Cour des comptes

THE ENFORCEABLE RIGHT TO HOUSING

A priority that requires reassertion

Rapport public thématique

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Summary

The enforceable right to housing (Dalo) was introduced in the French Law of 5 March, 2007, and is a last resort for applicants who experience severe difficulties with housing. It requires the State to house or rehouse households recognized as eligible as a matter of priority and urgency. Although the State alone bears this responsibility, local authorities, social landlords and the employer-funded organization *Action Logement* are obliged to help with rehousing.

Seven criteria can confer Dalo eligibility:

- the applicant is homeless;
- the applicant is threatened with eviction without alternative accommodation;
- the applicant has been living in social accommodation or a social residential hotel for more than six months, or in transitional housing or a hostel for more than 18 months;
- the applicant is housed in premises that are unfit for habitation or that are unsanitary and dangerous;
- the applicant is in inadequate housing, provided that either he/she is caring for at least one minor child or disabled person, or that he/she has a disability;
- the applicant is in overcrowded accommodation, provided that either he/she is caring for at least one minor child or disabled person, or that he/she has a disability;
- the applicant has applied for social housing and been waiting for an “abnormally long” time.

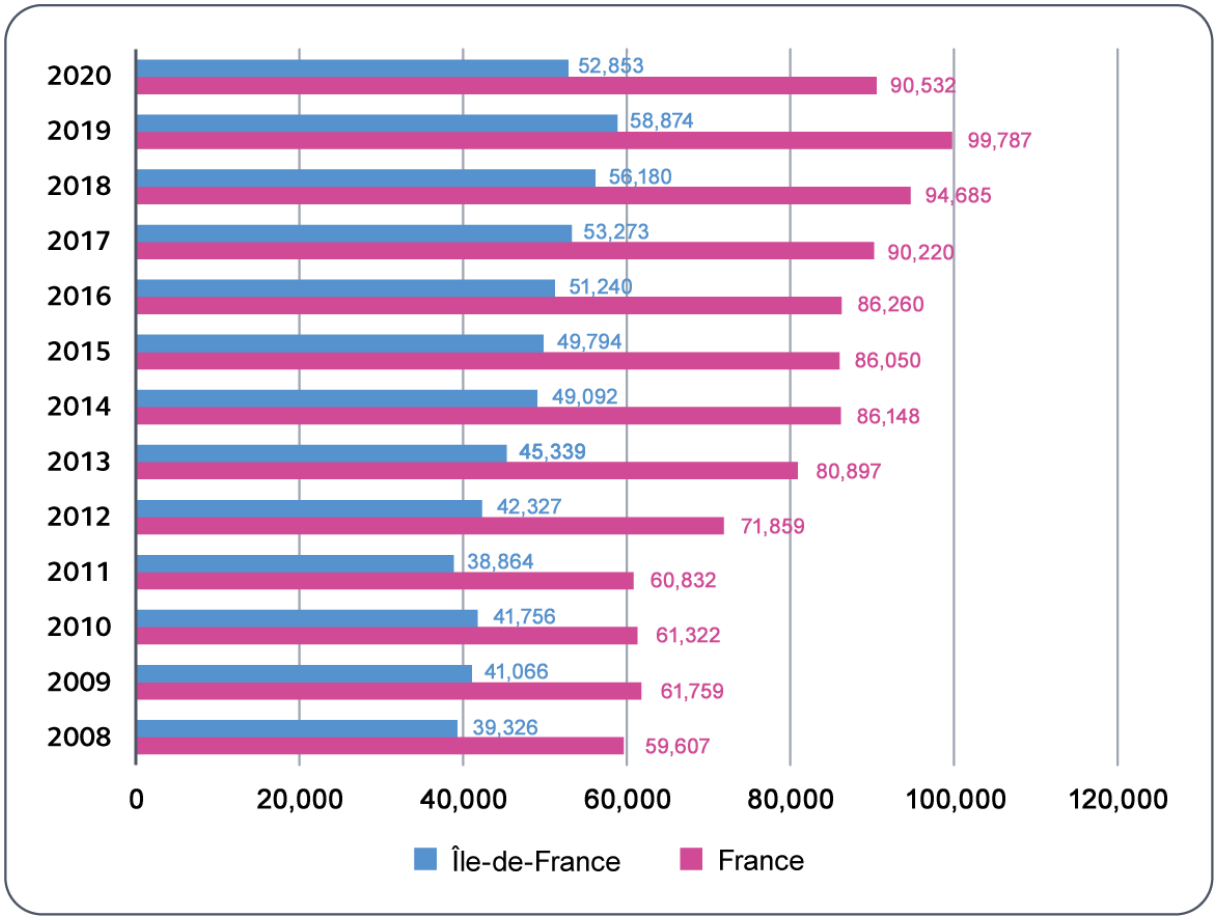
The housing offer devised by the State must be “suitable” in the sense of the Law, i.e. it must meet the needs and characteristics of the household. When the State fails to fulfil its obligations, it may be held liable, including liable to pay compensation.

Partially effective; on-going deterioration in Île-de-France

The Dalo is unique in Europe and across the world, and the number of recorded requests has increased since it came into force on 1 January 2008. By the end of 2020, nearly 1.3 million requests for recognition of Dalo eligibility had been submitted to the Departemental Mediation Commissions (Comed) responsible for reviewing them.

Over 60 % of the requests over the period were recorded in Île-de-France. They now represent 2.7 % of the total number of social housing applications (4.5 % in 2015). This development reflects the increased stress on the demand for social housing. Although the number of Dalo applicants is increasing, as a proportion of the overall demand for social housing, the figure is decreasing.

Movement in the number of Dalo recognition applications between 2008 and 2020



Source: Court of Accounts, based on data from the DHUP The same household may make several applications

The percentage of favourable decisions handed down by the Mediation Commissions was 34.5 % in 2019, compared with 25.0 % in 2008. The variations observed between Departements cannot be explained simply by differences in individual situations and in the rental stock. They also result from the disparate practices of the Commissions, which raises the issue of lack of uniformity in applying the Dalo.

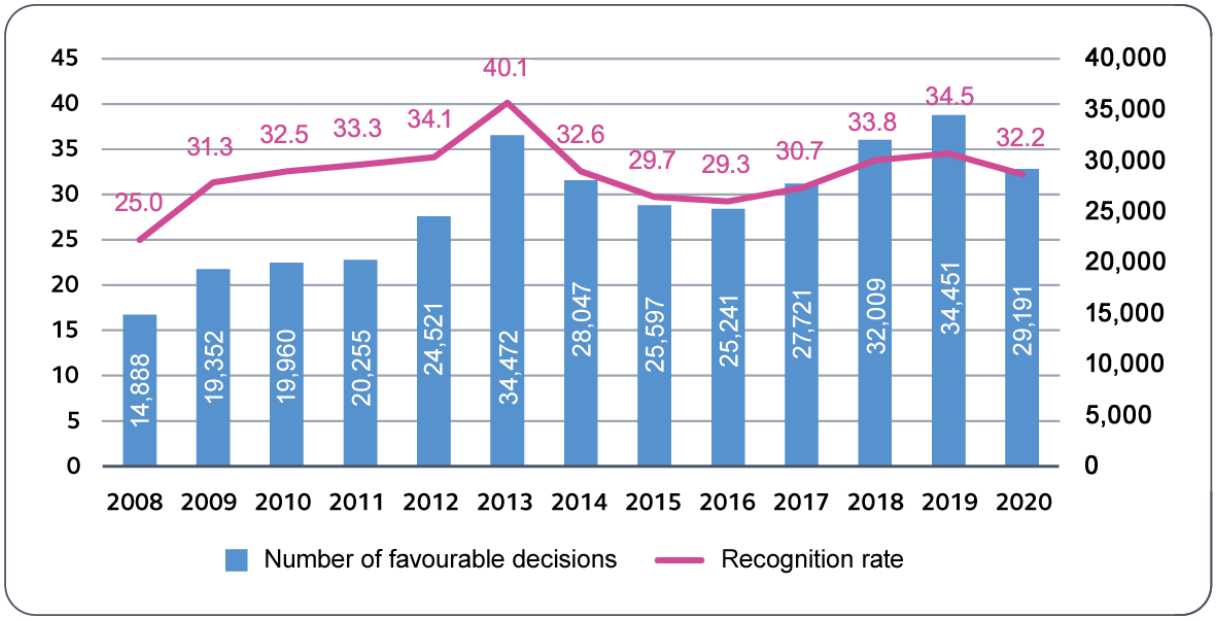
Being recognized as eligible for the Dalo is only a household's first step. This acquired right is only effective if the State, who is alone responsible, can quickly offer housing or alternative housing appropriate to the household's needs. The audited figures, updated since the Court's last investigation, still fall short of the commitment.

Between 2008 and 2020, 333,724 households were recognized as eligible for urgent and priority rehousing under the Dalo, of which 62.8% benefited from an appropriate rehousing offer from the State. However, 78,016 of them, or 23.4% of the total, were still not rehoused at the end of February 2021. The situation has deteriorated since 2015: there were then 60,000 households waiting for an offer. It is particularly difficult in Île-de-France, where nearly a third of the 65,000 households recognized as eligible for Dalo since 2008 are still waiting for a rehousing offer from the State.

Households are almost exclusively rehoused in social housing, even though private housing that is subject to an agreement can also be used.

At national level, fewer than half of the households recognized as eligible for the Dalo since 2008 have been rehoused within the timescales defined in the Law. The average timescales contradict the notion of priority and urgent rehousing.

Movement in the number of favourable decisions and the recognition rate



Source: Court of Accounts based on data provided by InfoDaLo supplied by the DHUP. Data (incomplete) extracted on 24 February 2021 for the years 2008, 2009, 2010, 2011 and 2012 for Bouches-du-Rhône. Reading: number of favourable decisions per year compared to the number of requests received. Some decisions may relate to appeals received in previous years.

The State's responsibility increasingly called into question

Where the State's response is deficient, the legislator has provided two remedies: an injunction for failure to act, with, if relevant, the imposition of a penalty; and an action for compensation. They are used increasingly by households recognized as eligible for the Dalo and waiting for an appropriate offer. Between 2015 and 2020, the State had to make penalty payments of nearly €130 million. The rise in the number of households still waiting for an offer is likely to increase these amounts. Litigation imposes a heavy burden on the administrative courts, particularly in areas under stress where the judge's intervention can have no influence on the deciding factor: the supply of housing.

A combination of factors causing a low-grade blockage

The growing difficulty in accessing social housing is often cited by local actors but is not the only obstacle to implementing the Dalo. Other factors come into play. The primary source is the increase in the number of objectives assigned to local actors when they allocate social housing. Since the Dalo came into force, new categories of priority beneficiary have been created by a number of pieces of legislation.

These numerous directives have deprived the Dalo of its higher-priority character, relegating it to the rank of one priority among others. One example is the still inadequate effort made by local authorities and landlords to participate with the State in the rehousing work.

The rating of social-housing applications is being standardized, and this may exacerbate the risk of the Dalo losing its significance. The points allocation system is based on a certain number of criteria and was developed within inter-municipal housing conferences to help the allocations commissions to prioritize the requests. It should come into general use by the end of 2023, with the aim of helping the allocation commissions to prioritize applications. While it should normally only be a decision-making aid, it could, given the volume of requests, significantly influence the order of applicants in the queue. None of the rules applied today ensures that the Dalo's higher priority will be taken into account.

A second set of difficulties relates to the excessive reliance on the State for the work of rehousing households recognized as eligible for the Dalo. The State alone is legally responsible, although it does not manage the entire housing stock. However, the Law requires *Action Logement* (since 2009), and local authorities and other landlords (since 2017) to contribute at least 25% of their annual allocations to this effort.

Measuring each stakeholder's contribution is difficult because the information systems are not compatible and the data they hold is incomplete. Based on the estimates available, the Court noted that the legal obligations were not being respected, particularly in stressed areas such as Île-de-France.

At the same time, the State, which alone is liable if a household recognized as eligible is not rehoused, does not use the penalty instruments provided by the legislator in a context where dialogue with the social-housing stakeholders is already difficult.

A third set of difficulties relates to direct or indirect challenges to Dalo's own legitimacy. These are sustained by the imprecision or unsuitability of some of the eligibility criteria:

- all requesting households are treated in the same way, whether or not they are already in social housing. This lends credence to the idea that the Dalo replaces both the normal obligations of social landlords and the ordinary law as regards transfers within social housing;
- people with disabilities are not considered in priority, unless their accommodation is inadequate or overcrowded.

Some landlords may also use legally-recognized background information, such as the need for a social diversity or insufficient resources, to refuse applications from households recognized as eligible for the Dalo, and they do so without proposing alternative housing.

A fourth set of difficulties stems from the fragility of the Mediation Commissions. Although their composition is more representative and although clearly the State services have tried to train members and harmonize practices, significant disparities persist between Departements. The chairmanship of such a Commission has few attractions.

Given their role, which is to grant certain households a right that can be enforced against the State, then by comparison with other administrative Commissions, their skills must be enhanced.

Finally, the lack of support for households is a source of difficulties both before they apply for recognition (failure to claim, incomplete files) and after they have obtained the right (refusal of a suitable offer).

At the end of this new assessment of the implementation of the enforceable right to housing, the Court notes that difficulties it had already identified in 2015, particularly in Île-de-France, have intensified. There is a risk that the Dalo will increasingly become a source of growing disillusionment. For too many households, it is not yet an effective right.

Although some of the problems are created by external factors (in particular an inadequate offering of both private and social accessible rented housing), a change to the legal framework and to the way in which Dalo is implemented in practice are necessary. To this end, the Court makes thirteen recommendations with the aim of restoring the Dalo's effectiveness. These recommendations are structured around the following five objectives:

- ensure the primacy of the Dalo;
- refocus the Dalo to preserve its character as a last resort;
- provide more support to households;
- differentiate and simplify procedures;
- make the stakeholders responsible.

They form a coherent whole, and the Court considers them indissociable if the effectiveness of the enforceable right to housing is to be restored.

Summary of recommendations

In view of the persistent difficulties that it notes five years after its previous investigation, the Court is defining a series of objectives and recommendations intended to restore the effectiveness and the primacy of the enforceable right to housing, in accordance with the legislator's initial intention. These proposals include both legislative and regulatory adjustments and measures relating to State services. They constitute for the Court a coherent and indissociable whole.

Objective 1: Ensure the primacy of the Dalo

Although the French Law of 5 March 2007 gives households recognized as eligible for the Dalo priority over all other priority applicants for housing or rehousing, the Court found that, in areas where access to private housing and social housing is the most difficult, households receiving a Dalo are too often considered as one category of priority applicants among others. It is important to restore the primacy prescribed by the legislator.

1. Harmonize the legal provisions so that if the Prefect designates a household with a Dalo, this is equivalent to a rehousing order ((*French Government Department for housing, town-planning and landscape [DHUP]*).

The Court recommends that the obligation of landlords to house Dalo beneficiaries be clarified. The term "designation", sometimes used in the French Construction and Housing Code (CCH), may be confused with the "designation" made by financial partners able to nominate possible tenants when housing is allocated, and suggests that a refusal is possible. The harmonization will aim to clarify the fact that if a household awarded a Dalo is designated, this is equivalent to an injunction to the lessor to house or rehouse it.

The Court recommends amending accordingly the wording of the 9th and 15th paragraphs of Article L. 441-2-3 of the CCH to indicate clearly that the designation of a household by the Prefect is equivalent to an injunction.

2. Ensure that when social housing applications are graded, the primacy of the Dalo is systematically recognized (*DHUP*).

In view of the standardization of the rating of applications for social housing, the Court recommends ensuring that the methods of rating selected guarantee the primacy of households awarded a Dalo. Until now there have been no prescriptive rules in this sense, with a real risk that, in stressed areas, the rating systems adopted at the inter-municipal level relegate the Dalo to the rank of one priority among others.

If the rating criteria are left to the choice of local actors, a Decree could provide that Dalo beneficiaries be given a higher rating than the others in all the territories covered by the allocation reforms.

3. If an application from a Dalo household is refused on the grounds of low income or of legislative objectives for social diversity, introduce into the Law an obligation for the allocation committee to offer it alternative accommodation or an adjusted rent (*DHUP)*.

Although the Housing Allocation Commissions (Caléol) must retain their ability to match the proposed applications with the available housing, blockages where households awarded a Dalo are refused on the grounds of their resources and without an alternative solution must cease.

The legal or regulatory provisions must provide for the lessor's obligation to offer other housing as an alternative.

Otherwise, State representatives must use the substitute methods of direct attribution already defined in the Law and currently not used, subject to the necessary adjustments to facilitate their implementation.

Objective 2: Redefine the law to guarantee its character of last resort

After thirteen years of operation, some of the eligibility criteria need revision in order to preserve the Dalo's character as a last resort, and to prevent it becoming a means of circumventing the ordinary law.

4. For applicants already in social housing, remove the Dalo eligibility criterion of an abnormally long delay in obtaining social housing (*DHUP*).

As an extension of its 2016 observations, the Court recommends that as regards this criterion, households already in social housing and others be treated differently. Only the second category keep this criterion.

The major advantage of occupying social housing in a stressed area, the specific responsibilities of social landlords, including the State, and the difficulties that the State has in these same areas in complying with its obligation to offer housing or rehousing offer no grounds for considering that the two situations are identical. This removes the risk that the ordinary legal procedures relating to transfers within the social housing stock are misused.

5. Specify, in the Law, the two stages in the review of applications for Dalo recognition: firstly, the verification that the household falls into one of the categories provided for in the Law, and then an assessment of the urgency of the requesting household's situation (*DHUP*).

The urgency of relocation must take precedence. The Court recommends that the 13th paragraph of Article L. 441-2-3 of the CCH prescribe the requirement for the Mediation Commissions (Comed) to review requests following these two stages.

6. Create a legal procedure to nullify the right before the Mediation Commissions (*DHUP*).

The Court recommends that a procedure to recognize the nullity of the Dalo be put in place, in order to deal with the situation where households have refused an offer that is suitable in the sense of the regulatory provisions.

Such a procedure would harmonize the various means of nullification currently used in certain regions, and clarify the precise number of households for which the State remains responsible for applying the Dalo.

In this respect, the Court suggests basing the system on that implemented in Île-de-France by the Regional and Interdepartmental Directorate for Accommodation and Housing (Drihl). This requires the Departemental services to seek the Comed's opinion before notifying households that the State considers itself released from its obligation towards them. It will be necessary to strengthen Comed's resources to respond to this additional workload.

Objective 3: Provide more support to households

Although the eligible households have fairly diverse profiles, a significant number of them need social support throughout the stages of obtaining recognition of their eligibility for Dalo, and until they are rehoused. This support ensures that they will find it easy to move into the housing.

7. Systematically offer households support before they obtain Dalo recognition and after they obtain it until they are rehoused (*DHUP*).

In view of the difficulties caused by an absence of systematic support both before the Comed's decision and afterwards while waiting for accommodation or rehousing, the Court recommends that the Comeds or the reviewing services systematically offer support both to households requesting recognition of their Dalo eligibility and to those who have obtained the right. The forms this support takes should be adapted to the household's situation and call on the different support bodies present in the area.

Objective 4: Differentiate and simplify procedures

Several measures can be implemented to simplify and hence streamline procedures for reviewing eligibility, without adversely affecting the requesting households.

8. Strengthen the chairmanships of the Mediation Commissions, strengthen their resources and amalgamate the commissions least used (*DHUP, Regional Prefects*).

The Court recommends continuing the work of amalgamating the Mediation Commissions in three complementary ways:

- strengthen the status of the chairmen by assigning the responsibility to former magistrates or legal professionals, as is already done for many other independent administrative commissions. The question of the chairmen's compensation must also be debated, as the activity of certain commissions is reaching high levels;

- train Comed members systematically, before they take up their duties and while they are in office;

- amalgamate the least-used Comeds at regional or even inter-Departemental level, and also pool the means of instruction. The Departemental Prefect will remain legally and operationally responsible, on behalf of the State, for the obligation to offer accommodation.

9. Remove from the Law the prior opinion of the mayor on the relocation of a Dalo household (*DHUP, DGCL*).

The Court recommends deleting the provisions of Article L. 441-2-3 of the CCH which provide that the State representative defines the perimeter within which housing will be offered to a household recognized as Dalo eligible, "after consulting the mayors of the communes concerned".

This prior opinion is not requested for social-housing applications coming under the ordinary legal procedure. It represents a tedious additional step for the State services and appears in no way likely to promote the household's integration into the commune. Negative opinions, even if they have only an advisory value, can make it difficult for the State to carry out the housing procedure successfully.

10. Abolish the requirement for a mandatory hearing before the administrative judge when applying for an injunction aiming to establish the State's failure to rehouse a household recognized as eligible for the Dalo (*DHUP*).

The Court recommends the abolition of the mandatory public hearing when applying for an injunction against the State the sole purpose of which is to establish the absence of an offer of housing by the Prefect. Since the administrative judge simply notes the absence of an offer, the hearing adds no value. This abolition would make standard the practice used during the health crisis, and the administrative judge would retain the right to hold the hearing if he/she considered it necessary.

However, this abolition would not affect applications for injunctions that aim to challenge the suitability of an offer of housing made by the State. The judge's decision may lead to the loss of Dalo eligibility if the State's offer is considered suitable, so that it is essential that the parties have the opportunity to express themselves at a hearing.

Objective 5: Make the actors responsible

Although the State is the sole guarantor of the Dalo's effectiveness, since the latest legislative changes, the work of housing or rehousing households entitled to the right is also the responsibility of landlords, local authorities and *Action Logement*.

11. Add a provision to the Law extending to regional Prefects the option of proposing rehousing outside the Departement, when the features of the territory make this a feasible option, taking the household's constraints into consideration (*DHUP*).

The options open to the Prefect should be broadened. Rehousing between Departements, currently an option only in the Ile-de-France region, must be extended to other clearly-defined areas.

In areas where urban organization, transport networks and living areas extend across Departemental administrative boundaries, this extension would make it possible to increase the number of offers available to households.

The criteria for adapting the offer, and in particular the consideration of the location of workplaces and schools, where relevant, would continue to apply, as they do now in Île-de-France.

12. Add a provision to the Law allowing Departemental Prefects to impose financial penalties on landlords who refuse without valid reason to allocate housing to a Dalo household designated by the Prefect (*DHUP*).

The Court recommends establishing a right for Prefects to impose financial penalties on landlords who refuse without valid reason either to allocate housing to a Dalo household designated by the Prefect or to register their candidacy on the agenda of a Housing Allocation Commission. The income from penalties would be added to the National Fund for Housing Support (FNAVDL) and could be deducted proportionally from the penalty payments made by the State for failure to rehouse. A simple solution would be advisable so that the procedure does not become more complicated and hence rendered impractical.

This power to sanction would be additional to the power of substitution.

At the same time, a change to the wording of the 19th paragraph of article L. 441-2-3 of the CCH appears necessary. This paragraph currently refers only to the refusal of an allocation, whereas it would be better to refer to the absence of an allocation within the regulatory period. It also refers only to the use of the Prefect's priority applicant group (*Contingent Préfectoral*) when the power of substitution is used, whereas now all *Contingents* must be able to be used.

13. Refine information systems in order to measure accurately compliance by local authorities, *Action Logement* and landlords with their obligations for rehousing Dalo households (*DHUP, local authorities, landlords*).

This recommendation was clearly identified by all the Court's interlocutors, and constitutes a general condition for the effectiveness of the reform mechanism proposed by the Court.