Introduction

Padraic Kenna

1. EVICTION

Eviction from home strikes at the core of human rights and civilized society. The forced removal of people from their homes evokes a primordial response, related to the primary human need for shelter.¹ All civilized societies have protected the homes of their inhabitants from arbitrary violations and forced eviction.

Across the world, today, most countries have adopted international human rights standards to protect people and households from forced eviction from their homes.² Often, these are based on the need to protect people's dignity and rights to habitation from powerful property owners or political forces. The concept of rights to respect for privacy, home and family life has emerged as a key legal principle. But inadequate public management of the control and use of property and private and public spaces, often leads to legally approved evictions. Indeed, lack of state regulation of property and spaces can facilitate illegal forced evictions. Even in developed European Union Member States, with constitutional and legislative protection, forced evictions are legally permitted in certain circumstances. Integrating housing rights protection into modern housing systems remains an undeveloped area of study.³

Today, protection from arbitrary eviction is often ascribed to the security of property ownership and property rights in liberal societies, and is finely balanced in law between occupiers and property owners in social democratic societies. It is, of course, regularly asserted that,

¹ The need for shelter is recognized as a fundamental need. See AH Maslow, 'Theory of human motivation' originally published in (1943) 50 *Psychological Review* 370–396.

² United Nations, Commission on Human Rights, Resolutions 1993/77 and 2004/28.

³ P Kenna, 'Can housing rights be applied to modern housing systems?' (2010) 2 (2) *International Journal of Law in the Built Environment* 103–117.

without the possibility of repossessing rented or mortgaged housing, investment in a functioning mortgage and rented housing market would cease to exist. Of course, in the real world it is much more complex.

Across Europe evictions are taking place every day. This book examines evictions across eleven European countries: Belgium, France, Germany, Hungary, Ireland, Italy, the Netherlands, Poland, Slovenia, Spain and the United Kingdom covering the period between 2010 and 2015/2016. Each chapter has been written by a national expert in the field and represents the most developed national research to date on this issue.

It follows and builds upon the EU Commission-funded study *Pilot Project – Promoting Protection of the Right to Housing – Homelessness Prevention in the Context of Evictions, Final Report*⁴ (hereinafter ‘the EU Pilot Project Report’). The EU Pilot Project Report examined evictions across the 28 EU Member States between 2010 and 2013, in the context of the protection of the right to housing, encompassing the prevention of evictions, early intervention, the provision of support for the rapid rehousing of those evicted and the measurement of the impacts of eviction on homelessness.

This introduction and each chapter examines evictions within the relevant social, policy, legal/human rights, and substantive frameworks. The social context considers wider issues relating to housing systems and social conditions set out in research by national experts. The policy section considers the general housing policies of the selected countries, as well as specific policies focused on evictions. It summarizes the range of measures which prevent and counter evictions. The legal/human rights context involves a range of human rights and legal frameworks applicable to evictions. These originate from international, regional and national constitutional and legislative provisions. The legal basis and procedures for evictions across tenures are explored as well as an outline of key emerging developments. The substantive section examines the structural and other risk factors which lead to evictions, as well as examining the nature and extent of evictions across tenures and countries. Data availability issues are summarized and examined.

⁴ P Kenna, L Benjaminsen, V Busch-Geertsema and S Nasarre-Aznar, *Pilot Project – Promoting Protection of the Right to Housing – Homelessness Prevention in the Context of Evictions* (VT/2013/056). Final report (2016). European Union: European Commission, Directorate-General Employment, Social Affairs and Inclusion. Freek Spinnewin of FEANTSA, who acted as scientific adviser for the project, has assisted in this research.

1.1 The Concepts of 'Home' and 'Eviction'

The issue of eviction is closely related to respect for home. Today, the notion of home is viewed as much more than a physical setting. In contemporary societies, home is associated with safety, belonging, esteem and self-actualization. Housing and home are intertwined with health, child development, poverty/wealth and opportunity in general.⁵ 'Home' can be seen as a physical structure; as a territory implying security, control and rootedness; as identity; as a social and cultural phenomenon; and as a base for relationships. Home also acts as a geographical space from which a person or household can access other services and amenities, and is regarded as necessary for the enjoyment of all human rights.⁶ International human rights law regards 'home' as involving 'rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others, and a settled and secure place in the community'.⁷

'Home' is an autonomous concept which does not depend on classification under domestic law. Whether or not a particular premises constitutes a 'home' which attracts the protection of Article 8 §1 will depend on the factual circumstances, namely, the existence of sufficient and continuous links with a specific place ... Thus, whether a property is to be classified as a 'home' is a question of fact and does not depend on the lawfulness of the occupation under domestic law⁸

Lorna Fox-O'Mahony suggests that, as yet, there is no established coherent concept of home in law. Indeed, she points out that in many ways 'home-type' interests are anathema to legal reasoning, especially as 'home' is seen as essentially a subjective phenomenon:

⁵ L Fox O'Mahony, *Conceptualising Home: Theories, Laws and Policies* (Oxford, Hart 2007).

⁶ According to the ECtHR, whether accommodation is classified as a 'home' is a question of fact and does not depend on the lawfulness of the occupation under domestic law – *Buckley v UK* (1996) 23 EHRR 101; *McCann v UK* App No 19009/04, 13 May 2008, §50.

⁷ *Connors v the United Kingdom* App No 66746/01, 27 May 2004, §82.

⁸ For the purpose of the Article 8 ECHR, 'home' has an autonomous meaning and the ECtHR refers to 'the existence of sufficient and continuous links' as being a prerequisite for a 'home' with the domestic legal status of the occupier being irrelevant. See also *Orlic v Croatia* App No 48833/07, para 54.

It does not appear to be easily quantifiable, and the value of home to its occupiers is not readily susceptible to legal proof. Nevertheless, there are compelling arguments to support further analysis of the idea of home in law. For one thing, while it may be true to say that the nature of home attachments presents obvious impediments to the development of a coherent legal concept of home, and that this explains, to a certain extent, the relative neglect of home-oriented analysis in law, the centrality of 'home' to human dealings and the deep significance of rights and obligations relating to home render the lack of rigorous analysis in this area difficult to defend.⁹

There are many personal and social consequences linked to an eviction. It is generally accepted that forced evictions from homes can result in severe trauma and can set back the lives of those already marginalized or vulnerable in society.¹⁰ Research shows that, although the experience varies, victims of home loss frequently experience feelings of painful loss; continued longing; a general depressive mood; frequent symptoms of psychological, social or somatic distress; a sense of helplessness; and occasional expressions of both direct and displaced anger.¹¹ Some households may be exposed to a great psychosocial burden, especially when children and/or adult dependents are involved. There are particularly negative consequences for children in the loss of home and the experience of homelessness.¹² Research shows that at least two years after their eviction, mothers still experienced significantly higher rates of material hardship and depression than their peers.¹³ Yet, generally, there is a paucity of research into the effects of eviction, especially its links to

⁹ Fox O'Mahony (n 5) 4–5.

¹⁰ See United Nations, Office of the High Commissioner for Human Rights (UN OHCHR). 'Forced Evictions and Human Rights Fact Sheet No 25/Rev 1' (New York and Geneva, UN 2014) <http://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Publications/FS25.Rev.1.pdf&action=default&DefaultItemOpen=1>.

¹¹ Fox O'Mahony (n 5) 110. Fox points out that the personal consequences of evictions, such as attachment, grief or loss, are seen as intangible, immeasurable and difficult to articulate, which means that they are easily ignored in cost-benefit and legal approaches to evictions.

¹² Fox O'Mahony (n 5) 440–441.

¹³ M Desmond and RT Kimbro, 'Eviction's fallout: housing, hardship, and health' (2015) 94 (1) *Social Forces* 295–324. Compared to matched mothers who were not evicted, mothers who were evicted in the previous year experienced more material hardship, were more likely to suffer from depression, reported worse health for themselves and their children, and reported more parenting stress.

suicide.¹⁴ One study of 22 000 Swedish households showed that those who had lost their legal right to their home, where a landlord had applied for the eviction to be executed, were approximately four times more likely to commit suicide than those who had not been exposed to this experience.¹⁵

Matthew Desmond, author of the iconic study on evictions in Milwaukee, suggests that:

Eviction's fallout is severe. Losing a home sends families to shelters, abandoned houses, and the street. It invites depression and illness, compels families to move into degrading housing in dangerous neighbourhoods, uproots communities, and harms children. Eviction reveals people's vulnerability and desperation, as well as their ingenuity and guts.¹⁶

Foundation Abbé Pierre and the European Federation of National Organisations Working with the Homeless (FEANTSA) have described eviction in Europe as:

... one of the worst forms of violence that can afflict someone. It is not one of life's ups and downs; it is a mark of infamy inflicted by society through institutions such as the police force and the legal system. Eviction is not only a punishment, it is a collective abandonment of other people; prioritising one individual's right to own property over another individual's most basic needs. Whether a property owner cannot meet mortgage repayments because of soaring interest rates, or a tenant cannot manage to pay rent while awaiting work-injury benefits, or a family deprived of the right to work is forced to seek shelter in a run-down barn; all are at risk of being forced from their homes, not just in a physical sense, but also psychologically in that the outside world invades the private sphere. Eviction is a humiliating and traumatising experience, which risks pushing the victim down a slippery slope

¹⁴ M Holl, L van den Dries and JRLM Wolf, 'Interventions to prevent tenant evictions: a systematic review' (2015) *Health Soc Care Community* 1–15. See also C Hartman, 'Evictions: the hidden housing problem' (2003) 14 *Housing Policy Debate* 461–501.

¹⁵ Y Rojas and S-Å Stenberg, 'Evictions and suicide: a follow-up study of almost 22 000 Swedish households in the wake of the global financial crisis' (2016) 70 *Epidemiol Community Health* 409–413 <<http://jech.bmj.com/content/70/4/409>>.

¹⁶ M Desmond, *Evicted – Poverty and Profit in the American City* (New York, Crown Publishers 2016) 5. These low-income tenants are disproportionately African American women with children. See also AD Dana, 'An invisible crisis in plain sight: the emergence of the "eviction economy", its causes, and the possibilities for reform in legal regulation and education' (2017) 115 (6) *Michigan Law Review* 935–953.

towards destitution and poor self-esteem. It constitutes a violent rupture of one's home life that directly feeds into the problem of homelessness.¹⁷

1.2 Defining an Eviction

The actual physical removal of occupants from a physical space is colloquially and generally regarded as the moment of eviction. However, that moment may represent the culmination of a lengthy and complex social and legal process involving a number of stages prior to, and leading to, the physical eviction. The trauma associated with physical eviction, however, is almost always avoided by occupiers, when possible. Indeed, occupiers may choose to leave before that moment, albeit involuntarily, and the physical removal will not be necessary for an eviction to occur.

While people move voluntarily and change accommodation all the time, it is the involuntary or forced moves which constitute eviction. In the Milwaukee study, some of those who were surveyed did not go to court, but Desmond concluded they were undeniably evicted, although they did not see it in this way “‘When you say ‘eviction’,” Rose explained, “I think of the sheriffs coming and throwing you out and changing the locks ... That’s an eviction. We were *not* evicted.””¹⁸ Desmond points out that:

I learned that asking why someone moved was no simple task. Tenants often provided an explanation for a move that maximized their own volition ... as tenants tended to have strict conceptions of eviction.¹⁹

In the Belgian research for this publication, the social workers’ advice that ‘tenants [should] disappear’ when summoned to court, or in order to avoid the experience of eviction, was described thus:

¹⁷ Foundation Abbe Pierre – FEANTSA, *Second Overview of Housing Exclusion in Europe 2017, Evictions in Europe: Useless, Expensive and Preventable* (Brussels, FEANTSA 2017) 82.

¹⁸ See Desmond (n 16) 330–331. Desmond’s detailed study revealed that one in eight of Milwaukee’s private renters experienced at least one forced move, formal or informal eviction, landlord foreclosure, or building condemnation, in the two years prior to being surveyed. Nearly half of these forced moves were informal evictions; off-the-books displacement not processed through the courts. Formal eviction was less common, constituting 24 per cent of forced moves. Thus, for every eviction executed through the judicial system, there were two others executed beyond the purview of the courts, without any form of due process.

¹⁹ Desmond (n 16) 330.

I always tell people to make sure that they go away of their own accord. Certainly, if it concerns a family when children are involved. (...) There is police, with a bailiff. Everyone in the street is watching. Just not a good experience. Avoid that, and we'll agree that you leave the key somewhere.²⁰

The EU Pilot Project Report identified the process of eviction as beginning at the moment when an occupier is formally instructed to leave the home.²¹ This excludes situations where an occupier willingly moves out, including leaving at the natural end of a tenancy.²² In many cases, occupiers vacate their accommodation after the instruction to leave, but before the completion of the full formal eviction process. The formal instruction to leave the premises may involve a notice from the owner, mortgagee or landlord requiring the occupant to vacate the property; the service of proceedings for possession; the service of a barring order or divorce papers; or some other such instruction.²³ In this context, across Europe there are both judicially supervised and non-judicially supervised evictions; and some of the latter evictions may be illegal, as illustrated in Table I.1 below.

In developing a deeper analysis, the EU Pilot Project Report identified the judicially supervised eviction process as comprising three distinct phases. The first phase is the pre-court phase and begins from the moment of issuance of the formal instruction to leave.²⁴ The second phase involves the court process itself. The third phase encompasses the period between the court order for possession and the actual physical eviction (if it actually takes place). There is a possible link with homelessness at every stage of this process, and indeed, people may become homeless even at the first stage, as they may leave their homes on receiving formal notice to quit.

²⁰ Interview with Public Centres for Social Welfare (PCSW) social worker.

²¹ Kenna et al (n 4) Part 1.

²² A significant exception is the assured shorthold tenancy arrangement used for the private rented sector in England. These tenancies provide legal protections during an agreed period (usually 6 or 12 months) but do not provide any legal protection once the agreed period of the tenancy has expired.

²³ The issue of those fleeing domestic violence is one that does not easily fit into these descriptions of eviction, but nevertheless it involves dispossession from the home.

²⁴ Prior to the instruction to the occupant to leave, there may be exchanges of letters, etc; however, only materials and data from the moment that the formal eviction process has begun can usually be researched (in many cases these informal exchanges may not lead to any eviction being instigated, and they are impossible to access).

Table I.1 Phases of eviction process for judicially supervised and non-judicially supervised evictions²⁵

Judicially supervised evictions	Non-judicially supervised evictions	
	Legal	Illegal
Phase 1. Pre-court from formal instruction to leave	Notaries/	Usually linked to housing shadow market (often use or threat of force, bullying, cutting off of utilities, etc)
Phase 2. Court proceedings to eviction order	Administrations/	
Phase 3. Execution of eviction/possession order	Police/Auction Houses	

In this context, it is widely accepted that officially recorded numbers of evictions do not reflect the full extent of evictions, as those at risk or issued with notices to leave may leave their home or indeed move at any stage of the eviction process.²⁶ For instance, in Ireland, two-thirds of mortgaged homes repossessed by lenders between 2009 and 2016, were voluntarily surrendered or abandoned.²⁷ The EU Pilot Project Report on evictions found that in some countries, seven times more households had eviction proceedings initiated against them than were actually physically evicted.²⁸ Thus, actual evictions may not involve court appearances, or physical removal, but are involuntary or forced surrenders of rights of occupation.

A ‘forced’ eviction is defined by the UN Committee on Economic, Social and Cultural Rights (UN CESCR) in their General Comment No 7 (1997) on the right to adequate housing as ‘the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.’²⁹ Of course,

²⁵ See Kenna et al (n 4) 22.

²⁶ Hartman (n 14).

²⁷ Department of Finance/Central Bank *Report on Mortgage Arrears* (Dublin, Central Bank of Ireland 2016) 33. Of course, this took place in the course of eviction proceedings having been instigated, and the action taken by distressed home loan borrowers avoided the traumatic physical eviction from taking place. Unfortunately, there has been no research by the Central Bank or Department of Finance on the fate of those who left their homes in these circumstances or how many children were involved.

²⁸ Kenna et al (n 4).

²⁹ UN Committee on Economic, Social and Cultural Rights (UN CESCR), General Comment No 7 (1997) The right to adequate housing (Art 11.1): forced evictions. UN Doc. E/1998/22 (Sixteenth Session 20 May 1997) Annex IV.

many evictions take place lawfully, with due process, and in conformity with international human rights norms and under judicial supervision. This can involve legally balancing property rights and human rights with managing control and use of private and public spaces.

2. SOCIAL CONTEXT

2.1 Prevention and Risk of Evictions

Most European welfare state systems seek to mitigate the personal and social costs of evictions. A variety of social inclusionary counter-measures, remedial services for victims, and other measures, act to prevent or delay evictions.

Clearly, most evictions arise from loss of income, poverty, over-indebtedness and other economic issues.³⁰ People threatened by eviction are typically weak actors: many do not apply for assistance and are unable to defend their rights by themselves.³¹ Yet, there are differences in the prevalence of evictions between types of tenure. Eviction for mortgage arrears is more common in some countries, and eviction from tenancies in others, although there are some common causative factors. Desmond and Gershenson, in a dataset of Milwaukee renters, empirically evaluated several potential mechanisms for understanding disparities in eviction among renting families. These included: discrimination (individual demographics); life shocks such as job loss or relationship dissolution (individual misfortunes); gentrification and concentrated disadvantage (neighbourhood characteristics); and social isolation (network composition).³²

³⁰ One of the major deficits identified in that research (EU Pilot Project Report) was that the Eurostat EU-Survey on Income and Living Conditions (SILC) on change of dwelling, in the special housing module of 2012 (which found that 700 000 people in EU Member States had changed dwelling due to an eviction in the previous five-year period) was based on households and did not survey those living in hostels, hotels, homelessness services or on the street. The EU Pilot Project Report recommended that improving the basis for the EU-SILC question on housing evictions requires a reason for 'change of dwelling'.

³¹ C von Otter, O Bäckman, SÅ Stenberg and CQ Eisenstein, 'Dynamics of evictions: results from a Swedish database' (2017) 11 (1) *European Journal of Homelessness* 1, 3.

³² M Desmond and C Gershenson, 'Who gets evicted? Assessing individual, neighbourhood, and network factors' (2016) *Social Science Research* 1, 2

In Europe, public policy interventions to prevent/restrain evictions are often closely linked with anti-poverty, social inclusion and social policy measures. Of course, individual cases also reveal a complexity of human, financial, social, relational and health factors.³³ The risk of eviction is shaped by economic and social mechanisms that operate on structural, systemic, interpersonal and individual levels. Structural factors such as poverty, unemployment and lack of affordable housing interact with individual vulnerabilities such as low educational skills, psychosocial vulnerabilities, weak family ties and lack of social support networks in shaping the risk of eviction for the individual. These risks are mediated by systemic and institutional factors, such as the functioning of social welfare and protection systems and the legal standards and procedures regulating repossessions and evictions. The EU Pilot Project Report identified irresponsible mortgage lending, inadequate consumer protection and liberalization of the private rented sector as factors which increase the risk of evictions. Table I.2 shows a conceptual model of risk factors on the structural, systemic, interpersonal and individual levels.

Table I.2 Analytical framework of risk factors for evictions³⁴

Level of cause	Factor	Comment
Structural	Poverty	High level of poverty
	Unemployment	High unemployment rate, financial turmoil
	Lack of affordable housing	High housing and rent prices, supply shortage of affordable housing
Systemic/ institutional	Legal systems	Legal procedures on evictions and repossessions contain few mechanisms to prevent eviction
	Social protection systems	Weak protection against unemployment and loss of income, low subsistence benefits

<<https://scholar.harvard.edu/mdesmond/publications/who-gets-evicted-assessing-individual-neighborhood-and-network-factors>>.

³³ The EU Pilot Project Report showed that in the EU Member States where evictions are widely concentrated among people with complex support needs, about one-quarter of those can become homeless.

³⁴ Kenna et al (n 4) 79.

Level of cause	Factor	Comment
	Availability of support services	Shortage of social support, prevention and outreach for high-need groups, ie individuals with psychosocial vulnerabilities
	Housing allocation systems	Insufficient social housing available for low-income and high-need groups
	Integration and coordination between existing services (including housing)	Lack of holistic approaches to housing and support
Interpersonal	Family status	Single persons more vulnerable
	Relationship situation	Abusive partners
	Relationship breakdown	Death, divorce, separation
Personal	Lack of social network	No support from family, friends or social networks
	Economic/ employment status	Low disposable income, no job, working poor, low savings
	Ethnic status/ minority background	Cultural barriers, discrimination
	Citizenship status	Lack of access to social protection
	Disability/long-term illness	Includes mental ill health and learning disability
	Educational attainment	Low attainment
	Addiction	Alcohol, drugs, gambling
	Age/gender	Young/old, male/female/transgender/ other
	Immigrant situation	Refugee status/recent arrival

Source: Adapted from W Edgar and H Meert (2005) 'Fourth Review of Statistics on Homelessness in Europe. The ETHOS Definition of Homelessness' (Brussels, FEANTSA).

Across the European Union, unemployment and financial instability in households are highlighted as major risk factors for eviction. The economic crisis since 2008 has reinforced this pattern, especially in the countries of southern Europe and the parts of the Central and Eastern European Countries (CEECs) that were most adversely affected by the

crisis.³⁵ The EU Pilot Project Report showed that in southern Europe, evictions were associated mainly with unemployment and household breakdown, whereas in most CEE countries, evictions were associated primarily with more general poverty-related problems. In CEE Member States, low income and lack of savings, among both the working poor and people on subsistence benefits, are associated with the risk of eviction, in combination with the often weaker social protection systems in those countries. Rent and mortgage arrears, frequently related to consumer debt, in addition to utility arrears (often due to high heating costs in cold winters, especially in housing estates in need of renovation), are highlighted as important or key reasons for evictions.

In northern and western European Member States,³⁶ unemployment, financial instability and household breakdown played a significant role in the risk factors for evictions. However, there is evidence of significant levels of eviction among individuals with complex support needs due to mental ill health and substance abuse. These groups were prevalent among evicted people in the eastern and southern European states too, but in these countries, more general poverty and unemployment problems are significant. This is a pattern which can be explained by the variations in general economic conditions and the welfare systems in these countries.

2.2 Structural/Societal Factors Related to Evictions in the Selected Countries

UN Habitat has pointed out that the commoditization of housing has strengthened the perception of shelter as a speculative financial asset, generating an artificial sense of wealth and an unsustainable cycle of debt, which culminated in the housing foreclosure crisis and the global economic downturn of 2007–2009.³⁷

³⁵ Southern European Member States in this classification include Cyprus, Greece, Italy, Malta, Portugal and Spain. The Central and Eastern European (CEE) Member States include Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.

³⁶ This category of northern and western European States includes Austria, Belgium, Denmark, Germany, Finland, France, Ireland, Luxembourg, the Netherlands, Sweden and the UK.

³⁷ UN Habitat, *Housing at the Centre of the New Urban Agenda* (Nairobi, UN-Habitat 2015) 9; see also MB Aalbers, *The Financialization of Housing* (Oxford, Routledge 2016).

Land and housing markets have reproduced this speculative practice in the urban domain reinforcing instead of attenuating socioeconomic and spatial inequalities. The challenges to create, preserve and improve affordable housing have grown across the globe. Indeed, this is one of the most critical problems of housing today with an increasing number of households in developing and developed country cities financially stretched by housing costs.³⁸

Across Europe, there are similar reports of structural challenges around expensive housing markets. The lack of affordable housing in larger cities exacerbates the financial problems of many low-income families. It forces them into housing they can barely afford, which also increases their risk of rent arrears. Moreover, changes in demographics and household composition reinforce the structural lack of affordable housing, as more and more households become single-person households, creating a need for additional housing. A shortage of social housing, with lengthy waiting lists in many countries, forces low-income and vulnerable households into the private rental markets, where, depending on the market situation and legal regulations, increasing rent levels limit their options, and enhance the risk of eviction.

Housing affordability can also be a key factor in the pathway to evictions. In 2015, an 11.3 per cent share of the EU-28 population lived in households that spent 40 per cent or more of their equivalized disposable income on housing. The proportion of the population whose housing costs exceeded 40 per cent of their equivalized disposable income was highest for tenants with market price rents (27.0 per cent), and lowest for persons in owner-occupied dwellings without a loan or mortgage (6.7 per cent).³⁹ The EU-28 average masks significant differences between the EU Member States. At one extreme, there were a number of countries where a relatively small proportion of the population lived in households where housing costs exceeded 40 per cent of their disposable income, notably Malta (1.1 per cent), Cyprus (3.9 per cent), Ireland (4.6 per cent) and Finland (4.9 per cent). At the other extreme, just over two out of every five people (40.9 per cent) in Greece and just under one in six of the population in Romania (15.9 per cent), Germany (15.6 per cent) and Denmark (15.1 per cent), spent more than 40 per cent of their equivalized disposable income on housing.

³⁸ UN Habitat (n 37) 9.

³⁹ See Eurostat, 'Housing Statistics 2015' <http://ec.europa.eu/eurostat/statistics-explained/index.php/Housing_statistics#Housing_affordability>.

Social housing has traditionally provided affordable housing to those on low incomes. It has a long history in Europe, where it has also played a vital role in the economy, in regeneration and in meeting housing need.⁴⁰ However, a report by the European Parliament in 2013 showed that state budgets dedicated to housing policies were significantly reduced in a number of countries.⁴¹

In Chapter 1, Jana Verstraete, Pascal De Decker and Diederik Vermeir point out that in Belgium, a high level of rented housing is occupied by low-income households (who cannot afford to buy), and these tenants bear a high rent burden. Private rented housing is regarded as a tenure of last resort, although some ‘buyers under duress’ purchase inferior quality dwellings and cannot then afford to make necessary improvements. One-third of social renters cannot afford a dignified lifestyle after rental costs. In Chapter 2, Marc Uhry suggests that in France prevention of evictions has been part of social policy for many decades, although recent decades have seen the emergence of new challenges in the form of undocumented migrants and the development of squats and slums.⁴² Mortgage lenders are held liable for their ‘irresponsible lending’, and accordingly, there are low levels of mortgage possession cases in France. The social effects of the banking crisis of 2008 were delayed in France; there was no house price collapse or rise in interest rates, and only a gradual increase in unemployment.

Christoph U Schmid and Sofija Nikolic point out, in Chapter 3, that in Germany, eviction is mostly a consequence of rent or mortgage arrears. As in France and the UK, there is a developed welfare state system of support for tenants and others in arrears. Evictions mainly arise as a result of unemployment, relationship breakdown or personal difficulties.

In Chapter 4, Nóra Teller, Eszter Somogyi and Nóra Tosics show that in Hungary, the 2008 financial crisis increased the vulnerability of many households. There has been a dramatic increase in the number of severely materially deprived people, which grew from 18 per cent of the population in 2008, to 30 per cent in 2016. General indebtedness has

⁴⁰ K Scanlon, CME Whitehead and M Fernández Arrigoitia (eds), *Social Housing in Europe* (London, Wiley-Blackwell 2014); Housing Europe, *The State of Housing in the EU 2015* (Brussels, Housing Europe 2015); M Elsinga, ‘Changing housing systems and their potential impacts on homelessness’ (2015) 9 (1) *European Journal of Homelessness* 15.

⁴¹ European Parliament, ‘Social Housing in the EU’ (2013), Brussels, IP/A/EMPL/NT/2012-07 PE 492.469.

⁴² Some 400–500 such slums were counted in 2014, where 17 000–20 000 people lived, and in that year some 13 000 people experienced forced evictions.

increased dramatically, while utility, loan and housing arrears are common. There is growing housing insecurity, and evictions have almost doubled in the period 2012–2016.

The current economic crisis facing Italy has been identified as the main causative factor in the rising level of evictions, although as Elena Bargelli and Giulia Donadio observe in Chapter 6, the mortgage market has not been affected by the speculative bubble of some other European countries. Lending policies have been conservative, and this is now reinforced by the Mortgage Credit Directive.⁴³ Indeed, this Directive has been transposed by many EU countries, and limits the levels of mortgage lending according to strict means tests and property valuation tests. In Ireland, the banking collapse led to a severe recession and unemployment of 15 per cent in 2012. However, the rise in rents and shortage of affordable rented housing is the main cause of evictions.

In Chapter 8, Witold Borysiak shows that in Poland, the main reasons for evictions are viewed as economic, in the context of a 12 per cent unemployment rate. This leads to arrears of rent, or mortgage or other debts. Psychosocial factors also have an impact, and sometimes a combination of economic, social and personal issues precipitates an eviction. Poland lacks a national support system for local authorities to deal with the need for social housing, and there are an estimated 1.5 million housing units required.

In Slovenia, since 2008, unemployment levels have increased, but are now declining, although the EU at-risk-of-poverty rate increased from 9 per cent in 2009 to 14.3 per cent in 2015, and for those who are unemployed the rate was 45 per cent in 2015. Maša Filipovič Hrast suggests, in Chapter 9, that these financially vulnerable households face a higher risk of eviction due to arrears of mortgage, rent or other costs.

In Chapter 10, Sergio Nasarre-Aznar and Rosa Maria Garcia-Teruel explain that the absence of any alternatives to home ownership rendered Spanish households vulnerable, due to their reliance on mortgages. This has been facilitated by tax and policy incentives for developers and purchasers, and the establishment of a mortgage system with fast foreclosure, until EU consumer law (the iconic *Aziz* case) began to be applied. This case exposed irresponsible lending and very strict enforcement of security, often extending to family guarantees as recourse. The rental sector remains undeveloped and often in the shadow economy; and

⁴³ Directive 2014/17/EU on Credit Agreements for Consumers Relating to Residential Immovable Property and Amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010.

this affects greatly the housing security of those who are at risk of poverty. Spain has only 2 per cent social housing stock. The banking crisis and subsequent recession, with unemployment of 20 per cent, exacerbated the problems, with major levels of evictions.

In Chapter 7, Michel Vols affirms that in the Netherlands the economic crisis and unemployment have been significant factors in mortgage-related evictions, but another factor is the approach of local authorities to squatting and housing-related crime, such as drug-dealing and cannabis-growing.

In the UK, since 2010 government policy has sought to assert a 'free market' approach to renting. Even earlier, legislative and policy changes reduced the protection of private tenants to the lowest level in Europe, with six- or twelve-month assured shorthold tenancies. These give an automatic right to possession for the landlord once the required notice is given. Indeed, such is the insecurity of these tenancies that one-quarter of renters are in their homes for less than one year. Taking place against a background of reduction in welfare and social housing expenditure, this leaves fewer and fewer options for poor households. Housing affordability is poor in the UK, and the gap between income and housing costs continues to grow. As Nicholas Pleace and Caroline Hunter suggest in Chapter 11, there is an inherent dysfunctionality in the private rented sector, which needs to be addressed, as the current model exacerbates the risk of eviction. Law plays a central role in the UK. It is the law which makes the private rented sector an inherently insecure tenure for tenants, with major imbalances in rights in favour of landlords.

3. POLICY CONTEXT

3.1 General Housing Policy

There are significant variations in the housing systems of the eleven countries in this study. Levels of owner-occupation vary between 92 per cent in Hungary to 45 per cent in Germany, with concurrent variations in the levels of private and social rented housing. Germany exhibits some 50 per cent of tenures in the private rented sector, while Spain, Italy and Hungary have less than 5 per cent. Significantly, the UK, which has had a liberal market-based approach to its housing system, has less than 18 per cent private rented housing. Housing cooperatives or similar condominium ownership systems account for 16 per cent, 9 per cent and 14 per cent of tenures in Poland, Italy and Slovenia respectively.

The housing systems vary considerably in the proportions of social rented housing, with France, the Netherlands and the UK reflecting the

legacy of welfare state post-World War II public housing provision (see Table I.3). These variations have significant implications for security of tenure in cases of potential eviction, as well as the opportunity for state agencies to provide alternative accommodation in cases of eviction. Indeed, as shown by Nicholas Pleace and Caroline Hunter, general housing policy in the UK in the years after World War II, involving a range of welfare state measures, has had a major impact on evictions and related homelessness. This model is being dismantled in the UK, but still exists there to a greater extent than in many other European countries. For instance, while legislation and policy since the 1980s have diminished tenant security and affordable rented housing, nevertheless there are local authority supports and interventions which protect tenants and ensure that those evicted do not become homeless. However, lack of government investment in the UK in new social housing means that poorer families now occupy private rented housing and cannot pay increasing rents. State housing benefits are paid to five million households at an average of £5460 (€6150) per annum. UK government policies may be creating systemic general inequality in health care, education and housing, but with state assistance reduced to a safety net.

In France, as Marc Uhry suggests, the legacy of the post-World War II welfare state with relatively high levels of social housing (4 million dwellings or 17 per cent of total stock), is significant. However, there is a paradox, whereby poor households have a relatively low housing costs burden yet are relatively more often involved in rent arrears cases and evictions.

In Germany, legislative competences and government responsibilities for housing policies have been transferred from the federation to the regional states (*Bundesländer*). However, legislation regulating housing subsidies (*Wohnraumförderungsgesetz* – WoFG), the control of rents in the private rented sector, and tenancy protection (all of which are regulated in the Civil Code (*Bürgerliches Gesetzbuch* – BGB)) remains at the national level. There is a good level of protection against eviction, which includes reporting obligations on courts, support with rent and arrears, curial discretion to suspend evictions and obligations on authorities to provide shelter for those who are involuntarily homeless. In Hungary, some 90 per cent of dwellings are in private ownership (20 per cent with a mortgage), with 3–4 per cent social rentals. The housing allowance scheme (devolved to local government in 2015) covers 500 000 households or 3.8 million people and 10–15 per cent of normative housing costs. Although some municipalities run local arrears management schemes, these are ineffective as most private sector

tenancies are now unofficial. Non-governmental organizations (NGOs) operate tenancy support and eviction-prevention schemes.

Table I.3 Variations of housing tenures across the eleven countries⁴⁴

Country	Owner-occupied (%)	Private rented (%)	Social rented (%)	Other (%)
Belgium ⁴⁵	64.8	27.5	6.5	1.2
France	57.9	23	16.8	2.4
Germany	45.4	50.7	3.9	
Hungary ⁴⁶	92	4	3	1 ⁴⁷
Ireland ⁴⁸	67.6	20.6	8.7	3.1
Italy	71.9	14.8	3.7	9.6
Poland	75.4	0.8	7.6	16.2 ⁴⁹
Slovenia	77	3	6	14
Spain	77.1	13.8	2.5	6.5
The Netherlands	60	10	30	
United Kingdom	63.1	19	17.6	

In Ireland, evictions are a socially and politically charged issue, and politicians of all parties denounce such actions. Yet, as Padraic Kenna suggests in Chapter 5, evictions are quite common, largely in the private rented sector, but also due to mortgage arrears arising from the credit boom up to 2007. Following the banking collapse of 2008, the subsequent economic recession led to high unemployment and many mortgages becoming unsustainable, particularly where reckless lending had taken place. General housing policy related to evictions involves significant support to help with unaffordable rents, social supports, and extensive homelessness supports delivered through non-state bodies.

⁴⁴ Housing Europe, *The State of Housing in the EU 2017* (Brussels, Housing Europe Observatory 2017) <<http://www.housingeurope.eu/resource-1000/the-state-of-housing-in-the-eu-2017>>.

⁴⁵ European Commission, Population and Housing Census 2011; Housing Europe General Survey 2016.

⁴⁶ Census 2011, European Mortgage Federation (EMF) *Hypostat 2017* (Brussels, EMF 2017).

⁴⁷ Cooperatives.

⁴⁸ Census (Ireland) 2016.

⁴⁹ Cooperatives.

There have been a number of codes for lenders and a major revision of Irish personal bankruptcy/insolvency legislation. This enables households to achieve a fresh start after one year of personal bankruptcy, or six years of an insolvency arrangement.

The Polish Ministry of Infrastructure and Development has adopted new guidelines for national development of housing, although there are no specific policies on evictions. Witold Borysiak points out that local governments or municipalities are obliged by law to provide shelter, meals and essential clothing for those who are evicted. In Slovenia, Maša Filipovič Hrast discusses how debt levels are low, despite a high level of home ownership. The new 'Resolution on Housing Policy 2015–2025', includes increasing security of tenure and reducing illegal renting, but also contains measures which would enable quicker/swifter evictions.

Spain has been among the countries worst affected by the banking crisis, with reports of some 210 000 mortgage related evictions between 2010 and 2015. In the rented sector, there were some 206 000 evictions in the period. Despite the large numbers of households evicted, only a small number become homeless. Reliance on family supports and accommodation in such cases of emergency is a significant feature of the response of Spanish society. Various enactments by the Spanish government and the Autonomous Regions have sought to address the levels of repossession, often in response to findings of the Spanish Supreme Court or the Court of Justice of the European Union (CJEU). However, as Sergio Nasarre-Aznar and Rosa Maria Garcia-Teruel point out, there is a lack of rented housing, or intermediate tenures, and reliance on mortgages to access homes remains a significant element of housing policy.

Government policy in the Netherlands supports home ownership, although levels of social rented housing are comparatively high, amounting to some 30 per cent of housing stock. One significant feature of the Dutch mortgage system is the National Mortgage Guarantee Scheme (NMGS), which, for a premium of 1 per cent of the mortgage, paid at the outset, guarantees to cover any shortfall in the event of default and sale of the mortgaged property. Michel Vols points out that in 2015, some 78 per cent of buyers availed of this surety. Another unique feature is that following EU decisions on State Aid, Dutch housing associations who provide social housing must rent the great majority of new tenancies to those on annual incomes below €36 000.

3.2 Policy Measures which Prevent Evictions

The EU Pilot Project Report identified a range of primary, secondary and tertiary measures across EU Member States which prevent evictions or

mitigate their impact. Primary prevention measures are macro-level measures related to increased housing supply and affordability. In some cases, the state takes on a direct provision or appropriation role, or sponsors NGOs or housing organizations and others to do so. This may require investment in major social housing programmes.

The general availability of income benefits, housing benefits, employment protection and other supports can have a major impact on preventing evictions, alongside the more focused and targeted secondary and tertiary prevention measures. Indeed, social transfers reduced the at-risk-of-poverty rate by around 50 per cent or more in the Czech Republic, Germany, Finland, Ireland, the Netherlands, Sweden and the United Kingdom.⁵⁰ However, the EU Pilot Project Report identified an increasing gap between combined welfare and housing benefit levels, compared with increasing rent levels, particularly in urban growth centres, where a high level of evictions from private rented housing is evident. The specific nature of this problem varies, depending on whether the focus is on very high rent levels in cities, such as London, Munich, Paris or Stockholm, or on general poverty problems for lower-income people in CEE Member States. There is a major current challenge in aligning welfare and housing benefit levels with housing costs so as to enable low-income and vulnerable persons to access secure and affordable housing.

Evictions can be prevented in many ways. Availability of financial and social support from family and friends can be significant factors. Public assistance to cover rent arrears/mortgage instalments and the provision of housing counselling and advice are also significant. Holl et al suggest that debt advice and legal assistance can be most effective in preventing evictions of tenants.⁵¹ Evictions can be prevented or suspended through measures which support tenants to deal with arrears and debt, as well as developing realistic repayment options for arrears. There are a range of measures which can be taken in cases of mortgage arrears which would prevent evictions.⁵² Other secondary prevention measures

⁵⁰ The greatest impact was in Ireland, where the rate was reduced from 38.5 per cent to 14.1 per cent in 2013 through social transfers.

⁵¹ Holl et al (n 14) examined all existing international (English language) published research on preventing tenant evictions and concluded that '[A] scientific foundation of knowledge for the development and implementation of preventative practices and policies regarding tenant evictions is almost absent and more research is needed.'

⁵² European Central Bank (ECB), *Guidance to Banks on Non-Performing Loans* (ECB 2017) 49; EBA, *Final Report on Guidelines on Arrears and Foreclosure*, EBA/GL/2015/12 (EBA 2015). These include forbearance measures such as

include notification by courts of state/welfare agencies of the planned eviction, legal aid and representation, adequate legal defences to eviction, general moratorium on evictions, winter and out-of-hours bans on evictions, and court suspensions of eviction orders. Measures which reduce the negative impact of evictions include rapid or emergency rehousing of those evicted, protected minimum income and debt relief schemes, and access to effective homelessness services.

A critical limitation in any European research on evictions is the absence of data and reports on evictions in the informal or 'shadow' housing sector, particularly among migrants (documented and undocumented) and other excluded people. These include people with disabilities, asylum seekers and others who experience insecure housing, precarious employment and a high risk of eviction, and those who are not included in state, court or NGO bureaucracy and/or (any other) record-keeping. Data exists on such evictions in only a few northern European countries; although anecdotal accounts would suggest that there are many evictions in the informal or 'shadow' sector. The risk of homelessness among those evicted is clearly related to economic and social resource levels, with the poorest people (always including migrants) generally becoming homeless in the absence of state or family support.

Specific policies related to evictions in the eleven countries in this study vary considerably. All countries have a range of state and charitable funds which support those at risk or after eviction. In France, the Housing Solidarity Fund can assist those in arrears, and courts are obliged to allow a tenant three years to repay arrears, while the social agency CCAPEX can intervene at any time to provide alternative housing. In Germany, there is a housing allowance (*Wohngeld*), for those on low incomes with high housing costs, and a social protection system. In the UK, there is a welfare state safety net involving emergency homelessness provision, social protection measures and housing benefits to assist with housing costs, in addition to a range of statutory and policy measures. For instance, legislation from 1977 on protection from evictions enables local authorities to intervene and support tenants at risk of eviction. There is also a statutory obligation on local authorities, since the 1970s, to provide accommodation for homeless people who are in

interest-only payments; reduced payments; grace period/payment moratorium; arrears/interest capitalization; interest rate reduction; extension of maturity or term; additional security; sale by agreement or assisted sale; rescheduled payments; conversion of currency; other alteration of contract conditions or covenants; new credit facilities; debt consolidation; and partial or total debt forgiveness.

priority need (those with children, disabilities or a vulnerability), are not intentionally homeless, and have a local connection with the authority.

In France and Belgium, there are a range of policies to prevent evictions such as an obligation on landlords or courts to notify public authorities of an impending eviction. Relevant Italian housing policy measures include support for vulnerable people, suspension of evictions and measures to alleviate temporary economic hardship. Italian legislation which allows the suspension of enforcement of evictions has resulted in mortgage lenders becoming more conciliatory. Faced with a lengthy process, lenders often opt for some form of debt restructuring or forbearance, which usually results in lower levels of evictions. As pointed out by Elena Bargelli and Giulia Donadio, the Solidarity Fund of 2007 finances the suspension of mortgage payments in cases of death, total impairment or unemployment. There is also an alternative dispute-resolution system focused on the mortgage market. The Social Fund for Rent and Fund for Tenants in Default, assists those who cannot afford rents in the private rented sector. Tenancy laws initiated in 1978 act to suspend evictions and allow late payments of arrears to avoid eviction.

The foreign exchange loan crisis in Hungary led to government action in 2012, with the establishment of the National Asset Management Company, which took over those mortgages. Loans were taken at 35–55 per cent of origination value, and debtors converted to tenants, thereby avoiding evictions. By 2016, some 25 000 mortgages had been converted to tenancies in this way. In Spain, as Sergio Nasarre-Aznar and Rosa Maria Garcia-Teruel point out, the national government did not react to the crisis until 2011, and the Autonomous Regions, such as Catalonia, were the first to address the issue of evictions. However, almost all these steps by the Autonomous Regions have been challenged before the Spanish Constitutional Court. This has led to the rise of social movements and judicial activism by some judges to mitigate the worst effects of the situation. In 2011, legislation protected a minimum income of the debtor from being attached as part of the enforcement of the security on the defaulted mortgage. There are public and charitable funds to assist those evicted by the provision of temporary shelter.

3.3 Best Practice Models for Preventing, Tackling and Reacting to Evictions

There are a range of good practices examined in this study across the eleven countries, although most are tenure specific. In relation to mortgage arrears, the caution of lenders against reckless lending was highlighted as a key issue in Belgium, German and Italy, and as a major

factor in avoiding mortgage-related evictions. In Germany, prevention of eviction from mortgaged property is also advanced through conservative lending practices, and long-term mortgages with fixed interest rates, which avoid sudden increases in costs for the borrower. The harmonization of responsible lending, as a result of the EU Mortgage Credit Directive, is generally viewed as beneficial.

A second example of good practice was the linkage of a range of support agencies, particularly when combined with an early-warning system; for instance, where there is an obligation on landlords or courts to inform social services of impending eviction, as in Germany. Other best practices include the Flemish ‘fund to prevent evictions’, compensating a small number of affiliated landlords for a shortfall between a court-agreed payment schedule and the actual payments made by the tenant. The French GIP Charente Solidarités (Charente Solidarities Public Interests Group) coordinates all actions preventing evictions in the Department of Charente. It manages the Fund for Solidarity for Housing (FSL), and a personalized support service, making reports to the court and the Prefect at all stages of the procedure. Two-thirds of those who engaged with GIP Charente Solidarités found a concrete housing solution to the eviction process. In Ireland, a tenancy protection service operated by the Threshold housing advice agency renegotiates rents and levels of assistance to ensure continued occupation of tenants at risk of eviction, and a tenancy protection service operated by Focus Ireland, a housing NGO, are examples of good practice. Another example is the provision that a landlord cannot penalize a tenant for referring a dispute, including a threatened eviction, to the State Residential Tenancies Board.

There are special protections available in Poland for vulnerable groups of tenants such as pregnant women, minors, persons with disabilities and the unemployed, who must be provided with alternative accommodation in the event of eviction, and this applies to some 60–65 per cent of cases. Other groups of tenants can be evicted, but the court will examine *ex officio* whether special conditions exist which require alternative social housing. Witold Borysiak points out that there may be a delay of two to four years in the provision of such housing and that no eviction can take place in the meantime. Other best practices include the protection of tenants from excessive rent increases and other fees, as specified in Polish legislation dating from 2001.

Maša Filipovič Hrast highlights that in Slovenia, while free legal aid is inaccessible to vulnerable people at risk of eviction, social tenants are protected from eviction under 2003 legislation in cases of a death in the family, unforeseen loss of employment, serious illness and other factors. In Germany, pursuant to Article 721 *Zivilprozessordnung* (ZPO), the

court may, *ex officio* or upon a request, grant to the debtor a reasonable period to vacate premises (up to twelve months), taking into account all relevant circumstances. According to Article 765a (1) ZPO, the eviction may be suspended if ‘the measure entails a hardship that due to very special circumstances is immoral (*contra bonos mores*)’.⁵³

Best practices in Spain, as described by Sergio Nasarre-Aznar and Rosa Maria Garcia-Teruel, include moratoria on evictions and codes of good practice for lenders. These include new insolvency measures allowing a ‘fresh start’, measures to facilitate separating parents, a social fund of dwellings, assistance by the authorities with securing a new dwelling, and judicial discretion allowing more time before evictions.

In the UK, as described by Nicholas Pleace and Caroline Hunter, legal advice and support is available from a range of agencies for tenants at risk of eviction, along with mediation services and tenancy-sustainment teams in social housing. Legislation obliges local authorities to provide access to temporary rehousing for homeless people with a priority need and a local connection. There is also a network of court duty schemes whereby anyone facing possession proceedings can get free legal advice and representation. In Ireland, the *Abhaile* scheme (which is attached to the state Money Advice and Budgeting Service) provides for a consultation with a solicitor in mortgage possession cases, although this does not actually cover legal representation. The Human Rights Ombudsman in Slovenia has argued for changes in legislation regarding the principle of proportionality in cases of eviction.

In addition to the moratoria on eviction in winter in France, Hungary, Poland and the northern Italian cities, moratoria on evictions have been introduced in Italy and Spain.⁵⁴ Italian legislation in 2013 provided a moratorium on evictions in the private rented sector in cases arising from unemployment, reduction in working hours, economic hardship or health issues. Spanish legislation in 2012 provided for a mortgage possession moratorium until 2020, but this is, however, quite limited (covering around 2000 cases in 2017).

Michel Vols draws on research which shows that in the Netherlands, combinations of personal and circumstantial factors which create risk of eviction can be addressed only through individualized and tailor-made approaches to effectively prevent evictions.⁵⁵ Research in 2015 highlights that debt advice, monitoring, agreements between housing agencies and

⁵³ Art 765a (1) ZPO.

⁵⁴ In Poland this does not apply to squatters.

⁵⁵ D Wewerinke, W De Graaf, L van Doorn and J Wolf, *Huurders over een dreigende huisuitzetting* (Nijmegen, RUMC 2014) 54.

debt support organizations, and community mental health networks that respond to vulnerability of households, proved to be valuable interventions to prevent evictions.⁵⁶

Of course, rapid rehousing and effective homelessness services are a major part of the policy response to evictions. In Germany, according to laws of regional states relating to police, security and regulatory issues, it is a duty of municipalities to provide temporary accommodation for persons who would otherwise be homeless, with homelessness considered a serious threat to public safety. In Belgium, rehousing is not guaranteed, although social support agencies can offer assistance including financial support, and are obliged to do so in the Brussels and Wallonia Regions.

In Italy, as described by Elena Bargelli and Giulia Donadio, there is assistance through social services for households that become homeless, although this is limited by available regional and local resources.

Other examples of good practice involve initiatives where the state purchases distressed mortgages and arranges for occupants to become tenants, as in Hungary, a practice described by Nóra Teller, Eszter Somogyi and Nóra Tosics. Ultimately, as Nicholas Pleace and Caroline Hunter point out, the key to avoiding homelessness or housing exclusion following eviction is a strongly integrated strategy involving housing advice, homelessness prevention and other services working seamlessly.

4. LEGAL AND HUMAN RIGHTS CONTEXT

4.1 Housing Rights and Evictions

Evictions can involve a gross violation of human rights, especially the right to adequate housing. Forced evictions can result in other severe human rights violations, particularly when they are accompanied by forced relocation or homelessness.⁵⁷ Unsurprisingly, therefore, evictions

⁵⁶ G Schout, G De Jong and I Van Laere, 'Pathways toward evictions: an exploratory study of the inter-relational dynamics between evictees and service providers in the Netherlands' (2015) 30 (2) *Journal of Housing and the Built Environment* 183–198.

⁵⁷ See UN OHCHR (n 10) 1.

which involve interference with the home by state or non-state institutions have been the subject of many constitutional and legal provisions establishing strict legal limitations.⁵⁸

Fundamental human rights and housing rights are rooted in the social and political order of society, social justice, the development of children, the securing of a stable home life, security of tenure, a corrective to markets and advancing the public interest. The term 'right to housing' often refers to wider rights of housing access, quality and other factors, as well as protection from eviction and homelessness prevention. The right to housing is primarily framed, defined, implemented and enforced through national constitutional, legislative, regulatory and institutional provisions.⁵⁹ Across EU Member States, there is a complex interplay between national law, EU law and various international human rights instruments in relation to evictions.⁶⁰

Illegal or unauthorized evictions are generally regarded as a violation of housing rights, and there are growing obligations on EU Member States, in relation to particular classes of people, to rehouse those evicted before authorizing actual evictions.⁶¹ While the rights of those being evicted can include criminal law remedies for illegal or unauthorized evictions, the EU Pilot Project Report found few enforced criminal sanctions in relation to illegal/unauthorized evictions across EU Member States. Countries with a relatively high level of renting in the 'shadow market' reported significant levels of illegal evictions.⁶²

⁵⁸ B Bengtsson, S Fitzpatrick and B Watts, 'Rights to housing: reviewing the terrain and exploring a way forward, housing' (2014) 31 (4) *Theory and Society* 447–463; See also S Fick and M Vols, 'Best protection against eviction? A comparative analysis of protection against evictions in the European Convention on Human Rights and the South African Constitution' (2016) 3 *European Journal of Comparative Law and Governance* 40–69; S Gerull, 'Evictions due to rent arrears: a comparative analysis of evictions in 14 countries' (2014) 2 *European Journal of Homelessness* 137–155.

⁵⁹ M Oren, R Alterman and Y Zilbershats, 'Housing rights in constitutional legislation: a conceptual classification' in P Kenna (ed) *Contemporary Housing Issues in a Globalized World* (Aldershot, Ashgate 2014); P Kenna (ed), *Contemporary Housing Issues in a Globalized World* (Aldershot, Ashgate 2014).

⁶⁰ See Kenna et al (n 4).

⁶¹ Significantly, the Tenants Charter of the International Union of Tenants 2004, Article IX (b), suggests that '[E]victions on social causes cannot be accepted without the tenant obtaining another dwelling' <http://www.iut.nu/aboutiut.htm#Tenants_Charter>.

⁶² The EU Pilot Project Report recommended the development of a prohibitory injunction against illegal or unauthorized evictions similar to that in

4.2 Housing Rights at UN Level

Protection from eviction forms part of the protection of the right to housing and is recognized at the level of international human rights.⁶³ The right to housing is included within the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR)⁶⁴ and the European Social Charter of the Council of Europe,⁶⁵ both of which have been ratified by all EU Member States.

Article 11 (1) of the ICESCR obliges States Parties to recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties should take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.⁶⁶ State obligations with regard to the right to housing should be interpreted together with all other human rights obligations and, in particular, in the context of eviction, with the obligation to provide the family with the widest possible protection. The obligation of States Parties to provide, to the maximum of their available resources, alternative accommodation for evicted persons who need it, includes the protection of the family unit, especially when the persons are responsible for the care and education of dependent children.

The UN Committee on Economic, Social and Cultural Rights (UN CESCR), General Comment No 7 on Forced Evictions, sets out the

environmental cases and consumer protection under Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests, 11 June 1998, OJL 166/51.

⁶³ See J Hohmann, *The Right to Housing: Law, Concepts, Possibilities* (Oxford, Hart 2013); M Kolocek, *The Human Right to Housing in the Face of Land Policy and Social Citizenship – A Global Discourse Analysis* (London, Palgrave Macmillan 2017); N Moons, *The Right to Housing in Law and Society* (Abingdon, Routledge 2018).

⁶⁴ Art 11 International Covenant on Economic, Social and Cultural Rights (1966) UN Doc. A/6316. There are also a range of housing rights in relation to children, persons with disabilities, migrants and others groups at risk of eviction; See P Kenna, 'Can housing rights be applied to modern housing systems?' (2010) 2 (2) *International Journal of Law in the Built Environment* 103–117.

⁶⁵ Council of Europe, European Treaty Series – No 35: European Social Charter, Turin, 18 October 1961. (Revised) Council of Europe, Strasbourg 3 May 1996, Articles 16, 30 and 31.

⁶⁶ All EU Member States have adopted the ICESCR.

international human rights norms.⁶⁷ In cases of forced evictions,⁶⁸ UN human rights standards oblige states to ensure the presence of government officials, or their representatives, during an eviction, and ensure proper identification of the persons carrying out the eviction.⁶⁹

However, evictions should not render individuals becoming homeless. Where those affected do not have the means to acquire alternative housing, States Parties must take all appropriate measures to ensure, where possible, that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.⁷⁰ States Parties should pay particular attention to evictions that involve women, children, older persons, persons with disabilities or other vulnerable individuals or groups who are subject to systemic discrimination. The State Party has a duty to take reasonable measures to provide alternative housing to persons who are left homeless as a result of eviction, irrespective of whether the eviction is initiated by its authorities or by an individual, such as the lessor.

The obligation to provide alternative housing to evicted persons who need it implies that, under Article 2 (1) ICESCR, 'States Parties must take all necessary steps, to the maximum of their available resources, to uphold this right.'⁷¹ States Parties can choose a variety of policies to achieve this purpose, including the establishment of housing subsidies for those unable to obtain affordable housing.⁷² However, any measures adopted must be deliberate, specific and as straightforward as possible to fulfil this right⁷³ as swiftly and efficiently as possible. Policies on

⁶⁷ UN Committee on Economic, Social and Cultural Rights (UN CESCR), General Comment No 7 (1997) (n 29).

⁶⁸ According to the UN CESCR, General Comment No 7 (1997) (n 29).

⁶⁹ UN CESCR, General Comment No 7 (1997) (n 29) 4, para 15 (d).

⁷⁰ UN CESCR, General Comment No 7 (1997) (n 29) 5, para 16.

⁷¹ UN CESCR, General Comment No 3: The Nature of States Parties' Obligations (Art 2, Para 1 of the Covenant) 14 December 1990, E/1991/23 (Adopted at the Fifth Session of the Committee on Economic, Social and Cultural Rights).

⁷² UN CESCR, General Comment No 4: The Right to Adequate Housing (Art 11 (1) of the Covenant). Adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights, on 13 December 1991. (Contained in Document E/1992/23), para 8 (c).

⁷³ UN CESCR, General Comment No 3 (1990) (n 71). See also the letter of 16 May 2012 from the Chair of the Committee to the States Parties to the Covenant.

alternative housing in case of eviction should be commensurate with the need of those concerned and the urgency of the situation and should respect the dignity of the person. Moreover, States Parties should take consistent and coordinated measures to resolve institutional shortcomings and structural causes of the lack of housing.⁷⁴

In 2015, the UN CESCR stated that there are state obligations to ensure the accessibility of legal remedies for persons facing mortgage enforcement procedures for failure to repay loans. States must adopt appropriate legislative measures to ensure that mortgage enforcement procedures contain appropriate safeguards before evictions take place, in accordance with the ICESCR and General Comment No 7.⁷⁵ It is significant that, in this case, inadequate notice of possession proceedings was held to be a violation of the right to housing.⁷⁶

In a significant decision relating to eviction, the UN CESCR, on a complaint under the Optional Protocol, held that an eviction in Spain without a guarantee of alternative housing by the authorities of the State Party, constituted a violation of the right to adequate housing.

The protection against forced evictions applies to persons living in rental housing. In the case of *Mohamed Ben Djazia and Naouel Bellili v Spain*, the UN CESCR set out the state obligations to ensure the horizontal nature of the protection against forced eviction, ie the state has a duty to ensure that the protection extends to relations between private individuals in eviction proceedings.⁷⁷ Significantly, the State Party contended that the eviction took place at the initiative of the lessor and that the state/judiciary intervened only as a mediator. However, the UN

⁷⁴ See, for example, the submission in this case of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, and her report (A/HRC/31/54, paras 28–38). See also UN Doc. A/72/128, Farha, L, UN Special Rapporteur, 'Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context' and UN, Committee on the Rights of Persons with Disabilities, General Comment on Article 19: Living independently and being included in the community. UN Doc. CRPD/C/18/1.

⁷⁵ UN CESCR, Communication No 2/2014, Views adopted by the Committee at its fifty-fifth session (1–19 June 2015 Spain) UN Doc E/C.12/55/D/2/2014.

⁷⁶ Ibid para 13.7.

⁷⁷ See UN Doc. E/C.12/61/D/5/2015, Committee on Economic, Social and Cultural Rights. Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights with regard to communication No 5/2015. Adopted by the Committee at its sixty-first session (29 May–23 June 2017).

CESCR reiterated that the state's duty to protect tenants involves taking measures to protect ICESCR rights, even when the action which undermined the right was in the first place carried out by an individual or a private entity. An eviction due to the expiry of the term of a rental contract is regarded as a dispute between individuals (lessor and lessee), in which the eviction is not directly initiated by the state. Thus,

An eviction related to a rental contract between individuals can, therefore, involve Covenant rights. Accordingly, the State party's argument that the communication deals with a dispute that is exclusively between individuals and therefore does not fall under the Covenant does not stand.⁷⁸

The UNCESCR stated that:

... States parties do not only have the obligation to respect Covenant rights, and, it follows, to refrain from infringing them, but they also have the obligation to protect them by adopting measures to prevent the direct or indirect interference of individuals in the enjoyment of these rights. If a State party does not take appropriate measures to protect a Covenant right, it has a responsibility even when the action that undermined the right in the first place was carried out by an individual or a private entity. Thus, although the Covenant primarily establishes rights and obligations between the State and individuals, the scope of the provisions of the Covenant extends to relations between individuals. An eviction related to a rental contract between individuals can, therefore, involve Covenant rights. Accordingly, the State party's argument that the communication deals with a dispute that is exclusively between individuals and therefore does not fall under the Covenant does not stand.⁷⁹

The UN CESCR held that in some circumstances the eviction of people living in rental accommodation may be compatible with the ICESCR, as long as the eviction is provided for by law, is carried out as a last resort, and that the persons concerned have had prior access to an effective judicial remedy in order to ascertain that the measure in question was duly justified. This could apply, for example, in the case of persistent non-payment of rent, or of damage to rented property without just cause. In addition, there must be a real opportunity for genuine prior consultation between the authorities and the persons concerned, there must be no less onerous alternative means or measures available, and the persons

⁷⁸ Ibid para 14.1.

⁷⁹ Ibid para 14.2.

concerned must not remain in or be exposed to a situation constituting a violation of other Covenant or human rights.⁸⁰

In 2015, UN Member States unanimously adopted the 2030 Agenda for Sustainable Development, grounded in the international human rights treaties, and the Sustainable Development Goals (SDGs).⁸¹ States made an undertaking that by 2030, to ensure access for all to adequate, safe, and affordable housing and basic services and upgrade slums. While there is no direct reference to protection from eviction, the development of access to housing for all will be a significant policy goal.

4.3 Housing Rights and the Council of Europe

All European countries have accepted the European Social Charter and Revised Charter of the Council of Europe.⁸² The European Committee on Social Rights of the Council of Europe (COE, ECSR) has stated that evictions are subject to a range of human rights standards.⁸³ States must take action to prevent categories of vulnerable persons from becoming homeless. While illegal occupation of a site or dwelling may justify the eviction of the illegal occupants, the criteria of illegal occupation must not be unduly wide. The eviction should be governed by rules of procedure sufficiently protective of the rights of the persons concerned and should be carried out according to these rules.⁸⁴

Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the parties affected, in order to find alternative solutions to eviction and the obligation to fix a reasonable

⁸⁰ Ibid para 15.1.

⁸¹ See UN Doc. See A/RES/70/1. SDG 11 provides targets for building sustainable cities and communities.

⁸² Council of Europe, European Treaty Series – No 35; European Social Charter (Revised) Council of Europe, Strasbourg, 3 May 1996. See <http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/AboutCharter_en.asp>. These charters include state obligations in relation to access to adequate and affordable housing; a reduction of homelessness; housing policy targeted at all disadvantaged categories; procedures to limit forced eviction; equal access for non-nationals to social housing and housing benefits; and housing construction and housing benefits related to family needs.

⁸³ Council of Europe (COE), Digest of the case law of the European Committee of Social Rights <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168049159f>>.

⁸⁴ COE, European Committee on Social Rights (ECSR), *European Roma Rights Center (ERRC) v Greece*, Complaint No 15/2003 (Decision on the Merits 8 December 2004) 14, §51.

notice period before eviction. When evictions do take place, they must be carried out under conditions which respect the dignity of the persons concerned. The law must prohibit evictions carried out at night or during the winter period. When an eviction is justified by the public interest, authorities must adopt measures to rehouse or financially assist the persons concerned.⁸⁵ Domestic law must provide legal remedies and offer legal aid to those who need to seek redress from the courts. Compensation for illegal evictions must also be provided.⁸⁶

The European Convention on Human Rights (ECHR), as adopted by all European countries, requires respect for the rights to 'home', and proper justification and a 'pressing social need' for an eviction, which must be proportionate to the legal aim pursued.⁸⁷ Evictions which impact on people's dignity and cause inhuman and degrading treatment are regarded as violating the ECHR.⁸⁸ The European Court of Human Rights (ECtHR) found that the living conditions and racial discrimination to which a family was publicly subjected after eviction, constituted an interference with their human dignity amounting to 'degrading treatment'.⁸⁹

The application of Article 8 ECHR on the right to respect for privacy, home and family life is creating a common European standard in relation to loss of home or repossession. The ECtHR has held:

The loss of one's home is a most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his right of occupation has come to an end.⁹⁰

These 'proportionality' questions arising from Article 8 ECHR housing-related issues were more elaborately defined in *Yordanova and Others v*

⁸⁵ ECSR (n 83) 172.

⁸⁶ COE, ECSR, *European Roma Rights Center (ERRC) v Bulgaria*, §52.

⁸⁷ *Connors v the United Kingdom* (n 7) §9.

⁸⁸ The relationship between Art 8 ECHR and housing in the jurisprudence of the ECtHR is summarized by the Council of Europe and European Court of Human Rights (2017). *Guide on Article 8 of the Convention – Right to respect for private and family life* 52–58, <https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf>.

⁸⁹ *Moldovan v Romania (No 2)* App Nos 41138/98 and 64320/01, 30 November 2005 (Final) 27, §113.

⁹⁰ *McCann v United Kingdom* App No 19009/04, Fourth Section 13 May 2008, §50.

Bulgaria.⁹¹ Assuming the eviction measures are legally permitted, on the question as to whether the interference is ‘necessary in a democratic society’ the ECtHR held:

An interference will be considered ‘necessary in a democratic society’ for a legitimate aim if it answers a ‘pressing social need’ and, in particular, if it is proportionate to the legitimate aim pursued. While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention (see, among other authorities, *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, 27 September 1999, §§ 88, ECHR 1999-VI).⁹²

While a margin of appreciation is left to the national authorities, this margin will vary according to the nature of the ECHR rights at issue. The margin of appreciation left to the national authorities will tend to be narrower where the right at stake is crucial to the individual’s effective enjoyment of intimate or key rights.⁹³

(ii) ... Since Article 8 concerns rights of central importance to the individual’s identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community, where general social and economic policy considerations have arisen in the context of Article 8 itself, the scope of the margin of appreciation depends on the context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicant (see, among many others, *Connors*, cited above, § 82);

(iii) The procedural safeguards available to the individual will be especially material in determining whether the respondent State has remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see *Buckley*, cited above, 1292–93, § 76, and *Chapman*, cited above, § 92). The ‘necessary in a democratic society’ requirement under Article 8 § 2 raises a question of procedure as well of substance (see *McCann*, cited above, § 26);

(iv) Since the loss of one’s home is a most extreme form of interference with the right under Article 8 to respect for one’s home, any person at risk of an interference of this magnitude should in principle be able to have the

⁹¹ *Yordanova and Others v Bulgaria* App No 25446/06, 24 September 2012.

⁹² *Ibid* §117.

⁹³ *Ibid* §118.

proportionality and reasonableness of the measure determined by an independent tribunal in the light of the relevant principles under Article 8, notwithstanding that, under domestic law, he has no right of occupation (see *Kay and Others v. the United Kingdom*, no. 37341/06, § 67–8 and 74, 21 September 2010 and *Orlić v. Croatia*, no. 48833/07, § 65, 21 June 2011). This means, among other things, that where relevant arguments concerning the proportionality of the interference have been raised by the applicant in domestic judicial proceedings, the domestic courts should examine them in detail and provide adequate reasons (*ibid.*, §§ 67–69).⁹⁴

Key ‘proportionality’ issues around interference with Article 8 ECHR rights regarding respect for privacy, family life and home as identified in *Yordanova* are:

- the individual’s identity
- self-determination
- physical and moral integrity
- maintenance of relationships with others
- a settled and secure place in the community
- the extent of the intrusion into the personal sphere of the applicant.

In *Yordanova and Others v Bulgaria*,⁹⁵ the European Court of Human Rights stated that those at risk of eviction should be afforded the following procedural safeguards:

1. The decision-making process leading to measures of interference has to be fair and must afford due respect to the interests safeguarded to the individual by Article 8.
2. Any person at risk of the loss of his/her home should in principle be able to have the proportionality and reasonableness of the measure determined by an independent tribunal, notwithstanding that, under domestic law, he/she has no right of occupation.
3. National authorities, in their decisions ordering and upholding the applicant’s eviction, must give an explanation or put forward arguments demonstrating the necessity of eviction.

More recently, the European Court of Human Rights has requested that Spain make arrangements for housing and social care for a household with children that was subject to potential eviction to ensure compliance

⁹⁴ Ibid.

⁹⁵ (n 91).

with international human rights standards.⁹⁶ Together, these human (social) rights instruments, which have been adopted to varying degrees by the EU Member States being examined, oblige countries to ensure that evictions do not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those evicted are unable to provide for themselves, Member States must take the maximum appropriate measures allowed by their available resources to ensure that adequate alternative housing or resettlement is available.⁹⁷

There is, however, a major limitation in the application of Article 8 ECHR in the context of evictions in the ‘private’ arena. The horizontal impact of the Article, ie whether it applies in evictions from private rented housing, or as a result of mortgage repossessions, has been subject to much discussion. The *McDonald* case⁹⁸ in England (the UK) held that Article 8 protection and the need for a proportionality test did not apply in circumstances where legislation governed the contractual rights of the landlord. The Housing Act 1988 section 21, entitles a landlord to possession at the expiry of an assured shorthold tenancy after having served the required notice in writing on the tenant.⁹⁹ In *Vrzic v Croatia*,¹⁰⁰ the ECtHR addressed the ‘horizontal’ application of Article 8 in a case where the home was sold, as it had been pledged as collateral for a business loan which had not been repaid. The ECtHR held that in all previous such Article 8 cases involving eviction, the applicants were living in state-owned or socially owned accommodation flats, and an important aspect of finding a violation was the fact that there was no other private interest at stake.¹⁰¹ Furthermore, the applicants in those cases had not signed any form of agreement whereby they risked losing their home. In the *Vrzic* case, the parties involved a bank, and the

⁹⁶ *Cesay Cesay and others v Spain*, App No 62688/13, Decision of 15 October 2013.

⁹⁷ UN CESCR, General Comment No 3: The Nature of States Parties’ Obligations (Art 2, Para 1 of the Covenant) (n 71).

⁹⁸ [2016] UKSC 28. See Emma Lees, ‘Horizontal effect and Article 8: *McDonald v McDonald*’ (2014) *Law Quarterly Review* 131. For a modern critique of *McDonald* see S Pascoe, ‘The end of the road for human rights in private landowners’ disputes?’ (2017) 81 (4) *The Conveyancer and Property Lawyer* 269–286.

⁹⁹ The order can be suspended for a maximum of six weeks in cases of exceptional hardship under the Housing Act 1980, s 89(1), and therefore no proportionality test can be effectively carried out.

¹⁰⁰ App No 43777/13 Judgment 12 July 2016.

¹⁰¹ *Ibid* §66.

borrowers had voluntarily used their home as collateral for a loan.¹⁰² There was no violation of Article 8, despite the absence of a proportionality assessment. However, the ECtHR held that this does not mean that the court will not examine the procedures in cases involving private parties:

The Court is mindful of the fact that the present case concerns proceedings between private parties, namely the applicants and their creditors on the one hand and the applicants and the purchaser of their house on the other hand. However, even in cases involving private litigation, the State is under an obligation to afford the parties to the dispute judicial procedures which offer the necessary procedural guarantees and therefore enable the domestic courts and tribunals to adjudicate effectively and fairly in the light of the applicable law (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 83, ECHR 2007-I; *J.A. Pye*, cited above, § 57; and *Zagrebačka banka d.d. v. Croatia*, no. 39544/05, §§ 250 and 251, 12 December 2013).¹⁰³

4.4 Housing Rights and the European Union

Evictions from residential, commercial or state property usually require the invocation and enforcement of property law. Each country has its own property law regime, based on national law. National property law systems are very closed, and the development of European harmonized standards has been slow and indirect.¹⁰⁴ Indeed, Article 345 Treaty on the Functioning of the European Union (TFEU) specifically precludes Treaty primacy over national systems of property ownership, and the principles of subsidiarity and proportionality are highly significant.¹⁰⁵ This means that the rules relating to property ownership fall within the sole competence of Member States. But, although national constitutional law

¹⁰² The situation involving a state owned or majority state owned bank seeking possession for a mortgage debt was not considered, even though this situation is common in Ireland.

¹⁰³ *Vrzic v Croatia* App No 43777/13 Judgment 12 July 2016 §73.

¹⁰⁴ See S Van Erp and B Akkermans, *Cases, Materials and Text on Property Law* (Ius Commune Casebooks for the Common Law of Europe) (Oxford, Hart 2012) Ch 10; P Sparkes, *European Land Law* (Oxford, Hart 2007); CU Schmid, C Hertel and H Wicke, *Real Property Law and Procedure in the European Union* (European University Institute (EUI) Florence/European Private Law Forum, Deutsches Notarinstitut (DNotI) Würzburg 2005).

¹⁰⁵ See Sjef Van Erp, 'Article 345 TFEU: a framework for European property law' in Jaume Tarabal Bosch, Elena Lauroba Lacasa (coords) *El derecho de propiedad en la construcción del derecho privado europeo* (Tirant lo Blanch, 2018).

protects private property rights, there is an increasing Europeanization of these rights, especially through the jurisprudence around Article 1 of Protocol 1 to the ECHR, as well as the effects of Article 8 ECHR. Indeed, both these provisions have been replicated in the EU Charter of Fundamental Rights, in force since 2009.¹⁰⁶ European Union Treaty provisions on establishing and ensuring the single market (Article 26 TFEU) can impact on national property law. Consumer law provisions, and especially the Unfair Contract Terms Directive, are leading to harmonized standards in relation to the enforcement of mortgage security over property. Perhaps the most significant and far-reaching harmonization of property law in the EU has taken place through the adoption of the Mortgage Credit Directive (MCD).¹⁰⁷

The MCD proposed an EU harmonized legal framework on mortgage law, including significant measures in relation to home possession in cases of mortgage arrears. This was created:

In order to facilitate the emergence of a smoothly functioning internal market with a high level of consumer protection in the area of credit agreements relating to immovable property and in order to ensure that consumers looking for such agreements are able to do so confident in the knowledge that the institutions they interact with act in a professional and responsible manner, an appropriately harmonised Union legal framework needs to be established in a number of areas, taking into account differences in credit agreements arising in particular from differences in national and regional immovable property markets.¹⁰⁸

Article 28 of the MCD deals with this concept of arrears and foreclosure, creating a harmonized approach to the enforcement of security for mortgages on property and of course, the concurrent exclusion from occupation of the debtor. Subsection 1 of Article 28 states that ‘Member States shall adopt measures to encourage creditors to exercise reasonable forbearance before foreclosure proceedings are initiated.’¹⁰⁹ This concept

¹⁰⁶ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union Charter of Fundamental Rights of the European Union (OJ C 83/13, 30 March 2010).

¹⁰⁷ Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010. See M Anderson and EA Amayeulas (eds), *The Impact of the Mortgage Credit Directive in Europe* (Groningen, Europa Law Publishing 2017).

¹⁰⁸ Directive 2014/17/EU Preamble 5.

¹⁰⁹ While Art 43(1) of the Directive disapplies the Directive to mortgages created before 21 March 2016, Peter Sparkes points out that this is quite

of reasonable forbearance was solidified by the European Banking Authority (EBA) and the European Central Bank (ECB), bodies created as part of the mechanism of the European System of Financial Supervision, which was in turn set up to ensure cohesion and consistency of the EU financial system, promoting the proper functioning of the internal market.¹¹⁰ Following the enactment of the MCD, the EBA published its *Final Report on Guidelines on Arrears and Foreclosure*¹¹¹ (the *Guidelines*) to assist Member States in complying with their obligations under Article 28 of the MCD.¹¹² The *Guidelines* cover all stages of the mortgage process from ‘establishment of policies and procedures’ prior to the engagement with consumers,¹¹³ through the initial and ongoing engagement with the consumer,¹¹⁴ to the resolution of a situation where a consumer has fallen into arrears.¹¹⁵ Guideline 4, on the ‘resolution process’, provides more extensive information on what Article 28 of the MCD considers ‘forbearance measures’. This gives a non-exhaustive list of possible modifications a credit institution should consider when exercising forbearance in the resolution of a credit account in payment difficulties. These are: ‘a) extending the term of the mortgage;

illogical: ‘as things stand, the full benefits of the legislation [MCD] will not be felt for twenty or twenty-five years when all loans in circulation will be covered by post-Directive agreements and there is no solution on offer to the millions of borrowers burned by the conduct of lenders leading up to and during the financial crisis’. See P Sparkes, ‘What is mortgage credit?’ in M Anderson and EA Amayeulas (eds) *The Impact of the Mortgage Credit Directive in Europe* (Groningen, Europa Law Publishing 2017) Ch 2. The EBA Guidelines on Arrears and Foreclosures (2015) appear to suggest that these are now applied to existing mortgages as described in Article 3 MCD rather than just post March 2016 mortgages.

¹¹⁰ See Council Regulation No 1024/2013 of 15 October 2013, conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (Single Supervisory Mechanism [SSM] Regulation). See ECB website for explanation of the significance of the SSM Regulation, <<https://www.bankingsupervision.europa.eu/about/thessm/html/index.en.html>>.

¹¹¹ EBA/GL/2015/12. The EBA’s authority to issue guidelines stems from Article 16(1) of Regulation (EU) 1093/2010.

¹¹² Section 3 of the EBA *Final Report on Guidelines on Arrears and Foreclosure* (1 June 2015) EBA/GL/2015/12.

¹¹³ Ibid Guideline 1.

¹¹⁴ Ibid Guidelines 2 and 3.

¹¹⁵ Ibid Guideline 4.

b) changing the type of the mortgage ... ; c) deferring payment ... ; d) changing the interest rate; [and] offering a payment holiday'.¹¹⁶

Forbearance measures are considered more closely by the ECB in Part 4 of its *Guidance to Banks on Non-Performing Loans* (the *Guidance*) of March 2017.¹¹⁷ It should be noted that unlike the *Guidelines* of the EBA, the *Guidance* is not limited to mortgage credit agreements, but rather applies to all non-performing loans (NPLs), as its title suggests. This includes those mortgages excluded from the MCD provisions ie pre 2016 mortgages. The centre of focus is not the consumer in payment difficulties, but rather the financial institution itself when affected by a high level of NPLs. These (also referred to as non-performing exposures), for the purposes of the *Guidance*, are 'material exposures which are more than 90 days past due' and/or situations where 'the debtor is assessed as unlikely to pay its credit obligations in full without realization of collateral, regardless of the existence of any past-due amount or of the number of days past due'.¹¹⁸ The list of forbearance measures proposed by the ECB in the *Guidance* is non-exhaustive, similar to the list provided by the EBA in its *Guidelines*, in the understanding that there are 'national specificities' to which financial institutions of each Member State must mould their system.¹¹⁹

The short-term forbearance measures proposed in the *Guidance* are: (i) interest only; (ii) reduced payments; (iii) grace period/payment moratorium; and (iv) arrears/interest capitalization.¹²⁰ The long-term measures are: (v) interest rate reduction; (vi) extension of maturity or term; (vii) additional security; (viii) sale by agreement or assisted sale; (ix) rescheduled payments; (x) conversion of currency; (xi) other alteration of contract conditions or covenants; (xii) new credit facilities; (xiii) debt consolidation; and (xiv) partial or total debt forgiveness.¹²¹ The most severe long-term forbearance measure listed in the *Guidance* is partial or total debt forgiveness. This latter measure entails a settlement between the parties, whereby the debtor agrees to pay a certain amount of

¹¹⁶ Ibid Guideline 4.1.2.

¹¹⁷ Although the *Guidance* is 'currently non-binding in nature', non-compliance could 'trigger supervisory measures' as prescribed by the Single Supervisory Mechanism of the EU.

¹¹⁸ European Central Bank, *Guidance to Banks on Non-Performing Loans* (ECB March 2017) 49.

¹¹⁹ Ibid 43.

¹²⁰ Ibid 42.

¹²¹ Ibid 42–43.

the debt within a given time-frame in return for which the creditor waives any legal claim over the remaining amount.

There is also much developing harmonizing jurisprudence across Europe which indirectly impacts on property law through other elements of EU and ECtHR jurisprudence. Today, there is a developing jurisprudence linking national, EU and international human rights law on evictions, which also encompasses EU consumer protection law.¹²² This impacts in different ways, creating unique sets of circumstances for evictions in each EU Member State. Through a combination of EU consumer law and the EU Charter¹²³ of Fundamental Rights (CFREU),¹²⁴ a developing CJEU jurisprudence is developing whereby mortgage-related evictions are engaging consumer and human rights protections for those at risk of eviction.¹²⁵

Article 51 (1) CFREU provides that the Charter is binding on the institutions, bodies, agencies and offices of the EU, and these include the European Central Bank and the European Banking Authority.¹²⁶ Article 7 CFREU states that: ‘Everyone has the right to respect for his or her private and family life, home and communications.’ According to the *Explanations* on the CFREU,¹²⁷ this corresponds with Article 8 of the ECHR. Indeed, the Court of Justice of the European Union (CJEU) has drawn on the jurisprudence of the European Court of Human Rights (ECtHR), in mortgage consumer law cases. In Case C-34/13, *Monika Kušionová v SMART Capital a.s.*, the CJEU held:

The loss of a family home is not only such as to seriously undermine consumer rights (the judgment in *Aziz*, EU:C:2013:164, paragraph 61), but it

¹²² Case C-34/13 *Kušionová v SMART Capital a.s.*

¹²³ All provisions of primary and secondary EU law must be interpreted according to the provisions of the Charter, including Art 24 (The rights of the child), Art 25 (The rights of older people), Art 26 (Integration of persons with disabilities) and Art 47(2) and (3) (Fair and public hearing and legal aid).

¹²⁴ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union Charter of Fundamental Rights of the European Union (OJ C 83/13, 30 March 2010).

¹²⁵ Case C-415/11 *Aziz v Caixa d'Estalvis de Catalunya*; Case C-280/13 *Barclays Bank* [2014]; Case C-280/13 *Sánchez Morcillo and Abril García* [2014] ECLI:EU:C:2014:2099; Cases C-482/13, C-484/13, C-485/13; Case C-539/14 *Sánchez Morcillo and Abril García* [2015]; Case C-8/14 *BBVA* [2015]; Case C-49/14 *Finanmadrid EFC* [2016]; Case C-421/14 *Banco Primus* [2017].

¹²⁶ Steve Peers et al, *The EU Charter of Fundamental Rights: A Commentary* (Oxford, Hart 2014).

¹²⁷ *Explanations Relating to the Charter of Fundamental Rights* (OJ 2007/C 303/02).

also places the family of the consumer concerned in a particularly vulnerable position (see, to that effect, the Order of the President of the Court in *Sánchez Morcillo and Abril García*, EU:C:2014:1388, paragraph 11). In that regard, the European Court of Human Rights has held, first, that the loss of a home is one of the most serious breaches of the right to respect for the home and, secondly, that any person who risks being the victim of such a breach should be able to have the proportionality of such a measure reviewed (see the judgments of the European Court of Human Rights in *McCann v United Kingdom*, application No 19009/04, paragraph 50, ECHR 2008, and *Rousk v Sweden*, application No 27183/04, paragraph 137). Under EU law, the right to accommodation is a fundamental right guaranteed under Article 7 of the Charter that the referring court must take into consideration when implementing Directive 93/13 [Unfair Terms in Consumer Contracts Directive].¹²⁸

The emerging trend is a closer link between mortgage law, consumer law and human rights law, with the Unfair Contract Terms Directive providing the nexus between all three areas.¹²⁹ The treatment of consumer mortgage contracts by the CJEU has the potential to radically improve the rights of home loan borrowers in the EU context.

In November 2017, The European Parliament, the Council and the Commission solemnly proclaimed the European Pillar of Social Rights¹³⁰ laying down 20 key principles for delivering stronger protection of social rights for citizens. The 19th Principle is focused on the right to housing and assistance for the homeless as follows:

1. Access to social housing or high-quality housing assistance shall be provided for those in need.

¹²⁸ Case C-34/13 *Kušionová v SMART Capital a.s.* paras 63–65.

¹²⁹ Anthi Beka points out in ‘The Protection of the Primary Residence of Mortgage Debtors: Embedding a “Basic Needs” Principle in Mortgage Repossession Proceedings’ in Luca Ratti (ed) *Embedding the Principles of Life Time Contracts* (The Hague, Eleven Publishing 2018), that the MCD also provides a link in European legislation between credit default, indebtedness and the family home. Of course, the proposed Directive on credit servicers, credit purchasers and the recovery of collateral Com(2018)135 final 2018/0063(COD), which advances the use of extra judicial enforcement of collateral default, proposes that ‘Even for business borrowers, the main residence of a business owner will be excluded from the scope, based on social considerations.’ Thus, the development of three EU legislative areas are viewing contracts relating to home loans as a special type of consumer contract subject to different considerations than other loans.

¹³⁰ See <https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet_en.pdf>.

2. Vulnerable people have the right to appropriate assistance and protection against forced eviction.
3. Adequate shelter.

Abbe Pierre Foundation and FEANTSA have welcomed the European Pillar of Social Rights as giving ‘hope of a positive change in relation to social rights in Europe’.¹³¹

This provision makes use of Article 34.3 of the Charter of Fundamental Rights of the European Union which recognises the right to social and housing assistance to ensure a decent existence for all those who lack sufficient resources.

Although the Commission’s initiative was welcomed, a point of concern was that of the legal nature of the principles. The principles and rights enshrined in the Pillar are not directly enforceable and non-binding. They need to be translated into concerted action and legislation. In the case of principle 19, Member States are invited to adopt measures to support universal access to accommodation.

The Secretary General of the Council of Europe believes that the Pillar is an opportunity. However, he expressed concerns that ‘while the standard-setting systems of the European Union and Council of Europe constitute a comprehensive and structured whole, the persisting inconsistencies between them could jeopardise effective enforcement of the rights that they guarantee.’ Many European stakeholders believe that the provisions of the European Social Charter should be formally incorporated into the European Pillar of Social Rights as a common benchmark.

Indeed, the proclamation states that: ‘nothing in the European Pillar of Social Rights shall be interpreted as restricting or adversely affecting rights and principles as recognised, in their respective fields of application, by Union law or international law and by international agreements to which the Union or all the Member States are party, including the European Social Charter signed at Turin on 18 October 1961 (...)’.¹³²

Housing Europe has pointed out that neither the Pillar nor the associated social scoreboard makes an express reference to the right to housing. Thus, the EU Commission will not supervise housing affordability, the number of people in housing need or, generally speaking, the policies

¹³¹ FEANTSA/Abbe Pierre Foundation, *Third Overview of Housing Exclusion in Europe 2018* (FEANTSA 2018) 91/92.

¹³² Ibid.

adopted to comply with the provisions enshrined in the Pillar.¹³³ Yet, the Pillar adds to the *acquis* of housing rights instruments in Europe.

4.5 Constitutional and Legislative Protection from Evictions

Among the EU Member States, some eleven countries, all of them with civil law systems, make specific reference to housing in their constitutions.¹³⁴ The ‘inviolability’ of the home is specifically protected in the constitutions of most EU Member States.¹³⁵ This is often juxtaposed with the universally recognized right to property, enabling expropriation and regulation of property rights for public purposes, with compensation required in some cases.¹³⁶ Article 30 of the Polish Constitution, on the obligation to respect and protect the inherent and inalienable dignity of the person, was invoked by the Polish Constitutional Court in 2001 to rule that, ‘evictions to nowhere’ (in the absence of alternative temporary housing) were unconstitutional.¹³⁷ Nevertheless, express terms on housing rights in constitutions or laws are not always an indicator of stronger protection from eviction.

Public policy measures enable a court to suspend, postpone or restrict the execution of eviction orders for specified purposes. Winter bans on evictions exist in Austria, the Brussels-Capital and Wallonia Regions of

¹³³ Housing Europe, *Housing in the European Pillar of Social Rights: A Critical Review* (Housing Europe, April 2017) <<http://www.housingeurope.eu/resource-930/housing-in-the-european-pillar-of-social-rights>>.

¹³⁴ For the essential differences between and development of civil and common law systems in property law in Europe see S Van Erp, ‘From “classical” to modern European property law’ in *Essays in Honour of Konstantinos D Kerameus/Festschrift für Konstantinos D Kerameus* Vol I (1517–1533) (Athens/Brussels, Ant. A Sakkoulas/Bruylant) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1372166>.

¹³⁵ While the Constitution of the Czech Republic, the Constitution of the Fifth Republic of France (1958), and the Constitution of Sweden do not specifically refer to this, the protections in Arts 6 and 8 ECHR apply in these countries, providing similar protection. The Human Rights Act 1998 incorporates these ECHR provisions into UK law, adding the requirement for the principles of fair procedures, due process and the rule of law to be taken into account in evictions, as well as court rules, since there is no single written constitutional document.

¹³⁶ In Poland, there is also a constitutional commitment to protecting the rights of tenants; see Art 75 Constitution of Poland 1997.

¹³⁷ Polish Constitutional Court Decision of 4 April 2001, K 11/00, OTK-ZU [Official Journal of the Constitutional Court; Polish: *Orzecznictwo Trybunału Konstytucyjnego. Zbiór Urzędowy*] 2001, No 3, item 54.

Belgium, France, Hungary and Poland. There have been moratoria (either legal or *de facto*, with broader or narrower scope) on actual evictions in Cyprus, Greece, Ireland, Italy, Spain (for vulnerable households until 2017) and Portugal. In Italy, a state fund operates to permit the temporary suspension of mortgage repayments where the debtor fulfils certain requirements. The suspension of ‘evictions to nowhere’ in Poland and Slovakia protects those with children, pregnant women, larger families, people with disabilities, old people and other vulnerable people. In some cases, such as in Spain, Lithuania and Poland, courts have linked evictions to the right to respect for home and family life under Article 8 ECHR, European Union law and the human rights of children.

In Belgium, Article 23 of the 1994 Constitution declares that everyone has the right to a decent living, which includes the right to decent housing. This can be used to contest the appropriateness of an eviction, as well as giving direction to the interpretation of legal norms.¹³⁸ No one can be evicted without a court order except in the case of a municipal or regional administration for an uninhabited dwelling. The right to housing is endorsed in the Housing Codes of all three Regions (Brussels-Capital, Walloon, Flanders) in Belgium.

Marc Uhry recounts that in France, housing is not a constitutional right, although the Supreme Court held in 1995 that the right to housing was a constitutional goal. Legislation in 1989, 1990, 2007,¹³⁹ 2009, 2013 and 2014 refer to housing rights in the various tenures and in relation to measures addressing homelessness. German law does not guarantee an individually enforceable right to housing, although states such as Bremen, Bavaria and Berlin have regulations on housing rights which

¹³⁸ See N Moons, *The Right to Housing in Law and Society* (Abingdon, Routledge 2018); N Bernard, ‘L’article 23 de la Constitution: pas une botte secrète, mais pas non plus dénué de toute effectivité (judiciaire)’ (2015) 23 *JLMB* 1080–1089.

¹³⁹ Droit au logement opposable (DALO) 2007 [Enforceable Right to Housing Act], Art 1, states: ‘the right to decent and independent housing is ensured by the State to any person residing on French territory who cannot access it by his own means or keep it’. This provides for a two-tier remedial mechanism with local mediation committees, and an administrative court. See K Olds, ‘The role of courts in making the right to housing a reality throughout Europe: lessons from France and the Netherlands’ (2010) 5 (21) *Wisconsin International Law Journal* 170–199. The Prefect must secure housing or pay a penalty as determined by a court for as long as the person has not been rehoused.

enable local authorities to develop housing policies.¹⁴⁰ There are obligations on municipalities to provide temporary accommodation for people who would otherwise be homeless, as involuntary homelessness is considered a serious threat to public safety. Occasionally, to prevent homelessness, the authorities may require that a tenant remains in situ after a lawful termination of tenancy, with rent support provided.

Article 12 of the Constitution of Hungary 2012 states that: ‘Hungary shall strive to ensure decent housing conditions and access to public services for everyone.’ There is an obligation on the state and local municipalities to ensure accommodation for persons without a dwelling, although it is illegal to use a public space as a habitual dwelling. In Italy, in 1988 the Constitutional Court recognized rights to housing as a consequence of the mandatory duties of social solidarity in Article 2 of the Constitution, and also Article 3 dealing with equality. Indeed, this is a right with horizontal effects among private parties. On the other hand, the suspension of eviction orders in densely populated municipalities was held to be in breach of European Convention on Human Rights (ECHR) property rights guarantees, although such moratoria can be used in areas of housing stress.¹⁴¹ There is no fundamental right to housing in the Irish Constitution, although there is a right to protection of the inviolability of the home, in line with almost all European countries. Legislation permits local authorities to provide social housing, and social welfare supports are provided by government and voluntary agencies.

In Poland, as Witold Borysiak describes, the Constitution guarantees the inviolability of human dignity, as well as obliging public authorities to pursue policies to combat homelessness and grant statutory protection to tenants. A combination of the Act on Tenants Rights and Municipal Housing Stock 2001, together with Article 146 of the Code of Civil Procedure, and the Act on Social Assistance 2004, creates a duty to provide a place to sleep in a shelter to every evicted person. Constitutional Court decisions have led to the principle of ‘no evictions to nowhere’ as the combination of constitutional, statute and human rights

¹⁴⁰ Constitution of the Free Hanseatic City of Bremen (1947). Art 14 (I) states that: ‘Every citizen of the *Hansestadt Bremen* has the right to an adequate dwelling. It is a duty of the state and the municipalities to facilitate the realisation of this right.’

¹⁴¹ See *Spadea and Scalabrio v Italy* App no 12868/87 (Chamber) Strasbourg, 28 September 1995; *Immobiliare Saffi v Italia*, 28 July 1999, no 22774/93; *Stornelli and Sacchi v Italia*, 28 July 2005, no 68706/01; *Cuccaro Granatelli v Italia*, 8 December 2005, no 19830/03.

protections are applied.¹⁴² Indeed, the courts have ordered that social housing be made available in a significant number of cases. Courts, in 2010, established the right of a person entitled to such social housing to claim compensation from a local authority where it was not provided. The Polish Ombudsman has established that it is not possible to evict a person where the court has made such an order unless temporary accommodation at least is provided. The Polish Constitutional Court applies the approach that an eviction without adequate alternative housing violates Article 8 ECHR, which, combined with the Constitution, requires minimum safeguards in relation to housing rights. Case law in 2013 established that this also applies to social housing evictions. In Poland, illegal eviction is punishable under Article 191 of the Criminal Code and 2065 such proceedings were initiated in 2015, with convictions in 1551 cases, which involved a fine or suspended jail sentence.

Although Article 36 of the Constitution of the Republic of Slovenia guarantees the inviolability of the dwelling, there is no fundamental right to housing per se. Legislation from 2003 protects tenants from eviction for rent arrears where they are faced with extraordinary circumstances, such as death in the family, illness or unemployment.

In Spain, the right to housing is not a fundamental right but is considered a programmatic principle which guides legislation and the courts. The Spanish Supreme Court has defined this right as a fundamental right of freedom, which includes the sanctity of the home and promotes the free development of the personality. Judicial activism has led to many new interpretations on the extent and nature of housing rights. This, combined with an increasing number of CJEU judgments on consumer law and human rights, as well as ECtHR rulings on the eviction of squatters, and United Nations reports, means that legal development in the area of evictions in Spain is the most active in Europe. The Order of the Court of First Instance No 39 of Madrid 6/3/2013, suspended the eviction (by the Municipal Housing Company of Madrid) of a tenant with three minor children on the basis of both the Convention on the Rights of the Child of 20 November 1989, and the relationship between the right to housing and other constitutional rights enshrined in the Spanish Constitution such as the right to personal and family privacy (Article 18.1), the freedom of residence (Article 19), the

¹⁴² Polish Constitutional Court Decision of 4 April 2001, K 11/00, OTK-ZU [Official Journal of the Constitutional Court; Polish: *Orzecznictwo Trybunału Konstytucyjnego. Zbiór Urzędowy*] 2001, No 3, item 54.

right to education (Article 27) and the right to health (Article 45). Moreover, the Court, taking as a starting point the case *AMB v Spain*,¹⁴³ required the local authority to take concrete measures to guarantee the right of the children to adequate housing. The court made reference to Article 8 ECHR and other international treaties concerning the protection of children that have been ratified by Spain.¹⁴⁴ More recently, the decision of the Spanish Supreme Court 23 December 2017, held that the Court must consider the Convention on the Rights of the Child where the local authority were seeking possession of housing, even if illegally occupied, where minors may be affected by the execution of the eviction order.¹⁴⁵

The Constitution of the Netherlands does not contain a right to housing, but courts draw on Article 8 ECHR as well as on Article 12 of the Constitution on the inviolability of the home. Article 8 ECHR requires that any interference with the respect for home, such as an eviction, must be approved by a court, and the principle of proportionality applied. Michel Vols points out that although these substantive and procedural protections can lead to a dismissal of the action, or a suspension of the order of eviction, this does not happen very often, and most eviction actions are approved by courts.

In the UK, as Nicholas Pleace and Caroline Hunter specify, there is no written constitution, and no universal right to housing. However, legislation provides something quite close to this, with statutory obligations on local authorities to provide temporary accommodation for specific categories of homeless people who are in priority need, are not intentionally homeless, and who have a local connection. Scottish local authorities have statutory obligations to provide permanent accommodation to a wider group of homeless people.

4.6 Law Relating to Owner-occupation

There is a significant difference in the process of possession and eviction in mortgage arrears between the civil law and common law countries (the latter being Ireland and the UK). Civil law systems usually enable a

¹⁴³ *AMB v Spain*, App No 77842/12 (ECHR, 20 February 2014).

¹⁴⁴ According to Sergio Nasarre-Aznar, “‘Robinhoodian’ courts’ decisions on mortgage law in Spain” (2015) 7 (2) *International Journal of Law in the Built Environment* 136.

¹⁴⁵ ECLI: ECLI:ES:TS: 2017:4211.

lender, after a period of arrears,¹⁴⁶ to engage the legal system, a notary or a bailiff, who then arranges for a forced sale (where no agreement has been reached with the debtor). The new purchaser then uses the resources of the legal system to evict the former owner. There are various discretions and appeals within the court process, such as 24-month suspension in France to enable a payment plan.¹⁴⁷ In Germany, where a court responsible for the execution of the eviction finds that the eviction entails ‘a hardship that due to very special circumstances is immoral (*contra bonos*)’, it is entitled to reverse, prohibit or temporarily stay the enforcement of the eviction.¹⁴⁸ Since 2016 and the transposition of the Mortgage Credit Directive, under Dutch law, the mortgagee is no longer able to sell the mortgaged property in default without a court order, although there were some 4500 forced sales by the National Mortgage Guarantee Scheme (NHGS) in 2015. In Spain, enforcement of the security on a mortgage involves a civil procedure, with the possibility of a forced auction. The case of *Aziz*¹⁴⁹ challenged the compatibility of the procedure with the requirement of the effectiveness of EU consumer law, which regards mortgages as consumer contracts.

In Ireland, legislation, the mortgage contract and principles of equity enable a lender under a defaulted mortgage to acquire possession of the property, prior to sale. However, legislation of 2009 distinguishes between ‘housing loans’ and other mortgages, and gives more discretion to courts to adjourn or suspend cases where there is a possibility of

¹⁴⁶ After three months’ arrears in Belgium and Spain; 30–180 days’ arrears in Italy, but only after seven occasions. In Italy, the forced sale may take up to three years after proceedings are initiated and generally the process is slower, which encourages lenders to seek more conciliatory approaches, and therefore finding agreement with the debtor, which avoids eviction, is more likely. In Germany, the highest bid in the forced auction must exceed 50 per cent of the estimated value.

¹⁴⁷ The Code of Civil Procedure provides that in cases of sale as a result of mortgage debt, the contract can oblige the new owner to allow the debtor to remain in occupation. The Overindebtedness Commission (*Commission de surendettement*) can suspend an enforcement procedure for two years.

¹⁴⁸ Art 765a (1) ZPO. Serious illness that may deteriorate owing to the execution of the eviction is one of the circumstances where this provision may be applied. Consequently, the eviction may either be prohibited altogether, or it may be carried out when the illness is controlled through medication.

¹⁴⁹ See Case C-415/11 *Mohamed Aziz v Caixa d’Estalvis de Catalunya*; Case C-280/13 *Sánchez Morcillo and Abril García* [2014], ECLI:EU:C:2014:2099; Cases C-482/13, C-484/13, C-485/13; Case C-539/14 *Sánchez Morcillo and Abril García* [2015]; Case C-8/14 *BBVA* [2015]; Case C-49/14 *Finanmadrid EFC* [2016]; Case C-421/14 *Banco Primus* [2017].

repayment. The ‘equity of redemption’ and the legislation in place require that the courts firstly grant an order for possession. This is followed by a sale (with obligations on the mortgagee to get the best price). While the mortgagor is liable for any shortfall, they can also receive any surplus after all debts are paid from the sale price.¹⁵⁰ There are few defences to possession in mortgage arrears cases, and failure to respond to the initial proceedings quickly can result in a summary judgment of eviction.¹⁵¹ However, most cases are treated sympathetically by judges and registrars, who adjourn proceedings to enable an arrangement to be made. United Kingdom property legislation since 1925 enables a mortgagee to take possession of a property where there are mortgage arrears, although in practice, it is necessary to obtain vacant possession before sale, unlike in most EU civil law systems. Legislation of 1970 in England and Wales gives powers to courts to adjourn or suspend cases.

4.7 Law Relating to Private Renting

The laws on private renting vary considerably across European countries and procedural protections differ. Generally, the procedure is that after a period of arrears or some other breach, the landlord will issue a legal claim for possession and the court will have some discretion to order, suspend or enforce that order. However, the UK is unique in that assured shorthold tenancies give an automatic right to possession for the landlord, after either the prescribed six- or twelve-month tenancy. There is an accelerated procedure in England and Wales which does not require a court hearing. Similar legislation was introduced in the Netherlands in 2016, although Michel Vols points out that Dutch courts continue to carry out proportionality assessments in line with Article 8 ECHR.¹⁵²

Protections for tenants at risk of eviction vary, including landlords’ obligations to inform housing benefits services, and, as Marc Uhry points out, the Prevention of Eviction Commission (CCAPEX) has played a

¹⁵⁰ Unlike civil law countries, Ireland, with its common law system, does not use the term foreclosure, although it is widely used in ECB, EBA and European Commission literature. Foreclosure was abolished in Irish law through legislation in 2009, although this does not change the rights of mortgagees to acquire rights of possession and sale in default.

¹⁵¹ SI No 171 of 2016, Circuit Court Rules (Actions for Possession, Sale and Well-Charging Relief) 2016.

¹⁵² Similar legislation was introduced in Spain in 2013, providing for short contracts, limited security of tenure and market rents.

significant role in its interventions to avoid evictions in France.¹⁵³ In Germany, the law on private renting is regulated by the German Civil Code (*Bürgerliches Gesetzbuch* – BGB),¹⁵⁴ and tenancies can be terminated only on specific grounds unless it is a fixed-term tenancy, but tenants can defend the action on grounds of hardship, or seek an extension of occupancy of up to one year.

There are few protections for tenants where an unregulated private market persists, and this applies in Hungary, where illegal or unauthorized evictions are common. In Italy, tenancy laws of 1978 and 1998 provide protection to tenants, enabling late payment of arrears and suspending the eviction order for up to 180 days in densely populated areas (as identified by the government).

In Ireland, the law on evictions from private rented dwellings is contained in legislation dating from 2004 and requires statutory periods of notice and allows an appeal to the Residential Tenancies Board (RTB) by a tenant (or former tenants who have been illegally evicted). Where a tenant does not leave after a notice from the landlord or an order from the RTB, it is necessary to obtain a court order to enforce the eviction. There are limited grounds for eviction, although sale of the property is one of these. There is a three-step process for evictions for rent arrears. Most landlords have one or two properties, and in some cases where landlords have defaulted on mortgages, receivers are appointed by lenders who then evict tenants prior to sale, one of the main causes of family homelessness in Ireland.

4.8 Law Relating to Social Renting

In most countries, evictions from social housing are rare and take place only when all other supports and efforts have been exhausted. However, the exceptions are the UK and the Netherlands. In the UK, the structure of social housing provisions has changed, and many housing associations use tenancies comparable to the private sector, including ‘probationary’ and ‘flexible’ tenancies. Nicholas Pleace and Caroline Hunter show that the UK courts have interpreted the obligations under Article 8 ECHR to consider the proportionality of any possession order in a somewhat

¹⁵³ Tenants can request extension of time of up to three years before vacating after an order is granted.

¹⁵⁴ German Civil Code (*Bürgerliches Gesetzbuch* – BGB), in the version promulgated on 2 January 2002, I Federal Law Gazette [*Bundesgesetzblatt*], 42, 2909; 2003 I, 738, last amended by Art 4 para 5 of the Act of 1 October (2013), I Federal Law Gazette, 3719.

narrow way, resisting the notion that this created any ‘horizontal’ rights between a tenant and a landlord, except in state tenancies. Michel Vols indicates that under social housing eviction litigation in the Netherlands, requiring court assessment of proportionality, tenants do not successfully defend these actions. In Ireland, a small portion of social housing tenancies with approved housing bodies has been merged with the regulatory system for private rented tenancies. In Germany, the definition of social housing includes municipal housing and public–private arrangements involving development subsidies for cost-based tenancies of fifteen years’ duration to low-income households; thus, the law applying to private tenancies applies, as in Poland.

4.9 Law Relating to Unauthorized Occupancy

Generally, the law relating to evictions from unauthorized occupancy has two elements. Firstly, it can involve evictions from personally owned property of unauthorized occupants. A mix of property law and criminal law operates in all countries and involves the removal of the occupants, usually, but not always, after a court hearing. In the second instance, large settlements of people, often Roma, Sinti, Travellers or migrants, in unauthorized encampments in districts are mostly tolerated by state authorities. However, there are instances of evictions of these groups and indeed, such evictions have been examined for compatibility with the ECHR.¹⁵⁵

Inviolability of the dwelling protects against arbitrary evictions by the property owner, but where squatters are not identifiable a speedy eviction process is usually authorized by a court of first instance. The laws on ‘no eviction to nowhere’ in Poland do not apply to squatters. In Italy, where almost 5 per cent of public buildings are squatted, particularly in southern Italian cities, legislation dating from 2014 seeks to prevent unauthorized occupiers from using public services such as energy or telephone. However, the eviction process is lengthy and there are few evictions, which usually requires police intervention.

Squatting is considered a criminal law issue in Spain, although social movements, such as PAH,¹⁵⁶ have been encouraging people in mortgage arrears to squat empty bank-owned properties, as a means of negotiation. There are also some 10 000 temporary dwellings occupied by Roma. Indeed, in Italy, Spain and Slovenia, there are unauthorized settlements of

¹⁵⁵ *Winterstein v France* App No 27013/07 (ECHR, 17 October 2013).

¹⁵⁶ Plataforma de Afectados por la Hipoteca (Platform for People Affected by Mortgages).

Roma, Sinti or Caminanti, with some camps of 40 000 people or more, which are tolerated by the public authorities.

4.10 Law Relating to Temporary Dispossession – Domestic Violence, Urban Development and Other Issues

In all eleven countries examined, legislation provides that abusive partners can be excluded from the dwelling. The situation in cases of divorce or relationship breakdown is more protracted, but generally the party with custody of any children retains the right to occupancy of the dwelling, with the other party being excluded. Sergio Nasarre-Aznar and Rosa Maria Garcia-Teruel estimate that there are almost 100 000 male partners in divorce cases seeking new accommodation annually in Spain.

The temporary closures of buildings by public authorities on grounds of breach of building codes, nuisance or crime has been highlighted by Michel Vols as significant in the Netherlands. Surprisingly, these grounds are used to close down 200 buildings per year and to evict those involved in drug-related crime or cannabis cultivation. In Spain, the declaration of ruin of buildings by the state administration can result in occupiers being forced to leave, while recorded evictions from unauthorized occupancies range between 2500 and 3000 per annum, according to Sergio Nasarre-Aznar and Rosa Maria Garcia-Teruel.

In Slovenia, as well as in Poland and Hungary, those living in denationalized dwellings face an increased risk of eviction with title restored to the heirs of former owners who wish to convert or sell the property. Changes in tenancy protection and increases in rents make these occupancies less secure than other tenancies and this has been held in some cases to amount to a breach of the European Social Charter housing rights protection.¹⁵⁷

4.11 Soft Law/Codes and their Effectiveness

There are situations where Codes of Guidance or Conduct in the procedures leading to eviction can have an impact. In relation to mortgage arrears, there are Codes of Conduct or Pre-action Protocols in Ireland, Hungary and the UK, which, although not legally binding, offer some procedural protections against arbitrary evictions. Protocols between landlords, municipal administrations, NGOs and consumer or

¹⁵⁷ European Committee of Social Rights (ECSR), *European Federation of National Organisations Working with the Homeless (FEANTSA) v Slovenia* CC53/2008, Complaint No 53/2007, 8 September 2008.

support services in France, Germany, Italy¹⁵⁸ and the Netherlands,¹⁵⁹ can reduce or effectively suspend evictions.

5. SUBSTANTIVE CONTEXT

In almost all countries in the study, the data available on evictions is limited and fragmented over the period 2010 to 2015/2016. While states collate court statistics, very often possession cases do not distinguish between property types or tenures and whether the property is inhabited and by whom. The ECB is now engaged in monitoring the levels of non-performing loans in EU Member States, and this involves direct supervision of significant lenders in each Member State in the euro area.¹⁶⁰ However, even this data does not distinguish between loans on properties which are used as homes, and those which are not.

5.1 Mortgage-related Evictions

Good data is available for some regions of EU Member States, or various dispute-resolution systems, and it is possible to generate some estimation of the levels of evictions in a number of countries, for some tenures. However, while some records exist for court proceedings, often there is no data available on the pre-court proceedings (the point at which many leave their accommodation involuntarily). For instance, in Ireland, some 40 per cent of instigated mortgage arrears actions result in possession, and this occurs in 70 per cent of cases where the creditor is an investment or ‘vulture’ fund.¹⁶¹ Indebted borrowers are actually more likely to voluntarily surrender or abandon their homes before the conclusion of court proceedings than be forcibly repossessed.¹⁶² Of the dwellings

¹⁵⁸ Between March 2015 and December 2016, 11 338 families obtained a twelve-month suspension <<https://www.abi.it/Pagine/news/Raggiunta-intesa-su-nuova-moratoria-famiglie.aspx>>.

¹⁵⁹ Between 2004 and 2014, the Dutch government and the four biggest cities implemented an action plan to address homelessness and reduce the number of evictions, which was effective in reducing evictions by 22 per cent. There are inter-agency agreements in the main cities to prevent evictions.

¹⁶⁰ European Central Bank, *Stocktake of National Practices and Legal Frameworks Related to NPLs* (Frankfurt, ECB 2016 and 2017).

¹⁶¹ Overall, in Ireland, court proceedings for mortgage possession rose from 300 in 2010 to 1300 in 2015, and then fell to 1000 in 2016.

¹⁶² In Ireland, the government and the banks are strongly resisting debt write-downs in favour of a policy of mortgage forbearance. Forbearance involves

repossessed by lenders between 2009 and 2016, some 66 per cent were repossessed by lenders after voluntary surrender or abandonment.¹⁶³

In France, the numbers of evictions instigated rose from 155 874 in 2010 to 168 775 in 2015, with over 90 per cent the result of arrears.¹⁶⁴ Some 75 per cent of cases involved a court decision. A police request for assistance in the execution of the eviction order was requested in some 35 per cent of the decisions, and effective execution by police in 30 per cent of requests.

While there are no universal official statistics in Germany, data was obtained from juridical reports on enforced auctions. These show some 68 723 cases of real estate repossessions in 2010, and a reduction to 42 670 in 2015. In terms of evictions from private rental(s), while there is no official national data, research in Saxony indicated that there were 3037 cases in 2010, rising to 4762 in 2015. There are some 10 000 eviction cases each year in Berlin, of which 50–70 per cent are executed. Research indicates that approximately 20 per cent are the result of divorce or separation.

In Hungary, there is no overall data collected on the extent of evictions, but some information exists for parts of the country. There were approximately 40 000 procedures for possession of immovable property (which includes all buildings) instigated in 2013, but this resulted in some 2500 housing units being designated for sale in the process, and 517 ended with an eviction. In 2016, there were 3400

restructuring a debt's contractual terms to ease a debtor's repayment schedule. In practice, forbearance has been a strategy of 'extend and pretend' whereby lenders have been slow to offer restructurings or have relied on temporary interventions that impose minimal costs upon them. Forbearance benefited lenders by negating the pressure to enforce possession of devalued property, while ensuring borrowers remain solely responsible for outstanding debts. See R Waldron and D Redmond, '(For)Bearing the costs of reckless lending: examining the response to the Irish mortgage crisis' (2016) 16 (3) *International Journal of Housing Policy* 267–292.

¹⁶³ Department of Finance/Central Bank (2016) 33. In Ireland, data is available on possession orders through the Courts Service of Ireland and the Central Bank of Ireland, and from the Residential Tenancies Board in relation to the private rented sector. However, there is no exact data on the numbers of evictions from owner-occupied dwellings as a result of mortgage enforcement, although observations suggest that the number is very low, and the data from the Courts Service does not accord with data prepared by the Central Bank of Ireland.

¹⁶⁴ This data includes evictions from squats and slums but may be an underestimate in those situations.

housing units made for sale, and 1734 evictions. Political initiatives led to a situation where lenders agreed to cap the number of evictions arising from defaults on foreign exchange mortgages. Based on their research, Nóra Teller, Eszter Somogyi and Nóra Tosics suggest that in Hungary, some 3000 auctions take place each year in relation to real estate, resulting in about 300 households being evicted as a result of actions on debt.

The Polish Ministry of Justice collects data on the number of evictions. Although the Ministry does not distinguish between the different types of housing, it records the numbers of cases in the District Courts and the numbers of bailiffs' actions. The data shows some 34 500 cases submitted in 2010, and 32 863 cases resolved, compared to 26 286 cases submitted in 2015, and 27 000 resolved.¹⁶⁵ Of these cases, the obligation to provide social housing was upheld in 50 per cent of cases. The number of bailiffs' actions was 6569 in 2010, of which two-thirds required the provision of social housing to proceed. The numbers increased to almost 9000 in 2015.

In Belgium, mortgage arrears rarely lead to evictions, as alternative solutions are pursued. The figures indicated that just over 1 per cent of mortgage accounts are in arrears.

There have been significant increases in mortgage-related evictions in Italy, concurrent with the economic crisis, with one report by a banking federation showing increases of 160 per cent between 2008 and 2014, and a further increase of 18 per cent in 2015. In Slovenia, Ministry of Justice data covers reposessions of all immovable property, both residential and commercial. Maša Filipovič Hrast suggests that the figure is less than 300 per annum, and the level of evictions from mortgaged property is quite low.

While no comprehensive data is collated by Spanish state agencies, research by Sergio Nasarre-Aznar and Rosa Maria Garcia-Teruel shows that the number of evictions was approximately 40 000 per annum between 2010 and 2013, and 30 000 per annum for 2014 and 2015. In the Netherlands, mortgage arrears are the main reason for owner-occupier evictions, but there is no central register of systematically collected data on these evictions. Figures from the NHGS reveal that forced sales of mortgaged properties rose from 1335 in 2010 to 4477 in 2015. Overall, according to Michel Vols, it is estimated that there are also 7500 pre-court evictions from mortgaged properties. In the UK, pre-court actions are not recorded and court data on mortgage cases is collated by the Ministry of Justice. This shows that in England and Wales, claims for

¹⁶⁵ Cases resolved may date from earlier years.

possession dropped from 75 000 in 2010 to 20 000 in 2015, while execution of possession orders by bailiffs decreased from 21 000 in 2010 to 2000 in 2015. Available data indicates a two-thirds fall also in the period for Scotland and Northern Ireland.

5.2 Evictions from Private/Social Rented Housing

The data in relation to evictions from private/social rented housing is not universally collated, although studies in some regions, and on types of tenure, have yielded some useful estimates. One major issue identified in the Italian, Hungarian and Slovenian research, was the absence of records in relation to the unofficial private rented sector. In some cases, this can amount to a larger element of housing stock than the regulated sector, and therefore statistics on eviction for rented housing will almost always be a gross underestimate. The exceptions are Belgium, Germany and Ireland, where the sector is somewhat better regulated. In Belgium, some 12 000 eviction procedures are instigated in Flanders annually, and about one in three instigated procedures results in eviction for rent arrears. When behavioural problems are the issue, tenants are evicted in six out of ten cases. A combination of both rent arrears and behavioural problems leads to 80 per cent of cases resulting in eviction.

In Hungary, less than a dozen households are officially evicted from the private rented sector, although the figure is estimated to be much higher in reality. In relation to social housing, the figure can reach 500 to 1000 per year, according to the Hungarian experts.

Elena Bargelli and Giulia Donadio have found that evictions from private rented accommodation in Italy are increasing, though not dramatically, and in any case, there is a significant unofficial market. In the rented sector, between 2008 and 2014 there was an increase of 50 per cent. In the private rented sector, eviction notices for non-payment of rent doubled between 2007 and 2013. Evictions from social housing are not widespread in Italy.

The trend in evictions from private sector tenancies in Ireland as published by the RTB involved a growth in eviction-related cases from 580 in 2010 to 3000 in 2015 – a five-fold increase. Padraic Kenna shows that evictions from social housing remained at relatively low levels.

For Slovenia, a report on social housing from Ljubljana revealed very small numbers of evictions, between 10 and 30 per annum. However, a study in Ljubljana dating from 2013 and described by Maša Filipovič Hrast, found that 11 per cent of private landlords wished to rent without a contract, thus avoiding inclusion in official data. In Spain, the estimates are 23 000 in 2010 to 36 000 in 2015, but again the data is not universal,

and includes some other buildings and mainly relates to private and social rented housing. Comprehensive data is not available in the Netherlands either. However, research by AEDES (Dutch organization of housing associations), indicates 19 000 to 23 000 eviction judgments per annum, with 25–30 per cent of these executed by bailiffs. The actual number of evicted tenants is higher, as a further 1700 to 2800 tenants left before the execution of the eviction order according to Michel Vols.

In the UK, eviction claims by private and social landlords in England increased between 2010 and 2015, although actual evictions were less common. Data from the Ministry of Justice shows that claims issued rose from 135 000 in 2010 to 154 000, while the use of the accelerated procedure rose from 22 600 cases in 2010 to 38 400 in the period. Actual evictions from this sector increased from 26 700 in 2010 to 41 500 in the period. In Scotland, where data includes evictions from both private and social rented housing, the figures remain broadly similar over the period.

5.3 Profile of Those Evicted

Many countries do not collate data on the profile of those evicted, although local and regional studies have proven very valuable in creating an impression of the key profiles. Research by Jana Verstraete, Pascal De Decker and Diederik Vermeir suggest that, in Belgium, among evicted tenants, some 50 per cent are men and 21 per cent are couples composed of a man and a woman. Some 40 per cent were single persons with children. One study in the city of Namur in 2010 showed that almost all those evicted were dependent on social welfare and households with children were involved in 50 per cent of cases. In Germany, research in Rhine Westphalia in 2012 showed that single persons without children made up 57 per cent of those evicted, while couples without children amounted to 9.6 per cent, and couples with children to 16.7 per cent. Single parents made up 12 per cent of those evicted, and people with a migration background constituted 22 per cent of the total. There is no research on this issue in Ireland, Italy, Poland, Slovenia, Spain or the UK.

5.4 Risk Factors Identified Leading to Evictions

In all the chapters of this book, compiled by the experts across the eleven countries, there is a clear pattern in the analysis of the risk factors for evictions. Unemployment, relationship breakdown, loss of a family member or illness are the key determinants of risk of eviction. This leads

to mortgage or rent arrears, or other breaches of the housing arrangements.¹⁶⁶ The sudden drop in income following unemployment often triggers mortgage or rent arrears, which may be attenuated by other debt commitments claiming a higher priority. Other factors mentioned include substance abuse, and, for mortgage-related evictions, Christoph U Schmid and Sofija Nikolic identify incorrect estimation of financial capacity of borrowers and underestimation of all costs as the main risk factors. Some researchers, including Nóra Teller, Eszter Somogyi and Nóra Tosics, identified energy and utility costs as risk factors leading to eviction, as well as situations where a guarantee has been offered on another person's loan, which becomes non-performing. They also highlight the situation of foreign exchange loans with increased repayments due to devaluation or interest rate increases. For Elena Bargelli and Giulia Donadio, economic circumstances in Italy were observed as the main risk factor.

In Ireland, there are clear factors associated with risk of eviction from private rented housing, such as low income, insecurity of tenure and relationship breakdown. For mortgage debtors, Central Bank of Ireland studies have shown that low income (or unemployment) and relationship breakdown are the main risk factors, in addition to overindebtedness. Witold Borysiak suggests that in Poland, unemployment, poverty, debt, misuse of alcohol and release from prison are viewed as key risk factors. Another risk factor, which was also highlighted for Slovenia, is the reprivatization of property appropriated by the state during the socialist period, where the new owners are converting the property for re-use. Michel Vols suggests that in the Netherlands, rent arrears are the main reason for evictions, amounting to over 80 per cent of cases, with nuisance, illegal sub-letting and drugs at approximately 5 per cent each. In social housing evictions, landlords execute eviction orders for arrears only in 30 per cent of cases; however, they do so in over 90 per cent of cases involving drugs. Mortgage-related evictions are often the result of relationship breakdown, accounting for 60 per cent in 2015, with unemployment or loss of income accounting for 29 per cent in the same year.

¹⁶⁶ Sarah Nield, 'Secured consumer credit in England' in M Anderson and E Arroyo Amayuelas (eds) *The Impact of the Mortgage Credit Directive in Europe. Contrasting Views from Member States* (Groningen, Europa Law Publishing 2017) Ch 5, 199, points out that 'Changes in macro-economic climate in the labour and property market thus present immediate risk for the mortgage borrower as do higher divorce rates and the instability of the modern family. However, evaluating these risks and the prospect of default present a challenge to economic experts, let alone consumers. A borrower may understand their responsibilities and the risks they face but is unable to do much about them.'

Nicholas Pleace and Caroline Hunter point out that in the UK, risk of eviction is clearly linked to socio-economic position. Job loss, relationship breakdown and loss of income are major risk factors. Although the UK still has a comparatively extensive and relatively generous welfare state system, housing costs are very high relative to incomes. In areas of housing stress, housing costs can be much higher than the level of welfare supports. In the private rented sector, high rents, limited regulation and restricted legal protections for tenants create insecure tenancies and high risk of eviction. In the social rented sector, there is evidence of over-representation of women, lone parents and unemployed people among eviction cases. Problems in the administration of housing benefits can be a significant factor in arrears cases. Research on mortgage possessions also show a strong association between loss of income and arrears, leading to actions for possession.

5.5 Links between Evictions and Homelessness

There are complex links between evictions and homelessness. As the EU Pilot Project Report shows, persons who are evicted seek the assistance of family and friends initially and only when these support networks are inadequate or break down does the household rely on homelessness services. Of course, this pathway may not be linear or consistent, and particularly in the case of those with complex support needs, there may be a recurrent pattern of evictions and homelessness. Research shows that it is only the most vulnerable who become street homeless directly after eviction.¹⁶⁷

The availability of eviction-prevention services, even after a court order has been granted, can have a significant impact in breaking the link between eviction and homelessness. Indeed, supporting those at risk of eviction, even at the earlier stages of the process before court, to remain in their homes can be a critical element in mitigation of homelessness. According to the report of National Coalition of Services Working with the Homeless in Germany (*Bundesarbeitsgemeinschaft Wohnungslosen-hilfe e.V. – BAG W*), in 2014, some 172 000 households were threatened with eviction and approximately 50 per cent availed of preventative measures. Of the 86 000 persons who lost their homes, 40 per cent lost them as a result of the execution of eviction orders, whereas 60 per cent left in the course of, or before, the conclusion of the eviction proceedings. Some 30 per cent had left after receiving a notice to quit.

¹⁶⁷ Kenna et al (n 4).

However, Marc Uhry suggests that in France, there is scant evidence that evictions are leading to homelessness, although homeless people with multiple needs regularly experience eviction. Generally, people with multiple needs, especially those suffering from psychiatric disorders, seem particularly vulnerable to the pathway from arrears to eviction, and consequent homelessness.

Nóra Teller, Eszter Somogyi and Nóra Tosics describe a study in Hungary in 2011 which showed that persons losing their home was the direct cause of their homelessness in 44 per cent of cases. Elena Bargelli and Giulia Donadio suggest that in Italy, the link between evictions and homelessness is considered a 'social bomb', and the highest risk of homelessness is among those with poor social networks, such as immigrants or old people. In Ireland, there are clear links between evictions and homelessness. A doubling of family homelessness between 2014 and 2017 is directly linked with evictions from private rented housing. Sergio Nasarre-Aznar and Rosa Maria Garcia-Teruel point out that in Spain, of the 23 000 homeless people studied in 2012, over 50 per cent had lost their jobs and remained unemployed, while 12 per cent were homeless as a result of eviction. A quarter of homeless people stated that they were homeless because they could not pay their housing costs. However, in the vast majority of cases, those evicted return to their parents' home, as there is a legal obligation in Spanish law to provide for relatives in need, an option not effectively open to immigrants. There is insufficient social housing to rehouse those evicted in Spain.

Nicholas Pleace and Caroline Hunter indicate that in the UK, the end of a time-limited assured shorthold tenancy can be a trigger for homelessness, although the safety net of housing benefits to cover rent, legislation to deal with threatened homelessness and the provision of temporary housing, all mitigate against homelessness in eviction cases. Indeed, in England, some 3.5 million households were provided with temporary or permanent housing as a result of becoming homeless in the period 1979–2015.

Michel Vols highlights research on homeless people in the Netherlands which showed that the three main pathways to homelessness were evictions (38 per cent), relationship problems (35 per cent) and other reasons (28 per cent). Finally, the difficulty of avoiding homelessness through access to new rented housing was emphasized by Jana Verstraete, Pascal De Decker and Diederik Vermeir for Belgium, since, where rents are high, landlords can be selective and may not look favourably upon applicants with a history of eviction.

6. CONCLUSION

Evictions are legally justified on the basis of enforcing property, mortgage, contract or tenancy law, as well as for public and social policy reasons. All EU Member States have a unique blend of constitutional, legislative, human rights, administrative and procedural norms, as well as distinct political/policy approaches to evictions. An array of complex legal, social and procedural anti-eviction and support measures are in place in many countries, but in others there are significant gaps in the protection of housing rights in the context of evictions.¹⁶⁸ The risk factors are the same – a combination of structural, personal and social impacts – and the prevention of eviction can be enhanced through state measures. This book shows that in the various different social, policy, legal and substantive contexts of evictions in eleven selected countries, cross-country comparisons are difficult, and with varying national systems, a clear comparison is not always possible.

Each of the eleven countries has its own pattern and interaction of public policy, law, social inclusion measures, and, indeed, societal structures that impact on the prevalence and nature of evictions. The situation in the UK – with very limited security for tenants – stands out. But the situation generally is one where a clear overall picture can be formed only by assembling available data and reports, which are often limited. Although it is clear that comparative data on evictions in any particular tenure does not universally exist, permitting robust comparisons, there are similar factors that create a propensity for evictions. Poor security of tenure, high housing costs, unemployment or income shock, illness, relationship breakdown or death of a partner, combined with personal difficulties and lack of social or personal support create a high risk of evictions everywhere. The level of legal and social protection determines whether an eviction takes place in these circumstances or not; and whether those evicted become homeless and experience one of ‘life’s tragedies’.

While some examples of innovative legal and human rights development shine out, particularly in Poland and Spain, the analysis in the chapters shows little evidence of systematic application of EU consumer and human rights law across the eleven countries. Witold Borysiak demonstrates that the courts in Poland have developed an advanced jurisprudence in this area, combining constitutional rights to dignity with ECHR rights on home and national legislation to create an innovative

¹⁶⁸ Kenna et al (n 4) 1.

matrix of protection against eviction where alternative accommodation is not made available. In Spain, the EU consumer law cases have established obligations on Spanish courts to carry out own-motion assessments for unfair terms in mortgage possession cases, and to interpret the compatibility of the whole process with respect for the rights of the EU Charter of Fundamental Rights. However, this does not appear to have been followed elsewhere to any great extent. While Germany has a somewhat unique approach to the issue of harm caused by an eviction, in practice this does not lead to any significant legal developments. Equally, this research shows that in the Netherlands and the UK (for social housing only), where the courts comply strictly with the Article 8 ECHR proportionality assessment, in reality the balance between those who own or control property and those being evicted remains generally in favour of those owners or controllers. One area which seems to be undeveloped in any of the jurisdictions is that of the rights of household members who may not be party to the mortgage or the tenancy, such as children or adult dependents. Their rights do not seem to figure in any of the cases and only marginally in policy measures. While most states have policies to protect children from homelessness, the integration of these rights with the right to continue living in an established home seems to be largely relegated to post-eviction protection measures.

Blanket bans or moratoria on mortgage-related possessions are in force in Italy and Spain, although the ECB states that debt-enforcement procedures in Germany, Ireland and Spain are not an obstacle to NPL resolution. However, the ECB suggests that the ‘foreclosure’ procedures are an obstacle in Italy and Slovenia.¹⁶⁹ Many states and regions have winter or night-time bans on evictions.

Developing a European narrative on loss of home must be viewed in the context of the difficulties of creating EU harmonized standards, and the disparate but emerging human rights jurisprudence. However, all eleven countries have adopted a set of common housing rights norms and are adapting these to a greater or lesser extent into the corpus of national law. The obligation on all states which have accepted the ECHR to ensure that any person at risk of losing their home must have the

¹⁶⁹ European Central Bank, *Stocktake of National Practices and Legal Frameworks Related to NPLs* (Frankfurt, ECB 2016) 18. The term ‘non-performing loans’ (NPL) as used by the ECB and EBA includes home loans as part of the overall lending, and do not recognize the fact that actions in relation to realizing the security on a home loan, which involves eviction, raises human rights issues. The word eviction is entirely absent from the reports, guidance and guidelines of the ECB and EBA in relation to non-performing loans.

proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 ECHR provides a sound common protective base.¹⁷⁰ This human rights norm has been clarified further in *Yordanova*,¹⁷¹ which identified that the proportionality issues relate to the effect of an eviction on the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others, and settled and secure place in the community, and the extent of the intrusion into the personal sphere of the applicant being evicted. Since Article 8 ECHR is replicated in Article 7 of the EU Charter of Fundamental Rights, this norm can become part of EU law, and indeed has been so regarded by the CJEU. The MCD, although not yet transposed by all EU Member States, has the potential to create a harmonized and consumer-oriented mortgage market, as well as a more coherent mortgage arrears process across EU Member States. The treatment of mortgages as consumer contracts by the CJEU has the potential to radically improve the rights of home loan borrowers in the EU context. The emerging trend is a closer link between mortgage law, consumer law and human rights, through the nexus between all three areas provided by the Unfair Contract Terms Directive.¹⁷² It is perhaps useful to view mortgage contracts and tenancy contracts more as Life Time Contracts which provide the necessities for living, rather than a purely commercial contract.¹⁷³

As Nogler and Reifner point out:

At the heart of this class of contracts there is an individual human being, with his or her physiological and ethical requirement, in terms of security, belonging, success and self – fulfillment in other words the existential need to be able to enjoy essential goods (*lebenswichtige Güter*), services, labour opportunities and income opportunities. Satisfaction of such needs is normally an essential pre-condition for the pursuit of a happy life, or self-realization and participation.¹⁷⁴

¹⁷⁰ *McCann v United Kingdom*, App No 19009/04, Fourth Section 13 May 2008, §50.

¹⁷¹ *Yordanova and Others v Bulgaria* No 25446/06, 24 September 2012.

¹⁷² Case C-34/13 *Kušionová v SMART Capital a.s.*; H-W Micklitz and N Reich, 'The court and the sleeping beauty: the revival of the Unfair Contract Terms Directive (UCTD)' (2015) 51 *Common Market Law Review* 771–808.

¹⁷³ E Bargelli, 'Exploring interfaces between social long-term contracts and European law through tenancy law' in L Nogler and U Reifner (eds) *Life Time Contracts* (The Hague, Eleven 2014) 627 ff.

¹⁷⁴ See Nogler and Reifner (n 173).

Many of these objectives are already included within human rights instruments in Europe, yet, there seems to be little interaction between countries in the implementation of these human rights norms, good practices or better policies on evictions. There is a great need for a European Open Method of Coordination-type approach, similar to that suggested in relation to rented housing by Christoph Schmid in his book on tenancy law in Europe.¹⁷⁵ This would involve a process similar to the Open Method of Coordination advanced by the European Commission in key areas of social policy, whereby comparative data is collated across Europe and best practices are promoted.¹⁷⁶ However, evictions raise important human rights issues, which go to the core of civilized societies and the mainstreaming of eviction preventative measures with budgetary and policy instruments represents an innovative approach. In this context, the UN report on European Added Value (2018)¹⁷⁷ has set out a set of recommendations on combatting forced evictions and ending homelessness, which should apply to the Multiannual Financial Framework (MFF) of the EU budget from 2020. These are:

- The MFF should explicitly recognize the principle that the EU budget must contribute to the advancement of security of tenure and the right to adequate housing more broadly.

¹⁷⁵ CU Schmid, *Tenancy Law and Housing Policy in Europe* (Cheltenham, Edward Elgar Publishing 2017).

¹⁷⁶ <<http://www.europarl.europa.eu/EPRS/EPRS-AaG-542142-Open-Method-of-Coordination-FINAL.pdf>>.

¹⁷⁷ UN Office of the High Commission for Europe, *European Added Value, The EU Multi-Annual Financial Framework Post-2020. A Tool to Close Human Rights Gaps in Europe?* (Brussels, UN Regional Office for Europe 2018). The report suggests that EU funding in the next cycle should be directly linked to international human rights treaty provisions, as well as the authoritative guidance and recommendations from the UN human rights mechanisms, Council of Europe monitoring bodies, as well as EU bodies. The report also suggests that the EU should fund, directly and independently from Member State intervention, academic institutions, media, and other civil society organizations that are essential for the functioning of democracy, in particular those working on the protection and promotion of human rights. Such funding should be readily available for a range of entities including for grassroots organizations and human rights defenders. Such funding should cover, as appropriate, the variety of activities of civil society organizations, such as service provision, watchdog activities, advocacy, litigation, campaigning, human rights and civic education and awareness-raising. In addition, the EU should review current funding criteria to remove rules barring the use of EU funding for human rights litigation.

- The MFF should support the use of EU funds for actions that advance the implementation of policies for realizing the right to adequate housing.
- The MFF should fund the advancement of alternative accommodation to ensure that evictions do not result in households being rendered homeless or vulnerable to the violation of other human rights.
- The MFF should fund initiatives aimed at overcoming shortages of social housing and advance affordable housing, as well as ending homelessness.

The development and implementation of housing rights norms, on adequate housing and prevention of evictions across Europe compares poorly with the position of national property law, and ECB directions to lenders on non-performing loans, encouraging evictions. There is a major imbalance in the national and European legal and policy architecture around evictions and the position of those who are engaged in advocacy, litigation, campaigning, human rights and awareness-raising on evictions enjoy very little media recognition.

Acknowledgements

Special thanks are due for the valuable support of Christoph U Schmid, University of Bremen, without whose support this book would not have been published, and the dedicated work of Dr Ingrid Cunningham in editing drafts of this book.