

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**



14 March 2007
Case Note No. 1

**European Federation of National Organizations Working with the Homeless
(FEANTSA) v. France**
Complaint No. 39/2006

COMPLAINT

Translation of pages 75-128

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II.2.2 – Domestic law

II.2.2.1 – Right to housing

The right to housing is embodied in a number of statutes as a fundamental right, that is one that enshrines the principle of equal human dignity.

Act of 6 July 1989¹:

*Section 1. **The right to housing is a fundamental right**; it shall be exercised in accordance with the laws to which it is subject.*

This right implies freedom for all to choose a dwelling through the provision and development of rented and owner-occupied sectors open to all social groups.

No one may be refused the tenancy of a dwelling on account of his origins, name, physical appearance, sex, family situation, state of health, disability, morals, sexual orientation, political opinions, trade union activities or membership or non-membership, real or imagined, of a particular ethnic group, nation, race or confession.

In the event of a dispute concerning the application of the aforementioned paragraph, persons who have been refused the tenancy of a dwelling shall present factual evidence in support of their contention that there has been direct or indirect discrimination. In the light of this information, the onus is on the defendant to prove that the decision was justified. The court shall reach a decision, after ordering any investigations it considers necessary.

There must be a reasonable balance between the mutual rights and obligations of landlords and tenants in both their individual and their collective relationships.

Act of 31 May 1990:

*Section 1: **Securing the right to housing is a duty for the entire nation.***

Any person or family experiencing particular difficulties on account of inadequate resources or unsuitable living conditions shall be entitled to public assistance, in accordance with the provisions of this Act, in obtaining or retaining adequate and

¹ This act borrows from an act of 1982, repealed in 1986, which according to René Ballain (Economie & Humanisme, 2004), was the first to embody the right to housing, though with a limited scope: "*The first reference in legislation to the right to housing was in 1982. The first section of the Act of 22 June is particularly ambitious because it states that the right to housing is a fundamental right, and adds that it implies freedom for all to choose a dwelling through the provision and development of rented and owner-occupied sectors open to all social groups. In practice, it is more limited in scope because it is mainly concerned with the rights and obligations of landlords and tenants and with establishing a fairer balance between the two parties to the tenancy relationship, which under the Civil Code, based on the law of property, is heavily weighted towards the landlord.*"

independent housing and the supply of water and energy supplies and telephone services.

Act of 28 July 1998:

Section 1. Combating exclusion is a challenge for the nation, based on the principle of the equal dignity of all human beings, and is a national policy priority.

This Act seeks to ensure universal access to fundamental rights throughout the country in the fields of employment, housing, health, justice, education, training and culture, and family and child protection.

Central government, local and regional authorities and other public bodies such as municipal and inter-municipal social services centres, social security bodies and other social and medical institutions shall contribute to implementing these principles.

They should implement policies designed to identify, prevent and remove situations that might lead to exclusion.

They shall take the necessary steps to inform everyone of the nature and extent of their rights and help them, where necessary through personal assistance, to complete the necessary administrative and social procedures in the shortest possible time.

Employers, occupational organisations, representative trade unions, mutual associations and other bodies governed by the Mutual Societies Code, voluntary organisations concerned with rehabilitation and combating exclusion, ordinary citizens and all those active in the social economy shall contribute to achieving these objectives.

Constitutional Council

(The Constitutional Council is the highest French court, and ensures that legislation and regulations are compatible with the Constitution).

Decision 94-359 DC of 19 January 1995:

Considering that the tenth sub-paragraph of the preamble to the Constitution states that the nation shall provide the individual and the family with the conditions necessary to their development, and the eleventh states that it shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure. All persons who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working, shall have to the right to receive suitable means of existence from society;

Considering also that pursuant to the preamble to the 1946 Constitution, protecting human dignity from any harm is a constitutional principle;

Considering that pursuant to these principles, the universal right to decent housing is a constitutional objective;

Considering that parliament and the government have a duty to determine, according to their specific powers and responsibilities, the arrangements for securing this constitutional objective; that to this end parliament may amend, add to or repeal previously enacted legislation, on condition that this does not deprive the constitutional values that it is required to apply of their legal safeguards;

This legislation is generally interpreted as meaning that the constitutional objective of the "right to housing" has to be balanced against the constitutional value of the "right of property", with the former carrying less weight and thus requiring much less commitment to its application.

The Constitutional Council decision requires the government and parliament to determine the arrangements for securing the right to housing, subject only to any infringements of other constitutional safeguards.

In practice, the government and parliament have done nothing to determine the arrangements for securing the right to housing. Indeed, repeated references to the right to housing as a general principle in the first section of various statutes have simply served as a basis for dealing with other subjects, such as the rules governing tenancy relationships, the management of housing for disadvantaged persons, securing a social mix of housing and so on.

National legislation and regulations lay down the principle of the right to housing but only deal with housing policy in terms of the provision of services and never from the standpoint of enforcing an individual right.

This is reflected in the absence of any guaranteed minimum for individuals or of any judicial or out-of-court remedies² for those who are homeless.

As the Abbé Pierre Foundation noted in its 2001 annual report on housing deprivation in France, the courts are the traditional arbiters in disputes between landlords and tenants and are able to order evictions with the new powers at their disposal, but do little to enforce the right of access to housing.

II.2.2.2 – Other rights relating to housing

The right to decent housing is embodied in various statutes and regulations, though not defined. Likewise, the right to housing is covered by various instruments, which either contribute to it or dilute it.

They cannot all be listed but we will summarise the main areas concerned and how they interact with the right to housing.

The right to health

Housing standards are normally considered from the standpoint of health and safety. Letters must comply with various rules relating to habitable space (surface area, means of access, ceiling heights), health (presence of lead or asbestos, health hazards), fitness for habitation (a series of technical specifications) and human dignity (living conditions).

The Solidarity and Urban Renewal Act of 13 December 2000 strengthened and widened the opportunities for occupants and authorities to intervene in this area by imposing significant constraints on owners, ranging from "unfit for habitation" to the obligation to carry out repairs or to rehouse.

Occupants and the authorities now have a fairly full range of legal resources, with various forms of judicial remedy.

Nevertheless, such protective measures for existing households can rebound on the homeless. In the name of health or hygiene standards, certain shanty-type constructions are demolished without rehousing the occupants, who are constantly forced to rebuild their temporary shelters. This has particularly been the case with various encampments of Roma from eastern Europe, above all in the Paris and Lyon regions.

Moreover, the legal arrangements to protect individuals' health are not necessarily applied in practice, as we noted earlier.

² To be precise, the Act of 28 July 1998 established mediation committees, which applicants for social housing can apply to after an "abnormally long" waiting time, the length of which is determined locally. These are intended to provide remedies for unequal treatment, since acceptable waiting times are determined with reference to average waiting times rather than individual needs. The committees simply ensure that applications will be examined, but offer no guarantee of a response. Besides, they only make recommendations and have no power to order rehousing.

Town planning law

Planning law, or the rules governing land use, is mainly designed to protect the public interest when it is threatened by individual proposals.

Recent developments in France related to the right to housing include the search for social mix, which should apply to at least 20% of each municipality's social housing stock³, the application of sustainable development principles, the need for a satisfactory balance between housing and associated services and efforts to achieve a coherent built and urban environment.

Here again, the law is essentially designed to protect established households, who can thus demand a certain quality of life.

However, planning law can also be used to prevent undesirable social groups from settling in a locality.

For example, planning regulations may require sloping roofs with red tiles in a municipality, ostensibly in the interests of aesthetic consistency, when the real purpose is to prevent caravans, and thus travellers, from settling in the area.

As another example, municipalities may impose a land occupancy ratio, determining the actual building surface of a plot of land, that is so low that it becomes financially impossible to construct social housing on it (thus, the financing arrangements do not permit the purchase of a hectare to build one house).

As in the case of health, planning regulations do not help the poorly housed. Just living in an area which is not designated for residential purposes is sufficient to justify an eviction order and demolition of the occupants' homes, even where those concerned own the plots they live on. Unbuildable plots are regularly sold to households with no other options who are unaware of the relevant regulations and are attracted by the low price, only too often to be evicted after settling on the site⁴.

Moreover, local authorities often ignore their statutory social responsibilities. For example, under the 2000 Solidarity and Urban Renewal Act, at least 20% of each municipality's stock of principal residences must be social housing. Five years after the legislation was passed, 45% of the municipalities with less than 5% of social housing – that is, the ones that were furthest from the target – had no new housing programmed. Of the 741 municipalities concerned, one in three had not programmed any new social housing⁵.

These municipalities face very mild sanctions, in the form of a small fine that is less burdensome than the perceived social cost of low income residents. And as we shall go on to show, fewer than 10% of municipalities have satisfied the requirement to provide sites for travellers, yet no penalties have been imposed.

It would have been possible – and simple – to enforce these obligations by ruling that municipalities that did not comply with them were ineligible for any further state funding and that their local land-use plans, on which building and zoning regulations are based, were inapplicable.

The regulations that place social obligations on municipalities are thus largely decorative. And this decorative aspect is quite deliberate since the means of making them effective are simple, costless and well known.

The legal measures at the state's disposal to deal with crises are also under-exploited. Examples are the requisitioning of hotels not used for tourism (an option that is probably little known) or of vacant properties (with greater media impact), under an order dated 11 October 1945, "in any municipality with a housing crisis". According to the journal *Le Moniteur* of 1 September 2005, such measures were applied in the 1950s and 60s but have since gradually fallen into disuse, despite the fact that associations such as *Droit au Logement* have continued to draw attention to them in the media.

Binding measures and powers of intervention are thus underused.

³ Section 55 of the Solidarity and Urban Renewal Act

⁴ this is illustrated by examples of case-law provided (Billotet/municipality of Gleizé, etc.)

⁵ Source: Abbé Pierre Foundation, 2005 annual report on housing deprivation in France

As in the case of health, planning regulations do not contribute to the right to housing but offer the majority certain guaranteed standards. Since planning documents are mainly drawn up at local level, they rarely offer favourable treatment to undesirable groups with no local standing. This difference between a universal right and a system of partial safeguards works to the detriment of the most vulnerable households, whose right to housing is the most threatened.

Individual social assistance

Social assistance arrangements also partially reflect this system of safeguards for the majority, as a substitute for a right to housing.

Individual housing assistance takes the form of financial assistance based on households' income, family composition and address. Such assistance is not discretionary: all those who meet the criteria are eligible for the corresponding assistance and if they do not accept the official decision they can seek first mediation and then judicial enforcement. Despite reservations about the wide-scale use of such assistance as a housing policy tool, they therefore help to establish a form of equality between tenants, or at least those who are already accommodated and who do not pose problems.

In other words, to avoid subsidising undesirable tenants and ensure that households do not misuse this assistance, eligibility does not extend to the homeless, who have no rent to pay, households in rent arrears, who would use it for other purposes, and households in sub-standard dwellings. The last point is consistent with a provision of the Solidarity and Urban Renewal Act that states that tenants are no longer required to pay rental for accommodation that fails to comply with official standards. However, ineligibility for housing assistance also includes families that are too large for the size of the accommodation or living in untypical conditions, such as travellers living in caravans.

Not only do national solidarity and the redistribution of wealth fail to extend to the least well housed, but the policy actually serves to penalise households for their poor living conditions by making them responsible. This is illustrated by the "necessary floor area" requirement (25m² for a couple plus 9m² for each additional person) to be eligible for housing assistance, which makes the households concerned responsible for their situation when they are in fact the principal victims.

French law is now tending to restrict the right to housing

Developments in legislation of a general scope are having an impact on the right to housing. By way of example, Miloon Kothari, the UN's special rapporteur on housing, has highlighted the effects of France's Internal Security Act on gypsies' living conditions. As we have noted, this legislation criminalises the unauthorised parking of caravans. It provides for them to be moved on without the need for a court order and for penalties of fines or imprisonment, resulting in the criminalisation of a life style that concerns some 400 000 persons.

II.2.2.3 – A convenient dilution of responsibilities

The absence of a legal right to housing is the consequence of the lack of individual safeguards to which all are entitled, of an appeals procedure against failures to apply these safeguards and of any body with legal responsibility for enforcing them.

In its 8th and 9th annual reports, the High Level Committee on the Housing of Disadvantaged Persons stressed the need for an enforceable right to housing, which would necessitate a clarification of responsibilities.

"It is no longer imaginable in France for persons to remain untreated, irrespective of their means and whatever the staffing or financial problems of hospitals. The right of everyone to access to care is not just the result of a well-organised health system, it is the starting point for and foundation of such a system.

The same logic must apply to the right to housing. It is no longer acceptable for this to be the

hoped for consequence of existing assistance arrangements. The logic needs to be turned on its head: the necessary means must be mobilised to implement the right to housing. We must therefore move on from an obligation to provide resources to an obligation to show results."⁶

According to its 9th report:

"Current policies are often only partial and aimed at one objective. Every official regulation introduced and action taken must take account of the obligation to ensure that everyone is housed. This is what is meant by enforceability. By establishing an obligation to show results, the right to housing will become the centrepiece of housing policies, whether these relate to planning regulations, the activities of the construction industry, urban renewal or social housing, and more generally of any policy that has a direct or indirect impact on the supply of and demand for housing. In the first place, this means that citizens in difficulty should be able – as is not currently the case – to turn to a political authority with statutory responsibility for implementing the right to housing. There are three preconditions for such an enforceable right:

- *the appointment of a responsible political authority*
- *the allocation of sufficient resources for this authority to meet its obligations*
- *the introduction of judicial and non-judicial remedies.*⁷

As we have already seen in the section on discrimination, no one is currently responsible for access to social housing. Individual letting decisions are made by each social housing agency's own internal letting committee, whose composition will vary according to the status of the organisation and will include representatives of the various tiers of local government, the social partners, voluntary associations and so on.

Central government does have the right to reserve social housing for priority households⁸. It may recommend candidates for certain dwellings, but does not decide on their allocation. In practice, moreover, this central government right of reservation on behalf of those in the greatest need is not applied, as a result of which its continued existence is regularly questioned.

Local authorities also have a right of reservation and may recommend candidates to a proportion of the housing stock, which varies according to their contribution to the costs of construction. They are also consulted on housing allocations.

Letting organisations have a direct right of reservation for part of the housing stock.

⁶ 8th report of the High Level Committee on the Housing of Disadvantaged Persons: "Towards an enforceable right to housing" October 2002.

⁷ 9th report of the High Level Committee on the Housing of Disadvantaged Persons: "Right to housing: establishing responsibility". November 2003

⁸ In exchange for public funding, prefectures have a housing allocation or quota representing 30% of all the social housing built in each *département*. Of this 25% is intended for the priority group of persons who are inadequately housed.

Finally, the social partners – trade unions and employers – have a significant right of reservation for the housing of employees, who contribute towards the construction of social housing.

This duplication of powers and responsibilities regarding access to social housing, which is the main means of responding to denial of the right to housing, illustrates a dilution of responsibilities that is also to be seen in other fields (such as combating unhealthy living conditions, responsibility for which is split in a complex fashion between central and local government, often resulting in paralysis).

The 2004 Local Responsibilities Act decentralised certain housing-related responsibilities, particularly aid for the construction of social housing. Depending on local circumstances, this responsibility may end up at different levels, such as groupings of municipalities or *départements*. Similarly, reservation rights over social housing, which depend on the form of financing, vary between tiers of authority. Nevertheless, the state, or central government, still plays a major part, through the tax system, individual financial assistance and urban renewal programmes that finance the demolition and reconstruction of social housing. The trend is thus towards dilution and greater complexity of responsibilities.

As another example, the only non-judicial remedies that ensure that cases will be investigated are the mediation committees, which applicants for social housing can apply to after an abnormally long waiting time. Draft legislation currently under discussion would place these committees under the supervision of a judge, in the name of an "enforceable right to housing". This proposal is a fraud, since the judge would not be operating in a judicial setting with the power to decide whether there had been fault, who was responsible and what reparation should be made. Such a body would not even draw in all the scattered bodies responsible for access to housing, since local authorities in particular would not be represented. This machinery is a perfect illustration of the disconnect between arrangements governing access to housing, the available remedies (which in any case are particularly lacking in authority, since they are only required to investigate cases, not to remedy them) and the agencies that are supposed to be responsible for the right to housing.

In the absence of any clear-cut responsibility and a procedure for calling it to account, the right to housing, ambitiously set down in national and international legislation, cannot exist in France.

The weakness of the protection offered to individuals is reinforced by the ineffectiveness of the rare binding measures to which different authorities are subject.

To summarise, the right to housing in France is not a legally enforceable individual right, and is not applied through statutory duties that are binding on local authorities, whereas housing law, in the form of housing standards regulations, the rights and duties attached to various forms of occupancy and so on, can theoretically be enforced in the courts⁹. Citizens who fail to qualify for the protected forms of occupancy or lose that protection, have no right to housing.

The lack of an individual right to housing must be seen as a deliberate policy choice, since other individual social rights are safeguarded and institutionalised. Historically, France has shown itself to be quite capable of developing policies from the standpoint of fundamental individual rights, as in the case of access to care (social security then universal medical coverage) and education (free, secular and compulsory schooling).

The lack of an enforceable right to housing is in breach of Article 31 of the revised European Social Charter, since most of the country's commitments to the right to housing under international and national legislation are not enforced.

⁹ Even if, as noted in the first part, in practice relatively little is done to enforce housing standards, even for tenants covered by the 1989 tenancy legislation, who are nevertheless the best protected group.

We agree with the definition of an enforceable right put forward by the High Level Committee on the Housing of Disadvantaged Persons¹⁰. According to the committee's 8th report, numerous bodies concerned by the social damage caused by the current situation now support such an enforceable right to housing:

- In its opinion of 18 June 2003 on access to rights, the Economic and Social Council recommends an examination of how such a right might be implemented.
- In its opinion in early 2003 on the draft national plan against social insecurity and exclusion, the National Council on Anti-Poverty and Social Exclusion Policies expressed its support for the high level committee's proposals to assist disadvantaged persons by making the right to housing enforceable. It hoped that the committee would develop its ideas along these lines.
- In its contribution to the Congress of the Social Housing Union in June 2003, the Social Council of the social housing movement said that the right to housing, as provided for in section 1 of the Anti-Exclusion Act of 29 July 1998, had to be legally enforceable, in other words it must impose an obligation on public authorities to achieve certain outcomes, particularly in the case of housing that was unfit for occupation or failed to meet certain minimum standards.
- The idea also has the support of all the voluntary associations concerned with the social integration and housing of the most deprived members of the community: Abbé Pierre Foundation, UNIOPSS, FAPIL, ATD Fourth World, Droit au logement, Médecins du Monde and the entire Alerte network.

However, in 2004, the junior minister responsible for combating social insecurity and exclusion said that an enforceable right to housing could only be introduced when it was possible to provide the necessary dwellings¹¹.

This statement is regularly repeated by government representatives.

It means that individual rights are dependent on the resources that the government is willing to devote to housing.

In the publicly expressed view of a minister of the republic, France refuses to acknowledge that it has a legal responsibility to make available the resources necessary to enforce individual rights laid down in national legislation and international treaties, including the revised Social Charter.

In doing so, France is in breach of its obligations regarding the right to housing. This constitutes a violation of the three paragraphs of Article 31 of the revised Social Charter.

II.2.3 – Limited judicial intervention

The limited case-law on the right to housing shows how difficult it is to rely on existing legislation, since the wording is too imprecise, it is interpreted restrictively, relevant procedures do not exist and it is impossible to establish where responsibility lies.

Nevertheless, taking as their basis the link between the right to housing and human dignity, certain court decisions have highlighted both the inadequacies of government policies and the failure to correct situations where the right to housing is denied.

The right to housing and human dignity

On 3 May 2002, the Montauban regional court refused to order the eviction of travellers encamped in a municipal stadium because no properly equipped site had been provided, and referred to an objective with constitutional status that was one aspect of the principle of

¹⁰ This entails three elements: the appointment of a responsible political authority, ensuring that this authority has all the resources necessary to carry out its responsibilities, and establishing judicial and non-judicial means of appeal.

¹¹ Source: Abbé Pierre Foundation: 2005 Annual Report on housing deprivation.

protecting human dignity (interim order issued by the Montauban regional court, 3 May 2002, Montauban town council v. Chira).

In a decision of 21 June 2001, the Limoges court of appeal refused to apply a clause voiding a contract¹² which would have deprived the occupant of accommodation. The court argued that such a decision would have infringed his family rights and human dignity.

The Court of Cassation¹³ reversed this decision on 2 April 2003 (SA Sonacotra v. Devaux), but did not deny the link between the right to housing and human dignity. Paradoxically, in a decision dated 8 November 1995 the Court of Cassation criticised the court of appeal for ordering an eviction without taking account of the family's extreme poverty.

The case-law of the criminal division of the Court of Cassation

Under Article 225-14 of the Criminal Code, submitting a person whose vulnerability or state of dependence are apparent or known to the perpetrator to working or housing conditions incompatible with human dignity is punishable by five years' imprisonment and a fine of € 150 000.

According to the Court of Cassation in a decision of 11 February 1998, renting a dwelling measuring 20m², which contravened health and *département* regulations and whose dampness and heating arrangements posed a threat to the occupants, a family of three persons, including a child and a pregnant woman, was incompatible with human dignity.

Yet national and local social services regularly pay for the use of such dwellings to accommodate homeless households for extended periods¹⁴.

Turning to access to social housing, in a decision dated 30 May 2000 the Court of Cassation found that the court of appeal had misinterpreted the law when it ruled that a social letting agency was entitled to argue that a particular vacant dwelling was unsuited to the size and composition of a household to justify its refusal to allocate it, in mid-winter, to a poor family of two parents and five children, several of whom were very young, thus depriving them of the right to decent housing.

The case-law of the *Conseil d'Etat*¹⁵: the state disputes the right to housing

The *Conseil d'Etat* does not consider that the right to housing is a fundamental freedom within the meaning of Article L 512 of the Code of Administrative Justice (decision of 3 May 2002, *Association de réinsertion sociale du Limousin* and others). It relies on the case-law of the Constitutional Court, which refuses to make the right to housing a constitutional right but simply a constitutional "objective", which places it at a lower level than property rights and means that the right to housing is systematically infringed whenever the two come into conflict.

On 24 April 1990, the Clermont Ferrand administrative court (Prefect of the Auvergne region/municipality of Cendre) said that the right to housing was not enshrined in the constitution or even, in any concrete fashion, in law.

In cases concerning the right to housing, the *Conseil d'Etat* has focused on the seriousness of the threat to public order, while ignoring "purely personal" considerations.

Prefects may not rely on an infringement of the right to housing to justify a refusal to carry out evictions ordered by the courts (*Administrative court of appeal, 7 November 2000, Bounebache*).

In a decision of December 1997 (Prefect of Val de Marne), the *Conseil d'Etat* ruled that mayors' power of requisition under Article L641-1 of the Building and Housing Code could only be used in emergencies and as an exceptional measure, when a family's homelessness posed a serious threat to public order.

¹² Specifically, a provision rendering a tenancy contract null and void if the rent is unpaid.

¹³ In France, most judicial proceedings concerning housing are dealt with in the following order: district court, court of appeal, Court of Cassation.

¹⁴ *Etats généraux du logement*. Grenoble. 2004

¹⁵ The *Conseil d'Etat* is the country's highest administrative court.

The only concession the *Conseil d'Etat* makes to the right to housing is its acknowledgement (15 June 2001) that municipalities may lawfully introduce, on their own initiative, financial aid to assist social integration, if this is in the interests of the municipalities concerned. It argued that the Right to Housing Act of 31 May 1990 did not make measures to enable persons in difficulty to find or remain in decent housing solely a central government prerogative.

The *Conseil d'Etat* shows more concern for the right to housing of public officials than for that of the homeless. One example concerns permanent and temporary primary school teachers (*Conseil d'Etat*, 4 November 1987, municipality of Sainte-Foy-lès-Lyon/Lemaître). In accordance with section 19 of the Act of 30 October 1986, section 4 of the Act of 19 July 1989 and the decree of 2 May 1983, municipalities are required to make available suitable accommodation for primary teachers who so request, or failing that pay them an appropriate allowance.

The right to housing in French law, according to the case-law of the European Court of Human Rights

The European Court of Human Rights argues for a dynamic interpretation of Article 8 of the European Convention (respect for private and family life). Everyone has the right to respect for his home (*Gillow v United Kingdom* judgment, 24 November 1986). The privacy of home life must be protected. The right to respect for the home therefore has a social and economic dimension that is pertinent to individuals' "personal security and well-being".

This case-law is based on a well-established European view of law based on the political philosophy of John Locke, which makes property a fundamental right, with property being understood to comprise all that belongs to the individual. In this sense, the home is protected in international law as an aspect of property. In France, property is reduced to possession. Rather than being protected, occupants are undermined by the law of property, which only benefits their landlords. In contrast to the United Kingdom or Germany, occupants do not have "ownership of the use" of a dwelling. A tenancy contract does not constitute a long lease conferring a right *in rem*, amounting to ownership of its use.

The home is recognised in French law, but not with regard to its "ownership of use" dimension. The home covers "the place where the person has his principal residence" (Article 102-1 of the Civil Code). It may include caravans (in the case of members of a gypsy community - *Buckley v. United Kingdom*), other mobile homes or terraces. The home may be the place that the person does or does not occupy, whatever the legal basis of his occupation or the purpose for which the premises are used (4 January 1977), and may include hotel rooms (24 April.1985) or the outhouses of a dwelling (19 June 1957).

According to the European Court, full enjoyment of the right to respect for private and family life, in accordance with Article 8, entails the right to live in a healthy environment (*Loipez Ostra* judgment of 9 December 1994).

The Court appears implicitly to include the right to housing in the right to respect for the home (*Larkos v. Cyprus*, 18 February 1999; *Velosa Barreto v. Portugal*, 21 November 1995).

In this regard, French and international legislation appear to reach opposite conclusions, though this has not led to any change in the former while the latter does not offer citizens protection to match the formal commitments.

II.3 – Shortcomings in national policies

Application of the right to housing is not the objective of housing policy in France, which quite deliberately replaces individual rights with a whole series of measures, whose results are arbitrary and sometimes counter-productive.

As noted earlier, France has chosen not to introduce an individual right to housing that is enforceable, at least in terms of available judicial remedies.

This could be justified by a commitment to apply a right to housing in practice, with the authorities mobilising the necessary resources to achieve this end.

In reality, it is clear that France does not provide the means:

- to ensure access to housing of an adequate standard;
- to prevent and reduce homelessness with a view to its gradual elimination;
- to make the price of housing accessible to those without adequate resources.

France is therefore deliberately placing itself in breach of Article 31 of the revised Social Charter.

"By opting to reduce assistance to individuals that would enable them to solve their own problems, by significantly cutting back on social housing construction and rehabilitation programmes and by destroying financing systems based on employer contributions and special accounts in savings and post office banks the authorities have brought public expenditure under control, but at the cost of exacerbating segregation and exclusion."

Abbé Pierre Foundation – 2005 Annual Report on housing deprivation

II.3.1 – Historical context: how the right to housing has become a minor aspect of housing policy

Between the two world wars, housing barely featured in public debate. Thus, it was not an issue in national election campaigns. Social housing was the product of paternalistic initiatives or marginal co-operative activities.

It was only after the Second World War that the state began to intervene in this area on a large scale, reflecting the need for reconstruction, the advent of centralised state planning and strong social pressures to take account of working class needs, partly in response to the then largest political party in France, the Communists.

State intervention gradually divided into a number of strands that even today are reflected in various aspects of housing policy.

Although part of this policy is concerned with improving the living conditions of the greatest possible number, no attempt is made to secure the right to housing, thus leading to the current worsening of the conditions of households occupying the poorest accommodation.

- Controlling the market, particularly through the 1948 legislation imposing maximum rents, based on the standard of provision offered, for pre-1948 buildings that had not been improved by the landlord. The new law aimed at controlling the cost of housing, as well as encouraging improvements and new build.

In post-1948 Act buildings, rent rises were limited in line with the index of construction costs.

Finally, rents were controlled in accommodation covered by commercial contracts, in particular hotels and rooming houses that provided last resort accommodation to household in crisis and took in the most vulnerable sections of the community.

As we shall see, in all three cases – 1948 Act, ordinary tenants and rooming houses – over the last twenty-five years France has seen a continuous process of deregulation of prices, which has helped to deprive residents of affordable accommodation.

- **improving the private housing stock:** over the last half century a policy of direct assistance to owners for housing improvements has been developed, particularly since the establishment of a national housing improvement agency (ANAH) in the 1970s. The result

has been an unprecedented rise in housing standards, particularly in old urban centres, but the lack of any quid pro quo, in terms of rents charged and priority tenants, has led to the gentrification of rehabilitated neighbourhoods. As well as assisting private citizens to improve their dwellings, public finance is also used to improve inner city environments, through an urban development fund, established in 1976.

This policy has resulted in an overall improvement in the standard of accommodation, but with an accompanying massive rise in the cost of housing and increased pressure on the badly housed. Residents living in the worst housing conditions are not necessarily the ones who benefit from their improvement.

Housing improvement has also created a scarcity of mediocre, but nevertheless readily available and adaptable, accommodation that once offered a useful option to households facing crises or exceptional circumstances. After the war, such *de facto* social housing represented more than half the stock of property to rent but is now probably less than 5%.

In towns with old buildings, which faced much later housing pressures, this process has occurred more recently, with a much more violent impact. In Lyon, for example, in 1990, half the private sector rents were still below or equal to those of public housing. Thirteen years later, the figure had fallen to 5%. In other words, 90% of the private sector tenancies with rents below those of the public sector have disappeared, particularly as a result of the rehabilitation of old urban areas, with public funding.

The existence of this dwelling stock also allowed households to choose between expensive housing of a high standard and accommodation of a lower standard, but also less expensive, which helped to impose a certain stability on prices. The current lack of alternatives, in terms of quality, type of occupancy and so on, exerts an upward pressure on rents (as observed, for example, by Denis Arbonville of the French national institute of demographic studies).

Although housing improvement policies are clearly desirable and have produced some interesting trends, we shall see that the lack of any quid pro quo for public funding has had a negative impact on the conditions of the poorest housed members of the community.

- **Encouraging private initiatives:** housing policy as a whole has gradually coalesced around the idea that the market is self-regulating and that the main aim should be to encourage private investment, which will lead to greater output and thus eventually a more favourable balance between demand and supply.

Over time, there has been a significant trend towards deregulation¹⁶, based on tax strategies and grants to private owners, including subsidies for new build, reduced taxes on transactions and improvement grants with no countervailing conditions.

This determination to attract private investment to the housing market has been strengthened by the development of financial capitalisation, which periodically threatens to deprive the building sector of oxygen, thus radically reducing construction and exacerbating the crisis. The result is competition between several investment strategies, which the state has to take into account in its attempts to keep capital in the housing market.

Among other approaches, since the 1970s, it has encouraged wider home ownership, particularly by offering low-interest loans, to buyers on low incomes. In 2002, these advantageous interest rates cost the tax payer 1.8 billion euros.

The aim of these strategies is to make the rental market more fluid, as new home owners leave it.

However, they have two negative effects. Firstly, the new home owners, who commit themselves to long-term loans, are offered no protection at a time when the employment market requires them to be increasingly flexible. The result is an increasing number of run-down jointly owned properties¹⁷ whose purchasers lack the means to maintain them in the long term¹⁸.

¹⁶ Starting in 1982 and the ending of price controls in rooming houses, most new legislation has contributed to market deregulation, for example by making the 1948 Act more flexible.

¹⁷ In 2004 there were 250 000 dwellings in run-down jointly owned properties requiring public intervention, i.e. the most serious cases, and these represented 620 000 persons, or 1% of the French population.

¹⁸ *The financially beneficial effects for purchasers of the fall in interest rates in the 1990s have gradually been eaten away and then fully offset by the rise in prices. For example, owners meeting 25% of the cost of a new home from the sale of their old one, 25% from financial savings and 50% from a fifteen year loan with fixed interest rates and monthly payments who*

Secondly, the movement out of poorer or working-class neighbourhoods of those who had the resources helped to form ghettos in social housing schemes, whose scale then made them unsuitable for such a limited range of residents. The result was that social housing became unrepresentative, which is now used to justify their demolition. The state meets the cost of the middle class exodus from these areas and then pays for the demolition of the poor people's dwellings that remain, on the grounds that those concerned are too highly concentrated.

Finally, it is by no means clear that these low interest loans help to increase the supply of new housing. They may equally be absorbed by inflation of the property market, in which the case the policy simply enables more households to meet the costs of purchase, which in turn increases competition between buyers and forces up prices, thus preventing the sought-after effect of securing a more flexible market.

However, the symbolic attachment of a large section of the population to the idea of home ownership has made this a continuing feature of government activity that is still evident today, since it has become the most important element of housing policy.

- the construction of social housing: historically, government has invested massively in building social housing. In a France that had been ravaged by the war, it was necessary to offer such housing to a large sector of the population and social housing was also seen as a tool of urban development. These policies are concerned not just with housing families but also with the planning of towns and neighbourhoods. Today, many of the social housing organisations have the status of public planning and construction offices (OPAC), which emphasises their planning roles whereas their social function does not appear in their title.

This multidimensional function was reinforced in 1962 with the need to accommodate two million persons repatriated from Algeria and to settle them across the country. This entailed a significant town and country planning element and a relatively large number of candidate for social housing. Even today, two-thirds of the population are eligible for social housing.

Social letting agencies permanently face the conflicting demands of urban regulation, which requires them to maintain balanced populations and avoid concentrations of poverty, and pressures to accommodate the poorest households in the name of the right to housing.

Yet the social and urban crisis that has emerged in France since the early 1980s in social housing schemes has focussed attention on the problems associated with the concentration of poverty. This has led to an imbalance in the relationship between social letting agencies' urban planning and social responsibilities, to the detriment of the latter and in favour of a policy of social mixing, whose application, as we have seen, has generally had an undesirable effect. While the aim of balanced urban communities is quite understandable, social housing is the only means the authorities have of achieving it. Within this category, new build is much less significant than the existing stock. The main tools for securing social mix are therefore the allocation policies for social housing, most of which is located in neighbourhoods where poverty and social problems are already over-represented. The result is that households facing the greatest problems are denied access to housing, without being offered any alternatives. Social housing agencies' planning functions give them a leading role in denying the right to housing, with the support of local authorities, who compete with each other to avoid the presence of groups of the population deemed to be undesirable.

could afford 100m² in 1998, could only afford 93m² in 2004 (source: Conseil Général des Ponts et Chaussées according to INSEE figures, notarial data base, Bank of France and CDC). Admittedly, the decline in interest rates has enabled purchasers to borrow for longer periods: the average length of bank loans, other than subsidised loans, for house purchasers has risen from 14.1 years for the period 1993-1996 to 15.5 years for the period 1998-2002, according to INSEE housing survey statistics. However, with an interest rate of 4 or 5% and a length of loan of 14 or 15 years, increasing the length of the loan by 1.4 years only allows the purchaser to borrow an additional 7% or so, with unchanged monthly repayments. Assuming that the unsubsidised bank loan covers 50% of the purchase price, this enables the purchaser to buy a property 3.5% more expensive. Extending the length of the loan is therefore insufficient to compensate for the negative effects of price rises on buyers' purchasing power. Martine Beauvois. Insee Première No. 991. December 2004

Besides, another social objective of large scale social housing building programmes was to stabilise rents in the private sector, by making available very cheap accommodation. Government intervention took the form of investment aid to generate very low rents, but has switched towards subsidising households, enabling them to pay higher rents and thus also allowing rents in the private rented sector to rise.

- **individual housing aid:** the crisis of the 1970s again raised the issue of equity between social housing tenants. It seemed unfair for the middle classes living in social housing and the "new poor" to be paying the same rent and receive the same support from the public purse.

Housing policy was therefore reformed in 1977, with the introduction of individual assistance as of right, based on rent paid, income, household composition and cost of living in the locality concerned. Eligibility extends to low income households in both public and private rented sectors (who now receive the same allowances) and includes subsidies to help those buying their own homes to meet the cost of borrowing.

The Act of 3 January 1977 is still the keystone of housing policies. Some clarification is therefore required:

Economists like Raymond Barre became concerned that during the most "social" period of the Giscard d'Estaing presidency compulsory deductions had risen from 35.7 to 42.5% of GDP. They deemed it impossible for the state to guarantee housing, education, leisure activities and retirement benefits for everyone. Individual freedom was linked not to the uninterrupted expansion of public services but to the existence of a market. This was summarised in a sentence from France's 8th Plan: "The continued growth of public expenditure, and more particularly social spending, at a significantly faster rate than that of GDP will have very serious consequences".

The result was that those on assistance - the poor - were effectively trapped by a form of state manna that locked them into a bureaucratic prison. The great departments of state were not only failing to serve democracy and binding individuals head and foot, but were also draining the economy and ruining the country. To reverse this trend the seventh Plan (1975-1980) introduced a major change, in which socially determined supply side measures were to be replaced by the mobilisation of resources on the demand side. Priority was given to a guaranteed allowance that would be immediately reinjected into the economy. The same approach was applied to all groups of the population: the uprating of old age allowances, a specific allowance to disabled persons and a single parents' allowance.

In the field of housing, in a report commissioned by the President, the economist Raymond Barre spoke of the need for greater use of the market. The French had to pay the proper price for housing and all building must eventually be transferred to the private sector. The principle was simple: public support should be granted exclusively to enable individuals to cover, within certain limits, the difference between their actual accommodation costs and the amount they could bear, having regard to their family situation and their income. [...]

In practice, the 1977 reform introduced two forms of assistance: individual rent allowances and tax relief granted by savings plans. However, the latter was very selective. Even those with modest incomes had to devote an adequate sum to their accommodation. Households had to spend a third of their income. Investment would no longer be based on inflation and public spending, but on higher levels of longer-term saving. The measure was quite specifically inegalitarian and mainly benefited the better off. The purchasing power of the least well off was undoubtedly increased but those on higher incomes benefited disproportionately.

Housing assistance was expensive and rapidly took off. Far from reducing the burdens on the state it expanded them. In 1981 a committee chaired by François Bloch-Lainé set up to review the reforms was critical of the 1977 Act, and noted that the paradoxical consequence of the state's financial disengagement from the housing sector was to increase its level of commitment. The state was continuing to pay, but no longer financed housing.

Ch. Bachmann, N. Le Guennec: Violences urbaines. Hachette littérature. Coll. Pluriel. 2002. 569p.

By switching from the direct supply of housing to one of subsidising demand, the state has allowed prices to inflate, which has absorbed this significant financial commitment (and to

which we shall return in the description of the current situation) and above all has sacrificed the means of ensuring that its response measures up to needs.

- **Making tenancies more secure:** in the late 1980s there was a further development in how the housing crisis was perceived. Social housing was then experiencing a problem of underoccupation, because of a shortage of applicants. The conclusion was that the country was going through a housing crisis associated not with a lack of housing but with access to that housing.

New tenancy legislation was passed in 1989 to protect existing tenants, and was supplemented by the Right to Housing Act of 31 May 1990.

The latter established a housing solidarity fund (FSL) in each French *département*. FSLs had three objectives:

- helping those concerned gain access to housing by means of financial assistance or loans and by acting as guarantors for vulnerable households¹⁹,
- helping those in debt retain their accommodation through financial assistance to landlords who agree to allow tenants to remain in place,
- housing related social assistance in the form of individual support aimed at anticipating problems and mobilising the necessary resources and agencies to resolve them.

Certain *départements* have also given their FSLs responsibility for helping new home owners in difficulty.

The funds are completely consistent with a policy of making tenancies, or even the purchase of accommodation, more secure.

But once again it is clear that failure to control market forces has inflationary effects that absorb the added value of this public assistance. In practice, since the appearance of FSLs, requirements concerning tenancy guarantees have been reinforced and assistance with access to or the retention of accommodation is sometimes seen as part of households' disposable income, hence the recurrent need to make use of it²⁰.

- **services for the least well off:** after the Second World War, government started to offer responses to the problems of specific groups. Young people caught up in the exodus from the countryside were accommodated in young workers' hostels; single immigrants were similarly housed (and supervised) in migrant workers' hostels; the mentally ill were placed in psychiatric hospitals and special centres were provided for the maladjusted.

All of these sectoral policies gradually coalesced into a programme of assistance for the disadvantaged, characterised by temporary benefits and individual support aimed at a return to normal.

The first to appear were a series of residential and social rehabilitation centres offering a range of social services and acting as landlords for their clients. These were followed in the 1980s by the establishment of housing associations with an emphasis on rehabilitation, drawing on the combined skills of housing specialists and social workers.

The reform of the asylum procedure in 1991 deprived refugees of social rights, such as the right to work and to individual housing assistance, and led to the establishment of specialist reception facilities.

After 1995, new reception facilities emerged, though still according to the principle that short term shelter was justified because it would be rapidly followed by a form of accommodation fully adapted to the needs of those concerned. Eventually, the principle of short term shelter ceased to rely on any justification. Emergency arrangements offer neither dignified living conditions nor guidance towards a more satisfactory situation. The temporary nature of the shelter is used to justify the poor quality of the services provided. The process culminated in 1998 with the general adoption of "social watch" services, which are strengthened in winter and which offer street people an emergency number to contact. This emergency approach

¹⁹ Such guarantors are individuals or legal persons who undertake to ensure that a contract – in this case a tenancy – is fulfilled. The practice is quite normal in France, but banned in some countries, such as Belgium.

²⁰ See the study carried out under the auspices of the Loire *département* 2005 housing plan for the disadvantaged.

has continued to expand, particularly under the auspices of national anti-exclusion programmes.

Although these arrangements offer a certain number of operational responses to the problems encountered, paradoxically the very fact of their being temporary, discretionary, scattered and uncertain serves to further weaken the right to housing.

This is no trivial change of direction in housing policies, in terms of either target groups or objectives. By switching from housing policies for vulnerable groups to ones for the disadvantaged, France has abandoned the search for solutions to unacceptable situations in favour of measures with uncertain objectives. As René Ballain explains²¹:

"Although the poorly housed were omnipresent in the first part of the twentieth century, they only appeared on the political landscape in the late 1960s when the rapid expansion of new build made it unacceptable for a group of the population who had not benefited from the fruits of growth to be forced to remain in old, uncomfortable and unsuitable dwellings. The notion of poor housing coincided with a refocusing of social policy. The poor, who had become increasingly the province of the social protection machinery established since the liberation, gave way to the "unfit". The 1970s were therefore dominated by the dual notion of the poorly housed and the unfit, which led to an emphasis on more targeted approaches that marked a break with what had gone before.

The economic and social crises of the 1980s were reflected in new priorities that gave rise to the Besson Act of 31 May 1990. It was at this point that the notion of "disadvantaged persons" came to the fore. This covered "any individual or family experiencing specific difficulties on account of their inadequate means or living conditions"²², and therefore appeared to have a broader scope than the notions of homelessness and poorly housed. The last two named have not disappeared, but they no longer play the same central role in defining housing problems and in guiding government policy."

From social housing policies to urban policies: urban renewal and the disappearance of the right to housing

Recent trends in housing policy have been characterised by the stigmatisation of social housing schemes and incitements to promote social mixing, which have gradually led to the view that urban and built forms are pathogenic.

This change of view has had a critical impact on housing policies and the French approach to the right to housing. The problem is no longer poverty but the concentration of poverty. The result is that government policy is no longer to offer individual social security but to avoid concentrations of individual problems within specific areas.

The purpose of recent legislation, such as the 2000 Solidarity and Urban Renewal Act and the Social Cohesion Act, is to disperse poverty, not to prevent the denial of social rights.

Housing policy's priority is not to implement the right to housing but to ensure that towns and cities function harmoniously. France has progressed from social housing policies with no urban dimension (as in the 1990 Besson Act) to urban policies with no social dimension.

This is the logic that underlies the establishment of the national urban renewal agency (the ANRU), whose task is to support the dispersal of social housing within so-called "housing basins", which means financing demolition programmes in social housing schemes and reconstruction in more suitable areas. The objective is to demolish 200 000 social housing units and rehabilitate the same number between 2004 and 2009, at a total cost of 30 billion euros.

As we have already seen, the right to housing has suffered from this emphasis on urban policies:

²¹ René Ballain, et al. : Mettre en œuvre le droit au logement. La documentation française. 2004

²² Section 1 of the Act of 31 May 1990 on implementation of the right to housing

- demolition takes place before reconstruction, and difficulties in maintaining output mean that the latter is by no means guaranteed. In principle, replacement operations are supposed to be in addition to totally new dwelling but as it is impossible to achieve these objectives those concerned try to meet the agency's objectives by producing a combined new build figure. For example, the Government has announced the construction of 500 000 social housing units over the 2005-2009 period, but has made local authorities responsible for programming the operation, via their local housing programmes, whose combined objectives only add up to 60% of the Government's target²³. Moreover, it will be difficult even to achieve the local housing programme targets. According to Jean-Claude Driant, this demolition policy was drawn up at a time when there were substantial vacancies in the social housing stock and construction was relatively easy, neither of which is now the case.

- In addition, the demolished dwelling are ones built before 1976 and were very inexpensive. The rebuilt ones are more expensive, which will make accommodation dearer for poor households. Figures have been produced that apparently show that the average cost to households will be unchanged. We have prepared a table²⁴ that shows that this conclusion is based on several problematic assumptions: the first assumption is an average increase in individual housing allowances from 80 to 90%. The second is a large reduction of between 30 and 40% in costs, particularly of heating. Yet while it is true that old buildings and their outdated heating systems are expensive, increases in fuel costs and the loss of economies of scale in the new units make it difficult to envisage substantial savings in the longer term. If the costs of heating, lifts, maintenance and so on are underestimated, the bill will be met by the tenants via their annual settlement of outstanding charges, which can represent a heavy additional burden for them.

Those involved in the housing field are therefore tempted to present favourable figures for the combined cost of rent and other charges, because the latter are - deliberately or otherwise - underestimated. As a result, France claims that urban renewal offers satisfactory results in terms of the accessibility of replacement dwellings. However, we dispute the accuracy of the figures on which these claims are based.

- Another important consequence of the establishment of the national urban renewal agency (ANRU) is that it has destroyed local variations that made it possible to diversify the stock of social housing. Hitherto, local agencies have had differing priorities. The state has been responsible for the disadvantaged, each local authority and letting agency has had its own allocation policies and so on. By operating on a regional scale, the ANRU has set local authorities in competition with each other for its resources. This has led to regional consensus as a means of ensuring that agency funding was rapidly taken up, to the detriment of attempts to match programmes to local needs. According to the journal AMC²⁵, this can lead to the submission of inadequate proposals as a result of the need for a rapid response, indirect expectations of homogeneity and the financial greed that authorities may develop.

For example, if the scale of the programmes makes it necessary to produce more expensive dwellings, local agencies will be tempted to go along with this, rather than sacrifice funding that generates employment and so on. Clearly, against a background of difficult building conditions and the failure to resist pressures to gentrify the stock of social housing, the supply of the latter will tend to be geared towards the middle classes.

Moreover, this mode of operation, involving dialogue between local agencies and the ANRU, poses a challenge to a more locally based approach, particularly that based on *département* housing action plans for disadvantaged persons, whose aim is to bring together all the local agencies and draw up plans based on an analysis of individual needs. France has now entered an era where decisions are taken on the basis of regional assessments of needs. Although this dimension must be taken into account, it is clear that French practice is moving

²³ Abbé Pierre Foundation 2005 Annual Report on housing deprivation.

²⁴ This table was drawn up during the drafting of the greater Lyon local housing programme in 2005. It is based on the actual situation of households living in a block of flats scheduled for demolition and the estimated costs of new dwellings becoming available at the same time in the area.

²⁵ 167 000 euros par logement pour quoi faire ? AMC, No 147, November 2004

away from the protection of individual rights and is producing social housing that will respond to "average" social needs rather than each individual's need for protection.

Financial impact of a move from demolished to new units by type of household

Variation from the housing expenditure/ household income ratio of an "ordinary" social housing tenant

family comp.	Dwelling type	income sources	Income	HLM-O	PLA-I	PLUS	PLS
2	T2	salary/wage	1067	24%	-5%	-4%	17%
2	T2	wage + RMI	1646	18%	2%	2%	9%
2+3	T3	salary/wage	1651	20%	-4%	-2%	1%
2+1	T3	salary/wage	2597	13%	2%	4%	8%
2+4	T3	unemployment	1086	15%	-10%	-9%	-7%
1	T3	salary/wage	1677	18%	5%	9%	15%
1+1	T3	salary/wage	1372	23%	-3%	1%	8%
1+2	T4	salary/wage	2875	14%	3%	5%	9%
2+3	T4	invalidity	2629	7%	-3%	-2%	3%
1+3	T4	salary/wage	1342	20%	-3%	0%	8%
2+5	T4	salary/wage	2211	16%	-8%	-7%	-4%
2+4	T5	invalidity	1771	10%	-4%	-1%	7%
2+1	T5	retirement	1372	17%	1%	5%	16%
2+2	T5	unemployment	1381	11%	3%	7%	18%
hypotheses							
	2T2	RMI	536	21%	-9%	-8%	8%
	2T2	unemployment	750	15%	-6%	-5%	5%
	1+1	API	821	12%	-6%	-5%	1%

change in average individual allowance	119	214	226	235
		80%	90%	98%
change in average charges	185	111	126	132
		60%	68%	71%

This change of approach has to be seen in the context of decentralisation, with the dilution of responsibilities associated with the right to housing. The Besson Act of 31 May 1990 brought together all the local housing, social and political agencies in the local housing action plans for the disadvantaged, which constituted a common objective. Decentralisation has led to a scattering of responsibilities that need to be co-ordinated if the right to housing is to be successfully applied.

"Decentralisation that is operated in such a way as to make the action of government at all levels more effective, bring it closer to the ground and reduce to the maximum duplication of efforts results in a new division of housing responsibilities between the various public bodies. Municipalities, joint local authority bodies and département councils are given new powers while central government retains considerable powers of intervention. The latter keeps control of the main levers of authority in the housing field, by supporting construction through tax measures and influencing the balance between supply and demand through individual housing assistance. The state also plays a major role as crisis manager. It has responded to the crisis in difficult estates with its urban renewal policy, in which the national urban renewal

agency (ANRU) represents a recentralisation of policy, and to the social housing crisis, where the social cohesion plan has a series of ambitious construction objectives, even if they are not compatible with those of the local housing plans²⁶. It always has a leading role in laying down housing standards, target groups and so on. The state's continuing part in defining and implementing housing policy has been masked by the scale and significance of the powers that have been transferred to local and regional authorities.

Départements, which have full responsibility for housing solidarity funds and a leading role in drawing up and implementing housing action plans for the disadvantaged, now bear most of the responsibility for the social dimension of housing policy, even though the state retains its position as a "co-driver". Joint-local authority bodies are responsible for supporting the construction of social housing in the interests of regional balance. Municipalities have been delegated authority to determine the population structure of their areas, by using their planning powers to establish guidelines for new house building, as well as by directly allocating places in social housing and/or asking for the prefectural quota to be delegated to them.

This new division of responsibilities will alter the application of the right to housing. There is a danger that public action in the housing field will be segmented. Each public authority will deal with it from the standpoint of its own concerns, powers and responsibilities. Each may well focus on one particular dimension of housing policy based on its own priorities and responsibilities, without any attempt to ensure that their activities are consistent with each other. Yet such consistency is crucial for the application of the right to housing because it calls for simultaneous and co-ordinated action on the supply of housing, individual financial assistance, the legal protection of occupiers and tenants and support for the most vulnerable households. The problems faced cut across boundaries and are indivisible, and are unlikely to be solved under the new division of responsibilities. New forms of co-operation between authorities and agencies will be required.

Central government seems unable to offer the necessary co-ordination, or to apply the principles that should nevertheless underlie its activities, namely encouraging the application of the right to housing and ensuring a measure of regional parity. Admittedly, it did not always complete this task successfully in the past and there has been no lack of criticism of its failure to take the necessary action but it did have the legitimacy and, to an extent, the means. With part 2 of the decentralisation process, the state withdrew in some respects from the regional and local stage. Once it had concluded delegation agreements with département councils and joint local authority bodies it ceased to play an active part. This weakening of its powers seems to be reflected in the distinction established by the Act of 13 August 2004 between administrative and political decentralisation, with central government henceforth concentrating its own resources at regional level, leaving it unable to deploy the same level of resources at département, joint local authority and municipal levels, all of which were given new powers. This reduction in its capacity is also linked to the disappearance of financial resources at its disposal and of the expertise and negotiating skills of the département works departments, through which it operated to promote the right to housing and regional parity. These have not been replaced by alternative means of intervention, such as regional plans based on strategic diagnosis, a capacity for evaluation or the power of substitution. As a result, the decentralisation process has left us with a somewhat impotent state that may well find itself largely powerless to safeguard the right to housing.

In response to this lack of coherence or even ability to implement its own stated policies, central government is developing a complex system of contractualisation based on political agreements between the state and départements, joint local authority bodies and municipalities concerning the delegation of powers and operational agreements between the state and the "major players" in the housing policy field (the Union Sociale pour L'Habitat and the Union Economique and Sociale du Logement), to enable it to carry out its stated objectives regarding urban renewal and the social cohesion plan. At the same time the links between département housing action plans for the disadvantaged and local housing programmes were left unclear, although the proposed housing for all law did refer to the question. The département plans were rendered partially meaningless and their continuing

²⁶ The Abbé Pierre Foundation's 2005 report on housing deprivation says that only about 60% of the social housing construction objectives in the social cohesion plan for the 30 largest French conurbations – those with over 200 000 population – are included in the local housing programmes of these same conurbations.

value as means of stimulating and co-ordinating action on behalf of disadvantaged persons depends in large measure on the goodwill of local authorities and agencies and the state's capacity to provide the financial and human resources necessary to implement the plans. Local housing programmes and delegation agreements hardly ever incorporate département plan objectives and activities. In a situation where département plans have been significantly weakened and local housing policies focus mainly on questions relating to development and the allocation of the local social housing stock, it is by no means sure that the right to housing is making any progress. Après la décentralisation, quelles perspectives pour le droit au logement ? les Annales de la recherche urbaine. 2006)

In such a context, those concerned tend to compete with each other to ensure that the constraints on their freedom to use their new powers with the resources at their disposal are reduced to a minimum. The institutions concerned with social housing policies are increasingly numerous and are even in competition with each other because of the compartmentalisation of responsibilities within the same area, whereas in the field of urban policy it is in their interests to agree, because of rivalry between areas.

The juxtaposition of the national urban renewal agency and the rules of decentralisation is the death knell of local efforts to implement the right to housing, while encouraging partnership to achieve strictly urban planning objectives.

- Finally, the demolition/reconstruction approach clearly has financial implications against a background of a housing shortage and the growing cost of construction. The state pays out € 15 000 per dwelling demolished and € 152 000 per dwelling built²⁷. The cost of urban renewal with no addition to the stock is therefore € 167 000 per unit of accommodation. Notwithstanding the rise in standard (still to be confirmed, compared with rehabilitation), there is a danger that a significant gap will emerge between the supply of "social" accommodation and actual needs.

In practical terms, after a year in existence the urban renewal agency published its first report, which described the situation as of 31 March 2005. Thirty-nine agreements had been signed on the financing of the urban renewal of neighbourhoods in so-called sensitive urban areas. Altogether the agency's appropriations committee considered 94 projects, representing 154 neighbourhoods and more than a million residents.

The total sums involved amounted to € 10.3 billion, of which nearly 30% (€ 3.2 billion) was the agency contribution. Of the latter, 1.4 billion was allocated to making neighbourhoods less isolated, 940 million to public infrastructure and 200 million to artisanal and commercial infrastructure.

Forty-five thousand dwellings are scheduled for demolition and 42 000 will be replaced²⁸ (on site or elsewhere), 87 000 rehabilitated and 85 000 upgraded.

²⁷ Source: AMC, No 147, November 2004

²⁸ This footnote essentially concerns nuances in French.

II.3.2 – State housing assistance does not ensure the right to housing

II.3.2.1 – A limited budget, inconsistently allocated

Between 1983 and 1995, public expenditure on housing fell from 2.22 to 1.83% of GDP. Central government's share fell from 1.48 to 1.09%, whereas the housing shortage continued to get worse – 600 000 dwellings in the mid-1990s – while the polarisation of the market led to a growing, and recognised, problem of concentrations of poverty.

Then in 1995 public expenditure started to rise again, to 1.95% of GDP in 2004 (1.23% for central government). Despite a complex system of funding, the central state is still the main contributor to public spending on housing: state: 66%; local authorities: 26%; employers: 7%.²⁹

However, it remains to be seen how this effort is focussed and to what extent and how it contributes to the right to housing.

Public expenditure(%)	Aids to construction ³⁰	Aids to investment	Tax assistance	Individual assistance	Assistance to the least well off	Total
2000	6.94	17.01	32.51	43.01	0.53	100%
2001	6.65	17.13	32.18	43.18	0.86	100%
2002	6.20	17.03	31.40	44.55	0.82	100%
2003	5.98	17.20	31.84	44.17	0.81	100%
2004	5.05	17.21	31.58	45.36	0.80	100%

Source: Abbé Pierre Foundation - 2005 Annual Report on housing deprivation.

It appears that the direct construction of social housing only accounts for 5% of housing policy expenditure and has declined over the last five years. Over this period it has fallen by 20.1%. Moreover, the state has been reluctant to pay the sums owed to social housing organisations, with whom it has built up a debt of between 400 and 500 million euros³¹, thus helping to strangle this sector.

Direct assistance to the poorest members of the community accounts for less than 1% of public housing expenditure.

The other expenditure headings have the expected effects on the right to housing. They support landlords and the payment of rents, in the hope that this will contribute to the right to housing.

But as we have seen, the lack of any quid pro quo for this financial commitment to the private sector means that there is no increase in or harmonious geographical distribution of affordable housing, or a guaranteed minimum standard of housing, and it does not prevent or reduce homelessness.

The most distinctive aspect of recent trends has been the growing proportion of public expenditure devoted to the private sector.

²⁹ source: Union Sociale pour l'Habitat

³⁰ Aids to the construction of social housing

³¹ According *Le Canard Enchaîné* of 14 September 2005, the state owes social housing organisations 400 to 500 million euros. This sum represents three-quarters of the subsidies allocated by the state each year for the construction of social housing. In the Ile-de-France region alone, the debt has risen from 39 million in 2003 to 200 million today. Moreover, in the spring the finance ministry froze the final 150 million of grants intended for housing. The result is delays in the housing minister's social housing construction programme: in the Paris region, new starts will probably be 15% down this year whereas they were supposed to increase by 20%.

Between 1990 and 2000, the percentage going to the private rented sector rose from 23.1 to 33.2%. This has been met in part by the national tax payer (+5.1% on average between 1995 and 2000) but above all from local taxes – an average of +7.2% over the period.

A comparison of the social and private rental sectors since 2001 shows that the former is no longer the main beneficiary of public assistance since it receives 30.6% of expenditure, compared with 33.8% for the private rented sector and 35.6% for aid to home purchase. The social sector is no longer the only one to benefit from a positive net commitment³² from government: 1 835 million euro for the social sector compared with 1 962 million for the private rented sector.

Since we have seen that the rise in costs is much more rapid than that of households' purchasing power, we must conclude that the growing commitment of government to this sector has not resulted, nor is intended to result, in its becoming more accessible to households who find it difficult to exercise their right to housing.

The value of tax assistance has risen by 5.2% over the last to years, mainly as a result of the so-called "De Robien" arrangements³³, which have helped to destabilise private rented markets and increase exclusion. Other factors include the concentration of private savings on rented properties that are inaccessible to 85% of households, which has served as an excuse for withdrawing other forms of housing assistance and has contributed greatly to the general rise in private sector rents through a form of contagion effect³⁴.

It is clear that the state only devotes a modest part of its budget to housing, that this expenditure is not increasing and that direct provision to ensure the right to housing only plays a marginal role in its housing policies. On the other hand, the government has introduced a number of measures, such as the "De Robien" arrangements, to encourage rent rises in the private sector with no compensatory assistance, in full awareness of the effects in terms of greater exclusion and social and geographical exclusion.

Having described the gradual development of the various public housing policies and the current breakdown of the budget, we must now examine the current state of these policies and their limited impact on the right to housing.

We will show that French policies are tending to increase tensions in the housing market, while compensatory measure are being weakened, resulting in a denial of the right to housing of the most vulnerable groups of the population.

We will also demonstrate, with the aid of comments from independent national and international institutions, that French governments have been fully aware of the limitations of their actions and of the possible alternatives, all of which will show that France has quite deliberately failed to apply Article 31 of the revised Social Charter.

II.3.2.2 – Aid to the private sector: expenditure with no social quid pro quo

II.3.2.2.1 – House improvement assistance

The official objective of the national housing improvement agency (ANAH) is to improve housing in return for a controlled rent, but in practice it offers a range of provision and types that make no demands on landlords and are more attractive than those that do. For example, despite the increase in allocations and the appearance of so-called "social agreements", the number of dwellings covered by such agreements, particularly the so-called PST category, corresponding to the lowest social housing rents, continues to decline. ANAH's budget in 2004 was 418 million euros.

³² Difference between public expenditure and charges.

³³ These exempt private landlords from taxes, with no quid pro quo, and in 2003 replaced the equivalent "Besson" arrangements, under which in exchange for such benefits landlords had to comply with certain rent requirements, according to households' incomes.

³⁴ Abbé Pierre Foundation: 2005 Annual Report on housing deprivation.

In 2005 it was 487 million³⁵. But who has benefited? At a press conference, the junior housing minister stated that in action to combat sub-standard housing priority was to be given to owner-occupiers on low incomes, though this did not exclude other requests for assistance³⁶.

	1997	1998	1999	2000	2001	2002	2003
Dwellings grant aided by ANAH	107 600	111 200	118 414	135 500	127 700	115 005	87 300
Social agreements	9 100	9 100	9 950	9 650	7 400	7 800	7 700
of which PST	3 200	3 100	3 430	2 950	2 500	2 057	1 777
% social agreements	8.5%	8.2%	8.4%	7.1%	5.8%	6.7%	8.8%
% PST	3%	2.8%	2.9%	2.2%	2%	1.8%	2%

Source: Anah

House improvement policies are therefore improving overall quality of life, but do not prevent, and even increase, the cost of private housing, particularly for households on the lowest incomes, as we saw in the first part.

As housing markets become more polarised, low income households are pushed towards social housing, which makes the latter more congested and thus unable to respond to poorly housed or homeless households. The structure of house improvement assistance, 92% of which does not require any social compensation, is therefore in breach of Article 31 of the revised Social Charter. The overall improvement in housing standards offers no safeguards to those on low incomes and the homeless, indeed their situation is made worse.

II.3.2.2.2 – Tax benefits

The so-called "Besson" arrangements came into force on 1 January 1999 to assist investment in rented housing and encourage the development of a stock of intermediate rented properties between the uncontrolled sector and the social housing sector aimed at low income households. The tax benefits accorded required social compensation since tenants' income had to be no more than 40% above the ceilings laid down for social housing. Thus owner investors were required to rent their property for at least nine years and subject to maximum limits on rents and tenants' income.

These provisions were amended by section 9 of the Town Planning and Housing Act, No 2003-590 of 2 July 2003. The principle is the same as for the "Besson" agreements. The "De Robien" arrangements apply to purchases of new or soon to be completed property from 1 January 2003 and extend tax exemption to older dwellings, so long as significant rehabilitation work is carried out before they are made available for renting.

However, there are no compensatory social requirements: the ceiling on tenants' income has been abolished and maximum rents have been raised to about 90% of rental market rates. These ceilings vary according to the building's geographical location. The new arrangements encourage the wealthy to increase their property holdings, since the tax benefits are considerable - 50% of the purchase price over nine years and up to 65% over 15 years – while making the rents of the properties concerned unaffordable for lower income households, thus actually hindering the application of the right to housing.

The assistance granted under the De Robien arrangements is on the same scale as that available for the construction of social housing (so-called PLUS). According to the Social Union for Housing³⁷, taking all the assistance (VAT reductions, grants, property tax exemptions and reduction of taxes on fiduciary and property incomes) into account,

³⁵ Circular C-2004-01 du 9 December 2004

³⁶ Actualités Sociales Hebdomadaires 2392 of 28 January 2005. p.11

³⁷ Memorandum of the economic and financial studies directorate of 2 June 2003.

assistance to the average PLUS dwelling is € 22 000 and to an average "De Robien" dwelling € 21 000.

Yet the rent ceiling on the latter is two to three times higher and their tenants are not subject to any income limits.

Another Social Union for Housing source³⁸ offers the following breakdown: for an investment of € 100 000 and a dwelling measuring 67m² let to a three person household in geographical zone 2, the cost to the authorities and the constraints are as follows:

	PLUS	PLS (social housing)	De Robien
Cost to the authorities	18 500 to 22 900 euros	16 600 euros	14 000 to 22 000 euros
% of cost met by the authorities	18.5% to 22.9%	16.6%	14% to 22%
Maximum rent	304 euros	457 euros	837 euros
Maximum taxable income	13 446 euros	29 136 euros	Unlimited
Length of tenancy	Unlimited	Unlimited	9 to 15 years

We therefore maintain that section 91 of Act 2003-590 of 2 July 2003, establishing the De Robien agreements, is incompatible with the right to housing. More generally, against a background of high prices, all the redistribution policies with no social quid pro quos are open to challenge. Housing is one of the few fundamental rights that is acknowledged, and yet it is one of the few basic sectors in which prices are not controlled in France. France guarantees a minimum income and even the cost of borrowing is controlled, via a maximum so-called usury rate. The absence of controls over the cost of housing cannot therefore be explained by its technical impossibility or the lack of a national tradition of price controls. It is a policy decision.

II.3.2.2.3 – Assistance with acquiring property

We refer here to the comments of the Court of Auditors in 1994 in its report on state aid to housing:

As the social effectiveness of this measure appears to be declining, as does its role in the construction of housing, certain worrying abuses have emerged. The only income of beneficiaries to be taken into account is taxable income for the year before the previous one, which means that assistance can be given to households whose income at the time the loan is granted is well above the maximum for entitlement. The court proposes that current income be used to assess entitlement, following the practice used by lending organisations. The financing of grouped operations reveals even more disturbing abuses. Prefinancing loans at rates of up to seven points below market levels have been made available to promoters to build accommodation for sale on social grounds, but the percentage of dwellings sold outside the official social purchase procedure rose from 18% in 1980 to 39% in 1985, then 60% in the early 1990s. At all events, better management of the interest payable on such social loans, which can be adjusted to take account of income changes, would allow assistance to households to acquire new or older property to be administered more fairly. This would make it necessary to attach formal agreements to every type of loan, without automatically adding financial assistance with building costs, which could eventually lead to a reduction in, if not the abolition of, current assisted loans."

Despite these warnings and the rapid increase in the number of run-down jointly owned properties (which according to the Abbé Pierre Foundation are occupied by 625 000 persons), despite the international examples of the impact of a large scale rise in socially-based

³⁸ Social council of the union, contribution to social housing conference, September 2005.

ownership, particularly in the new EU member states, despite all these signs, social ownership is still a major objective, particularly through the sale of social housing to its occupants – the government aims to sell 25% of the stock – and through loans for purchase, the arrangements for which have changed very little since the Court of Auditors' report.

II.3.2.2.3 – The deregulation of prices

For 25 years, France has experienced a continuing process of deregulation of housing costs, with exceptions to the 1948 Act and the establishment of a floor category³⁹ in large urban centres (1986).

Still in 1986, the Méhaignerie Act introduced exemptions from the maximum increase in rent imposed by the construction cost index by allowing landlords to bring their rents into line with those of neighbouring properties if they were at a manifestly lower level.

Rent controls in rooming houses were abolished in 1982.

³⁹ The 1948 Act indexed rents according to the standard of the dwelling. There were different categories of price per square metre according to the level of comfort.

II.3.2.3 – Social housing

As noted in the first part, the figures on new housing are disturbing, with a decline in annual output of about 30% over ten years and a trend toward more expensive housing, which does not reflect changes in demand.

Admittedly, this is not entirely the fault of the state since it is also a consequence of financial fluctuations in the housing market that have forced up construction costs, which social housing has not been spared.

It therefore has to be established how far the state can influence the allocation and use of resources so as to limit these inflationary tendencies, which are detrimental to the living conditions of the most poorly placed households – overcrowding, more evictions and so on – and thus infringe their right to housing. As we have seen, far from attempting to control these developments, the state has even encouraged them. This would have been acceptable if, at the same time, it had introduced additional measures to offer an alternative to victims of rising prices in the private market.

As far back as 1994, in its report on housing assistance the Court of Auditors highlighted the erring ways of the state: *"The aim of assistance with social housing for rent should be either to focus on the poorest households, in which case such accommodation should be reserved for them and other households excluded from it, without needing to resort to higher rents, or to make it more widely available to avoid segregation or in acknowledgement of the specific difficulties faced by certain neighbourhoods. In the latter case, rent levels, tenancy agreements and management rules similar or even identical to those of the market should be set to reflect the means of those concerned. **Failure to choose clearly between these two options leads to a lack of consistency between the reasons for granting public aid to the social rented market and how they are applied in practice.**"*

The state has opted out of the direct construction of housing whose cost, location and type reflects current needs.

We have seen how the 1977 reform led, without any savings, to the state cutting back on construction.

Similarly, the proportion of the national housing budget allocated to the construction of social housing has been in constant decline and now represents 5.05% of the total, despite regular announcements that production is to be stepped up, including, most recently, that accompanying the Social Cohesion Act of 18 January 2005 and the announced 500 000 additional units in five years, with no changes to the financing rules that are currently preventing construction. Those concerned agree unanimously⁴⁰ that this cannot be achieved under the current rules, which make it impossible to balance the books on social housing activities.

According to the Social Council of the Social Housing Union⁴¹, *"since 1977 and the introduction of the Barre reform, the economic and social situation has changed greatly and no real consideration has been given to the respective roles of construction and individual assistance in national housing policy.*

As a result, there has been:

- *a dramatic shortage of housing to rent at affordable prices, even for intermediate categories;*
- *a growing gulf between private sector and social housing rents, which is creating a gap in the housing chain. This is being made worse by the upward surge of private sector rents in the tightest sectors of the market;*
- *a drying up of housing facilities and the disintegration of residential options;*
- *a withdrawal of the state, characterised by:*
 - *a drastic decline in aid for social housing construction, per operation, leading to higher rents in the social sector;*
 - *a significant decline in the value of individual housing assistance, placing a greater burden on families and exposing them to financial problems and rent arrears;*

⁴⁰ See for example the Abbé Pierre Foundation's 2005 annual report or the documents produced by the Social Union for Housing, which is the federation of social housing organisations.

⁴¹ Social Council: contributions to the Nantes social housing Congress, September 2005

- the near disappearance of aid for rehabilitation in areas without urban priority status, creating a risk of the emergence of new "difficult" neighbourhoods;
- a failure by the new government to appoint a minister with special responsibility for housing, despite the importance of this sector and the housing crisis;
- finally, tax concessions to investment in private letting without the least social quid pro quo, which have failed to regulate the market and have pushed up rents.

The major criticism of the state concerns its failure to ensure the supply of a sufficient volume of affordable housing to meet needs that cannot be met by a market that it refuses to regulate.

The method of financing social housing has greatly contributed to this trend, against a background of rising unsatisfied demand, market deregulation and a lack of clarity about the purpose of social housing, which means that eligibility extends to those who are not necessarily most in need. This has led directly to innumerable cases of the denial of the right to housing, as a result of a decline in the volume of affordable accommodation, growing quantities of sub-standard housing and an increase in homelessness, with which existing provision cannot cope.

Social housing construction by category

	PLA-I	PLA-PLUS	PLUS-CD	PLS ⁴²	TOTAL	% PLS
1994	11 078	68 575			79 563	
1995	15 481	45 060			60 541	
1996	8 617	43 619		5 225	57 061	9.2%
1997	11 818	43 583		4 510	59 911	7.5%
1998	15 597	30 463	416	4 966	51 442	9.7%
1999	13 921	28 336	570	4 868	47 695	10.2%
2000	5 050	31 325	1 661	4 081	42 117	9.7%
2001	5 427	39 513	2 711	8 648	56 299	15.4%
2002	5 188	36 412	2 856	11 834	56 290	21.0%
2003	5 034	34 588	4 144	12 659	56 425	22.4%

Source: Ministry of Public Works

Breakdown of types of social housing

	% of the population concerned	Rent	Tenants' incomes
PLS	80.7%	<150% PLUS	<130% PLUS ceiling
PLUS	65.5%	PLUS rent	30% households < 60% PLUS ceiling 60% households between 60% and 100% 10% households between 100% and 120%
PLA-I	30%	<88% PLUS	<60% PLUS ceiling

Source: Abbé Pierre Foundation – 2005 Annual Report on housing deprivation

As noted in the first part, the number of new housing units is falling steadily, particularly when compared with the constantly rising demand. This is the fault of the state, whose policies have inhibited the production of new social housing.

Despite a headline policy announcing high investment in social housing, the net amount and the rate of state subsidy have increasingly failed to reflect the costs of construction, when they have not actually fallen.

Moreover, such new build as there is is becoming increasingly expensive. The PLS category (the least need group) accounts for a growing proportion of the new stock and reached 22.4%

⁴² Excluding accommodation financed by the "Foncère" established in 2002 by recipients of the 1% employers' contribution to housing, which is not covered by the normal rules governing the allocation and management of social housing.

in 2004. At the other extreme, the most needy category – PLA-I – has fallen steadily to just 9%.

Moreover, in 2002 the Housing Social Economy Union, which collects the 1% employers' contribution to housing, established the Foncière association, which now builds its own so-called intermediate housing in individual units or plots.

Such accommodation is deemed to be social but is expensive and is not subject to local reservation systems under which priority may be given to priority households. The association has made social undertakings regarding the types of accommodation produced and their allocation, but there is no way of checking on these so we do not consider that they have necessarily been respected.

For many years (at least fifteen) there has been a steady rise in demand from persons in the highest priority category (PLA-I) while the percentage of housing in this category has constantly fallen in favour of social housing that a majority of applicants, including those facing the greatest difficulties, cannot afford. Against this background, the allocation of government financial assistance to new social housing has clearly led to many more cases of denial of the right to housing.

II.3.2.4 Individual housing aid

At the time of the 1977 reform, designed to switch spending from the direct construction of social housing to aiding households on the basis of their individual circumstances, the parliamentary debates drew attention to the risk of inflation in the housing market if money went on subsidising demand rather than producing low cost housing. In practice, although such individual assistance was distributed fairly among applicants, it stimulated demand, thus allowing rents to rise, which in turn pushed up the cost of purchasing and building houses, thus impeding the output of social housing. At the time it was stated that the total level of individual assistance would never be more than half what was spent on aids to construction.

Today, individual aid is three times higher than construction aid and the gap is constantly growing.

This individual assistance has had an inflationary effect, as noted by the former housing minister Marie-Noëlle Liennemann at the social housing Congress in 2004⁴³.

According to René Ballain (Economie et Humanisme, No. 368, 2004): "*there has been an explosion in personal assistance for housing in the last twenty-five years, without any assurance that the various categories of assisted tenants have been treated equitably.*"

In its 1994 report, the Court of Auditors also highlighted the limited effectiveness of such aid for those in the greatest need: "*The growth in individual assistance has been accompanied by excessive complexity. There are great variations in the rules governing entitlement, how it is managed and monitored, the avenues of appeal and the financing channels used, according to type of aid, which makes management very complex. The result is the, often delayed, publication of different scales, and disputes over individual housing assistance in the administrative courts and over other forms of assistance in the relevant social security courts. Yet the same bodies, be they family allowance or agricultural mutual funds, distribute all this aid and depending on age or family circumstances the same individual may be entitled successively to each of three forms of assistance*"⁴⁴

The means testing arrangements have undesirable effects. In assessing entitlement to individual (APL), only taxable income is taken into account. This may be substantially lower than actual income. Thus, in the case of households with two children and just one earner, living in social housing with a basic rent of 2000 francs, beneficiaries of social transfers receive a higher APL than employees on the same income. The procedures for non-payment of rent are insufficiently precise. According to the legislation, non-payment of rent or loan repayments results in the withdrawal of APL paid to social housing organisations or financial establishments, but certain landlords and letting agencies fail to declare them so that they can continue to receive aid unlawfully, and sometimes this involves sums that the state no longer tries to recover for fear of the financial or social consequences.

Making the system simpler and fairer – particularly by taking account of beneficiaries' real income – and exercising closer supervision, will make it easier to apply the principle of offering assistance to those least able to afford decent housing."

Aid granted in 2003⁴⁵

		Amount (billion €)	Change since 1984
Individual assistance	74%	13.776	+ 184%
Aids to construction	26%	4.757	-12,6%

Another argument in favour of individual assistance is that as it mainly goes to the social housing sector, it is spent on housing with a social purpose with controlled rents. It should therefore have only a limited effect on the market and the level of prices.

Yet more individual assistance goes to private than to public sector housing and the gap is widening.

⁴³ report of the round table on the future of public aid for housing.

⁴⁴ Individual housing allowances, social housing allowances and family housing allowances.

⁴⁵ Source: Ministry of Public Works

Recipients of individual housing assistance by sector

	1990	2002	Change
Private rental	31%	45%	+14%
Social housing rental	33%	37%	+4%
Owner occupiers	29%	11%	-18%
Institutional residents	8%	7%	-1%
Total (euros)	7.5 billion euros	13.3 billion euros	+5.8 billion euros (+77%)

Source: Ministry of Public Works

The surge in individual allowance over the twelve years is linked solely to the private rented sector.

All sectors combined, about half of all tenants receive individual housing assistance. In practice, the free market is totally subsidised by tax benefits, rehabilitation grants and above all rent allowances. The free market is only free of constraints.

49.5% of tenants receive individual housing assistance
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Source: CNAF

Between 1998 and 2002, the price of "old" (i.e. not new) dwellings rose by 70% ⁴⁶ , or 59.8% in constant terms. Over the same period, gross household incomes rose by 24%.

Since individual housing assistance tends to follow developments in the market, the state contribution has increased greatly in volume (+77% in twelve years, +184% in twenty years).

Such assistance, which is now the main tool of social housing policy, therefore helps to push up prices and rents by pumping in additional liquidity. Even though it seems fair, since allowances are based on income, rent and family composition, they are absorbed by the rise in market rates, which they themselves permit.

The result is aid that offers tenants with security of tenure a form of equity but makes the average situation of tenants worse.

The authorities are perfectly aware of this effect. In 1981, a very official committee chaired by François Bloch-Lainé was extremely critical of the 1977 Act and concluded that while the state continued to pay out, it was no longer financing housing.

The inflationary effect of individual allowances on the rents of lower income households was demonstrated in a recent very serious study⁴⁷ by the economist Gabrielle Fack, published in the journal *Economie et Statistique* No. 381-382 (2005).

Based on an analysis of the INSEE (social and economic statistics Institute) housing survey over a period of thirty years, the author concluded that 50 to 80% of aid had been absorbed in rent increases. The latter were the result not of a significant rise in the standard of accommodation, but of inelastic supply conditions in response to rising demand, which had been reinforced since 1992 by an influx of students onto the market after this group of the population was made generally eligible for housing assistance.

Between 1973 and 2002, the rise in rent per square metre was apparently much greater for households in the first two deciles of income than for the rest. Even after applying corrective indices to take account of changes in the structure of poor households, which had formerly been older and more rural and thus more likely to occupy less expensive accommodation, the observed effect continued to hold good. This higher increase in rents for the first two deciles was particularly noticeable when individual housing aid was made generally available, with a rise in the number of eligible households from 38 to 43% of private sector tenants between 1988 and 1996. Over this period, the average level of assistance remained stable, but increased significantly for the first two deciles of the population.

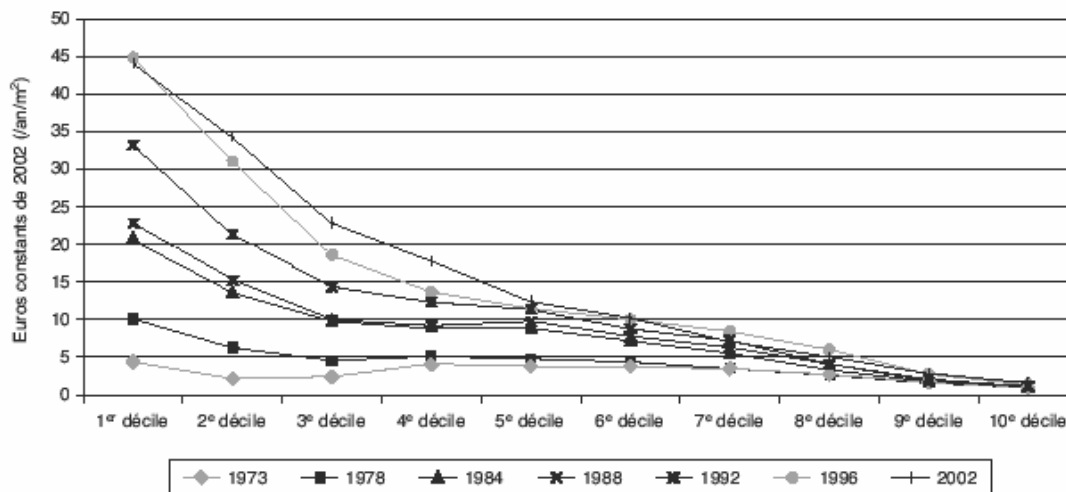
⁴⁶ source: INSEE Première, No 991. December 2004

⁴⁷ based on Susin's (2002) method of assessing the impact of housing aid in the United States.

Title of following table:

Housing assistance per square metre for each decile of income: renting households, 1973-2002

Aide au logement par m² en fonction du décile de revenu, ménages locataires, 1973-2002



Lecture : en 1973, l'aide au logement moyenne au mètre carré pour les 10 % des ménages les plus pauvres (1^{er} décile) était de 4,5 euros constants de 2002.

Champ : ménages locataires, tous secteurs.

Sources : calculs de l'auteur à partir des enquêtes Logement, Insee.

Drawing on complex econometric models, the study shows that the impact of individual housing assistance on rents depends on the elasticity of supply, or in the case of fragmented markets the different elasticities. For various reasons, including the saturation of large urban centres, trends in investment incentives and the ratio of new build to existing stock, the supply of housing is relatively inelastic.

The increased purchasing power provided by the housing allowances was therefore mainly absorbed by the existing stock, in the form of higher prices/rents.

For those who benefited from such allowances, the rise in prices absorbed their utility and despite the increase in individual assistance, the proportion of poor households' income going on housing continued to increase.

This rise in costs also penalised those who did not receive individual allowances.

The state was thus condemned to inject more and more resources into indirect aid for landlords, with unfortunate economic consequences. According to the Economic and Social Council, in its 2004 opinion on access to housing: *"Unfortunately, the success of these benefits has resulted in economic difficulties that have forced governments to adopt socially regressive measures that will have to be re-examined. The Council notes that technical adjustments such as increases in the non-payment threshold can cause difficulties for numerous households."*

The Council is referring here to the non-payment threshold (when the level of allowances falls below a certain level they are no longer paid), but also to the freeze on the level of housing assistance since 2003 and the introduction in 1994 of the rule that the first month's rent was no longer eligible for assistance. Such small technical measures result in efforts to control public expenditure falling particularly on those who are least well housed.

Housing costs of low income households⁴⁸

	1998	2002
Overall	13%	16%
Private sector	19%	26%

Source: INSEE Première, No 950. February 2004

The rise in rents results in an increase in transaction prices, which in turn allows construction costs to rise. The rise in construction costs leads to a shortage of new build, including social housing, which is subject to the same prices as the market. The shortage of new build helps to concentrate the money available, thus forcing up prices. It is a vicious circle.

The main housing policy tool to assist poor households does not make housing more affordable and does not correct the effects of the market. It may even be the case that the effect of government policy is drive up prices still further.

As well as offering individual assistance that pushes up prices in the market, the state has reduced, or impeded, the output of social housing, which might otherwise have had a corrective effect by absorbing part of the demand. At the same time, it has deregulated the private rental market, which has encouraged inflationary trends.

Independent organisations are now unanimous in criticising the gaps that have emerged between the different forms of assistance: to the market, to construction and to individuals. According to the Economic and Social Council, in its 2004 opinion on access to housing: *"In 1998, as a percentage of GDP, individual assistance represented 0.95%, aid to construction 0.33% and tax relief 0.32%. Is this ratio still appropriate to deal with the crisis? Probably not. A fresh balance is required."*

It is clear that national policies all serve to push up the market. Since the rise in the price of housing is an international phenomenon, there must be other factors involved but the convergent effects of various government measures are to make housing less accessible and affordable and to dry up the supply, thus contributing to the denial of the right to housing.

It is not possible to reverse the situation by penalising low income households through a reduction in housing allowances, without also controlling the level of rents. The current freeze on individual housing assistance simply places the most vulnerable households at greater risk of homelessness.

The Social Union for Housing⁴⁹ has made the following calculation:

The most recent uprating of individual housing assistance was on 1 July 2003. Between April 2003 and April 2005, the index of rents rose by 6.5%. Between July 2003 and July 2005, other charges linked to housing rose by 2.9% (following a 3.2% increase the previous year). The amount included in housing assistance for charges has remained unchanged since July 2002. After taking account of an increase in income of 3.5% based on consumer prices (which is probably over-optimistic in the case of the poorest households), the increase in the average proportion of household income spent on housing over this period, when assistance was frozen, was between 1 and 1.25%, and tended to be higher, the lower the household's income, as shown in the following simulation:

Single person	social housing rent ceiling: 218.89 euros			
Monthly income 2003 as % of minimum wage	50%	75%	100%	125%
Assistance July 2003	180 euros	95 euros	0 euros	0 euros
Rent 2003 as %	100%	100%	100%	100%

⁴⁸ Measured as the proportion of a household's income spent on rent after deduction of individual housing assistance. Low income households are ones whose income is less than half the median per consumption unit.

⁴⁹ "updating personal assistance to 2005" Memorandum of 15 September 2005

of ceiling				
Charges 2003	47 euros	47 euros	47 euros	47 euros
Charges 2005	49 euros	49 euros	49 euros	49 euros
Assistance Sept. 2005	180 euros	90 euros	0 euros	0 euros
Difference from monthly assistance	-0.2 euros	-4.1 euros	0 euros	0 euros
Difference from the bill before assistance	15.6 euros	15.6 euros	15.6 euros	15.6 euros
Proportion of income on housing July 2003	16.6%	22.1%	25.8%	20.6%
Proportion of income on housing Sept. 2005	19.0%	23.9%	26.4%	21.1%
Increase in proportion spent on housing	2.4	1.7	0.6	0.5

With the freeze on housing assistance, the proportion of poor households' income spent on housing rises automatically.

II.3.2.5 – Would-be efforts to make tenancies more secure

The results of such efforts are somewhat mixed. Individual financial assistance clearly serves a purpose and corrects inequalities of access to and security of tenancies. In particular, it offers a corrective to social isolation, which is a growing cause of social exclusion and poor housing, by providing an alternative to traditional family support. Although it is sometimes questioned from a budgetary standpoint, such assistance clearly represents progress in terms of greater equality.

The record of FSLs (housing solidarity funds) regarding non-payment of rent is less positive. Since the measure was introduced without placing any countervailing conditions on landlords, it has resulted in the latter making increased demands. Private landlords are reluctant to accept the FSL as a guarantee, or require it to be supplemented by one or more private guarantors. Because this arrangement has not been accompanied by countervailing requirements from the market, it has become a further source of division between households that have the financial means to enter the market and those that are allocated social housing. In Belgium, in contrast, which has a similar legal structure, landlords may not demand guarantors and deposits are paid into a common fund that requires both parties' signatures to be released. Rather than introducing costly measures to satisfy landlords' requirements, Belgium has opted for legal restrictions on these requirements and offering tenants legal protection, rather than a discretionary benefit that relies on the good will of both social services and landlords.

Social support has also had rather mixed results. It is a real service to households, but it has become a requirement of landlords, who see it as a means of protecting their interests to be applied as widely as possible. Social support was originally envisaged as a service to families experiencing difficulties of maintaining their independence, but linked to housing it has tended to become an additional arm of tenancy management or even a pre-dispute service, hence the increasing use made of it by social housing organisations and tenants' associations *vis-à-vis* low income households.

Once again, the development of a service with no quid pro quo has led to landlords setting further conditions and closer supervision of vulnerable households, who must now "seduce" social workers with "life projects" and other promises in order to qualify for their rights.

But the main problem with the various measures to implement the right to housing to emerge from the Besson Act, including *département* housing action plans for disadvantaged persons and FSLs, is the way they vary from area to area and the lack of political responsibility that ought to accompany them.

"The Besson Act's research and evaluation on this subject in the 1990s showed that in practice the level of commitment varied and there was insufficient political support from prefectures and local elected members, as a result of which plans were managed on a purely technical and administrative basis by the local operational arms of the housing ministry and département social services departments⁵⁰. Local associations have become increasingly professional and active alongside government, while social housing organisations have gradually moved from a fairly passive role to a much greater involvement in housing policy for disadvantaged persons, but municipalities, which are responsible for local spatial planning and are very concerned about the local population structure, are much less likely to contribute to such policies and are often reluctant to provide social housing for the most needy cases. In the period following enactment of the 1998 Anti-Exclusion Act there were great variations between département housing action plans, in some of which the state plays the dominant part and in others the département council or, in its absence, the local housing solidarity fund, despite the fact that to be fully effective measures to combat exclusion should reflect a joint approach to defining needs and strategic options⁵¹. Because its aim is to promote their social integration, housing policy for disadvantaged persons has focussed on offering them general access to housing and to housing solidarity funds, based on almost automatic resort to social work support. This is quite different from the approach adopted for the majority of persons, particularly employees with stable incomes. This growing use of social support machinery creates the risk of the emergence of a disadvantaged persons' "right to assistance", based on the presumption that they are unable by themselves to show that they are capable of social integration or of managing their own housing situation. It can therefore be argued that this right is related to the right to social assistance and like it is an aspect of a guardianship law approach to justify social protection for the most vulnerable members of the community⁵².

*Robert Lafore, who has examined the right to housing and protection for persons experiencing housing problems from a legal standpoint, believes that the Besson Act establishes a form of procedural law that does not itself lay down rules but multiplies the number of local bodies empowered to do so⁵³. Entering this process is intended to offer those concerned access to their legal rights and protection in the housing field, for which there are two preconditions: the need to identify the disadvantaged persons concerned and to establish broad-ranging partnerships to provide the housing best suited to their needs. Two problems then emerge. The first, as observations on the ground confirm, is the difficulty experienced by local bodies in determining who exactly the disadvantaged persons are and who should be given priority, and distinguishing between vulnerable groups and those suffering from an accumulation of financial difficulties and problems of social integration, according to the definitions in section 33 of the July 1998 Act. The second difficulty concerns the purpose and coherence of public intervention. Since the 1990 Act, lawmakers have sought to move away from special measures for particular categories in favour of an overall approach to housing disadvantaged persons. Housing policy is based on the principle of solidarity involving all levels of government from central to local and the commitment of each to this solidarity-based approach. In reality, however, local commitment has been very variable and is insufficient to ensure that the right to housing is applied right across the country." (René Ballain: Après la décentralisation, quelles perspectives pour le droit au logement ? article to appear in *les Annales de la recherche urbaine*.*

⁵⁰ see *Promouvoir le droit au logement, contribution à l'évaluation de la loi du 31 mai 1990*, Ministry for Infrastructure, Transport and Housing, la Documentation Française 1998.

⁵¹ see *Bilan d'application des dispositions du volet logement de la loi d'orientation du 29 juillet 1998 relative à la lutte contre les exclusions au 1^{er} juillet 2001*, DGUHC March 2002

⁵² René Ballain and Elisabeth Maurel: *Le logement très social*, éditions de l'Aube November 2003

⁵³ *Mettre en œuvre le droit au logement*, op. cit.

In 2002, the most recent year for which data are available, nearly 700 000 households received assistance from FSL (164 000) or Loca-Pass (521 666) to get access to housing. This shows the scale of these facilities.

Total value of housing solidarity funds (euros)

1991	1998	2002
53 000 000	120 000 000	157 000 000

Source: Ministry of Public Works

Number of households assisted by FSLs

No of households	1998	1999	2000	2001 ⁵⁴	2002
Assistance to avoid eviction	61 159	64 717	75 994	72 845	75 000
Assistance with access	151 391	163 835	162 683	154 969	164 000
New owners in difficulty			117	134	300
Total financial assistance	212 550	228 552	238 794	227 948	239 300
Social support	52 174	66 724	65 134	83 974	69 000
of which households receiving financial support	31 820	38 736	30 601	16 723	30 000
Total households assisted by FSLs	232 904	256 540	273 327	296 117	278 300

Source: Abbé Pierre Foundation - 2005 Annual Report on housing deprivation.

Loca'Pass assistance (financial loans and rent and charges guarantees)

	2001	2002	2003
Total (million euros)	142	251	319
Number	363 056	485 148	521 666

Source: ANPEEC

The impact of the measures - FSL and Loca'Pass - to make tenancies more secure has been too varied to draw any hard and fast conclusions.

Although some benefits have offered a real individual service to households, their overall value has been negated by the increased demands for guarantees by landlords.

Once again, the state bears a responsibility because of its quite conscious failure to lay down rules to avoid the emergence of inequalities and a wave of additional conditions that have gradually absorbed the value to be derived from individual assistance.

There is general awareness of these shortcomings. In 2002, the housing minister, Mrs Lienemann, proposed the creation of a single system of guarantees based on mutual insurance principles, to replace individual guarantees. Following a change of government, the proposal was dropped and no longer appears to be on the agenda.

French lawmakers are also aware of the practice in Belgium, with whom they share an official language, where it is illegal to ask for individual guarantees. This does not make it any more difficult for the market to function.

In the absence of any legislation to limit the guarantees requested by landlords, existing arrangements for making tenancies more secure perpetuate the most vulnerable households' difficulties in gaining access to housing, because the greater number of requirements imposed by landlords penalises households that are not eligible for these arrangements.

⁵⁴ Data on 86 *départements*, compared with 98 in preceding years. The data for 2002 are based on an overall estimate.

II.3.2.6 – Temporary accommodation: an arbitrary benefit dressed up as a fundamental right

Temporary accommodation arrangements are unable, and are not intended, to "prevent and reduce homelessness with a view to its gradual elimination".

II.3.2.6.1 Non-response

"115" is an emergency telephone number. In theory it should lead to immediate minimal provision of shelter.

Yet 46% of 115 calls received a negative response⁵⁵. Fifty-six percent of requests for shelter from single persons in Paris are unanswered. In this one city alone, there were 31 000 calls in 2002.

The absence of a guaranteed effective response to 115 calls helps to perpetuate homelessness, even though it is publicly claimed that everyone will be found a place.

Moreover, a 115 response is not accompanied by support aimed at finding a more permanent solution. In many cases, therefore, the only option when 115 accommodation ceases to be available is to phone the same number.

In most *départements*, "social watch" assistance is available, generally lasting 3 to 15 days, which is not usually enough time for families to find a proper solution. This means that they have to call 115 once again, as soon as they are permitted (since in many *départements* a certain period must elapse between periods of shelter to enable the maximum possible number to be looked after).

Emergency response arrangements are not designed to find a long term solution but simply to ensure a turnover between applicants. Those who do find something more permanent do so quite incidentally.

The failure to seek lasting alternatives when responding to emergencies means that those concerned remain homeless.

II.3.2.6.2 An apparent increase in provision that weakens the housing situation of those concerned

The number of permanent places in temporary accommodation has increased significantly in recent years to 90 000 places, broken down as follows:

emergency places for all comers	18 800 places
CHRS ⁵⁶	30 330 places
Half-way houses	1 899 places
Social residences/hostels	3 300 places
CADA ⁵⁷	15 440 places
CPH ⁵⁸	1 100 places
asylum seekers' emergency accommodation	19 000 places

Source: 10th report of the High Level Committee on the Housing of Disadvantaged Persons: 2004.

⁵⁵ 10th report of the High Level Committee on the Housing of Disadvantaged Persons: 2004. p.44, citing an FNARS survey of more than 10 000 such 115 calls on 18 April 2003.

⁵⁶ Accommodation and social reintegration centres

⁵⁷ Reception centres for asylum seekers

⁵⁸ Provisional reception centres for refugees

Like others⁵⁹, this source considers that many of these facilities have not been counted and that their total capacity is more like 150 000.

This must be compared with needs. For example, 150 000 of the million or so persons sharing accommodation with others live in extremely difficult conditions⁶⁰ and would alone account for the total capacity of such institutional provision.

Capacity is therefore manifestly inadequate, but there are three possible ways of adapting supply to demand: increase the supply, reduce the demand (for example, through sectoral provision for specific groups) or make it easier to move rapidly into social housing.

Yet policies in France have widened the gulf between supply and demand. Despite the headline figures (the 2004 Social Cohesion Plan announced 9 800 additional places - 4 000 in half-way houses, 4 000 in asylum seekers' reception centres and 1 800 in accommodation and social reintegration centres) the number of emergency and similar places is declining whereas their client population has increased as a result of the drastic cutback in specialist provision, particularly in the psychiatric field.

This quantitative reduction in provision and the insecurity, in terms of service provided and residence status, associated with these forms of accommodation means that France is in breach of Article 31 of the revised Social Charter.

Reduced hostel capacity

Single persons have traditionally been accommodated in large numbers in migrant and young workers' hostels. Such facilities were mainly established between the 1950s and 1980s and often have features that are incompatible with current standards, such as rooms measuring 6m². Nevertheless, they offer flexible conditions of access for indefinite periods, with occupancy contracts and often very low rents, particularly for those benefiting from so-called ATL allowances, which bring the total cost, including charges, down to about € 80.

The hostels were considered to be out of date in both form and function and were therefore gradually modernised, which meant that their capacity was reduced and they became so-called "social residences", of a higher standard but significantly more expensive, costing around € 260.

According to the relevant authorities, the reduction in capacity was linked to occupancy rates in the late 1990s. However, this was the bottom of the trough as far as the pressures on such social bodies is concerned, which are based on long-established cycles. Today demolition programmes continue while occupancy approaches 100%.

The organisation CROUS has some 150 000 rooms available for more than two million students. According to the Economic and Social Council, in its 2004 opinion on access to housing: *"at the start of each academic year, students, whose number is stabilising around 2.16 million after a period of major growth, face the torment of finding a reasonably inexpensive room or other accommodation. CROUS lacks the necessary resources to maintain its ageing and grossly inadequate stock of accommodation. Families are therefore required to act as guarantors in response to landlords' often exorbitant demands."*

There is no comprehensive national data on the loss of places in migrant workers' hostels, but extrapolation is possible based on a typical local situation such as that in the Lyon conurbation. Of the 4 316 beds in 2000, there were expected to be no more than 3 578 in 2006, a reduction in capacity of 17%⁶¹. Nationally, of the 150 000 places in migrant workers'

⁵⁹ Abbé Pierre Foundation - 2005 Annual Report on housing deprivation.

⁶⁰ *ibid*

⁶¹ Source: FTM five year plan.

hostels before 2000, some 25 000 have probably disappeared. This should be compared with the objective of creating 9 800 places, which clearly does not compensate for these losses.

The places that do remain have a different function, and thus a high level of rent.

The higher prices are justified by the housing assistance for which occupants on low incomes are eligible. Those using these forms of facility are for the most part older migrants with small pensions but who are disadvantaged by the method of calculating individual housing allowances⁶² and students, to whom the same applies⁶³.

Social residences do not therefore offer accommodation to such vulnerable groups as the former hostels did.

Finally, they are meant to act as a form of residential staging post and therefore offer little protection. One of their main features, for example, is the high turnover of occupancy.

Reduced capacity in psychiatric facilities

As in many European countries, France has reformed its hospital policy to focus it more on treatment, via a behaviourist approach. This means that patients are only admitted if they require medical treatment. Hospitalisation is only justified if treatment is required and cannot be provided on an out-patient basis.

In the past, psychiatric hospitals provided long term, and even permanent, accommodation and could admit persons who did not necessarily require hospital treatment. The change of policy reflected a commendable commitment to limiting the classification of those on the margins of society as psychiatric cases and ending authoritarian internment. However, the persons leaving hospital are still patients, who require long term follow up and whose degree of autonomy may well be limited.

*In 30 years the number of places in psychiatric hospital has fallen from 180 000 to 62 000⁶⁴. Average length of stay has declined from 230 to 35 days. **Here again, this loss of capacity of 128 000 has to be set against the planned increase of 9 800 places, announced in 2004 as an ambitious new development.***

No alternative provision was made for persons who found it difficult to live autonomously, or who alternated between hospital and the "community" or who were discriminated against on account of their psychological problems.

The result is that persons with psychological disorders are heavily represented among the homeless. The loss of psychiatric hospital provision has also had an impact on emergency facilities. These are often very basic, with no privacy and offering minimal social support, which makes them very unsuited to this client group, who suffer greatly from the experience and create major problems for those running them.

Once again, the result is a drop in standard of provision, a less secure living environment and the management of special social problems in an ordinary and minimalist emergency setting.

Regarding mental health, the High Level Committee on the Housing of Disadvantaged Persons stated in its 9th report (2003) that "*Failure to take account of psychiatric disability throws patients onto the street. Associations working with the homeless have observed the high proportion of persons with disorders among the transient groups of the population. It is estimated that persons with psychiatric disorders account for 30 to 40% of the homeless. Under the circumstances, then, it is not surprising that the mentally ill also account for a high percentage of the prison population. A study carried out for the health ministry in 2001 on*

⁶² The type of income is one of the factors taken into account in assessing entitlement and retired persons are less well covered than, for example, those receiving the same amount but in the form of minimum subsistence income (RMI).

⁶³ Young persons are penalised by their occupational mobility, which means that assistance does not coincide with needs, and, in the case of those with no means, by the way income is estimated.

⁶⁴ Habitat et Humanisme : *Santé mentale et logement, sujets sensibles*. Mario Mella édition. 2005

2 300 newly admitted prisoners showed that 50% of them displayed at least one form of mental disorder⁶⁵. A fifth of them had already been in contact with the psychiatric sector."

The presence of tenants suffering from psychological disorders sometimes leads to conflicts with their environments, aggression towards neighbours and so on. Social letting agencies may also have to deal with situations with which they feel unable to cope, particularly as they are not always aware of such disorders when tenants first enter into occupation. They do not know how to react to people for whom they have had no preparation or whom to turn to for support, and instead tend to opt for radical solutions such as eviction proceedings.

The drastic and rapid decline in the number of psychiatric hospital beds, with no alternative provision, is one of France's most serious, and conscious, contributions to denial of the right to housing. This contribution is all the more serious in that it concerns a particularly vulnerable group. The human situations that result from this transformation of mental patients into the homeless are particularly degrading for the individuals concerned, and for the community from which they have emerged.

Asylum applications: an administratively generated need for accommodation

The 1991 reform of asylum procedures deprived asylum seekers of the rights to work and to individual housing assistance. As a result, they were confined in institutional accommodation while their applications were investigated. The reform was justified by the argument that the period of investigation would henceforth be very brief.

Yet despite further reforms and a succession of announcements of improved arrangements for dealing with asylum seekers, the period for responding, and then hearing appeals, lasts a minimum of six months and is often a year. The average period of stay in a specialist establishment is 500 days⁶⁶.

This is not counting the various judicial options open to applicants whose appeals are rejected by the refugees' appeals commission. Above all, they can take their case to the administrative court, where the waiting times are particularly long.

Not infrequently, applicants have to wait five or six years for a response.

Moreover, many complicated situations, such as those relating to foreign children, the partial regularisation of a household or the parents of French children, fall outside the scope of the normal administrative procedure or are subject to different investigation arrangements.

Asylum seekers therefore form an important part of the demand for special and emergency accommodation whereas fifteen years ago they were eligible for housing. The increase in specialist accommodation for this group cannot therefore be treated as additional provision, but merely as a partial replacement for the housing that was formerly available to them.

In 2003, 52 204 adults⁶⁷ applied for asylum under the Geneva Convention and 27 000 requested territorial asylum (when the agent of persecution is not the state). The two figures are not mutually exclusive as some applicants may have submitted two requests. In 2004, the two procedures were unified.

Whatever the total figure of asylum seekers, it is sufficiently large to highlight the impact on the demand for accommodation of the removal of this group's social rights to work and to housing assistance. They have become dependent on institutional provision, when the stated objective remains 20 000 places (24 000 including special emergency places), which must also accommodate their children, who are not included in the published figures.

⁶⁵ Ministry of Health, research, evaluation and statistics directorate, Etudes et résultats No. 181 July 2002 - " La santé mentale et le suivi psychiatrique des détenus accueillis par les services médico-psychologiques régionaux "

⁶⁶ source: Forum Réfugiés, *annual report 2004*

⁶⁷ Source: French office for the protection of refugees and stateless persons (OFPRA)

Since average length of stay is now more than a year, there were only 8 438 admissions to such specialist accommodation in 2004.

Without counting children, there are thus a minimum of 40 000 persons who cannot be accommodated in this specialist provision, and are therefore dependent on emergency reception arrangements.

Persons whose asylum applications have been rejected who are required to leave the specialist centres but can remain in the country while they follow up the various options for appeal, are also dependent on emergency accommodation.

As a result, the regularly promised speeding up of procedures would not be enough to reduce existing pressures.

This group is also becoming increasingly dependent on institutional provision, often of a low standard, and with particularly limited security since those concerned are evicted as soon as their appeals are turned down, without the need for court eviction proceedings, in serious contravention of French and international law. These arrangements for rapidly freeing up places for those who are "entitled" to them are encouraged, or even put in place, by the local representatives of the state.

Such evictions without going through the formalities are the norm in specialist asylum seekers' hostels and in emergency reception facilities.

In 2003, the most important specialist association, France Terre d'Asile, was ordered to readmit a woman and her children who had been evicted with no formalities from asylum seekers' emergency accommodation. This court order has not led to a change of practice, or of the instructions of the relevant government departments that encourage them, in terms of day-to-day functioning or the regulations. For example, since 2006 a monthly census has been carried out of households accommodated in asylum seekers' hostels. The associations concerned only receive public funding for households whose applications are still being considered. Eviction proceedings take several months to complete, so an association that complies with the eviction procedure to remove a family whose application has been turned down is penalised financially by the state.

Asylum seekers' lack of social rights (to work and to guaranteed accommodation) is a breach of the right to housing, since the households concerned have no option but to become homeless, given the low level of specialist provision and a highly precipitate method of operating that produces almost as much homelessness at the end as it absorbs at the beginning, after a period in which those concerned are offered a form of occupation that gives them very little legal protection.

This inadequate response is the consequence of the demand created by the 1991 reform, which was clearly designed to deprive the new migrants of social rights to housing. France has therefore acted quite deliberately.

The claim that the level of accommodation has increased, corresponding to a rise in public spending from 478.1 million to 887.2 million euros between 1998 and 2003, has to be treated cautiously since it coincides with reduced funding of accommodation in other sectors, linked to health policy, the financing of hostel management bodies and so on. It is difficult to establish the precise figures since some state funding has passed via intermediate bodies, such as the social action fund for foreigners and their families, whose structure has been changed on a number of occasions.

We will therefore confine ourselves to a few facts. The demand for accommodation – particularly emergency accommodation – is rising, largely on account of social groups whose rights or normal accommodation arrangements have been cut back at the behest of government. In five years, between 1997 and 2002, the SAMU Social de Paris, which provides an emergency service, recorded a rise of 32% in "115 calls", which reached 31 340 in 2002. The monitoring centre of the national federation of associations concerned with accommodation and social reintegration has observed the same trend throughout the country, and not just in the large conurbations.

The response to this increased demand has been the large scale use of emergency provision, thus making it less secure⁶⁸. The High Level Committee also draws attention to the unfair distribution of certain financial resources allocated to emergency accommodation and conflicting legislation and regulations.

Finally, the social groups concerned, for whom emergency or temporary accommodation has to some extent become the norm, have experienced a deterioration in their housing status.

To the extent that emergency provision has been increased, it has been very much at the fringes and has led to a decline in the quality of provision.

II.3.2.6.3 The decline in the quality of emergency provision

"Most of the increase in accommodation capacity simply leads on the homelessness⁶⁹"

Despite government encouragement to improve the quality of provision in emergency accommodation⁷⁰, the standard of this provision continues to decline.

There has been a growing number of cases of shared rooms offering no privacy, with mattresses on the floor (and sometimes no mattress) and no guarantee of food, mixing all types of resident – or alternatively separating families.

There are also increasing instances of persons being lodged in containers, railway carriages and so on. In the Rhone *département* for example, there were no plans to use containers in 1995, but ten years later and following government encouragement to improve the standard of provision, four accommodation facilities were offering permanent or temporary (but repeated each winter) places in containers for up to 200 persons. The first experiment was aimed at a very marginalised group for whom ordinary accommodation was not suitable. Today, such facilities are used to compensate for the lack of provision to meet ordinary requests for housing or other accommodation.

The special role of the bodies running such establishments has changed and it is not unusual for the main employees on the spot to be wardens, sometimes accompanied by dogs, whose task is to maintain a minimum of order in circumstances where young persons, families, asylum seekers and alcoholic down-and-outs are randomly juxtaposed.

Above all, poor quality hotels have seen a significant increase in the number of families accommodated, to at least 17 000 places in 2003⁷¹.

These offer major disadvantages, in terms of lack of privacy between parents and children, bans on cooking in rooms (which means that for months or even years families do not have hot meals and only eat once or twice a day), no local links, which interferes with children's education, and so on.

⁶⁸ 10th report of the High Level Committee on the Housing of Disadvantaged Persons: 2004.

p.55

⁶⁹ 10th report of the High Level Committee on the Housing of Disadvantaged Persons: 2004.

p.51

⁷⁰ See, for example the letter from the prefect of the Ministry of Employment and Solidarity of 19 November 1998, repeated in 2000, which states: *"You must ensure that persons are admitted immediately, unconditionally and, if they so wish, anonymously.... You must ensure that there is sufficient accommodation of an adequate standard to meet foreseeable needs ... Plans must be made to create additional places immediately, should they be needed Nursing beds must also be available to accommodate sick persons who do not necessarily require hospital care.... Individual or small family rooms that respect persons' privacy, security and dignity should be preferred to dormitory-type accommodation... The comments of homeless persons on their accommodation should be recorded. The reasons for refusing offers of accommodation should be examined with the management of these facilities, with a view to rectifying the situation... You should pay particular attention to section 134 of the Anti-Exclusion Act, which stipulates that to comply with the right to respect for family life, all reception and accommodation centres should seek to avoid the separation of families neither member of a couple should be separated from their children.*

⁷¹ 10th report of the High Level Committee on the Housing of Disadvantaged Persons: 2004.

p.52

The standard of the facilities may also leave much to be desired: *"the main problem is clearly a social and human one. Despite the vigilance of the local social services, the need to make large-scale use of cheap hotels means that it is not always possible to exclude certain hotels that are bordering on sub-standard. Even when the accommodation standards are consistent with the regulations applicable to this type of establishment they are not always compatible with a family's permanent living conditions and respect for its dignity"*⁷².

More emergency accommodation is made available in winter.

The social affairs minister's 1998 letter, renewed in 2000, to prefects, the government representatives in the *départements*, laid down conditions for accommodation in these facilities, particularly concerning material conditions compatible with family privacy and integrity, the need to maintain anonymity and so on.

These requirements have quite systematically not been applied.

Even in the Paris region, with its long-established "SAMU social" – the social equivalent of the emergency medical service – and the most sophisticated system in France, criticisms have been increasingly levelled at the existing arrangements, not least by organisations that provide emergency accommodation services:

"The winter provision consists in a temporary increase of capacity in the emergency accommodation centres and the suspension, during the coldest periods, of all social work activity in favour of finding shelter for those living on the streets.

1. *The arrangements are based on repeated crisis management.*

This can be criticised on the grounds that:

- *it has a purely logistical basis that takes no account of people's lives, their everyday reality, their relation to time or the information at their disposal;*
 - *the rapid closure of short term CHUs⁷³ and the policy of accommodating persons in gymnasiums offers no way out of the crisis and brutally forces people back onto the streets, to return to their cardboard boxes, their bridges or their squats, with no opportunity to pursue their contacts with the CHU social workers. It no longer even constitutes humanitarian action;*
 - *the opening of a CHU for three days is typical of this approach and raises issues regarding respect for the homeless and the recognition that is granted to social work;*
- the issues raised by the winter period have been known for many years. They cannot be treated permanently as crises.*

2. *The arrangements assume that there is more demand for beds in winter than in summer.*

This can be criticised on the grounds that:

- *more homeless die in summer than in winter;*
- *the CHUs are nearly 100% occupied in summer;*
- *it may be the closure of the short term CHUs that forces the homeless to sleep outside in summer, hence the heavy demand for accommodation after the closure of these centres, which gradually diminishes over the spring months;*
- *hunger is just as much a problem in summer as in winter, particularly in July and August with the closure of local shops and street markets.*

3. *Under these arrangements, the social work activities of the "ESI" day centres are suspended during very cold spells*

This can be criticised on the grounds that:

- *ESIs are not just intended to respond to primary needs, such as shelter and food;*
- *offering shelter alone therefore ignores the necessary process of support and the creation of social bonds.*

4. *The arrangements underestimate needs*

The winter arrangements are planned to last five months, from 1 November to 31 March.

Yet everyone was surprised by the cold spell in late February-early March (with beds being made available one Sunday afternoon).

⁷² Ibid.

⁷³ Emergency accommodation centres

This year's example shows that needs are greater than forecast, leading to the opening of beds in highly unsatisfactory conditions in Péreire, Tessier and la Pitié, and 60 to 80 persons each night in l'Agora looking for accommodation.

5. The arrangements are difficult to understand, and are even seen unfavourably. Their complexity makes them difficult to understand by the homeless, by social workers and by the general public:

- for example, at the Louvel Tessier CHU there are five levels of provision;*
- a weekly system of alternation continues to be applied in ESIs, despite the criticisms of associations, based on the previous year's experience;*
- CHUs continue to be badly perceived (generally without justification, given the demands they face in the press and from the public).*

[...]

1. The logistics fail to take account of the target group

The homeless act slowly because they have no means of information other than word of mouth, and react more slowly because they have a different concept of time. Half a day is sufficient for the organisation Emmaüs to open or close a centre but it takes two to three days to inform those concerned of the opening or closure of a site.

Organising the facilities on a two to three day, or even daily, basis may be very rapid and efficient in logistical terms but does not reflect the movement of several thousand persons dispersed throughout Paris.

The weekly alternation of ESIs means that persons arrive at the on-call one just as it is about to close. Uncertainty about which will next be on call makes it almost impossible to offer guidance, to such an extent that Emmaüs has decided to keep the Bichart centre open after the end of the on-call week.

The complexity of the arrangements makes them difficult to understand. Which one is open, and why spend one or more nights in this or that particular CHU?

2. The arrangements lead to permanent tensions

There is permanent tension, particularly in the ESIs, which makes itself felt among the clients and also affects the social workers. There are several contributory factors:

- the number of persons gathered in the same place for a short period*
- the living conditions, overcrowding, lack of privacy and noise*
- the daily anxiety about where to sleep and whether there will be a bed*
- the tiredness caused by cold, general weariness, long waits and short nights (some transfers by shuttle bring clients to CHUs late at night)*
- the diversity of clients in the same place, with definite self-images (for example as being homeless not down and out) and the presence of psychiatric patients*
- the absence of any alternative solution or way out of the spiral.*

3. The facilities have to adapt to new clients

Beds are generally allocated anonymously, renewable each day by 115 call, and the process takes insufficient account of individual circumstances.

However, it appears that this authoritarian method of allocation is being increasingly criticised by 115 callers, that they have their own preferences, which apparently relate more to the personal reception they receive than the physical conditions and that they want to have a say, or once more have a say, in how they are accommodated.

In addition, if a referral is to be accepted the accommodation must be easy to find. The referral must also be prepared, either by going out to search for those concerned or via night time ESI provision. In the experience of Emmaüs field staff, street people cannot be forced or obliged to go to a centre but they will accept an invitation. Moreover, an overnight stay in a CHU has a cost. "Just one night in a CHU and I will lose my place on the pavement for which I have fought." Is this sufficiently attractive? Is the game worth the candle?

Finally, the people who have been in the most difficult situations, and who make up the core of priority cases this winter, have been:

- pregnant women and single women with a new-born child;*
- sick persons who suffer particularly from very cold spells and heat waves, whereas the social services do not accept new rest beds;*
- elderly persons (over 50);*
- poor workers".*

It is rare for a major association to criticise so vigorously the services that it itself provides and shows the seriousness of the shortcomings in what is, however rudimentary, a system of social protection in the housing field.

II.3.2.6.4 Emergency accommodation and the right to housing: an impossible safety net operated by scattered agencies for whom this is not the objective

Emergency accommodation is tacitly considered to be a form of housing social security – a guaranteed minimum for households suffering the greatest deprivation. This has been confirmed in various public documents. Thus the letter to prefects of 19/11/1998 (op. cit.) asks local representatives of government to ensure that "persons are admitted immediately, unconditionally and, if they so wish, anonymously" and that "there is sufficient accommodation of an adequate standard to meet foreseeable needs". Since 1998, these emergency services have centred on the so-called "*Veille sociale*" (social watch) arrangements, following the experience of the Paris-based "SAMU social", whose name refers explicitly to the hospital emergency services, to which all are entitled.

There are two aspects that are inconsistent with the notion of social security, as applied to this emergency service.

Firstly, the facilities are provided by numerous scattered associations, with no necessary links between them. In medium sized towns, there are often more than twenty associations offering one or more forms of accommodation. Nowhere are there co-ordinated arrangements for registering and investigating requests, to offer the most appropriate response to needs.

Each *département* in the country has a reception, housing and reintegration plan, designed to co-ordinate accommodation arrangements.

However, in their attempts to determine what level of provision is required none of these plans assesses unmet needs. They really co-ordinate existing provision by establishing the relationship between the state, which finances these activities, and the associations that manage the accommodation facilities.

No attempt is made to plan provision to meet local needs, which in any case are poorly identified. Each establishment is the brainchild of a particular association and reflects its own objectives, which have been approved or modified by government in accordance with the rules governing the financial assistance sought rather than with social needs.

Moreover, those concerned – state and associations – are not concerned with guaranteeing a minimum level of accommodation because their relationship is not based on this objective. Establishments offering emergency accommodation are set up and run by associations, who do not see their role as being to uphold the right to housing. Their main interest is usually to organise social welfare projects in which accommodation is just a supporting activity. These projects focus on the social integration or reintegration of target groups such as young persons, single women or migrants, to whom they offer social work, and in particular psychological, support.

Given the nature of these projects, the accommodation facilities are therefore discriminatory, since they are aimed at particular groups, and fail to uphold the right to housing, in that they allow eviction without proper notice and intrusions into private quarters, do not comply with standards of comfort and so on. It is the social work programme rather than the accommodation that is at the heart of the relationship between association and client.

There is thus a misunderstanding between the state, which claims to be organising a service that guarantees accommodation, and the organisations on which it relies to implement it, who are concerned with particular segments of the population and for whom accommodation is often a subsidiary interest.

This partly explains why, despite the existence of fairly well developed remedies, the aim of eradicating homelessness is nowhere near to being achieved. Nor is homelessness being gradually reduced. Indeed, the trend is more towards denying entire categories of the

population a minimum entitlement to housing. Depending on the particular area, asylum seekers, foreign Roma, the mentally ill and drug addicts and alcoholics are explicitly excluded from emergency accommodation.

The absence of facilities that can meet all the immediate needs for accommodation is in breach of the right to housing.

Moreover, the poor quality of the provision to meet the most urgent needs, which fails to meet the standards laid down in national legislation, and the very limited security of occupancy that they offer, in law and even more in practice, are in breach of the right to housing of those who are found accommodation.

The limited number and quality of accommodation facilities open to all, from which households emerge with no future prospects, are further manifestations of this breach.

Finally, the lack of possible remedies or means of appeal

- for households that have been unable to express their wishes,

- for households that receive no reply,

- for households accommodated in conditions that are incompatible with their dignity, respect for their family life, the inviolability of their home and their right to housing,

- for households that are evicted without any formalities,

is in breach of the right to housing of tens of thousands of persons in France each year.

II.3.3.7.5 A measure that is quite consciously incompatible with the eradication of homelessness: the temporary housing allowance (ALT)

The temporary housing allowance (ALT) was introduced by the government in 1993. It is a lump sum payment to associations for the accommodation, and possible some of the associated social work and management costs, of households lawfully in the country who are not entitled to individual housing assistance, for a maximum of six months, renewable once.

This flexible measure has been used to accommodate all the groups of the population in need of housing who are not looked after by specialist forms of provision, either because they do not meet the necessary criteria or because of lack of places.

In particular, the ALT has been used to accommodate young persons with no means of support (eligibility for the minimum income starts at 25), vulnerable foreign nationals, especially asylum seekers, households in debt whose actual resources have not been properly taken into account by assistance bodies and so on.

It covers an extended range of provision, including collective emergency accommodation, scattered dwellings, furnished and unfurnished and with or without social support, for variable periods of let and with different occupancy statuses, assistance to prevent evictions and so on.

The voluntary sector as a whole alerted the authorities to the need to adjust the rules to take account of how this assistance operates in practice:

- the over-representation of foreign nationals raised difficulties because they often only had a 90 day residence permit whereas the notion of lawful presence only started after three months, in other words 91 days;
- the maximum period of a year was not consistent with the necessary periods for households' rehousing or eligibility for social rights – in most large conurbations, the average waiting time for social housing, for households with no special difficulties, is more than two years;
- the flexibility with which it was applied made it difficult for local state representatives to monitor its use, since there were no criteria for assessing the relevance of proposals.

After ten years of silence, the state adopted a very directive approach to stem the growing use of this allowance ... mainly on the initiative of the government's own local representatives – the prefects – in response to asylum requests and in breach of the principles laid down by central government.

A ministerial circular of 5 December 2003 announced:

- a 10% reduction in the national budget, even though this assistance meets the most urgent needs at what is an unsatisfactory level,
- the continued restriction to households lawfully in the country, thus in practice excluding asylum seekers who had received the allowance, often on the initiative of prefects, because of the time taken by the state to examine their cases,
- continuation of the maximum period of eligibility, despite the chronic poverty of those concerned and the known waiting times for social housing,
- the optional nature of the lump sum, which can be reduced if rents are low, thus preventing receiving agencies from using savings from the former to cover the deficit on high rents, making it necessary to seek other assistance to meet the management and social work costs of the households and accommodation concerned. However, ATL-financed accommodation is not eligible for rental mediation assistance, the other possible form of aid for management purposes.

This reform was clearly not the product of a commitment to matching provision to needs, or even to securing the best use of public funds, since no assessment of how these funds are used has been carried out. It reflects a simplistic accounting approach designed to limit

entitlement, by specifying the eligible categories of the population and lengths of stay, and to reduce benefits paid to households, by adjusting the lump sum⁷⁴.

No steps have been taken to make alternative provision for the households that are no longer covered.

As a result, the organisation of financial support to assist the accommodation of the homeless, which limits the periods of eligibility and specifies who shall be eligible, irrespective of whether or not alternative provision is available, is in breach of Article 31 of the revised Social Charter.

The arrangements for accommodating and offering social support to those suffering housing deprivation are deemed to offer a comprehensive safety net, based on the Right to Housing Act of 31 May 1990.

A research programme has been undertaken to evaluate the Act and its impact. The conclusions are summarised in *Mettre en œuvre le droit au logement* (implementing the right to housing), edited by René Ballain.

The researchers, whose objective and balanced approach we wish to emphasise, acknowledge the ambitious aims of the Act and its related provisions, but confirm the increasing number of shortcomings to which we have already drawn attention by stating that "their safety nets have been woven with the wool of their rights", and that housing policies for the disadvantaged have been reduced to marginal adjustments that have very little connection with the implementation of a right to housing.

"The first problem concerns the extended range of temporary accommodation, which current terminology has difficulty in defining since it is designed both to accommodate persons facing personal crises and other emergencies and to offer a staging post leading gradually, via various forms of transitional accommodation, to a rented dwelling. Such a system, whose scope has widened since the mid 1990s, can clearly only function if there is sufficient capacity in the stock of social housing and privately rented dwellings. Yet today, there is great uncertainty about the future path of persons and families lodged in the various types of temporary accommodation. This is confirmed by the difficulties faced by the managers of such establishments in securing "decent and independent accommodation" for their clients. Temporary accommodation then becomes less of a staging post than a means of coping with a period of waiting of uncertain duration.

The increased number of forms of occupation that fall short of that of tenant, as recognised in the Act of 6 July 1989, is another cause of concern. The establishment of a housing policy for disadvantaged persons in the wake of the Besson Act was accompanied by the emergence of various forms of unclearly defined occupation status, such as resident, lodger, sub-tenant, hotel client, paying guest and so on, offering debased levels of protection compared with that associated with the status of tenant under the 1989 Act. While tenants have been granted more and more security, those passing through the various types of temporary accommodation mainly managed by associations, are deprived of such protection. As if their "safety nets had been woven with the wool of their rights". As if they had only been offered the prospect of debased rights, thus totally demolishing the very notion of a universal right to housing.

These issues all cast doubts on the ability of society, its political representatives and its operational agencies to ensure genuine access to a legal entitlement, in the form of decent and independent accommodation under the protective umbrella of the 1989 Act. Such doubts are reinforced by the housing difficulties experienced by numerous socially or financially vulnerable families and individuals and the lack of options for moving out of emergency provision. We are past the time when rising living standards offered households a parallel opportunity to improve their social and residential conditions. Instead, opportunities for progression are disappearing, and have even gone into reverse, in every sector of housing.

⁷⁴ The *Conseil d'Etat* has ruled (Fapil/Etat 2004) that the maximum sum payable cannot be laid down by circular, but this decision has not led to any change of practice.

This applies to the homeless, of whom the survey conducted in winter 2000-2001 shows that three-quarters had previously occupied their own personal accommodation, mainly in the rented sector, and had lost it following separation, inability to pay the rent or eviction. Forty percent said that they had lost their accommodation in the year preceding the survey'. It also applies to the thousands of persons who benefit each year from the temporary housing allowance (ALT), only a third of whom move on to their own accommodation. The social housing stock also serves to block progress in the housing market, since 30-40% of the demand comes from existing social housing tenants who cannot aspire to other forms of occupancy. Indeed, there is also a regressive factor in that each year a considerable number of former private tenants and owners enter social housing.

These few facts alone throw some light on the nature and scale of the housing crisis and cast doubts on the effectiveness and relevance of current policies to ensure the right to housing. This was the object of the research programme and colloquy on which this report is based. How much attention is paid to its findings obviously depends on our assessment of the social situation and the type of changes that housing policy has experienced over the last fifteen or so years. Some may argue that the body of measures that have changed the social character of this policy simply reflect adjustments to the reality of greater household vulnerability and more uncertainty about the future. Such adjustments to housing policy would be seen as short term and linked to the deterioration of the economic situation, with a maximum of resources deployed at the height of the crisis and a reduction as the situation improved.

The danger is that such an assessment of housing policy trends will mask much more profound changes in both demand for and the supply of accommodation. It may also reduce the housing of disadvantaged persons to a subsidiary and marginal issue rather than viewing it from the standpoint of the right to housing, even though the latter is at the forefront of the Besson Act. The research findings and colloquy discussions in fact suggest that the changes affecting the housing of disadvantaged persons need to be taken very seriously. They are the consequence of the breakdown of the system of housing supply and management based on the 1977 reform and of the system of protection, which in the housing as in other sectors was based on the capacities and autonomy of persons whose income was essentially derived from employment and who could look forward to steadily improving prospects. This conclusion points to the need to establish new forms of protection in the housing field to ensure that in a period marked by a new stage of decentralisation the right to housing becomes a reality."

II.4 Responses to comments of the European Committee of Social Rights on the state of the right to housing in France

Article 15: The right of persons with disabilities to independence, social integration and participation in the life of the community

Paragraph 3: - Integration and participation of disabled persons in the life of the community

"The Committee wishes to receive further information on any other forms of economic assistance available to persons with disabilities to meet additional needs and to enable integration - for example the existence of special loans, grants to adapt housing, cars, to access certain technology, to cover higher transport costs, assistance devices etc." (Report 2003)

According to INSEE (national social and economic statistics Institute, 1999 survey), the most commonly recorded impairments are motor-based (7.7 million persons), internal (5.3 million), auditory (4.3 million), visual (3 million) and psychological (2.4 million).

Of these:

912 400 only have difficulties gaining access to their accommodation

525 600 only have difficulties inside their accommodation

155 500 have difficulties gaining access to and inside their accommodation

582 600 are confined to their accommodation.

In total therefore, and only taking account of difficulties cause by physical disability, nearly 2.2 million persons living in their own homes are concerned. According to the same survey, one million persons suffering from impairments or disabilities use at least one home adaptation.

Regarding mental health, the High Level Committee on the Housing of Disadvantaged Persons stated in its 9th report (2003) that *"Failure to take account of psychiatric disability throws patients onto the street. Associations working with the homeless have observed the high proportion of persons with disorders among the transient groups of the population. It is estimated that persons with psychiatric disorders account for 30 to 40% of the homeless. Under the circumstances, then, it is not surprising that the mentally ill also account for a high percentage of the prison population. A study carried out for the health ministry in 2001 on 2 300 newly admitted prisoners showed that 50% of them displayed at least one form of mental disorder⁷⁵. A fifth of them had already been in contact with the psychiatric sector."*

"Article 15§3 requires the existence of non-discrimination (or similar) legislation covering both the public and the private sphere in the fields such as housing, transport, telecommunications, cultural and leisure activities as well as effective remedies for those who have been unlawfully treated. The Committee notes that there is no general specific anti-discrimination legislation for persons with disabilities, however it requests information as to whether other legislation exists which protects persons with disabilities from discrimination and provides those who have been unlawfully treated with effective remedies."

Regarding general arrangements to prevent discrimination in access to housing, in a report in 2002 an anti-discrimination study and action group comprising representatives of the main agencies in this field mainly focussed on racial discrimination, because of the difficulty of treating the shortage of specially adapted housing for the disabled or the ostracism they faced as discrimination.

⁷⁵ Ministry of Health, research, evaluation and statistics directorate, Etudes et résultats No. 181 July 2002 - " La santé mentale et le suivi psychiatrique des détenus accueillis par les services médico-psychologiques régionaux "

At all events, the report made a number of recommendations to combat discrimination, such as making housing applications anonymous and the establishment of "anti-discrimination brigades", none of which has been implemented.

"The Committee found no real information in the report on how the needs of persons with disabilities are taken into account in housing policies, nor on whether assistance is available to adjust existing housing to the needs of persons with disabilities."

"No information is provided on how the needs of elderly persons are taken into account in national or local housing policies. The Committee requests information to be provided in the next report on this issue, including information on the duty of local authorities to provide appropriate housing, the rules on security of tenure and whether the supply of housing for elderly persons is adequate."

The housing needs of disabled and elderly persons are always mentioned in housing policy documents. In practical terms, though, there is never any reference to the necessary number of adapted housing units and even less to a building and other works programme to meet these needs.

The only discussion concerning the need for autonomy stems from the social housing movement itself, and mainly concerns the problems of ageing among its own tenants.

Generally speaking though, measures to deal with loss of autonomy now tend to be organised privately, and are often expensive. Little is being done to anticipate the ageing of the most vulnerable sections of the population.

Each *département* has a plan to deal with the ageing of the population, but these are exclusively concerned with health matters. They have established no links with those responsible for housing or planning policies.

"Residents of these facilities may benefit, if they fulfil the requisite conditions, from certain allowances to cover the cost. The Committee wishes to receive further information on the fees payable by residents in respect of these institutions and the conditions under which the various allowances are payable. The different institutional facilities are subject to various controls; health and safety, food safety, etc. They are also subject to the overall supervision of the *Préfecture*. The Committee considers that any inspection system should be independent of the entity that establishes or manages the residential facility and asks whether steps are envisaged to create an independent inspection mechanism to examine in particular, the quality of care. The Committee wishes to receive information on the following topics:

- requirements of staff qualifications, training and wage levels;
- can persons be compulsorily placed in such institutions? What is the procedure?
- guidelines on the social and cultural amenities to be provided in institutions;
- how the rights to personal dignity and privacy are guaranteed in institutional facilities.

The Committee wishes to receive further information on the procedures for complaining about the availability of services and care and/or the standard of the service, care or treatment in both residential and non- residential facilities."

We share the Committee's concerns, particularly concerning the protection of dignity and privacy in residential establishments and the complaints procedures.

These issues apply to the whole range of social welfare and medical provision of accommodation, where there are no guarantees of respect for fundamental freedoms and there are no judicial or other means of challenging the type or content of the services offered. It is also difficult to identify examples of ill-treatment in facilities designed to accommodate highly vulnerable individuals and families for whom there are no alternatives.

Article 30 – The right to protection against poverty and social exclusion

"With respect to housing, including the issues of homelessness and evictions, the Committee refers to its comments in the conclusion under Article 31 of the Revised Charter. the Committee's view housing is a critical policy area in fighting poverty and it is particularly interested to know what measures have been taken to ensure an appropriate spatial distribution of (social) housing so as to avoid "ghettoising" poverty and social exclusion."

In this regard, there has been clear progress, particularly in response to the 2000 Solidarity and Urban Renewal Act, which confirms the 1990 objective of 20% social housing in each municipality, with penalties for those that fail to comply. Although small authorities find it difficult to meet their obligations the situation is improving. There is also greater spatial harmonisation, following the establishment of a national urban renewal agency, which co-ordinates the demolition of obsolete social housing in particularly poor neighbourhoods, accompanied by the rebuilding of units in areas of shortage. However, as we have emphasised, this social mixing policy operates to the detriment of the right to housing, in a situation where the decreasing supply of affordable housing for the most vulnerable households is reinforced by the effects of urban renewal.

"The Committee notes that the CNLE in November 2000 issued a series of 25 proposals for adapting and improving the anti-exclusion effort⁶. The proposals concern access to employment, health and housing, responses to social need and contain a call for strengthened coordination, for greater involvement of persons affected by poverty and social exclusion the formulation, implementation and evaluation of the different measures taken and for improving the qualifications of social workers in the field. The Committee asks how and to what extent the Government has acted on these various proposals"

The question is still relevant, since none of the CNLE's proposals have so far been acted on.

Article 31 - The right to housing

Paragraph 1: right to housing of an adequate standard (TO BE INCORPORATED IN THE BODY OF THE TEXT)

"The Committee considers that, for the purpose of Article 31§1, the Parties must define the notion of adequate housing in law. The Committee considers that "adequate housing" means a dwelling which is structurally secure, safe from a sanitary and health point of view and not overcrowded, with secure tenure supported by the law. This definition means that:

- a dwelling is safe from a sanitary and health point of view if it possesses all basic amenities, such as water, heating, waste disposal; sanitation facilities; electricity; etc and if specific dangers such as, for example, the presence of lead or asbestos are under control.**
- over-crowding means that the size of the dwelling is not suitable in light of the number of persons and the composition of the household in residence.**
- security of tenure means protection from forced eviction and other threats, and it will be analysed in the context of Article 31§2.**

According to the Committee, the standards of adequate housing shall be applied not only to new constructions, but also gradually, in the case of renovation to the existing housing stock. They shall also be applied to housing available for rent as well as to housing occupied by their owners."

France only partially satisfies the Committee's definition. There are several definitions of adequate housing. The rules governing housing standards concern such matters as safety, floor area, ceiling heights and so on; public health rules lay down standards relating to risks such as asbestos; the notion of decent housing includes a variety of technical features relating to heating, ventilation, protection and so on while the general notion of substandard housing encompasses a broad-ranging understanding of what

is incompatible with the equal human dignity of all persons, whose elements may change to take account of current standards.

The latter point is particularly interesting and the introduction of the notion of dignity to housing standards in the Solidarity and Urban Renewal Act represents major progress.

However four points emerge from what has already been said:

- firstly, overcrowding and the risk of eviction are not taken into account with regard to a satisfactory standard of housing. This is true from an individual standpoint since the resulting needs for rehousing are not treated as priorities, under the headings of inadequate or substandard housing. The same applies at the collective levels, as shown by the small size and high price of new housing, including social housing, which inevitably lead to overcrowding and increase the risk of eviction.

- secondly, the response to technically poor or sub-standard housing is either to declare it uninhabitable, thus reducing the options of poor households for whom it represents the only available accommodation, or by providing incentives for its modernisation, which normally results in higher rents, once again reducing poor people's options. Briefly, housing improvements do not benefit households living in the worst conditions.

- thirdly, there is absolutely no guarantee of adequate standards for households seeking temporary accommodation, whether in terms of physical conditions, occupancy levels or security of occupation.

- finally, the application of housing standards is also an excuse for preventing the most vulnerable members of society from establishing their own forms of shelter. Such standards are cited to justify the demolition of makeshift homes, generally unaccompanied by rehousing. This has been the case with numerous caravan sites in the Paris region occupied by Roma, where the caravans have been destroyed, and with several shanty areas in and around Lyon. Such housing standards therefore serve to protect those higher up the scale but swamp those lower down, since no one is responsible for giving them the means to satisfy these standards.

The Committee recalls that the satisfactory application of the Charter "cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised" (Complaint No. 1/1998, International Commission of Jurists against Portugal, decision on the merits, 9 September 1999, paragraph 32)."

France does operate checks on proposed dwellings, but it does not carry out checks to ensure that residents have effective access to adequate housing.

Moreover, questions may be asked about the effectiveness of these checks⁷⁶.

Finally, rigorous checks are not carried out on certain commercially run forms of accommodation⁷⁷, or on certain types of institutional accommodation that are not deemed to be housing because of their temporary nature, despite the lack of alternatives for the households concerned.

"As far as the control of specific health dangers is concerned, the Committee notes from other sources that relevant legislation exists in the field of lead poisoning. Act no. 657/1998 on fighting against exclusion has introduced a two-tier control system imposing to local authorities to take action. This distinguishes in the definition zones at risk, within which any real estate transaction is subject to a lead poisoning control (prevention), and in the realisation of urgent rehabilitation works (intervention).

⁷⁶ See ANIL, Logement décent, L'état du parc au regard de la réglementation, Enquête dans les ADIL : nouveau bilan au 1er juin 2002, (www.anil.org).

⁷⁷ see the colloquy Habitat Indigne – Ministry of Public Works, DGUHC, October 2004.

The Committee notes from another source that the implementation of the existing legislation is revealing several weaknesses and asks which measures have been taken to improve the control and the rehabilitation of the housing stock."

The doubts expressed in the 8th report of the High Level Committee on the Housing of Disadvantaged Persons still apply, at least in certain areas. We refer here to the statistics and comments in the first part of this document on the continuing difficulties relating to housing standards and, among other things, to the application of the legislation on lead poisoning.

"The report indicates that measures have been taken to avoid interruption in water, electricity and telephone due to non-payments through the creation of appropriate funds."

Steps have been taken to limit cuts, particularly in water and electricity supplies. However, these measures have not been enough to make up for a hardening of attitudes among operators, particularly of electricity supplies, towards those who fail to pay their bills. The 2004-2005 winter was marked by a series of headlines (a child arriving at school in a state of hypothermia following an electricity cut, etc) that masked a much more widespread problem, albeit one that is difficult to establish since the households concerned often remain silent. Examples include lack of access to power supplies in squats or makeshift homes, or the death of two young girls following a fire in their improvised heating system. Once again, aid with access to water and electricity is discretionary and cannot be deemed to offer any guarantees.

"The Committee observes from another source that Act no. 1208/2000 on solidarity and urban renewal has simplified the procedure for declaring lodging unfit for habitation and has strengthened tenants' protection.

The Committee notes that tenants may at any time ask landlords to comply with the existing legislation or stop paying the rent. Moreover, tenants have the right to be lodged elsewhere when the building is declared unfit for habitation. A tenant's right to adequate housing has been included in the Civil Code and eventually judicial remedies are available (the Court of first instance). The judge can oblige the landlord to renovate the lodging within a certain period of time and, when this is not respected, to lower the rent. Landlords can be held liable under tort and even criminal law.

The Committee asks for information about the extent to which the right of appeal is used."

Little use is made of the right of appeal since households living in inadequate accommodation are often constrained by the lack of any alternative. If they are to exercise their judicial rights, they must be guaranteed rehousing within a reasonable time, or the authorities must be able to take the owner's place in order to bring the accommodation up to standard, for which there is no provision.

Paragraph 2 – Reducing homelessness

"The Committee considers as homeless those individuals not legally having at their disposal a dwelling or other forms of adequate shelter. The temporary supply of shelter, even adequate, cannot be held as satisfactory by the Committee and the individuals living in such conditions and who wish so, shall be provided with adequate housing within a reasonable period."

It is becoming increasingly difficult to find alternatives to temporary accommodation, which means that those concerned are spending longer and longer in such establishments. These establishments vary in their purpose, and in their arrangements for ensuring a turnover of residents. A proper analysis of lengths of stay would first have to discount enforced departures and take account of discrimination at the point of entry.

Such an analysis would have to be restricted to trends in all establishments. According to FAPIL, on average lengths of stay increased by 50% between 1998 and 2003⁷⁸. In independent temporary accommodation, lengths of stay may be rising by more than three months each year⁷⁹, and are now three years in certain sectors... which is the same as an ordinary tenancy contract.

"The Committee observes that, for feasibility reasons, the INSEE enquiry do not cover all homeless people and, moreover, that, notwithstanding the measures implemented by the public authorities, the problem of homeless is far from being under control. The Committee refers to documents and abundant press review on the issue, according to which there are many shortcomings to the way in which homelessness is tackled. These concern, for example, the reduction of available housing places during the summer, the day-time closure of certain reception centres, the scarcity of staff, and the under-estimation of homeless deaths due to the lack of help. In particular, it is argued that the French system lies on the emergency approach rather than on the treatment of the problem of homelessness, which, to be solved or at least reduced, requires long-lasting solutions of re-integration. The Committee asks if and which measures are planned to improve the situation and whether, beyond emergency intervention, policy measures exist or are planned to get out of the urgency approach and to put the stress on the definitive re-integration of homeless persons."

Firstly, the INSEE survey does not cover all the homeless, as defined by the European Committee of Social Rights, but only persons without any shelter, even if the latter is extremely makeshift, such as squats, huts and so on. Those who do qualify do not necessarily attend the day centres where the survey is conducted.

For a more precise picture of the situation in its various aspects we refer to the table prepared by the Abbé Pierre Foundation, reproduced at the start of this document.

Regarding the "emergency" context in which the state's policies operate, we also refer to our earlier discussion of this topic. The emergency approach takes the place not only of a long-term policy of integration but also of long-term sectoral policies offering lasting solutions to client groups, such as those in psychiatric hospital or migrant workers' hostels, with chronic needs.

"To improve the situation [the excessive waiting time for social housing] a series of measures have been adopted. In the context of Act no. 657/1998 on fighting against exclusion the allocation procedure of social housing has been reformed.

First, it has been provided that applicants for social housing will receive a single application number, which they will keep until they receive lodging. The goal is to make it possible measuring the length of the waiting period, which, if too long, open the way to judicial and other remedies.

Secondly, in each *département* a contract shall be concluded between the state and the bodies responsible for social housing setting the target of the number of disadvantaged households that are to be lodged during three years time.

In order to assess properly the situation, the Committee asks that the next report provide figures about the demand for social housing, the average waiting-time for being allocated social housing, and the rate of satisfaction ensured through the combined public and private social housing supply. It also asks whether the measures adopted to reduce the waiting-time for disadvantaged household have revealed effective."

"The Committee asks for information about what is considered to be excessive as length of waiting period, to which extent the non-judicial remedies are used, and whether judicial remedies are open."

⁷⁸ Fapil: annual survey 2004

⁷⁹ See, for example, ASLIM: 2005 Report

Applicants' right of appeal to the mediation committee in the event of an abnormally long waiting time for social housing represents real progress, in so far as it offers them a guarantee that their application will be investigated and an opportunity to appear before a jointly constituted body. However, mediation committees are not judicial bodies with power to apportion responsibility or correct any faults that may have been committed.

A draft "housing for all" law would strengthen them by having them chaired by a judge. This is an interesting idea, but as long as they had no powers to enforce responsibility for rehousing or impose penalties, the households concerned would still face the same problems.

For example, in the Rhone *département*, 100% of the households that have appealed to the mediation committee have foreign or Muslim sounding names.

What constitutes an unreasonable or excessive waiting time is determined by each *département*, based either on average waiting times recorded or on some theoretical waiting time derived from the number of applications outstanding divided by the number of allocations each year. Thus the notion of excessive waiting time is a function not of the situation of applicant households but of the theoretical capacity for response. Demand is adjusted to supply and not the reverse, which is a curious way of dealing with an individual right.

Non-judicial appeals are still fairly rare, though the number is constantly growing as applicants become better informed. There are no other forms of appeal. Social letting agencies' letting committees have full statutory authority and no other body may replace them in the exercise of their powers to allocate housing.

Département collective agreements place very few constraints on social letting agencies. In most *départements*, they simply undertake to reach the annual level of availability already established.

Nevertheless, social letting agencies have to deal with conflicting requirements, in that they must simultaneously ensure social mix and rehouse the most vulnerable households, while social housing residents as a whole are becoming poorer.

"The Committee observes from another source that, next to public social housing, the private rental sector also offers a supply of low rent dwellings through the system of contracts between the landlords and the state in exchange for subsidies or tax reductions. However, the amount of dwellings available through the regulated rental sector (about 230 000 lodgings yearly, 10 000 of which are new) is held to be insufficient and the policy measures to attract the private landlords need to be improved to avoid this low rent housing stock to disappear. The Committee asks whether measures are taken to increase the supply of dwellings in the regulated rental sector."

Nothing been done to increase the supply of dwellings in the controlled rental sector and indeed measures to abolish social "quid pro quos" for tax concessions further restrict this sector's capacity for self regeneration. The "De Robien" agreements between owners and the state offer the former the same tax benefits as before but with no countervailing social benefits, such as the former requirement to charge a rent of less than 36 francs, or € 5, per square metre. The result has been expensive for the community and counter productive regarding the right to housing.