguardia dei diritti dell'uomo e delle libertà*, Cedam, Padova, 2012, p. 793 e ss.; F. BIONDI DAL MONTE, *Dai diritti sociali alla cittadinanza: la condizione giuridica dello straniero tra ordinamento italiano e prospettive sovranazionali*, Giappichelli, Torino, 2013, p. 119.

<sup>42</sup> Corte Edu, Grande Camera, *Mellacher e altri c. Austria*, ricc. nn. 10522/82, 11011/84 e 11070/84, 19 dicembre 1989, § 48; cfr. G. SCACCIA, *Proporzionalità e bilanciamento tra diritti nella giurisprudenza delle corti europee*, *www.rivistaaic.it*, n. 3/2017, p. 13 e ss.; F. DONATI-P. MILAZZO, *La dottrina del margine di apprezzamento nella giurisprudenza della Corte europea dei Diritti dell'uomo*, in *Riv. AIC*, 2002, p. 21 e ss.; P. TANZARELLA, *Il margine di apprezzamento*, in CARTABIA (a cura di), *I diritti in azione*, 2007, Il Mulino, Bologna, p. 145 e ss., specie p. 160.

<sup>43</sup> L.S. Rossi, *Member States' obligations in relation to housing rights -Views of the CJEU*, cit., p.28

<sup>44</sup> F. DELLA NEGRA, *The uncertain development of the case law on consumer protection in mortgage enforcement proceedings: Sánchez Morcillo and Kusionova*, in *Common Market Law Review*, 2015, p. 1009 e ss.

<sup>45</sup> P. KENNA-H.S. MORENO, *Towards a common standard of protection of the right to housing in Europe through the charter of fundamental rights*, in *European Law Journal*, vol. XXV, n. 6/2019, p. 608 ff.

housing, to the point of justifying the suspension of enforcement proceedings where these would entail the loss of the home for the consumer and his or her family<sup>46</sup>.

For example, in *Kusionová*<sup>47</sup>, the Court of Justice echoes the case law of the European Court of Human Rights developed from *McCann v. the United Kingdom*<sup>48</sup>, and reiterated in *Rousk v. Sweden*, according to which “the loss of a home is one of the most serious breaches of the right to respect for the home”. More recently, in *Jawo* (C-163/17), the Court of Justice, drawing on ECtHR case law, emphasised that severe material deprivation, including the lack of access to housing, is detrimental to the protection of human dignity<sup>49</sup>.

This alignment between the two Courts makes it possible to identify, albeit a weak one, a signal of emancipation of the protection of the right to housing from its traditional functionalisation in favour of the economic freedoms underpinning the market<sup>50</sup>. It appears that a space is opening for a conception of social justice that for a long time remained overshadowed by what has been described in the literature as “access justice”. As previously noted, the latter is consistent with a system in which States adopt public policies aimed at fostering the construction of a market

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<sup>46</sup> The reference is to the well-known *Aziz* case (C-415/11), on which, critically with regard to the expansion of the role assumed by the Court, see H.-W. MICKLITZ, *Mohamed Aziz – sympathetic and activist, but did the Court get it wrong?*, in V. COLAERT – E. TERRY (eds.), *Landmark Cases of EU Consumer Law – In Honour of Jules Stuyck*, Intersentia, 2013, p. 615 ff.

<sup>47</sup> **Court of Justice of the European Union**, 10 September 2014, C-34/13, *Kušionová*; **European Court of Human Rights**, *McCann v. the United Kingdom*, application no. 19009/04, para. 50, and *Rousk v. Sweden*, application no. 27183/04, para. 137; cfr. F. DELLA NEGRA, *The uncertain development of the case law on consumer protection in mortgage enforcement proceedings: Sánchez Morcillo and Kusionova*, cit., p. 1012 et seq.; more recently, judgments consistent with *Kušionová* include *Profi Credit Polska and Others* (C-84/19, C-222/19 and C-252/19), delivered on 3 September 2020; *Gómez del Moral Guasch* (C-125/18), delivered on 3 March 2020; *Prima banka Slovensko* (C-192/20), delivered on 10 June 2021; and *Všeobecná úverová banka v. Slovakia* (C-598/21), delivered on 9 November 2023

<sup>48</sup> *European Courts of human rights, James and other v, United Kingdom*, ric. n.8793/79, par. 47; cfr. E. BREMS, *Indirect protection of social rights by the European Court of Human Rights*, in D. BARAK-EREZ-A. GROSS (eds), *Exploring social rights. Between theory and practice*, Portland, Hart Publishing, 2007, p. 135 e ss.

<sup>49</sup> 19 March 2019, *Jawo*, C-163/17, EU:C:2019:218, par.92 in cui si cita Corte EDU, 21 gennaio 2011, M.S.S. c. Belgio e Grecia, CE:ECHR:2011:0121JUD003069609, §§ da 252 a 263).

<sup>50</sup> P. KENNA, *Introduction*, in P. KENNA-S. NASARRE-AZNAR-P. SARKES-C.U. SCHMID (edt), *Loss of homes and evictions across Europe*, Elgar Publishing, Cheltenham, UK, 2018, pp. 40-41

in which economic actors operate as entrepreneurs, workers and consumers, and at facilitating the re-entry into the market of those actors who may have been excluded from it. However, this model of justice is markedly different from the models of “social justice” that belong to the constitutional heritage of modern democracies, which are characterised by redistributive interventions presupposing fiscal as well as ethical-social solidarity, and which have therefore also been described as forms of solidaristic social justice.

A further observation concerns the dimension in which the protection of the right to housing derived from Article 8 ECHR is realised. The European Court of Human Rights has consistently held that the protection of the right “to respect for one’s home” operates primarily in a vertical dimension, involving the State in the first place. However, with regard to the “horizontal” dimension of relationships between private parties, the Court has recently clarified, in *Jansons v. Latvia* (2022), that a violation of Article 8 ECHR exists in all cases in which a private individual is evicted from a privately owned dwelling “without his or her right to reside in the apartment—or the absence of such a right—having been previously established by the national courts”<sup>51</sup>. This decision is significant because, as noted by Padraic Kenna, “The procedural safeguards provided under domestic law had failed to prevent this arbitrary interference with Article 8 rights, and thus, it would now appear that even in cases involving purely private parties a possession order is still required before a lawful eviction can take place.”<sup>52</sup>.

At the same time, it should be emphasised that, notwithstanding these “openings” towards a protection of the right to housing that also draws on a horizontal dimension, neither the case law of the Court of Justice nor that of the European Court of Human Rights displays adequate attention to the guarantee of the right to

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<sup>51</sup> ECtHR, 8 September 2022, App no 1434/14; available at.: <https://hudoc.echr.coe.int/eng?i=001-223954>

<sup>52</sup> Padraic Kenna and Maria José Aldanas, *Proportionality and Evictions*, in Noria Derdek & Padraic Kenna, (edt) (2023) *The European and International Contribution to the Right to Housing: Standards, Litigation and Advocacy*. (Brussels, FEANTSA, Abbé Pierre Foundation, University of Galway), p.70

housing and to a dignified life for those who find themselves in conditions of extreme poverty, including homeless persons.

This is not the place to examine in depth the impact that this case law is having on the so-called constitutionalisation of the consumer, characterised by the increasingly frequent connections between consumer protection legislation and constitutional rights. What should instead be highlighted is the stimulus that the case law of the two Courts can exert on national States, even though, as observed by Paulo Pinto de Albuquerque, “The current context in Europe is not favourable. International law and justice are increasingly challenged. International courts, in particular, have difficulties in enforcing their judgments”<sup>53</sup>.

## 6. Conclusions

The considerations developed thus far allow some concluding reflections on the constitutional implications of housing poverty and on the role and obligations of Member States within the European legal order. Far from being a marginal social issue, housing poverty emerges as a structural phenomenon capable of affecting the effective enjoyment of fundamental rights and, ultimately, the conditions of democratic inclusion upon which constitutional democracies are founded.

From a constitutional perspective, housing poverty operates through exclusionary legal mechanisms. As the Italian case has illustrated, the lack of access to adequate housing—and, above all, the absence of a registered residence—functions as a legal threshold that prevents individuals from activating a broad set of rights, including social, civil and political rights. In this sense, housing deprivation does not merely generate material disadvantage, but produces a form of constitutional marginalisation, calling into question the principle of equality and the concrete accessibility of democratic membership. Housing poverty thus affects not only social inclusion, but the very composition of the demos.

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<sup>53</sup> Paulo Pinto de Albuquerque (interview), *State obligations in relation to housing rights - views of the ECHR*, in Noria Derdek & Padraic Kenna, (edt) (2023) *The European and International Contribution to the Right to Housing: Standards, Litigation and Advocacy*. (Brussels, FEANTSA, Abbé Pierre Foundation, University of Galway), p.31

Within this framework, the obligations of Member States cannot be confined to discretionary or episodic welfare measures. Rather, they must be understood as constitutional obligations stemming from the commitment to human dignity, equality and democratic participation enshrined in national constitutions and in the foundational values of the European Union. Although the right to housing is not generally configured as an immediately enforceable individual entitlement, the analysis has shown that Member States are nonetheless bound by a set of legally relevant obligations deriving from both national and supranational law.

First, Member States are required to remove legal and administrative barriers that transform housing deprivation into exclusion from rights, ensuring that access to fundamental services and to democratic participation is not made conditional upon the possession of a stable residence. Secondly, they are under an obligation to adopt coherent and non-regressive housing policies aimed at progressively ensuring access to adequate and affordable housing, in accordance with the logic of positive obligations and progressive realisation that characterises European social and constitutional law. Thirdly, Member States must guarantee effective procedural safeguards against arbitrary interferences with housing, including evictions, so that the protection of the home remains compatible with the requirements of human dignity and proportionality.

In this context, the role of supranational courts has proven significant, though not exhaustive. Through evolutionary interpretation, both the European Court of Human Rights and the Court of Justice of the European Union have contributed to strengthening the constitutional relevance of housing by linking it to the protection of private and family life, human dignity and, in certain contexts, equality and non-discrimination. At the same time, their case law reveals a persistent asymmetry: judicial protection is more developed where housing intersects with property relations, market regulation or consumer status, and markedly weaker in situations of extreme housing poverty and homelessness, which often fall outside the prevailing legal categories.

This asymmetry reflects a broader structural tension within the European constitutional framework. The prevailing logic of “access justice”, centred on market participation and legal status, struggles to accommodate forms of exclusion that precede or negate access to the market itself. Housing poverty thus exposes a constitutional blind spot, in which the formal universality of fundamental rights coexists with their substantive inaccessibility for growing segments of the population.

Ultimately, the analysis suggests that the fight against housing poverty constitutes a constitutional responsibility of Member States. It is a responsibility that cannot be reduced to social policy discretion, but must be understood as integral to the preservation of democratic equality and to the effective inclusion of all individuals within the constitutional community. In this sense, housing emerges as a gateway right, whose protection is indispensable for the realisation of a society of free and equal persons, as envisaged by the constitutional traditions common to the Member States and by the values enshrined in Articles 2 and 3 TEU.