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Hilary Silver & Lauren Danielowski

To cite this article: Hilary Silver & Lauren Danielowski (2019): Fighting Housing Discrimination in Europe, *Housing Policy Debate*, DOI: [10.1080/10511482.2018.1524443](https://doi.org/10.1080/10511482.2018.1524443)

To link to this article: <https://doi.org/10.1080/10511482.2018.1524443>



Published online: 14 Feb 2019.



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# Fighting Housing Discrimination in Europe

Hilary Silver and Lauren Danielowski

Department of Sociology, George Washington University, Washington, DC, USA

## ABSTRACT

There is no exact European equivalent to the U.S. Fair Housing Act. The member states of the European Union (EU) have transposed into law the EU Racial Equality Directive of 2000 that prohibits discrimination in, among other things, access to the supply of goods and services, including housing, on the basis of race. Most housing discrimination case law so far comes from nonbinding decisions of the European Court of Human Rights and European Committee of Social Rights under the revised European Social Charter of the Council of Europe. This article explains how the European context of discrimination and segregation differs from the American, reviews the major legal conventions establishing equal rights in housing, protected classes, and key precedents. It discusses how mixing policies in social housing are the primary mechanism to reduce residential segregation in Europe. The special case of extreme discrimination against the Roma is presented, before concluding with some comparative observations.

## ARTICLE HISTORY

Received 11 August 2018

Accepted 10 September 2018

## KEYWORDS

Fair housing; Europe; discrimination; segregation; Racial Equality Directive

The 50th anniversary of the U.S. Fair Housing Act (FHA) affords an opportunity to reflect on the efforts of other countries to protect minorities from housing discrimination and to prevent or reduce residential segregation. This article considers approaches to fair housing in Europe. It reviews international rights to housing, the European Union (EU) equality directives, and some national statutes prohibiting discrimination. After describing the particular housing and social contexts within which these rules operate, we discuss some legal cases and mixing policies that fight segregation.<sup>1</sup> The special case of extreme discrimination against the Roma is presented before concluding with some comparative observations. Each side of the Atlantic provides insights for the other.

Europe has no exact equivalent to the U.S. FHA. Legal prohibitions against discrimination treat housing as just one among many goods and services, without a dedicated statute. Housing and urban development policies, not discrimination laws, commonly address segregation, which is less severe across the Atlantic. Those policies typically entail greater government intervention in the housing market and more publicly owned and subsidized housing. Race and ethnicity—with one important exception, the Roma—have been less central to residential location in Europe. Greater attention is given to mixing social classes. The groups protected from housing discrimination comprise a smaller population share than in America, and they vary from one European country to another. Indeed, this article flattens out national differences to highlight Europe's contrast with the United States.

Until recently, housing discrimination has not been as central a policy concern in Europe as it is in the United States. There are several reasons that it has come to the fore. Significant numbers of non-Europeans arrived in Europe only after being recruited to fill postwar labor shortages, and

these guest workers were often allocated low-quality vacated housing or residential quarters near their employers. By the 1980s, high unemployment among immigrants and their children living in social housing projects or low-rent districts led to crime, violence, and protests. Later, terrorist acts by Islamic extremists and assaults on women contributed to Islamophobia and nationalist populism. Throughout Europe, politicians fretted about the potential for ethnic ghetto formation where alienated youth lived beyond the reach of national institutions and culture. Hate crimes increased, and far-right parties stoked fears of Muslims, portraying them as unassimilable outsiders with different values and beliefs than the aging native population. As public opinion turned against immigration, some far-right parties won enough support to join the government. Concerned about the implications for liberal democracy especially as the postsocialist countries were joining the EU, leaders agreed to issue a Racial Equality Directive (RED) to combat discrimination. Since 2000, all European countries have enacted harmonized antidiscrimination laws and established national equality bodies to monitor and enforce them.

The legal prohibitions against housing discrimination in Europe differ from the FHA in important respects. With its legacy of slavery and legal Jim Crow segregation, the United States needed a separate law for housing to combat persisting resistance to integration. Although Title VI of the 1964 Civil Rights Act prohibited discrimination in federally assisted programs, it excluded any reference to private housing discrimination (Sugrue, 2018). Attempts in 1966 and 1967 to pass a fair housing bill failed, even as Dr. Martin Luther King Jr. led marches in Chicago, Illinois, advocating for open housing and as urban riots broke out across American cities. The FHA (Title VII) was ultimately enacted in 1968, 1 week after King's assassination. This history would thereafter couple the FHA with America's struggle for racial justice.

Given the many evasions of desegregation of the years, the FHA was both broad and detailed, specifying many prohibited practices and many protected classes.<sup>2</sup> The FHA both outlawed discrimination—which could be demonstrated with group disparities and not necessarily proof of intent—and called for active pursuit of open housing and ghetto prevention (Mondale, 2018, p. 293). Amended in 1988 to rectify some original weaknesses, the FHA covered public and private housing, only exempting landlords who occupy their buildings with fewer than five units. And it mandated positive action to *affirmatively further fair housing*. The U.S. Department of Housing and Urban Development (HUD) was charged with enforcement, but rarely imposed penalties on discriminatory jurisdictions (Hannah-Jones, 2015). In 2016, private fair housing organizations were responsible for addressing 70% of all housing discrimination complaints (NFHA, 2017). Basically, individual Americans initiate civil suits, and advocates can bring class action suits on behalf of an entire category.

In contrast, Europe—meaning, the Council of Europe, the EU, and their member states—approaches housing discrimination and segregation differently than the United States. Europeans derive authority from the social and human rights guaranteed in international treaties and, in some juridical settings, see them as justiciable. European antidiscrimination law rests upon not only the principle of rights, but also the principle of equality. When the European Council issues a Directive such as the Racial Equality Directive, it assumes the force of law and must be transposed into the national statutes of the member states. Embedded within international legal environments are national statutes and institutions that may go even further to protect citizens from unfair treatment in housing.

## Contextual Differences Between Europe and the United States

Housing discrimination is widespread in Europe, although it is difficult to compare its extent with that in the United States. Legal cases largely rely upon witness testimony and documentary evidence. Surveys reveal many self-reports of discrimination in housing, but in fact more Europeans experience discrimination in employment or other services (European Union Agency for Fundamental Rights [FRA], 2017, 2010). The victims of housing discrimination also vary. Two

groups have the highest levels of self-reported discrimination on the grounds of ethnic or immigrant background when trying to rent or buy an apartment or a house: 12% of Roma respondents and 9% of those with North African background. Rather than race or religious appearance, they say their first or last names are the most frequent reason for discrimination when looking for housing (44%). Furthermore, the groups reporting more or less discrimination differ across countries. Whereas black/white segregation is persistently the highest in the United States, no single nationality, race, or ethnicity is excluded everywhere in Europe, except the Roma. However, even those who admit to experiences of housing discrimination rarely file complaints with the authorities, in the belief that it would be useless or may lead to retaliation. In fact, until recently, many countries had no equivalent of the Equal Employment Opportunity Commission (EEOC) or Human Relations Commissions where they could file complaints. The most determined turned to the police or nongovernmental organizations (NGOs).

Because many European censuses do not ask for race, ethnicity, or religion, and because minority groups comprise a small proportion of national sample surveys, there are not many statistical analyses of housing discrimination in Europe. One study used nationality as a proxy for ethnicity, finding that tenants born abroad pay more in rent than comparable Norwegians (Beatty & Sommervoll, 2012). Although few American-style fair housing audits had been conducted until very recently (Bunel, l'Horty, Du Parquet, & Petit, 2017, p. 2; Connerly, 2006, p. 357), more European academics have started to perform testing studies.<sup>3</sup> There is now quasiexperimental evidence from various countries or cities documenting disparate treatment, especially by landlords. Most pertains to ethnic discrimination in rental housing, with disparities in callbacks or email responses to advertisement inquiries. Nationality varied, although usually Arabic or Turkish names were contrasted with those of natives. In Greece and Italy, discrimination against Albanians was tested; in the UK, Indians and Africans. There is some documentation of discrimination on other grounds, such as disability, current residence, and gender or single mothers.

In contrast to the United States, very few European testing studies have examined discrimination in housing sales and lending, partly because these transactions usually require face-to-face meetings. One French study found real estate brokers in the Paris region tended to take place of residence as a proxy for ethnic origin, although they denied it when interviewed later (Bonnet, Lalé, Safi, & Wasmer, 2016). Another study in the Paris region found prospective minority tenants were interrogated more often and asked for more supporting documents than the native French control group were (Maugain, 2014). A particularly clever audit tested Belgian real estate agencies by posing as landlords who wanted to rent an apartment, but to avoid certain candidates. It found that almost half the agencies were willing to steer away foreigners as prospective tenants, either before or after a visit to an apartment, although they knew the practice was illegal. Fewer agencies outright refused to avoid foreigners. The study identified discouragement strategies, too, such as claiming the landlord's family wants to rent the property, an exception to discrimination laws (Van Den Broeck & Heylen, 2015). Such diversion tactics recall American steering practices prior to the FHA.

Generally speaking, racial and ethnic segregation in Europe is more moderate than in American cities, although there are exceptions (Musterd, 2005; Peach, 1996; Van Kempen & Murie, 2009). The most meticulous quantitative comparison to date, one that controls for neighborhood scale, found U.S. black/white segregation is greater than European/non-European segregation in Belgium, Denmark, the Netherlands, and Sweden, with few differences among the latter (Andersson, Lyngstad, & Sleutjes, 2018). However, the extent of racial or ethnic segregation is often difficult to gauge because not all countries collect statistics on small areas or on race or religion. For example, the French Constitution's prohibition on discrimination based on race has led the Constitutional Court to systematically object to any official collection of information on racial/ethnic identity (Blanc, 2010; Sabbagh & Peer, 2008; Simon, 2001). In 2018, the National Assembly even voted to remove the word "race" from Article 1 of France's constitution.

Although comparison is facilitated by drawing a boundary between foreigners and European citizens, in fact, most immigrant neighborhoods in Europe are diverse in nationality, and the groups in question vary across cities, whereas American ones are more black versus white. Across Europe, ethnic segregation levels appear to be higher in the UK and Belgium and lower in Germany, France, and Austria (Musterd, 2005). All this makes segregation in Europe less rigid and dualistic. Methodological decisions partly determine whether one can say British cities such as London or Bradford are as segregated as New York or Chicago (Johnston, Forrest, & Poulsen, 2002; Peach, 1999, 2009, 2010).

Even lumping all minorities together, few European cities have majority-minority neighborhoods or clusters of a single origin group, although rare concentrations do exist in Brussels, Stockholm, Berlin, and other cities (Carlsson & Eriksson, 2014; Dancygier, 2017). Not only are European cities multiethnic, but the same racial group may be highly segregated in one European city and not in another (Iceland, 2014). Ethnic enclaves in European cities are also less longstanding, stigmatized, and isolated than American ghettos. By these criteria, some argue that there are no ghettos in Europe in the American sense of parallel societies or significant pockets of ethnic segregation (Blanc, 2010; Blokland, 2008). As a consequence of this lower segregation, where one lives in a European city is less likely than in the United States to determine access to opportunities and life outcomes in education, employment, health, and wealth. Nevertheless, there is evidence of neighborhood effects on life outcomes in European cities, too (Galster & Friedrichs, 2015; Korsu & Wengleski, 2010).

Tracking segregation indices of a fixed set of groups in a single nation over time provides a good benchmark for trends. In Britain, ethnic segregation seems to tend downward, as some groups are integrating. But socioeconomic segregation in 12 European capital cities appears to be rising (Musterd, Marciniak, van Ham, & Tammaru, 2015). As for segregation among second-generation immigrants compared with their parents' generation, the evidence is mixed (Arbaci & Malheiros, 2010; Peach, 2009; Verdugo, 2011).

There are a number of important historical and institutional differences to account for Europe's lower levels of segregation. First, racial and ethnic minorities make up a smaller share of most European populations than they do in the soon-to-be majority-minority United States. According to Eurostat, more than 9 out of every 10 persons living in the EU-28 in 2016 had been born in the country where they were living, with some 4.1% of the total number of inhabitants born outside the EU and 3.1% born in another EU member state.<sup>4</sup> This percentage varied widely among the member states, with a majority foreign-born in Luxembourg and scarcely 1% in Croatia, Lithuania, Romania, and Poland (see Mellis, Marra, & Gelormino, 2013). The arrival of ex-colonial subjects, asylum-seekers, and other racial and ethnic minorities on European soil is of relatively recent vintage.

There have been fewer urban disturbances in Europe than in the United States, although ethnic neighborhoods in the United Kingdom and France have occasionally erupted too (Mayer, Thörn, & Hakan Thörn, 2016). Yet it would be a mistake to assume that European minorities are never subjected to terror and violence when they move into native neighborhoods. In *LK v. Netherlands* (1993), for example, a partially disabled Moroccan citizen applied for housing and was offered a lease for him and his family. Twenty people gathered outside his house, shouted "No more foreigners," and threatened to burn the house down if he and his family moved in. The protesters signed a petition to offer a different house to his family. The United Nations Committee on the Elimination of Racial Discrimination found that LK was a victim of "incitement to racial discrimination and to acts of violence against persons of another color or ethnic origin" under the International Convention on the Elimination of all Forms of Racial Discrimination.

European segregation patterns are less rigid than the American ones partly because of the moderating influence of more extensive European welfare states and public intervention in housing (Maloutas, 2012; Musterd, 2005; Musterd & Ostendorf, 1998, p. 5; Van Kempen & Murie, 2009). Compared with Americans, Europeans have a greater tolerance for state intervention in markets

and are willing to pay taxes for it. In 2016, the share of gross domestic product devoted to social expenditures was 19.3% in the United States, compared with 31.5% in France, 28.7% in Denmark, and 21% in the Organisation for Economic Co-operation and Development as a whole.<sup>5</sup> Different welfare regimes shape and reflect social inequality and differentiate housing systems that in turn influence ethnic and sociospatial segregation (Arbaci, 2007).

The allocation of housing in Europe is not all left to the market. Homeownership rates vary across countries, but are lower in most European countries than in the United States. In general, more Europeans (42–64%) than Americans (32%) live in multifamily or semidetached structures rather than in sprawling, suburban, single-family American Dream homes. Although there are inconsistent definitions, Eurostat estimates that in 2013, 18% of households in Europe rented at a market rate, but may have done so with housing allowances, and 11.2% rented for free or at a reduced rent. Eleven percent live in social or public housing (Memken & Niemeyer, 2018). In Vienna, 60% currently live in homes that are built, owned, or managed by municipalities.

Planning powers and land-use controls are also far more extensive, allowing local governments to develop mass multifamily housing and shape the landscape. European sociospatial patterns typically reverse American ones. Concentrated poverty areas in European metropolises are typically on the periphery and not in the center of cities as in the United States. The spatial distribution of immigrants is strongly connected with the tenure composition of neighborhoods, and so ethnic segregation is very dependent on how tenures are distributed spatially (Skifter, Hans, Wessel, & Vilkkama, 2016). Thus, segregation is partly administered, and desegregation is handled through land-use and transportation planning and social housing policies.

Multiethnic neighborhoods in Europe tend to be middle class, but the few studies examining the relationship between ethnic and socioeconomic segregation in Europe find that they are not necessarily associated (Arbaci, 2007; Costa & Valk, 2018; Peach, 2009; Tammaru, Marcińczak, Van Ham, & Musterd, 2016). For example, in Riga, ethnic Latvians are less segregated from ethnics who come from the former Soviet Republics, because the natives are less concentrated in large socialist-era housing estates (Musterd et al., 2015; Tammaru et al., 2016). A major comparative study found that key structural variables, such as social inequalities, global city status, welfare regime, or the housing system, cannot totally account for variation in urban segregation (Tammaru et al., 2016). For example, segregation in Southern European cities is distinctive because family attachments to housing may diverge from market incentives (Maloutas, 2016). Historical and cultural factors are also at work. In sum, residential segregation in Europe is both less pronounced than in the U.S. and less a function of markets or direct discrimination than of nationally specific policies, history, and cultural factors.

## The Right to Housing and the Racial Equality Directive

European states derive their authority to prohibit and prosecute housing discrimination from the legal principles of rights and of equality. International human rights declarations and treaties promise social rights, including a universal right to adequate housing. For example, the United Nations International Convention on the Elimination of All Forms of Racial Discrimination, in force since 1969, commits its 175 members to the elimination of racial discrimination. Individuals in the 54 states that signed Article 14 of the convention can, under certain circumstances, lodge complaints within 6 months after the exhaustion of domestic remedies, claiming that the state party has violated their rights (UN, 2012). The Committee on the Elimination of Racial Discrimination—comprising 18 independent experts of high moral standing and acknowledged impartiality—interprets, monitors, reports on, and implements the convention, creating case law and making recommendations to the state parties. So far, the committee has rendered over 50 decisions, but only one of them explicitly addressed the right to housing.

In 1951, the UN and Council of Europe signed their first protocol of cooperation in the fields of the protection of human rights, the fight against racism, discrimination, xenophobia and

intolerance, and the protection of minorities. The European Convention on Human Rights (ECHR) belongs to the legal system of the Council of Europe, which entered in 1953 and has 47 member states, including Russia. The European Court of Human Rights was established in 1959 to adjudicate claims of violations of the convention, Article 1 of which prohibits discrimination on a range of grounds including race, language, political opinion, minority status, and so on. Individuals, NGOs, or groups can lodge complaints against contracting states for violating their rights. Article 46 of the convention provides that contracting states shall abide by the court's final decision, although advisory opinions are, by definition, nonbinding. Furthermore, unlike U.S. judicial review, the court has no jurisdiction to annul domestic laws or administrative practices that violate the convention.

The EU became a party to the ECHR in 2009, under the Lisbon Treaty, superseding its own 2000 Charter of Fundamental Rights. EU institutions, including the EU Court of Justice, and the member states, all of which are members of the Council of Europe too, became bound by the judicial precedents set in the European Court of Human Rights when implementing EU law. The European Union Agency for Fundamental Rights (FRA) (2009) in Vienna, Austria, monitors the case law, which improves consistency across systems.

The Revised European Social Charter, adopted in 1996, takes account of developments in labor law and social rights since the first charter was drawn up in 1961. Seen by some as the Social Constitution of Europe, the Social Charter is a Council of Europe treaty that guarantees fundamental social and economic rights as a counterpart to the ECHR, which refers to civil and political rights. It guarantees a broad range of everyday human rights and protects vulnerable persons from discrimination. EU law on social rights, such as Article 31 of the EU Charter of Fundamental Rights that guarantees the right to housing, is mainly based on the Revised Social Charter, so that 2010 was the first year the EU operated on the basis of a legally binding bill of rights. The European Committee of Social Rights is a committee of independent experts established under Article 25 of the European Social Charter that can render a decision in certain disputes. The right to housing is broadly conceived to include access to social housing, eradication of substandard housing without proper amenities, protection from evictions and homelessness, and so on.<sup>6</sup>

Finally, the EU consists of 28 member states, all in the Council of Europe, and it has its own hard (binding) and soft (consensual) law. The Court of Justice of the European Union (ECJ) treats the ECHR as if it were part of the EU's legal system, since it forms part of the legal principles of the EU member states. The ECJ may review a member state's law for conformity with European law and directives, but it does not serve as a court of appeal for aggrieved parties. Rather, when national avenues of redress for discrimination complaints are exhausted, individuals can bring their cases to the international human rights bodies.

Whereas these rights have formally been on the books for decades, there have been very few discrimination suits over housing, especially compared with those over employment issues. Neither has there been much of a grassroots movement among minorities to demand open or fair housing as there was in the United States prior to the FHA. Rather, international federations of advocacy groups such as the European Anti-Poverty Network, European Network against Racism, Starting Line Group, and European Federation of National Organizations Working with the Homeless (FEANTSA) brought lawsuits, sought remedies, and held governments accountable to make these rights real. For example, drawing upon Article 34.3 of the Charter for Fundamental Rights of the EU, *FEANTSA v. France* established housing as a positive right, indicating the obligations and burden of proof on France and other European States to ensure its realization. As recently as 2015, FEANTSA and Fondation Abbé Pierre (2016) began to issue Overviews of Housing Exclusion in Europe to monitor European Case Law in relation to housing in the ECHR, ECSR, and ECJ.

### **Racial Equality Directive**

Council directives are hard law binding member states of the EU. In the field of European antidiscrimination law, gender equality led the way, not race as in the United States. Directives



on equal pay, social security, and burden of proof in cases of sex discrimination were all enacted in the previous century.

The 2000 Racial Equality Directive (RED) prohibits discrimination by public and private actors not only in employment, but also in access to and supply of goods and services which are available to the public, including housing (European Council, 2000). The RED had a major impact on antidiscrimination law throughout the Continent, harmonizing any existing national statutes, mandating their enactment where they were absent, and guaranteeing the establishment of national equality bodies to help victims of discrimination enforce their rights (Givens & Case, 2014).

Rather than a groundswell of demand for open housing or civil rights, the RED originated in growing resistance to far-right racism and the specter of a Fortress Europe on immigration. In the 1990s, SOS-Racism in France, SOS-Racismo in Portugal, Open Society Institute, Migration Policy Group, and other associations in Europe agitated against rising extremism, hate speech, and hate crime against third-country nationals. The Starting Line Group, a transnational advocacy network of lawyers, experts, and activists, was instrumental in moving from antiracist and pro-immigrant campaigns to enacting the EU antidiscrimination directives. Although member states had signed the human rights charters, only five of 15 EU member states had yet outlawed discriminatory practices nationally in the early 1990s (Givens & Case, 2014, p. 58).<sup>7</sup> This began to change in 1994, with the establishment of the Kahn Commission, culminating in Article 13 of the 1997 Treaty of Amsterdam, the framework for basic antidiscrimination laws adopted by all members of the EU. Ironically, 1997 was declared the European Year against Racism, but most member states still refused to cede the EU authority over national discrimination law. In the 1990s, comparative analyses of national antidiscrimination law and enforcement agencies in Europe reported wide variation in effectiveness. Some countries treated discrimination under criminal rather than civil law (MacEwen, 1995). Yet few convictions for racial discrimination were handed down. After the Treaty of Amsterdam, many recognized a general need to strengthen both EU and national legislation (Wrench, 2000, p. 261).

This changed abruptly in the late 1990s. In 1997, the Council of Ministers established the European Monitoring Center (to become the FRA in 2003), which, in 1998, concluded a cooperation agreement with the Council of Europe. Then the UK, France, and Germany elected left-wing governments. New Labour's EU Presidency in the first half of 1998 focused on racism. Next, in the 1999 parliamentary election, Austria's far right Freedom Party leader, Jorg Haider, won 27% and entered the government in 2000. This alarmed the leftist members of the EU Council, who quickly adopted a draft directive that NGOs and the Commission had meanwhile been promoting. Member states approved, perhaps without realizing the profound implications for national law (Geddes & Giraudon, 2004).

In 2000, two directives were issued, both going beyond the earlier gender directives. They were framed to ensure political support, as there was conservative opposition, as in the United States. The Racial Equality Directive had a broader scope, limiting racial and ethnic discrimination in employment and other aspects of public and private life. There was concern not to include religion so as not to threaten the privileged position of the churches in many countries. But the Employment Equality Directive, which protected against discrimination on broader grounds (religion, belief, disability, age, sexual orientation), was limited to employment. Unlike the gradual extension of the FHA to cover additional groups such as people with disabilities, EU housing discrimination law remains confined to race and ethnicity. Given the principle of subsidiarity limiting EU powers, the RED could only set a minimum floor on minority protection, but allowed sovereign member states to exceed its provisions, establishing protections for additional categories or vulnerable groups. France, for example, outlawed discrimination on the basis of some two dozen grounds. Table 1 compares the protected classes in various European countries.

In the RED (European Council, 2000, Article 2, paragraph 1), "equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin." Direct discrimination refers to unfavorable treatment of a person relative to another in a comparable





Table 1. Protected classes, national-level antidiscrimination laws, and equality body organizations in Europe.

Country	Protected classes (excluding race, ethnicity, sexual orientation, gender, age)	Antidiscrimination law	Equality body created from antidiscrimination law
Belgium	National origin, nationality, civil status, birth, property, religious or philosophical belief, actual or future state of health, physical or genetic characteristics, political opinion, language, social origin, trade union opinion (conviction syndicale), gender (including pregnancy, childbirth, maternity) gender reassignment and gender expression	Cooperation Agreement between Federal State, the Regions and the Communities creating the inter-federal Centre for Equal Opportunities and Opposition to Racism and Discrimination Article 2	Interfederal Centre for Equal Opportunities and Opposition to Racism and Discrimination (UNIA; founded in 1993, updated following Racial Equality Directive)
Denmark	Protected classes in employment: skin color, religion or belief, political opinion, national origin, social origin, ethnic origin	Act No. 553 of June 18, 2012, with later amendments; Act on the Board of Equal Treatment (2008)	Institute for Humans Rights – The National Human Rights Institute of Denmark (2012)
Finland	Protected classes outside of employment: gender, race, ethnic origin	Non-Discrimination Act, Section 19	Board of Equal Treatment (2008)
France	Religion, belief, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics	Organic Law no. 2011–333 of March 29, 2011, creating the Defender of Rights Article 4, paragraph 3	Non-Discrimination Ombudsman
	Real or assumed origin, appearance of origin, national and ethnic origin, pregnancy, family situation, physical appearance, last name, health, genetic characteristics, loss of autonomy, mores, union activities, mutualist activities, political and religious convictions (which are interpreted broadly to encompass all philosophical or spiritual endeavors; however, the term <i>belief</i> is not usual), belief, sexual identity and place of residence		Defender of Rights (2011)
	Any ground protected by national or European legislation and international conventions		
Germany	Parentage, ethnic origin, language, homeland and origin, faith, belief, religious or political opinions, political or union activities or attitudes, nationality, political or union activities or attitudes, background, relationships, sexual identity	General Act on Equal Treatment (Article 25) (2006)	Federal Anti-Discrimination Agency (2006)
Greece	Racial or ethnic origin, descent, color, language, religious or other beliefs, chronic illness, family or social status, gender identity or characteristics	Law 2477/1997, Article 1 and Equal Treatment Law 4443/2016	Greek Ombudsman
Iceland	No specific body	N/A	No specific body
Italy	Ethnic origin, belief, sex, nationality, national origin, language, political opinion, personal and social condition	UNAR Legislative Decree No. 215/2003 on the implementation of the Directive 2000/43/EC Article 7	National Office Against Racial Discrimination
Netherlands	Belief, political opinion, hetero- or homosexual orientation, sex, nationality, civil (or marital) status, working time and type of labour contract	Netherlands Institute for Human Rights Act Articles 9–13 Law on anti-discrimination Bureaus, Article 2a	The Netherlands Institute for Human Rights The NGO, Article 1
	Race, religion, and belief, political opinion, hetero- or homosexual orientation, sex nationality, civil (or marital) status, disability, age		
Portugal	Race and ethnic origin, nationality	Decree-law 31/2014 Article 1	High Commission for Migrations

(Continued)

Table 1. (Continued).

Country	Protected classes (excluding race, ethnicity, sexual orientation, gender, age)	Antidiscrimination law	Equality body created from antidiscrimination law
Romania	Race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, age, disability, noncontagious chronic disease, HIV-positive status, belonging to a disadvantaged group or any other criterion	Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination, Articles 16–25, 29, and 30	National Council for Combating Discrimination
Slovakia	Sex, race, skin color, language, belief, religion, political affiliation or conviction, national or social origin, nationality or ethnic origin, property, lineage/gender, affiliation with nationality or an ethnic group, disability, age, sexual orientation, marital status and family status, political or other opinion, the reason of reporting criminality or other antisocial activity, trade union activities, unfavorable state of health and genetic features or any other status	Act No. 308/1993 on Establishing the Slovak National Centre for Human Rights, Section 1, paragraphs 2a, e, f, g, h, and Sections 1(3) and (4)	Slovak National Centre for Human Rights
Spain	Ethnic origin, religion or belief, age, gender, marital status, origin, social condition, political ideas, ideology, affiliation to a trade union, use of official languages in Spain, family ties with other workers in a company, nationality, any other condition or personal or social circumstance	Law 62/2003 of 30 December on Fiscal, Administrative and Social Measures, Article 33	Council for the Elimination of Racial or Ethnic Discrimination
Sweden	Sex, sexual identity or expression, ethnicity, religion and other belief, disability, sexual orientation, age, part-time workers, fixed-time workers, workers taking parental leave	Discrimination Act, Chapter 4, Sections 1–6 and the entire Equality Ombudsman Act	Equality Ombudsman
United Kingdom	Sex, sexual identity or expression, ethnicity, religion and other belief, disability, sexual orientation, age, part-time workers, fixed time workers, workers taking parental leave (including citizenship), sexual orientation, religion, belief, disability, age, sex (including gender reassignment, marriage/civil partnership status, pregnancy)	UK Equality Act 2006, Sections 1–43 Northern Ireland Act, Sections 73–74	Great Britain: Equality and Human Rights Commission Northern Ireland: Equality Commission for Northern Ireland

Data from “Table 1: Grounds Protected on the National Level in Various Laws, Whether at the Federal or Regional Level,” in *A Comparative Analysis of Non-Discrimination Law in Europe*, 2016, by Isabelle Chopin and Catharina Germaine, Luxembourg: Publications Office of the European Union, 2016, p. 11, European Commission, 2012; and *A Comparative Analysis of Non-Discrimination Law in Europe*, 2017, by Chopin and Germaine, 2017, European Commission.

situation on the basis of protected characteristics. Indirect discrimination refers to an informal, seemingly neutral provision, criterion or practice which applies to everyone, but may be of particular disadvantage to members of a protected racial, ethnic, or national origin group, unless objectively justified by a legitimate aim and the means to achieve that aim are necessary and appropriate. Statistical evidence may but need not establish indirect discrimination. Harassment is also forbidden, defined as “unwanted conduct related to racial or ethnic origin” that takes place with the purpose or effect of “violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment” (Article 2, paragraph 3).

The RED required the transposition of the EU law into national statutes within 3 years and the establishment of national, independent equality bodies to promote equal treatment, advise and represent people complaining of discrimination, and monitor discrimination through surveys, investigations, and reports. By 2008, most EU member states had passed laws to implement the equality directives. Member states created equality bodies or brought existing ones in line with the RED. Federated in the European Network of Equality Bodies (EQUINET), they launched information campaigns, issued opinions, and brought cases before the ECJ. The number of discrimination complaints varied a great deal, with Belgium, France, Sweden, and the UK registering over 500 apiece, sometimes overwhelming the relevant staff. With the 2008 financial crisis and the success of far-right parties, equality body budgets were cut. In addition to public equality bodies, the RED gave a role to a wide range of advocacy groups with a legitimate interest in enforcing the law. In some countries, NGOs are empowered to represent plaintiffs in antidiscrimination trials.

In Europe, judicial remedies for violations of the RED must be effective, proportionate, and dissuasive, including adequate compensation for monetary and nonpecuniary damages. Decisions should weigh individual needs and rights against legitimate public purposes. Some 17 countries, including France, Italy, Romania, and Spain, do not restrict RED protection to publicly available goods and services. However, a number of countries exempt private associations, families, small landlords or those with a special relationship of trust and proximity between the parties or their families from antidiscrimination laws in housing.

Most housing discrimination cases in Europe are brought on the grounds of race/ethnicity, religion, and nationality. However, other protected classes, such as those with a disability, have lodged complaints with national and UN bodies (e.g., *HM v. Sweden*, 2012; see FEANTSA, 2016; Fumarco, 2017). One serious limitation of the RED is that Article 3(2) affords protection from differential treatment solely on the grounds of race and ethnicity, but not of nationality. Article 13 of the Amsterdam Treaty gave the EU competency on grounds of sex, racial or ethnic origin, religion or belief, disability, age, and sexual orientation, but not nationality. Third-country nationals, who should have equal rights to citizens, are therefore protected from discrimination only on racial or ethnic grounds. In some cases, courts might rule that discrimination based on religion is actually associated with nationality, and find for the accused. The RED exclusion of nationality has dogged litigation.

For example, in the 2004 case, *Public Prosecutor and Centre for Equal Opportunities and the Fight Against Racism v. H. Neuville*, the landlord, Mr. Neuville, refused to rent to a couple of Congolese descent who had Belgian citizenship, despite their producing both evidence of sufficient income and favorable references from past landlords. Neuville’s explanation—that he allegedly experienced issues in the past with “non-nationals” in making timely and sufficient rent payments—was rejected (European Union Agency for Fundamental Rights, 2010, p. 75). In *Servet Kamberaj v. IPES and Others* (Court of Justice of the European Union, 2012), Mr. Kamberaj, an Albanian national resident of Italy, was denied social housing benefits because the budget dedicated to services for third-country nationals was exhausted and housing assistance was not deemed a core benefit. In *Sarwar Seliman Mostafa v. Denmark* (2001), Mr. Mostafa, an Iraqi resident with secure employment, was offered an available rental apartment from the Danish social housing company DAB, but the municipality did not approve. After he filed a discrimination complaint, the municipality relented, but meanwhile the unit had been rented. Nevertheless, the Danish Ministry ruled that it is unlawful

for localities to use refugee or immigrant status to reject applications. The ECHR Court heard related cases—*Hunde v. the Netherlands* (2016), *V. M. and others v. Belgium* (2016)—concerning the right to housing of asylum seekers whose applications were rejected.

Housing discrimination studies and case law overwhelmingly concern social and private rental housing—refusal to show or rent an apartment, offering lower quality units, or charging higher rents. Unlike in the United States, little attention has been devoted to steering by real estate brokers. In one case, *F. A. v. Norway* (2001), F. A. filed charges under the Norwegian Penal Code with the Oslo police challenging racist advertisements for rental housing such as “no foreigners desired,” “whites only,” and “only Norwegians with permanent jobs” (United Nations Office of the High Commissioner for Human Rights, 2012, p. 171). There is also very little information about lending discrimination in Europe (Stefan et al., 2018), as access to housing credit is conventionally considered a consumer affairs or social policy issue (Taffin & Vorms, 2007).

## Mixing Policies: How Europe Combats Segregation

Discrimination is a violation of individual rights, whereas segregation is a collective social condition. The U.S. FHA outlawed discrimination, but also included a clause to affirmatively further fair housing. HUD disregarded it until the Supreme Court ruled in 2015 that the FHA prohibited policies that disparately and negatively impact protected minority groups, even without an explicit statutory intent to do. The Obama Administration then issued a rule directing any community receiving block-grant funding from HUD to complete a comprehensive Assessment of Fair Housing. Trump HUD Secretary Ben Carson stalled this.

It is usually not possible to bring class action suits based on disparate impact in Europe because many European governments do not collect ethnic data, although some equality bodies and NGOs do monitor statistical group differences. Rather, Europeans take positive action to reduce segregation, but under the rubric of urban development and housing programs rather than antidiscrimination law or the RED.<sup>8</sup> Whereas residential segregation by race, ethnicity, or income is less pronounced in most European societies than in the United States, it has increased in Europe, leading to widespread fears of American-style ghettos, income neighborhoods, or parallel societies. Recognizing that equal opportunities cannot be achieved by nondiscrimination alone, Europeans are more accepting of quotas, targeting, and other mixing policies to achieve substantive, not just procedural, equality (Appelt & Jarosch, 2000). The personal right to housing is balanced with the public interest in social integration (Blanc, 2010; Serafini, 2016). Since the 1990s, mixing policies used selective demolitions, strategic construction of owner-occupied and private housing, and new allocation rules to transform comparatively large social housing developments. Strategies included diversifying designs and tenures, providing community spaces and transit, and specifying the social mix through rent and tenure variation. The best known are France’s *Politique de la Ville*, the UK’s *New Deal for Communities*, Germany’s *Soziale Stadt*, and the Netherlands’ *Empowered Neighborhoods Policy*. They target their country’s poorest neighborhoods for physical reconstruction, often accompanied by social services (Andersson, Brama, & Holmqvis, 2010; Andersson, Musterd, Galster, & Kauppinen, 2007; Beaumont & Musterd, 2005; Colomb, 2007; Launay, 2010; Ostendorf, Musterd, & DeVos, 2001).

European countries have been more likely than the United States to rehabilitate and diversify the housing stock and tenure mix in disadvantaged areas than to encourage mobility of the poor to more affluent places (Iceland, 2014). Thus, there is less of a one-way street to integration out of existing neighborhoods (Goetz, 2018). Whether they provide aid to people or to places, European mixing policies have done little so far to deconcentrate the poor and ethnic minorities, or to attract middle-class residents to disadvantaged suburban neighborhoods, eluding the hoped-for social mix and poverty reduction (Andersson et al., 2010; Bolt, 2009; Bolt & Van Kempen, 2010; Bolt, Phillips, & Van Kempen, 2010; Münch, 2009; Ostendorf et al., 2001). Housing policies have had a limited effect on ethnic concentration because they fail to address the root structural causes of segregation, targeting only the spatial organization of disadvantage (Tamaru et al., 2016).

Even in the mixed housing that does exist, relations across the class divide may be superficial, chilly, or even hostile, at least in the short run (Lees, 2008; Tunstall & Fenton, 2006; Uitermark, Duyvendak, & Kleinhans, 2007), much as in American mixed-income housing (Chaskin & Joseph, 2015; Fraser, DeFilippis, & Bauzin, 2012; NIMC, 2013; Silver, 2013). Personal characteristics, such as education, nationality, and other background factors, determine social interaction more than spatial propinquity does (Martinovic, 2013; Rimoldi & Terzera, 2017). However, living in a diverse neighborhood does offer more of an opportunity for people with different backgrounds to interact.

Mixing programs often assume that increasing tenure diversity increases socioeconomic and ethnic diversity at the same time. But encouraging middle-class homeownership in poor neighborhoods may fuel gentrification and price out longtime lower income residents who want to stay put for the sake of their employment, their children's education, and their local networks, amenities, and quality public services (Bates, Lane, Power, & Serle, 2013; Bolt, 2010). In France, where there is an effort to build social housing in affluent areas, some have suggested that moving the poor into middle-class places may do them no favors. It can increase their cost of living, create relative deprivation, even deprive them of the right to decide with whom to live. "Enforced desegregation is no better than enforced segregation" (Blanc, 2010, p. 69). More permissive mixing policies would allow people to freely express their preferences to live with similar or diverse people (Lees, 2008).

European mixing policies, like mixed-income housing in the United States, may bring social classes and groups into spatial propinquity, but cannot force them to interact. In fact, rubbing shoulders with people who have different cultural practices may exacerbate conflicts among neighbors. In Milan, for example, place of residence can only partially explain friendship relations between immigrants and natives, since different ethnic groups tend to settle in particular territory and interact with others depending on the characteristics of individuals and their immigration history (Rimoldi & Terzera, 2017). In the Netherlands, immigrants more often engage in contact with natives than the other way around, but education, not propinquity, is key. More specifically, higher educated immigrants have more, and higher educated natives less, interethnic contact (Martinovic, 2013). In mixed large social housing estates around Paris, France, middle-class tenants tend to avoid their lower class neighbors (Tunstall & Fenton, 2006). Although physical and tenure mixing has not attained the supposed goal of social interaction across classes, some argue that social mix is still justified by the "preponderance of plausibly causal evidence from Europe and North America" (Galster & Friedrichs, 2015, p. 175).

Some cities and social landlords have implemented social housing allocation measures designed to disperse ethnic minorities. Since *U.S. v. Starrett City* (1988), it is illegal to specify a racial mix or quotas, so Americans have pursued racial desegregation by deconcentrating poverty, income-mixing public housing, and encouraging individual mobility. In contrast, European law considers it discriminatory to steer ethnic minorities into spaces where members of their group already live, but often condones capping the number of ethnic minorities or low-income households assigned to places where they are already concentrated. In the Netherlands, for example, fear of creating ethnic ghettos led to a prohibition on concentrating the unemployed or low-income households in rental housing in certain neighborhoods (Van Eick, 2010). Because it is so difficult to attract middle-class residents to mixed social housing, especially in high-poverty zones, social housing landlords give them priority entry over lower class households. However, this preference violates low-income households' right to housing, as in France's enforceable right for housing (Gautier & Masclaux, 2015). For example, SOS-Racisme, a French NGO, brought a complaint on behalf of Frederic X, who was denied social housing because of a cap on the number of persons of African and Caribbean origin living in the apartment building that Mr. X had requested. The Court of Cassation found for the first time that taking into consideration racial or ethnic origin of an applicant to determine whether the social mix requirement was met constituted criminal discrimination in access to goods and services (European Commission, 2018).<sup>9</sup>

## Denmark's Ghetto Package

Denmark's ghetto package is perhaps the most draconian case of state intervention into segregated neighborhoods in Europe. It builds upon the earlier *Ghettoplanen* that tore down buildings, increased police supervision, offered business opportunities, and controlled crime in 45 official ghettos (Johansen, 2011; The Local, 2018). In 2018, Denmark's government introduced 22 initiatives to integrate and regulate life in 25 low-income, high-unemployment, high-crime, low-education, and heavily non-Western background (i.e., Muslim) enclaves. Many have passed. Prime Minister Rasmussen calls his plan "One Denmark without Parallel Societies: No Ghettos in 2030." The goal is to eliminate all ghettos by 2030 by turning underprivileged areas into normal neighborhoods.

New rules include mandatory preschool for ghetto children to be instructed in Danish values, language, and Christian religious traditions. Those who resist could lose their welfare payments. Courts may double the punishment for certain crimes committed in the ghettos. New housing rules aimed at changing resident demographics threaten to cut unemployment benefits of people who move into the areas. The government will demolish and regenerate housing and will sell units on the general housing market to private investors and homeowners. Social housing companies could refuse to rent property to tenants with certain types of recent criminal convictions and could more easily evict tenants convicted of crimes. Critics say these measures discriminate on the basis of residence, restrict the right of free movement, and undermine municipal autonomy. By stigmatizing the inhabitants, the ghetto package may create the very parallel society policymakers fear (Bahgat, 2018).

## France's SRU

Urban sociologists have long debated whether there are ghettos in France like the ones in the United States (Lapeyronnie, 2008; Maurin, 2004), but it is difficult to ascertain the ethnic makeup of low-income neighborhoods since France does not officially collect such statistics (Blanc, 2010; Simon, 2000, 1998; Gründler & Thouvenin, 2016). Ethnicity is "side-stepped by applying measures based on a territorial definition of social problems" (Wrench, 2000, p. 271). The French government has long intervened in socioeconomically disadvantaged Urban Priority Zones (ZUP) with spatially targeted urban policies (*Politiques de la ville*) designed to promote "la mixité sociale."<sup>10</sup>

The *Solidarité et Renouvellement Urbain* (Solidarity and Urban Renewal) law is the French analog to American inclusionary zoning or fair share housing, and resistance to it is reminiscent of that seen in Mount Laurel, NJ, Yonkers, NY, and other exclusionary American suburbs. The SRU attacks segregation by legally requiring every sizable commune in an urban agglomeration to have at least 20% of its housing stock in social housing before 2020. This is an ambitious target; for comparison, most American inclusionary housing programs (e.g., in Illinois, Connecticut, Rhode Island, and Massachusetts) set a fair share at about 10%. To ensure a social mix within as well as between municipalities, construction of social housing in the 1,500 urban policy neighborhoods (*quartiers politique de la ville*) was capped at 50%.

Housing advocates and mayors of towns with a lot of social housing strongly support the SRU, claiming that it has doubled the production of social housing in 15 years and strongly encouraged social mixing (Serafini, 2016). They have fended off attempts to repeal and evade the SRU. Affluent communes resisted the construction mandate (Serafini, 2018), and conservative mayors preferred to pay fines than to increase their social housing stock. Other communes claim there is no land to build the *Habitation à Loyer Modéré* (HLM), even while issuing licenses to developers. Social housing itself is heterogeneous, so even communes building new social housing may make it too small or too expensive to accommodate large ethnic families. In noncompliant municipalities, departmental prefects were empowered to issue construction permits or purchase private buildings to convert to social housing, going over the heads of the municipality. This resonates with American antisnob



zoning legislation, such as Massachusetts's Chapter 40-B regulations allowing the state Housing Appeals Committee to overrule an unfair local decision regarding a permit to construct affordable housing and Minneapolis' 2018 ban on single-family zoning. Despite its defenders, the SRU's fate under PM Emanuel Macron is still uncertain (Borloo, 2018). In sum, the heavier hand of European state intervention in social housing policies may increase tenure and socioeconomic mixing, but cannot ensure ethnic mixing, either spatially or socially. Color-blind policies are too blunt an instrument to eliminate group prejudice.

## The Special Status of the Roma Minority

The FHA was singularly focused on longstanding, recalcitrant residential segregation between blacks and whites, emerging only after a period of heightened racial violence and protest in the United States. It is hard to find an equivalent pattern of racial or ethnic animosity in postwar Europe, with one glaring exception. There is one racialized group suffering longstanding penury, intolerance, segregation, and even genocidal victimization: the estimated 10–12 million Roma peoples.<sup>11</sup> They have their own language, history, and culture, and are recognizable people of color. Although traditionally itinerant groups are found in Western Europe, the Roma reside especially in the Eastern European states that joined the EU in 2004 and 2007. Their living conditions deteriorated further after the end of the socialist regimes in 1989 (Kopf, 2012).

The Roma suffer from multifaceted discrimination. Negative stereotypes dating back centuries underlie prejudicial attributes of *the Gypsy* (Kopf, 2012). Residentially segregated, their children are often consigned to special education schools. And "Roma are faced with an even more critical level of discrimination in the field of housing compared with the field of education" (Chopin, Germaine, & Tanczos, 2017, p. 19). Like successful African Americans who confront white hostility, affluent and successful Roma who do not live in ghettos still experience stigma and housing discrimination (Cretan & Powell, 2018).

Although Roma are the largest ethnic minority in Europe, it has been difficult to assess trends toward Roma equality. As mentioned, Eurostat and many member states do not collect data on ethnicity. The best data on the Roma currently available come from the FRA's large-scale European Union Minorities and Discrimination Survey (EU-MIDIS) of Roma in selected member states in 2008, 2011, and 2016. The surveys revealed dire housing conditions compared with those of other nationals. Roma households suffer from a lack of basic sanitary facilities, electricity, sunlight, and tap water, insufficient space, and deterioration in the structure of their dwellings. They live with environmental degradation such as grime, smoke, dust, unpleasant smells, or polluted water (European Union Agency for Fundamental Rights, 2016, p. 34). Throughout Europe, Roma settlements are fenced off and hidden from public view. They can justifiably be described as ghettos (Berescu, 2011).

The Roma now have a specially protected status under international and European law. The Council of Europe, which encompasses far more Eastern European countries than does the EU, has long concerned itself with the group it recognized in 1993 as a "true European minority."<sup>12</sup> During the accession process of the new member states in the early 2000s, the European Commission established a section on Roma-related issues to coordinate targeted actions and pilot projects, and it earmarked European Structural Funds to induce changes in the education, housing, and treatment of nationally defined marginalized communities. However, Brussels had little influence over *de facto* mistreatment of ethnic Roma (Vermeersch, 2002). Declarations, resolutions, and even formal reforms did little to eliminate discrimination or housing segregation. Even in Slovakia, "often used to demonstrate the power of EU conditionality, the influence of the EU on domestic actors and policy change has been exaggerated" (Haughton, 2007, p. 233). In April 2009, the European Platform for Roma inclusion was launched to bring together the key players in Roma inclusion, including organizations representing Roma.

In 2011, the Council adopted the EU Framework for National Roma Integration Strategies up to 2020. Although the RED was already in force, the Commission concluded that “non-discrimination alone is not sufficient to combat the social exclusion of Roma” (EU Commission, 2011, p. 3). Through an Open Method of Coordination, each EU member state produced a concrete plan to improve the situation of the Roma, specifically focusing on housing, education, healthcare, and employment, and submitted yearly reports detailing progress. The Commission’s 2012 Communication reviewed the national Roma integration strategies and established objectives in the area of housing to promote desegregation; facilitate local integrated housing approaches with special attention to public utility and social service infrastructures; and improve the availability, affordability, and quality of social housing and halting sites with access to affordable services as part of an integrated approach (p. 11). In 2013, the EU Council issued a similar Recommendation on effective Roma integration measures, including access to social housing, desegregation, and so on. Brussels has issued guidelines about how to monitor residential segregation and its relationship to school segregation. Since 2010, with the European Semester process, the Commission also provides Country Specific Recommendations to meet the 2020 integration goals. In a huge investment, the Commission dedicated €172 million in European Social Funds between 2007 and 2015 explicitly for actions integrating and desegregating the Roma. A 2017 evaluation found segregation patterns in 21 of 24 member states and no progress in more than a third (Chopin et al., 2017, pp. 19–26). The most common issue was poor-quality housing (in 15 member states), but evictions of Roma were also widespread (found in nine countries). Enforcement of prohibitions on housing discrimination against the Roma has so far been ineffective.

The Roma have benefitted from representation by a vocal interest group and lobby, the European Roma Rights Centre (ERRC) dedicated to defending their legal rights before the UN Committee on the Elimination of Racial Discrimination and ECHR Court. In 2011, the ERRC brought a collective complaint, *European Roma Rights Centre v. Portugal*, to the European Committee of Social Rights (2011) about the substandard, segregated housing conditions of the Roma in Portugal, in violation of the European Social Charter.<sup>13</sup> The ECHR is adjudicating a case against Slovenia for failure to ensure access to drinking water in some Roma settlements.<sup>14</sup> Likewise, in *B. C. and Others v. Town of Sabinov* (2009), eight residents of Roma ethnic background sued the town of Sabinov in Slovakia for forcibly relocating Roma families to an isolated settlement with poor infrastructure and an exclusively Roma population.

Municipalities and citizens in both Eastern and Western Europe not only segregate the Roma in isolated slums lacking basic services, but also routinely evict them, sometimes burning their homes after them. In *Koptova v. Slovakia* (2000), after repeated displacements and torching of their temporary quarters, two municipalities adopted resolutions forbidding Roma citizens to enter or settle there, in violation of Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. A similar resident petition against low-cost housing for Roma was the basis of a racial discrimination complaint in *L. R. et al. (represented by the European Roma Rights Center and the League of Human Rights Advocates) v. Slovakia* (2005). In 2012, the European Court of Human Rights heard *Yordanova and Others v. Bulgaria* in which a Roma squatter community in Sofia was evicted without the town proposing an alternative location. Neighbors illegitimately demanded that the residents be “returned to their native places” (European Court of Human Rights, 2012, p. 16).

Evictions are not confined to Eastern Europe. Accession gave new EU citizens, including Roma, the freedom of movement, and many migrated westward. However, rising anti-Romani hostility against camping, begging, school truancy, and other misdemeanors led to evictions and clearances in Rome,<sup>15</sup> France<sup>16</sup> (Human Rights Watch, 2011), and other western countries. Another common practice in France, Belgium, the Netherlands, and the United Kingdom is for towns to deliberately exclude parking spaces or campgrounds to discourage the Roma from settling. For example, after complaints from Roma, Sinti, and Travelers, the Netherlands Ombudsman found in 2017 that municipal governments were discriminating against these

groups by not making trailer or caravan sites available as housing options and by reducing the number of existing sites.

Roma frequently lack alternatives, as they are often excluded from social housing. But after Vilnius, Lithuania, repeatedly evicted the inhabitants of a particular Roma settlement without providing any alternative housing, the city adopted the Vilnius Kirtimai Roma Community Integration to the Society Program to provide social housing options for the inhabitants. Yet it is also worth noting that not all displaced Roma want to live in social housing flats. In *Yordanova* (European Court of Human Rights, 2012, p. 24), the evicted Bulgarian Roma did not want to be dispersed. They valued their community, lifestyle, and family life. Contrary to the state's claim that special treatment would be reverse discrimination, the ECHR took account of their specificity as a "an outcast community and one of the socially disadvantaged groups." Thus, there exists a multicultural precedent for differential group treatment in housing.

Despite glacial progress, Europeans are beginning to address the desperate housing situation of the Roma. Initiatives range from the legalization of homes (in Croatia) to establishing more caravan sites (in Belgium), to ensuring a fair process in public housing for Roma applicants (in Finland; see Chopin & Germaine, 2016).

## Conclusion

The comparison of European and American fair housing laws is instructive for policymakers on both sides of the Atlantic. On the one hand, the FHA, whatever its shortcomings, has blazed a trail for European antidiscrimination law in the housing field, which is just coming into its own. On the other hand, European governments demonstrate to Americans how active public intervention ensuring a supply of affordable housing can further desegregation at the same time.

This article has shown that the origins of housing antidiscrimination law—combatting urban violence in the United States and far right anti-immigration politics in Europe—contributed to their respective emphases. Americans had to overcome centuries of state-sanctioned racial segregation, whereas Europeans confronted segregation only after World War II, when they had the international and European human rights regime to draw upon. There were simply fewer ethnic minorities in these relatively homogeneous societies until recently. As the main concern of the EU has been the construction of a common labor market, not rectification of historic wrongs, European antidiscrimination law initially focused on gender and has a broader scope, emphasizing discrimination in employment rather than housing. Many countries have only recently enacted national legislation and established equality bodies to enforce it, under pressure from the Council of Europe and EU.

Since European antidiscrimination law is not as well developed as its American counterpart, especially in the housing sphere, the FHA experience offers some possible insights. The official collection of racial and ethnic statistics has been a key resource in documenting trends in residential segregation and disparate impact of laws and regulations in the United States. Although the collection of U.S. census data on religion, and now citizenship, has been controversial, much as some European countries resist collecting racial statistics, the availability of information on trends in racial and ethnic gaps in housing conditions, prices, and locations has been central to fighting statistical discrimination on these grounds. In contrast, the European Commission rejected a recommendation of the EU FRA for Eurostat to add questions on ethnicity in the EU-Survey of Income and Living Conditions and Labour Force Survey, citing technical difficulty, expense, and legal obstacles in some countries. American courts also recognize testing studies as probative evidence, even if the researchers must also testify as expert witnesses. Recognizing this, European NGOs are now pressing for such studies to the point of instructing victims of housing discrimination how to conduct such tests themselves to support their claims in judicial proceedings. European studies of discrimination by lenders and estate agents are rare, in contrast to U.S. ones, but the need will only grow as more minority group members move up the

social ladder and enter the market for homeownership. In sum, American social science has bolstered the enforcement of antidiscrimination law to a much greater extent than has Europe's.

The United States has a long history of racial segregation, and during the past 50 years, the FHA has been a stunning deterrent to overt discriminatory practices in the U.S. housing market. The FHA was necessary to address a centuries-long legacy of racial oppression, persistent racial segregation, and continuing resistance to interaction across the color divide (Sugrue, 2018). Discriminatory practices are resurgent—even racial covenants persist (Rich, 2005)—and require vigilance. What African Americans endured before the Civil Rights Act is similar to the continuing illegal segregation, deprivation, stigmatization, and terrorizing of the Roma, evicted and burned out of their homes. Increasingly active EU efforts to prohibit and prosecute state-condoned housing discrimination and segregation of the Roma are reminiscent of the battles and necessity for the FHA.

In turn, Americans can draw some lessons from this review of European antidiscrimination law. Antidiscrimination laws like the FHA and RED cannot address the structural reproduction of segregation through market mechanisms, even though they prohibit discriminatory treatment and statutes. However, European urban and social housing mixing policies show how concerted public intervention through land-use planning, regulation, and subsidization can correct for housing market outcomes and reshape the social composition of neighborhoods. European policies make the right to housing real by building affordable units in a variety of places to ensure true freedom of choice for all income levels. As welfare states, many European countries provide a larger share of the poor with housing allowances compared with the meager supply of American Housing Choice Vouchers. By insuring widespread public provision of services, place of residence in Europe is less determinative of living standards and prospects than it is in the United States. Although some heavily ethnic peripheral housing estates may find access to services difficult, Europeans do not have to become homeowners to enjoy quality schools and services. The redistributive impulse to build solidarity through the state also extends to housing.

Although austerity has caused European states to curtail their social commitments from historic highs, they still do a lot more to even the playing field than Americans do. Where member states defied European antidiscrimination directives to protect the Roma, more positive actions were mandated, with funds allocated to achieve results. Sometimes, that state intervention may seem heavy handed, putting the public interest ahead of individual rights. To Americans, the Danish antighetto law and the French SRU appear to tread on civil liberties and even discriminate on the basis of residence, income, or nationality to further equality. Yet European governments consider the state's collection of data on race and ethnicity, as in the United States, to be overly intrusive, especially after the Nazi regime's disastrous use of such data. This may be a bad time to change that policy, even if it could promote social integration.

In Europe, the growth in ethnic populations, the mass arrival of refugees, urban riots and terrorist incidents in central cities, and the anti-immigrant rhetoric of far-right parties all contribute to public fears of ghettoization. Europeans worry aloud that their cities might come to resemble American ones. Given the perceived threat that this poses to social cohesion, European governments are endeavoring to prevent the formation of parallel societies, enacting and enforcing stricter laws against housing discrimination, and imposing mixing programs. In many respects, they have stronger means at their disposal than do Americans to accomplish this. As Kirszbaum (2018) has argued, the American liberal model of color-blind procedural justice allows tenants to choose where they live, even if it produces resegregation, whereas European mixing policies rest upon a substantialist approach that more forcefully imposes diversity of results.

## Notes

1. To review the national case law on housing discrimination in Europe, we interviewed legal experts in the Belgian Equality Body and European-wide nongovernmental organizations and scoured some 17 data sources,

including the Court of Justice of the European Union (CURIA), European Network of Equality Bodies (EQUINET), EUR-Lex, the official website of European Union law, European Court of Human Rights, European Roma Rights Centre, European Union Court of Justice (Europa), European Federation of National Organisations Working with the Homeless (FEANTSA), Monitoring of European Case Law, European Commission, European Union Agency for Fundamental Rights (FRA), 2018, Handbook on Non-Discrimination Law, Google Scholar, HeinOnline, Housing Rights Watch, LegiFrance, SOS Racisme, United Nations Human Rights Office of the High Commissioner 2012, Selected Decisions of the Committee on the Elimination of Racial Discrimination, World Cat Discovery.

2. The FHA made it illegal “to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person,” “to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith,” or “to represent to any person that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available” because of “race, color, religion, familial status, or national origin” (Sec. 804.[42 U.S.C. 3604] <https://civilrights.findlaw.com/discrimination/fair-housing-act.html>). Sex was added in 1974 and people with disabilities and families with children were added as protected classes in 1988. Some states and localities also forbid discrimination based on sexual orientation, source of income, veteran status, criminal background, and other grounds. In comparison, we will see, European case law is not as developed or detailed as the FHA in terms of specific practices that constitute discrimination. European law identifies at least three forms of ethnic discrimination in housing: (a) exclusion from access to living space; (b) spatial segregation or steering to spaces where members of one’s group already live; and (c) price discrimination. See Table 1 for nationally protected grounds.
3. Our wide search of social science databases, legal sources, bibliographies, and EU, NGO, and national reports turned up less than two dozen testing studies of housing discrimination in all of Europe.
4. Trying to measure race and ethnicity in each European country is complex, impeding comparison. The last German Census in 2011 did not ask ethnicity, only nationality. It counted 2.7 German residents with at least one parent from Turkey. Academics estimate 4 million people (5% of the German population) are of Turkish origin. However, the 1.6 million Turks who acquired German citizenship are usually counted as German, whereas ethnic Turks with non-Turkish, non-German nationality are not included in these counts. These adjustments would put ethnic Turks at about 6% of the total.
5. [https://stats.oecd.org/Index.aspx?DataSetCode=SOCX\\_AGG](https://stats.oecd.org/Index.aspx?DataSetCode=SOCX_AGG)
6. 2010 marked the first year the European Union (EU) operated on the basis of a legally binding bill of rights – the Charter of Fundamental Rights of the EU.
7. The earliest, best known, and most similar European act to the FHA is Britain’s Race Relations Act of 1968, amended in 1978, that banned housing and all other forms of racial discrimination. The 2000 EU Directive was incorporated into British law in 2003, and the 2006 Equality Act established the Equality and Human Rights Commission, consolidating the older Commission for Racial Equality, established in 1978, with the Equal Opportunities Commission and the Disability Rights Commission, to cover age, sexual orientation, and religion or belief as well as race and ethnicity. In France, a similar consolidation folded the Haute autorité de lutte contre les discriminations et pour l’égalité into a broader human rights agency, the Défenseur des Droits, in 2011.
8. Before the RED, “the absence of anti-discrimination law in housing, for example, may be counterbalanced by public and grant-aided private or voluntary sector programs which effectively ameliorate disadvantage” (MacEwen, 1995, p. 27).
9. France, Court of Cassation, Criminal Chamber, 11 July 2017, No. 16-82426.
10. France has a long succession of urban and housing policies targeted at disadvantaged zones, stretching from the 1980s *Développement social des quartiers* (DSQ) to the 1990 *Protocols d’occupation du patrimoine social* (POPS) to the 1991 Framework Act for Cities (*Loi d’orientation pour la Ville* or LOV), nicknamed the Anti-Ghetto Act, demolishing some 23,000 social housing units in *zones urbaines sensibles* (ZUSs) between 1992 and 1997 (Deschamps, 2001), until the SRU replaced the LOV in 2000. The Borloo report (2018, p. 72) calls for addressing the threat of a “new apartheid” in 1500 neighborhoods.
11. This label is in fact an umbrella term the EU uses to refer to diverse groups of people who have more or less similar cultural characteristics, such as Sinti, Travelers, Kalé, Gens du voyage, etc., whether sedentary or not; around 80% of Roma are estimated to be sedentary. Population estimates are from the Council of Europe at [http://www.coe.int/t/dg3/romatravellers/default\\_EN.asp](http://www.coe.int/t/dg3/romatravellers/default_EN.asp)
12. <https://www.coe.int/en/web/programmes/roma>
13. <http://hudoc.esc.coe.int/eng?i=cc-61-2010-dmerits-en>
14. ECHR, Applications No. 24816/14 and 25140/14, *Branko Hudorović and Aleks Hudorović v. Slovenia and Ljubo Novak and others v. Slovenia*, lodged on March 26, 2014. For third-party intervention of the European Roma Rights Centre, <http://www.errc.org/article/hudorovic-and-others-v-slovenia-third-party-intervention-pending/4423>
15. La Barbuta, <http://www.asgi.it/wpcontent/uploads/2015/06/Ordinanza-La-Barbuta.pdf>

16. ECtHR, *Stefan and others v. France*, Application No. 36779/16, decision of July 6, 2016, available at <http://www.romeurope.org/IMG/pdf/cedh.pdf>. The Défenseur des Droits, France's equality body, has intervened to block illegal evictions of Roma.

## Disclosure Statement

No potential conflict of interest was reported by the authors.

## Notes on Contributors

**Hilary Silver** is Professor of Sociology, International Affairs, and Public Policy & Public Administration, and Chair of the Department of Sociology at George Washington University.

**Lauren Danielowski** is an MA student in the Department of Sociology at George Washington University.

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