Implementation of the enforceable right to housing (DALO) confronted by the French regions [1]

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The Republic of France has been familiar with public interventionism in the field of housing for a long time. As early as 1931, in a "Demoiselle Dumy" judgement, the French Council of State clearly stated that social housing was a public service activity. And yet, this interventionism was not based on a text making it an obligation for the public authorities. In fact, it should be made clear at once that the French Constitution, unlike many other constitutions of European Member States, does not mention the word housing or accommodation, and especially does not refer to any obligation pertaining to it.

This did not, however, prevent the Constitutional Council, upon examining certain laws relating to housing, to set down a reference framework.

Primarily, it considered that housing for disadvantaged people was a response to a demand of national interest (Constitutional Council No. 90-274-DC of 29 May 1990). Consequently, the State has the role of a "leader" and could impose a certain number of obligations of means or obligations to achieve results on local authorities: for example, the Constitutional Council judged that the obligation for some communes to comply with a minimum quota of 20% of social housing on their territory, set down by the Urban Renewal and Solidarity act of 13 December 2000, did not breach the principle of free administration of local authorities (decision No. 2000-436-DC of 7 December 2000).

However, the qualification of "national interest" did not result in a State monopoly in the field of housing. The Council of State thus decreed that "the law of 31 May 1990

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intending to implement the right to housing [...] does not give the State the advantage with regard to measures enabling people experiencing particular difficulties to access decent housing or to hold onto it" and that, as a result, a municipal council was capable of creating a municipal housing allowance[2]. The legislator can thus grant local authorities the power to intervene, subject, as stated by the Constitutional Council, to "notifying, by relevant means, of any inequalities in the possibilities of disadvantaged people accessing decent housing" (decision No. 2004-503-DC of 12 August 2004, Law pertaining to local freedoms and responsibilities).

Secondly, in 1995, the Constitutional Council, based on the foreword of the constitution of 1946, revealed an objective of constitutional value, which is the possibility for everyone to have decent housing (decision No. 94-359-DC of 19 January 1995). This objective is a constraint on the part of the legislator, but does not have a direct effect in favour of citizens seeking justice. The latter cannot use this constitutional objective to attempt to get the failings of the State or of any other public authority penalised in matters of implementing this right of claim[3].

It was in this fairly flexible normative context that the State decided "spontaneously" in 2007 to introduce the "enforceable right to housing[4]" (DALO). We use the word spontaneously because no direct legal constraint – on a constitutional or community level – required it to institute such a procedure. We should in fact speak of a procedure and not of a new subjective law dedicated to the benefit of constituents. The character of the "enforceable right to housing" can be summed up as the introduction of a new procedure, as recalled in Article 1 of the law of 5 March 2007, which affirms that the right to decent and independent housing "is exercised via mediation and then, where applicable, via legal appeal."

To briefly sum up the apparatus, people that meet the criteria set down by the law (homeless, living in over-occupied housing or unfit housing, people threatened with eviction, etc.) can contact a «mediation» committee in the *département* in which they live, which will study the application and, if necessary, declare it a priority case requiring urgent housing. The Prefect, who represents the State in the *département*, then has to find housing for this person, or otherwise pay a penalty delivered by court order, which will be borne by the State for as long as the person has not been housed.

2. CE 29th June 2001, Commune de Mons en Baroeul, *AJDA, 2002, p. 42, note Jégouzo Y.*
3. *The right to housing being recognised as an objective of constitutional value is not sufficient to raise it to the level of a "fundamental freedom" under the terms of Article 521-2 of the French Code of Administrative Justice, or as a "constitutional principle": CE, ord. 3 mai 2002, n°245697.*
4. *The law of 5th March 2007 also sets up an enforceable right to accommodation based on a quasi-analogue provision. However, this raises other problems of application that are not treated in this article.*

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Within the framework of a unitary State like France, this obligation to achieve results is supposed to be met and applied in the same way over the entire national territory. It may, therefore, appear misplaced to question any local variations in the implementation of the "enforceable right to housing". However, concrete examination of the deployment of this procedure in different *départements* tends to show a territorial aspect considered by the DALO. In addition, discussing interactions between the DALO and the French territories leads in turn to local housing policies to be questioned.

CONSIDERATION OF THE TERRITORIES BY THE DALO

As it is guaranteed by the State, the DALO cannot be subject to any local differentiation in the way it is processed or implemented. Despite this, on a legal level, the texts themselves contain elements liable to cause variations in the way this right is implemented in the territories.

This concerns above all the procedure. The texts offer the possibility of having, in the same *département*, one or several mediation committees (article L. 441-2-3 CCH). The Prefect is free to determine, in agreement with the *département's* mediation committee, how services responsible for the instruction are organised, along with the conditions of this instruction, which implies disparities between *départements*. The notion of "abnormally long time" (on the waiting list), which is supposed to give rise to entitlements, is set by prefectural order and is therefore not the same everywhere. The timeframes in which the committee must make a decision and the prefect must allocate housing are also different, depending on whether the claimant is situated in a *département* that includes or not a metropolitan area or part of a metropolitan area with over 300,000 inhabitants. In the Ile-de-France region, implementation of this right may even be pooled between different *départements*. Even the amount of the fine given by the judge if the State demonstrates failings varies from area to area, as it is determined in relation to the average rent for the type of housing considered as suitable: but the reference rent for social housing differs from one zone to another, because texts make a difference between Paris and its neighbouring communes, the metropolitan area of Paris, metropolitan areas that have over 100,000 inhabitants and the rest of the national territory.

These local variations in processing the DALO remain within acceptable limits; questions may arise when identical situations in terms of "poor housing conditions" can give rise to divergences in eligibility to the right. Similarly, local situations will be decisive as to the effectiveness of the right.

Local interpretations

We think it is essential to underline an important singularity of the DALO apparatus. In fact, committees that act in the name of and on behalf of the State decide if a claimant

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is entitled or not to this right. According to texts, they "represent the State in the *département*" and at the same time are autonomous and independent with regard to the State. These committees can be likened to "pseudo-jurisdictions" and are not supposed to receive any instruction from the prefect or central administration. This independence, to which the chairmen and members of the committees are strongly attached, explains why it would be out of place to try to impose a uniform policy.

The law of 5 March 2007 leaves a fairly wide margin for manoeuvre for the committees, which are only "bound" by the criteria set down by the law and regulatory provisions; for all that, we cannot consider that they rule "in equity" as the committees consider themselves as bodies that, under the control of the judge, make legal qualifications. They are also very reticent when it comes to using the possibilities of derogation recognised by the last paragraph of Article R. 441-14-1. of the French building code.

It should therefore not be a surprise that identical situations are interpreted differently depending on the different committees. These divergences, which are rapidly noted and criticised by associations and some representatives[5], should not necessarily shock. Besides, case law in administrative courts is so vast that there are even examples of the Council of State intervening to put an end to these differences of interpretation.

Differences of interpretation are problematic, of course, when they seem to breach the law or add a condition to the law; for example, some committees do not consider DALO claimants housed in the public housing stock living in over-occupied, unsuitable or unfit conditions as priority or urgent cases, deeming that this situation comes under the framework of an internal transfer within the landlord's organisation. Likewise, some committees include people who have been informed by the landlord that they have to leave their place of residence due to the sale or recovery of the premises in the "threatened with eviction" category, even when no eviction judgement has been pronounced. These interpretations should be harmonised – unlike the texts – by the administrative law judge. But to do this, the judge needs to be addressed. Within the framework of a restrictive interpretation of the texts, the claimant who has been refused entitlement to the DALO has to instigate this. Naturally, the social situation of some claimants and the low involvement of associations in contentious matters explain why there are fairly few claims made regarding the legality of decisions. To counteract interpretations that are "too wide", the Prefect has to commence proceedings with a view to examining the legality of the committee's decision. Indeed, although the mediation committee acts in the name of the State and the Prefect, the Council of State, in its notice of 21 July 2009, granted the latter the possibility to challenge the legality of a decision[6]. To our knowledge,

5. *Report on the implementation of the enforceable right to housing, Ph. Dallier, Senate, No. 92, 12th Nov. 2008*
6. *CE, notice of 21st July 2009, Ihadji, No. 324809, AJDA, 2009 p. 1463.*

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this approach has never been undertaken, which may be explained by the prefects' concern about entering into a process of conflict with the committees.

In other cases and in equivalent circumstances, the different ways of processing can be explained by the existence of a particular local situation. This is the case, for example, for the "threatened with eviction" category. In the presence of an eviction judgement, the "physical" reality of the eviction and the urgency to rehouse the claimant will not be the same depending on local practices. The same goes for housing considered to be unfit; when informed of the failings of State services in processing a situation where housing is considered to be unfit, a committee is more likely to declare the claimant eligible in view of the inadequacies of the apparatus of common law. This raises the essential issue of the committee taking the "local situation" into account in its legal qualification work. In September 2007, when preparing the decree for application of the DALO law, a certain number of associations and the DALO Monitoring Committee were disturbed by the fact that a provision of the decree arranged for the committees to rule on the priority nature of a housing request, taking "local circumstances" into account. For the Government, this condition was necessary in view of differences between localities and therefore the necessity to take their specificities into account, whereas the associations considered that the logic of the law depended on demand and not supply. The final text does not refer to this condition.

In addition, the average rate of refusal of claims is around 50%, but some committees refuse 12% of cases while others reject 74%[7]; do these differences convey differences in processing from one *département* to another, or is this the standard result of different situations? Should these numbers be used to advocate harmonisation? How far does the comparison push the committees to change their practices? Some denounce acknowledgement of a principle of reality or even a form of self-censorship by the committees. Aware of the scarcity of available supply or the difficulty for certain households to integrate, some committees are more severe when it comes to eligibility. The publication of numbers, severity rates and rehousing rates logically puts a certain amount of pressure on the committees. However, the texts specifically state that committee members should be informed of any follow-up given to decisions[8].

7. *Economic, social and environment council, Evaluation relative à la mise en œuvre du chapitre 1er instituant le droit au logement opposable*, July 2010, p. 33

8. Article L. 441-2-3 of the Housing and Building Code states: *"The mediation committee […] is informed, in all events, of any follow-up given to its decisions."* And Article R. 441-18-4 of the Housing and Building Code states the same, affirming that the prefect must regularly inform the committee of rehousing and housing cases as well as of court decisions made by the administrative law judge in the event of proceedings for annulment against its decisions. Likewise, the prefect must transfer statistics on rented social housing allocations produced by landlords to the committee.

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This principle of reality and its influence on the eligibility of applicants also depends on the composition of the mediation committees: representatives of landlords' organisations, for example, may provide information concerning social housing tenants which will influence the members; likewise, the prefectural services may also provide information that puts the declarative nature of the policy into perspective. The administrative law judge, in the procedure of pronouncing the penalty, refuses to take into account the issue of the supply of available housing, considering that the conditions of the law "apply an obligation for the State, which is appointed as the guardian of the right to housing, to achieve results" (TA Paris 5 February 2009, Mr Fofana, No. 0818923: *AJDA 2009 p. 230)*. However, the Monitoring Committee for the implementation of the DALO expressed regret, in its report of 1 October 2008, of the division operated by the administrative courts between the priority nature of the claim and the level of urgency in allocating housing (see TA Paris 20th Nov. 2008, Dabo, No. 0812600), deeming that this amounted to assessing the claimant's situation by comparing it to other claimants, rather than handling it as a separate case, and by taking into account a possible insufficiency of available supply.

Local implementations

Once declared entitled to the DALO, the beneficiary must be housed by the prefect. More specifically, the law of 5 March 2007 indicates that the prefect "allocates each claimant to a leasing organisation with housing that meets the request".

We may wonder how the prefect makes this allocation. The prefectures examined seem to operate in the following way: applicants are chosen in order of their arrival, depending on the geographical area in question and – a criterion taken into account as a result of the law of 25 March 2009 – depending on whether they are employed or not, in order to put them forward or not for "Action logement programmes" (e.g. "1% logement – employer-sponsored housing assistance programme). It is tempting for the prefecture to make an order of priority from the applicants declared eligible by the committee: it is understandable that a prefecture would try to allocate housing to a claimant who has a court order rather than to a priority case under the conditions of waiting for "an abnormally long time", who will not be able to go before the judge until 2012. It should be noted in this respect that certain prefectures define an "urgency coefficient" for rehousing depending on the accumulation of a certain number of criteria: existence of litigation, existence of a fine, disability of the claimant, etc.

Then, the effectiveness of the system rests on one essential element: the "prefectural allocation quota". Remember that in exchange for state funding granted to low-rent housing bodies to build social housing, the State has a "right to reserve" that may be as much as 30% of the total housing programme. This right to reserve means that the housing in question can only be allocated to an applicant put forward by the prefect.

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Local disparities may be evident in the implementation of decisions: in general we can distinguish two systems. In the first, based on a bottom-up logic, low-rent housing bodies transfer their prefectural quota vacancies to the prefectures; the prefecture then "picks" from the list of priority DALO applicants and puts forward one or more applicants to the leasing organisation. This system requires in-depth knowledge of the landlords and their housing stock to avoid the latter being choked. Some prefectures, who at one time were happy to put forward one single applicant, have gone back to the former practice of putting forward a list of three applicants per vacant housing unit to give the organisations a choice. Further, this system features the risk of making the State lose its "turn of proposal" in the event of a delay from the prefecture or a refusal by the leasing organisation.

In the second system, the logic is top-down. The prefecture transfers the lists of priority claimants to low-rent housing bodies, leaving it to them, within the framework of landlords' committees, to share these priorities between them.

Naturally, the rate of success of the DALO will depend on tensions in the housing market. But, without taking this essential information into account, the localities will also implement the committees' decisions using different processes. Once again, these processes are related to initial, disparate situations. One prefecture will start with a well-identified and well-managed quota, while for another, the work will be immense. This is without taking into account situations where management of the prefectural quota is delegated to groups of communes, which once again suggests local variations.

Among the keys to the effectiveness of the DALO, relations that may exist between low-rent housing bodies and prefectural services are essential. The provisions relating to the enforceable right to housing come under the "Relations between low-rent housing bodies and beneficiaries" title of the French housing and building code. This situation indicates the chief utilisation of the low-rent housing stock in this scheme, to the extent that one may wonder if these bodies, via a system of joint and several liability, are the only real grantors of the right to housing and the State is simply the "guardian". In the end, the State only plays a role of "mediation" between the eligible claimant and the low-rent housing bodies.

The low-rent housing bodies are torn between the obligations dispensed by the State and the concerns of local elected representatives, which is particularly evident for housing offices that are public establishments connected to local authorities. Further, on a legal level, the low-rent housing bodies are dependent on two objectives – on the same normative level – that may be contradictory: the objective of the right to housing, and the objective of social mix. Article L. 411 of the French housing and building code recalls that the construction, allocation and management of rented social housing "play a role in implementing the right to housing and contribute to the necessary social mix of towns and neighbourhoods"; this imperative is also

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mentioned in article L. 441 devoted to the allocation of social housing. In addition, the DALO procedure itself provides for the consideration of this objective as the prefect must define the scope of housing allocation "taking into account the objectives of social mix defined by the inter-communal or departmental collective agreement" (Art. L. 441-2-3 CCH).

The objective of social mix suggests in-depth consideration of the situation in the localities. The logic of the right to housing prevents variation of the notion of national solidarity based on criteria fixed depending on the territorial location of housing claimants. It postulates a certain uniformity of the regulations. Inversely, the logic of social mix imposes diversification and the introduction of local criteria and parameters; social diversity, assessed on the level of a neighbourhood or housing area, is not a result of the application of criteria or quota defined uniformly for the entire national territory. It is precisely to comply with the social mix objective that the low-rent housing bodies could come into conflict with the prefectures on housing allocation proposals. We can also point out that it was on the basis of this objective for social mix that a low-rent housing body asked – in vein – the Council of State to suspend the effects of the circular of 23 October 2009 requiring just one applicant to be put forward to low-rent housing bodies for housing under the employer-sponsored housing assistance programme (CE, 4 February 2010, OPAC Marne et Chantereine, AJDA 2010 p. 1723, note N. Foulquier).

It turns out that, while in some regions the low-rent housing bodies frequently uphold prefects' allocation proposals regarding the quota, refusals are high in others. These refusals may be based on compliance with the social mix objective, but sometimes the reasons are more surprising – as the populations concerned are disadvantaged – such as sufficient resources or a too-high revenue/expense ratio. On a legal level, the prefect does indeed have ways of forcing an applicant on a recalcitrant low-rent housing body, but at the price of a heavy and complex procedure that involves open conflict with the concerned low-rent housing body.

Lastly, local disparities may be evident in the very way in which DALO beneficiaries are given satisfaction. One prefecture will set itself the policy of never putting DALO applicants forward for new housing, in order to avoid creating feelings of special treatment with "common law" social housing claimants. Another will be particularly careful about complying with social mix and will try to limit allocation proposals in housing situated in sensitive urban areas (ZUS).

THE IMPACT OF THE DALO ON THE TERRITORIES

The introduction of the DALO apparatus into French positive law constitutes a remarkable innovation on several levels. First, in terms of public policy implementation. It is in fact the first time that citizens and residents in France can become, through their

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claims, a channel to implement public policies when the main actors, notably the State representative, fail. The law therefore nourishes hope that the effectiveness of the public housing service may be improved thanks to active and legal participation of the beneficiaries of public action[9]. Then, in terms of local policies. While housing policy associates an increasing number of territorial communities, the DALO system only concerns the State. It is therefore useful to examine how the system's implementation has impacted actors of housing policy and, more widely, local housing policies.

Is the State alone responsible ?

The constitutional objective of access to decent housing – confirmed by the Constitutional Council in 1995 – is an objective borne by the public authorities alone. The judicial judge recollected, within the framework of the contentious matter of squatters, that "the right to housing is recognised as a fundamental right and an objective of constitutional value, the guarantee of which constitutes a duty of solidarity for the entire Nation, concerning however, in the first place, the State and the responsible public authorities[10]." In other words, even if certain constraints may be enacted against private landlords in the name of this objective, it is essentially the public authorities that must act. Within this framework, the State is obviously concerned, but it is not the only public legal body that has an obligation with regard to meeting this constitutional objective.

In particular, although housing policy has not really been devolved to the regions, the territorial communities now largely intervene in its definition and implementation. From this point on, the question was raised – in the perspective of implementing an enforceable right to housing – regarding the involvement and therefore responsibility of the territorial communities in this system.

Initially, the draft law instituting the enforceable right to housing, while making the State the guardian of this right, also planned to largely involve territorial communities. This idea of giving responsibility to territorial communities had already been brought up by a certain number of parliamentarians at the time of the law of decentralisation of 2004[11] and the law pertaining to the national housing commitment in 2006. In short, the idea was to consider that the increased authority of territorial communities in housing policy – law of 2006 symbolically introducing a chapter

9. Wolmark C., *L'opposabilité du droit au logement*, Recueil Dalloz, 2008, p. 104.
10. CA Paris 14e ch. 15 Sept. 1995, Association "Droits devant", No. 95/10568
11. A certain number of ministers from the opposition wanted the delegation agreements for housing subsidies to be accompanied with legal responsibility of the groups of communes with an obligation to achieve results. The government rejected this position, arguing that it was more important to develop the housing supply than to allocate responsibility. The minister delegated to local freedom even admitted he was "terrified by the idea of an obligation to achieve results" (A.N. session of 1 March 2004).

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in the building code entitled "local housing policy" – should be accompanied with legal and therefore political responsibility.

In this frame of mind, Article 3 of the draft law stated that the communes and groups of communes that signed a delegation agreement of the prefectural quota were to replace the State, as far as responsibility for the DALO was concerned, for claimants residing for more than one year in the locality. We can also recall that the Scottish example, so often brought to attention during parliamentary discussions, is a system whereby local authorities and not the State are responsible in implementing the right to housing.

From the first reading, the French Senate deleted the provisions concerning the replacement of the State with the communes and EPCI (local public infrastructures), with the welfare committee evoking that "local elected representatives are firmly opposed to the delegation of responsibility for implementing the right to housing", arguing that there were "neither the resources (power of requisition, for example), nor necessarily the will" to implement this apparatus. The Assembly adopted the same position as the Senate, with the communes' and EPCIs' involvement being restricted to the possibility of asking to test the implementation of the right to housing.

Contrary to the Scottish model, the French apparatus only concerns the State in its implementation[12]. This obligation, which is the responsibility of the State, is mentioned in Article one of the Law, codified in Article L. 300-1 of the French building and housing code via the expression "is guaranteed by the State".

We have seen that the law of 5 March 2007 gives beneficiaries of the delegation of construction subsidies the possibility to ask to test the implementation of the right to housing. For the time being, this provision has gone unheeded, with no assignee having sought to carry out this test. Thus, if we examine the implementation of the DALO on a local level, we get the impression that the State is somewhat alone. In substance, the apparatus is considered as a matter wanted by the State, which in the end is a "matter of the State".

Internally, implementation of the DALO has not been without consequences for the State. The prefectures have been put at the heart of the apparatus and have had to mobilise their prefectural quota.

Externally, things are a little more complicated. In the communes, attitudes can differ

12. In her report to the Assemblée nationale, the minister Christine Boutin even affirmed that the Scottish example was isolated in Europe, and went so far as to say that certain German *Länder* "have even proclaimed a "non-right to housing" by deliberately arranging for a subjective right to the allocation of housing by the commune not to exist" (report AN No. 3671, 6th February 2007 p. 33). Without claiming to have read all the constitutions of the *Länder,* we sincerely doubt that this principle exists.

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in a same territory, from "compassionate neutrality" to open hostility. Some communes have played a slightly ambiguous role in terms of information regarding the system: some slowed down the distribution of DALO forms, while others systematically distributed one when a social housing request came up, causing an avalanche of preliminary proceedings that were not justified for the mediation committee. Likewise, participation of local elected representatives on the committees is quite rare. The general feeling is that elected representatives do not have any hold on the system. The law stipulates that the prefect – when allocating a priority claimant to a leasing organisation – must get the opinion of the mayor concerned, but this procedure is only formal in appearance and few prefects take account of any possible negative opinions. Elected representatives are often concerned about the impact of implementing the Act on social mix. Mayors claim housing allocations and often refuse to accept priority DALO applicants who are not originally from the commune.

As for leasing organisations, reactions are also varied. The apparatus was often initially perceived as a proof of suspicion on part of the public authorities with regards to low-rent housing bodies. The latter did not always spontaneously inform the prefectures of housing coming under the prefectural quota or were not very concerned about the issue of housing disadvantaged people. Also, representatives of the bodies are very active on the mediation committees and genuinely take up positions, for example concerning tenants of social housing with a high rental debt. When it comes to implementing the decision, once again the situations can be varied. Some bodies play the card of clarity, while others dig their heels in in opposition. It is true that the bodies have seen the number of "priority" situations multiply over several years.

The intervention of the judge in a field which, until now, only had very few litigious cases is something remarkable. Some Presidents of Chambers responsible for DALO litigations have even taken the initiative to bring together all players in the "DALO chain" in order to perfectly identify the issues of the apparatus. It is true that, contrary to what parliamentary studies suggest, the judge is not restricted to simply determining the facts. Before pronouncing a ruling to the prefect, he must make sure than no suitable offer has been made to the claimant and that the condition of urgency is still applicable. Further, in terms of payment of fines, the judge plays an essential role insofar as – most of the time – it is on his initiative that the settlement procedure is started.

Lastly, the judge may have to intervene to settle "collateral damage" related to the implementation of the DALO; action for indemnity from non-housed priority claimants[13], action from a low-rent housing body against the prefect's decision to

13. Belrhali-Bernard H., "L'action en responsabilité : recours de la dernière chance pour le DALO ? », *AJDA, 2011, p. 690.*

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enforce a DALO claimant; action from the State against a commune that refuses to produce social housing, etc. It will be interesting to observe the jurisprudence related to the DALO Act as it develops in the housing field[14].

DALO and local housing policies

The work of the mediation committees could have been restricted to filing requests and determining which ones take priority, with the others being referred under common law. But, and this is one of the benefits of the system, the DALO procedure adds value to information and alert mechanisms in the field of housing. This "alert" role was actually the role initially vested to the committee by the law of 1998 to fight against exclusion. The DALO Act is supposed to produce a "leverage effect" to move local housing policies forward.

As for information, implementation of the DALO Act has not really revealed any new situations that have not yet been experienced by local housing policy actors. In the Ile-de-France region, according to State services (DREIF), the only major difference between social housing tenants, social housing claimants and DALO claimants is the high representation of foreign populations among DALO claimants and those considered priority claimants. Almost one claimant in two is foreign, compared to 28.96% for claimants of low-rent housing and 13.54% for the entire population.

The DALO reveals local differences in terms of tensions regarding access to housing, and the Ile-de-France region is particularly concerned. At the same time, the very low number of requests filed in certain *départements* or certain regions does not necessarily lead to the assumption that, in these areas, access to housing does not present any real problems. However, we may be led to wonder, just like the Council of State in its 2009 report "Droit du logement, droit au logement", as to the utility of the Act in 80 *départements*.

Concerning the state of the housing stock, the DALO has revealed a certain number of problems concerning unfit housing conditions and over-occupation in the low-rent housing stock, requiring the bodies to adopt a more active mobility policy.

Above all, implementation of the DALO Act has led to a number of existing schemes to be questioned. The DALO procedure will enable situations which fall under other "sectors" to be reactivated and speed up the processing of situations. In terms of

14. *In this sense, we might regret the decision of the Court of Cassation which, in an order dated 30th Sept. 2009, judged that the general principles for allocating rented social housing to priority claimants do not apply to demands for transfer within the social housing stock. Thus, the parents of a disabled child in rented social housing are deprived of the right to have their request to be transferred to a more adapted form of housing examined as a priority case by the subsidised housing body. Cass. 3e civ. 30th Sept. 2009, No. 08-18.820, AJDI, 2010 p. 568.*

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housing considered to be unfit, for example, further to the law of 25 March 2009, the committee can ask the relevant services for a state of proceedings. However, the committee establishing itself as an "inspection authority" of common law procedures in terms of fight against unfit housing seems awkward. The important role played by the DALO procedure in terms of reporting should also be noted. One example concerns housing regarded as unfit. This in an interesting case because the committee can start an administrative procedure, even though unfit housing is the domain of the judiciary judge and there is no "policy" regarding it. However, monitoring housing regarded as unfit and accompanying the tenant in his/her dealings with the landlord poses a problem as most often, the tenants are left alone to manage the situation.

As for how the DALO fits in with other local schemes, one of the stumbling blocks concerns departmental collective agreements. Implementation of these agreements varies from area to area, but the main interest of the system is that, unlike the DALO, these agreements – signed with low-rent housing bodies to facilitate the allocation of housing to disadvantaged people – concern all quotas held by the authorities (State, commune, groups of communes, etc.). Hence the important question: should DALO audiences be included in departmental collective agreements whereas currently, it is one of the few "shared" instruments for managing disadvantaged people? Would this integration "cannibalise" the system? Some actors observe that reservees are now advising their claimants to file a DALO claim rather than handling their situation directly. But the DALO committee is only supposed to intervene when all other routes have failed.

In terms of social housing production, the impact of the DALO seems weak. Via urban development funds that exist in each region, penalties paid by the State are intended to finance the building of social housing. But the argument of "pressure" related to the DALO is not really relayed by State services to local partners in view of pushing them to develop the offer. The system of the enforceable right to housing might even widen the existing gap between municipalities that have chosen to comply with obligations of the law pertaining to urban renewal and solidarity (which imposes a quota of 20% of social housing per commune) and those that do not comply with these conditions. The first will experience even more pressure from poorly–housed people as soon as their public housing stock fills out and will suffer from what some people call a "double penalty". On the other hand, areas that only make a restricted social housing supply available will be less sought out by disadvantaged people. Concerning the latter, prefectures, which on a legal level have important forms of coercion, have been asked to use a "soft" method of persuasion through the signing of "social mix contracts". This involves accompanying, in terms of methodology and finance, the communes that fail to produce enough social housing.

Lastly, on a legal level, both before and after application of the Act, DALO

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beneficiaries do not have subjective rights that can be invoked against private individuals and public authorities. The Court of Appeal of Paris reminded that "the law of 5 March 2007 establishing the enforceable right to housing gives public authorities the responsibility of implementing the right to decent housing, but it cannot impose, even by court decision, expropriation for public utility or a non-legally-recognised requisition on a private person in the name of the duty of solidarity that concerns the Nation[15]". The Court of Cassation has the same position, deeming that the Act of 5 March 2007 cannot make legitimate "any occupation without right or title of a residence belonging to somebody else[16]." The Council of State considers too that the provisions of the Act of 5 March 2007 cannot go against a prefect's decision to call on assistance from the police to carry out an eviction[17].

In other words, implementation of the DALO Act does not enable jurisdictions to allot the subjective right to decent housing in opposition to all public authorities.

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