

THE NEED FOR STRONGER AWARENESS OF HOUSING RIGHTS IN MALTA

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Abstract

Housing rights have undergone a very significant evolution both under the ECHR as well as under other international statutes such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the European Social Charter. On the contrary, they remain a rather vague concept under the Maltese legal order. The best justification is perhaps offered by Mifsud Bonnici (2003) who suggests that the notion of the right to housing reached Malta at a moment when public opinion was convinced that local administrative structures had already seen effectively to this need. A rapidly changing housing scenario seems, however, to be warranting a stronger rights-based approach capable of ensuring the respect of every individual's right to adequate.

1. Introduction

The notion of housing as a right has hardly taken root in Malta. Although the absence of any formal provision within the domestic legal order which seeks to guarantee adequate housing conditions for those living in Malta is conspicuous, housing matters have constantly been treated with importance, at varying degrees, by successive governments. The figure of up to 62% of owner-occupied households without a mortgage and 5% in social housing (see Figure 1 below) do bear testament to the continued effort of the Maltese government in promoting home ownership amongst the generality of citizens and whilst seeing to the need of the most vulnerable. The picture illustrated by the most recent Census (2011) was, in fact, one of steady equilibrium where up to three-fourths of the Maltese owned their household, 9% rented their properties at significantly below-market rents, 6% relied on the liberalised i.e post-1995 private rented sector and as mentioned above, 5% lived in government-owned units. This state of affairs led government to take a softer approach on housing by, inter alia, halting its home ownership- facilitation schemes as well as the construction of social housing units.

This situation was a lull before the storm. In 2016, Malta recorded the second-highest growth rate in the EU (5%) thus establishing itself as the strongest growing EU Member State in the 2006-2016 period (average growth of 3.7% per annum)¹. The skills-gap present amongst local workers as well as the numerical shortage inevitably attracted a considerable foreign workforce which rose up to 37,000 in 2017 (in 2010 this figure was less than 10,000)² which, in turn, had a drastic effect

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¹ Eurostat, *National Accounts and GDP*. Accessed online on 14 December 2017 on: http://ec.europa.eu/eurostat/statistics-explained/index.php/National_accounts_and_GDP.

² J. Bonnici, "37,000 foreign workers in Malta: a necessary figure to sustain country's economic growth", *The Independent*, 7 November 2017. Accessed online on 14 December 2017 on: <http://www.independent.com.mt/articles/2017->

on both rental and property prices³. This affordability crisis, to which the government did not have any sudden measures of response, highlighted the insufficiency of administrative structures to respond to housing needs in such a quickly-changing economic environment. Moreover, the emergence of new housing distress is gradually bringing out the concept that rather than a mere political concession, the protection of housing rights should constitute a duty to which the State is formally bound.

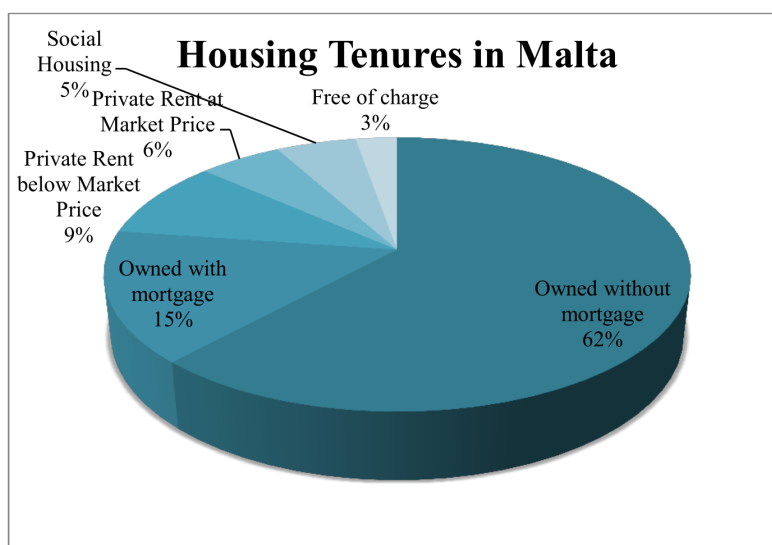


Figure 0.1: Proportion of Housing Tenures in Malta (Source: National Statistics Office)

2. The assessment of Maltese Housing Policy

The aim of this paper is to establish whether there exists the need for a formally protected right to housing in Malta. In order to do this one must first of all understand the implications of such a right in order to eventually assess what new remedies it might present. The justification for which there exists no Right to Housing in Malta was provided by Mifsud Bonnici who proffers the view that despite not being bound by the Constitution, the State had still effectively seen to the needs of the population:

Given the history of housing laws in Malta, [the notion of a Constitutional right to housing] has not arrived in a period of denial or of challenge of these rights, but at a moment when public opinion is convinced and not entirely as a result of complacency, that there already exist adequate legal and administrative structures to satisfy this need⁴.

At the beginning of the 2000s this statement was certainly a valid one. Property prices were indeed stable and affordable whilst government was still active in promoting access to home

11-07/local-news/37-000-foreign-workers-in-Malta-a-necessary-figure-to-sustain-country-s-economic-growth-6736181151.

³ "Malta's property prices among the highest in the EU", *The Independent*, 15 April 2015. Accessed online on 14 December 2017 on: <http://www.independent.com.mt/articles/2015-04-15/local-news/Malta-s-property-prices-among-the-highest-in-the-EU-6736133854>. In the second quarter of 2016, the index of advertised prices for residential property went up by 8.7% compared with the corresponding quarter of 2015 (Central Bank of Malta, *Quarterly Review 2016:2*); H. Grech, "Malta average rental prices increases by 47% between 2013-2016, signs of 'overheating'", *The Independent*, 30 November 2017. Accessed online on 14 December 2017 on: <http://www.independent.com.mt/articles/2017-11-30/local-news/Malta-average-rental-prices-increase-by-47-between-2013-2016-signs-of-overheating-6736182097>.

⁴ U. Mifsud Bonnici, "Housing Rights in Malta", in *National Perspectives on Human Rights*, edited by S. Leckie, The Hague: Nijhoff, 2003, p. 256.

ownership especially for young couples, whilst maintaining its efforts in the construction of new social housing units. Malta's accession into the European Union did, send ripple effects down the housing market, particularly through the government's decision to allow Maltese citizens to repatriate undeclared funds held overseas at a nominal penalty rate which were, in turn, reinvested in property⁵. The sudden property price boost created an artificial demand which challenged prospective home buyers by no insignificant measure. Foreign analysts who assessed the conditions of the Maltese housing market were, therefore, far less impressed with Malta's housing policy. Vakili-Zad was amongst the earliest to underline how housing policy in Malta was always driven by the political considerations of the two dominant political parties together with the influence of the Catholic Church rather than by any logic of industrialization or economic laws. This, in turn, explains how whilst in the 1990s countries were rethinking their housing policies, Malta:

... merely revised rent regulation, yet left the majority of privately-rented accommodations trapped in outdated rent regulation, kept building dwellings and sold them at a discount and left the management of social housing in the hands of central government bureaucrats and professionals⁶.

This less optimistic outlook revealed amongst some of the deepest-lying problems in the Maltese system. First of all the absence of a properly regulated private rented sector which either leaned disproportionately in favour of the tenant (pre-1995⁷) or else left the tenant without the least guarantee regarding minimum contractual duration or stability of rents (post-1995). Secondly, the significant degree of bureaucracy and clientelism present in the allocation procedures of social accommodation.

It is mostly these latter problems that are currently manifesting themselves in the market: the inadequacy of rent regimes for either their disproportionate rigour or their excessive liberality and the record numbers of social housing applicants⁸ caused simultaneously by the rapid decline in rental affordability and the absence of new construction of social housing units during the recent years⁹. It is in this light that the various international statutes under which the Maltese State is bound will be analysed in more detail.

3. Housing Rights under the Maltese Legal Order

Malta's principal obligations in the sphere of housing are, in fact, constituted by the number of international instruments that it has ratified over the years. First amongst which, there is the International Covenant on Economic Social and Cultural Rights (ICESCR)¹⁰ that requires the necessary standard of the housing conditions to be 'adequate' (Article 11). Malta has also

⁵ L. Bianco, "Malta: Housing and Real Estate 1980-2005", *Architectural Design* 76 (2006): 3.

⁶ C. Vakili-Zad, "Housing Policy in Malta: A Welfare State Regime Approach", *The FEMA Research Bulletin*, 2006:1(2), 64.

⁷ As regulated by Chapters 69, 116 and 158 of the Laws of Malta.

⁸ In November 2017 the total number of applicants for social accommodation was that of 3,271 (Hon. Michael Falzon, Minister for Family, Children's Rights and Social Solidarity, PQ no. 2080, Legislature XIII, 29 November 2017).

⁹ Between the 2010 and 2017 only 14 new units were erected (the last one was erected in 2014). In 2017 Government announced a number of new projects that should house up to 683 households (Hon. Michael Falzon, Minister for Family, Children's Rights and Social Solidarity, PQ no. 1456, Legislature XIII, 2 October 2017).

¹⁰ Malta signed the International Covenant on Economic, Social and Cultural Rights on the 22 October 1968 and subsequently ratified it on 13 September 1990. It entered into force on 13 December 1990 [United Nations Economic and Social Council, *Implementation of the International Covenant on Economic, Social and Cultural Rights: Initial reports submitted by States parties under articles 16 and 17 of the Covenant*, Addendum, MALTA, 7 February 2003]. Malta, however, has not signed the Optional Protocol that allows the Committee to hear complaints from individuals.

accepted housing rights deriving from the European Social Charter besides other relevant provisions contained in the European Convention on Human Rights as well as the European Union treaties and regulations.

3.1. ICESCR

This universal right to “adequate” housing conditions, as contained in the ICESCR, places a significant obligation on the part of the State to ensure the provision of adequate accommodation to its citizens. This does not mean that the Covenant imposes onto States the obligation to eliminate homelessness immediately¹¹, however, the State must show that the measures being taken are “sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources”¹².

The Committee on Economic, Social and Cultural Rights has itself recognised that housing rights are infinitely more complex than the commonly cited ‘right to a roof over one’s head’ and it entails additional concerns such as security of tenure, non-discrimination and affordability¹³. The norm is the right to a place to live in security, peace and dignity¹⁴.

The practical implications of this right were explained by the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment no. 4. The main concepts include:

i) *Legal security of tenure*

The object of this law is not so much that of prolonging leases as much as that of ensuring that evictions only occur in strictly defined circumstances (the legality of an eviction would be initially determined by reference to domestic law)¹⁵.

ii) *Availability of services, materials, facilities and infrastructure*

The State must ensure that homes contain the necessary facilities for one’s health, security, comfort and nutrition, and there should be sustainable access to resources such as water and energy supplies, sanitation, washing facilities, food storage, refuse disposal, site drainage and emergency services.

iii) *Affordability*

This is one of the most important elements as this requires States to ensure that elevated housing costs do not threaten or compromise the fulfilment of other basic needs as well as ensure that these remain commensurate with income levels. Hence, the State’s obligations are those of ensuring enough low-cost housing to cater for the needs of the population, particularly the more economically disadvantaged categories¹⁶. In respect to tenants the Committee specifically lays down that: “. . . tenants should be protected by appropriate means against unreasonable rent levels or rent increases”. Therefore, States are expected to exercise some control over rent levels in the private sector¹⁷ at least where these become a threat to social inclusion.

iv) *Accessibility*

¹¹ M. Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development*, Oxford Monographs in International Law (Oxford: Clarendon Press, 1995), 330.

¹² *CESCR General Comment no. 5*, para. 14.

¹³ S. Leckie, “The Justiciability of Housing Rights” in *SIM Special No. 18 Proceedings of the Conference on an Optional Protocol to the Covenant on Economic, Social and Cultural Rights*, Netherlands Institute for Human Rights, Utrecht.

¹⁴ Office of the United Nations High Commissioner for Human Rights, *CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, UN Doc. E/1992/23, 13 December 1991, para. 7.

¹⁵ *Ibid. Craven*, 339, 344.

¹⁶ *Ibid. Craven*, 338.

¹⁷ *Ibid. Craven*, 338.

Housing must be available to all and it must, most of all, be accessible to the more disadvantaged groups such as the elderly, children, the ill or physically disabled, victims of natural disasters and people living in disaster-prone areas.

Malta signed the ICESCR in 1968 and eventually became a State Party to the Covenant in 1990¹⁸. Nevertheless, Malta runs a dualist system¹⁹ and since it was never transposed, the ICESCR does not have any direct applicability in the domestic sphere. In its concluding observations on the initial report submitted by Malta on the implementation of the ICESCR, the Committee noted that the level of protection afforded to economic, social and cultural rights in Malta was overall high and that the State was continuing to improve the protection of these rights²⁰. However, it expressed its regret at the fact that the Covenant had not been incorporated into domestic law and that it could not therefore be invoked before the domestic courts²¹.

3.2. *European Social Charter (ESC)*

The ESC is particularly relevant in sphere of housing rights since it is the only international instrument to lay down in unequivocal terms the general principle that “[e]veryone has a right to housing” (Article 31)²². This provision aims to bind State parties to take measures in order to progressively eliminate homelessness and to promote access to housing of an adequate standard²³. Malta both signed and ratified the Revised Charter on the 27 July 2005, however, it did neither accept Article 31 nor the abovementioned Collective Complaints procedure that enables the lodging of complaints about Charter violations with the European Committee of Social Rights (ECSR)²⁴. Its commitment was therefore limited to ensuring the right of every family to appropriate social, legal and economic protection, including the provision of housing, in order to ensure its full development (according to Article 16)²⁵.

The full implications of Article 16 have also been explained in the case *European Roma Rights Centre (ERRC) v. Greece*²⁶:

The committee recalls its previous case law to the effect that in order to satisfy Article 16 states must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). The committee has stated that adequate housing refers not only to a dwelling which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence. Furthermore the obligation to promote and provide housing extends to security from unlawful eviction²⁷.

This interpretation means that there can be far-reaching obligations for Malta under Article 16 and that Malta is effectively bound to respect the families’ right to housing. The ECSR has recently

¹⁸ UN Human Rights, Office of the High Commissioner for Human Rights: <http://indicators.ohchr.org/>.

¹⁹ A ‘dualist’ system, as opposed to a ‘monist’ one, requires that international obligations be incorporated into domestic law before becoming part of national legislation.

²⁰ UN Economic and Social Council, E/C.12/1/Add.101, 14 December 2004, Thirty-third session, 8-26 November 2004

²¹ *Ibid.* para 10.

²² European Social Charter, *Part I*.

²³ *Ibid.*, para. 118.

²⁴ Council of Europe: http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/Overview_en.asp.

²⁵ http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ProvisionTableRevMarch2015_en.pdf Malta has also failed to accept Article 30 that guarantees everyone a right to protection and social exclusion.

²⁶ Complaint no. 15/2003.

²⁷ *Ibid. ERRC v. Greece*, §16.

pronounced itself on Malta's compliance with the latter article following its assessment of the state of conformity of the domestic regime in respect of those obligations that it had undertaken in the field of children, families and migrants²⁸. In its conclusions, the Committee clarified that Articles 16 and 31 overlap in several areas relating to the right of families to housing and the former had been constantly interpreted as including a guarantee for housing rights. In reiterating the States Parties' obligations the Committee held that:

Under Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and size considering the composition of the family in question, and include essential services (such as heating and electricity)²⁹.

On the whole the Committee found that the situation in Malta was not in conformity with Article 16 of the Charter since the Maltese report had not provided sufficient information for the Committee to establish that the State implemented a comprehensive policy to ensure the social, legal and economic protection of the family³⁰.

3.3. European Convention on Human Rights (ECHR)

Under the ECHR, new inroads in the protection of social rights have mostly been made through the utilisation of article 8, which binds State parties to respect the individual's "home". This article is, however, primarily of interest to those who already have a home and therefore it merely seeks, at least on the outset, to protect existing occupiers rather than to create an entitlement to a house *per se*³¹.

The principles that emanate from this provision have been summarised in the two recent cases of *Yordanova and Others v. Bulgaria*³² and *Winterstein and Others v. France*³³. Article 8(2) binds State parties to interfere with this right lawfully, in pursuance of a legitimate aim and so long as it is deemed "necessary in a democratic society" in the interest of the five grounds mentioned in the article. As regards the verification or assessment of this necessity, the ECtHR has reserved to itself the final evaluation of the decision, although it has also acknowledged that due to the State organs' direct and continuous contact with their countries they would generally be better placed to evaluate local needs and conditions;³⁴ the ECtHR would therefore only intervene in cases of manifest errors of assessment³⁵.

This margin of appreciation afforded to States would, however, narrow down in proportion to the extent of the intrusion into the applicant's private sphere and in determining whether the State would have remained within this margin, the Court attaches particular importance to the procedural safeguards put in place to enable any affected individuals to contest the decision. From this reasoning it follows that since the loss of one's home is considered to be the most extreme form of interference to the rights protected by Article 8, any person risking eviction should in all cases have the possibility of questioning the proportionality and reasonableness of the measure taken

²⁸ ECSR, *Conclusions 2011 (MALTA): Article 7, 8, 16, 17 and 27 of the Revised Charter*, January 2012.

²⁹ *Ibid.*, 14.

³⁰ *Ibid.*, 17.

³¹ I.E. Koch, *Human Rights as Indivisible Rights: The Protection of Socio-Economic Demands under the European Convention on Human Rights*, International Studies in Human Rights (Leiden: Martinus Nijhoff Publishers, 2009:101), 113; H. Simón Moreno, *La Jurisprudencia del Tribunal Europeo de Derechos Humanos sobre la Vivienda en Relación al Derecho Español*, *Teoría & Derecho*, 2014: 16, 163.

³² App. no. 25446/06, 24 April 2012.

³³ App. no. 27013/07, 17 October 2013.

³⁴ *Ibid.* *Yordanova* §§117-118.

³⁵ *Ibid.* *Winterstein* §76(α).

against him before of an independent tribunal. Moreover, this would apply regardless of whether, under domestic law, the applicant would have any right to occupy the premises or not³⁶. These guarantees for the tenant against eviction have been identified by Schmid et al (2013) as one of the main topics covering tenancy law issues within the ECtHR jurisprudence³⁷.

The ECHR differs from the aforementioned international instruments since it was transposed into Maltese law by virtue of the European Convention Act³⁸. Infringements of the European Convention have been claimed in at least two eviction cases that were referred to the Maltese Constitutional Court. Although the major cases concerning tenants had claimed the protection of Article 8 of the Convention, Maltese applicants have managed to secure their rights through the utilisation of Article 6(1). Both cases concerned a specific article contained in the Land (Compulsory Eviction) Act³⁹ that entitled the Commissioner of Lands to proceed with the eviction of any illegal occupants of government property.

The first case was *Emanuel Camilleri et v. Kummissarju tal-Artijiet et*⁴⁰ where the allegedly adverse occupants of a government-owned property, which they were using as their sole residence, were unceremoniously ordered by the Commissioner of Lands to evict the premises within a period of three days. The Constitutional Court underlined that the mere three-day notice period in which the tenant was expected to resort to judicial means in order to halt his eviction was “manifestly derisive” and thus proceeded to declare the nullity of the Commissioner’s order since it ran contrary to the applicants’ rights as protected by Article 6(1) of the Convention.

In *Carmel Camenzuli et v. Kummissarju tal-Artijiet et*⁴¹ the Commissioner ordered the eviction of a household that was precariously occupying government-owned property due to the imminent initiation of a public project. The First Hall decided the case along the same lines of the Constitutional Court judgment delivered in *Camilleri v. Kummissarju tal-Artijiet* and despite upholding the validity of the law, it annulled the eviction order which had only allocated seven days for their departure from the property. The novelty in this case was that the First Hall established the minimum period of notice at 20 days⁴² although once again it only seemed to take Article 6(1) into consideration.

3.4. EU Legislation

Schmid & Dinse assert that “tenancy law remains nearly a blank space in the landscape of European private and comparative law” although EU Regulation and policy in certain specific fields may be said to have exerted significant effects on the various local tenancy systems⁴³. In any case, it remains clear that housing rights and housing policy have only been affected tangentially by the bulk of EU legislation, which was decidedly more concerned about the creation of a single

³⁶ Ibid. *Yordanova* §118. Although in *Winterstein* (§76(€)) the Court elaborated that if the establishment of the home would be unlawful, the position of the individual would be much weaker.

³⁷ C.U. Schmid & J.R. Dinse, *Towards a Common Core of Residential Tenancy Law in Europe*, The Impact of the European Court of Human Rights on Tenancy Law, ZERP-Working Paper 1/2013 (Bremen: Zentrum für Europäische Rechtspolitik, 2013), 6.

³⁸ Cap. 319 of the Laws of Malta.

³⁹ Chapter 228 of the Laws of Malta

⁴⁰ Constitutional Court, 11 April 2006, App. Civ. Nr. 5/2005/1.

⁴¹ Civil First Hall (Constitutional Jurisdiction), 23 March 2007, Rik. 33/2005.

⁴² Once again, however, the Civil Court followed the strict guidance of the previous Constitutional decision that had cited the decision of *Joseph Busuttil v. Prim Ministru* (Constitutional Court, 20 July 1994, Vol. LXXVIII.I.175). The latter judgment had found an article prohibiting the opposition to the execution of a warrant of seizure as running contrary to Article 6(1) of the Convention. Subsequent amendments had eventually set a period of twenty days for the debtor to challenge the basis of the executive warrant. The same period is available for a defendant to file a reply to a sworn application or for any party to present an appeal following a first hall decision.

⁴³ Ibid. Schmid et al, *Towards a Common Core of Residential Tenancy Law*, 3-4.

market in goods and services⁴⁴.

Consumer law is certainly the instrument through which EU law has had the most telling impact on housing rights across the respective Member States. The treatment of home loans, any attached securities as well as certain private leases as business-to-consumer contracts inevitably meant their regulation by European standards. In this respect, the most instrumental body of rules have been the ones contained in the EU Directive on Unfair Terms in Consumer Contracts⁴⁵ which has recently led to a series of key CJEU decisions on the rights relating to prospective evictees.

The CJEU's most significant statement in relation to housing rights was certainly pronounced in *Monika Kušionová v. SMART Capital a.s.*⁴⁶ where it underlined that “[u]nder 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”⁴⁷. In this case, the applicant had secured a €10,000 loan with her family home. Although Slovak law was found to be in line with the EU provisions, since unlike its Spanish counterpart it allowed the national court to suspend or terminate the enforcement proceedings, it underlined that “[t]he loss of a family home is not only such as to seriously undermine consumer rights . . . but it also places the family of the consumer concerned in a particular vulnerable position”⁴⁸. The CJEU thus elevated the level of protection afforded to homes to a higher degree than that of other ordinary consumer goods.

The same Directive, has been found to apply to tenancy agreements. This point was confirmed by the CJEU which held that contracts of letting and hiring concerning residential premises, which were concluded between a landlord acting for purposes relating to his trade, business or profession and a tenant acting on a non-commercial basis, came in an equal manner under the scope of the Directive⁴⁹. Tenants were deserving of the protection reserved to weaker parties due to the fact that, on the one hand, the amount that the tenant would be taking out on rent would usually represent a significant fraction of his income, whilst on the other, the rules governing this contract were typically too complex for an individual to acquire proper information on them.

Another relevant piece of EU legislation is the Status of Long-Term Residents (Third Country Nationals) Regulations⁵⁰ which aim to ensure equal treatment in respect of third country nationals who are granted long-term residence status in Malta also in regard to “procedures for obtaining housing”⁵¹. Studies have confirmed that third country nationals, especially those who hail from Africa and the Middle East are largely unaware of these rights and remedies that are made available to them and that in most cases the stakeholders of the housing market themselves -such as owners and estate agents- would be equally poorly informed of their legal obligations, particularly those emanating from the Racial Equality Directive.

Regardless of the legislation that was put in place, flagrant abuses in this respect have been revealed by a recent survey conducted amongst immigrant and ethnic minority groups which, inter alia, found out that estate agents have been colluding with property owners in discriminating against

⁴⁴ P. Kenna, *Housing Law, Rights and Policy*, (Dublin: Clarus Press, 2011), 562.

⁴⁵ Directive 1993/93/13/EEC.

⁴⁶ Case C-34/13 (Third Chamber), 10 September 2014.

⁴⁷ Ibid. *Kušionová*, §65.

⁴⁸ Ibid. *Kušionová*, §63.

⁴⁹ Dirk Frederik Asbeek Brusse and Katarina de Man Garabito v. Jahani BV, Preliminary ruling by the CJEU (First Chamber) decided on the 30 May 2013, C-488/11.

⁵⁰ Subsidiary Legislation 217.05. The purpose of these regulations is to implement the provisions of Council Directive 2003/109/EC concerning the status of third country nationals who are long-term residents. The Regulations determine (a) the terms for conferring and withdrawing long-term resident status granted in relation to third country nationals legally residing in Malta and the rights pertaining thereto and; (b) the terms of residence in Malta of a third country national who was conferred the status of long-term resident in another Member State.

⁵¹ Article 11(1)(g).

certain ethnic groups. This discrimination goes to the extent that estate agents have been described as “gatekeepers in maintaining certain neighbourhoods as ‘white/non Muslim’” whilst they have also been found to steer certain categories into depressed areas⁵². Similar conclusions emerged from a separate research that once again identified discrimination as “one of the key obstacles in finding rented accommodation in the community”. A pilot project, conducted by the same NGO that drew up the report, which aimed at assisting residents of one particular Open Centre with finding places for rent was also reported to have been met with resistance by local landlords⁵³.

This misconduct on the part of legislators is, however, already foreseen by local legislation. The *Equal Treatment of Persons Order*⁵⁴ expressly prohibits discrimination in relation to access to housing and any discriminatory act, including any instruction to discriminate against any person, would be exposing the offender to a *multa* of up to €2,239.37 and to any term of imprisonment inferior to six months.

4. State duties under Housing Rights

The above analysis may shed more light on the scope of the right housing as protected under the various instruments to which Malta is a state party. The ICESCR and ESC (even simply under Article 16) are the treaties that assert this right in the clearest terms although, despite having ratified and accepted the relevant provisions, Malta has not transposed their contents into domestic legislation. The ICESCR and the ESC are the two instruments that could guarantee the full development of the right to housing in Malta since rather than binding a State to provide a home for every household, it obliges it to take concrete policy measures, commensurate with economic resources at its disposal, in favour of segments of the population, particularly the most vulnerable ones, who would face the inevitable prospect, or the risk, of homelessness. The State would also be bound to oversee the housing standards and take the necessary steps to ensure that essential services (such as heating and electricity) are available to all.

The ECHR and EU Legislation protect the right to housing in a more indirect manner, however, being already transposed into Maltese law they can already guarantee certain remedies. As regards the ECHR, one has to underline the procedural guarantees that it requires, particularly in the process of depriving someone of one’s home. Specifically, that of allowing an occupant to question the proportionality and reasonableness of the measure being taken against him before an independent tribunal, irrespective of whether he would have a valid title or otherwise. EU Law may primarily be availed of in order to guarantee the fairness of rental agreements where the tenant/consumer would have contracted with a business or a professional entity and to curtail discriminatory practices that limit access to housing for racial or ethnic minorities.

5. Conclusion

The recent economic realities have exposed the peril of having the housing rights of segments of the population depend entirely on the political discretion of the public administration. The juridical advancements in the conception of housing rights both at a European as well as at a global level should serve as the basis on which to start a local discussion on the usefulness of such a formal safeguard within the local context. In today’s society, housing rights have become key to both an effective welfare policy as well as a guarantee of Malta’s fulfilment of its human rights

⁵² National Commission for the Promotion of Equality (NCPE), *I’m Not Racist, But...: Immigrant & Ethnic Minority Groups and Housing in Malta*, 2012, 15.

⁵³ *Ibid.* no. 72, 37-38.

⁵⁴ Subsidiary Legislation 460.15.

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