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The protection and enforcement regime of the rights of internally displaced persons: an assessment of the Council of Europe's approach
Francis E. **Ikebundu** and Ahmed A. Muhammed-Mikaaeel
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*84 Introduction

The choice of inquiry into the Council of Europe's legal regime for the protection of rights of Internally Displaced is informed by the reality that there are mixed supranational and intergovernmental tendencies in the Council of Europe.[1] The delegation of powers by member-states that makes it into a confederation of sort, has qualified the Council of Europe to be a central authority itself. In early 2014, based on the Parliamentary Assembly of the Council of Europe (PACE) Indices, some 2.5 to 2.8 million Europeans were internally displaced in 11 out of the 47 member states of the Council of Europe.[2] It was noted by PACE that the vast majority of displaced persons were forced to leave their homes, either as a result of prolonged armed conflicts or human rights violations and are living in situations of protracted displacement.[3] These numbers do not include the approximately 1.8 million IDPs registered in Ukraine by the Ministry of Social Policy since the annexation of Crimea,[4] and the outbreak of armed conflict in eastern Ukraine in April 2014. Such figures can only provide an estimate of the numbers of IDPs, given the difficulties in recording IDPs and the absence of data collection systems across all relevant countries of European member states. Nonetheless, the rise in the numbers of IDPs is described as "considerably alarming" by PACE;[5] because, among others, many IDPs are housed in collective centres under what has been described as "deplorable conditions."[6]

The approach popularly accepted in Europe in ending IDP-related situations is firstly political. Thus, it is noted that the key to ensuring full enjoyment of human rights by IDPs in Europe lies in combined and reinvigorated efforts by the local, national and international actors in terms of finding political solutions to protracted conflicts, improved legal and normative frameworks and increased will and capacity of all relevant actors to implement such frameworks.[7] However, it is suggested that the governments of states in Europe have not made any serious attempt at legislating rights for IDPs.

Against that backdrop, the Council of Europe, as the only European inter-governmental organization with the mandate to ensure the safeguarding of human rights, the rule of law and democracy[8] has ***85** developed a robust framework of human rights standards for the Council of Europe.[9] Unlike Principle 3 of the Guiding Principles on Internal Displacement,[10] the Council of Europe has specifically established that persons who are internally displaced have specific needs by virtue of their displacement.[11]

Policy framework on the rights of IDPs

In 2006, the Committee of Ministers of the Council of Europe adopted its Recommendation CM/Rec (2006) 6, in which it agreed on a set of 13 recommendations regarding IDPs, building on the Guiding Principles and underlining the binding obligations undertaken by Council of Europe's [CoE] member states. Rather than simply integrating the Guiding Principles into the European context, this Recommendation goes further to stress that the binding obligations already undertaken by CoE member states surpasses the level of commitment reflected in the Guiding Principles. Although the adoption of Recommendations does not create a new legal obligation for states, the process of drafting and adopting the Recommendations indicates that member states agree over the need to work towards improving the area concerned; indeed, they may even be in a state of preliminary preparedness for responding to suggestions. Most internal displacements of persons in Europe are due to armed conflicts, which involve armed groups and trafficking of heavy weaponry to these groups. The latter apparently perpetuates the human suffering of IDPs and seriously threatens their security and humanitarian situation. Therefore, all member States have been encouraged to apply the Convention on Laundering fully: Search, Seizure and Confiscation of the Proceeds from Crime and the Financing of Terrorism of 2005, as well as the Convention on the Prevention of Terrorism and its Additional Protocol of 2015.[12]

Besides the ECHR, other CoE instruments are binding on member states, and there are a number of CoE mechanisms to monitor countries' obligations under these instruments. Of particular importance is the protection mechanism provided by the European Social Charter and the revised Social Charter. The European Committee of Social Rights (ECSR) oversees country compliance with the ESC and the ESCI through a periodic reporting procedure and a collective complaints procedure.[13]The European Committee of Social Rights (ESCR) oversees the country's compliance with the ESC through a periodic reporting procedure and a collective complaints procedure. With the latter, international NGOs listed as having status with the ECSR, as well as certain national NGOs, trade unions and employer organisations can submit collective complaints.

Legislative and judicial protection of the rights of IDPs

At the Council of Europe level, a number of rights have been identified over the years in favour of Internally Displaced Persons (IDPs). The rights include the Rights to Home, Right to Enjoyment of Possession, Right to Family Life, Freedom of Movement, Electoral Rights, and Protection against Discrimination. These rights are augmented by various special social protection rights. The rights are prioritised on the dynamics of laws and thus indicate that the approach of the Council of Europe to the ***86** rights of Internally Displaced Persons is highly anticipatory and proactive rather than reactive. Indeed, these laws anticipate circumstances that may naturally occur out of internal displacement and not necessarily that which has been settled to be re-occurring. It is, therefore, not gainsaid that the legal regime in the Council of Europe brings to the fore an array of rights applicable to the situations of the IDPs. The rights have enjoined various judicial interpretations and enforcements in the interests of the IDPs. These rights are examined below.

Regime of right to enjoyment of possessions

Under the laws of the Council of Europe, the right to property is guaranteed under Article 1 of Protocol No. 1 of the ECHR.[14] This provides that every person, legal or natural, is entitled to the enjoyment of property in his possession. The IDPs are entitled

to the enjoyment of the right subject to restriction under public interest or legal conditions. Further, the right to respect for home is protected under Article 8 of the ECHR. To this end, Article 8 provides that everyone has the right to respect for his private and family life, his home, and his correspondence.

The vacuum created by the apparent absence of a more specific and binding international treaty or instrument safeguarding the rights of IDPs in Europe is filled by the Guiding Principles and the Pinheiro Principles.[15] The principles outline standards and provide guidance relating to the recovery of lost properties and homes in the internal displacement context. However, it must be pointed out that the Pinheiro Principles do not apply exclusively to IDPs; although they focus on the rights of displaced persons including refugees. It offers them rights to peaceful enjoyment of their possessions and homes. It equally offers them a right to restitution or compensation in the event of loss of properties or homes because of displacement. In view of the foregoing, the European Court of Human Rights, in the case of *Marckx v Belgium,* [16] stated *adeffectum* that everyone has the right to the peaceful enjoyment of his possessions as guaranteed under Article 1, Protocol 1, which in substance guarantees the peaceful enjoyment of property.[17]

It is also important to note that in the event of examination of allegations of interference with the enjoyment of property by the European Court, the applicant must first and foremost prove that there is a possession protected by Article 1 Protocol No. 1.[18] This is because Article 1 Protocol No. 1 allows member-states some level of interference with the peaceful enjoyment of possessions, thereby indicating that the right is not absolute but qualified. These interferences must however be shown to be in the public interest or general conditions stipulated by law. In the circumstance, the state must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.[19] The intention and consistency of the law must also be considered in line with reasonableness or justifiability in a typical democratic society.

The ECtHR has decided a number of cases in compliance with the intention and consistency of the law given societal needs. For instance, in *Hentrich v. France,* 68 the ECtHR ruled that an interference with the applicant's right to property under Article 1 Protocol No. 1 was unlawful because in the circumstances France operated the rule arbitrarily and its actions were not based on reasonable grounds. ***87** The ECtHR also applied the fair balance test in *Sporrong case* [20] to determine whether a fair balance had been struck between the demands of the general interest of the community and the requirements of the protection of individual rights. It must be reiterated that the loss of homes, properties, ancestral graves, lands and monuments all constitute a person's way of life, as there are the immediate and inevitable consequences of the displacement of large numbers of people. For the Internally Displaced, the trauma of loss is always further aggravated by worse conditions of living, which is worsened by deprivations and emotional suffering.[21] The ECtHR also examined for the first time the rights of internally displaced persons to respect for their homes and property. This is because respect for their home and properties constituted an important right of the internally displaced persons. Such right should not be left unenforced particularly in the vulnerable situation the IDPs found themselves. This became the subject matter of consideration in the case of *Loizidou v. Turkey*: 85 Oscar reporting[22] that this case is referred to in its group as the three *Loizidou* judgments. 86 In *Cyprus v. Turkey* 87 and in several other cases against Turkey,[23] the ECtHR examined and ruled on grave issues often associated with internal displacement and loss of property and homes. This shows that the home and property rights of IDPs cannot be treated with indifference.

In finding a violation of the right to property and home of IDPs, the ECtHR usually applies certain principles to claims brought by displaced persons regarding deprivation of their homes and land in post-conflict situations. The ECtHR first addressed the claims of displaced persons to their land and homes in the context of the post-conflict situation in Cyprus. This is evident in the establishment of the self-proclaimed Turkish Republic of Northern Cyprus (TRNC) or the TRNC in the northern part of the divided Island. Hence, in Cyprus cases, the ECtHR ruled that Turkey was responsible for the continuing violations of their rights to property and homes under Article 1 Protocol No. 1 and Article 8 of the ECHR respectively, as a result of their displacement following the war and occupation of their land.

By way of general comment, it is observed that if the ECtHR finds a violation of the ECHR, under Article 46 of the ECHR the Court imposes an obligation on the respondent state to put an end to the violation. The obligation includes adopting general measures to end similar, or prevent future violations. This usually includes making reparations to the affected parties in order to adequately restore their situation (i.e. *restitutio in integrum*).[24] In implementing the ECtHR judgment, the obligation of the respondent state is not limited to the payment of damages. In *Guiso-Galliani v. Italy,* [25] the Grand Chamber reiterated its position on Article 41 as follows:

"…if the nature of the violation allows for *restitutio in integrum*it it is the duty of the State held liable to effect it, the Court having neither the power nor the practical possibility of doing so itself. If, however, national law does not allow - or allows only partial - reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate.'[26]

*88 *The regime of the right to home*

By virtue of Article 8(1) of the European Convention on Human Rights, everyone has the right to respect for his private and family, including his home. The ECtHR's case law on the meaning of home under the ECHR, though not exhaustive, has established certain factors as determinative in deciding whether a house/home is that of the applicant's. These factors include sufficient continuing links;[27] legal or proprietary interest;[28] presence or absence of an alternative home; a place treated by the applicant and his family as a home;[29] or where private and family life develops;[30] and intention to remain and continuity. In *Gillow v. the United Kingdom,* [31] the ECtHR reiterated that when claiming that a place constitutes his home, the applicant must show that they enjoy concrete and persisting links with the property concerned. This is because, such proof is identified as the most significant element in the determination of the existence of a home either as ongoing or recent occupation of a particular property. Therefore, in *Khatun and 180 others v. the United Kingdom,* [32] the European Commission on Human Rights decided that there were sufficient and continuing links in the case of all the applicants and thereby held that their residences qualify as home.

The regime of the right to home was the subject of judicial consideration by ECtHR in *Mentes and Others v. Turkey.* [33] The case concerned the destruction of the applicants' homes by the Turkish security forces during its campaign against the PKK in South-eastern Turkey. The case affects the human right of the internally displaced persons, and the ECtHR accordingly held that all the applicants, including one who did not own her house, were within the scope of the protection guaranteed by Article 8.[34] The applicant was declared by the court to have had a home worthy of being so-called because of her *strong family connection* and the fact that she regularly spent considerable periods of time there. In the absence of legal interest, a home is found where the applicant lives with the permission of the owner.

The European Commission on Human Rights had reason to be involved in the consideration of violation IDPs' right to home and has ruled in favour of the IDPs. For instance, in the interstate case of *Cyprus v. Turkey,* [35] the European Commission on Human Rights concluded unanimously that during the period under consideration, there had been a continuing violation of Article 8 of the ECHR by the authorities' refusal to allow any Greek Cypriot displaced persons to return to their homes in Northern Cyprus. In its judgment,[36] the ECtHR concluded that the complete denial of the right of the 200,000 Greek-Cypriot displaced persons to their homes in Northern Cyprus since 1974 constituted a continuing violation of Article 8. The ECtHR did not need to determine whether the displaced Greek Cypriots had homes in the occupied north by a strict application of the criteria developed in its case law: it was undisputed that such IDPs were living in residences where their furniture and possessions were kept and where their family life developed, with the clear intention of remaining there.[37]

In a further bid to enforce IDPs' right to home, the ECtHR took a bolder stand against the government to avert further breaches against the IDPs in the case of *Zavou v. Turkey.* [38] The applicants were Greek- ***89** Cypriot displaced persons. The ECtHR first rejected the government's argument that the applicants' properties did not fall within the notion of a home under Article 8, stating clearly that they constituted a home that the applicants had been obliged to leave. The ECtHR did not consider the applicants' absence over the previous three decades to have severed the required connection with their homes to deprive them of the protection of Article 8. Similarly, in *Dogan v. Turkey,* [39] the applicants were displaced persons evicted from their homes because of the conflict in southeastern Turkey. When determining whether the applicants had a possession within the meaning of Article 1 Protocol No.1, the ECtHR noted that it was undisputed that the applicants all lived in Boydas¸ village until 1994. This was despite the fact that the applicants did not have registered property in the area as they either had their own houses constructed on the lands of their ascendants or lived in the houses owned by their fathers.

The ECtHR has stressed that all cases involving breach of IDPs' right to home are not granted as matters of course. If the claims of the applicants are not well grounded, their claims may fail. This was illustrated in two inadmissibility decisions, *Papayianni and Others v. Turkey* and *Fieros and Others v. Turkey.* [40] The cases concerned family members who were all claiming violations of their rights to home since 1974. It is worthy of note that this was the situation of the vast majority of all Greek-Cypriot IDPs because they are members of displaced families who had been sharing the family home. The two cases were determined shortly after the Court's decision in *Demopoulos' case,* [41] concerning issues emanating from the interpretation of Article 8. The ECtHR went beyond its judgment in *Demopoulos* by rejecting the claims of all applicants to the protection under Article 8 except that of the titleholders. Some of the applicants were found to be too young with no concrete ties in existence at that moment in time. The rest of the applicants were older applicants having lived for decades in the family home before 1974 but however they did not have title to the property. On this note, their claims to protection under Article 8 were turned down by the court.

The regime of the right of IDPs to family life

Article 8 of the European Convention of Human Rights (ECHR) guarantees special right to respect for family life to the IDPs.[42] Arguably, the most harrowing aspects of war and displacement include break-up of the family unit, loss and often the dispersal of its members, and the lack of information regarding their fate and whereabouts. This occurs especially where there is prolonged and indefinite disappearance of family members. To this end, family reunification is addressed specifically by Principle 17 of the *Guiding Principles* which guarantees the right of every human being to respect of his or her family life. This principle states that family members who wish to remain together shall be allowed to do so. In the event, where families have been separated by displacement. Required efforts should be made to reunite them as soon as possible. Principle 16 of the *Guiding Principles* further provides that IDPs have the right to know the fate and whereabouts of missing relatives. It places an obligation on the authorities to attempt to establish the fate and whereabouts of missing IDPs and cooperate with relevant international organisations pursuing such matters. The next of kin of missing persons must be kept informed of the progress of the investigation into their missing relatives at all stages.

The concept of family life under Article 8 is a developing in the jurisprudence of the ECtHR. It is interpreted in a dynamic way to take into account the evolving attitudes of European national laws towards family life. In *Kroon and Others v. the Netherlands,* [43] the ECtHR reiterated its flexible approach to the meaning of family life by stating that the notion of family life under Article 8 is not confined solely to marriage-based relationships. In that case, the Court held that it might encompass other *de facto* family ties where parties are living together outside marriage. The ECtHR has adopted a ***90** case-by-case approach in this area. In general, the applicable principle is that the Court finds that there is family life where close ties between those concerned are shown to exist. Member states are prohibited from interfering with family life except where such interference is in accordance with the law and necessary in a democratic society. Furthermore, member states are also bound by positive obligations to respect and preserve family life under Article 8.

The dynamism of the ECtHR was reflected in cases involving a violation of IDPs' right to family life. The fact that applicant does not physically own a home cannot be a bar to enforcement of his or her right to family life as an IDP. In *Mentes, and Others v. Turkey,* [44] the ECtHR found that all the applicants including one who did not own her house were within the scope of the protection guaranteed by Article 8.[45] The applicant had been deemed to have a home because of her "strong family connection." Similarly, in *Khamidov v. Russia,* [46] the ECtHR held that the house of the applicant's brother as well as his own attracted the protection of Article 8,[47] despite the fact that the applicant had legal title only to his home. The ECtHR reached this conclusion by attributing greater weight to the close family connections evidenced by the circumstances and in particular the closeness of the brothers' dwellings.

The regime of freedom of movement

The ECtHR has previously found violations of the right to free movement under Article 2 of Protocol No. 4 in judgments against Russia because the interference with the applicants' right was not in accordance with the law as required under Article 2.3 of Protocol No. 4. The prohibition to pass from one area to another lacked a proper legal basis,[48] and the refusal to allow the applicant to register her residence at her chosen address was not in accordance with the law.[49] It is thus important to note that freedom of movement is very germane as part of the right of IDPs to live normal life like other human beings. A violation of this right to freedom of movement has not been taken seriously by the ECtHR. In *Timishev v. Russia,* [50] the applicant was not permitted to re-enter the Republic of Kabardino-Balkaria based on instructions not to admit people of Chechen ethnic origin. The ECtHR found a violation of Article 2 of Protocol No. 4. This is because the restriction on the applicant's liberty of movement was not considered to be clearly in accordance with the law.[51] In addition, the ECtHR also unanimously found a violation of Article 14 of the ECHR taken in conjunction with Article 2 of Protocol No. 4 because the applicant's liberty of movement was restricted solely on the ground of his ethnic origin.

In respect of IDP rights, the ECtHR has found violations of the rights guaranteed under Article 3. Article 3 provides for the right not to be subjected to torture or inhuman and degrading treatment, and has been applied in cases relating to displaced and enclave persons in Cyprus following the 1974 Turkish invasion and division of the Island. In the case of *Denizci and others v. Cyprus,* [52] the Turkish Cypriot applicants were expelled to the northern part of Cyprus. When they were within the territory of the Republic of Cyprus, they were subjected to police surveillance, intimidation and restrictions to their movements. Cyprus was found to have violated Article 2 of Protocol No. 4 because restrictions to the applicants' movements constituted an interference with the freedom of movement. In addition, no lawful basis for these restrictions had been advanced by the government. This is because the action of the government was not shown to be a measure necessary in a democratic society to achieve one of the legitimate aims set forth in paragraphs 3 and 4 of Article 2 of Protocol No. 4. In the similar vein, ***91** violation of Article 3 of the ECHR bothering on freedom of movement was the subject of legal tussle in the interstate case of *Cyprus v Turkey.* 431 the ECtHR found a violation of Article 3 of the ECHR because of the discriminatory treatment by the Turkish authorities of the Karpas Greek Cypriots. In the circumstance, the Karpas Greek Cypriots were isolated and restricted in their movements within the area under Turkish control in the north of the Island. The Court found this so severe as to amount to degrading treatment. The conditions under which the population were condemned to live were debasing and violated the very notion of respect for the human dignity of its members.[53]

Regime of electoral rights of IDPs

The right to vote is available to IDPs under Article 3 of Protocol No. 1 ECHR. In view of this, the ECtHR has considered that the exclusion of any groups or categories of the general population must be reconcilable with the underlying purposes of Article 3 of Protocol No. 1.[54] In the case of *Aziz v. Cyprus,* [55] the applicant complained that he was refused permission to be registered

on the electoral roll in order to vote in the parliamentary elections. The reason for his refusal was that he was a member of the Turkish Cypriot community. The ECtHR noted that Article 63 of the Cypriot Constitution provided for separate electoral lists for the Greek-Cypriot and Turkish-Cypriot communities. Nonetheless, the participation of Turkish-Cypriot members of parliament was suspended from 1963, from which time the relevant articles of the Constitution providing for the parliamentary representation of the Turkish-Cypriot community and the quotas to be adhered to by the two communities became impossible to implement in practice. The ECtHR also examined an exclusion rule *ad effectum* in *Sejdić and Finci v. Bosnia and Herzegovina,* [56] that only persons declaring affiliation with a constituent people were entitled to stand for election to the House of Peoples - the second chamber of the State Parliament. Potential candidates who refused to declare such an affiliation could not therefore stand. The ECtHR noted that this exclusion pursued at least one aim that was broadly compatible with the general objectives of the Convention, namely the restoration of peace. When the impugned constitutional provisions were put in place, a very fragile ceasefire was reached and was in effect on the ground and they were designed to end a brutal conflict marked by genocide and ethnic cleansing.

In the sphere of electoral process, the ECtHR has affirmed the right of IDPs to electoral process. In *Zornić v. Bosnia and Herzegovina,* [57] the ECtHR found a violation of Article 3 of Protocol No. 1 with respect to the applicant's ineligibility to stand for election to the House of Peoples and to the Presidency. Observing that there had been excessive delay in executing its judgment in *Sejdić and Finci v. Bosnia and Herzegovina,* [58] and that the violation complained of was the direct result of that delay, the ECtHR made a ruling under Article 46 of the ECHR. It found that, eighteen years after the tragic conflict in Bosnia and Herzegovina, the time had come to adopt a political system capable of affording all citizens of that country the right to stand for election to the House of Peoples and to the presidency without any distinction as to ethnic origin.[59]

In another context, dual nationality has posed some legal confusion. Thus, the ECtHR in *T&anase v. Moldova,* [60] ruled on the question of dual nationality, albeit under Article 3 of Protocol No. 1 alone. The case concerned the introduction of a prohibition on Moldovan nationals holding other nationalities. This is because, as at that time, they had not started a procedure to renounce those nationalities and their seats as members of Parliament following their election. The applicant was a Moldovan and Romanian nationals who had been elected as a Member of Parliament (MP) in the legislative elections in 2009. The ECtHR found that there was a consensus that where multiple nationalities were permitted, the ***92** holding of more than one nationality should not be a ground for ineligibility to sit as an MP, even where the population is ethnically diverse.

Regime of protection against discrimination

Principle 1.1 of the *Guiding Principles* prohibits any discrimination on the enjoyment of any rights and freedoms of IDPs on the sole ground of their displacement. Principle 1.1 states that IDPs are entitled to the enjoyment of the same rights and freedoms as other persons in their country and to the same extent.[61] Principle 1.1 applies to IDPs throughout their displacement, whether short or long-term displacement. It also applies to the IDPs even after their return to home or habitual place of residence.[62] In the same vein, Article 14 of the ECHR provides that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. In *Abdulaziz, Cabales and Balkandali v. the United Kingdom,* [63] the ECtHR held that the notion of discrimination within the meaning of Article 14 includes in general cases where a person or group is treated without proper justification or less favourably than another, even though the more favourable treatment is not called for by the Convention.

Article 14 therefore imposes on member states strict obligations to avoid discrimination in the enjoyment of the rights and freedoms set forth in the ECHR without proper justification. One such example can be seen in the case of *Vrountou v. Cyprus,* [64] regarding discrimination of IDPs on the ground of gender. In *Vrountou,* the ECtHR found that the respondent state's practice of granting refugee status to IDPs (such as housing assistance) only to children of displaced men and not to children of displaced

women constituted a breach of Article 14 in conjunction with Article 1 Protocol No. 1 of the ECHR based on sex. The ECtHR held that the respondent government had not shown an objective and reasonable justification for the difference in treatment.

The regime of social protection of IDPs

Principle 19 of the *Guiding Principles* sets out in more detail what safe access to medical services entails. The provisions of the principle ensure that the wounded, sick IDPs and IDPs with disabilities shall receive without distinction all necessary medical care and attention including psychological and social services. According to Principle 19, healthcare providers should be available for reproductive health services and counselling services should be made available for survivors of sexual violence and other abuse. Clause 3 of Principle 19 addresses the reality that during displacement the nature of shelters or settlements in which IDPs reside, especially when these are densely populated, with neither privacy nor adequate sanitation, may expose IDPs to risks of attacks, sexual assault or the spread of diseases.[65] States are therefore responsible for preventing violence and the spread of contagious and infectious diseases among IDPs. States bear such responsibilities "to the fullest extent practicable" - meaning that it is not always possible or easy to provide all the expected care systems. In the case of *L.C.B. v. the United Kingdom,* [66] the ECtHR emphasized that the state is not only required to refrain from the intentional or unlawful taking of life, but is required to take all appropriate steps to protect the lives of people within their jurisdiction.

***93** These rights to social protection extend to the right to basic needs for survival such as water and food.[67] In *Nencheva and Others v. Bulgaria,* [68] the ECtHR found a violation of Article 2 of the ECHR (right to life) in conditions of economic crisis where fifteen children with disabilities and young adults placed in care had died during the winter of 1996-1997 for lack of food and basic cares.[69] The applicants alleged, *inter alia,* that the state had failed to fulfil its positive obligations to protect the lives of vulnerable persons in its care in the circumstances which threatened their lives and well-being.[70] Significantly, in the case of *M.S.S v. Belgium and Greece,* [71] in finding a violation of Article 3, the ECtHR also took into account the fact that the applicant not only lacked adequate housing, but also spent his days looking for food and had no access to sanitary facilities.

The right to social protection has also been found to apply to access to education and vocational training.[72] For example, in the inter-state case of *Cyprus v. Turkey,* [73] the applicant Government claimed that the children of Greek Cypriots living in Northern Cyprus were denied secondary-education facilities. The ECtHR found further that the Greek-Cypriot parents of children of secondary-school age were in consequence denied the right to ensure their children's education in conformity with their religious and philosophical convictions. In finding a violation of Article 2 of Protocol No. 1, the ECtHR took note of the fact that the children of Greek-Cypriot parents in Northern Cyprus, who wished to be taught in the Greek language, were obliged to transfer to schools in South Cyprus due to the decision of the "TRNC" to abolish this facility which had previously been available.[74]

The regime of access to justice

States have obligation to provide free legal assistance to those most in need in certain circumstances, especially when that is indispensable for effective access to the courts.[75] For example, where people, such as IDPs, who are in an economically difficult or vulnerable position, are prevented from accessing justice by various financial obstacles, such as excessive court fees, Article 6 comes into play with a view to making access to justice affordable and realisable in the overall interest of IDPs.

Conclusion and special appeal to the ECtHR to continue to play last hope role for the enforcement of IDPs rights vide judicial activism

The regime for the protection and enforcement of the rights of IDPs is the product of legal ECHR framework in operation. The provisions of the framework with respect to the rights of the IDPs are anticipatory and proactive in nature. It thus deserves commendation for recognising the situation of IDPs and their rights required in their helpless circumstances. In another context, efforts to combat challenges being faced by IDPs in Nigeria have been daunting due to lack of specific legal framework that directly caters for IDPs.[76] Resorts that are being made to the general rights' provisions to address the issues confronting the IDPs in Nigerian have not yielded positive results as reports of violation of ***94** IDPs rights continue.[77] Thus, the proactiveness of the European legal framework for the protection and enforcement of the rights of IDPs has set the pace for other countries to emulate. The approach of the Council of Europe towards addressing issues relating to the rights of IDPs is all-encompassing.

It is an understatement to posit that the Council of Europe's approach to the protection and enforcement of the rights of IDPs is laudable. The proactiveness of the nature of the IDPs' rights guaranteed and the ability to anticipate breaches is laudable. The various rights provided under the law such as right to home, right to enjoyment of possession, right to family life, freedom of movement, electoral rights, protection against discrimination are very apt considering the IDPs' situation. However, there is often a gap between the law and enforcement. Invariably, despite the robustness of the rights accorded the IDPs by the Council of Europe, the IDPs have suffered a number of violations and abuses despite the ECtHR intervention. In many of those occasions, the ECtHR has orchestrated enviable judicial activism in favour of the enforcement of the IDPs' rights.

Other nations battling with inadequate legal frameworks for the protection and enforcement of these rights have great lesson to learn from the robustness and proactive nature of the IDPs' rights from the European approach. The ECtHR in many IDPs' rights' violation cases have displayed non-biasness and independent approach to the protection, enforcement and sustenance of the IDPs' rights. This is a call to others that human rights courts cannot do without the attributes exhibited by the ECtHR. Thus, the positive attitude of ECtHR towards safeguarding the IDPs' rights being their last hope is worthy of recommendation.

Legal Consultant, Barrister and Solicitor of the Supreme Court of Nigeria. Email: francisikebundu@gmail.com Tel: 2348034644573.

Legal Practitioner, Notary Public for Nigeria, Lecturer, Department of Islamic Law, Faculty of Law, Kwara State University, Malete, Nigeria. Email: ahmed.muhammed-mikaaeel@kwasu.edu.ng. Tel: +2347035064745.

Footnotes

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2 Armenia, Azerbaijan, Bosnia And Herzegovina, Croatia, Cyprus, Georgia, Moldova, Russian Federation, "The Former Yugoslav Republic of Macedonia", Serbia And Turkey. See also PACE, Doc. 11942 Report, Europe's forgotten people: protecting the human rights of long-term displaced persons, 8 June 2009, p. 8, para. 2.

3 Council of Europe Project "Strengthening the Human Rights Protection of Internally Displaced Persons in Ukraine" Under the Framework of the CoE Action Plan for Ukraine 2015-2017, June 2016, p. 4.

4 PACE Resolution 2026 (2014), Alternatives to Europe's substandard IDP and refugee collective centres,18 November, 2014, para. 7.

5 PACE Doc. 11942 Report, *Europe's forgotten people: protecting the human rights of long-term displaced persons,* 8 June 2009, p. 8.

6 PACE Recommendation 1877 (2009), Europe's forgotten people: protecting the human rights of long-term displaced persons, 24 June 2009, paras. 7-8.

7 Ibid.
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13 These Include, The European Convention for The Protection of National Minorities, The Revised Social Charter, The European Convention on The Exercise of Children's Rights and The European Convention on Action Against Trafficking in Human Beings.
14 See Article 17 Of the Universal Declaration of Human Rights (UDHR); Article 21 on the American Convention of Human Rights (ACHR) and Article 14 of the African Charter on Human and Peoples' Rights (ACHPR). Also Provide for the Right to Property. Articles 16 And 23 Of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
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73 Application No. 2571/94

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