



OHCHR/HRMMU

Briefing Paper

Social Housing in Crimea

1. This briefing paper provides a summary of developments in the area of housing rights, documented by OHCHR/HRMMU in 2020. It is based on information obtained from court registries of the Russian Federation and other open sources and an analysis of Russian laws as applied in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation (“Crimea”).
2. The right to adequate housing, derived from the right to an adequate standard of living,¹ infers that all persons should possess a degree of security of tenure, which guarantees legal protection against forced eviction.² Instances of forced eviction are *prima facie* incompatible with the requirements of international human rights law and can only be justified in the most exceptional circumstances.³
3. In giving effect to the right to housing, States are not permitted to discriminate against persons on the basis of national or social origin.⁴ In this regard, OHCHR notes that the Special Rapporteur on the right to adequate housing has articulated guidelines which outline the key elements needed for the effective implementation of the right to housing. These guidelines are based on existing human rights standards and recommendations of the Special Rapporteur outlined in her official reports. In relation to the principle of non-discrimination, the guidelines provide that “States must prohibit all forms of discrimination in housing by public or private actors and guarantee not only formal but also substantive equality” and that “the right to equality requires

¹ See International Covenant on Economic, Social and Cultural Rights, art. 11(1);

² The United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 4, E/1992/23, paras. 1 and 8(a).

³ *Ibid*, par. 18.

⁴ See International Covenant on Economic, Social and Cultural Rights, art. 2.

that housing and related social programmes be non-discriminatory in their effect.”⁵

4. According to Ukrainian legislation, individuals requiring social protection, including citizens with low income and persons with disabilities, are entitled to social housing.⁶ This is a special category of subsidized housing usually owned by the State or municipalities. Social housing is allocated to tenants on the basis of special lease agreements⁷ typically concluded for an indefinite period. Other forms of state-provided housing include service-related accommodation⁸ and social dormitories. While the former is usually provided to Ukrainian public service employees, police and military officers, as well as their family members whose home is located at a remote place from their duty stations, social dormitories are reserved as transitional accommodation for the most vulnerable categories of citizens awaiting social housing.
5. Following wide-spread nationalization of Ukrainian state, municipal and private property in Crimea,⁹ in 2016 the Russian Federation authorities initiated a retrospective review of the lawfulness of the allocation of social and other state-provided housing to Crimean residents prior to the occupation. In addition, all tenants living in social housing in Crimea on the basis of lease agreements, concluded pursuant to Ukrainian legislation, were required to enter into new social lease contracts under Russian law. These measures adversely affected Ukrainian citizens living in Crimea without Russian passports (including those who refused to take up Russian citizenship and those who did not qualify for it) who were excluded from social housing on the basis of Russian legislation,¹⁰ according to which only Russian citizens are entitled to enter into social lease contracts.¹¹ Another category of citizens whose security of tenure was threatened were former Ukrainian public officials, employees of public educational institutions and military officers, who continued living in state-provided housing in Crimea after their resignation.
6. During 2016-2019, based on the abovementioned review, Russian authorities in Crimea initiated at least 73 court proceedings to evict tenants who had been residing in social and other state-provided housing long before the occupation. Forty-five of these cases concerning 78 individuals (28 men, 41 women, 9 children: 6 boys and three girls) ended with eviction orders.¹² In

⁵ See Guidelines for the implementation of the right to adequate housing of the Special Rapporteur on Housing, Guideline No. 8, para 48 a) and b) available at <https://undocs.org/en/A/HRC/43/43>

⁶ See Law of Ukraine No. 3334-IV “On Social Housing Stock” dd. 12 January 2006.

⁷ “Dogovor naimu sotsialnogo zhytla”.

⁸ “Sluzhbove zhytlo”.

⁹ See 2019 Report of the Secretary-General (A/74/276), para. 54, available at <http://undocs.org/A/74/276>

¹⁰ See Article 49(5) of the Housing Code of the Russian Federation.

¹¹ Unless otherwise specified by an international agreement.

¹² The majority of these cases concerned State provided service-related accommodation (“sluzhbove zhytlo”, i.e. housing provided to families of public service employees and military officers), including dormitories, and social housing.

addition, in 30 other cases, 35 Crimean tenants (16 men, 17 women and two children) initiated cases against the Russian authorities for refusing to offer them a social lease agreement under Russian law. The court dismissed their claims, leaving those involved at risk of receiving eviction orders. OHCHR notes that the authorities justified the issuance of eviction orders as well as refusals to conclude social lease contracts for a range of reasons, including an absence of documentary evidence on the tenant's part of the legality of the initial allocation of social housing, the termination of tenants' service or employment, an absence of registration stamps in the tenants' passports, or formal changes in the property's status outside the control of the tenant (such as the transfer of the building from municipal to state property and vice versa).

7. In violation of international human rights law, courts retroactively applied provisions of Russian housing laws when assessing the legality of the allocation of state-provided housing, declined to apply the statute of limitations usually applicable in such cases and failed to engage in any analysis of whether the eviction was proportionate and in pursuit of a legitimate aim.¹³
8. In 2020, OHCHR documented a case where a man was ordered to vacate social housing in Simferopol in May 2019 after his female partner died in 2017, despite the fact that both of them had been living in the disputed housing for the last 15 years. Russian authorities argued that the man had no right to live in the apartment, as the lease agreement was concluded with his female partner only, and not with him. OHCHR notes that in this case the court did not consider issues related to the man's rights to housing, including whether the man had any alternative accommodation in Crimea and ignored the fact that the man had sufficient and continuing links with the flat for it to be considered his home. OHCHR further notes that the Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment on the right to adequate of housing, states that "Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection."¹⁴
9. Similarly, OHCHR documented another case, in April 2018, where a former Ukrainian military officer and his wife were ordered to leave their home in Yalta, after it was nationalized by the Russian Federation and transferred for the use of the military base. The court determined that the allocation of the apartment in question by the local city council to the tenant in January 2012

¹³Article 8 of the European Convention on Human Rights, for example, encompasses the right to respect for one's home and protects individuals against interferences by public authorities. It requires that any person at risk of losing his or her home should be able to have the proportionality of the measure determined by an independent tribunal in light of the relevant principles under Article 8. See, among other authorities, *Yordanova and Others v. Bulgaria*, no. 25446/06, § 122, 24 April 201 and *Winterstein and Others v. France*, no. 27013/07, § 156, 17 October 2013.

¹⁴ See General comment No. 4: The right to adequate housing (art. 11 (1) of the Covenant), para 8 (a).

was illegal.¹⁵ The court again failed to assess the proportionality of the eviction. In particular, it did not take into account the fact that the apartment in question belongs to the State of Ukraine and the tenant, who was a retired Ukrainian serviceman, had openly resided there for more than six years, took care of the apartment and refurbished it at his own expense and had no alternative housing in Crimea. These are factors that would typically feature in any proportionality analysis.¹⁶ This case is also inconsistent with the comments of CESCR regarding the positive steps States should take to confer legal security of tenure on persons lacking such protection.¹⁷

10. In another case, in April 2018, the Supreme court of Crimea issued an eviction order against a former teacher of the vocational school in Yevpatoriia concerning a state-owned service-related apartment in a social dormitory which he had occupied together with his three family members since 1990. Following Crimea's occupation, the building of the dormitory was nationalized by the Russian Federation and transferred to the use of the vocational school. The court established that the respondents do not have residency rights in the apartment in question as none of them currently worked or studied in the vocational school. OHCHR notes that, for reasons unknown, the court refused to apply the statute of limitations which applies to such cases, disregarded the fact that the apartment had been allocated to the ex-teacher 28 years ago and did not consider any alternative accommodation options. As mentioned above, these are factors that would typically feature in any proportionality analysis. This case is also inconsistent with the comments of CESCR regarding the positive steps States should take to confer legal security of tenure on persons lacking such protection.¹⁸
11. In all of the cases reviewed, there were no instances of victims being provided with compensation or alternative housing.
12. OHCHR/HRMMU calls on the Russian Federation authorities in Crimea to respect the right to adequate housing of all Crimean residents and ensure that access to social housing is consistent with the principle of non-discrimination.

¹⁵According to the court, the local council failed to formalize the allocation of housing with a formal decision or a housing order.

¹⁶ By way of example: The case of *Connors v. UK* (2005) 40 EHRR 9 involved the eviction of Roma from a halting site by a local authority in a situation in which the applicant was accorded no means of challenging allegations made against him as part of the eviction process. The European Court of Human Rights found that "the eviction of the applicant and his family from the local authority site was not attended by the requisite procedural safeguards, namely the requirement to establish proper justification for the serious interference with his rights and consequently cannot be regarded as justified by a 'pressing social need' or proportionate to the legitimate aim being pursued. There has, accordingly, been a violation of Article 8 of the Convention".

¹⁷ As outlined in para 8 above.

¹⁸ Ibid.